

STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF CAYUGA

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CNY Scrap Processing, LLC and,  
Carrier Salvage & Recycling, LLC

**ANSWER**

Plaintiffs,

Index No. 2015-206

v.

TOWN OF STERLING,  
BRUCE APPLEBEE, individually and  
As purported Code Enforcement Officer of the  
TOWN OF STERLING,

Defendants.

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Defendants, TOWN OF STERLING, BRUCE APPLEBEE, individually and as purported Code Enforcement Officer of the TOWN OF STERLING, (hereinafter referred to as "Defendants") by and through their attorneys, Goldberg Segalla, LLP, as and for their Answer to the Plaintiffs' Complaint hereby state as follows upon information and belief:

1. As to paragraph 1 of the complaint, Defendants deny the allegation as the Defendants are not engaged in an effort to shut down Plaintiffs' business but merely seeking Plaintiffs' compliance with applicable law.
2. As to paragraph 2, Defendant admits it issued the cease and desist letter.
3. As to paragraph 3, Defendant denies the allegations and characterizations as stated and asserts Plaintiffs are using this action to avoid compliance with the proper and lawful regulations of the Town.
4. As to paragraphs 4, 5, 6, 7, and 8, Defendants lack knowledge and information sufficient to form a belief as to the truth or accuracy of the allegations so as to either admit or deny the same.
5. As to paragraphs 9, and 10, Defendant admits the allegations.

6. As to paragraphs 11, 12, and 13, Defendants lack knowledge and information sufficient to form a belief as to the allegations as they relate to the co-Plaintiffs.

7. As to paragraph 14, Defendant denies the same.

8. As to paragraph 15, 16, and 17, Defendants lack knowledge and information sufficient to form a belief as to the allegations as they relate to the co-Plaintiffs.

9. As to paragraph 18, Defendant denies the Town represented to Plaintiffs that its use of the subject property was in full compliance or that a scrap processing facility had ever been a proper pre-existing non-conforming use. As to the resolutions of the Town Board or any of its departments, divisions, or boards, the Defendant states that any such actions or resolutions speak for themselves and the Defendant therefore denies the allegations, characterizations or presumptions asserted by the Plaintiffs.

10. As to paragraph 19, and 20, Defendant lacks knowledge or information sufficient to form a belief as to the allegations as they relate to the co-Plaintiffs.

11. As to paragraphs 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, and 48, which paragraphs seek to set forth portions of the Town's laws, enactments, or enforcement procedures, the Defendant denies the allegations and characterizations as stated and further states that said laws, rules, regulations and procedures are a matter of record which records speaks for itself. Accordingly, the Defendant denies the characterizations, inferences and conclusions asserted by the Plaintiffs as to the same.

12. As to paragraph 49, the Defendant denies the property was operated as a scrap processing facility before the Town adopted any land use regulation.

13. As to paragraph 50, the Defendant admits the Board adopted the resolution as stated, and that said resolution speaks for itself.

14. As to paragraph 51, the Defendant states that any such letter referenced speaks for itself, and while Defendant admits such correspondence was sent, the Defendant denies any characterizations of the same as stated by Plaintiffs.

15. As to paragraph 52, the Defendant admits no further enforcement action was taken at such time, though it lacks knowledge and information sufficient to form a belief as to whether the conditions were remedied.

16. As to paragraph 53, Defendant states the referenced correspondence speaks for itself and therefore denies the allegations to the extent they seek to allege anything more than as stated in the document itself.

17. As to paragraph 54, Defendant states the referenced correspondence speaks for itself and therefore denies the allegations that "Plaintiffs' invited the Code Enforcement Officer to inspect the property" or that such correspondence were "requests" to inspect the property and further that the correspondence denied the Town the opportunity to inspect.

18. As to paragraphs 55, 56, and 57, Defendant states the referenced correspondence all speaks for itself and therefore denies any allegations or characterizations as stated by Plaintiffs.

19. As to paragraph 58, Defendant denies that Exhibit P is Plaintiffs' appeal of the ZBA decision referenced and states there appears to be an error between the reference and the exhibit.

20. As to paragraph 59, Defendant denies that Exhibit Q is Town correspondence dated January 14, 2015 and states there appears to be an error between the reference and the exhibit.

21. As to paragraph 60, Defendant admits that Plaintiffs authorized the Town's CEO to inspect the property.

22. As to paragraph 61, Defendant lacks knowledge and information sufficient to form a belief as to when Plaintiffs “discovered” Defendant’s January 14, 2015 correspondence but admit the correspondence is annexed as Exhibit R and speaks for itself, but otherwise deny the allegations and characterizations as stated.

23. As to paragraph 62, and 63, Defendant states the correspondence annexed as Exhibit S speaks for itself and otherwise deny the allegations and characterizations as stated.

24. As to paragraph 64, Defendant states the correspondence referenced is not annexed to the Complaint, but Defendant admits that correspondence dated February 5, 2015 was sent to the Plaintiffs and that such correspondence speaks for itself, and therefore Defendant denies the allegations and characterizations as stated.

25. As to paragraphs 65, 66, 67, and 68, the Defendant denies the allegations.

26. As to paragraph 69, Defendant admits the same.

27. As to paragraph 70, 72, 74, 76, 78, 80, 82, 86, 90, 94, 98, and 103 Defendant repeats and realleges its answers and responses to each and every paragraph referenced therein.

