

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
EDWARD PRUIM and ROBERT PRUIM,)
)
Respondents.)

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CLERK'S OFFICE

FEB 24 2006

STATE OF ILLINOIS
Pollution Control Board

PCB No. 04-207
(Enforcement - Land)

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
COMMUNITY LANDFILL COMPANY,)
INC.,)
)
Respondent.)

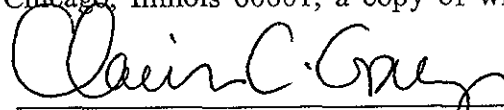
PCB No. 97-193
(Enforcement - Land)
(consolidated)

NOTICE OF FILING

TO: Christopher Grant
Environmental Bureau
Assistant Attorney General
188 West Randolph Street
20th Floor
Chicago, Illinois 60601

Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph
Suite 11-500
Chicago, Illinois 60601

PLEASE TAKE NOTICE that on FEBRUARY 24, 2006, the undersigned filed an original and nine copies of **RESPONDENT ROBERT PRUIM'S AND EDWARD PRUIM'S MOTION FOR LEAVE TO FILE A REPLY IN SUPPORT OF THEIR MOTIONS FOR SUMMARY JUDGMENT** with Ms. Dorothy Gunn, Clerk of the Illinois Pollution Control Board, 100 West Randolph Street, Suite 11-500, Chicago, Illinois 60601, a copy of which is attached and hereby served upon you.


One of the Attorneys for Respondents

Mark A. LaRose
Clarissa C. Grayson
LAROSE & BOSCO, LTD.
Attorney No. 37346
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THIS FILING IS SUBMITTED ON RECYCLED PAPER.

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PCB No. 97-193
(Enforcement – Land)
(consolidated)

**RESPONDENTS EDWARD PRUIM AND ROBERT PRUIM'S JOINT MOTION FOR
LEAVE TO FILE A REPLY TO COMPLAINANT'S RESPONSE TO THEIR
MOTIONS FOR SUMMARY JUDGMENT**

Respondents Edward Pruum and Robert Pruum, by and through their attorneys LaRose & Bosco, Ltd., and pursuant to 35 Ill. Adm. Code 101.501(e) hereby file their Joint Motion seeking leave from the Illinois Pollution Control Board to File a Reply to Complainant's Response to their Motions for Summary Judgment as to all counts of the complaint in PCB No. 04-207 (Enforcement) (consolidated with PCB No. 97-193 (Enforcement)), and in support thereof, state as follows:

1. Respondents filed their motions for summary judgment on January 13, 2006 to which Complainant filed its Response on February 6, 2006. The present motion is timely filed within 14 days after Respondents were served with the Complainant's reply on February 10, 2006, pursuant to 35 Ill. Adm. Code 101.501(e).

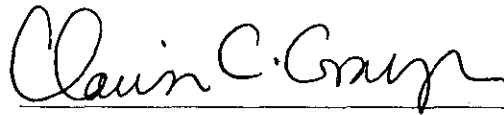
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2. Complainant's Response contains information, statements and admissions that justify Respondents' seeking leave to file a brief reply so that they may address these issues in order to avoid material prejudice. The Respondents' proposed Reply is attached herein as Exhibit A.

WHEREFORE, based on the foregoing, Respondents EDWARD PRUIM and ROBERT PRUIM respectfully request that the Illinois Pollution Control Board grant their Motion for Leave to File their Reply to Complainant's Response to their Motions for Summary Judgment

Respectfully submitted,

LaROSE & BOSCO, LTD.



Attorney for Edward Pruum and Robert Pruum

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CERTIFICATE OF SERVICE

I, Clarissa C. Grayson, an attorney, hereby certify that I served copies of the foregoing **RESPONDENT ROBERT PRUIM'S AND EDWARD PRUIM'S MOTION FOR LEAVE TO FILE A REPLY IN SUPPORT OF THEIR MOTIONS FOR SUMMARY JUDGMENT** by placing the same in first-class, postage, prepaid envelopes and depositing same in the U.S. Mail Box located at 200 North LaSalle Street, Chicago, Illinois, this 24th day of **February 2006**, addressed as follows:

Christopher Grant
Environmental Bureau
Assistant Attorney General
188 West Randolph Street
20th Floor
Chicago, Illinois 60601

Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph
Suite 11-500
Chicago, Illinois 60601



One of the Attorneys for Respondents

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Respondent.)

