

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

GLD3, LLC,

Plaintiff,

v.

MARTIN “MARTY” BYSTER, and
“JOHN DOE”, “JANE DOE”, “DOE ASSOCIATES”,
the names being fictitious and being intended to refer
to any and all adult natural persons and to all partnerships,
corporations and other legal entities having, or which
may have conspired in the illegal conduct described
in the complaint in this action, other than
persons or entities already defendants herein,

Defendants.

Date Filed: 11/16/17

Index No.: _____

COMPLAINT

Plaintiff, GLD3, LLC (“Plaintiff”), by and through its attorneys, Buchanan Ingersoll & Rooney PC, for its Complaint against Martin “Marty” Byster and “JOHN DOE”, “JANE DOE”, “DOE ASSOCIATES” (collectively referred to as “Defendants”), alleges as follows:

INTRODUCTION

1. This is an action seeking injunctive relief in connection with Defendants’ trespasses on Plaintiff’s property, which Plaintiff is in the process of seeking to develop, and the nuisance caused by their tortious conduct.

2. More specifically, as Defendant Byster himself admitted in front of eye-witnesses, he and the “Doe” Defendants “buried” a “bone” or “bones” (hereinafter “bones”) on Plaintiff’s property near “the foundation.” The foundation refers to a certain area in the northerly portion of

the property near where Plaintiff intends to build retail shops.¹ Defendant Byster's admission was captured on tape by one of the eye-witnesses. The eyewitness's sworn affidavit is attached to this Complaint as Exhibit ("Exh.") A.

3. Also attached hereto, as Exh. B, is the sworn affidavit of another witness, who was told by non-party Barbara Hobens, that the burying of bones on Plaintiff's property was "a pretty open subject" and that they "talked about it openly" during meetings held by the "Friends of the Fishkill Supply Depot" ("FoFSD"), an organization that was created to oppose the development of Plaintiff's property. Ms. Hobens was at one time the Vice President of the Friends of the Fishkill Supply Depot.

4. Defendant Byster and the Doe Defendants' motive was to stop the planned development at all costs, even if it meant planting bones on the property so that the entire property could be claimed to be an area of "mass burials" such that no development would be permitted by the governmental agencies reviewing the Plaintiff's development proposal, or that Plaintiff would abandon his application.

5. By an eyewitness, Lance Ashworth, the President of the FoFSD, who at times worked with Defendant Byster in connection with the proposed development, told a group of local college students that "[w]e have to get the owner into a position where nobody is going to develop this site and that requires us to convince the Town of Fishkill that this is really, truly a unique Revolutionary War site." He added: "We are going to *strangle him* basically, *bleed him out*." These comments were also captured on tape.

6. Planting bones by the foundation of Plaintiff's property would not "strangle" the developer, let alone "bleed him out," unless or until those same bones were later "discovered,"

¹ For purposes of this Complaint, the phrase "northern or northerly portion of the property" is the portion of Plaintiff's property north of the creek known as Raiche Run.

and found to be “evidence” of an area of “mass burials.” Defendant Byster and the Doe Defendants needed them to be found, at which time he and his accomplices could “prove” the area a burial ground from the American Revolution and insist that development not be allowed *anywhere* on the property.

7. As Defendant Byster was aware from his long-standing history with the project, some bones were previously discovered on a *different* portion of the property—*i.e.*, on a small 0.4 acre area (of Plaintiff’s 10.47 acre property) on its southwest corner, which corner borders Van Wyck Lake Road and NYS Route 9. After numerous archeological surveys—all undertaken under the State’s close supervision—the archeologists and the State determined that the limits of the burial area had been properly established and that the burial area was *confined* to this small location in the southwest corner of the property, and south of Raiche Run. Archeological testing supervised by the State in the northern portions of the Property, north of Raiche Run, established *no* evidence of human bones or burials in the *northern* section of the property, including near the foundation, where the Plaintiff intended to construct retail shops.

