

CA - O+Y v. Old Bridge

4/29/81

cover letter

- Reply to TI's brief in opposition to  
~~the~~  $\Delta$  Old Bridge Twp Sewerage  
Authority's motion for Summary judgment
- + aff. clavit of Jack Phillips, executive  
director of Old Bridge Twp Sewerage  
Authority
- + collaborating correspondences

pg 14

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*John Demos*

YACKER, GRANATA & CLEARY  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

STANLEY YACKER  
LOUIS E. GRANATA  
JAMES J. CLEARY

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BRUNSWICK, N.J.

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THOMAS J. DENHEUX  
COUNTY CLERK

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210 MAIN STREET  
P. O. BOX 189  
MATAWAN, NEW JERSEY 07747  
(201) 583-3626

April 29, 1981

Clerk, Superior Court  
State House  
Trenton, NJ 08625

Re: O & Y Old Bridge  
Development Corp. v.  
Township of Old Bridge  
et als. (L-32516-80)

*PN*

*[Handwritten signature]*

Dear Sir:

Enclosed please find Reply to Plaintiff's Brief in Opposition to Defendant Old Bridge Township Sewerage Authority's Motion for Summary Judgment for filing in the above matter.

Very truly yours,

*[Handwritten signature of Louis E. Granata]*

Louis E. Granata

LEG:dc  
enc.

cc: Henry A. Hill, Esq.  
William E. Flynn, Esq.  
Louis J. Alfonso, Esq.  
Thomas Norman, Esq.  
John C. Demos, J. S. C.  
Old Bridge Township Sewerage Authority

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81 MAY 5 1981

SUPERIOR COURT OF  
NEW JERSEY  
LAW DIVISION  
MIDDLESEX COUNTY

OW

O & Y OLD BRIDGE DEVELOPMENT CORP. )

Plaintiff,

vs.

THE TOWNSHIP OF OLD BRIDGE, et als. )

Defendants. )

DOCKET NO. L-32516-80

Civil Action

5-1-81  
Motta

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REPLY TO PLAINTIFF'S BRIEF IN OPPOSITION TO  
DEFENDANT OLD BRIDGE TOWNSHIP SEWERAGE  
AUTHORITY'S MOTION FOR SUMMARY JUDGMENT

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YACKER, GRANATA & CLEARY, P. A.  
210 Main Street, P. O. Box 389  
Matawan, New Jersey 07747

(201) 583-3636

On the Brief:

Louis E. Granata, Esquire

POINT I

THE OLD BRIDGE TOWNSHIP SEWERAGE AUTHORITY  
BY WAY OF REPLY TO THE PLAINTIFF'S BRIEF  
IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

The plaintiff wishes to persuade the Court that the Old Bridge Township Sewerage Authority is "powerless to modify all of its fee schedules, and is throwing out the illusion of administrative remedy." (Plaintiff's Brief Page 6). The Sewerage Authority does not involve itself, or any applicant, in useless motions or illusions. Its resolutions, rules and regulations are as required by its enabling legislation. Its rules are adopted in the normal course of business as prescribed by law. After expending all that time, it is difficult for the defendant to understand why the plaintiff believes it is an illusion.

A - 1. The plaintiff miscited Colonial Oaks West, Inc. v. Township of East Brunswick, 61 N. J. 560 (1972). It also misdirects the Court as to what the law of Economy Enterprises, Inc. v. Township Committee of Manalapan Township, 104 N. J. Super 373 (App. Div. 1969). There the township ordinance provides a five (5%) percent inspection fee of estimated costs as determined by the township engineer, (not the applicant). The fee was increased or decreased based upon the "amount of money expended by the municipality for the services of the municipal engineer," Economy, at pg. 376. This is the factual background that led the Court to conclude the "deposit" was against public policy. The Court ruled that a fee schedule be on a fixed or mathematically

determinable basis. The Old Bridge Township Sewerage Authority complies fully, as the plaintiff's complaint alleges. The inspection fee is based upon the applicant's, engineer's estimate and is a fixed mathematically determined basis. Therefore, based upon the plaintiff's own allegations and case law, they have clearly demonstrated the defendant Old Bridge Township Sewerage Authority has complied with the law.

POINT: B - 1

The previous course of dealings outlined in the affidavit of Lloyd Brown indicates quite clearly that the defendant Old Bridge Township Sewerage Authority met with an applicant named Olympia and York. (See further the affidavit of Executive Director, Jack Phillips, attached hereto). In addition, after filing this complaint, an applicant, with whom the Authority has dealt, made inquiry concerning processing and application.

It would appear as though the plaintiff is involved in "illusions," by appearing before the Sewerage Authority in the name of Olympia and York and on the other hand, filing a 65 page complaint stating that they have never received satisfaction from the Sewerage Authority. These very lengthy complaints, affidavits, moving papers, etc., etc. could very easily be resolved through the administrative process rather than the judicial process.

POINT: B - 2

The plaintiff shows a very incongruous position in Point B, 2 by alleging that the Sewerage Authority has no jurisdiction to modify its fee schedule. That it is directed by law to charge uniform rates within each class and, on the other hand, urges that the Sewerage Authority has adopted a fee schedule in accordance with law. All of which is unlawful. It cites AMG Associates v. Tp. of Springfield, 65 N.J. 101 as authority. However, there the Court was dealing with a zoning ordinance adopted by discretion rather than State Statute.

If the plaintiff is to pursue this line of reasoning it must, attack the constitutionality of the State Statute under which the Authority has acted.

Perhaps the better course of action of the plaintiff is to appear before the Sewerage Authority and present reasons why their residential development should be considered another class.

