

FORM A

Superior Court Of New Jersey
Law Division

Tony Novak
Your Name (first, middle, last)

Cumberland County
Docket Number: CLMC 17-18

183 Bayview Road
Street Address

Money Island NJ 08345
Town, State, Zip Code

(856) 237-9199
Telephone Number

NJDEP
Plaintiff

CIVIL ACTION

v.
Tony Novak, et al.
Defendant

Answer

The defendant, Tony Novak, answers the plaintiff's claim as follows:
(your name)

(State whether you agree or disagree with each paragraph of the plaintiff's complaint. If additional room is needed, attach a separate sheet.)

1. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

2. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

3. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

4. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

5. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.
(continued on a separate page)

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Answers to complaint

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6. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

7. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

8. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

14. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

15. Admitted.

16. Denied.

17. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

18. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

19. Denied.

20. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

21. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs. Denied that Cumberland County Health Department found any sewage disposal system on any property owned, operated or managed by Defendant to be "immediate public health risk". These 2013 findings of deficiency of the water supply system were previously resolved to the satisfaction of the Cumberland County Board of Health before the issuance of this complaint.

22. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs. Denied that the inability of a representative of NJDEP to locate records within the department constitutes evidence of a lack of compliance by the installers of

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the fuel system. Defendant asserts that all required permits have been obtained by the licensed professional hired for the post-Sandy rebuild of the fuel supply system and that no other representative or permitting branch of NJDEP corroborates the findings of Ms. Benkert regarding a missing permit. The system engineers and operators reserve the right to offer evidence that disputes the finding of Ms. Benkert.

23. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs. Denied that the inability of a representative of NJDEP to locate records within the department constitutes evidence of a lack of compliance by the installers of the fuel system. Defendant asserts that all required permits have been obtained by the licensed professional hired for the post-Sandy rebuild of the fuel supply system and that no other representative or permitting branch of NJDEP corroborates the findings of Ms. Benkert regarding a missing permit. The system engineers and operators reserve the right to offer evidence that disputes the finding of Ms. Benkert.

24. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

25. Admitted.

26. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

27. Admitted.

28. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

29. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

30. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

31. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

32. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

33. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

34. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

35. Admitted except for the dates. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations of the dates and leave Plaintiff to its proofs.

36. Admitted.

37. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

38. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

39. Denied.

40. Admitted.

41. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

42. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

43. Denied.

44. Denied.

45. Denied.

46. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

47. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

48. Denied.

49. Denied.

50. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

51. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

52. Denied.

53. Denied.

54. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

55. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

56. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

57. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

58. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

59. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

60. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

61. Denied.

62. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

63. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

64. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

65. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

66. Denied.

67. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

68. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

69. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

70. Denied.

71. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

72. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

73. I do not have enough knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiff to its proofs.

WHEREFORE, the defendant demands judgment dismissing the complaint with costs.

AFFIRMATIVE DEFENSE(S)

(State the reasons why you disagree with plaintiff's complaint or why what you did or did not do is not a matter for court. If additional room is needed, attached a separate sheet.)

1. This action is blocked by estoppel. The Plaintiff has played an active role in blocking and preventing me from attaining required permits and achieving our legal compliance goals and now attempts to seek judgment and damages for the same.
2. Innocent infringement. The Defendant obtained the properties in an allegedly impaired condition and did not cause, contribute or expand to the infringement. Defendant has actively worked to repair infringements but understands that more time is needed to accomplish this.
3. Unjust enrichment. The Plaintiff claims expanded rights under the law as a result of sea level rise. Those expanded rights come at direct expense of the Defendant.

(continued on a separate page)

CERTIFICATION OF NO OTHER ACTIONS

I certify that this dispute is not the subject of any other action pending in any other court or a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge and belief, no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

Dated: _____

Signature: _____

CERTIFICATION REGARDING FILING AND SERVICE

The undersigned hereby certifies that a copy of this pleading was served and filed within the time permitted by the court rules.

Dated: 6/14/2018

Signature: Tony M. J.

OPTIONAL: If you would like to have a judge decide your case, do not include the following paragraph in your complaint. If you would prefer to have a jury to decide your case, please sign your name after the following paragraph.

DEMAND FOR TRIAL BY JURY

TAKE NOTICE that the defendant demands a trial by jury on all issues.

Dated: 6/14/2018

Signature: Tony M. J.

Affirmative Defenses

(continued from page 2)

4. **Comparative fault of third parties.** The violations cited were apparently initiated by others and allowed to exist for 40 to 80 years since the opening of the Money Island Marina under multiple prior owners without corrective legal action prior to Defendant's involvement. The responsibility for these violations primarily falls on these unnamed other third parties.

5. **Business necessity.** I was acting as agent for third party watermen who rely on these bayshore properties for their livelihood and have no other means of survival and no other homes or workplaces other than continued use of the subject properties. Under these circumstances any other course of action other than to hold open their possibility of earning a livelihood would have been unreasonable and possibly illegal under other statutes.

6. **Business judgement.** Actions as director or officer may be shielded from liability for taking actions that are reasonable and prudent. I acted prudently given the complexity of the legal situation and the extent and scope of the physical challenges we face.

7. **Failure to join necessary parties.** Other people and organizations claim to have the majority stake in ownership, equity, or the lead role in the redevelopment of the subject properties. These alternate claims of use or redevelopment rights and alternate plans of ownership for the subject properties have not yet been legally resolved. In most or all cases, responsibility for addressing alleged violations flows with ownership of the subject properties. This action fails to enjoin these other parties. Without the ability to address these parties and their competing claims, the Defendant lacks the authority and power of ownership required to make an appropriate defense to the allegations.