RESPONDENTS EDWARD PRUIM AND ROBERT PRUIM'S REPLY IN SUPPORT OF THEIR MOTIONS FOR SUMMARY JUDGMENT

Respondents Edward Pruim and Robert Pruim, by and through their attorneys LaRose & Bosco, Ltd., and pursuant to 35 Ill. Adm. Code 101.501(e), hereby reply to Complainant's Response to their Motions for Summary Judgment as to all counts of the complaint in PCB No. 04-207 (Enforcement) (consolidated with PCB No. 97-193 (Enforcement)), and in support thereof, state as follows:¹

I. INTRODUCTION

Respondents filed their motions for summary judgment on January 13, 2006 to which

¹ Although separate Motions for Summary Judgment and Memoranda in Support were filed on behalf of each respondent in PCB No. 04-207 (Enforcement), one (1) set of Joint Exhibits A - W has been filed and each exhibit will be referred to herein as "Exh. ___." The Reply is filed jointly on behalf of both respondents. References to Respondents' Motions will be made as "Motion, p. ___" or "Motion, Exh. ___"; Complainant's Response will be referenced as "Response, p. ___" or Response, Exh. ___".

THIS FILING IS SUBMITTED ON RECYCLED PAPER.



Complainant filed a response on February 6, 2006. Respondents have contemporaneously filed with this reply a Motion for Leave to File a Reply pursuant to 35 Ill. Adm. Code 101.501(e) so that they may address issues raised by Complainant in order to avoid material prejudice.

Based on the Response filed by Complainant, the Illinois Pollution Control Board should grant summary judgment in favor of Respondents Edward Prum and Robert Prum on Counts I, II, III, VI and XII because the State has admitted in its response that it does not have evidence to support its allegations of personal involvement with or active participation in the acts resulting in liability on the part of the Respondents individually. Further, summary judgment should be granted in favor of Respondents on Counts VII, VIII, IX and X because the sole support for Complainant's allegations consists of documents signed by Respondents in their corporate capacity. Finally, summary judgment should be granted in favor of Respondents for Counts IV, V, XVII and XIX because the acts alleged by Complainant do not rise to the level of active participation and personal involvement necessary to impose liability on them individually.

II. ARGUMENT

- A. **Summary Judgment should be granted in favor of Respondents on Counts I, II, III, VI and XII because the State admits in its Response that it does not have any evidence to support its allegations of personal involvement with or active participation in the acts resulting in liability on the part of the Respondents individually**

Based on the State's Response, it is clear summary judgment should be granted in favor of Respondents on Counts I, II, III, VI and XII, which relate to operational, maintenance and improper disposal violations. (Response, p. 13). The State admits that they do not have any evidence to support its allegations of personal involvement with or active participation in the acts resulting in liability on the part of the Respondents individually, by stating as follows:

- it is **unknown** what ability Pelnarsh had to institute remedial action;

- in regard to Count I, it is unknown whether the respondents were aware of ongoing violations and refused to provide funds to remedy known problems;
- in regard to Counts II and VI, it is unknown whether sufficient funds were provided by respondents to prevent and mediate leachate seeps; and
- in regard to Counts III and XII, it is unknown whether respondents arranged to have tires and landscape waste dumped at the landfill.

(Response, pp. 13-14).

As the Board is well aware, the purpose of summary judgment is not to try an issue of fact, but rather to determine if a triable issue of fact exists. Bear v. Power Air, Inc., 230 Ill.App.3d 403, 407, 595 N.E. 2d 77, 80 (1st Dist. 1992). Although Complainant does not have to try its case, it must provide a factual basis which would arguably entitle it to judgment. Bear, 230 Ill.App. 3d at 407, 595 N.E.2d at 80, 81. In the present matter, the State's mere allegation of personal involvement and active participation in the acts resulting in liability does not satisfy the standards for summary judgment; it has the affirmative duty on the respondents' motion to bring forth all facts and evidence that would satisfy its burden of proving the existence of a cognizable cause of action. Golden v. Marshall Field & Co., 134 Ill.App.3d 100, 102, 479 N.E.2d 1211, 1212 (1st Dist. 1985).

The foregoing makes it clear that the State cannot prove its case against Respondent for the allegations set forth in Counts I, II, III, VI and XII. The State should know by now whether its evidence to support its allegations against respondents individually exists, certainly at this point in the litigation. If it doesn't know now, when and how does it intend to ascertain this information? The State filed its complaint against the respondents individually almost seven years after it filed the original complaint against the company nearly ten (10) years ago.

That something is "unknown" is not the same as it being a "question of fact". The dictionary

definition of “unknown” is: “not discovered, identified, determined, explored , etc.” (Webster’s New World College Dictionary, 4th Edition, 1999.) A “question of fact” is something that by common sense contains at least two differing positions that need to be resolved. Here, Respondents have quite clearly set forth in their motions for summary judgment that they did not actively participate in the day to day management of the landfill. (E. Pruim Motion, pp. 8-16; R. Pruim Motion, pp. 8-16). Complainant has failed to produce any evidence that Respondents’ had personal involvement with or active participation in the acts resulting in liability for Counts I, II, III, VI and XII, not just active participation in the management of the corporation. People v. Tang, 346 Ill.App.3d 277, 284, 805 N.E.2d 243, 250 (1st Dist. 2004).

