

Aug 07 2006
PHIL C. GARNER
STARK COUNTY CLERK
CLERK OF COURTS

**IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO**

STATE OF OHIO, ex rel.	:	
JIM PETRO, ATTORNEY	:	
GENERAL OF OHIO,	:	CASE NO. 2004 CV 01672
	:	
PLAINTIFF,	:	JUDGE LILE (Assigned)
v.	:	
	:	JUDGMENT ENTRY
MEADOWLAKE CORPORATION,	:	
et al.,	:	
DEFENDANTS,	:	

This civil action came before the court for trial upon the Plaintiff's complaint, filed May 19, 2004, the Defendants' joint answer, filed June 10, 2004, and Plaintiff's motion for preliminary injunction, filed March 15, 2005. A counterclaim previously filed by the Defendants was dismissed by the court on November 23, 2004.

A jury trial to determine whether the Defendants were the owners or operators of a Public Water System, was begun on January 9, 2006 and was terminated on January 11, 2006, by declaration of mistrial. Thereafter, the matter was set for retrial and, upon further review of the Plaintiff's previously filed motions and memoranda to proceed in this matter without jury, the court determined that the matters before it in this action were not triable to a jury and the issues herein were ordered to proceed as a trial to the court on May 30, 2006.

Previously, on March 23, 2006, the court granted leave to Matthew Yackshaw, Esq., counsel for the Defendants, to withdraw as counsel for cause, namely that the Defendants had deliberately failed to make payment on their account and had failed to make any satisfactory provisions for payment on their substantial account balance due despite written and oral requests by counsel to do so. In the same entry, which was sent to all Defendants, the court advised the Defendants:

Therefore, the Defendants are ordered to immediately secure the representation of other counsel in order to proceed in this matter, or if they choose to waive the representation of counsel to understand that any non-attorney even though an officer of any of the Defendant corporations or an appointed agent of any of the Defendant corporations could not file pleadings, present further defense regarding the issue before the court, or otherwise represent the interests of the corporate defendants.

Prior to the trial of May 30, 2006, no counsel entered appearance on behalf of the Defendants or requested a stay of proceedings. Following the trial, the court took the matter under advisement.

Findings of Fact

Upon the evidence presented, the court finds:

1. The Defendants, Meadowlake Corporation and Meadowlake Ltd., invite the public to patronize a swimming pool, a golf course, snack bars and a restaurant, all of which are situated on the Defendants' property located at 1211 39th Street, NE, Canton, Ohio, hereafter referred to as the "Meadowlake property".
2. The Ohio Environmental Protection Agency ("Ohio EPA") determined, beginning in the year 1996, that Meadowlake Corporation owned and operated a "public water system" on the Meadowlake property. The Ohio EPA determined, effective May 2001, the onset of its legal existence, that Meadowlake Ltd. owned and operated a "public water system" on the Meadowlake property.
3. The determinations by the Ohio EPA that the Defendants own and operate a "public water system" at the 39th Street NE, Canton, Ohio, location have not been overturned pursuant to the laws of the State of Ohio.
4. The Defendant Meadowlake Corporation, in the name of Meadowlake Country Club, applied for a license to operate a "public water system" for the years 1996, 1997, and 1998 and was granted licenses to operate a "public water system" on the Meadowlake property during those years. Neither Meadowlake Corporation since 1999, nor Meadowlake Ltd. since May 2001, (the onset of its legal existence) have applied for or been granted a license to operate a "public water system".
5. On August 11, 1999, the Director of the Ohio Environmental Protection Agency ("Director Ohio EPA") issued a proposed action designating the public water system on the Meadowlake property as a source of water "under the influence of surface water". Meadowlake Corporation as the owner of the public water system received notice of the proposed action and its right to appeal such proposed action. The proposed action became final on September 27, 1999.
6. From March 27, 2001, to May 30, 2006 (1,890 days), Defendant, Meadowlake Corporation did not provide the necessary filtration treatment for the public water system on the Meadowlake property and has been advised monthly of such failure.

