

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KENDALL COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
ex. rel. LISA MADIGAN, Attorney)
General of the State of Illinois,)
)
Plaintiff,)
)
)
vs.) Gen. No. 08-CH-811
)
)
DON HAMMAN FARMS, LLC, an)
Illinois Limited Liability Company,)
)
Defendant.)

FILED

SEP 14 2009
BECKY MORGANEGG
CIRCUIT CLERK KENDALL CO.

ORDER

This cause comes on for ruling on the Motion to Dismiss First Amended Complaint. The Motion was filed on June 3, 2009. Oral arguments were heard on the Motion on August 21, 2009. For the reasons which follow, the Court hereby finds and orders as follows:

At this juncture of the proceedings, I must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party. Borowiec v. Gateway 2000, Inc., 209 Ill.2d 376 (2004) certiorari denied 543 U.S. 869. Involuntary dismissal is warranted only where it clearly is apparent that no set of facts can be proved which would entitle a plaintiff to recover. Thornton v. Shah, 333 Ill. App. 3d 1011, (First Dist. 2002) rehearing denied. Stated another way, a motion to dismiss should not be granted unless it clearly appears that no set of facts could ever be proved that would entitle petitioner to recover. In re Marriage of Hoppe, 220 Ill. App. 3d 271, (First Dist. 1991).

In the Motion, Defendant sets out various reasons why each count of the four count Amended Complaint should be dismissed pursuant to 735 ILCS 5/2-615. I will address the Motion as it relates to each count.

Count I seeks injunctive relief as well as court imposed sanctions for alleged violations of 415 ILCS 5/42(d) and (e). Specifically, Plaintiff complains that Defendant has violated 415 ILCS 5/21(a) and 415 ILCS 5/21(p)(1) by committing "Open Dumping" in violation of the Environmental Protection Act.

Section 21(a) of the Act prohibits the open dumping of any waste. The Act defines "Open Dumping" as the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill. 415 ILCS 5/3.305.

Plaintiff complains in Count I that Defendant, by permitting "the thousands of pieces of plastic, metal, paper and miscellaneous debris" to be deposited on or in the ground on which Defendant operates his land application process, is committing open dumping.

Defendant responds that the term "consolidation" means some sort of aggregation of the waste into a single site, suggesting that open dumping requires the Plaintiff to demonstrate that the waste was placed in a single location and not spread around over the multiple acres operated by the Defendant here.

However, this is not a Motion for Summary Judgment where I can consider the process that Defendant engages in. The issue presented, at this juncture, is simply whether the Plaintiff has alleged sufficient facts to allege a cause of action for open dumping. I believe it has.

In Count II, Plaintiff alleges that Defendant is conducting a waste storage operation without a development permit. However, it appears that Plaintiff has failed to plead sufficient facts to show that Defendant is storing waste on the premises. The facts allege demonstrate that Defendant receives the landscape materials, which apparently contain miscellaneous debris and rubbish, and that those materials are incorporated into the soil on the premises. By applying the material (and debris) to the soil, Defendant is not engaged in storing of the materials. Accordingly, I believe Plaintiff has failed to plead a cause of action for improper waste storage in Count II of the First Amended Complaint.

Similarly, in Count III the Plaintiff alleges that Defendant is conducting a waste storage operation without an operating permit. As in Count II, I find that Plaintiff has failed to plead a cause of action for improper waste storage in Count III of the First Amended Complaint.

In Count IV, Plaintiff alleges Defendant improperly applied landscape waste at a rate higher than the default rate of 20 tons per acre per year. Defendant contends that since Defendant now has a permit which allows Defendant to apply its landscape waste at the rate of 80 tons per acre per year, Plaintiff's First Amended Complaint fails to state a cause of action.

However, what Plaintiff complains of here is that Defendant improperly applied the waste at the rate in violation of the default rate of 20 tons per acre per year prior to the time that rate of application was authorized. I believe that Plaintiff has pleaded a cause of action in Count IV of the First Amended Complaint.

Based on the foregoing, the Motion to Dismiss First Amended Complaint is granted as to Counts II and III of the First Amended Complaint. The Motion to Dismiss First Amended Complaint is denied as to counts I and IV of the First Amended Complaint.

Defendant is granted 28 days to file its Answer to Counts I and IV of the Motion to Dismiss First Amended Complaint.

The previously set status date of September 25, 2009 is stricken.

This cause is continued to 9:00 a.m. on October 27, 2009 at which time a discovery schedule will be established.

Entered: 9-14-09



JUDGE

The undersigned hereby certifies that a true and correct copy hereof was mailed to counsel for the parties or to the parties if no counsel is of record via first class mail with postage fully prepaid this 14th day of September, 2009.

Dated: 9/14/09 SIGNED: Nicole S. Bolen