

News

Pottstown developer scores \$18 million award

Supermarket chain backed out of deal to lease a store in North Coventry plaza

Sunday, March 21, 2010

By MICHAEL P. RELAHAN, Staff Writer

WEST CHESTER — Damages awarded to the developer of a North Coventry shopping center in a lawsuit against Safeway Inc. may be among the most in county history, if not the most.

Common Pleas Judge William P. Mahon last month awarded \$18,489,221 to Newman Development Group of Pottstown in a suit filed in 2002 against the nation's third-largest supermarket chain.

Buck Riley, lead partner in the Exton law firm of Riley, Riper, Hollin & Colagreco, said the case shows the importance of pursuing a claim no matter how much larger a legal opponent may be. Although Newman is a developer with projects in four states, the company is small when

compared to Safeway, Riley said.

"In the big picture, the Newman organization is a tiny organization," Riley said. "Most people would not take on and pursue a case like this because they might not have the resources to do it."

Safeway has 1,743 stores and in fiscal year 2009 had income of \$40.9 billion and profits of more than \$1 billion.

"This really proves that the justice system works," Riley said in an interview. "Given the opportunity to present the facts and the law to an unbiased and fair judge, the result is going to be an equitable one."

Charles Bloom of the law firm Stevens & Lee represented Safeway Inc. throughout the proceedings. Bloom declined to comment on the case, saying only that his clients have filed a notice of appeal.

Newman developed the Town Square Plaza shopping center off Route 100 in North Coventry after a long series of contentious zoning and planning hearings. The developer said Safeway had breached a contract made between it and Genuardi's Supermarkets in 1998 to build a 50,000-square-foot anchor store at the center.

After a non-jury trial in 2006, Mahon found in favor of Newman and against Safeway but awarded only \$316,889 in damages, the amount of lost rent that the developer suffered from the time the center opened until it was sold to a property management firm six months later.

The developers and Safeway both appealed the verdict to the state Superior Court, with Newman arguing it should be owed the full 20 years of rent on the lease it signed with Genuardi's, and Safeway contending that Newman, and not the chain, had broken the contract because it did not build the center on time.

The appeals court found in favor of Newman and sent the case back to Mahon to work out the proper damages.

After a set of hearings in January, Mahon awarded the developers \$10 million in back rent as well as counsel fees and back interest for a total of more than \$18 million.

Michael Wachs is the local principal of Newman Development Group and Marc Newman is the general partner of the shopping center developer based in Vestal, N.Y.

The developers "are marvelous individuals, and it's a great satisfaction to see them vindicated in their lawsuit against one of the largest supermarket chains in the nation," Riley said in a prepared statement. "This verdict proves once more that in our system of justice, the little guy can win when given an opportunity not to be run over by huge corporate entities."

In 1996, Newman identified North Coventry as a good site for a shopping center, to be known as Town Square Plaza.

Two years later, Genuardi's Family Markets signed a letter of intent with Newman to build a 50,000-square-foot anchor store at the proposed plaza.

Riley said both parties understood that the center could not be built as soon as Genuardi's had hoped because of a long battle in the township over the shopping center's plans. Instead, the company signed a lease and put it in escrow, he said.

In February 2001, Safeway bought Genuardi's.

"Thereafter, Safeway, as a result of marketing and other changes it was attempting to make at the highly popular and successful Genuardi's stores, met a firestorm of consumer opposition," a statement by Riley says.

In February 2002, Safeway sent Newman a termination letter alleging default on Newman's part for failure to start construction on the Genuardi's store.

Riley said other supermarket chains previously made Newman offers to locate a store at Town Square Plaza, but those companies made other plans by the time Safeway had backed out of the lease. Newman was unable to find a new supermarket anchor, and to this day Town Square has no such business.

Newman contended in its suit that Safeway should pay damages for the lost rent for the 20-year term of the lease.

Safeway, on the other hand, argued that the developer had failed to live up to its end of the lease by not having the store built on time, and further that it should have to pay back rent only for the time between when the store was finished and when Newman sold the property.

Riley was assisted in the case by attorneys Jeannette Simone and Edward Green Jr.

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