

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL FINK and KAREN PARDINI,	:	CASE NUMBER: 20-CV-3002
Plaintiffs,	:	
-against-	:	
MOHONK PRESERVE INC., THE	:	
SHAWANGUNK CONSERVANCY INC.,	:	<u>COMPLAINT</u>
OPEN SPACE INSTITUTE INC., THE	:	
LAND TRUST ALLIANCE, AND THE	:	
NEW YORK STATE CONSERVATION	:	
PARTNERSHIP PROGRAM,	:	
Defendants.	:	
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THE NATURE OF THE ACTION

1. This is a civil action for legal and equitable remedies for violations of 42 U.S.C. § 1983.

JURISDICTION

2. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3). This Court has personal jurisdiction over the Defendants because they are located in the State of New York or do business therein.

VENUE

3. Venue is proper in this District under 28 U.S.C. § 1391(b)(1), (b)(2) and (b)(3). Open Space Institute Inc., a Defendant, maintains its principal place of business within the Southern District of New York.

THE PARTIES

4. Plaintiff Michael Fink (“Fink”) is a citizen of the United States and resident of Ulster County, New York.

5. Plaintiff Karen Pardini (“Pardini”) is a citizen of the United States and resident of Ulster County, New York.

6. Mohonk Preserve, Inc. (“MPI”) is a New York Not-for-Profit Corporation. In past years it was previously known as the Mohonk Trust. It was incorporated on March 27, 1978 under the laws of New York. MPI is located at 3197 US-44, Gardiner, New York, 12525 with a mailing address of P.O. Box 715, New Paltz, New York, 12561-0715. MPI presently owns or controls approximately 9,000 acres of land in New York State. Upon information and belief, MPI is a tax-exempt 501(c)(3) Corporation.

7. The Shawangunk Conservancy Inc. (“Shawangunk”) is a New York Not-for-Profit Corporation. It was incorporated on March 25, 1987 under the laws of New York, and maintains an address of P.O. Box 270, Accord, New York 12404. Upon information and belief, Shawangunk is a tax-exempt 501(c)(3) Corporation.

8. Open Space Institute Inc. (“OSI”) is a New York Not-for-Profit Corporation. It was incorporated on July 25, 1974. OSI is organized under the laws of New York and is headquartered at 1350 Broadway, Suite 201, New York, New York, 10018. Upon information and belief, OSI is a tax-exempt 501(c)(3) Corporation. OSI’s goal of conservation is achieved through land acquisition. OSI has acquired over more than 21,000 acres of forest land in the Catskills.

9. The Land Trust Alliance (“LTA”) is a not-for-profit corporation organized under the laws of the Commonwealth of Massachusetts. The LTA is a tax-exempt 501(c)(3) corporation under federal law. The LTA, headquartered in Washington, D.C., represents more than 1,700 land

trusts across the country. The LTA provides monetary support to land trusts in the form of grants with support from, *inter alia*, the New York State Department of Environmental Conservation. MPI and OSI are both members of the LTA. In fact, the LTA plays a significant role in distributing public funds to land trusts under their partnership program with New York State. Indeed, the LTA serves as an administrator and gatekeeper for public funds to be distributed to land trusts such as Defendants MPI and OSI. The LTA maintains a significant field office in Saratoga Springs, New York. The LTA's Registered Agent for service of process is Darron Blake, located at 112 Spring Street, Suite 206, Saratoga Springs, New York, 12866.

10. The New York State Conservation Partnership Program (the "CPP") is a partnership between the New York State Department of Environmental Conservation and the LTA's New York Program. The CPP offers "competitive matching grants" to "qualified New York land trusts to advance land conservation, recreation, and tourism." The public-private partnership between the DEC and the LTA was created in 2002, and is managed by the LTA in coordination with the DEC.

NON-PARTIES

11. Robert K. Anderberg, Esq. ("Anderberg") is the founder of Shawangunk, has been a Board Member of MPI, is currently Vice-President and General Counsel of OSI, and serves as an Affiliate Member of the Lower Hudson Valley (Region 3) Regional Open Space Advisory Committee. In 1985, then on behalf of MPI, Anderberg began relentless efforts to acquire "Smitty's Ranch," a privately owned piece of property contiguous to MPI's property. In 1987, Plaintiffs succeeded in buying "Smitty's Ranch," thereby blocking Anderberg's and MPI's (and by 1987, Shawangunk's) efforts. At all times thereafter, Anderberg through his roles with Defendants has worked tirelessly to acquire "Smitty's Ranch" and the property of local private

citizens by any and all means possible. At or around the time Fink and Pardini bought “Smitty’s Ranch”, Anderberg threatened that he [MPI and Shawangunk] “... would get [Plaintiffs’] land ‘by hook or by crook.’” At the time, Anderberg was an attorney at Cahill, Gordon, & Reindel. Anderberg maintains a residence in Ulster County, at 94 Lawrence Hill Road, Accord, New York 12404.