POINT C - 1

Concerning the question of public interest, Oakwood at Madison did not involve the Old Bridge Township Sewerage Authority, did not review its rules, its regulations or in any way whatsoever effect, rule upon, direct or even infer action by the Sewerage Authority. The plaintiff deals in illusions here.

The public interest question is "so that developers in Old Bridge Township will not be discouraged from construction."  
(Plaintiff's Brief Page 14) The plaintiff is unable to show any public interest other than their own self-serving interest.



POINT II

Based upon the affidavit of Lloyd Brown and the affidavit of the Executive Director of the Old Bridge Township Sewerage Authority, it is easy to see that the plaintiff is not the person or corporate entity that made payment to the Old Bridge Township Sewerage Authority.

This, again, indicates issues or questions which could be readily resolved at the administrative level rather than the judicial level.

POINT III

The plaintiff's report of what constitutes conspiracy is well defined. It points to Lloyd Brown's affidavit as "repleat with overt acts." Overt acts to conspire with who? The affidavit clearly shows that the defendant dealt with the plaintiff only and by law you cannot conspire with yourself.

To allow discovery to determine if there is even an indication of circumstantial evidence, would be a fishing expedition in its extreme. The plaintiff neither raises a direct nor circumstantial inference of conspiracy, and the plaintiff may speculate as to the wildest allegations and ask the Court to believe that it "cannot be assured that the Executive Director of the Sewerage Authority would have been invited to participate and observe" those wild speculations.

CONCLUSION

Based upon the foregoing reply to the plaintiff's brief, it is most respectfully submitted that the defendant Old Bridge Township Sewerage Authority's motion be granted.

Respectfully submitted,

  
LOUIS E. GRANATA

**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**  
**AFFIDAVIT**

STATE OF NEW JERSEY: .

SS.:

COUNTY OF MIDDLESEX:

JACK PHILLIPS, of full age, being duly sworn according  
to law upon his oath deposes and says:

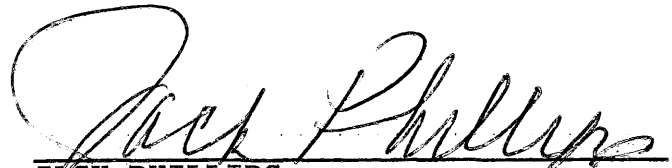
1. I am the executive director of the Old Bridge  
Township Sewerage Authority, and as such, I am responsible for  
accepting all applications and inquiries concerning the  
Sewerage Authority's services.

2. At no time has a firm by the name of O & Y Old  
Bridge Development Corporation, a Delaware Corporation, made  
inquires of this Authority.

3. I have reviewed the affidavit of Lloyd Brown and have viewed the records of the Sewerage Authority and find that this Authority has dealt with Olympia and York Developments Limited and has on deposit in its inspection fee account \$5,000.00.

4. On February 13, 1981, this Authority received inquiry from Ellison I. Killam Associates, Inc. concerning a service to Olympia and York Development; attached hereto is a copy of that letter. This inquiry was made six days before the Sewerage Authority was served with a Summons and Complaint in this matter.

5. On February 19, 1981, a letter was addressed to the Sewerage Authority by the same engineering firm requesting additional information for Olympia and York.

  
JACK PHILLIPS

SWORN AND SUBSCRIBED TO  
BEFORE ME THIS 29<sup>th</sup> DAY  
OF APRIL, 1981.

  
DIANE COVELLO

NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires March 23, 1982

**Elson T. Killam Associates Inc.**

27 Bleeker Street, Millburn, New Jersey 07041  
Telephone (201) 379-3400

**Environmental and Hydraulic Engineers**



James G. Coe, P.E.  
Associate

February 13, 1981

Old Bridge Sewerage Authority  
Boulevard W  
Clifford Beach, NJ 07735

Re: 710 - Olympia & York Developments, Ltd

Gentlemen:

We have been engaged by Olympia & York Developments, Ltd to provide engineering services and act on their behalf relative to the development of their properties in Old Bridge. We have enclosed a plan sheet which depicts properties which Olympia & York Developments, Ltd own or have under contract to purchase. These properties lie within your service district. It is estimated that the planned residential and commercial development of these properties will require sewage disposal capacity on the order of 3.6 million gallons per day. We are writing at this time to request that you advise us in writing that you will serve this development. If you are unable to serve the development at this time but feel that service could be provided in the future, please advise us as to when service of the magnitude requested would be available.

Olympia & York is proceeding with development plans for this site and a very early response would be appreciated.

Very truly yours,

ELSON T. KILLAM ASSOCIATES, INC.

James G. Coe

JGC:bah

**Elson T. Killam Associates Inc.**

27 Bleeker Street, Millburn, New Jersey 07041  
Telephone (201) 379-3400

Environmental and Hydraulic Engineers



James G. Coe, P.E.  
Associate

February 19, 1981

Mr. Tom Wilson  
System Coordinator  
Old Bridge Sewerage Authority  
Boulevard W  
Clifford Beach, NJ 07735

Re: 710 - Olympia & York

Dear Mr. Wilson:

Confirming our telephone conversation on February 18, 1981, we request that you authorize Middlesex County Utilities Authority to release flow records maintained by MCUA for the Sandfield Road and Monroe/Old Bridge meter chambers. We understand that this matter has been discussed between Mr. Phillips, Executive Director of the Authority, and your consulting engineers, Charles J. Kupper, Inc. and the release may have already been provided to MCUA but that you would check on this and be certain that MCUA is informed of the Sewerage Authority's release.

Very truly yours,

ELSON T. KILLAM ASSOCIATES, INC.

A handwritten signature in black ink, appearing to read 'James G. Coe', written over the typed name.

James G. Coe

JGC:bah