

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

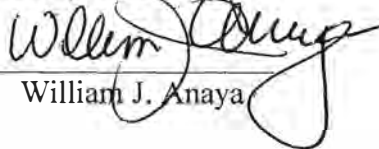
Paul Christian Pratapas,)
 an American)
 Complainant,)
 v.)
)
 Cantera Development Holdings, LLC,)
 Incorrectly sued as Arden of Warrenville,)
)
 Respondent.)

PCB No.: 2023-064
 (Enforcement – Water)

Notice of Electronic Filing

Please take notice that I have electronically filed today with the Illinois Pollution Control Board the attached Appearance of William J. Anaya of Greensfelder, Hemker & Gale, P.C., on behalf of Cantera Development Holdings, LLC incorrectly sued as “Arden of Warrenville,” and Respondent’s “Motion to Dismiss Formal Complain or to Not Accept Complainant’s frivolous Formal Complaint,” on behalf of Cantera Development Holdings LLC, incorrectly sued as “Arden of Warrenville” copies of which are attached hereto and hereby served upon you.

Respectfully submitted,

By: 
 William J. Anaya

Dated January 12, 2023

William J. Anaya
 Greensfelder, Hemker & Gale, P.C.
 200 West Madison Street, Suite 3300
 Chicago, Illinois 60606
 312-419-1930
 wanaya@greensfelder.com

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that the above Notice and attached documents were served via email Transmission to the Clerk and all other parties listed below at the addresses indicated on January 12, 2023.

Illinois Pollution Control Board
Don Brown – Clerk of the Board
100 West Randolph Street, #11-500
Chicago, Illinois 60601
Don.brown@illinois.gov

Paul Christian Pratapas
Complainant
1330 East Chicago Avenue, #110
Naperville, Illinois 60540
paulpratapas@gmail.com

Respectfully submitted,



William J. Anaya

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

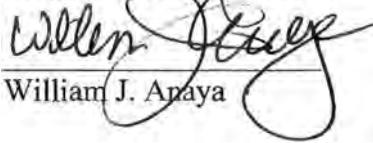
Paul Christian Pratapas,)
 an American)
 Complainant,)
 v.)
 Cantera Development Holdings, LLC,)
 Incorrectly sued as Arden of Warrenville,)
 Respondent.)

PCB No.: 2023-064
(Enforcement – Water)

ENTRY OF APPEARANCE

I, William J. Anaya, of Greensfelder, Hemker & Gale, P.C., hereby enter my appearance in this proceeding as counsel on behalf of Cantera Development Holdings, LLC, incorrectly sued as “Arden of Warrenville.”

Respectfully submitted,



William J. Anaya

Date: January 12, 2023

William J. Anaya
 Counsel for Cantera Development Holdings, LLC,
 incorrectly sued as “Arden of Warrenville”
 200 West Madison Street, Suite 3300
 Chicago, Illinois 60606
 wanaya@greensfelder.com

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|---|---|-------------------|
| Paul Christian Pratapas, |) | |
| an American |) | |
| |) | |
| Complainant, |) | |
| v. |) | |
| |) | PCB No.: 2023-064 |
| Cantera Development Holdings, LLC, |) | |
| Incorrectly sued as Arden of Warrenville, |) | |
| |) | |
| Respondent. |) | |

RESPONDENT’S MOTION TO DISMISS FORMAL COMPLAINT OR TO NOT ACCEPT COMPLAINANT’S FRIVOLOUS FORMAL COMPLAINT

Respondent Cantera Development Holdings, LLC, incorrectly sued as “Arden of Warrenville,” by and through its attorneys, Greensfelder, Hemker & Gale, PC, respectfully moves the Illinois Pollution Control Board to dismiss the Formal Complaint pursuant to 35 Ill. Adm. Code §§ 101.304(b)(5), 101.400(a)(5), 735 ILCS §2-301(a), and 805 ILCS 180/1-50(a), or to not accept the Citizen’s Formal Complaint because the Respondent is not the proper party to respond to the allegations described in the Formal Complaint and because Complainant failed to serve the proper party accordingly to law.

Simply stated, there is no entity known as “Arden of Warrenville” subject to suit. Cantera Development Holdings LLC, is the owner of a property identified as “Arden of Warrenville,” but Cantera Development Holdings LLC does not own or operate the project that is the subject of the Citizen’s Formal Complaint. Moreover, the property that is the subject of the Formal Complaint is not known, or identified, as “Arden of Warrenville.”

In addition, even if Cantera Development Holdings LLC, incorrectly sued as “Arden of Warrenville,” were the correct Respondent to answer the Formal Complaint, Complainant failed to properly serve Cantera Development Holdings, LLC in the manner prescribed by law.

In all respects, the Formal Complaint against Respondent is frivolous and without merit, and the Illinois Pollution Control Board lacks jurisdiction and authority to order the requested relief against this Respondent because the Formal Complaint fails to allege a recognized cause of action against this Respondent for alleged acts or omissions that purportedly occurred at another property owned by another person or entity.

