

6-12-84

AMG

Letter re:

- w/ Answer, counterclaim, demands separate defenses of D
Twp &
Twp County
- w/ Answer of D Twp. Several Auth.

Pgs. 15

AM000152A

*Post
+
file*

J. ALBERT MASTRO

ATTORNEY AT LAW
7 MORRISTOWN ROAD
BERNARDSVILLE, N. J. 07924
(201) 766-2720

June 13, 1984

RECEIVED

JUN 14 1984

JUDGE SERPENTELLI'S CHAMBERS

Mr. John M. Mayson
Clerk of the Superior Court
CN-971
Trenton, New Jersey 08625

Re: Shainee Corporation vs. Warren Township, et als. - Docket No. L-030351-84

Dear Mr. Mayson:

I am enclosing for filing original and copy of Answer in the above matter together with my check in the amount of \$40.00 to cover costs.

Please return a copy of the filed Answer in the envelope provided.

Very truly yours,



J. Albert Mastro

jc

enclosures

*Leff-
rep?*

KUNZMAN, COLEY, YOSPIN & BERNSTEIN

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
15 MOUNTAIN BOULEVARD
WARREN, NEW JERSEY 07060
(201) 757-7800

EDWIN D. KUNZMAN
JOHN E. COLEY, JR.
HARRY A. YOSPIN
STEPHEN J. BERNSTEIN

June 12, 1984

*ADMITTED IN NEW YORK ONLY:

HAROLD J. LEVY*
JOHN V. BIVONA*
SIDNEY COHEN*

ASSOCIATED WITH:
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RECEIVED

JUN 15 1984

JUDGE SERPENTELLI'S CHAMBERS

Superior Court of New Jersey
Attn: Court Clerk
CN 971
Trenton, NJ 08625

RE: Shainee Corp. vs. Township of Warren, et als
Our File No.: W-126
Docket No.: L-034351-84

Dear Sir or Madam:

Enclosed herewith please find an original and one copy of Township of Warren and Township Committee of Township of Warren's answer to the complaint containing demands, counterclaim and separate defenses in the within. Kindly file same, returning filed copy to the undersigned in the envelope provided. Our check for \$75 is enclosed herewith to cover your filing fee.

Thank you.

Very truly yours,

KUNZMAN, COLEY, YOSPIN, & BERNSTEIN

John E. Coley, Jr.

JEC:jld
encs.

cc: Somerset County Clerk
Ocean County Clerk
Honorable Judge Serpentelli
Brener, Wallak, and Hill, Esqs.
Eugene Jacobs, Esq.
J. Albert Mastro, Esq.
Warren Twp. Committee

RECEIVED

FILED

JUN 28 1984

JUN 27 1984

LAW UNIT

JUN 22 1984

JUDGE SERPENTELLI'S CHAMBERS

M. DEAN HAINES, CLERK
COUNTY OF OCEAN

SUPERIOR COURT OF N.J.
PAID

KUNZMAN, COLEY, YOSPIN, & BERNSTEIN, P.A.

15 Mountain Boulevard
Warren, NJ 07060
(201) 757-7800

Attorneys for Defendants, Township of Warren and The Township
Committee of the Township of Warren

Shainee Corporation,)	SUPERIOR COURT OF NEW JERSEY
)	LAW DIVISION
Plaintiff(s),)	SARATOGA COUNTY/OCEAN COUNTY
)	(Mount Laurel II)
-vs.-)	Docket No.: L-034351-84
)	09 Civil Action
Township of Warren, etc.,)	
et als,)	<u>ANSWER, COUNTERCLAIM, DEMANDS</u>
)	<u>SEPARATE DEFENSES</u>
Defendant(s).)	

Defendants, Township of Warren and The Township Committee
of the Township of Warren, by answer to the complaint, say(s):

AS TO THE FIRST COUNT

THE PLAINTIFF

1. These defendants have insufficient knowledge to answer
Paragraph 1 of the First Count and hereby leaves plaintiff to its
proofs.

THE DEFENDANTS

2. These defendants admit the allegations contained in
Paragraph 2 of the First Count.

3. These defendants admit the allegations contained in
Paragraph 3 of the First Count.

4. These defendants admit the allegations contained in
Paragraph 4 of the First Count as to the creation of the Planning

6/29/84

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EW JERSEY

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N M. MAYSON
CLERK

Board, remainder of this allegation is left to be answered by defendant, Warren Township Planning Board.

