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NO.: CV-91-0062496 S : SUPERIOR COURT
HIGH STREET ASSOCIATES : J.D. OF MIDDLESEX
VS. : AT MIDDLETOWN
WILLIAM J. ZISK : FEBRUARY 11, 1993

REQUEST FOR LEAVE TO FILE
AMENDMENT TO COUNTERCLAIM

Now comes the defendant William J. Zisk, by and through his attorney as of record appear and pursuant to, inter alia, Practice Book Section 176 as amended, and herein requests leave to file an amended counterclaim, same being appended hereto and made a part hereof.

THE DEFENDANT,
WILLIAM J. ZISK

BY Paul Gozzi
PAUL GOZZI
CARTA, SLUIS & PALADINO
P.O. Box 308
Essex, CT 06426

ORDER

Above motion having been heard it
is hereby ~~denied~~ granted

Waldron
3/1/93

Waldron
3-1-93

Present T. H. Milardo
& Atty. Gozzi

TAC/Waldron
3-1-93

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AMENDED COUNTERCLAIM

COUNT ONE - ACTION TO QUIET TITLE

1. The plaintiff, High Street Associates, purchased whatever interest it may have in a certain 32-acre parcel of real property located at 106 High Street, Haddam, Connecticut, by quit claim and warranty deeds (attached hereto and marked Exhibits A and B respectively) signed in May of 1991 and recorded at the Haddam Town Records on June 3, 1991.

2. Said purchase was subject to a mortgage deed and note payable to Mary A. Zisk, Donald R. Zisk and Edward J. Zisk, also signed in May, 1991 and recorded June 3, 1991 with a note balance of \$183,333.32. (A copy of the note is attached hereto and marked Exhibit C).

3. The plaintiff, a Connecticut General Partnership, by complaint dated June 4, 1991, claims to own the entire 32-acre property, as tenants in common with the defendant William J. Zisk, which are adverse to the title or interest of the defendant therein.

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4. On or about July 20, 1952, the defendant's late father, William W. Zisk, and mother, Mary A. Zisk, gave the defendant all their right to a certain 4 acre portion of the aforementioned 32-acre parcel described as follows:

all that certain real property situated in Middlesex County, Connecticut, fronting on the East side of Killingworth Road, being a portion of the Zisk property and having a frontage of approximately 300 feet on Killingworth Road and adjacent on the North side to the South boundary line of Professor West property; running East along the said boundary line to the east end of West property and thence in a Southerly direction along the extension of the East boundary line of West property to the South boundary line of Zisk property; thence West along the South boundary line of Zisk property to the West boundary line of Zisk property fronting on Killingworth Road, containing approximately four (4) acres, more or less, excepting and reserving a right of way for ingress and egress to the main real property along the North side of Professor West property, said right of way to be fifty (50) feet in width extending from the Killingworth Road to the main real property."

5. The defendant is the absolute sole owner of said 4 acre parcel described in paragraph four above.

COUNT TWO - ACTION TO ANNUL DEED FOR FRAUD

1 - 3. Paragraphs 1 thru 3 of Count One are incorporated herein.

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2. CONNECTICUT
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RIS NO. 11070

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4. The plaintiff acquired whatever interest it may have by, and with full knowledge of the incapacity of Mary A. Zisk, taking advantage of her for the purpose of defrauding her, and procured her signature to deeds conveying the lands of the plaintiff.

5. The plaintiff and Donald R. Zisk and Edward J. Zisk, knowing representations regarding the value of the property, its intended use, and the effect of its conveyance on the defendant William J. Zisk to be untrue, defrauded Mary A. Zisk and fraudulently induced her to attempt to convey her interest in the subject 32-acres.

6. Mary A. Zisk relied on said representations to be true, and relying on them executed the deeds.

7. As a reasonable and foreseeable consequence of such fraud, the defendant has been damaged by his association as a purported tenant in common and subjected to this present partition action, all at great costs and expense.

COUNT THREE - UNJUST ENRICHMENT

1 - 3. Paragraphs 1 thru 3 of Count One are incorporated herein.

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4. Since on or about May 1, 1991, the plaintiff has received rental income from apartments located at 106 High Street, which the defendant has never received any portion thereof, and is therefore entitled to said rentals as per his proportionate ownership interest.

5. Since on or about June 1, 1989, the defendant has paid all real property taxes on the entire subject real property and is therefore entitled to a payment from the plaintiff for its proportionate share, if any.

6. By failing to provide any sharing of rental income or paying any portion of the real property taxes, the plaintiff has been unjustly enriched.

COUNT FOUR - TORTIOUS INTERFERENCE OF PROPERTY RIGHTS

1 - 3. Paragraphs 1 thru 3 of Count One are incorporated herein.

4. On various occasions since June 1, 1989, the plaintiff, or its employees, agents or representatives, has caused severe and drastic damage to the real property at 106 High Street, by drilling, excavating, tunneling, trampling, testing, and destroying said property, thereby diminishing its value and worth.

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5. The plaintiff acquired whatever interests it may have by fraudulently inducing Mary A. Zisk and/or Donald R. Zisk and/or Edward J. Zisk, all to the great detriment of the plaintiff.

WHEREFORE, the defendant requests this court to:

1. Enter judgment determining the rights of the parties in/or to the land of the 4-acre parcel as referred to, in Count One, and settling the title thereto.

2. Enter judgment declaring the deeds, as referenced in Count Two, to be null and void and of no effect.

3. Money damages and interest as to the allegations of Count Three.


4. Money damage pursuant to the tortious interference of the defendant's property rights by the plaintiff, as set forth in Count Four.

5. Attorney's fees.

6. Punitive damages.

7. Any and all other remedies as equity may require.

THE DEFENDANT

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