

Litigation Highlights: 2010

Keane & Beane Wins Major RLUIPA Case

The firm obtained a decision in federal court awarding injunctive relief and undetermined damages (likely to exceed \$4 million) to a local church that has been prevented by the Town of Greenburgh from building a house of worship and religious school on 6.5 acres of church-owned property. The 206-page decision in *Fortress Bible Church v. Feiner, et al.*, 2010 WL 3199876 (S.D.N.Y. Aug. 12, 2010), came after a protracted legal battle that began in 2003. Following a 29-day bench trial, the court ordered the Town to permit construction of church and school facilities, awarded Fortress Bible Church compensatory damages and attorney's fees, and imposed \$10,000 in sanctions against the Town.

As reflected in the Opinion, Keane & Beane successfully presented “overwhelming evidence of [the Town's] intentional delay, hostility and bias towards the Church's application...” [Pg. 169]. The Court concluded that the Town's actions violated RLUIPA and the Church's rights under the United States Constitution, the New York State Constitution and New York State Law. District Judge Stephen Robinson also cited “a record replete with evidence regarding the Defendants' intentional destruction of evidence and disregard for discovery obligations.” [p.204]

The Court ordered that the Town to issue a building permit to the Church within 90 days. The Court also directed the Church to supplement its application for monetary damages, including increased construction costs as a result of delay, reimbursement of excessive environmental review fees charged by the Town, and attorneys' fees and costs. During trial, the Church claimed over \$4 million in damages from the Town, and the additional evidence that the Church intends to submit to the Court will only increase this amount.

The Church is represented by Donna Frosco, who served as lead trial counsel, Nicholas Ward-Willis, who represented the Church throughout the land use process and at trial, and Edward Phillips, who assisted on the litigation and briefs.

Favorable Settlement Achieved In Complex Commercial Litigation

Keane & Beane achieved a swift and favorable settlement for its client in *Millennium Pipeline Co., LLC v. MBF Inspection Services, Inc.*, 09 Civ. 7208 (CS), a complex federal litigation

involving the construction of a \$1 billion, 182-mile natural gas pipeline in New York State. The case settled in the early stages of discovery as the parties sparred over the retrieval and production of electrically stored information, such as e-mails. This type of electronic discovery, known as “e-discovery,” has reshaped the modern litigation landscape. Not only have digital communications revolutionized the way businesses and individuals communicate and exchange information, they have generated an exponential increase in the amount of records that may be relevant to a legal dispute. Being able to navigate the technical complexities and challenges of e-discovery has become essential in most commercial cases. Nicholas M. Ward-Willis and Edward J. Phillips served as counsel on this matter.

SEQRA Findings Statement Upheld For Former General Motors Plant

On January 8, 2010, the Supreme Court, County of Westchester, issued a comprehensive Decision dismissing the vast majority of General Motors’ challenge to the Village of Sleepy Hollow’s SEQRA Findings Statement concerning the proposed redevelopment of the former GM factory known as Lighthouse Landing. GM challenged several conditions contained in the Village’s Findings Statement issued pursuant to the New York State Environmental Quality Review Act. Joel H. Sachs and Nicholas M. Ward-Willis had advised the Village Board of Trustees and Planning Board, respectively, during the Village’s review of the Environmental Impact Statement and land use documents for the proposed project.

Mr. Sachs and Mr. Ward-Willis, along with firm Associate Jennifer Gray, defended the Village from General Motors in the Article 78 litigation. The Court upheld many of the challenged conditions, including significant conditions such as the reduction in density of the proposed development, the requirement of GM providing environmental easements to address significant environmental contamination, construction sequencing with respect to the scheduling of construction of public improvements, and a significant monetary contribution required of General Motors for public improvement as a result of the proposed development.

Substantial Damages Award Obtained After Trial Of Shareholder Dispute

The firm handled several matters during the year involving disputes between shareholders in closely-held corporations. One such matter, *Ten Culver Drive, LLC v. Hanssen, et al.*, culminated in a multi-day bench trial in Rockland County Supreme Court with the firm obtaining a judgment for its client of approximately \$130,000. The case required the firm to investigate an array of business records, real estate transactions and different business entities. Andrew Tureaud, a senior associate with the firm, served as lead trial counsel. Edward J. Phillips assisted him on the matter.

James W. Borkowski Obtains Two Jury Defense Verdicts

Jim Borkowski capped a busy and memorable year having achieved two favorable defense verdicts from juries in Richmond and Sullivan Counties. One of these verdicts, and a favorable settlement that Mr. Borkowski obtained during trial in an Orange County case, were selected for publication in the *New York Jury Verdict Reporter*.