If an issue raised in a complaint is not further supported by evidentiary facts, summary judgment is appropriate. Golden v. Marshall Field & Co., 134 Ill.App.3d 100, 102, 479 N.E. 2d 1211, 1212 (1st Dist. 1985). Respondents point out that on its own, Complainant has, simultaneously with the filing of its response, moved to voluntarily dismiss Counts XIII, XIV, XV, XVI and XVIII of the Complaint on the grounds that it “**now believes that dismissal of [these] counts ... would be appropriate.**” The Board should not sanction the State’s attempt to avoid summary judgment by hoping it can transform an admitted lack of evidence into a question of fact when by its own admission, it does not have any facts to support its position. The Board should grant summary judgment in favor of the Respondents on Counts I, II, III, VI and XII.

B. Respondents’ position in the affidavits attached to their answers is consistent with their position in their motions for summary judgment

Respondents’ attached affidavits to their answers to the complaint stating that they were without sufficient knowledge to form a belief as to the truth or falsity of the allegations. (See Affidavits attached to Edward Pruim and Robert Pruim Answers). This statement is entirely

consistent with their positions in their motions for summary judgment that they have no personal involvement with or active participation in the allegations contained in the complaint that result in liability, as is required. People v. Tang, 346 Ill.App.3d 277, 284, 805 N.E.2d 243, 250 (1st Dist. 2004). Common sense dictates the following question: how could the respondents know about the allegations in the complaint if they did not have any personal involvement with or active participation in these allegations? The answer is: they could not and that is why they are entitled to summary judgment: because they had no personal involvement with or active participation in these allegations.

Moreover, complainant misstates the relevant law and characterizes respondents' statements as "admissions". (Response, p.4). The statements in respondents' affidavits conform with the Illinois Rules of Civil Procedure which require that "[e]very allegation, except allegations of damages, not explicitly denied is admitted, **unless** the party states in his or her pleading that he or she has no knowledge thereof sufficient to form a belief, and attaches an affidavit of the truth of the statement of want of knowledge." 735 ILCS 5/2-610(b). The Appellate Court "find[s] no logic in an interpretation under which a defendant who has sworn he has no knowledge of the facts and is seeking specific information is deemed to have admitted those very facts because he has not denied them." Marion v. Wegrzyn, 93 Ill.App.2d 205, 207, 236 N.E.2d 328, 330 (1st Dist. 1968). Based on the foregoing, there is nothing inconsistent with respondents' position in their answers and in their motions for summary judgment.

- C. Summary Judgment should be granted on the remaining Counts IV, V, VII, VII, IX, X, XVII and XIX because Complainant's Response fails to set forth sufficient evidence to support its allegations of personal involvement with or active participation in the acts resulting in liability on the part of the Respondents individually.**

Without repeating Respondents' arguments as set forth fully in their motions for summary

judgment, Complainant's entire argument in regard to the alleged overweight violations (Counts VII, VIII, IX and X) are supported by no more than three (3) documents, all of which were signed by Respondents in their corporate capacity. The landfill capacity reports were prepared by engineers and presented to respondents on an annual basis. These reports are not indicative of personal knowledge or active participation necessary to impose liability on the individual corporate officers. They do not constitute an "egregious example of personal involvement, or of a willful violation" as the Complainant would have the Board believe. As a matter of law, these acts simply do not rise to the level necessary to impose liability on the respondents individually. People v. Tang, 346 Ill.App.3d 277, 284, 805 N.E.2d 243, 250 (1st Dist. 2004). Summary judgment should therefore be granted in favor of Respondents on Counts VII, VIII, IX and X.

Similarly, the evidence surrounding the Complainant's allegations in regard to alleged financial assurance violations are insufficient to withstand Respondent's motions for summary judgment. The acts alleged simply do not rise to the level necessary to impose liability on the individual corporate officers. Summary judgment should therefore be granted in favor of Respondents on Counts IV, V, XVII and XIX.

III. CONCLUSION

WHEREFORE, based on the foregoing and for those reasons previously set forth in their Motions for Summary Judgment, Respondents EDWARD PRUIM and ROBERT PRUIM respectfully request that the Illinois Pollution Control Board grant their Motion for Summary Judgment in its entirety on all counts in the 2004 case against them individually, and find that:

- (1) Edward Pruim and Robert Pruim were not involved in the day-to-day operation of the landfill;
- (2) Edward Pruim and Robert Pruim's acts as corporate officers do not constitute

personal involvement or active participation in the acts that might result in liability; and

(3) the delay by the complainant in bringing this complaint against respondents personally has resulted in undue prejudice.

Respectfully submitted,

LaROSE & BOSCO, LTD.

Attorney for Edward Pruim and Robert Pruim

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