

JEMAS, NARDONE & BURNSIDE
A PROFESSIONAL CORPORATION
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ATTORNEYS FOR INTERVENORS

BOROUGH OF RINGWOOD, a
municipal corporation of
the State of New Jersey,

Plaintiff,

v.

RINGWOOD BOROUGH SEWERAGE
AUTHORITY, a body politic
and corporate of the State
of New Jersey; JOSEPH
SILBERBERG, WALTER ASH, III,
ROY G. LUCAS, RICHARD
WEISGLAS, and SHELLEY
BALESTRIERI, Commissioners of:
the RINGWOOD BOROUGH SEWERAGE:
AUTHORITY,

Defendants.

RAHA CORP., a not-for-profit
New Jersey corporation and
CHARLES E. LESNICK,
individually as homeowner/
taxpayer and as
representative of 109
homeowners/taxpayers
of Ringwood Acres,

As Intervenors,

v.

BOROUGH OF RINGWOOD and
RINGWOOD BOROUGH SEWERAGE
AUTHORITY,

Defendants.

:
:
: SUPERIOR COURT
: OF NEW JERSEY

:
: PASSAIC COUNTY:
: CHANCERY DIVISION

:
: DOCKET NO.

:
: CIVIL ACTION

:
: VERIFIED COMPLAINT
: FOR INTERVENORS

Intervenors, RAHA CORP., a not for profit New Jersey
corporation and CHARLES E. LESNICK individually as
homeowner/taxpayer, and as representative of 109 homeowners

and taxpayers of Ringwood Acres, a development located in the Borough of Ringwood, County of Passaic, State of New Jersey, (known collectively for purposes of this action as "109 Homeowners"), through their attorneys, Jemas, Nardone & Burnside, A Professional Corporation, by way of complaint against the Borough of Ringwood and the Ringwood Borough Sewerage Authority, say:

THE PARTIES

1. RAHA Corp. ("RAHA") is a not-for-profit corporation duly organized under the laws of the state of New Jersey. The members of RAHA consist of the homeowners and taxpayers who comprise a development known as Ringwood Acres, located in the Borough of Ringwood.

2. Charles E. Lesnick is an individual homeowner and taxpayer in the Ringwood Acres development.

3. The Borough of Ringwood is a Municipal Corporation of the State of New Jersey (the "Ringwood Borough").

4. The Ringwood Borough Sewerage Authority (the "Sewerage Authority") is a public body corporate and politic created by ordinance of the Ringwood Borough Council on December 12, 1969. The Sewerage Authority was created originally to service all the residents of Ringwood. Currently, however, the Sewerage Authority serves only the 109 Homeowners.

FACTS COMMON TO ALL COUNTS

(THE HIGHPOINT HOMES/RINGWOOD ACRES SEWERAGE SYSTEM)

5. Upon information and belief, in or about November, 1965, G. Peduto & Son proposed the construction of the development commonly known as Highpoint Homes, later to become known as Ringwood Acres.

6. In or about October 1966, the Passaic County Planning Board recommended that Highpoint Homes (Ringwood Acres) be served by sanitary sewers, and not by septic, due to the area's eroding soil conditions.

7. G. Peduto & Sons constructed a sewerage system for the 109 Homeowners including a treatment plant known as the James Drive Treatment Plant (the "Plant"). The Ringwood Acres development and the Plant that would serve that development were in various stages of construction from approximately 1966 through the early 1970's.

(THE BOROUGH-WIDE SYSTEM)

8. In or about October 1966, the Ringwood Borough committed itself to the construction of a borough-wide sewerage system to service all Ringwood residents. At that point in time, all Ringwood residents, with the exception of the planned 109 homes at Ringwood Acres, were served by septic tanks.

9. On December 12, 1969, the Ringwood Borough adopted an ordinance thereby creating a Sewerage Authority to effectuate the borough-wide system.

10. The members of the Sewerage Authority, at the time of their initial appointment, and for most of the subsequent relevant years, were the same officials who comprised the governing body of the Ringwood Borough.

11. From the initial planning stages in 1966, the borough-wide plan was designed to become a part of a regional system with Wanaque and West Milford (the "Regional System").

12. In 1971, although the Sewerage Authority was already in existence and functioning, the James Drive Treatment Plant was conveyed to the Ringwood Borough for \$1.

13. Upon information and belief, Ringwood Borough subsequently transferred its interest in the Plant to the Sewerage Authority.

14. In or about 1973, the Sewerage Authority authorized the issuance of bonds totalling \$7.4 million to fund the construction of Ringwood Borough's portion of the sewerage system before it had obtained (a) any assurances regarding federal and state funding, (b) an estimate of the total cost of construction, (c) any assurances regarding the date on which the system would be operational and capable of creating revenues and (d) before the Regional plans were finalized.