Both of Mr. Borkowski's jury verdicts involved personal injury actions. In *Andrade v. American Parkinson Disease Association, Inc. and CLJ Building Enterprises, Inc.*, the plaintiff claimed to have sustained spinal and hip injuries while working at a construction site. The plaintiff sought approximately \$475,000 for his future medical expenses, as much as \$2.5 million for his future lost earnings, and damages for his past and future pain and suffering. Mr. Borkowski successfully argued that the plaintiff was solely responsible for his injury. He also obtained, through surveillance, post-accident videotape showing the plaintiff was still able to pick-up trash cans, walk his dog and perform other tasks that were inconsistent with his alleged injuries. The jury unanimously delivered a defense verdict. In *Dookeran v. Narayan Inn Corp.*, the plaintiff, a guest at the defendant's hotel, slipped and fell on ice allegedly located on a walkway. Mr. Borkowski argued that the hotel had taken reasonable measures to make the walkway safe. The jury returned a unanimous verdict for the hotel. The plaintiff's post-trial motion to set aside the verdict was denied.

Firm Takes Appellate Victory In Long-Running Land Use Litigation

On June 18, 2010, Keane & Beane, P.C., obtained a very favorable Decision and Order from the Environmental Claims Part of the Westchester County Supreme Court in *Mamaroneck Beach & Yacht Club, Inc., et al. v. Galvin, et al.*, West. Cty. Index No. 24348-2010 (Hon. Francis A. Nicolai, J.S.C., presiding). The suit involves the longstanding efforts of the firm's client, the Mamaroneck Beach & Yacht Club, to develop and improve portions of its waterfront property. The Decision and Order marked the latest in a string of legal victories by Keane & Beane against the Village of Mamaroneck on behalf of the Club. Later in the year, the Club entered into a comprehensive settlement agreement with the Village of Mamaroneck in which the Planning Board and other Village boards agreed to consider the Club's proposed development plan in a fair and impartial manner, eventually resulting in the Club receiving a site plan approval. The Village also agreed to make a substantial monetary payment to the Club to resolve the dispute. Joel H. Sachs and Eric L. Gordon represented the Club.

Firm Secures Favorable Judgment In Significant Tax Certiorari Litigation

On December 20, 2010, the Supreme Court, Orange County, entered a judgment in *Al Turi Landfill, Inc. v. Town of Goshen* that decided a longstanding real property tax dispute. The court ruled in favor of the firm's client, the owner of an inactive solid waste landfill, and held that it had been substantially over-assessed in real property taxes over a period of ten years. The

judgment was issued following a trial at which the parties advanced competing, and complex, methodologies for estimating the fair market value of a solid waste landfill at the end of its operational life. The court sided with the position and arguments advanced on behalf of the firm's client. Edward F. Beane and Judson K. Siebert represented the property owner in obtaining this successful result.

Keane & Beane Successfully Represents Police Chief In Rockland County

Although the firm successfully represented public officials and employees in a number of matters during 2010, it won a significant victory in *Seidel v. Prendergast* (Rockland County Sup. Ct. Index No. 236/10). The suit was brought by a retired Town of Orangetown police officer to challenge the 1997 promotion of the Chief of Police of the Town of Orangetown, who continues to serve in that position. The firm represented the Chief of Police in the vigorously contested litigation, which involved expedited motion practice and arguments before both the trial court and the Appellate Division, Second Department. The firm won in both venues. The trial court ultimately dismissed the suit, finding that the petitioners lacked standing to sue, and that their claims were time-barred. Lance H. Klein and Edward J. Phillips represented the Chief of Police.

Second Circuit Court of Appeals Upholds Dismissal Of Employment Case

Keane & Beane successfully defended an appeal in the United States Court of Appeals for the Second Circuit in *Lawrence v. Mehlman*, 389 Fed. Appx. 54 (2d Cir. 2010). The Second Circuit found that the lower court correctly dismissed all claims against the firm's clients -- a hospital emergency room physicians group and an individual physician. The plaintiff had alleged racial discrimination under 42 U.S.C. § 1981, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, *et seq.*, and the New York Human Rights Law. On a summary judgment motion before trial, the firm demonstrated that those claims lacked merit as a matter of law, and the plaintiff could not prevail. The Second Circuit found that the plaintiff failed to demonstrate any adverse employment action and could not make a showing permitting an inference of discrimination. Edward F. Beane and Donna E. Frosco handled the case for the firm.

About Our Firm

Located in White Plains, NY, Keane & Beane has provided the highest quality legal counsel to its clients - in the Hudson Valley and beyond - for over 30 years. At Keane & Beane, you get the best of two worlds: The breadth and depth of professionals and practice areas usually found only at a large law firm, with the accessibility, personalized service and loyalty to clients of a smaller firm. Our Practice Areas are Business Transactions, Construction Law, Education Law, Elder Law, Environmental Law, Intellectual Property & Technology Law, Labor Relations & Employment Law, Land Development & Zoning, Litigation & Dispute Resolution, Municipal Law, Real Estate and Trusts & Estates.

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