

ROGUT McCARTHY TROY LLC  
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Attorneys for Plaintiff,  
Township of Manalapan

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TOWNSHIP OF MANALAPAN,	:	
	:	
Plaintiff,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION-MONMOUTH COUNTY
	:	
v.	:	DOCKET NO. MON-L-2893-07
	:	
STUART J. MOSKOVITZ, ESQ., JANE	:	
DOE and/or JOHN DOE, ESQ., I-V	:	<b><u>CIVIL ACTION</u></b>
(these names being fictitious	:	
as their true identities are	:	(LEGAL MALPRACTICE)
presently unknown) and XYZ	:	
CORPORATION, I-V (these names	:	
being fictitious as their true	:	<b>CERTIFICATION OF</b>
corporate identities are	:	<b>DANIEL J. McCARTHY</b>
currently unknown),	:	
	:	
Defendants.	:	

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**Daniel J. McCarthy**, of full age, hereby certifies and says:

1. I am an attorney at law of the State of New Jersey and a principal of the firm Rogut McCarthy Troy LLC, counsel for the Plaintiff, Township of Manalapan, in this matter. I am fully familiar with the facts contained herein and submit this Certification in support of the Township's Application to Vacate the Order to Show Cause and for other relief.

## BACKGROUND

2. The Township passed resolution No. 2005-431, appointing Defendant, Stuart J. Moskowitz, Esq., ("Defendant"), as the Township Attorney for the calendar year 2005. A true and correct copy of that resolution is attached hereto as Exhibit 1.

3. On June 8, 2005, Defendant executed a contract on behalf of the Township obligating the Township to purchase real property located adjacent to the athletic fields owned by the Township ("Dreyer property"). The contract obligated the Township to purchase the Dreyer Property "as is" and did not condition the Township's obligation to purchase on receipt of Preliminary Site Assessment report. A true and correct copy of that contract is attached hereto as Exhibit 2.

4. The Township intended to fund the purchase of the property through, inter alia, grants to be received by the Township from the New Jersey Department of Environmental Protection Green Acres Program and the County of Monmouth Recreation Program.

5. Green Acres and the Monmouth County Board of Recreation Commissioners both required that the Township demonstrate that the property was free from contamination prior to the release of grant funding. True and correct copies of letters from Green Acres and the Monmouth County Board of Recreation Commissioners to the Township are attached hereto as

Exhibits 3 and 4, respectively.

6. There are internet blog entries discussing Defendant's involvement in the Township's purchase of the Dreyer property and the ensuing issues with environmental problems and the Green Acres and the Monmouth County grants. The blog is entitled "daTruthSquad" and appears to have been written by Defendant. True and correct copies of entries printed from that blog are attached hereto as Exhibits 5 through 10.

7. Defendant also authored an editorial guest column in "The News Transcript" wherein Defendant claimed that the Township's action is part of a personal vendetta against Defendant by the Township's former Mayor, Andrew Shapiro. A true and correct copy of that column is attached hereto as Ex. 11.

8. Defendant further provided numerous comments regarding this litigation in other articles published in "The News Transcript." True and correct copies of those articles are attached hereto as Exhibits 12 through 14.

#### **TOWNSHIP ACTION**

9. At a public meeting held on or about December 27, 2006, the Governing Body of the Township passed Resolution No. 2006-542, appointing Ruprecht, Hart & Weeks, LLP, as Counsel for Special Litigation. A true and correct copy of that resolution is attached hereto as Exhibit 15.

10. At a subsequent public meeting, the Governing Body of the Township passed Resolution No. 2007-130, authorizing execution of an agreement with Ruprecht, Hart & Weeks, which agreement was attached and made a part of the resolution. The contract states that Ruprecht, Hart & Weeks will "represent the [Township] with respect to the [Township's] claim for damages suffered as a result of professional negligence in connection with real estate purchases by the Township in 2005." It further states that Ruprecht, Hart & Weeks will "pursue" the Township's claim "with respect to those who may be responsible for the injuries or damages." A true and correct copy of that resolution and attached contract is attached hereto as Exhibit 16.

11. At a public meeting held on or about January 7, 2007, the Governing Body of the Township passed Resolution No. 2007-06, appointing Rogut McCarthy Troy, LLC, as Township Conflict/Alternate Counsel for the calendar year 2007. A true and correct copy of that resolution is attached hereto as Exhibit 17.

12. On or about June 14, 2007, the Township, by its Special Litigation Counsel, Ruprecht, Hart & Weeks, caused to be filed a Complaint against Defendant and certain fictitious persons and corporations. The Complaint alleges that Defendant committed legal malpractice. A true and correct copy of that Complaint is attached hereto as Exhibit 18.