15. In December 1974, the Sewerage Authority learned that it had all but destroyed its chance to receive substantial state and federal monies because it had begun

construction prior to obtaining DEP and EPA approval. As a result, the Authority down-scaled its original construction plan. That decision, in turn, made it virtually impossible for the Authority to complete construction in time to collect the revenues needed to meet the bond obligations.

16. On or about September 27, 1976, the Sewerage Authority learned that the regional system would not be operational until November 1979, almost two and one-half years after the originally anticipated date.

17. On or about January 24, 1977, the Sewerage Authority realized that it would be unable to meet the debt service requirements on its \$7.4 million bonds.

18. Despite that realization, the Sewerage Authority, on December 19, 1977, adopted a resolution reaffirming its intent to complete the sewerage system.

19. The Sewerage Authority, for the next five years, continued to face difficulties obtaining federal and state funding and struggled to meet the debt service obligations on the bonds.

20. In an effort to continue to fund the construction of the sewerage system, the Sewerage Authority executed several resolutions authorizing the issuance of short term sewer revenue bonds approximating at least \$5.7 million. Upon information and belief, short term bonds approximating \$5.7 million were issued and the Sewerage Authority fell deeper into debt without any prospect of completing the

project.

21. On or about October 2, 1979, in breach of its prior commitment to provide a borough-wide sewerage system, the Sewerage Authority resolved to initiate a project that would leave 35% percent of the residents of Ringwood on septic systems.

22. Upon information and belief, this change of intent (a) made it substantially more difficult for the Sewerage Authority to receive state and federal funding, (b) delayed construction, and (c) made it impossible to collect sewerage revenues in time to satisfy the bond obligations.

(THE BOROUGH'S DEFAULT ON THE \$7.4 MILLION BOND)

23. As a result of the Sewerage Authority's gross mismanagement, the Sewerage Authority defaulted on the \$7.4 million bond issue in or about April 1983.

24. The Sewerage Authority, with the consent of the Ringwood Borough governing body, has spread the expense resulting from the bond default to each taxpaying household in the Ringwood Borough including the 109 Homeowners who were already serviced by the James Drive Treatment Plant (the "Plant") and who were ready to be hooked up to the regional with little additional cost to the Sewerage Authority and/or Ringwood Borough.

25. As a result of the Sewerage Authority's failure to become a part of the Wanaque regional sewerage system, the Sewerage Authority is also indebted to the Wanaque Regional

Sewerage Authority for a \$900,000 judgment entered against the Sewerage Authority.

26. The governing body of the Ringwood Borough admits that it intends to pass the expense of that judgment to each taxpaying household of the Ringwood Borough including the 109 Homeowners, despite the fact that those 109 Homeowners did not require a regional hook-up.

(THE JAMES DRIVE UPGRADE)

27. The James Drive Treatment Plant (the "Plant") was constructed with the express approval of the Ringwood Borough to provide sewer service exclusively to the 109 Homeowners of Ringwood Acres when that development was initially constructed in or about 1965.

28. The Sewerage Authority continues to operate the Plant.

29. Under the initially proposed Regional System, the Sewerage Authority planned to convert the Plant into a "pumping station" for sewerage that would be treated at the Wanaque plant. Under that regional plan, no "upgrade" of the Plant would have been necessary since it would have been converted to a pumping station.

30. However, as a result of the Sewerage Authority's failure to complete the hook-up to the Regional System, the Department of Environmental Protection (the "DEP") and the Environmental Protection Agency (the "EPA") required that the Plant be upgraded to provide primary and secondary

treatment.

31. The Sewerage Authority issued bonds approximating \$2.4 million to fund the upgrade of the Plant in or about 1989.

32. Ringwood Borough is obligated to pay the bond obligations under the terms of the 1973 Service Agreement executed by the Sewerage Authority and Ringwood Borough. That Service Agreement requires Ringwood Borough to "aid and assist the Authority in the establishment of [a] sewerage system and to make it economically feasible for the Authority to proceed with the financing, acquisition and construction ... so as to make available, at an early date, a sanitary sewerage system for the use of all residents and inhabitants of the Borough."

33. The Service Agreement also requires Ringwood Borough "to pay to the Authority such sum or sums of money as may be necessary to provide for deficits (if any) resulting from failure or disability of the Authority to derive the adequate revenues from the operation of said sewerage system."

34. Moreover, the effluent of the Plant is discharged into Ringwood Borough waters and the entire borough is responsible for the preservation of those waters.

35. In breach of its contract with the Sewerage Authority and its obligations under federal and state environmental protection law, Ringwood Borough seeks to pass

the total expense of the Plant upgrade to the 109 Homeowners. As a result, each of the 109 Homeowners faces a possible user charge in excess of \$9000 per year - by far the highest user charge in the nation.

COUNT ONE

(AGAINST THE SEWERAGE AUTHORITY)

36. The 109 Homeowners repeat and reallege paragraphs 1 through 35 above.

37. The Sewerage Authority failed to obtain government funding, failed to properly fund the construction, and failed to ensure that the bond obligations could be satisfied.