8. **Ratification.** In my meeting with Plaintiff in 2016, a series of written and verbal agreement were made to prioritize the correction of land use permitting violations. I upheld my end of these agreements. Having enticed me into these agreements, the Plaintiff is not entitled to unilaterally rescind its offer or cancel the agreement.

9. **No actual injury.** The Plaintiff is not asserting or offering evidence that the state has incurred any actual damage as a result of Defendant's actions.

10. **Unconscionability.** Plaintiff cannot enforce the contract because the terms are substantively or procedurally unconscionable. It is fundamentally unjust that the Plaintiff has repeatedly on at least 15 occasions denied or blocked permit applications or pre-application compliance inquiries and now seeks prosecution and damages for my failure to obtain such permits.

11. **Novation.** The original 2012 agreement between two parties proposed that the Defendant act as agent for the Plaintiff on an "as is" basis that relieved the Defendant of liability to Plaintiff. There was no expectation under this arrangement that Defendant would take on responsibility for compliance actions. Both parties were aware that the entire community of Money Island had developed and evolved over decades without required compliance and permits and this was a core of the negotiation to transfer ownership and responsibility to the state. In fact, the arrangement was made with the discussion

focused on the assumption that the Plaintiff was in the best position to address the alleged noncompliance issues that were known at that time. Now after having acquired the properties on an “as is” basis the Plaintiff seeks to change the deal and collect damages from me for acting as we proposed and agreed.

12. **Trespass to Chattels and Nuisance.** Necessity is a complete defense to these torts. The Defendants who acted to prevent a threatened injury from the forces of nature including Superstorm Sandy is acting under necessity. The danger affects the entire community, so many people that the public interest is involved, so that interest serves as a complete justification to the defendant who acts to avert the peril to all.

13. **Personal necessity.** I lost substantially all of my business interests and personal assets in Superstorm Sandy and was acting out of necessity to survive the disaster. The disastrous effects continue today. I did what was necessary to survive this unprecedented period of physical and financial distress after superstorm Sandy.

14. **Assumption of risk.** By failing to take corrective action for the past 35 to 80 years that alleged violations existed prior to Defendant’s arrival and for negotiating to assume ownership of properties with these known risks and unknown timetable of pre and post Sandy compliance proposals that were known to the parties at that time, Plaintiff assumed some of the liability for the time schedule under which the violations will ultimately be corrected.

15. **Duress.** Defendant lost use of his home, business and financial resources were quickly depleted following Superstorm Sandy. Medical complications directly related to the stress imposed by this disaster further restricted the options available to the Defendant.

16. **Unclean hands.** Plaintiff repeatedly took assertive actions to block Defendant’s multiple permit applications or pre-application inquiries, denied alternate dispute resolution, and now wishes to collect damages on the same actions that the Plaintiff directly caused to continue to be unresolved. It is fundamentally unjust that Plaintiff be both the denier of permits and the prosecutor of failure to have permits.

17. **Latches.** Plaintiff admits that it was aware of alleged violations long before Defendant’s involvement. Plaintiff took no action against to litigate against or place liens on the property of the original alleged offenders. Plaintiff’s failure to take action at an appropriate time against the appropriate parties provides valid legal defense for the Defendant.

18. **Contributory negligence.** Plaintiff was aware that the alleged conditions existed since the original development of the property reportedly in the 1930s to the 1970s but took no action to correct these alleged violations. Plaintiff continued to issue various other operating permits, collect permitting fees and on-site inspection fees from Defendant each year until the present time.

19. **Agency.** Defendant was acting as agent for the Plaintiff in the original 2012 proposal and verbal agreement to acquire most of the subject properties. The agency agreement did not intend that the Plaintiff assume responsibility for the alleged non-compliance actions. The Plaintiff’s unreasonable delay of approximately five years before cancelling the agency agreement in 2017 provides defense for the Defendant who was acting in good faith as agent during that period of time.

20. **Whistleblower protection.** Much of the complaint appears to be based on the statements of a NJDEP employee that the Defendant reported to the Department for unprofessional behavior and a federal investigator for attempted illegal action. This testimony and resulting legal action appears to be retaliatory.

21. **Physical safety.** I've received numerous death threats for my public support of modernizing Money Island to bring us into compliance with state law. My reputation for working with state and county government offices – in a community known for a long history of non-compliance - makes me a target of those with strong anti-government sentiment in this rural blue-collar farming and fishing community. A former neighbor was indicted for assault after maiming me in a planned retaliatory 'hit' a decade ago for my involvement in a Money Island environmental issue resolution. The local government's Deputy Mayor settled civil charges for conspiracy to murder after we produced witness testimony detailing the conspiracy. Both men escaped criminal prosecution after admitted case management errors at the Cumberland County District Attorney's office. The lack of criminal prosecution for the death threats and assault only further emboldens the anti-government local aggressors. The changes political climate of the past year heightened the level of hostility against me as a progressive member working toward government compliance. Most recently, a prominent local government official raised tensions by publicly criticizing the Money Island redevelopment plan and name me personally for criticism. We have no local police near Money Island and the New Jersey State Police are more than 20 minutes away. The business redevelopment plan that addressed the required legal compliance is expected to raise the risk of violent reaction by some members of the community. The timetable for increased NJDEP compliance must coordinate with a planned improvement in the site and community security capabilities. The timetable for action proposed by the Plaintiff is not reasonable and would result in increased risk of physical attack.