7. From May 2001, to May 30, 2006, (1,855 days) Defendant Meadowlake Ltd. did not provide the necessary filtration for the public water system on the Meadowlake property and has been advised monthly of such failure.

8. From March 27, 2001, to May 30, 2006 (1,890 days), Meadowlake Corporation did not issue required public notifications after being advised of its failure to provide surface water treatment.

9. From May 2001, to May 30, 2006, (1,855 days), Meadowlake Ltd. did not issue required public notifications after being advised of its failure to provide surface water treatment.

10. From April 2001 through October 2005, a total of 51 sampling periods, Meadowlake Corporation failed to complete the required four monthly coliform monitoring samples even though it was advised monthly of such failure.

11. From May 2001 to October, 2005, a total of 50 sampling periods, Meadowlake Ltd. failed to complete the required four monthly coliform monitoring samples even though it was advised monthly of such failure.

12. From April 2001, to October 2005, Meadowlake Corporation did not issue the required public notifications after being advised of its failure to provide coliform bacteria samples.

13. From May 2001, to October 2005, Defendant Meadowlake Ltd. did not issue the required public notifications after being advised of its failure to provide coliform bacteria samples.

14. From April 2001, to August 2005, a total of 52 sampling periods, Defendant Meadowlake Corporation failed to complete the required monthly nitrate sampling.

15. From May 2001, to August 2005, a total of 51 sampling periods, Defendant Meadowlake Ltd. failed to complete the required monthly nitrate sampling.

16. From April 2001, through October 2005, Meadowlake Corporation did not issue the required public notifications after being advised of its failure to complete monthly nitrate monitoring requirements.

17. From May 2001, to October 2005, Defendant Meadowlake Ltd. did not issue the required public notifications after being advised of its failure to complete monthly nitrate monitoring requirements.

18. From July 1998 to May 30, 2006, the Defendant Meadowlake Corporation failed to prepare and maintain a written sampling plan for the collection of total coliform routine samples at sites which are representative of water throughout the Meadowlake property public water system.

19. From May 2001 to May 30, 2006, the Defendant Meadowlake Ltd. failed to prepare and maintain a written sampling plan for the collection of total coliform routine samples at sites which are representative of water throughout the Meadowlake property public water system.

20. The well casing for the Meadowlake property public water system well, which is located in the basement of a former farmhouse on the Meadowlake property, terminates less than eight inches above the finished grade of the land outside the farmhouse.

Conclusions of Law

1. Meadowlake Corporation and/or Meadowlake Ltd. own(s) and/or operate(s) a "public water system" as such is defined in R.C. 6109.01(A) and the Ohio Administrative Code (O.A.C.) 3745-81-01 (FFF).

2. The defendants, Meadowlake Corporation and/or Meadowlake Ltd. have violated provisions of R.C. Chapter 6109, rules adopted under authority of R.C. 6109, and/or orders issued by the Director of the Ohio Environmental Protection Agency, to wit:

a. By operating, from 1999 to May 30, 2006, a "public water system" in Ohio, without a public water system license issued by the Director Ohio EPA;

b. By failing, from July 1998 to May 30, 2006, (Meadowlake Corporation) and from May 2001 to May 30, 2006, (Meadowlake Ltd.) to collect total coliform routine samples at sites which are representative of water throughout the public water distribution system located on the Meadowlake property according to a written sample siting plan;

c. By failing, from April 1995 through March 2001, (Meadowlake Corporation) to monitor for the presence of coliform bacteria once each calendar quarter in the Meadowlake property public water system;

d. By failing, from April 2001 to September 2005, (Meadowlake Corporation) and from May 2001 to September 2005, (Meadowlake Ltd.) to sample the Meadowlake public water system four times each month for total coliform bacteria;

e. By failing, from 1996 to 2000, (Meadowlake Corporation) to monitor annually to determine compliance with the maximum contaminant level for nitrate and from March 27, 2001 to August 2005, by failing to monitor monthly to determine compliance with the maximum contaminant level for nitrate;