**COMPLAINANT FAILED TO IDENTIFY
THE OWNER OF THE PROPERTY AT ISSUE**

The Formal Complaint alleges that an entity with no legal capacity, and described only as “Arden of Warrenville,” violated 415 ILCS 5.12 (a) (to cause or threaten to cause water pollution); 415 ILCS 5.12(a) (deposit contaminants on land that may create water pollution); and 35 Ill. Adm. Code 304.141(b) (discharges in excess of limitations imposed by the National Pollutant Elimination Discharge System).

“Arden of Warrenville” is not an individual or an entity subject to suit. “Arden of Warrenville” is simply a name attributed to a fully developed and constructed apartment complex located on real property owned and operated by Cantera Development Holdings, LLC - at which property none of the alleged acts or omissions occurred. The real property at which the alleged violations occurred is not real property commonly known as “Arden of Warrenville.” In fact, the owner of “Arden of Warrenville,” (i.e., Cantera Development Holdings, LLC), is not performing any construction activity at the real property identified in the Formal Complaint. See Affidavit, attached hereto at Exhibit A.

Respondent moves to dismiss the Formal Complaint because the alleged cause of action does not involve Cantera Development Holdings, LLC, incorrectly sued as “Arden of Warrenville.”

SERVICE OF PROCESS WAS IMPROPER

Complainant purports to have served “Arden Staff” with the Formal Complaint, by leaving a copy at 28294 Gerry Road in Warrenville, Illinois on November 29, 2022. See Exhibit B. Respondent, Cantera Development Holdings, LLC in an Illinois Limited Liability Company with its principal place of business identified on the Illinois Secretary of State’s Web Page as: 2 Northfield Plaza, Northfield, Illinois 60093. The Registered Agent for Cantera Development Holdings, LLC is identified as Alina Sandal, and Cantera Development Holdings LLC’s registered office address is: 2 Northfield Plaza, Suite 320, Northfield, Illinois 60093. Complainant failed to serve the Registered Agent or leave a courtesy copy of the Formal Complaint with Cantera Development Holdings, LLC at its registered office or at its principal place of business.¹ See: Exhibit C, attached hereto.

As an Illinois limited liability company, service of process on Cantera Development Holdings, LLC is effective only by serving “the registered agent appointed by the limited liability company or upon the Secretary of State as provided in this section.” See: 805 ILCS 180/1-50. In this instance, Complainant failed to serve Respondent’s Registered Agent. Accordingly, the Formal Complaint is frivolous to the extent that the Illinois Pollution Control Board has no jurisdiction or authority over Cantera Development Holdings, LLC, incorrectly sued as “Arden of Warrenville” to order Respondent to abate the conditions allegedly caused or created by the acts or omissions alleged in the Formal Complaint.

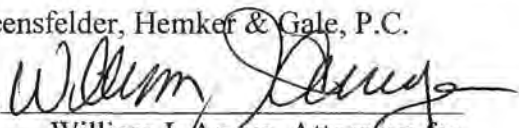
¹ That is not to say that service would have been proper by leaving a copy of the Formal Complaint at Cantera Development Holdings LLC’s registered office or principal place of business. The point is, Complainant did not even attempt to serve Respondent.

Moreover, Complainant's lack of diligence is further evident by the failure to identify the person or persons upon whom the Formal Complaint was delivered. See Exhibit B. Was "Arden Staff" the janitor, or a parking lot attendant? Whether or not this attempt at abode service was proper, Illinois law does not recognize abode service on a limited liability company. See: 805 ILCS § 180/1-50 (service of process is effective only on the Registered Agent, or in limited circumstances upon the Illinois Secretary of State).

The purported service of process fails as a matter of law, and the formal Complaint is frivolous and should be dismissed not only because service of process was defective but also because the requested relief cannot be imposed on Respondent to the extent that Respondent has no ownership interest, control or authority over the activities at the real property that us the subject of the Formal Complaint. Indeed, Respondent has no obligation under the law or regulations to abate the alleged violations on another's property. According to 35 Ill. Adm. Code §101.304(d) the Formal Complaint must be dismissed for Complainant's wholesale failure to even attempt to properly serve the proper Respondent.

WHEREFORE, for the forgoing reasons, Cantera Development Holdings, LLC, incorrectly sued as Arden of Warrenville, respectfully moves the Illinois Pollution Control Board to dismiss the Formal Complaint in this cause, or to refuse to accept the Formal Complaint as frivolous.

Greensfelder, Hemker & Gale, P.C.

