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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

State of Minnesota, by the Minnesota Pollution Control Agency,

Plaintiff,

and City of St. Louis Park,

Intervenor-Plaintiff

vs.

Reilly Tar & Chemical Corporation,

Defendant.

COURT FILE NO. 670767

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ANSWER TO AMENDED COMPLAINT OF STATE OF MINNESOTA

Reilly Tar & Chemical Corporation answers the amended complaint of the State of Minnesota, as follows:

I

The Plaintiff and the Court lack jurisdiction over the subject matter.

II

The Plaintiff and the Court lack jurisdiction over Reilly Tar & Chemical Corporation. That Plaintiff has attempted to use a Rule 15 amendment to extend the jurisdiction of the Court contrary to Rule 82; and contrary to due process of law requirements under the Fourteenth Amendment to the United States Constitution and the Minnesota Constitution.

III

The Plaintiff and the Court lack jurisdiction over Reilly Tar & Chemical Corporation because of insufficiency of process.

IV

The Plaintiff and the Court lack jurisdiction over Reilly Tar & Chemical Corporation because of insufficiency of service of process.

V

The complaint fails to state a claim upon which relief can be granted.

VI

The amended complaint of the State should be dismissed for failure to join an indispensable party under Rule 19, and for failure to follow Rule 19.03. The complaint violates Rule 19.03 in that it does not include as parties the owners in interest or possession of the real estate in question. That this is an action involving title and condition and the right to possession of real property.

VII

That the action begun by the State of Minnesota on October 2, 1970, wherein the State and the City of St. Louis Park were co-plaintiffs, was settled by the parties or rendered moot by the agreement and action of the parties. That after the conclusion of said proceedings on November 9, 1973, Reilly Tar & Chemical Corporation withdrew from doing business in the State of Minnesota. That the Plaintiff was well aware of all of said proceedings and acquiesed therein and acted in reliance thereon in proceedings involving the company's former real estate and the City of St. Louis Park. That the agreements and actions of the parties in 1970-1973 constituted a full and complete settlement of this litigation. As a result of said settlement, the Defendant claims the following:

A. That the Defendant is not within the jurisdiction of the Plaintiff or the Court.

B. That the Court is without jurisdiction over the Defendant or the subject matter to reopen the case.

C. That regardless of the question of jurisdiction, that the settlement by agreement and action of

the parties in 1970-1973 constituted a full adjudication and a binding contract of settlement of all matters between the parties and that said settlement and agreement is res judicata; and that the Plaintiff and the City of St. Louis Park are both estopped by virtue of the settlement agreements, dismissals, contracts and reliance thereon and the actions of the parties, from now asserting any of the claims asserted in the amended complaint.

VIII

That any new matters complained of not previously settled are an effort to enforce statutes or rules which were adopted subsequent to the time that the Defendant acted, or subsequent to the time that Defendant discontinued operations in Minnesota and withdrew from the State and that any attempt to enforce such rules or statutes retroactively is contrary to Article I, Section 11 of the Minnesota State Constitution which provides as follows:

> "No bill of attainder, ex post facto law, or any law impairing the obligation of contract shall be passed, . . ."

and is contrary to MSA Section 645.21 which provides as follows:

> "No law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature."

and in contrary to the United States Constitution, Article I, Section 10, which provides:

> "No state shall. . . pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts . . ."

IX

As a separate defense, Defendant alleges that the State of Minnesota by the Minnesota Pollution Control Agency is estopped in all of its claims against Defendant, Reilly Tar & Chemical Corporation by virtue of the decision in a prior PCA administrative proceedings which

involved the same real estate and the same issues. Said proceedings were titled "State of Minnesota, Minnesota Pollution Control Agency, County of Ramsey, In the matter of the application by the City of St. Louis Park for a national pollutant discharge elimination system permit MN0045489) to discharge from a waste water system on the former Republic Creosote site to Minnehaha Creek."

That the hearing officer in said proceedings made the following findings, which are applicable:

> "1. In October, 1970, the Agency and the city commenced an action against the Reilly Tar & Chemical Company to abate pollution of waters of the state resulting from its creosoting operations. Earlier investigations made by the Agency and the city provided evidence of pollution of surface and ground waters by coal tar distillates and other industrial chemicals at and in the vicinity of the Republic Creosote Plant. As a settlement of that litigation with the company, the city purchased from the company the site on which the plant was located, it being the intent of the city to redevelop the site for housing."
>
> "3. Require the applicant before construction is commenced to submit within three months of the date of issuance of this permit to the Agency for approval plans for the existing storm runoff system and proposed diversion for the estimated additional 180 acres which are now drained to Bass Lake and from which the runoff is proposed to be diverted to the new system for discharge to Minnehaha Creek (via outlet 001 of permit MN0045489). The permitee also should be required to submit to the Agency for approval before construction of the disposal system is started under permit 8718 a plan for monitoring the ground water and subsurface soils of the proposed land farming site, such monitoring plan to be sufficiently comprehensive and representative to enable an evaluation to be made by the Agency and city during successive stages of the project of the degree, if any, to which the land farming activity may contribute to further degradation of the underground waters of the site and if so, of any modifications which should be made in the operation of the project to minimize any such degradation."

