

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

CONSTANTINE DEMAS,	:	
PLAINTIFF,	:	
	:	
v.	:	CIVIL ACTION NO.
	:	3:03-cv-2273 (JCH)
	:	
TOWN OF TRUMBULL,	:	
LAND USE & PRESERVATION	:	
COMMITTEE OF THE TOWN	:	
OF TRUMBULL, STEPHEN	:	
LAWRENCE, HILLANDALE,	:	MARCH 31, 2005
LLC, AND 1563 MEDICAL	:	
ASSOCIATES, LLC,	:	
DEFENDANTS.	:	

**RULING ON DEFENDANTS’ MOTIONS FOR  
SUMMARY JUDGMENT [DKT. NOS. 21 & 43]**

The plaintiff, Constantine Demas, brings this action against the Town of Trumbull (“Trumbull”), the Land Use and Preservation Committee of the Town of Trumbull (the “Committee”), Stephen Lawrence, Hillandale, LLC (“Hillandale”), and 1563 Medical Associates, LLC (“Medical Assocs.”). Demas’s complaint alleges: (1) Trumbull and the Committee (the “Trumbull Defendants”) denied Demas procedural and substantive due process of law under the Fourteenth Amendment of the United States Constitution pursuant to 42 U.S.C. §1983; (2) fraudulent misrepresentation and non-disclosure by all defendants; (3) a violation of the Connecticut Unfair Trade Practices Act (“CUTPA”), CONN. GEN. STAT. §42-110b, *et seq.*, by all defendants; (4) a breach of the duty of good faith and fair dealing by defendants Hillandale, Lawrence and Medical Associates (together the “Hillandale Defendants”); (5) unjust enrichment by the Hillandale Defendants. The Hillandale Defendants, Trumbull and the Committee have moved for summary judgment pursuant to FED. R. CIV. P. 56., asserting, *inter alia*, that Demas’s

Fourteenth Amendment due process claims fail as a matter of law.

## **I. FACTUAL BACKGROUND<sup>1</sup>**

On August 14, 1986, Constantine Demas (“Demas”) and his brother, Nicholas Demas, acquired property located at 675 Daniels Farm Road, Trumbull, Connecticut (the “Property”). By March 1999, the Property had become encumbered by several loans, liens, and back taxes.<sup>2</sup>

On June 10, 1996, Hillandale, LLC (“Hillandale”) acquired a note and first mortgage on the Property from Berkeley Federal Savings Bank FSB, as assignee of the Federal Deposit Insurance Corporation as receiver of the Bank of Hartford. Hillandale was a limited liability partnership established by Lester Geigerich and defendant Stephen P. Lawrence for the purpose of acquiring this note and mortgage. Geigerich and Lawrence were the only two members of Hillandale. Defendant 1563 Medical Associates, LLC is the successor-in-interest of Hillandale.

By the time Hillandale acquired the note and mortgage, Demas and the Estate of Nicholas Demas were in default and were already the subject of a foreclosure

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<sup>1</sup> The court’s recitation of the facts is based on Demas’s admissions as provided in his Rule 56(a)(2) statement. In Demas’s Rule 56(a)(2) statement, he failed to support his statements of fact, in violation of D. CONN. LOC. R. CIV. P. 56(a)(3). Such unsupported statements are insufficient to create a genuine issue of material fact.

<sup>2</sup> On January 24, 1990, Demas and his brother borrowed a sum, claimed to be \$600,000, from the Bank of Hartford, which loan was secured by a \$1,000,000 mortgage dated January 24, 1990. G & L Trumbull, LLC, as assignee of PB Real Estate 1994, Inc., held a mortgage effective May 10, 1990 on the Property in a principal amount of \$350,000. Demas took another mortgage on the property on August 29, 1991, in the amount of \$100,000 held by East Village Pension Plan (“East Village”). The Property was further encumbered by a mortgage dated September 3, 1991 to the late Alfred Frankel in the original principal amount of \$200,000. The property was further encumbered by a judgment lien dated January 17, 1997 in favor of Emerald Financial Corp. in the amount of \$504,888.30 which was recorded on January 29, 1997. The Property was also encumbered by taxes due to the Town of Trumbull, which by March 26, 1999 had reached \$200,000.