38. Throughout the planning and partial construction of the sewerage system, the Sewerage Authority's use and application of sewerage funds was palpably unreasonable.

39. The Sewerage Authority is liable to the 109 Homeowners for its conduct pursuant to N.J.S.A. §59:2-3.

WHEREFORE, the 109 Homeowners demand judgment against the Sewerage Authority for compensatory and consequential damages together with interest, costs of suit, reasonable attorneys' fees, and such other relief as the Court may deem just and equitable.

COUNT TWO

(AGAINST THE RINGWOOD BOROUGH)

40. The 109 Homeowners repeat and reallege paragraphs 1 through 39 above.

41. Throughout the planning and partial construction of the sewerage system, the Borough had exclusive control over the Authority.

42. Throughout the planning and partial construction of the sewerage system, the Borough's use and application of sewerage funds was palpably unreasonable.

43. The Borough is liable to the 109 Homeowners for its conduct pursuant to N.J.S.A. § 59:2-3.

WHEREFORE, the 109 Homeowners demand judgment against the Borough for compensatory and consequential damages, together with interest, costs of suit, reasonable attorneys' fees, and such other relief as the Court may deem just and equitable.

COUNT THREE

(AGAINST THE RINGWOOD BOROUGH)

44. The 109 Homeowners repeat and reallege paragraphs 1 through 43 above.

45. Throughout the planning and partial construction of the sewerage system, the Ringwood Borough had exclusive control over the Sewerage Authority.

46. Upon information and belief, the Ringwood Borough created and used the Sewerage Authority to avoid the expense of the construction of a borough-wide sewerage system and the James Drive up-grade.

47. The Ringwood Borough now seeks to benefit from the malfeasance of its governing authority (under N.J.S.A.

40:14B) and pass the expense of the construction onto the 109 Homeowners.

WHEREFORE, the 109 Homeowners seek a judgment enjoining the Ringwood Borough from taxing only the 109 Homeowners for the up-grade of the James Drive Treatment Plant and declaring that the Ringwood Borough is required to pay for that up-grade.

COUNT FOUR

(AGAINST THE RINGWOOD BOROUGH)

48. The 109 Homeowners repeat and reallege paragraphs 1 through 47 above.

49. As a result of the Ringwood Borough's palpably unreasonable conduct and malfeasance of its governing authority under N.J.S.A. 40:14B, the 109 Homeowners are being unreasonably and arbitrarily taxed and are being denied their right to due process.

WHEREFORE, the 109 Homeowners demand judgment against the Ringwood Borough for compensatory and consequential damages, together with interest, cost of suit, reasonable attorneys' fees, and such other relief as the Court may deem just and equitable.

COUNT FIVE

(AGAINST THE RINGWOOD BOROUGH)

50. The 109 Homeowners repeat and reallege paragraphs 1 through 49 above.

51. As a result of the Ringwood Borough's palpably

unreasonable conduct and malfeasance of its governing authority under N.J.S.A. 40:14B, the 109 Homeowners are being taxed upon a standard different than other persons residing in the borough of Ringwood and are being denied their right to equal protection.

WHEREFORE, the 109 Homeowners demand judgment against the Ringwood Borough for compensatory and consequential damages, together with interest, cost of suit, reasonable attorneys' fees, and such other relief as the Court may deem just and equitable.

COUNT SIX

(AGAINST THE SEWERAGE AUTHORITY)

52. The 109 Homeowners repeat and reallege paragraphs 1 through 51 above.

53. As a result of the Sewerage Authority's palpably unreasonable conduct, the 109 Homeowners are being taxed upon a standard different than other persons residing in the borough of Ringwood and are being denied their right to equal protection.

WHEREFORE, the 109 Homeowners demand judgment against the Sewerage Authority for compensatory and consequential damages, together with interest, cost of suit, reasonable attorneys' fees, and such other relief as the Court may deem just and equitable.

COUNT SEVEN

(AGAINST THE SEWERAGE AUTHORITY

54. The 109 Homeowners repeat and reallege paragraphs 1 through 53 above.

55. As a result of the Sewerage Authority's palpably unreasonable conduct, the 109 Homeowners are being unreasonably and arbitrarily taxed and are being denied their right to due process.

WHEREFORE, the 109 Homeowners demand judgment against the Sewerage Authority for compensatory and consequential damages, together with interest, cost of suit, reasonable attorneys' fees, and such other relief as the Court may deem just and equitable.

JEMAS, NARDONE & BURNSIDE
Attorneys for Intervenors

BY: _____
DIANE C. NARDONE

Dated: December 28, 1992

R.4:5-1 CERTIFICATION

I hereby certify that the matter in controversy is not the subject of any other action pending in any court or a pending arbitration proceeding, and that no other action or arbitration proceeding is contemplated. I know of no other parties who should be joined in this action.

JEMAS, NARDONE & BURNSIDE
Attorneys for Intervenors

BY: _____
Diane C. Nardone