8. Defendant Byster and the Doe Defendants buried the bones in the northern portion of the property by the foundation so that, once found, they can make the argument that despite the results of these archeological studies the burial area, or burials, in fact extended beyond the southwestern portion of the property into the *northern* portion of the property.

9. Once again, “seeding” the northern portion of the property with bones would do Defendant Byster and his accomplices no good unless those bones were discovered. Not surprisingly, in an effort to bring about the discovery of the bones he and his accomplices buried, Defendant Byster has been arguing that more study is needed in the northern portion of the property, including by the foundation area—the very same area where he and his accomplices

had planted the bones. Defendant Byster and his accomplices are also aware that Plaintiff has incorporated, as an integral part of its development proposal, an unanticipated discovery plan to address any potential archeological finds which are, while “unanticipated,” found nonetheless during site preparation or construction. By “seeding” the northern portion of the property with bones, Defendant Byster and his accomplices have changed the character of the site in order to stop development, but at a minimum, to cause substantial delays in development and construction and aid their plan to discourage Plaintiff from completing his project.

10. Defendants’ conduct, as well as the conditions they created by burying human remains on the property, constitutes both a trespass and nuisance and has caused significant injury to Plaintiff and the property.

11. Despite their trying to sabotage the proposed development, Plaintiff is not seeking damages against Defendants. Rather, Plaintiff merely seeks injunctive relief requiring Defendant Byster and his fellow Defendants to identify precisely where they buried the bones, locate them, and then remove them in accordance with applicable law.

12. Through discovery in this action, Plaintiff believes it can and will identify the names of each of the Doe Defendants who acted together with Defendant Byster in burying the bones on Plaintiff’s property. Once known, their names will be identified in the caption of the complaint as well.

JURISDICTION AND VENUE

13. This Court has personal jurisdiction over Defendant Byster because he resides in New York.

14. Venue is properly situated in the Supreme Court of the State of New York for the County of Dutchess because Dutchess County, New York is where Defendant Byster and, upon

information and belief, the Doe Defendants are located, and where the conduct giving rise to the claims alleged herein occurred.

PARTIES

15. Plaintiff is a limited liability company formed in the State of New York with an address of c/o 1070 Esplanade, Pelham Manor, New York 10803 and is the owner of real property located at 480 Route 9, Fishkill, New York, (hereinafter known as the “Property”).

16. Upon information and belief, Defendant Marty Byster is an individual who resides in Dutchess County at 54 High View Road in Fishkill, New York.

17. Defendants “JOHN DOE”, “JANE DOE”, and “DOE ASSOCIATES” are fictional names intended to include any and all parties which may have conspired in the illegal conduct described in the complaint not otherwise identified above.

FACTS RELEVANT TO ALL CAUSES OF ACTION

The Property and the Proposed Continental Commons Development

18. At all times hereafter mentioned, Plaintiff has been and is the fee title owner of a 10.47 acre parcel of land located at 480 Route 9, Fishkill, New York. See Figure 1 below.