5. These defendants admit Paragraph 5 of the First Count as to the creation of Sewerage Authority, Township has entered various agreements with the Authority - the specific agreement referred to is referred insufficiently, and the defendants, Township of Warren and the Warren Township Committee leave plaintiff to its proofs.

REGIONAL SETTING

6. These defendants have insufficient knowledge to form a belief as to the first Paragraph 6 of the First Count and hereby leaves plaintiff to its proofs.

6. These defendants admit the allegations contained in the second Paragraph 6 of the First Count.

7. These defendants have insufficient knowledge to form a belief as to Paragraph 7 of the First Count and leaves plaintiff to its proofs.

8. These defendants have insufficient knowledge to form a belief as to Paragraph 8 of the First Count and leaves plaintiff to its proofs.

THE WARREN LITIGATION

9. These defendants have insufficient knowledge to form a belief as to Paragraph 9 of the First Count and leaves plaintiff to its proofs.

10. These defendants admit the allegations contained in Paragraph 10 of the First Count.

11. These defendants admit the allegations contained in Paragraph 11 of the First Count.

12. These defendants admit the allegations contained in Paragraph 12 of the First Count.

13. These defendants admit the allegations contained in Paragraph 13 of the First Count.

14. These defendants admit the allegations contained in Paragraph 14 of the First Count.

15. These defendants admit the allegations contained in Paragraph 15 of the First Count.

16. These defendants deny the allegations contained in Paragraph 16 of the First Count.

17. These defendants admit the allegations contained in Paragraph 17 of the First Count.

PLAINTIFF'S PROPERTY

18. These defendants have insufficient knowledge to form a belief as to Paragraph 18 of the First Count and hereby leaves plaintiff to its proofs.

19. These defendants deny the allegations contained in Paragraph 19 of the First Count.

THE CONTROVERSY

20. These defendants deny the allegations contained in Paragraph 20 of the First Count.

21. Defendant, Warren Township, admits it has certain obligations to provide lower cost housing, but denies the remainder of the allegation.

22. These defendants deny the allegations contained in the first Paragraph 22 of the First Count.

22. These defendants deny the allegations contained in the second Paragraph 22 of the First Count.

23. These defendants have insufficient knowledge to answer Paragraph 23 of the First Count and leaves plaintiff to its proofs.

24. These defendants have insufficient knowledge to answer Paragraph 24 of the First Count and leaves plaintiff to its proofs.

25. These defendants have insufficient knowledge to answer Paragraph 25 of the First Count and leaves plaintiff to its proofs.

26. These defendants deny the allegations contained in Paragraph 26 of the First Count.

27. These defendants deny the allegations contained in Paragraph 27 of the First Count.

28. These defendants deny the allegations contained in Paragraph 28 of the First Count.

29. These defendants deny the allegations contained in Paragraph 29 of the First Count.

30. These defendants deny the allegations contained in Paragraph 30 of the First Count.

WHEREFORE, Defendants, Township of Warren and the Warren Township Committee, demand judgment against the plaintiff dismissing the Complaint plus cost of suit and attorneys fees.

AS TO THE SECOND COUNT

1. These defendants repeat and reallege their answers to the First Count as if same were set forth at length herein.

2. These defendants deny the allegations contained in Paragraph 2 of the Second Count.

3. These defendants deny the allegations contained in Paragraph 3 of the Second Count.

4. These defendants deny the allegations contained in Paragraph 4 of the Second Count.

5. These defendants deny the allegations contained in Paragraph 5 of the Second Count.

6. These defendants deny the allegations contained in Paragraph 6 of the Second Count.

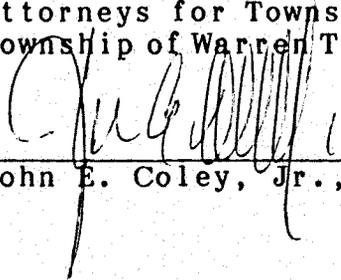
7. These defendants deny the allegations contained in Paragraph 7 of the Second Count.

WHEREFORE, Defendants, Township of Warren and the Warren Township Committee, demand judgment against the plaintiff dismissing the complaint plus costs of suit and attorneys fees.

AS TO THE THIRD COUNT

1. These defendants, Township of Warren and the Township Committee of the Township of Warren Committee leave the answering of the Third Count to the Defendant, Sewerage Authority of the Township of Warren.

KUNZMAN, COLEY, YOSPIN, & BERNSTEIN
Attorneys for Township of Warren and
Township of Warren Township Committee

By: 

John E. Coley, Jr., Esq.