proceeding. The foreclosure action was scheduled for trial on November 10, 1998, by which date Demas and all of the defendants other than Emerald and East Village had already defaulted. As of November 10, 1998, Demas had made no payments of either principal or interest on Hillandale's note and mortgage or on real estate taxes since April 1994. On November 10, 1998, Hillandale entered into a settlement with East Village and Emerald whereby Hillandale agreed to acquire East Village's note and junior mortgage, and Emerald agreed to withdraw its defenses and release its judgment lien in return for a total payment to East Village and Emerald of \$157,000.

On October 6, 1998, Hillandale filed with the court a stipulation as to the amount of the debt. The Stipulation, signed by Demas' counsel and counsel for the Estate of Nicholas Demas, acknowledged the first mortgage debt to be \$1,524,192.75 as of October 1, 1998, with interest accruing at the rate of \$257.42 per day. The court found the debt due Hillandale to be \$1,534,746.97 and the value of the Property to be \$1,210,000. On November 30, 1998, Demas filed a motion to re-open the judgment, which the court denied on December 21, 1998. On January 4, 1999, Demas filed a Notice of Appeal with the Appellate Court. Hillandale filed a motion to terminate the appellate stay. The Superior Court granted Hillandale's motion on February 22, 1999. The court then reset the sale date to March 27, 1999.

On March 26, 1999, Demas filed a Petition for Relief pursuant to Chapter 11 of the United States Bankruptcy Code. On April 22, 1999, Demas filed schedules required by the Bankruptcy Code and attested to their accuracy under penalty of perjury.

On November 4, 1998, the Land Acquisition and Preservation Committee of the Town of Trumbull had discussed the possibility of acquiring the Property. The

Committee commissioned an appraisal of the Property and received a report from their appraisers, dated November 25, 1998, valuing the Property at \$2,200,000. Hillandale first learned of Trumbull's interest in the Property on or about November 19, 1998. Trumbull informed Hillandale and Lawrence of the amount of Trumbull's appraisal sometime after November 19, 1998.<sup>3</sup> Hillandale received a copy of the appraisal on December 22, 1998.

On April 20, 1999, Hillandale and G & L Trumbull filed a Motion for Relief from Stay with the United States Bankruptcy Court, seeking the right to proceed with their foreclosure of the Property. Hillandale specifically claimed that the Property was worth \$2,200,000 and served this motion upon Demas' counsel. On May 11, 1999, Demas's attorney filed an objection to the motion for relief in which his attorney specifically noted Hillandale's claim that the Property was worth \$2,200,000.

On July 28, 1999, the Bankruptcy Court approved a stipulation granting Hillandale and G & L relief from stay to pursue their actions in state court, and, subsequently, the Superior Court reopened the judgment on October 4, 1999 and set a new sale date for the Property. At the auction, held on November 20, 1999, Hillandale was the only bidder and bought the Property for \$1,600,000.

On December 3, 1999, Hillandale entered into a contract to sell the Property to Trumbull. On January 28, 2000, Hillandale sold the Property to Trumbull for \$2,200,000. The deed was recorded in the Trumbull Land Records.

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<sup>3</sup>See PI's Local Rule 56(a)(2) Statement at ¶ 32. Demas states that Lawrence spoke with Trumbull and Committee officials as early as November 19, 1998 and alleges that it "defies credibility" that the value of the Hillandale property did not come up during these discussions. However, Demas cites no evidentiary basis for this speculation. See id.

