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Jury Shows No Pity For Lawyer Who Teamed With Builder

Ex-Cummings partner loses bid for \$2M in homebuilding deal

John D. Freeman v. William C. Gardiner, et al.: A Danbury jury returned a defense verdict Oct. 31 in favor of Greenwich homebuilder William C. Gardiner Jr. after his former development partner sued for \$2 million in lost profits.

A decade ago, **John D. Freeman**, of Redding, was an equity partner at Stamford-based **Cummings & Lockwood** who did a substantial amount of zoning and development work for Indian Spring Land Co., which was founded in 1912 by John D. Rockefeller's brother, William. The company owns large amounts of undeveloped land in Greenwich.

Beginning in 1996, Freeman worked to prepare a 75-acre parcel of Indian Spring land for development—a property previously designated protected forest land. By 1999, Freeman won approval for a 39-lot subdivision, dubbed Sherwood Farm.

In 2000, road building and utility work proceeded, with Freeman's continued involvement. Indian Spring's president, Andrew Rockefeller, 75 at the time, recognized the full development would require years of hard work. He offered Freeman a senior executive position, with base pay augmented by an option to buy two lots per year at market rate. Freeman could develop the lots if his housing designs passed muster with Indian Springs' design review board.

Freeman met Gardiner in 2001 and they entered into a 50-50 partnership to develop lots under Freeman's land purchase agreement. Freeman, under the partnership agreement, retained authority to make all decisions about design, landscaping, labor and materials costs, government approvals, hiring of professionals and closing arrange-



Bridgeport lawyer Richard L. Albrecht successfully defended a Greenwich homebuilder in a case involving a land company owned by the Rockefeller family.

ments. Gardiner received a \$150,000 fee for overseeing the construction of two homes expected to sell for \$4 million each.

Freeman, according to his complaint, agreed reluctantly to hire Gardiner's wife to design the homes at a fee Freeman thought was an above market rate. He reluctantly agreed in the interest of "good will," according to his complaint.

The partnership acquired another two lots, and extended the development agreement in 2003.

By then, Freeman became concerned that there had been cost overruns by hundreds of thousands of dollars on the first two houses. The partnership specified that cost overruns would be taken out of Gardiner's share of the profits, but in

January 2004, Freeman agreed to split the overruns 50-50 to "make peace," he said in his complaint.

The partners' relationship continued to deteriorate, and by April 2004 they were maneuvering against each other to buy more Indian Springs lots separately. When Gardiner learned that several lots he was bidding on had already been sold to Freeman, he made disparaging comments to Indian Springs board members, according to Freeman's complaint.

Freeman was terminated by Indian Springs shortly thereafter, and he sued Gardiner for getting him fired, for interfering with his deal to purchase additional lots from Indian Spring and for violating the state unfair trade practices act (CUTPA).

Gardiner contended he didn't even know about Freeman's Indian Spring employment or his bonus land purchase agreement. The jury didn't believe that, and said as much in its answers to written interrogatories. On the other hand, it did not find that Gardiner wrongfully interfered with Freeman's employment or his land purchase deal, or that Gardiner violated CUTPA.

Freeman was seeking \$2 million in lost development profits and attorneys fees under CUTPA. After 11 hours deliberation, the jury awarded nothing on all three counts.

Freeman's lawyers were **Louis R. Pepe**, **Thomas J. Rechen** and **James A. Budnetz** of Hartford's **Pepe & Hazard**. Gardiner's lawyers were **Richard L. Albrecht**, a partner at Bridgeport's **Cohen and Wolf**, and associate **Jason A. Buchsbaum**.

— By Thomas B. Scheffey