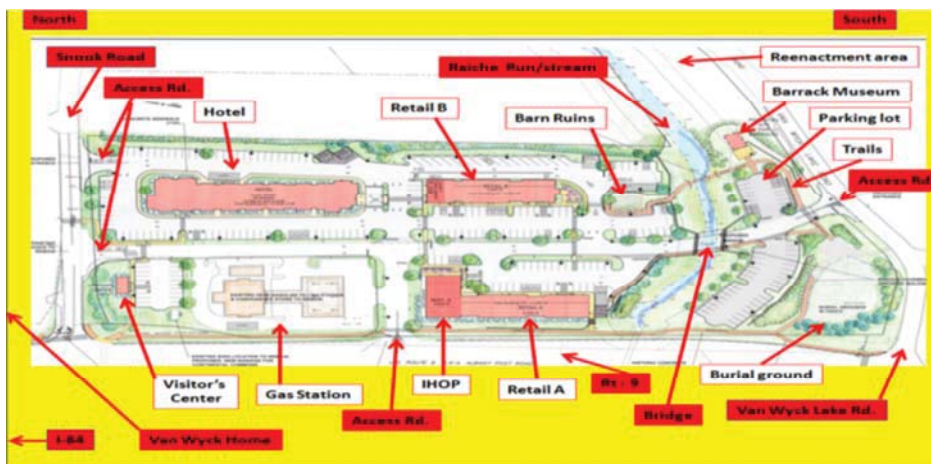


Figure 1

19. The Property was originally purchased in or around 1987 by Plaintiff's predecessor company Touchdown Development Corporation (hereinafter referred to as "Touchdown"). Touchdown improved the Property in the 1990s, after obtaining municipal approvals for same, by erecting a gas station and convenience store on the northwest portion of the Property (the corner of Route 9 and Snook Road across from the Van Wyck House). *See* Figure 1 above.

20. In or around 2006, Touchdown transferred all of its assets, including the Property, to GLD3 and subsequently dissolved the company.

21. Since 1999, Plaintiff or its predecessor has been attempting to further develop the Property, but that development has been complicated by the fact that the Property is part of a much larger area that is listed on the National Registry.

22. In mid-2015, Plaintiff submitted a formal proposal to the Town of Fishkill to develop the remainder of the Property in the form of a colonial village known as "Continental Commons."

23. The Continental Commons development will operate as a commercial, social, and educational center with restaurants, shops, and an inn. *See* Figure 2 below showing a portion of the proposed development.



Figure 2

24. Visitors of Continental Commons would enjoy an interactive and immersive historical experience as the development would integrate architectural elements from historically significant buildings in Dutchess County during the time of the American Revolutionary War.

Id.

25. The proposed Continental Commons development would not develop on the burial area that was identified on the southwest corner of the Property. (It has been inaccurately reported by some that the developer was going to build an IHOP on the burial area). Rather, the development will preserve and memorialize the burial area and open it for access to the community, together with a system of walkways connecting the Van Wyck House, the home of the Fishkill Historical Society located to the north of the Property, to the burial area, providing a connection that does not presently exist. See Figure 3 below showing Plaintiff's efforts to preserve the burial area to date.



Figure 3

26. In addition, the development would create a Dutchess County Visitor's Center at the northwest corner of the Property, which would enhance the attraction of the Fishkill Historical Society to visitors, and teach them about the rich history of the Town of Fishkill and

its relationship to the American Revolution. *See* Figure 4 below showing the proposed Visitors Center.



Figure 4

27. As part of this system of historic and educational benefits incorporated as integral elements of the development proposal, the existing barn ruin/foundation in the northern portion of the property would be maintained as well, and opened for public viewing.

The Fishkill Supply Depot Site and the Archaeological Studies

28. The Property is 10.47 acres in size. The proposed area of development is 6.85 acres (the “Area of Potential Effect” or APE). The Property is a small part of a 74 acre “Fishkill Supply Depot National Register Site” (the “NR Site” or “Depot”). The NR Site was placed on the National Register in 1974 but the exact origins of and basis for its precise boundaries are unclear.

29. Many elements of the Fishkill Supply Depot (*e.g.*, barracks, a hospital) are *outside* of the limits of the Continental Commons Property.

30. In developing the Continental Commons proposal, Plaintiff conducted archaeological research on the site, which incorporated review of extensive prior studies on the location that have been carried out over half a century. Since 1968, more than a *dozen*

archeological studies have been completed on the 10.47 acre Property by numerous parties. And, according to a 2016 report often cited by the FoFSD, “almost 50 separate archeological studies have been conducted within the limits of the National Register-designated Fishkill Supply Depot Site.”