On December 30, 1999, Demas moved to convert his bankruptcy case to Chapter 7, which motion the Bankruptcy Court granted on January 14, 2000. Upon conversion, the Bankruptcy Court appointed Attorney Richard Coan as Chapter 7 Trustee. The conversion specifically required Demas to update his schedules to reflect additional assets, if any. Demas never filed any amendments to his schedules that reflected the existence of the cause of action asserted in this case.

Demas brought this action in state court on December 8, 2003, seeking redress for violation of his rights guaranteed under the Fourteenth Amendment of the United States Constitution, 42 U.S.C. § 1983, and state statutory and common law.

## **II. STANDARD OF REVIEW**

In a motion for summary judgment, the burden is on the moving party to establish that there are no genuine issues of material fact in dispute and that it is entitled to judgment as a matter of law. See, FED. R. CIV. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986); White v. ABCO Eng'g Corp., 221 F.3d 293, 300 (2d Cir. 2000). A court must grant summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact . . . .” Miner v. Glen Falls, 999 F.2d 655, 661 (2d Cir. 1993) (citation omitted). A dispute regarding a material fact is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Aldrich v. Randolph Cent. Sch. Dist., 963 F.2d 520, 523 (2d Cir.) (quoting Anderson, 477 U.S. at 248), cert. denied, 506 U.S. 965 (1992). After discovery, if the nonmoving party “has failed to make a sufficient showing on an essential element of [its] case with respect to which [it] has the burden of proof,” then

summary judgment is appropriate. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

A party may not rely “on mere speculation or conjecture as to the true nature of the facts to overcome a motion for summary judgment.” Knight v. U.S. Fire Ins. Co., 804 F.2d 9, 12 (2d Cir. 1986), cert. denied, 480 U.S. 932 (1987).

The court resolves “all ambiguities and draw[s] all inferences in favor of the nonmoving party in order to determine how a reasonable jury would decide.” Aldrich, 963 F.2d at 523. Thus, “[o]nly when reasonable minds could not differ as to the import of the evidence is summary judgment proper.” Bryant v. Maffucci, 923 F.2d 979, 982 (2d Cir.), cert. denied, 502 U.S. 849 (1991). See also Suburban Propane v. Proctor Gas, Inc., 953 F.2d 780, 788 (2d Cir. 1992).

A party may not create a genuine issue of material fact by presenting contradictory or unsupported statements. See Securities & Exchange Comm’n v. Research Automation Corp., 585 F.2d 31, 33 (2d Cir. 1978). Nor may he rest on the “mere allegations or denials” contained in his pleadings. Goenaga v. March of Dimes Birth Defects Found., 51 F.3d 14, 18 (2d Cir. 1995). See also Ying Jing Gan v. City of New York, 996 F.2d 522, 532 (2d Cir. 1993) (holding that party may not rely on conclusory statements or an argument that the affidavits in support of the motion for summary judgment are not credible). Litigants in the District of Connecticut must also comply with Local Rule 56 which requires a party opposing summary judgment to clearly list each disputed material issue of fact and cite to admissible evidence in the record to support each fact, or risk entry of summary judgment against them. See D. CONN. LOC. R. CIV. P. 56.

### III. DISCUSSION

Demas's sole federal claim is that the Trumbull Defendants deprived him of his procedural and substantive due process rights under the Fourteenth Amendment to the United States Constitution. Demas argues that the Trumbull Defendants violated his procedural due process rights by their failure to grant him "any kind of meaningful hearing on how he proposed to acquire the property so that he could sell it to the Town of Trumbull." Plaintiff's Memorandum of Law in Opposition to Motions for Summary Judgment of All Defendants ("Mem. Opp. Summ. J.") at 19-20. Demas claims that the Trumbull Defendants "stonewalled him, deliberately ignored him, and cast him aside . . . [and] gave [him] no hearing and opportunity to present his plan." Mem. Opp. Summ. J. at 20.