Dated: June 12, 1984

COUNTERCLAIM

Defendants, Township of Warren and the Township Committee of the Township of Warren, by way of Counterclaim against the plaintiff herein, say(s):

1. The plaintiff is aware that the litigation captioned AMG Realty Company, et al vs. The Township of Warren consolidated with Timber Properties vs. The Township of Warren, Docket Nos.: L-23277-80 PW and L-67820-80 PW has been tried before Judge Eugene

D. Serpentelli through all aspects except for the compliance portion of that Mt. Laurel II type litigation.

2. The plaintiff has been aware of the above-said litigation since at least January of 1984.

3. The plaintiff has been aware of court holdings in Southern Burlington County NAACP vs. Township of Mount Laurel, 92 N.J. 158 (herein referred to as Mt. Laurel II) since the decision was handed down by the New Jersey Supreme Court on January 20, 1983.

4. The plaintiff delayed in filing its present case until May 25, 1984.

5. The plaintiff's delay was for the purpose of avoiding the expensive and time consuming litigation which was borne by AMG Realty Company, Skytop Land Corporation, Timber Properties, the Township of Warren, the Township Planning Board and the Sewerage Authority of the Township of Warren in the litigation referred to above and/or for the purpose of gaining a favorable position in the AMG litigation referred to above.

6. The plaintiff has not conducted any good faith interaction with the aforesaid defendants to obtain the relief sought in its present complaint.

7. The plaintiff has not attempted to obtain the relief sought in the instant action before filing litigation against the said defendants.

8. It is past the time when the plaintiff might have vindicated the municipal constitutional obligation in a Mt. Laurel II

type action; that burden having been carried for the plaintiff by AMG Realty Company and the other plaintiff's in the litigation referred to above.

9. The plaintiff has retained the services of one of the New Jersey law firm that specializes in Mt. Laurel II type litigation against municipalities.

10. It is presumed that the said law firm has explained all the ramifications of Mt. Laurel II litigation to the plaintiff.

11. In light of all of the above factors and other factors which will be discovered by the said defendants in the regular discovery processes, the plaintiff chose to institute the within litigation in willful and wanton disregard of the Township of Warren's rights, the Township Committee of the Township of Warren's rights, and the rights of all the residents of Warren Township.

12. The Township of Warren will be granted the repose (freedom from Mt. Laurel II litigation) for the period set forth in the Mt. Laurel II case when Judge Serpentelli renders his decision in the AMG, et als, case referred to above.

13. By the within litigation, the plaintiff is attempting to circumvent the spirit and intent of the Mt. Laurel II case and to utilize the court in its intention to take advantage and subvert the good and welfare of the Township of Warren and its residents.

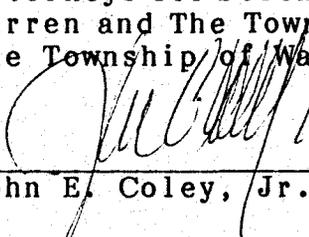
14. By plaintiff's actions the Township of Warren and its residents will suffer great monetary detriment and the loss of their rights, guaranteed in the the State and Federal Constitutions.

WHEREFORE, defendants demand judgment against plaintiff for:

- A. Compensatory damages.
- B. Punitive damages.

- C. An order of the court dismissing plaintiff's action.
- D. Attorney's fees.
- E. Costs of suit.
- F. Such other relief as the Court deems just and proper.

KUNZMAN, COLEY, YOSPIN, & BERNSTEIN
Attorneys for Defendants, Township of
Warren and The Township Committee of
The Township of Warren.

By: 
John E. Coley, Jr., Esq.

Dated: June 12, 1984

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

Plaintiff has failed to exhaust its administrative remedies.

SECOND SEPARATE DEFENSE

Plaintiff is estopped from maintaining the present litigation.

THIRD SEPARATE DEFENSE

The Warren Township Zoning Ordinances, as supplemented and amended, comply with Mt. Laurel II directives and are constitutional.

FOURTH SEPARATE DEFENSE

As plaintiff's litigation was filed after all evidence was heard and the case was closed in the AMG, et als litigation herein - above referred to, the plaintiff is not entitled to a court mandated "Builders Remedy."

FIFTH SEPARATE DEFENSE

Plaintiff's cause of action is barred by "unclean hands."

SIXTH SEPARATE DEFENSE

Plaintiff has not attempted to obtain relief without litigation.

SEVENTH SEPARATE DEFENSE

Plaintiff has not demonstrated a history of good faith interaction with the defendants before filing the within litigation.

EIGHTH SEPARATE DEFENSE

The Defendant, Township of Warren, has the right of local self-government.

