

RULS-AD-1976-260

12/15/1976

- LETTER FROM M&E TO SOMERSET CLERK (1)
- BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO DETERMINE SUFFICIENCY OF PLAINTIFF'S ANSWERS (4)
- MOTION TO DETERMINE SUFFICIENCY (3)

PGS - 8

MCCARTER & ENGLISH
COUNSELLORS AT LAW
550 BROAD STREET
NEWARK, N. J.
07102

AREA CODE 201
622-4444

December 15, 1976

Re. The Allan-Deane Corporation
v. The Township of Bernards in
the County of Somerset, et al.
Docket No. L-25645-75 P.W.

Clerk of Somerset County
Court House
Somerville, NJ 08876

Dear Sir:

We hand you herewith Notice of Motion to Determine the Sufficiency of Plaintiff's Answers to Defendants' Second Request for Admissions together with supporting brief which we would ask that you hand to the Judge who will hear this motion.

Will you please list this matter on the motion calendar for January 7, 1977? May we request that at the same time, and before the same Judge, there be listed for argument defendants' Motion to Determine the Sufficiency of Plaintiff's Answers or Objections to Defendants' First Request for Admissions, and also defendants' Motion to Compel E. James Murar to Answer Certain Questions on Depositions? These matters were originally scheduled to be heard by Judge Lucas on October 1, 1976 but time did not permit the motions to be argued and we have not yet received any notice of a new date for argument.

Very truly yours,

McCarter & English
McCarter & English

NCE:hk
Encs.

cc: Mason, Griffin & Pierson, Esqs.
Mr. William J. Wintermute, Sr.

This brief is filed in support of the motion of defendants, The Township of Bernards, et al to determine the sufficiency of plaintiff's answers or objections to paragraphs 4 and 5 as contained in plaintiff's Answers to Defendants' Second Request for Admissions.

For the convenience of the court, a copy of defendants' Second Request for Admissions, and a copy of plaintiff's Answer thereto, are attached to this brief. (The attachments to the defendants' Second Request for Admissions are omitted, except for Exhibits B and C.)

This motion is brought pursuant to the portion of Rule 4:22-1 which provides:

"The party who has requested admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The provisions of R.4:23-1(c) apply to the award of expenses incurred in relation to the motion."

Paragraphs 4 and 5 of the defendants' Second Request for Admissions request the plaintiffs to admit the Facts stated in the affidavits of Jack H. King and Wendell R. Inhoffer, respectively, copies of which are attached as Exhibits B and C.

Jack H. King is the Vice-President of Commonwealth Water Company. His affidavit (Exhibit B) sets forth the essential facts respecting the amount of water which Commonwealth

withdraws from the Passaic River, the municipalities to which Commonwealth distributes water, the number of persons served by the water system, and the volume of water distributed. It is obvious that Mr. King, as the Vice-President of Commonwealth Water Company, has knowledge of the facts stated in his affidavit. Commonwealth is a public utility and the facts of its operations are public knowledge.

Plaintiff's answer is clearly frivolous. Plaintiff says:

"Plaintiff objects to Paragraph 4 of the Second Request for Admissions on the grounds that the Affidavit refers to contracts and reports not served upon Plaintiff as required by Rule 4:22-1, that the Affidavit is obviously a pleading filed in some other action, and the Plaintiff lacks the information or knowledge to either admit or deny a number of the allegations and the information readily obtainable by Plaintiff after reasonably inquiry is insufficient to enable Plaintiff to either admit or deny the facts stated."

Plaintiff is not being requested to admit the genuineness of any contracts or reports. While it is true that the affidavit was prepared for use in the case of Lorenc v. Bernards Township (and in which action the plaintiff's attorneys admitted the facts stated in the affidavit pursuant to a request for admissions) it must be obvious to the Court, if not the plaintiff's attorneys, that an affidavit is not a pleading. Plaintiff's asserted inability to obtain information respecting the affidavit is not entitled to credence since a telephone call to Mr. King would have been sufficient.