13. In connection with the filing of its Complaint, the Township filed an Affidavit of Merit executed by Robert F. Renaud, Esq. Mr. Renaud is a licensed and practicing attorney in the State of New Jersey. In his Affidavit, he states that he reviewed correspondence related to the Township's purchase of the Dreyer property between the Township and Green Acres, the Township and the Monmouth County Board of Recreation Commissioners, and Defendant and various Township personnel, as well as Defendant's file on the matter. Mr. Renaud asserts that based upon that review and his "experience in representing municipalities and both buyers and sellers in real estate transactions in the State of New Jersey for over thirty years," it is his "opinion that Mr. Moskovitz failed to conform to the standard of care for attorneys in his representation of the Township of Manalapan in its purchase of the [Dreyer] property." A true and correct copy of that Affidavit of Merit is attached hereto as Exhibit 19.

**DEMAND FOR INDEMNIFICATION**

14. By letter dated June 28, 2007, Defendant demanded that the Township indemnify him in this action brought by the Township. A true and correct copy of this letter is attached hereto as Exhibit 20.

15. Attached hereto as Exhibit 21 is a true and correct copy of the Manalapan Township Code, Chapter 9.

16. By letter dated July 13, 2007, I advised Defendant that my firm was Special Counsel to the Township in this matter and that we would reply to his demand for indemnification. I further requested that Defendant communicate directly with my office regarding matters pertaining to this action and refrain from contacting the Township officials directly. A true and correct copy of this letter is attached hereto as Exhibit 22.

17. By letter dated July 13, 2007, Defendant asserted that the Township had not taken action in public session to authorize this lawsuit. Defendant further asserted that a Comment to Rule 4.2 of the Rules of Professional Conduct excused him from compliance with that Rule's mandate that attorneys refrain from directly communicating with parties known to be represented by counsel about the subject of that representation. A true and correct copy of this letter is attached hereto as Exhibit 23.

18. By letter dated July 17, 2007, I advised Defendant that I was in receipt of his July 13, letter and again requested that he refrain from contacting the Township officials directly regarding the litigation or his demand for indemnification. I explained that my understanding of the Comment to RPC 4.2 did not exempt Defendant from the prohibitions on direct communications with parties known to be

represented by counsel. In response to Defendant's allegation that the Township did not authorize this action in public session, I attached Resolutions Nos. 2006-542, 2007-06, and 2007-130, for his review. A true and correct copy of this letter is attached hereto as Exhibit 24.

**ORDER TO SHOW CAUSE**

19. On July 16, 2007, Defendant filed an Application for an Order to Show Cause with Temporary Restraints. See Defendant's Certification ("Def. Cert."), Ex. 25, and Defendant's Brief ("Def. Br."), Ex. 26.

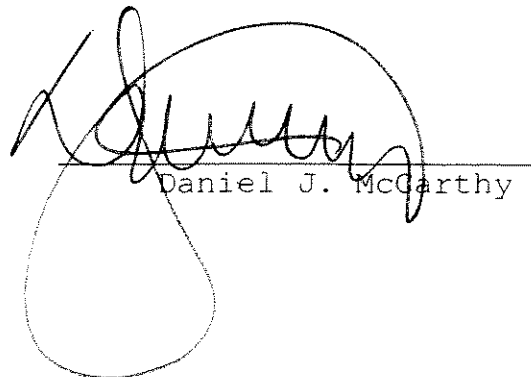
20. On July 17, 2007, the Court entered the Order to Show Cause requiring the Township to show cause why its Complaint should not be dismissed, or in the alternative, mandating that the Township indemnify Defendant in the instant litigation, and restraining the Township, its attorneys, officers, elected officials and employees "from communicating with the press, directly or indirectly, or anyone else outside the litigation circle other than the Court and Defendant, in connection with this matter." A true and correct copy of this Order to Show Cause is attached hereto as Exhibit 27.

21. On July 23, 2007, the Court entered a second Order to Show Cause requiring the Township to show cause why an Order should not be entered dismissing the Complaint and mandating the Township to indemnify Defendant. The Order to

Show Cause also "enjoined and restrained" the Township, "including the Township elected officials, employees, and Township attorneys and staff, and Defendant" from "Communicating with the press and the public concerning the subject matter of this litigation[.]" The Order to Show Cause vacated that portion of the July 17, 2007, Order directing counsel for the Township to assure Defendant that Township officials were in receipt of all materials related to this action. Lastly, the Order to Show Cause scheduled a hearing for August 20, 2007, and established a briefing schedule for the parties. A true and correct copy of this Order to Show Cause, with Defendant's accompanying documents, is attached hereto as Exhibit 28.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date: August 3, 2007



Daniel J. McCarthy