NINTH SEPARATE DEFENSE

Plaintiff has abused the Mt. Laurel II Doctrine.

TENTH SEPARATE DEFENSE

Plaintiff's cause of action is barred by duress.

ELEVENTH SEPARATE DEFENSE

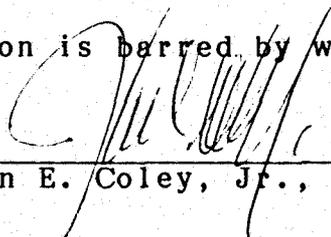
Plaintiff's cause of action is barred by laches.

TWELFTH SEPARATE DEFENSE

Plaintiff's cause of action is barred by Res Judicata.

THIRTEENTH SEPARATE DEFENSE

Plaintiff's cause of action is barred by waiver.

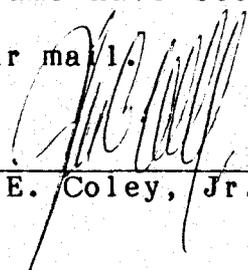


John E. Coley, Jr., Esq.

Dated: June 12, 1984

CERTIFICATION

I hereby certify that the original of this pleading has been filed with the Clerk of the Superior Court, CN 971, Trenton, New Jersey, and that copies of same have been served upon all known counsel involved, by regular mail.



John E. Coley, Jr., Esq.

Dated: June 12, 1984

J. ALBERT MASTRO
7 MORRISTOWN ROAD
BERNARDSVILLE, N. J. 07924
(201) 766-2720

ATTORNEY FOR Defendant, Warren Township Sewerage Authority

Plaintiff

SHAINEE CORPORATION

vs.

Defendant

WARREN TOWNSHIP, a municipal corporation of
the State of New Jersey, et als.

SUPERIOR COURT OF
NEW JERSEY
LAW DIVISION
SOMERSET COUNTY/
OCEAN COUNTY

Docket No. L-034351-84

CIVIL ACTION
(Mount Laurel II)

ANSWER OF DEFENDANT
WARREN TOWNSHIP
SEWERAGE AUTHORITY

The Defendant, Warren Township Sewerage Authority, a public body politic of the State of New Jersey, having its principal office at 46 Mountain Boulevard in the Township of Warren, County of Somerset, New Jersey, by way of Answer to the Complaint of Shainee Corporation, says:

ANSWER TO FIRST COUNT

1. Defendant does not have sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 1.
2. Defendant admits the allegations of paragraph 2 through 5.

3. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6.

4. Defendant admits the allegations of the following paragraph (also mistakenly designated as paragraph 6).

5. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 and 8.

6. In response to the allegations of paragraph 9, defendant makes reference to the Mount Laurel II decision for the precise language therein, meaning and intent thereof.

7. In response to the allegations of paragraphs 10 through 15, defendant makes reference to the appropriate public records of the Superior Court for the precise sequence of events, documents filed and action taken as outlined therein.

8. Defendant denies the allegations of paragraph 16.

9. Defendant admits the allegations of paragraph 17.

10. Defendant is without knowledge of information sufficient to form a belief as to the truth of the allegations of paragraphs 18 and 19.

11. Defendant denies the allegations of paragraph 20.

12. Defendant admits those portions of paragraph 21 alleging that Warren Township has an obligation to provide housing for its indigenous need and its fair share of the regional need. Defendant denies the remaining allegations of paragraph 21.

13. Defendant denies the allegations of paragraphs 22 and the following paragraph (also mistakenly designated as paragraph 22).

14. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 23, 24 and 25.

15. Defendant denies the allegations of paragraphs 26 through 30.

ANSWER TO SECOND COUNT

1. Defendant repeats its answers to each and every paragraph of the First Count and incorporates them herein.

2. Defendant denies the allegations of paragraphs 2, 3 and 4.

3. In response to the allegations of paragraphs 5, 6 and 7, defendant makes reference to Warren's Land Development Ordinance for the precise language therein, meaning and intent thereof.

ANSWER TO THIRD COUNT

1. Defendant repeats its answers to each and every paragraph of the First and Second Counts and incorporates them herein.

2. Defendant admits the allegations of paragraphs 2 and 3.

3. Defendant admits those allegations of paragraph 4 indicating that new sewage treatment facilities were constructed by defendant resulting in additional industrial and commercial rateables for Warren Township and denies the balance of the allegations therein.

4. Defendant denies the allegations of paragraph 5.

5. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 6 and 7.

6. In response to the allegations of paragraph 8, defendant makes reference to the litigation identified therein for the meaning of any testimony or evidence related thereto regarding sewage capacity.

