

CA-04 v. Twp of Gld Bridge

6/24/81

letter memorandum in opposition to  $\Delta$  / Twp's  
motion for security costs

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June 24, 1981

RECEIVED AT JUDGES CHAMBERS

JUN 26 1981

JUDGE J. NORRIS HARDING

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

Re: 0 & Y Old Bridge Development Corp.  
 v. Township of Old Bridge, et als.  
Docket No. L-32516-80

Dear Judge Harding:

In accordance with your ruling from the bench of June 19, 1981, please accept this letter memorandum and supporting Affidavit in opposition to Defendant Old Bridge Township's Motion for security for costs. It is our understanding that you will decide this Motion on the papers without oral argument.

Plaintiff 0 & Y Old Bridge Development Corp. is a Delaware Corporation which has been authorized to transact business in the State of New Jersey since August 17, 1977. Since 1977 Plaintiff has purchased large amounts of property in Old Bridge and presently owns approximately 2500 acres in the Township on which it pays \$400,000 in realty taxes per annum. Plaintiff regularly conducts business from its place of business at 7 Willis Court, East Brunswick, New Jersey and one of its corporate officers, Mr. Lloyd Brown, is a resident of the State of New Jersey; the corporation's registered agent is United Corporate Services of Gateway 1, Newark, New Jersey. Because of its substantial presence in New Jersey Plaintiff respectfully submits that it is not a "nonresident" corporation within the meaning of N.J.S.A. 2A:15-67 and therefore does not have to post security for costs in the within action.

"Non-resident" Plaintiffs are required by N.J.S.A. 2A:15-67 to post a \$100 bond as security for costs after notice and demand for the same is made. In construing the term "resident" as used in various settings, courts have considered the legis-

lative purpose of each statute finding that the polestar in each case is the intention of the law making authority. Garford Trucking Inc., 4 N.J. 346 (1950).

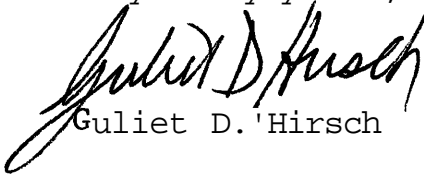
The primary purpose behind the security requirement of N.J.S.A. 2A:15-67 is to assure the defendant of the collection of his costs, if he is successful, from anyone who brought a suit against him. Marino v. Schiff Realty Co., 11 N.J. Misc. at 97 (1933). In the case of Merkin Faint Co. v. Riccardi, 124 N.J. Eq. 597 (1939), the New Jersey Supreme Court held that a New York corporation authorized to do business in New Jersey was exempt from the payment of security bond on the basis of its residence in New Jersey. The Court found the Merkin Paint Company to be a resident of the State of New Jersey within the meaning of the statute because it was doing business in New Jersey pursuant to license issued under New Jersey law and had a place of business here and an officer residing here upon whom process was served. Merkin, supra, at 598. The Court in Merkin reasoned that this definition of residency satisfied the purpose of the statute since under it defendants are no more likely to be deprived of their costs than if the complainant was incorporated under the laws of this state. Merkin, supra, at 598,

Plaintiff O & Y Old Bridge Development Corp. is not liable for security for costs under N.J.S.A. 2A:15-67 because it meets the residency standard set forth in the Merkin case. Plaintiff has sufficient residency in the State of New Jersey under Merkin because:

1. It has purchased large amounts of property in Old Bridge and has paid realty taxes in the State of New Jersey and has otherwise done business in New Jersey since 1977.
2. Plaintiff is licensed to conduct business in the State of New Jersey under an authorization which is still in force and effect (see attached Certificate of Good Standing).
3. Plaintiff maintains a place of business at 7 Willis Court, East Brunswick, New Jersey from which its corporate business is regularly conducted,
4. One corporate officer, Mr. Lloyd Brown, is a resident of the State of New Jersey.

5. Plaintiff's registered agent is United Corporate Services at Gateway 1, Newark, New Jersey.

Very truly yours,



Guliet D. Hirsch

GDH/vwa  
Enclosure