

IN THE COURT OF COMMON PLEAS  
PORTAGE COUNTY, OHIO

FILED  
COURT OF COMMON PLEAS

APR 22 9 19 AM '87

STATE OF OHIO, EX REL.  
ANTHONY J. CELEBREZZE, JR.,  
ATTORNEY GENERAL OF OHIO

Plaintiff,

vs.

JUST CRICKET CONDOMINIUMS  
44 WESTMINISTER LANE  
KENT, OHIO 44240

and

RICHARD A. LAFFERTY, President  
P.O. BOX 100  
TALLMADGE, OHIO 44278

Defendants.

CASE NO. 87CV0504

JUDGE \_\_\_\_\_

DELORES FLECK  
CLERK

CONSENT JUDGMENT AND  
PERMANENT INJUNCTION

The Complaint in the above-captioned case having been filed herein, and the Plaintiff, State of Ohio, by its Attorney General, Anthony J. Celebrezze, Jr., (hereinafter "Plaintiff"), and the Defendants, Just Cricket Condominiums and Richard A. Lafferty (hereinafter "Defendants"), having consented to the entry of this Decree:

Now, THEREFORE, without trial of any issue of fact or law, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

### I. JURISDICTION

1. This Court has jurisdiction over the subject matter herein pursuant to Chapter 6109 of the Ohio Revised Code. The Complaint states a claim upon which relief can be granted against the Defendants under these statutes. Venue is proper in this Court.

### II. PARTIES

2. The provisions of this Consent Judgment shall apply to and be binding on all Defendants to this action, their officers, directors, agents, servants, employees, assigns, and successors in interest.

### III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in this Complaint that the Defendants have operated a public water supply facility at Just Cricket Condominiums in violation of Section 6109 and various state water supply regulations. Compliance with the terms of this Consent Judgment shall constitute full satisfaction of any liability by Defendants, and all their employees and former employees to the State of Ohio for all claims under such laws known to Plaintiff at this time.

4. Nothing in this Judgment shall be construed to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint or addressed by this Consent Judgment.

#### IV. COMPLIANCE SCHEDULE

Defendants shall achieve compliance with section 6109. of the Revised Code and the regulations promulgated thereunder according to the following compliance schedule:

- A. Within thirty (30) days of the filing of this Consent Judgment, Defendants shall submit to Ohio EPA, an approvable site for a second well.
- B. Within thirty (30) days of EPA approval of a second well site, Defendants shall install this second well at the site approved by the Ohio EPA and shall submit the following:
  1. a log of the well; and
  2. a report of a constant rate pumping test of at least 24 hours duration performed on said well in accordance with published Ohio EPA guidance;
    - i. Defendants shall provide Ohio EPA two (2) weeks prior notice of the performance of the pumping test; and
  3. a water sample to be taken from said second well at the conclusion of the pumping test for analysis by the Ohio Department of Health Laboratory.
    - i. This water sample will be taken either by Ohio EPA personnel or under their supervision.
- C. Within thirty (30) days of receipt of the results of the water sample described in IV (A) (3) above, the defendant shall submit the following:
  1. detailed drawings and specifications, i.e., approvable plans, for the wells, chemical feed equipment, iron and manganese removal filters, ion-exchange softening equipment (if provided), pumping equipment, water storage facilities, distribution piping and service connections;
    - a. these approvable plans shall incorporate all alterations or revisions required by Ohio EPA comments dated January 2, 1987 on the plans which were received November 4, 1986; and

- b. while it is not required that ion-exchange softening be provided, if utilized, the plans must indicate a method of controlling the softener by pass water; including a meter, a throttling valve and shutoff valve;
  - c. these approvable plans will address the first phase water supply development which will serve a maximum of one hundred (100) units;
    - i. any expansion of the proposed water supply system to serve more than one hundred (100) units will require the approval of additional plans in accordance with Section 6109.07 of the Ohio Revised Code;
2. evidence of system ownership in accordance with Section 6109.08 of the Ohio Revised Code.
- a. if the system is to be owned by a resident homeowners' association, the following must be submitted:
    - i. evidence that ownership of the well sites and water plant is the property of the resident homeowners' association including evidence of ownership of sanitary control of all property within a 120 foot isolation radius around each well;
    - ii. a completed copy of the articles of incorporation of the homeowners' association;
    - iii. a copy of the bylaws of the homeowners' association;
    - iv. a copy of the appointment of agent;
    - v. a listing of the officers and/or directors of the homeowners' association;
    - vi. copies of the completed escrow agreements; and
    - vii. evidence that the escrow amount has actually been deposited in the financial institution specified in the agreements.
- D. Within 90 days after the Ohio EPA has approved plans, Defendants shall commence construction and installation of the system in strict accordance with the approved plans;

F. Within ninety (90) days after construction or installation is commenced, the construction and installation of the system in accordance with the approved plans shall be completed.

V. STIPULATED PENALTIES

6. Defendants shall pay a stipulated penalty of fifty dollars (\$50.00) for each day that they are not in compliance with the above schedule. Defendant shall pay the stipulated penalty upon written demand from the Plaintiff's counsel. The penalty will be paid within seven (7) days of said demand by delivering a certified check to Plaintiff's counsel, Sharon Sigler or her successor, payable to "Treasurer, State of Ohio". This stipulated penalty is not to be suspended in whole or in part. Defendant waives all rights it may have to contest the imposition of these stipulated penalties for violations of this Court Order except the defense that they did in fact comply.