By: 
William J. Anaya, Attorneys for
Respondent, Cantera Holdings
Development, LLC

William J. Anaya (wanaya@greensfelder.com)
Thadford A. Felton (tfelton@greensfelder.com)
Koplan Nwabuoku (knwabuoku@greensfelder.com)
Greensfelder, Hemker & Gale, P.C.
200 West Madison Street, Suite 3300
Chicago, Illinois 60606
Phone: 312-419-9090 Facsimile 312-419-1930

Exhibit A

State of Illinois

County of Cook

Affidavit of Daniel Simon

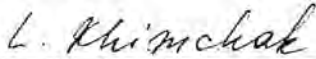
1. My name is Daniel Simon. I am 76 years old, and I make this affidavit from my personal knowledge, without reservation.
2. The Apartment Complex with the common name of "Arden of Warrenville" is located at 28294 Ferry Road, Warrenville, Illinois 60555, and is owned by Cantera Development Holdings, LLC, an Illinois limited liability company.
3. Cantera Development Holdings, LLC is an Illinois limited liability company with its principal place of business at 2 Northfield Plaza, Suite 320, Northfield, Illinois 60093.
4. Cantera Development Holdings LLC is an Illinois limited liability company with Alina Sandal as its Registered Agent. The Registered Agent is located at 2 Northfield Plaza, Suite 320, Northfield, Illinois 60093.
5. Arden of Warrenville is an apartment complex, fully constructed and in operation as residential apartments, and is not involved in the construction activities described in the Formal Complaint styled: "*Paul Christian Pratas, an American, Complainant v. Arden of Warrenville, Respondent*"; PCB 2023-064.28294 Ferry Road, Warrenville, Illinois 60555.

Further Affiant Sayeth Naught.



Daniel Simon

Subscribed and Sworn to before me, a Notary Public, in and for the state and county aforesaid, this 9th day of January 2023.



Notary Public

My Commission Expires: 10/09/23



Exhibit B

COMPLAINANT:

PAUL CHRISTIAN PRATAPAS

RESPONDANT:

ARDEN OF WARRENVILLE

SWPPP SIGNAGE MISSING

PROOF OF SERVICE

Concerning: Federal Law Implemented at State Levels

Case Name: PCP v AW Case# IPCB 2023-064

Name of Paper(s) Served: IPCB FORMAL COMPLAINT

Method of Service:

- First-Class Mail
- Registered Mail (Copy of Receipt Attached)
- Certified Mail (Copy of Receipt Attached)
- Fax
- Electronic Service
- Personal Service
- After all due diligence, I was unable to locate and serve the targeted person(s).

Person Served: ARDEN STAFF IN THE LOBBY

Address Served: 28294 FERRY RD

City: WARRENVILLE State: IL Zip: 60555

Time of Service: 2:43PM

I, the messenger, swear and affirm, under the penalty of perjury, that I was 18 years of age or older at the time of delivery and that I served the papers on the date of 11/29/2022

Name of Server: PAUL CHRISTIAN PRATAPAS


Signature

11/29/2022
Date

COMPLAINANT:

PAUL CHRISTIAN PRATAPAS

RESPONDANT:

ARDEN OF WARRENVILLE

SWPPP SIGNAGE MISSING {COUNTY, STATE}

PROOF OF SERVICE

Concerning: Federal Law

Case Name: PCP v AW

Case#

PCB

Name of Paper(s) Served: IPCB FORMAL COMPLAINT

Method of Service:

First-Class Mail

Registered Mail (Copy of Receipt Attached)

Certified Mail (Copy of Receipt Attached)

Fax

Electronic Service

Personal Service

After all due diligence, I was unable to locate and serve the targeted person(s).

Person Served: ARDEN STAFF

Address Served: 28294 FERRY RD

City: WARRENVILLE

State: IL

Zip: 60555

Fax No. Served: _____

Time of Service: 2:43PM

I, the messenger, swear and affirm, under the penalty of perjury, that I was 18 years of age or older at the time of delivery and that I served the papers on the date of 11.29.2022

Name of Server: PAUL CHRISTIAN PRATAPAS

Miles Traveled: _____

Fee: _____

Service Fee: _____

Incorrect Address Fee: _____

Total Fee: _____

Paul Christian Pratapas
Signature

11.29.2022

Date

Exhibit C

State of Illinois

County of Cook

Affidavit of Alina Sandal

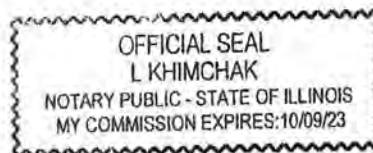
1. My name is Alina Sandal. I am 44 years old, and I make this affidavit from my personal knowledge, without reservation or disability of any kind.
2. The Apartment Complex with the common name of "Arden of Warrenville" is located at 28294 Ferry Road, Warrenville, Illinois 60555, and is owned by Cantera Development Holdings, LLC, an Illinois limited liability company.
3. Cantera Development Holdings, LLC is an Illinois limited liability company with its principal place of business at 2 Northfield Plaza, Suite 320, Northfield, Illinois 60093.
4. I am the duly appointed Registered Agent for Cantera Development Holdings LLC, and the registered address is 2 Northfield Plaza, Suite 320, Northfield, Illinois 60093.
5. I have never been served at any time, or by any means, with the Formal Complaint in the matter pending before the Illinois Pollution Control Board, styled: "*Paul Christian Pratapas, an American, Complainant v. Arden of Warrenville, Respondent*"; PCB 2023-064.

Further Affiant Sayeth Naught.


Alina Sandal

Subscribed and Sworn to before me, a Notary Public, in and for the state and county referred to above, this 9th day of January 2023.


Notary Public



My Commission Expires: 10/09/23