Demas claims that the Trumbull Defendants concealed the results of the appraisal of the Property and engaged in concealed negotiations in November and December 1998 that produced an agreement to purchase the Property from the Hillandale Defendants. See id. at 19. This concealment, Demas contends, continued up until Demas filed the instant suit. See id. Demas also claims that the Trumbull Defendants "steer[ed] its pursuit to purchase the property to the Hillandale defendants . . . [and] deprive[d] him of the ability and the opportunity to negotiate with the Town." Id. at 20. These actions, Demas argues, constitute the sort of "egregious official conduct", "gross abuse of governmental authority", and "outrageous" conduct necessary to maintain a substantive due process claim against the Trumbull Defendants under the Fourteenth Amendment and 42 U.S.C. § 1983. Id.

**a. Procedural Due Process**

“In order to sustain an action for deprivation of property without due process of law, a plaintiff must first identify a property right, second show that the state has deprived him of *that* right, and third show that the deprivation was effected without due process.” Local 342, Long Island Pub. Serv. Employees v. Town Bd. of the Town of Huntington, 31 F.3d 1191, 1194 (2d Cir. 1994) (emphasis in original). In the case at bar, the second prong of this test is dispositive. Assuming, *arguendo*, that Demas had a constitutionally recognizable property interest in the Hillandale Property, the Trumbull Defendants argue that, because they were not a party to the foreclosure action, they did not deprive Demas of that property right. The court agrees.

Demas has brought forward no evidence that Trumbull or the Committee deprived him of his property. It is undisputed that at the time the Trumbull Defendants commissioned an appraisal of the Property and began negotiations with the Hillandale Defendants, allegedly in October and November 1998, the Property had been subject to foreclosure proceedings for over two years. See PI’s Local Rule 56(a)(2) Statement (“PI’s Rule 56”) at ¶ 10. On November 10, 1998, the Superior Court for the Judicial District of Fairfield entered a judgment of foreclosure by sale against Demas and scheduled the foreclosure sale for January 9, 1999. See PI’s Rule 56 at ¶ 20.

Following some legal maneuvering that caused several stays, including an unsuccessful appeal of the Superior Court’s decision and a bankruptcy filing by Demas, the foreclosure sale finally took place on November 20, 1999. See id. at ¶ 38. Hillandale was the successful bidder at the foreclosure auction and bought the Property for \$1,600,000. See id. at ¶ 39. The sale was complete, with court approval, when

Hillandale purchased the Property by Committee Deed on December 9, 1999. See id. at ¶ 41; see also Trumbull and Committee Local Rule 56(a)(1) Statement of Undisputed Material Facts at Ex. 25. Trumbull subsequently purchased the Property from Hillandale on January 28, 2000 for \$2,200,000. See id. at ¶ 42.

The state court foreclosure proceeding extinguished Demas's rights in the Property. As Demas points out in his Memorandum in Opposition, under Connecticut law, his right of redemption was cut off by the Superior Court's approval of the foreclosure sale on December 9, 1999. See, e.g., Mem. Opp. Summ. J. at 18-19 (citing Willow Funding Co. v. Grencom Assocs., 63 Conn. App. 832, 837-38 (2001) ("Rights to redemption are not cut off by a foreclosure sale. '[S]uch rights survive the auction of the foreclosed property and may be exercised until such time as the judicial authority approves the foreclosure sale.'")). Demas does not allege, and certainly produces no evidence, that the Trumbull Defendants were parties to the foreclosure procedure. In fact, the only action that Demas alleges the Trumbull Defendants undertook throughout the foreclosure sale process was their discussion with the foreclosure creditor to possibly acquire the Property if and when the foreclosing was final. See, e.g., id. at 19. After the foreclosure was final, the Trumbull Defendants purchased the Property from Hillandale on January 28, 2000. See id. At that point, only Hillandale would have rights to the Property.