Certainly, the fact that Exhibit B is an affidavit under oath should create some presumption of the accuracy of the facts stated therein.

Paragraph 5 requests plaintiff to admit the facts stated in the affidavit of Wendell R. Inhoffer, who is the General Superintendent and Chief Engineer of the Passaic Valley Water Commission. The Commission is a public body and the facts respecting its operation are public knowledge.

Plaintiff's response to paragraph 5 is essentially the same as its response to paragraph 4 and is equally frivolous.

It is respectfully submitted that the Court should enter an order that plaintiff is deemed to have admitted paragraphs 4 and 5 of Defendants' Second Request for Admissions.

It is further submitted that plaintiff's answers to paragraphs 4 and 5 are so palpably lacking in merit that the Court should award the defendant, the Township of Bernards, the reasonable expenses in obtaining the Order sought for herein, including attorneys' fees, all as provided in Rule 4:23-1(c). Such an award is expressly available in proceedings to determine the sufficiency of answers to a request for admissions, Rule 4:22-1.

Respectfully submitted,

MCCARTER & ENGLISH
Attorneys for Defendants, The
Township of Bernards, et al.

By *Nicholas Conover English*
Nicholas Conover English
A Member of the Firm

The original of the within Notice of Motion has been filed with the Clerk of the Superior Court in Trenton, New Jersey.

S-1290

McCarter & English

MCCARTER & ENGLISH

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Attorneys for Defendants

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - SOMERSET COUNTY
DOCKET NO. L-25645-75 P.W.

THE ALLAN-DEANE CORPORATION, a
Delaware corporation, qualified
to do business in the State of
New Jersey,

Plaintiff

-vs-

THE TOWNSHIP OF BERNARDS IN THE
COUNTY OF SOMERSET, a municipal
corporation of the State of New
Jersey, et al.

Defendants

Civil Action

MOTION TO DETERMINE THE
SUFFICIENCY OF PLAINTIFF'S
ANSWERS TO DEFENDANTS' SECOND
REQUEST FOR ADMISSIONS

1-7-77

TO: MASON, GRIFFIN & PIERSON, ESQS.
Attorneys for Plaintiff
201 Nassau Street
Princeton, NJ 08540

SIRS:

PLEASE TAKE NOTICE that on Friday, January 7, 1977 at
9:00 o'clock in the forenoon or as soon thereafter as counsel
can be heard, we shall move the Court, at the Somerset County

Court House, Somerville, New Jersey, to determine the sufficiency of plaintiff's answers to defendants' second request for admissions, paragraphs 4 and 5.

Defendants also move, pursuant to Rule 4:23-1 for an order requiring plaintiff to pay these defendants the reasonable expenses incurred in obtaining the relief sought in this motion, including attorneys' fees.

In support of the within motion, we shall rely upon the brief submitted herewith.

Respectfully submitted,

MCCARTER & ENGLISH
Attorneys for Defendants, The Town-
ship of Bernards, et al.

By *Nicholas Conover English*
Nicholas Conover English
A Member of the Firm

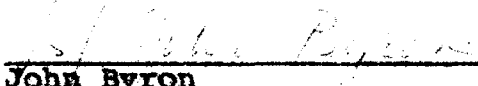
STATE OF NEW JERSEY)
) SS:
COUNTY OF ESSEX)

JOHN BYRON, being duly sworn according to law, upon his oath deposes and says:

1. I am employed by McCarter & English, attorneys for defendants herein.

2. On December 1, 1976, I personally mailed, by certified mail, return receipt requested, postage prepaid, a copy of the within Motion to Determine the Sufficiency of Plaintiff's Answers to Defendants' Second Request for Admissions together with supporting Brief to Mason, Griffin & Pierson, Esqs., attorneys for plaintiff, at 201 Nassau Street, Princeton, NJ 08540.

Sworn to and subscribed)
before me this 1 day)
of December, 1976.)



John Byron