12. The New York State Department of Environmental Conservation (the “DEC”) is a department of the New York State government that implements the State’s environmental policies, including policies related to land conservation and acquisition.

13. The Mohonk Preserve is a nature preserve located in the Shawangunk Ridge. The Preserve consists of over 8,000 acres of land, including cliffs, forests, fields, ponds and streams. The Preserve includes over 40 miles of trails for hiking, horseback riding and other activities.

14. The Mohonk Mountain House (the “Mountain House”) was founded in 1869 by the Smiley Family. The Mountain House is a large, well-known recreational and resort hotel located on the Shawangunk Ridge. The Smiley family continues to own and operate the Mountain House. The Mountain House and its guests freely use the Mohonk Preserve and its hiking, snowshoeing, and cross-country ski trails. Indeed, the initial 5,300 acres of the Mohonk Preserve were donated to the Mohonk Trust by the Smiley Family from the Mountain House’s property for tax benefits in 1963.

15. Terrafirma Risk Retention Group (“Terrafirma”) is a Limited Liability Company. Terrafirma was formed by the LTA in 2011 “as a charitable risk pool owned by participating land trusts that insures its members against the legal costs of defending conservation.” Upon information and belief, MPI and OSI are both members of Terrafirma.

FACTS

16. In July 1987, Fink and Pardini acquired approximately 300 contiguous acres of land, known as “Smitty’s Ranch” (sometimes referred to as the “Ranch”) located in the Shawangunks. The “Ranch” adjoins Mohonk Preserve. “Smitty’s Ranch” was assembled over many decades from various parcels, all of which lie in the “Nineteen Partners Tract”, dating back to 1799. The majority of the “Ranch” lies on the northwest side of Clove Valley Road, and includes portions of Lot 1 (74 acres), portions of Lots 2, 3, and 4 (136 acres), and a small portion of Lot 5 (2.5 acres), as well as a narrow portion of the Harmanis Rosekrans tract. The remainder of the “Ranch” lies on the Southeasterly side of Clove Valley Road, including the balance of the Harmanis Rosekrans tract and lots 12 and 11 (totaling approximately 100 acres). In fact, Anderberg had told certain individuals that “[‘Smitty’s Ranch’] is the most important piece of property in the Shawangunk Ridge[.]”

17. Since Plaintiffs acquired “Smitty’s Ranch” in 1987, Anderberg, acting on behalf of MPI and Shawangunk, has doggedly pursued acquiring Plaintiffs’ land. While generally perceived as a land use organization effectuating pro-environment, pro-conservation policies for the benefit of the State and its citizens, MPI lacks accountability for its actions, including initiating litigation to claim land in the name of the State’s conservation goals.

18. In 1994, Anderberg caused MPI to begin the process of taking portions of “Smitty’s Ranch” from Plaintiffs by “hook or by crook.” In 1994, Anderberg allegedly bought a portion of “Smitty’s Ranch” from an adjoining owner, Gloria Finger, that was part of what Fink and Pardini had purchased. This 1994 purchase would ultimately become the basis for the 2004 case captioned *Mohonk Preserve, Inc. v. Karen Pardini and Michael Fink*, Index No. 04-525. Significantly, at no time did MPI do anything to dispossess Plaintiffs from Lot 1 of the “Nineteen Partners Tract.”

Fink and Pardini continued to pay the real estate taxes, maintain the roads, and undertake proper forestation to maintain the land. The suit was ultimately initiated because MPI was ejected from the property.

Defendants' Efforts To Wrest Control Of "Smitty's Ranch" From Plaintiffs

19. Anderberg, acting through these Defendants in claiming that those actions were to implement New York State conservation and environmental policies, has made numerous efforts to claim ownership of large portions of "Smitty's Ranch" for Defendants.

20. *In 1995*, Shawangunk brought a litigation against Fink and Pardini, claiming ownership of Lots 2, 3, and 4 of the "Nineteen Partners Tract." *Shawangunk Conservancy, Inc. v. Fink and Pardini*, Index. No. 95-1012. *In 2002*, seven years of litigation later, the trial court ruled in favor of Fink and Pardini. Shawangunk's appeals were denied and the trial court's decision in favor of Fink and Pardini was upheld *in 2003*.

