

~~1/2~~ CA Old Bridge 23-Jul-1981

O&Y v. Top. of O.B.

Letter in lieu of Answer to Old Bridge  
Motion to Compel discovery.

pgs = 3

CA002324A

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July 23, 1981

RECEIVED AT JUDGE CHANDLER

JUL 24 1981

The Honorable J. Norris Harding  
Middlesex County Court House  
New Brunswick, N.J. 08903

JUDGE J. NORRIS HARDING

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

Dear Judge Harding:

Please accept the following in response to Defendant Township Council of the Township of Old Bridge's Motion to compel discovery returnable July 31, 1981. At issue on the Township Council's Motion are 16 Interrogatories which Plaintiff has objected to answering and 21 Interrogatories which the Township Council claims have been insufficiently or vaguely answered.

Plaintiff objects to questions regarding the history of its shareholders (Interrogatory #3), the present book value of its stock (Interrogatory #5), the history of its Board of Directors (Interrogatory #6), the history of its Officers (Interrogatory #8) on the grounds that these questions are not relevant to the Township Council's remaining abuse of process Counterclaim and cannot lead to the production of relevant evidence. In order to maintain its abuse of process Counterclaim, the Township Council must show a malicious or otherwise improper motive on the part of Plaintiff in bringing the within suit. It is hard to see how Plaintiff's corporate history could possibly bear on this question.

Furthermore, in answer to Interrogatory #16 Plaintiff has given the Township Council the information it needs to pursue further discovery on its abuse of process Counterclaim: namely, the title, name and address of Plaintiff's Officer who authorized the within suit. Since this Officer, Lloyd Brown,

CA002324A

has for the past several years been solely responsible for the operation of Plaintiff's business in Old Bridge Township, it should come as no surprise to the Township Council that he authorized the suit. The pro forma action of the shareholders or the Board of Directors' in ratifying the within suit could not provide the Township Council with the evidence it seeks.

Plaintiff's response to the portion of the Township Council's Motion which seeks to compel more specific answers to Interrogatories is as follows:

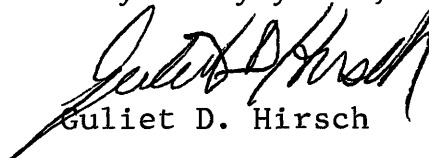
1. Interrogatory #12 - The answer given is a complete and full answer since the decision to institute the present suit was made by Mr. Lloyd Brown.
2. Interrogatory #13 - Legal advice given by Brener, Wallack & Hill to Plaintiff regarding institution of the present suit is protected from compelled disclosure by the attorney-client privilege. In re Kozlov, 79 N.J. 232 (1979).
3. Interrogatory #16 - This is a complete answer.
4. Interrogatory #18 - This question is so vague and ambiguous that a more specific response was not possible.
5. Interrogatories #27A to #27K - These questions ask for the name and address of each person who has relevant knowledge of the material set forth in each count of the Complaint. As an answer, Plaintiff has listed over 20 different individuals or firms while indicating that the names of additional persons with relevant knowledge of the facts would be supplied as they become available. Plaintiff's intention is merely to comply with the requirement of Rule 4:17-7 and supply additional information as it becomes available.
6. Interrogatories #29 and #30 - It is Plaintiff's position that it has supplied a full and complete answer to these Interrogatories.
7. Interrogatory #32 - In answer to the Township Council's request for the names of expert witnesses, Plaintiff has listed 10 witnesses presently working on the case. It should be noted that a specific procedure for limiting the period of time for the furnishing of expert reports is available under Rule 4:17-4a; if the Township Council wishes

to take advantage of this procedure it may make an application to the Court on notice. Of course, Plaintiff will want this limitation to be reciprocal.

8. Interrogatory #33 - This Interrogatory requests the identification of each and every writing which supports the allegations of the Complaint. In response, Plaintiff has supplied expert reports and a list of 11 other documents which support the allegations of the Complaint. It is Plaintiff's position that this is a full and complete answer.
9. Interrogatory #37 - This Interrogatory requests the name and address of persons with knowledge of relevant facts and the "general substance" of each person's knowledge. In answer to this question Plaintiff has supplied a list of persons with knowledge of relevant facts and indicated the substance of their knowledge; for example, Plaintiff has listed Peter Abeles as a planning expert with knowledge of the development ordinance history of Old Bridge Township. When Plaintiff obtains either an oral or written report from this expert witness further details will be supplied.
10. Interrogatory #38 - This Interrogatory requests the attachment of Plaintiff's expert reports. Plaintiff has attached expert reports to its answers and has indicated that no oral reports have been rendered to date. This is a fully responsive answer to the question.

For the afore-mentioned reasons, Plaintiff respectfully requests the denial of the Township Council's Motion to compel discovery.

Very truly yours,

  
Guliet D. Hirsch

GDH/vwa

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