28. As to paragraphs 71, 73, 75, 77, 79, 81, 83, 84, 85, 87, 88, 89, 91, 92, 93, 95, 96, 97, 99, 100, 101, 102, 104, 105, 106, 107, and 108 Defendant denies the allegations.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

29. Bruce Applebee is immune from suit.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

30. Plaintiffs have failed to exhaust administrative remedies.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

31. Plaintiffs have applied for the appropriate permit which would defeat any need for relief, as such the action is premature and should be dismissed.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

32. Any and all action of Bruce Applebee was taken with the good faith belief that such action was reasonable and necessary under the circumstances then and there existing, was in accordance with applicable law as would be understood by a reasonable zoning enforcement officer, and he reasonably believed that his conduct did not violate any of Plaintiffs' clearly established constitutional rights. As such he is entitled to qualified immunity from suit.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

33. Plaintiffs' property was never a pre-existing non-conforming use as a scrap processing facility.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

34. The Court does not have Jurisdiction to Order the Town's Zoning Enforcement officer to issue permits.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

35. The statutes, ordinances, rules and regulations in issue were properly advanced, published, and enacted and are constitutionally valid on their face.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

36. Plaintiffs' property has not been limited in use so as to constitute a taking.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

37. Plaintiffs' alleged claims stemming from the Fifth and Fourteenth Amendments of the United States Constitution and Article 1 of the New York State Constitution fail to state a cause of action upon which relief may be granted.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

38. Plaintiffs' alleged substantive and procedural due process claims fail to state a cause of action upon which relief may be granted.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

39. Plaintiffs' complaint fails to state a cause of action for abuse of process.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

40. Plaintiffs' complaint fails to comply with the General Municipal Law.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

41. Plaintiffs knowingly and improperly commenced the action without waiting the statutory period as required by law.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE**

42. To the extent Plaintiffs attempt to state a cause of action under 42 USC 1983 or 1988 as claimed in the demand for relief, the complaint fails to state a cause of action.

**AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE**

43. The Plaintiffs are not entitled to equitable relief.

**AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE**

44. Plaintiffs' claims are barred by the doctrine of unclean hands.

**AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE**

45. Plaintiffs have failed to satisfy conditions precedent to suit.

**AS AND FOR A EIGHTEENTH AFFIRMATIVE DEFENSE**

46. Plaintiffs are estopped from challenging the actions of the Town.

**AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE**

47. Plaintiffs had no vested right to operate the subject property as a scrap processing facility.

**AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE**

48. Plaintiffs' action is in violation of the doctrine of separation of powers.

**AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE**

49. Plaintiffs' claims or characterizations of the Freedom of Information requests fail to state a claim and in any event are not proper subjects of review in this action and must be dismissed.

**AS AND FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE**

50. Plaintiffs' complaint improperly alleges both equitable and legal relief while maintaining that appropriate legal relief is not available in support of its equitable claim. The claim for equitable relief should therefore be dismissed in its entirety.

**AS AND FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE**

51. Plaintiffs' claims or causes of action must be dismissed as relief may not properly be granted to two separate and distinct plaintiffs for the same claim.

**AS AND FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE**

52. Any non-conforming use was discontinued prior to any action of the Town relative to said use.

**AS AND FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE**

53. Plaintiffs' failure to own and operate the subject premises in violation of New York State DEC Rules and Regulations establish Plaintiffs were not entitled to continue their illegal use of the property and premises.

**AS AND FOR A TWENTY-SIXTH AFFIRMATIVE DEFENSE**

54. Plaintiffs are guilty of laches with respect to bringing their property into compliance with applicable law and as such any right to continue as a non-conforming use must be denied.

**AS AND FOR A TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

55. Defendant statutes, rules, regulations and ordinances are entitled to a presumption of constitutionality and the complaint fails to state facts or claims or a cause of action sufficient to overcome said presumption and must therefore be dismissed.

**AS AND FOR A TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

56. Plaintiffs' use and operation of the subject parcel constitutes a public nuisance.

**AS AND FOR A FIRST COUNTER-CLAIM**

57. The subject property ceased to be operated as a non-conforming use and lost its classification as a pre-existing non-conforming use.

58. The Court should adjudge and decide that the subject property is not a pre-existing non-conforming use.

**AS AND FOR A SECOND COUNTER-CLAIM**

59. The Plaintiffs operate a junkyard and scrap processing facility in violation of town ordinances and resolutions at the subject location.

60. The subject location does not qualify as a pre-existing non-conforming use.

61. The Town Board granted a limited grandfathering of the subject property despite its non-compliance and illegal operation as a junkyard for the express purpose of bringing the property into compliance with N.Y.S.D.E.C. as well as violations of the land use regulations of the Town and further to authorize the filing of a Planned Development District (PDD) for the subject property.

62. Plaintiffs have failed and refused to apply for a PDD, or bring the subject property into compliance with town law and N.Y.S.D.E.C. requirements.

**WHEREFORE**, Defendants hereby demand judgment as follows:

- a. Dismissing the Plaintiffs' Complaint in its entirety;



- b. Determining the subject parcels do not qualify as pre-existing non-conforming use as a junkyard and/or scrap processing facility;
- c. Declaring the operation of a junkyard and scrap-yard by the Plaintiffs is in violation of the Town of Sterling zoning ordinances;
- d. Directing Plaintiffs to cease and desist from operating the subject premises as a junkyard and/or scrap processing facility; and
- e. Any such other and further relief as this Court may deem just, proper and equitable, together with the costs and disbursements of this action.

DATED: March 20, 2015  
Rochester, New York

GOLDBERG SEGALLA LLP

By: 

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