Demas relinquished his rights to the Property as the result of the three-year judicial foreclosure process undertaken, and approved, by the Connecticut Superior Court. In essence, Demas appears to believe he has a due process right to have someone (Trumbull) buy his property from him while it is in foreclosure and not to buy it

from a third party after that third party acquires it. The court is unaware of any precedent that would support this due process “right.”

Taking the disputed facts in the light most favorable to Demas, no reasonable trier of fact could find the Trumbull Defendants “deprived” Demas of any property right. Therefore, as a matter of law, neither Trumbull nor the Committee violated Demas’s procedural due process rights. See Local 342, 31 F.3d at 1194. The Trumbull Defendants’ motion for summary judgment on Demas’s procedural due process claim is granted.

**b. Substantive Due Process**

Substantive due process protects an individual from governmental violations of personal rights that are “so rooted in the traditions and conscience of our people as to be ranked as fundamental . . . or are implicit in the concept of ordered liberty.” Rochin v. California, 342 U.S. 165, 169 (1952) (quotations omitted). However, as the United States Supreme Court has made clear, “the due process guarantee does not entail a body of constitutional law imposing liability whenever someone cloaked with state authority causes harm.” County of Sacramento v. Lewis, 523 U.S. 833, 848 (1998). The Fourteenth Amendment is “not a ‘font of tort law to be superimposed upon whatever system may already be administered by the States, . . . [o]ur Constitution deals with large concerns of the governors and the governed, but it does not purport to supplant traditional tort law in laying down rules of conduct to regulate liability for injuries that attend living together in society.’” Id. (quoting Daniels v. Williams, 474 U.S. 327, 332 (1986)).

In order to violate an individual’s substantive due process rights, a governmental

actor must engage in activity that “shocks the conscience.” Rochin, 342 U.S. at 172; see also Lewis, 523 U.S. at 847. “For state action to be taken in violation of the requirement of substantive due process, the denial must have occurred under circumstances warranting the labels ‘arbitrary’ and ‘outrageous.’” Natale v. Town of Ridgefield, 170 F.3d 258, 262 (2d Cir. 1999). Substantive due process “does not forbid governmental actions that might fairly be deemed arbitrary or capricious and for that reason correctable in a state court lawsuit seeking review of administrative action. Substantive due process standards are violated only by conduct that is so outrageously arbitrary as to constitute a gross abuse of governmental authority.” Id. at 262-63. Only the most egregious official conduct in which government officials abuse their power and “employ[ ] it as an instrument of oppression” can be said to be “arbitrary in the constitutional sense . . . .” Lewis, 523 U.S. at 846. The Trumbull Defendants argue that their conduct does not “shock the conscience” under the standards laid out in Lewis and that, therefore, the court should grant them summary judgment on Demas’s substantive due process claim.

Demas argues that his fundamental right of “ownership” of the Property was violated by the “egregious official conduct” of Trumbull Defendants. See Mem. Opp. Summ. J. at 20. The conduct in question consisted of the Trumbull Defendants’ failure to disclose their \$2.2 million appraisal and their refusal to negotiate with, or purchase the Property from, Demas instead of Hillandale. See id. Demas argues that the Trumbull Defendants’ attempt to “steer its pursuit to purchase the property to the Hillandale defendants” and their “stonewall[ing]” of Demas and obstruction of Demas’ opportunity to sell the Property to Trumbull himself, constituted “a gross abuse of

governmental authority” that “deprive[d] [the] plaintiff Demas of virtually all the property he owned and destroyed his life.” See id.

While reciting the appropriate substantive due process language in a conclusory fashion, Demas fails to point the court to any case law which supports his argument that the actions of the Trumbull Defendants “shock the conscience.” Natale is the only case cited by Demas in his substantive due process argument. See id. However, Natale does little to advance Demas’s argument. In Natale, the town of Ridgefield had refused to issue zoning and building permits which Natale argued he was entitled to under Connecticut law. See Natale, 170 F.3d at 261. A jury had returned a verdict in favor of Natale on his Fourteenth Amendment substantive due process claim based on an instruction that all Natale had to prove was that he was entitled to the permits under state law and that Ridgefield had denied him the permits. See id. at 262. The Second Circuit held that the district court should have instructed the jury that “the plaintiffs could not prevail unless the jury was persuaded that the conduct of the defendants in denying the permits was so outrageously arbitrary as to constitute a gross abuse of governmental authority.”<sup>4</sup> See id. at 263.