31. In November 2007, archeological investigation that was scoped, reviewed, approved, and supervised by the New York State Historic Preservation Office located one confirmed human burial at the southwest corner of the Property. In 2013, additional archeological testing was undertaken, also under the supervision of the State Historic Preservation Office, which delineated the northern and eastern most boundaries of the burial area within the Property to the satisfaction of the New York State Historic Preservation Office. The northern and eastern boundaries are the only boundaries of the burial area on Plaintiff’s Property.

32. Plaintiff also commissioned archeological investigation of the potential for burials in the northern portion of the Property. A 2012 report found that “[n]o graves or significant archaeological features were identified” in a GPR survey in the northern portion of the Property (*i.e.*, north of Raiche Run).

33. Plaintiff’s proposed colonial village plan designates and memorializes the burial area in the southwest corner of the Property as a burial ground; Plaintiff does not intend to build on top of the burial ground. Instead, Plaintiff intends to preserve and memorialize the burial area, provide public access to the burial area, and install appropriate signage and educational information to honor those who lost their lives fighting for independence.

34. The proposal submitted by Plaintiff to the Town Planning Board also incorporates, as an integral element of the proposed action, an unanticipated discoveries plan to insure that no archeological or historically significant artifacts or information will be lost should

any such be uncovered during excavation or construction activities in connection with the development of the Property.

Defendant Byster Admits that He Planted Bones on the Property

35. On August 13, 2015, the Town of Fishkill Planning Board held a public hearing where archeologists working for Plaintiff made a lengthy presentation regarding the proposed Continental Commons development.

36. The public meeting was broadcast on a local television network.

37. Defendant Byster attended that meeting, along with Penny Steyer, a volunteer of the FoFSD, and Ian Bondy, a local resident who was hired by Plaintiff to observe, record, and report on various events and meetings held or attended by the FoFSD. Ian Bondy is also known as Alec Crosby.

38. Mr. Bondy turned on his recorder that evening the moment he parked his car in the parking lot for the meeting and turned it off when he got back in his car following the meeting.

39. During the meeting, Mr. Bondy sat with Ms. Steyer and Defendant Byster.

40. The Planning Board began a short recess following the presentation by Plaintiff's archeologist. During that recess, Defendant Byster started a conversation with Ms. Steyer and Mr. Bondy (who was in between Ms. Steyer and Byster) and began to comment on various archeological reports relating to the Continental Commons project. In the course of that conversation, Defendant Byster, in a hushed but still highly audible voice, admitted that he previously "*buried bones*" on the Property near the "*foundation*" (which is in the northern portion of the Property).

41. This conversation was captured on the recording that Ian Bondy was making, and is transcribed below:

Defendant Byster: “Okay, how about this here? I mean, to me, from what I’ve seen they failed, what they failed to do today. Is this here X found the, you know, well, right, they found the barracks and they didn’t mention that. Heh heh! How can that go? Years of, years of prep right there. They didn’t even, they didn’t even look at this.”

Penny Steyer: “And do you want to know the funny thing? When SHPO sent Greenhouse back . . . to find this, they are never They just . . . report with”

Defendant Byster: “The Cartwright report?”

Penny Steyer: “Yes the Cartwright. There is obviously more that we’ve never seen. Cause I was looking at it; I have the notes from my original report”

Defendant Byster: “Yeah, I have them all too.”

Penny Steyer: “Yeah.”

Defendant Byster: “Oh, I don’t know how much more there is, but I have her report.”

Penny Steyer: “Yeah, you have her whole report. I sat down, . . . And I’m going through it and I’m saying, well no, it’s here on this page of her report, I said there is no such page, I said there most definitely is, I’m looking right at it. How would I know? . . . So when we sat down to dinner with it—we *never gave these things away* *[[whispered]]* you know? We were just . . . supposed to be here some place . . . I said, you know, you find it. I said, . . . What’s going on.”

Defendant Byster (in a hushed tone): “**Were you there, were you there when we buried, we buried the uh bones² [near the foundation that was exposed**”

Penny Steyer: “No.”