21. *In 2003*, MPI sought to quiet title in its favor against Fink and Pardini for approximately 17 acres on the northeast portion of the "Ranch" (hereinafter the "CNYE Lot"). MPI was substituted as successor to Mohonk Trust, in a dispute from 1977, originally brought against Wilbur Smith, the owner of "Smitty's Ranch." *Cooley v. CNYE Realty Corp., Inc.*, Index No. 77-226. The original 1977 dispute was allegedly resolved by settlement stipulation, but it was never signed or effectuated. *In 2004*, MPI succeeded in forcing the rewriting of the boundary line, but this was reversed on appeal *in 2005*. *Cooley v. CNYE Realty Corp. Inc.*, 791. N.Y.S.2d 702 (N.Y. App. Div. 2005).

22. *In 2004*, Plaintiffs' neighbor Barbara Rubin (who is a Shawangunk Board Member and an employee of the Mountain House) brought an action against Fink and Pardini, claiming that a portion of the northeast portion of the "Ranch", belonged to them. The parties

settled *in 2005*. Rubin received 5 acres, and Fink and Pardini received cash and a deed for the CNYE Lot as part of a global settlement. *Barbara L. Rubin v. Fink and Pardini*, Index No. 04-1081.

23. *In 2005*, MPI brought an action against Fink and Pardini, also claiming a portion of the northeast part of the “Ranch” belonged to them. The parties settled *in 2005*. MPI received 33 acres of the most northeasterly portion of the “Ranch” and Fink and Pardini received cash and a deed for the CNYE Lot as part of a global settlement. *Mohonk Preserve, Inc. v. Pardini and Fink*, Index No. 05-1722.

24. *In 2004*, MPI again brought suit against Fink and Pardini to obtain another portion of the “Ranch.” MPI sought possession of the 73 acres of Lot 1 of the “Nineteen Partners Tract.” MPI claimed superior title over Fink and Pardini to Lot 1. The case was captioned *Mohonk Preserve, Inc. v. Karen Pardini and Michael Fink*, Index No. 04-525.

25. During the 2010 trial, Fink’s sister, Anita Gerhke, testified that in the late 1980s, Anderberg told her to pass along a threat to Fink that Anderberg, “was going to watch every single thing [Fink] did and do everything in his power to take that land from [Fink].”

26. During the same trial, Eric Hertz, who has resided just west of the disputed land for over 25 years, testified that Anderberg told him and another individual that the land in dispute “is the most important piece of property in the Shawangunk Ridge, a privately-owned piece of property, and that *by hook or by crook he was going to get it.*” Anderberg acknowledged a similar threat in an affidavit filed in the case.

27. *Mohonk Preserve, Inc. v. Karen Pardini and Michael Fink*, Index No. 04-525, was the “most lengthy trial [the] Court [had] conducted to date.” The stenograph record ran nearly 2,500 pages; roughly 150 exhibits were introduced into evidence; and nearly 30 witnesses and

expert witnesses testified. The judge personally visited and inspected the land himself to understand better the deeds and descriptors in the case.

28. In May 2013, the Court ruled in favor of Pardini and Fink. The Court accepted each of Pardini's and Fink's 306 proposed findings of fact and conclusions of law and made 8 credibility determinations, each favorable to Pardini and Fink. Alternatively, the Court held that Pardini and Fink had established ownership by adverse possession as well.

29. In 2014, MPI appealed to the Appellate Division, Third Department. MPI claimed, for the first time, that its efforts to take Pardini's and Fink's property was in furtherance of "[New York] State's *codified* policy of ecological conservation."

30. On July 9, 2015, the Third Department awarded the 73-acre parcel at issue, without compensation to Pardini and Fink, to MPI. MPI had raised a new claim before the Court on appeal, arguing that MPI was acting to effectuate the "State's *codified* policy of ecological conservation", specifically citing N.Y. Envtl. Conserv. Law §§ 1-0101(1), (3), 49-301 (McKinney 2014). MPI claimed that it was acting in furtherance of this statute and policy to "conserve the property." Further, MPI argued "awarding Defendants' title would substantially offend public policy because [MPI] would be prevented from conserving the property[.]"

31. No further appeal or reargument was allowed; thus, Pardini and Fink were never able to raise the issue of their right to be free from unconstitutional taking of their property without due process of law. Instead, MPI, a private party acting under color of state law, obtained the property without just compensation, as if they were the State of New York exercising the right of eminent domain.

Defendants' Connections to the State of New York

32. Over the years, from at least the mid-1980s, MPI has worked closely with Shawangunk (and its affiliate, the Friends of the Shawangunks) OSI on various land acquisition projects and initiatives in Ulster County.

33. MPI and OSI frequently have engaged in partnerships with the State of New York. Significantly, upon the formation of the CPP, in conjunction with the LTA, MPI and OSI have acted with the blessing and support of the State of New York and its “*codified* policy of ecological conservation.” The “overzealous tactics” employed to acquire land from Fink and Pardini have been recognized and reported in the New York Times and several Hudson Valley publications over the years from as early as 1998. Indeed, these efforts to acquire land for alleged conservation purposes have been coordinated amongst the Defendants. But even the stated goal of “protecting the Shawangunk Ridge” and ecological conservation is belied by MPI’s 1985 Executive Director Report to its Trustees; certainly contrary to the lofty principles they now expound. MPI’s internal board minutes set forth the true purpose for acquiring the land more clearly: the purpose is to promote their own residential development on 40-50 acres of the property and to use much of the rest of it for “income producing activities” such as running campgrounds.

34. Indeed, these partnerships are aligned by a concerted effort to acquire land for conservation purposes and ultimately revert the land back to the State of New York for the encouraged and aligned goal of conservation.

35. In fact, OSI has stated that it is an important partner in supporting state and federal efforts to protect land, purchasing and stewarding land to become parks and community assets, including substantial land acquisitions doubling the size of nearby Minnewaska State Park.

36. In 2012, MPI received a \$500,000 grant from the New York State Regional Economic Development Council to purchase 534 acres in New Paltz, New York. Upon information and belief, the property was purchased from OSI, which had itself acquired approximately 857 acres from the Smiley family the year before. In fact, MPI was given a \$30K conservation catalyst grant by the CPP to partner with OSI and “determine the appropriate ways in which to manage [the] 857 acres acquired by OSI from the owners of the Mohonk Mountain House in 2011.”

37. Additionally, during its appeal of the Supreme Court’s ruling in favor of Fink and Pardini, the DEC contributed \$15,000 to MPI for “conservation defense,” ostensibly for legal fees in the action against Fink and Pardini.

38. For example, in 2009, the CPP provided MPI and OSI with a \$20.6K conservation grant in order to “facilitate a partnership” between the two entities and enable them “to acquire and manage two properties at the extreme northern end of the Shawangunk Mountain range.”

39. In addition, in 2011, the LTA created Terrafirma, a captive insurance company, to assist its members in paying legal expenses. MPI and OSI are charter members of Terrafirma.

40. MPI’s assertion that it intended to use Fink’s and Pardini’s property to further the “State’s *codified* policy of ecological conservation” dovetails with Anderberg’s justification for obtaining land – to prevent non-existent “rapacious development” in the region. Significantly, Fink and Pardini have never sought to “develop” their property; instead, they have paid taxes, kept roads and pathways clear, utilized forest management to maintain the health of the trees and shrubs on the property, and enjoyed the property for outdoor activities, including hiking. They reside in the former “Smitty’s Ranch” building on the property. In short, they are and have been models of private, non-disruptive owners, and continue to be on that portion of the land they still own.

41. The activities of the Defendants are highly intertwined and many high-ranking officials within MPI, Shawangunk, and OSI circulate among these organizations and New York State environmental positions.

42. Importantly, high ranking officials within MPI, Shawangunk, and OSI frequently move from management positions from one entity to another. MPI's and OSI's membership in the LTA assures continuous funding from the State for land acquisition and litigation expenses.

43. For example, Anderberg, currently Vice-President and General Counsel of OSI, founded Shawangunk, has served on MPI's Board of Directors and was instrumental in creating MPI's policy aimed at wresting control of "Smitty's Ranch" from Fink and Pardini. In addition, he is an Affiliate Member of the Lower Hudson Valley (Region 3) Regional Open Space Advisory Committee, which serves Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester counties. In these capacities, he has threatened not only Fink and Pardini, but has terrified and threatened numerous landowners in the Shawangunk region, to wrest control of their land from them.

44. In addition to Anderberg, Paul Elconin of OSI, Jennifer Garofalini, a former employee of MPI, now of OSI, and Glen Hoagland (former President and CEO of MPI for 26 years) each serve or have served as Affiliate Members of Region 3 of the Regional Open Space Advisory Committee.

45. Norman Van Valkenberg worked as a surveyor and then as Director of Lands and Forest for the DEC from 1954 until 1986. Later, he worked as a surveyor for Shawangunk, and as an in-house surveyor for MPI from 1993 until 2004. He assisted MPI during the trial conducted in 2011 and was present for each day of the trial. Van Valkenberg was not called as a witness by MPI, despite having been the only one who performed the disputed MPI survey. He, along with

Anderberg, was the central figure in the over three-decade long attempts to take Fink's and Pardini's land.

46. Joseph Martens served as President of OSI from 1998 through 2010 when he was appointed Commissioner of the DEC in 2011 through 2015. He returned to OSI in 2015 as a senior advisor.

47. Glenn Hoagland ("Hoagland") served as President and CEO of MPI from 1993 to 2019. He also served as Director of OSI's Citizen Action Program and is on the Region 3 Advisory Board as well as a member of the New York Land Trust Advisory Board, which was created as a New York field office for the LTA. The New York Land Trust Advisory Board's members are executive directors or board presidents of New York land trusts, or members of the community with land conservation experience and expertise.

48. New York State has and continues to provide financial support to MPI, OSI, and Shawangunk in land acquisition activities, generally through the CPP's funding of the LTA. Also, the State's policies are regularly invoked as the basis for MPI's and OSI's land acquisition activities and asserted as the basis for Shawangunk's programs. These private organizations liberally use images of the Governor and have published open letters on conservation as testimonials bear significance in effectuating the State's land acquisition and conservation, which could not be accomplished without the public-private partnership. Indeed, in one such letter, featured on the MPI website, Governor Cuomo stated that MPI "has proven to be an exceptional steward of the Hudson Valley and the Shawangunk Ridge's ecosystems and resources – effectively enhancing our quality of life and protecting our natural heritage for generations to come."

FIRST CAUSE OF ACTION
(VIOLATION OF 42 U.S.C. § 1983)

49. Fink and Pardini repeat and reallege the allegations contained in the previous paragraphs as if separately set forth herein.

50. The Defendants, working in concert, and claiming to effectuate the “State’s *codified* policy of ecological conservation,” have been able to obtain, finance, litigate, and use for private purposes Fink’s and Pardini’s land, and the land of others, to accumulate large contiguous parcels of the Shawangunk Ridge. These takings have frequently been accomplished “by hook or by crook.” Although these takings are justified as accomplishing the State’s policies, there has not been either just compensation or a limitation to the takings to that which is necessary to effectuate the State’s policy.

51. Defendants claim their actions have been to forestall “rapacious development” that would disturb the pristine nature of the land. All of this has been claimed while, in fact, no such development has occurred.

52. Title 42 U.S.C. § 1983 authorizes a party who under color of state law has been deprived of property without Due Process and just compensation to seek relief through “an action at law, suit in equity, or other proper proceeding for redress[.]”

53. Though separate not-for-profit corporations, MPI, Shawangunk, and OSI continuously work closely with each other, are led by the same people, in particular Anderberg, and engage projects under the purview of the CPP and the Open Space Advisory Committee for Region 3, with the LTA providing the administration of public funds used .

54. MPI, Shawangunk, and OSI’s actions in land acquisition invoke the environmental policies of the State of New York without justification, cause, or basis.

55. Individual landowners have no choice but to relinquish their property to OSI or MPI. An individual landowner faces a well-funded public relations campaign and can include costly litigation funded in part, whether directly or indirectly by the State of New York.

56. Defendants, as state actors, deprived Plaintiffs of their private property without just compensation, in violation of the Fifth and Fourteenth Amendments.

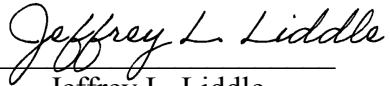
RELIEF SOUGHT

57. WHEREFORE, while reserving the right to seek additional damages as available, Plaintiffs pray for the following relief:

- a. Defendant MPI be ordered to return the property to Plaintiffs, or in lieu thereof, to pay just compensation for the taking in an amount of \$7,300,000.00;
- b. A permanent injunction against MPI, OSI, Shawangunk, and others acting in concert, barring them from further efforts to take Fink and Pardini's land;
- c. For attorney's fees under 42 U.S.C. § 1988(b); and
- d. For such other and further relief as the Court may deem necessary.

Dated: April 13, 2020

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