7. Plaintiff may choose not to demand payment of the stipulated penalties described above in situations where Plaintiff believes stipulated penalties are not adequate to facilitate compliance with Section 6109 of the Revised Code and the regulations promulgated thereunder. On occasions where Plaintiff chooses not to demand the payment of the stipulated penalty pursuant to paragraph 6 above for a failure to demonstrate compliance with Section IV of this Court order, or on occasion where Defendants otherwise violate the terms of

this Consent Judgment, Plaintiff reserves whatever rights it has in contempt or otherwise to seek redress for these violations.

VI. PERMANENT INJUNCTION

8. Defendants, the officers, directors, agents, servants, employees, assigns, successors in interest are permanently enjoined from constructing more than the current one hundred (100) housing units prior to the submittal to and approval of additional plans by Ohio EPA, as required by Chapter 6109 of the Revised Code.

9. Defendants, the officers, directors, agents, servants, employees, assigns, and successors in interest are permanently enjoined from violating any provisions of Chapter 6109 of the revised code and any regulations promulgated thereunder.

VII. CIVIL PENALTY AND FINE

10. Defendants shall pay, pursuant to Ohio Revised Code 6109.33, a civil penalty of fifteen thousand dollars (\$15,000). This civil penalty shall be paid in five yearly installments of three thousand dollars (\$3,000.00) each. The first three-thousand dollar (\$3,000.00) installment shall be due fourteen (14) days following the filing of this consent judgment. The remaining four installments will be payable on

or before March 31, 1988, March 31, 1989, March 31, 1990 and March 31, 1991 respectively. Payments shall be made by delivering to Plaintiff's counsel, Sharon Sigler, or her successor, for payment into the State Treasury, certified checks in the above amounts, made payable to "Treasurer, State of Ohio."

11. In the event that more than one hundred (100) housing units are constructed prior to the approval of additional plans as provided for in Section IV (B) (1) (c) (i), Defendants shall be in contempt of this court order, and shall pay to the Treasurer of the State of Ohio a fine of one hundred thousand dollars (\$100,000). The imposition of this fine is automatic and immediate, payment shall be made within seven (7) days of said violation by delivering to Plaintiff's counsel, Sharon Sigler, or her successor, a certified check in the above amount, made payable to "Treasurer State of Ohio."

VIII. OTHER STATUTES AND REGULATIONS

12. Nothing in the Consent Judgment shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to Defendants' facility. Plaintiff reserves all rights and privileges except as specified herein.

IX. MISCELLANEOUS

13. The Court shall retain jurisdiction of this matter for the purpose of enforcing compliance with the terms of this Consent Judgment.

14. All reports, requests, and information submitted to Plaintiff by Defendants pursuant to this Consent Judgment shall be submitted to:

For Ohio EPA - Central Office

Ashley Bird  
Division of Public Water Supply  
Ohio Environmental Protection Agency  
361 East Broad Street  
Columbus, Ohio 34216-1049

For Northeast Office

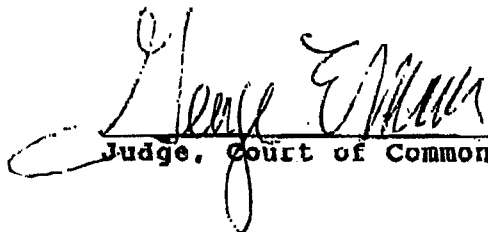
Division of Public Water Supply  
Ohio Environmental Protection Agency  
2110 East Aurora Road  
Twinsburg, Ohio 44087

or to such persons and addresses as may hereafter be otherwise specified, in writing.

X. COSTS

15. The costs of this action are hereby assessed against the Defendants.

Date

  
\_\_\_\_\_  
Judge, Court of Common Pleas



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STATE OF OHIO, EX REL.  
ANTHONY J. CELEBREZZE, JR.,  
ATTORNEY GENERAL OF OHIO

Plaintiff,

vs.

JUST CRICKET CONDOMINIUMS  
44 Westminister Lane  
Kent, Ohio 44240

and

RICHARD A. LAFFERTY, President  
P.O. Box 108  
Tallmadge, Ohio 44278

: CASE NO. 87 CV-0504  
:  
: JUDGE GEORGE F. ~~MARTIN~~ <sup>FILED</sup>  
: COURT OF COMMON PLEAS

APR 22 9 20 AM '87

DELORES REED  
CLERK

ORDER

It appears to the court that the order previously entered by the clerk in the above entitled action is incorrect because of the inclusion of the words "Within thirty (30) days of the signing of the Consent Judgment," on page 6 at the beginning of paragraph 10.

It further appears that the mistake mentioned in paragraph 1 of this order occurred through an inadvertent clerical error.

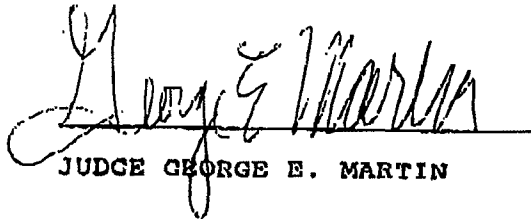
It is therefore ordered that the order previously entered, numbered 87 CV 0504, and dated April 3, 1987, be corrected by deleting the words "Within thirty (30) days of the signing of this Consent Judgment" from the beginning of paragraph 10 on page six of the order. The sentence shall now begin "Defendants shall pay".

JR 243 PAGE 807

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It is further ordered that this order as corrected, be entered nunc pro tunc to appear of record as of April 3, 1987, that being the date when the order was originally entered and erroneously transcribed.

DATED: \_\_\_\_\_, 1987

  
JUDGE GEORGE E. MARTIN

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