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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1260-16T4

MARGARET CHUDZIAK and
DARIUS MICHALSKI,

Plaintiffs-Appellants,

v.

BERGEN COUNTY CONSTRUCTION
BOARD OF APPEALS and BOROUGH
OF UPPER SADDLE RIVER,

Defendants-Respondents.

Submitted January 17, 2018 – Decided February 1, 2018

Before Judges Fuentes and Manahan.

On appeal from Superior Court of New Jersey,
Law Division, Bergen County, Docket No.
L-3240-13.

Garth A. Molander, attorney for appellants.

Robert T. Regan, attorney for respondent
Borough of Upper Saddle River.

PER CURIAM

This case returns to us after a remand. Plaintiffs Margaret
Chudziak and Darius Michalski appeal from an October 27, 2016

amended final judgment order awarding civil penalties to the Borough of Upper Saddle River. We affirm.

In Chudziak v. Bergen Cnty. Const. Bd. of Appeals, A-2998-14 (App. Div. June 30, 2016), we affirmed the Bergen County Construction Board of Appeals' decision to dismiss their appeal of a construction violation, and the entry of an award in civil penalties to the Borough of Upper Saddle River for plaintiffs' continuous non-compliance with the State construction code. However, as we concluded, the judge failed to provide an adequate statement of reasons for the damages awarded per Rule 1:7-4, therefore, we were constrained to vacate the award and remand for further fact finding.

The procedural and factual histories were set forth in detail in our prior opinion and need not be repeated herein. Chudziak, slip op. at 2-9.

On appeal, plaintiffs, who did not attend or participate in the remand proceedings, raise the following points:

POINT I

THE TRIAL COURT ABUSED ITS DISCRETION IN AWARDING CIVIL PENALTIES TO DEFENDANT BOROUGH BECAUSE THE REMAND DECISION IS NOT SUPPORTED BY SUBSTANTIAL CREDIBLE EVIDENCE IN THE TRIAL RECORD.

- a. There was no credible evidence to the contrary, and there was no evidence to refute the plaintiffs'

expert's testimony that an unsafe condition did not exist to warrant civil penalties with respect to violation 2008-0037 (no permit, unsafe condition and imminent hazard).

b. The penalties awarded to the Borough were unreasonable as applied to the specific facts involved.

c. The medical and personal circumstances faced by the plaintiffs in 2008 were not given due consideration and were actually disregarded in assessing whether continuing penalties should be awarded to the Borough.

d. The Uniform Construction Code is not a fee shifting statute, and civil penalties cannot be awarded on such basis or rationale.

POINT II

THE TRIAL COURT DECISION TO REINSTATE CIVIL PENALITIES SHOULD BE REVESED BECAUSE THE REMAND RECORD CANNOT ESTABLISH[] THAT THE REOCCURRING PENALIES WERE RATIONALLY RELATED TO AN UNSAFE STRUCTURAL CONDITION OR IMMINENT HAZARD.

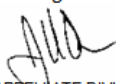
a. The December 3, 2014 hearing testimony clearly supports a fact-specific determination that the civil penalties granted to the Borough were not fair and reasonable and actually irrational or excessive.

b. The remand decision did not provide a factual and legal basis to award attorney fees and costs of litigation.

Having considered the record in light of the arguments, we conclude that they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We affirm for the reasons set forth in Judge William C. Meehan's written opinion dated October 13, 2016.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION