

CA - 04 Old Bridge

Application to vacate ex parte order of
dismissal and entry of default.

Notice of motion to extend time for
discovery

P-16

CA 002301N

YACKER, GRANATA & CLEARY

A PROFESSIONAL CORPORATION
210 MAIN STREET / P. O. BOX 389
MATAWAN, NEW JERSEY 07747
(201) 583-3636

ATTORNEYS FOR Defendant

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Plaintiff

O & Y OLD BRIDGE DEVELOPMENT CORP.

vs.

Defendant

THE TOWNSHIP OF OLD BRIDGE, et als

*Docket No.*L-32516-80

CIVIL ACTION

APPLICATION TO VACATE
EX PARTE ORDER OF
DISMISSAL AND ENTRY OF
DEFAULT. NOTICE OF MOTION
TO EXTEND TIME FOR
DISCOVERY

TO: BRENER, WALLACK & HILL, ESQS.
15 Chambers Street
Princeton, New Jersey 08540

SIRS:

PLEASE TAKE NOTICE that on the 19th day of June, 1981 at 9:00 a.m. or as soon thereafter as counsel may be heard, the undersigned, attorney for the Defendant, Old Bridge Township Sewerage Authority shall apply to the Honorable J. Norris Harding, Superior Court of New Jersey, Law Division, Middlesex County, for an Order vacating an Ex Parte Order of Dismissal and Entry of Default dated June 8, 1981, attached hereto.

Take additional Notice that the undersigned shall request
the Court to Extend Time for Discovery.

Dated: June 15, 1981

YACKER, GRANATA & CLEARY, ESQS.
Attorneys For Defendant
Old Bridge Township Sewerage
Authority

By: 
LOUIS E. GRANATA, ESQ.

I certify that the within Motion, together with supporting
Affidavit has been forwarded to the Clerk of the Superior Court;
a copy to the Honorable N. Norris Harding, J.S.C, and my
adversary.


LOUIS E. GRANATA, ESQ.

7. On May 15, 1981 the Plaintiff, through Mr. Hill served notice to take depositions upon me. to be heard on June 2, 1980. (B).

8. I telephoned Mr. Hill and asked him to put the depositions off until after the Motion was determined (At this time the Assignment Judge had not designated a Judge). Mr. Hill would not consent. I wrote to Mr. Hill on May 19, 1981 embodying the "objections" I had to the scheduled depositions. (C)

9. On May 20, 1981 Mr. Hill replied (D) and stated "We are unwilling to delay discovery indefinitely during the pendency of your Motion."

10. Instead of filing a Motion for a Protective Order, or an extension of time, I wrote Mr. Hill, and the Assignment Judge requesting the Motion be scheduled. I clearly stated that:

" The Plaintiff has served this Defendant with Interrogatories and Notice to Take Depositions. The discovery appears to be extensive and very costly. In the event of the pending Motion is granted, this Defendant will have expended the time and expense unnecessarily. I have asked counsel for the Plaintiff to delay discovery until my Motion is decided. He is unwilling to delay discovery indefinitely." (E).

11. On May 26, 1981 Your Honor scheduled the Motion for June 19, 1981 (F).

12. On June 3, 1981 Mr. Hill and I agreed by telephone and by letter (G/H) to adjourn the depositions until after the Motion. (The sixty days had now run).

13. Throughout this time we were in constant telephone contact, discussing fees for experts, attendance of experts' attorneys and other matters relating to discovery. At no time did Mr. Hill or anyone in his office indicate to me that they were pressing for answers to interrogatories. One June 4, 1981 the very day Mr. Hill confirmed adjournments, He(his office) was executing an Affidavit in support of an Ex Parte Order of Dismissal and Entry of Default. The Order, as prepared by his office, did not even include a provision or notice to me that the Order had been entered, it was added by the Court.

14. My office, the Defendant and myself have, prior to any litigation, dealt openly and honestly with the Plaintiff. Since the litigation has been filed, I have dealt courteously and honorably with Mr. Hill's office in an attempt to resolve the underlying issues without being deceptive or misleading, and seeking always to cooperate in any reasonable manner.

15. I was surprised and dismayed when I opened my mail on Friday, June 12, 1981 to find an Order dismissing my Answer and Striking my defenses now requiring me to make this application, pay a \$50.00 sanction and face the possibility of having to complete all answer to 203 pages of interrogatories within thirty days. I called Mr. Hill's office and expressed

my displeasure at the "tactic" and asked if this is the way we were to practice during this litigation.

15. I am well aware of our Rules of Professional Conduct and Disciplinary Rules (D.R. 7-101) Mandating that no lawyer shall not knowingly fail to seek the lawful objectives of his client. The Rule also contains a provision that a lawyer does not violate it by:

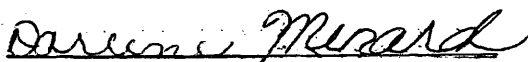
... acceding to reasonable requests of opposing counsel, ... by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process."

16. Because of the above, it is most respectfully requested that the Court vacate the Order, allow, in the event the Motion pending to dismiss is denied, an extension of time within which discovery may be heard. And, within the Court's discretion, waiver of sanctions.

Sworn and Subscribed to
before me this 15th day
of June, 1981.



LOUIS E. GRANATA



DARLENE M. MINARD
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Dec. 26, 1983

ORIGINAL FILED
9-17-81
W. LEWIS BAMBRICK
Clerk

YACKER, GRANATA & CLEARY

A PROFESSIONAL CORPORATION
210 MAIN STREET / P. O. BOX 389
MATAWAN, NEW JERSEY 07747
(201) 583-3636

ATTORNEYS FOR Defendant Old Bridge
Township Sewerage Authority

Plaintiff

O & Y OLD BRIDGE DEVELOPMENT CORP., a
Delaware Corporation

vs.

Defendant

THE TOWNSHIP OF OLD BRIDGE in the COUNTY
OF MIDDLESEX, a municipal corporation of
the State of New Jersey, et al.

SUPERIOR COURT OF
NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

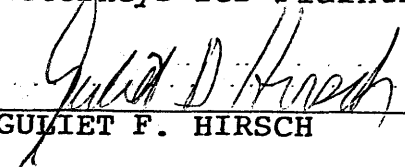
Docket No. L-32516-80

CIVIL ACTION

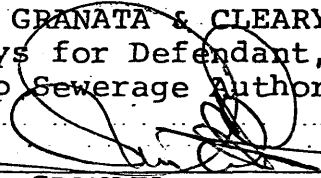
CONSENT TO EXTENSION OF
TIME

The undersigned, attorneys for both the Plaintiff and the
Defendant herein, consent to an extension for service of a
responsive pleading to the Complaint for a period of 30 days
from March 11, 1981 to April 10, 1981, pursuant to R. 4:6-1(c).

BRENER, WALLACK & HILL, ESQS.
Attorneys for Plaintiff


GULIET F. HIRSCH

YACKER, GRANATA & CLEARY, P. A.
Attorneys for Defendant, Old Bridge
Township Sewerage Authority


LOUIS E. GRANATA

BRENER, WALLACK & HILL
ATTORNEYS AT LAW

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CABLE "PRINLAW" PRINCETON
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(201) 658-4130

HARRY BRENER
ALAN M. WALLACK

MICHAEL D. MASANOFF
HENRY A. HILL
ROBERT A. FELMEISTER
GULIET D. HIRSCH
NATHANIEL L. FULK

May 15, 1981

MEMBER OF N.J. & PA. BARS

Louis E. Granata, Esq.
Yacker, Granata & Cleary
210 Main Street
Matawan, New Jersey 07747

Re: O & Y OLD BRIDGE DEVELOPMENT CORP. v.
TOWNSHIP OF OLD BRIDGE, et als.
Docket No. L-32516-80

Dear Sir:

Enclosed herewith please find an original and 1 copy of documents listed below.

- | | |
|---|---|
| <input type="checkbox"/> Summons | <input type="checkbox"/> Notice pursuant to |
| <input type="checkbox"/> Complaint | <input type="checkbox"/> R. 4:42-1(b) and Order |
| <input type="checkbox"/> Answer | <input type="checkbox"/> Order dated |
| <input type="checkbox"/> Interrogatories | <input type="checkbox"/> Request to Enter Default |
| <input type="checkbox"/> Answers to Interrogatories | <input type="checkbox"/> and Certification |
| <input checked="" type="checkbox"/> Notice to Take Oral Depositions | <input type="checkbox"/> Stipulation of Dismissal |
| <input type="checkbox"/> Notice of Motion and Affidavits | <input type="checkbox"/> Judgment |
| <input type="checkbox"/> Notice of Motion | |
| <input type="checkbox"/> Other | |

Will you please:

- File.
- File and charge our account.
- File and return conformed copy in enclosed stamped envelope.
- File and list for argument on the date listed in the Notice.
- Serve.
- Sign and return to us for filing.
- Return original Acknowledgment of Service.
- Other.

~~Also enclosed herewith please find our check in the amount of \$~~

Very truly yours,

BRENER, WALLACK & HILL

By: 

Henry A. Hill

HAH/vwa

cc: William E. Flynn, Esq.
Louis J. Alfonso, Esq.
Thomas Norman, Esq.

"B"

YACKER, GRANATA & CLEARY

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

STANLEY YACKER
LOUIS E. GRANATA
JAMES J. CLEARY

210 MAIN STREET
P. O. BOX 389
MATAWAN, NEW JERSEY 07747

(201) 583-3636

Hill
May 19, 1981

Messrs. Brener, Wallack & Hill
15 Chambers Street
Princeton, New Jersey 08540

Attn: Henry A. Hill, Esquire

RE: O & Y OLD BRIDGE DEVELOPMENT CORP. vs.
TOWNSHIP OF OLD BRIDGE, et al
Docket No. L-32516-80

Dear Mr. Hill:

I have received your Notice to take Oral Depositions of Harry Allen, Joe Romash, Kupper Associates.

I object to the time, place, and method of your request for the following reasons:

1. There is presently pending a Motion to Dismiss the Complaint. The result of that motion may render the taking of depositions moot. It would, therefore, be advisable to delay the scheduling until after that has been determined.

2. Harry Allen, Joe Romash, and "Kupper Associates" are the Consulting Engineers for the Old Bridge Township Sewerage Authority or employees of the Consulting Engineer. As such, their participation in any discovery proceedings would be as expert witnesses. "Discovery of facts known and opinions held by experts" may be obtained only in accordance with Rule 4:10-2(d) of the 1981 Rules Governing the Courts of the State of New Jersey.

3. Rule 4:14-7(b) provides for the taking of a deposition "only in the County of this State in which he resides, is employed, or transacts his business . . .". The Authority's Consulting Engineer and employees are not in Mercer County.

Mr. Hill
May 19, 1981
Page Two

I am instructing our experts that they need not attend or respond to the subpoena, until the aforementioned matters are resolved.

Very truly yours,

LOUIS E. GRANATA

LEG:dm

cc: Old Bridge Township Sewerage Authority
Kupper Associates
Joe Romash
Harry Allen
William E. Flynn, Esquire
Louis J. Alfonso, Esquire
Thomas Norman, Esquire

BRENER, WALLACK & HILL
ATTORNEYS AT LAW

15 CHAMBERS STREET
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CABLE: "PRINLAW" PRINCETON

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MEMBER OF N.J. & D.C. BAR
MEMBER OF N.J. & PA. BAR

HARRY BRENER
HENRY A. HILL
MICHAEL D. MASANOFF **
ALAN M. WALLACK *
ROBERT A. FELMEISTER
GULIET D. HIRSCH
JOSEPH C. MAHON **

May 20, 1981

Louis E. Granata, Esq.
Yacker, Granata & Cleary
210 Main Street
P.O. Box 389
Matawan, New Jersey 07747

Re: O & Y OLD BRIDGE DEVELOPMENT CORP. v.
TOWNSHIP OF OLD BRIDGE, et al.
Docket No. L-32516-80

Dear Mr. Granata:

We are in receipt of your letter of May 19, 1981 in which you advise us that you are instructing Harry Allen, Joe Romash and Kupper Associates not to attend or respond to our Subpoena on the grounds that:

1. The place of depositions is in Mercer County and Rule 4:14-7(b) limits the taking of deposition only in the County where the witness is employed or transacts his business.
2. You have a Motion pending.
3. You appear to suggest that we are in some way violating Rule 4:10-2(d).

Please be advised that the place of depositions, SCANTICON, 103 College Road, Princeton, New Jersey is actually located in Plainsboro Township, Middlesex County which is the County where this action is brought, Kupper Associates transacts its business and its employees are employed. I am sure you will agree with me when you have verified the fact that SCANTICON is in Plainsboro Township and although it has a Princeton mailing address is actually in Middlesex County, that Rule 4:14-7(b) is not applicable.

Louis E. Granata, Esq.
May 20, 1981
Page 2

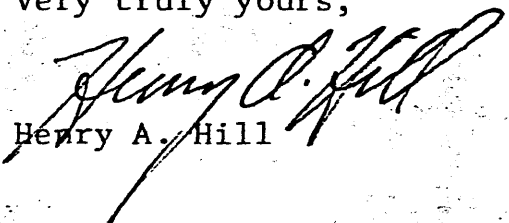
We take the position that Kupper Associates are not expert witnesses pursuant to Rule 4:10-2(d) because they were not hired "in anticipation of litigation or for trial" as "expert witnesses". Kupper Associates are the regular sewer engineers of the municipality and as such have knowledge which we have a right to discover.

Even if Kupper Associates fall under this Rule, however, we have a right to depose them under Rule 4:10-2(d)(2).

We understand from our telephone conversation with you on May 20, 1981 that you are unwilling to permit us to commence discovery until such time as your Motion for summary judgment is decided. We are unwilling to delay discovery indefinitely during the pendency of your Motion.

The purpose of this letter is to notify you, since we have been unable to resolve this matter, that in the event Harry Allen, Joe Romash and Kupper Associates do not appear or do not have their attorney call us to arrange an alternate time in early June for us to take their depositions, we will move in court pursuant to Rules 1:9-5 and 1:9-6 of the Rules Governing New Jersey Courts that they be deemed in contempt of court and that appropriate sanctions be applied against them. By carbon copy of this letter we are notifying Harry Allen, Joe Romash and "Kupper Associates" of our position with respect to this Subpoena and suggesting that they get in touch with their attorney promptly regarding this matter. We take the position that they have an independent obligation to comply with a Subpoena issued pursuant to the rules governing the courts of the State of New Jersey irrespective of your advice to them.

Very truly yours,


Henry A. Hill

HAH/vwa

cc: Harry Allen
Joe Romash
Kupper Associates
(certified, return receipt
requested)

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF
J. NORRIS HARDING
JUDGE



MIDDLESEX COUNTY COURT HOUSE
NEW BRUNSWICK, NEW JERSEY 08903

May 26, 1981

Brenner, Wallack & Hill
15 Chambers Street
Princeton, New Jersey 08540

Antonio & Flynn
P. O. Box 515
Old Bridge, N. J. 08857

Yacker, Granata & Cleary
210 Main Street
Matawan, N. J. 07747

Thomas Norman, Esq.
414 Stokes Road
Medford, N. J. 08055

Louis J. Alfonso, Esq.
325 County Highway 516
Old Bridge, N. J. 08857

Re: O & Y Old Bridge Development Corp.
v. Township of Old Bridge et als
Docket No. L-32516-80

Gentlemen:

This is to advise that I will hear Old Bridge Township Sewerage Authority's Motion for Summary Judgment on Friday, June 19, 1981, at 1:30 p.m.

Very truly yours,

JNH:le

June 3, 1981

Brener, Wallack & Hill, Esqs.
15 Chambers Street
Princeton, New Jersey 08540

Attention: Guliet D. Hirsch, Esq.

Re: O&Y Development Corp.
vs. The Township of Old Bridge, et als

Dear Mrs. Hirsch:

This is to confirm the adjournment of the depositions
of Joseph Romash, Harry Allen, Kupper Associates to
July 6, 7, 1981 at the same location.

As we discussed, the witnesses are "expert" witnesses
for the Defendant Old Bridge Township Sewerage Authority
and according to the Rules of Court, payment must be
arranged. I will advise you by tomorrow the cost of
each expert to appear.

Thank you for your continued cooperation.

Very truly yours,

Louis E. Granata

LEG/vf

cc: Old Bridge Township Sewerage Authority
cc: Louis J. Alfonso, Esq.
cc: Thomas Norman, Esq.
cc: William E. Flynn, Esq.
cc: Bernard D. Karasic, Esq.

BRENER, WALLACK & HILL
ATTORNEYS AT LAW

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MICHAEL D. MASANOFF **
ALAN M. WALLACK *
ROBERT A. FELMEISTER
GULIET D. HIRSCH
JOSEPH C. MAHON **

June 4, 1981

*MEMBER OF N.J. & D.C. BAR
**MEMBER OF N.J. & PA. BAR

Louis E. Granata, Esq.
Yacker, Granata & Cleary
210 Main Street
P.O. Box 389
Matawan, New Jersey 07747


Re: O & Y OLD BRIDGE DEVELOPMENT CORP. v.
TOWNSHIP OF OLD BRIDGE, et al.
Docket No. L-32516-80

Dear Mr. Granata:

This will confirm our telephone conference of Monday, June 1, 1981 in which we agreed to adjourn the depositions of Joe Romash, Harry Allen and Kupper Associates from 10:00 A.M., June 2, 1981 at SCANTICON to July 6, 1981 at 10:00 A.M. at the offices of SCANTICON, 103 College Road, Princeton, New Jersey (location - Plainsboro Township, Middlesex County).

By carbon copy of this letter I am notifying counsel to all parties that the Notice to take oral depositions previously forwarded to them, scheduled for June 2, 1981, has been rescheduled to July 6, 1981 per our agreement.

Very truly yours,


Henry A. Hill

HAH/vwa

cc: William E. Flynn, Esq.
Louis J. Alfonso, Esq.
Thomas Norman, Esq.
Bernard D. Karasic, Esq.
Harry Allen
Joe Romash
Kupper Associates

YACKER, GRANATA & CLEARY

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JAMES J. CLEARY

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File

June 11, 1981

Henry Hill, Esq.
Brenner, Wallack & Hill
15 Chambers Street
Princeton, N.J. 08540

Re: O & Y OLD BRIDGE DEVELOPMENT CORP.

Dear Henry:

Enclosed please find a letter I received from Charles J. Kupper indicating the costs for the appearance of Messrs. Romash and Allen.

Please confirm to me in writing your payment of these fees.

Very truly yours,


Louis E. Granata

jvh

Enclosure

CC: Charles J. Kupper
OBTSA
Bernard Karasic