Nor does the case law the court has examined support Demas’s argument that the Trumbull Defendants’ actions were outrageous, conscience-shocking, or a gross abuse of governmental authority. In Rochin, 342 U.S. at 172, the Supreme Court held that three police officers’ illegal entry into a defendant’s house, attempt to physically

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<sup>4</sup>The Second Circuit held that the district court’s failure to properly instruct the jury on the constitutional standard required the invalidation of the judgment in the case, but ultimately held that retrial was not necessary because the plaintiffs did not have a federally protected property right. See Natale, 170 F.3d at 263.

remove evidence from his mouth, and their subsequent forcible pumping of the defendant's stomach shocked the conscience. Also, in Poe v. Leonard, 282 F.3d 123, 139 (2d Cir. 2002), the Second Circuit found a police officer's actions "shock[ed] the conscience" when he illicitly videotaped a civilian that he had engaged to help make training videos while she was changing clothes. Perhaps most significantly, in Lewis, 523 U.S. at 854, the Supreme Court held that Sacramento police officers' actions *failed* to shock the conscience when the officers engaged in a high speed chase of a motorcycle, contrary to department policy, that resulted in the death of the motorcycle's sixteen year-old passenger.

Taken in the light most favorable to Demas, the facts would not allow a reasonable jury to find for Demas on his substantive due process claim. Demas's claims amount to charges that the Trumbull Defendants concealed an appraisal they had done of the Property and then chose to negotiate only with the Hillandale Defendants, one side in ongoing foreclosure proceedings that pre-dated the Trumbull Defendants' interest in the Property, regarding purchase of the Property. However, Demas fails to provide any evidence or case law that supports an allegation that the Trumbull Defendants had any duty to disclose their appraisal or any duty to negotiate with anyone, let alone with Demas, regarding property involved in a foreclosure proceeding.

Even if such a duty existed, Demas has offered neither evidence, nor citation to supportive authority, upon which a reasonable jury could base a finding that the Trumbull Defendants' conduct "shocks the conscience" in the manner required under Rochin, Poe, and Lewis. Therefore, Demas has failed to come forward with evidence

to prove an essential element of his substantive due process claim. The Trumbull Defendants' motion for summary judgment on this claim is therefore granted.

Having granted summary judgment to the defendants on all of Demas's federal claims,<sup>5</sup> the court declines supplemental jurisdiction as to Demas's possible state claims. See United Mine Workers of America v. Gibbs, 383 U.S. 715, 726 (1966) ("... if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well.") See also Strong v. Bd of Educ. of the Uniondale Union Free Sch. Dist., 902 F.2d 208, 213 (2d Cir. 1990). Demas's state law claims are dismissed. See 28 U.S.C. § 1367(c).

#### **IV. CONCLUSION**

For the foregoing reasons, the Trumbull Defendants' motion for summary judgment [Dkt. No. 43] is hereby **GRANTED** as to Demas's Fourteenth Amendment claim for violation of procedural and substantive due process. Demas's state law claims against all defendants are **DISMISSED**. The Hillandale Defendants' motion for summary judgment [Dkt. No. 21] is **DENIED AS MOOT**. The clerk is ordered to close the case.

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<sup>5</sup>Having decided the plaintiff's federal claims on Fourteenth Amendment due process grounds, the court does not reach the merits of the defendants' other grounds of defense.

**SO ORDERED.**

Dated at Bridgeport, Connecticut, this 31st day of March, 2005.

/s/ Janet C. Hall  
Janet C. Hall  
United States District Judge