f. By failing, from May 2001 to August 2005, (Meadowlake Ltd.) to monitor monthly to determine compliance with the maximum contamination level for nitrate;

g. By failing, from March 27, 2001 to May 30, 2006 (Meadowlake Corporation) or from May 2001 to May 30, 2006 (Meadowlake Ltd.) to either install an approved disinfection and filtration treatment or in the alternative to provide water for the Meadowlake property public water system that would not be subject to the surface water treatment requirements of O.A.C. Rule 3745-81-71 through 3745-81-75;

h. By failing, either classified as a ground water source or as using a surface water source, to issue a public notification of its/their failure to conduct quarterly or monthly total coliform routine monitoring of the Meadowlake property public water system - Meadowlake Corporation from April 1995 to May 30, 2006, and Meadowlake Ltd. from May 2001 to May 30, 2006;

i. By failing, either classified as a ground water source or as using a surface water source, to issue public notification of its/their failure to conduct annual or quarterly nitrate monitoring of the Meadowlake property public water system - Meadowlake Corporation from July 1966 to May 30, 2006, and Meadowlake Ltd. from May 2001 to May 30, 2006;

j. By having a well casing for the Meadowlake property public water system which terminates less than eight inches above finished grade of the land outside of the building in which the public water system source is located; the well is located in the basement of the former farmhouse and the well casing terminates more than eight inches below the outside ground level.

3. The law provides that no person shall violate any provision of R.C. chapter 6109, any rule adopted under it, or any order or term or condition of a license, license renewal, variance, or exemption granted by the director of environmental protection under it. Each day of noncompliance is a separate violation. (See R.C. § 6109.31).

4. The Director Ohio EPA is authorized to investigate or make inquiries into any suspected violation of R.C. § 6109.31. The attorney general is authorized to bring an action for injunction or other appropriate action against any person violating or threatening to violate § 6109.31. Any final order of the director, the finding of the director, after hearing, is prima-facie evidence of the facts found therein. (See R.C. § 6109.32).

5. Any person who violates section 6109.31 of the Revised Code shall pay a civil penalty of not more than twenty-five thousand dollars for each violation. . . (See R.C. § 6109.33).

6. The number of noncompliance day-violations committed by the Defendants, Meadowlake Corporation and/or Meadowlake Ltd., exceeds one thousand (1,000) in number.

7. The Defendants' violations of R.C. chapter 6109, the rules adopted under the chapter, and orders issued by the Director Ohio EPA have been intentional.

Judgment

Upon the findings and conclusions made above, the court finds the issues herein in favor of the Plaintiffs and against the Defendants. It is Ordered, Decreed, and Adjudged, therefore:

1. The Defendants, Meadowlake Corporation and Meadowlake Ltd, which include entities or businesses carried on under the names of Meadowlake Golf & Swim, Meadowlake Country Club and/or Rafters Bar and Grille shall, within 30 days, obtain a public water system license pursuant to R.C. §6109.21 and O.A.C. Rule 3745-84-01 and shall pay the required license fees, late fees and interest;

2. The Defendants, Meadowlake Corporation and Meadowlake Ltd, which include entities or businesses carried on under the names of Meadowlake Golf & Swim, Meadowlake Country Club and/or Rafters Bar and Grille, shall immediately comply with the written siting plan for the collection of total coliform bacteria that was submitted to Ohio EPA on May 30, 2006;

3. The Defendants, Meadowlake Corporation and Meadowlake Ltd, which include entities or businesses carried on under the names of Meadowlake Golf &

Swim, Meadowlake Country Club and/or Rafters Bar and Grille shall immediately monitor the water supplied by the Meadowlake "Public Water System" at least four times each month for the presence of coliform bacteria and comply with repeat monitoring and maximum contaminant level requirements in accordance with O.A.C. Rules 3745-81-14 and 3745-81-21 for as long as the Defendants or either of them continue(s) to use a surface water source. Should the Meadowlake "Public Water Source be redesignated by Ohio EPA as ground water, the Defendants shall monitor quarterly for total coliform bacteria and comply with repeat monitoring and maximum contaminant level requirement, in accordance with O.A.C Rules 3745-81-14 and 3745-81-21;