7. Defendant denies the allegations of paragraph 9.

FIRST SEPARATE DEFENSE

Plaintiff has no standing to bring the within action since plaintiff has

not acted in good faith in attempting to obtain relief without litigation as required under Mount Laurel II. In addition, plaintiff was not active in the Mount Laurel II litigation, accordingly, it did not vindicate the constitutional obligations anticipated by Mount Laurel II.

SECOND SEPARATE DEFENSE

The remedial approach in Mount Laurel II deprives this defendant as fiduciary and holder of the public trust and its customers of property rights contrary to Article I, Sec. I of the New Jersey Constitution (1947), Due Process of Law and Equal Protection of the Laws under the Fourteenth Amendment of the United States Constitution.

THIRD SEPARATE DEFENSE

The remedial approach in Mount Laurel II encroaches upon powers that are administrative and legislative in nature contrary to Article III of the Constitution of the State of New Jersey (1947), and deprives this defendant as fiduciary and holder of the public trust and its customers of their right to petition for redress of grievances contrary to Article I, Sec. 18 of the Constitution of the State of New Jersey (1947).

FOURTH SEPARATE DEFENSE

The utilization of density bonuses, mandatory set-asides, "builders remedy," economic incentives within zoning ordinances, extension of sewer lines and active participation by the judiciary in the municipal zoning process (or appointing a special master to do so) as articulated in Mount Laurel II and incorporated in the complaint deprive this defendant as fiduciary and hold of the public trust and its customers of Due Process of Law and Equal Protection of the Laws under the Fourteenth Amendment of the United States Constitution.

FIFTH SEPARATE DEFENSE

Preferential treatment in regard to sewers as alleged by plaintiff in its Complaint constitutes a violation of N.J.S.A. 40:14A-8 et.seq.

SIXTH SEPARATE DEFENSE

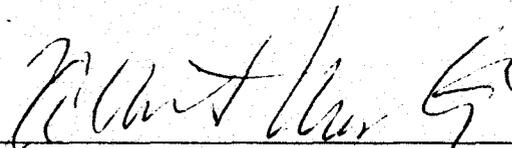
Preferential treatment in regard to sewers as alleged by plaintiff in its Complaint constitutes discrimination against other customers of this defendant and deprives them of Due Process of Law and Equal Protection of the Laws under the Fourteenth Amendment of the United States Constitution.

SEVENTH SEPARATE DEFENSE

Any contribution by defendant Sewerage Authority toward subsidizing low and moderate income housing would constitute an unfair and discriminatory burden upon the other customers of this defendant as opposed to the municipality generally.

WHEREFORE, this defendant demands judgment dismissing the Complaint.

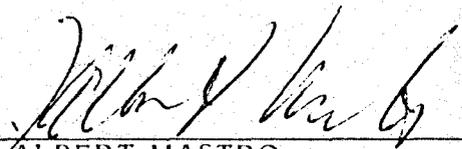
DATED: June 13, 1984



J. ALBERT MASTRO
Attorney for Defendant,
Warren Township Sewerage Authority

CERTIFICATION

I hereby certify that a copy of the within Answer was served within the time prescribed by Rule 4:6.



J. ALBERT MASTRO
Attorney for Defendant,
Warren Township Sewerage Authority

I, JOAN M. CALELLO, a secretary with the firm of J. Albert Mastro,
mailed a copy of the within Answer to the following by regular mail on June 13, 1984.

Hon. Eugene D. Serpentelli
Superior Court of New Jersey
Ocean County Court House
CN 2191
Toms River, N.J. 08753

John E. Coley, Jr., Esq.
Kunzman, Coley, Yospin & Bernstein
15 Mountain Boulevard
Warren, N.J. 07060

Eugene W. Jacobs, Esq.
Handelman & Jacobs
381 North Avenue
Dunellen, N.J. 08812

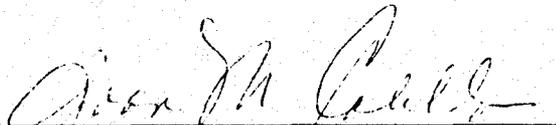
Joseph E. Murray, Esq.
McDonough, Murray & Korn
555 Westfield Avenue,
Westfield, N.J. 07091

Raymond R. Trombadore, Esq.
33 High Street
Somerville, N.J. 08876

Thomas J. Hall, Esq.
Brenner, Wallack & Hill
2 - 4 Chambers Street
Princeton, N.J. 08540

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

DATED: June 13, 1984


JOAN M. CALELLO, Secretary