"4. Require the applicant to submit to the Agency for approval a proposal for an adequate plan of study to determine the extent and severity of pollution of the underground waters resulting from the discharge of wastes at the former Republic Creosote site, together with a commitment to provide measures for satisfactory control of such ground water pollution within a reasonable time, and to obtain Agency approval for such plan and commitment within six months of the date of approval of this permit. In the event the city should fail to obtain such approval within the period indicated above, it is recommended that the Agency promptly thereafter initiate proceedings leading to the issuance of an order or for legal action as may be considered approporiate to abate pollution of the underground waters of the state at this site and obtain compliance with regulation WPC 22."

"7. Require from the city assurances that no building construction or other substantial redevelopment activity will be undertaken on the former Republic Creosote site which could jeopardize the operation of the surfact runoff treatment works or delay resolution of the ground water pollution problem."

That the State of Minnesota Pollution Control Agency and the City of St. Louis Park were parties to said administrative proceedings. That said proceeding was judicial or quasi judicial in nature and was held after notice, and included taking of evidence, making of findings and a determination by a hearing officer. Said administrative proceeding was complete and constitutes an adjudication of the matters contained therein, including the issues decided in the above quoted findings. That said administrative proceedings determined that the 1970 litigation had been settled and that according to its terms the City of St. Louis Park had assumed responsibility for any pollution problems in connection with the site' and that the City of St. Louis Park was responsible for the coreection of any ground water pollution. Said proceedings imposed the burden to correct the problem upon the City of St. Louis Park. The Agency and the City did not appeal that determination and it has now become binding on the Agency and the City, and is res judicata. That the Agency is

estopped and barred by the concept of res judicata from now proceeding contrary to the determination made in its own proceedings. That a copy from the PCA files of the findings of fact, conclusions and recommendations of the hearing officer in the proceedings are on file in this case as an exhibit to the affidavit of Thomas E. Reiersgord.

X

As a separate defense, Defendant pleads the statute of limitations, asserting as a defense that the statute of limitations has run on all matters or actions performed or done by the Defendant. Defendant also particularly pleads the two (2) year statute of limitations, MSA 541.07 (2), and asserts that said statute of limitations period has run.

XI

Except as otherwise explained or admitted herein, Defendant denies each and every allegation of the complaint, or the Defendant is without sufficient knowledge of the matters alleged and therefore puts the Plaintiff to the proof thereof.

XII

Defendant, Reilly Tar & Chemical Corporation admits that it is an Indiana corporation. That it withdrew from engaging in business in the State of Minnesota in 1973 and since that time has had no officers or agents or employees or property in the State of Minnesota.

XIII

That Defendant, Reilly Tar & Chemical Corporation has tendered the defense of this matter to the City of St. Louis Park pursuant to the hold harmless agreement

entered into between Defendant and the City of St. Louis Park relative to this dispute and a copy of said tender of defense has been filed with the Court.

XIV

That Defendant further denies each of the specific counts alleged by the Plaintiff and alleges that the City of St. Louis Park, or its assignees, has had full control over the premises of the Defendant since the City of St. Louis Park took possession of the property pursuant to a contract for deed dated October 12, 1972. That by virtue of the contract between the parties, including a hold harmless agreement executed by the City of St. Louis Park, a copy of which is on file with the Court, and the fact that the City's possession since October 12, 1972, the Defendant alleges that the City of St. Louis Park has sole responsibility for the correction of any conditions which may be found to exist which require correction.

XV

That the company to the extent that it is relevant also incorporates all of the material in its original answer in this action into this answer by reference.

XVI

Defendant alleges that it has been unfairly prejudiced by the long period of time which elapsed between the original settlement of this case and the purported reopening of the case by the State of Minnesota. That at the time of reopening, on April 12, 1978, only one person who was an employee of the company located at the Minnesota plant was still an employee of Defendant company. That Defendant has been out of possession of the real estate in question for over five (5) years and has had no control over activities on the property.

That other parties have excavated the site in various respects and perhaps have engaged in activities that may have been harmful during that period, however, Defendant has no practical way of ascertaining the nature of those activities at such a late date.

XVII

That Plaintiff's complaint is barred by accord and satisfaction, estoppel, laches, release, res judicata and statute of limitations.

WHEREFORE, Defendant respectfully prays as follows:

1. That none of the demands of the State of Minnesota be granted.

2. That the Court hold that this action was settled in 1972 by the agreement and action of the parties.

3. That the City of St. Louis Park, pursuant to its settlement agreement and hold harmless agreement and ownership of the premises is the sole party responsible for all pollution matters in connection with said site.

4. That the Defendant, Reilly Tar & Chemical Corporation is not within the jurisdiction of this Court pursuant to the procedures taken by the Plaintiff and that there has been no service of process and that any purported service of process was insufficient and incomplete.

5. That the claims of the State of Minnesota are barred by the statute of limitations.

6. That the dilemmas posed by the relation back doctrine in Rule 15 and the non-joinder or misjoinder of parties relative to the initial action and subsequent sale of the premises to the City of St. Louis Park and resale by the City of St. Louis Park create an unfair and improper state of pleadings to

the extent that Defendant, Reilly Tar & Chemical Corporation could not fairly and adequately respond and that therefore the amendment to the pleadings proposed by the State should be reversed and disallowed.

7. That this case be dismissed with prejudice against Defendant, Reilly Tar & Chemical Corporation.

Respectfully submitted,

YNGVE & REIERSGORD

By: Thomas E. Reiersgord

Thomas E. Reiersgord
Attorney for Defendant,
Reilly Tar & Chemical
Corporation
6250 Wayzata Boulevard
Minneapolis, Minn. 55416
Phone: (612) 544-8451