4. The Defendants, Meadowlake Corporation and Meadowlake Ltd, which include entities or businesses carried on under the names of Meadowlake Golf & Swim, Meadowlake Country Club and/or Rafters Bar and Grille shall immediately monitor the water supplied by the Meadowlake "Public Water System" at least once each month for the presence of nitrate and comply with confirmation monitoring and maximum contaminant level requirements in accordance with O.A.C Rules 3745-81-11 and 3745-81-23 for as long as the Meadowlake "Public Water System" continues to use a surface water source. Should the Meadowlake "Public Water System" source be redesignated by Ohio EPA as ground water, the Defendants shall monitor for the presence of nitrate annually and comply with confirmation monitoring and maximum contaminant level requirements in accordance with O.A.C. Rules 3745-81-11 and 3745-81-23 and a schedule provided by Ohio EPA.

5. The Defendants, Meadowlake Corporation and Meadowlake Ltd, which include entities or businesses carried on under the names of Meadowlake Golf & Swim, Meadowlake Country Club and/or Rafters Bar and Grille shall, within 120 days, properly abandon the presently constituted farmhouse well and, in compliance with O.A.C. Rules 3745-81-71 through 3745-81-75, connect with an approved water system: a) by repairing the well and obtaining written approval for its use from Ohio EPA, b) by abandoning the well and obtaining an Ohio EPA approved source of water for the public's consumption, c) by abandoning the well and hauling water approved by Ohio EPA, in writing, onto the premises, d) by abandoning the well and connecting to an Ohio EPA approved water system, or e) by installing an Ohio EPA approved surface water treatment system.

6. The Defendants, Meadowlake Corporation and Meadowlake Ltd, which include entities or businesses carried on under the names of Meadowlake Golf & Swim, Meadowlake Country Club and/or Rafters Bar and Grille shall, within 15 days, notify the public in accordance with O.A.C. Rules 3745-81-21, -23, -32 and -73, of the Defendants' failures to comply with the surface water treatment rules to date;

7. The Defendants, Meadowlake Corporation and Meadowlake Ltd, which include entities or businesses carried on under the names of Meadowlake Golf &

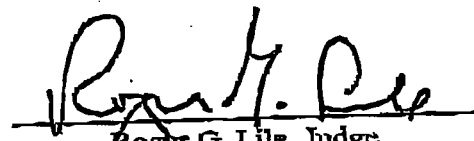
Swim, Meadowlake Country Club and/or Rafter's Bar and Grille shall, within 120 days, attain compliance with water well standards in accordance with R.C. § 6111.42 and O.A.C. Chapter 3745-9;

8. The Defendants, Meadowlake Corporation and Meadowlake Ltd., in view of their longstanding and intentional violations of R.C. Chapter 6109, the rules adopted under authority of R.C. 6109, and/or orders issued by the Director of the Ohio Environmental Protection Agency, are ordered to pay a civil penalty of \$300,000, for which amount judgment is granted in favor of the Plaintiff, State of Ohio, to be paid into the state treasury to the credit of the drinking water protection fund created in R.C. § 6109.30. Meadowlake Corporation and Meadowlake Ltd. shall be jointly and severally liable for such civil penalty;

9. The court does not find that attorney fees are available in this case in that pursuant to the general "American rule," the prevailing party cannot recover attorney fees as part of the cost of litigation in the absence of statutory authorization. See Sorin v. Bd. of Edn. (1976), 46 Ohio St.2d 177, 179. Had the legislature intended to authorize such additional assessment or penalty against a party, that authority would have been included in R.C. § 6109.33;

10. It is Ordered that all costs incurred in this lawsuit shall be paid by the Defendants, Meadowlake Corporation and Meadowlake Ltd., for which amount they are jointly and severally liable.

ORDERED, ADJUDGED, AND DECREED.


Roger G. Lile, Judge

cc: Gregory J Poulos, Esq., Assistant Attorney General
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