² It is unclear from the recording of the conversation whether Defendant Byster said “a bone” or “uh bones”.

Defendant Byster: “You weren’t there?”

Penny Steyer: “No. I wasn’t there that day.”

Defendant Byster: “. . . It was Bill Sandy, when we uncovered something, I thought there was an additional trench than what is shown on this report. So I’ve . . . *I’m going to have to go back and look.*”

See Exh. A (Affidavit of Ian Bondy)

**FIRST CAUSE OF ACTION
TRESPASS
(AGAINST ALL DEFENDANTS)**

42. Plaintiff incorporates the allegations within all prior paragraphs within this Complaint as if they were fully set forth herein.

43. Defendant Byster and the Doe Defendants, individually and acting through their employees and agents, and in concert with each other, intentionally entered onto Plaintiff’s Property on the occasions in which they buried bones.

44. Defendants, individually and acting through their employees and agents, and in concert with each other, entered onto Plaintiff’s Property during the time period when bones were buried without justification or permission.

45. Defendants’ conduct directly and proximately caused injury to Plaintiff.

46. Defendants, individually and acting through their employees and agent, and in concert with each other, intentionally and unlawfully entered the Property with the purpose of placing objects (*i.e.*, bones) into Plaintiff’s Property.

47. The bones placed by Defendants intentionally and unlawfully, and without justification or permission, remain on Plaintiff’s Property.

48. Defendants’ conduct is unreasonable, and not insubstantial or fleeting.

49. The Continental Commons is an over fifteen million dollar development project.

50. Furthermore, Defendants have caused a severe disruption of Plaintiff's completed archaeological studies and the development permits that Plaintiff has submitted proposals to obtain.

51. The bones placed on Plaintiff's Property constitute a continuing trespass to Plaintiff's Property.

**SECOND CAUSE OF ACTION
PRIVATE NUISANCE
(AGAINST ALL DEFENDANTS)**

52. Plaintiff incorporates the allegations within all prior paragraphs within this Complaint as if they were fully set forth herein.

53. Defendants, individually and acting through their employees and agents, and in concert with each other, have intentionally or recklessly engaged in conduct that resulted in the placement of objects (*i.e.*, bones) into Plaintiff's Property.

54. The bones placed by Defendants interfere with Plaintiff's use and enjoyment of the Property.

55. The bones that Defendants buried on Plaintiff's land interfere with Plaintiff's right to the use and enjoyment of its Property.

56. The changed location of human remains interferes with Plaintiff's ability to use its Property for development.

57. Defendants' conduct constitutes a private nuisance.

58. Defendants' conduct is unreasonable.

59. Defendants' conduct is not insubstantial or fleeting.

60. Defendants have caused a severe disruption of Plaintiff's completed archaeological studies and the development permits that Plaintiff has submitted proposals to obtain.

61. The Continental Commons is an over fifteen million dollar development project.

62. The bones placed by Defendants constitute a continuing private nuisance on the Property.

63. Defendants have unlawfully encroached on Plaintiff's Property, causing a continuous interference with Plaintiff's use and enjoyment of its Property.

64. Defendants' conduct directly and proximately caused injury to Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that judgment be entered upon the First, and Second causes of action against Defendants, jointly and severally, awarding the following injunctive relief to Plaintiff:

- (a) Enjoin Defendants from re-entering the Property situated at 480 Route 9, Fishkill, New York, without written permission of the Plaintiff, and/or altering or otherwise planting false evidence on the Property with the intention of interfering with Plaintiff's Development of the Property;
- (b) Compel Defendants to abate the continuing trespass and nuisance they created by, among other things identifying and disclosing the precise location where they placed bones, human remains, and other artifacts on the Property and removing them in accordance with applicable law; and
- (c) Such other and further relief as the Court may deem just and proper.

DATED: November 16, 2017

BUCHANAN INGERSOLL & ROONEY PC

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