

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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RAYMOND TARTAGLIONE, individually and as a shareholder  
of KUDER ISLAND COLONY, INC. suing on behalf  
of himself and on behalf of all the shareholders  
thereof similarly situated

Index No.

Plaintiff,

-against-

AFFIDAVIT OF  
WILLAM CANAVAN

KUDER ISLAND COLONY, INC., BEN MINARD in  
his individual capacity and as president of KUDER ISLAND  
COLONY, INC., JASON ANDERSON, in his individual  
capacity and as vice-president of KUDER ISLAND COLONY,  
INC., JOANN MOLLOY, in her individual capacity and as  
treasurer of KUDER ISLAND COLONY, INC., MARTIN  
EDERER, in his individual capacity and as secretary of  
KUDER ISLAND COLONY, INC., and LORRAINE VOLPE  
in her individual capacity, as director and as past president  
of KUDER ISLAND COLONY, INC., MARGARET  
JOHNSON, in her individual capacity and as director of  
KUDER ISLAND COLONY, INC., and HELEN  
CUNNINGHAM, in her individual capacity and as director  
of KUDER ISLAND COLONY, INC.,

Defendants.

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STATE OF NEW YORK                    )  
  ) ss.:  
COUNTY OF WESTCHESTER        )

William Canavan, being duly sworn, deposes and says:

1. I am a certified geologist and currently the president of HydroEnvironmental

Solutions, Inc., with expertise in analysis, operation, maintenance and implementation of water supply and waste water systems, including analysis of impacts upon ground water and water supply.

A copy of my professional resume is annexed hereto as Exhibit “L.”

2. Recently, I have had the opportunity to assess the impacts to the groundwater and the Long Island Sound as a result of the use of the non-engineered subsurface sewerage disposal systems for the existing thirty-three (33) homes situated on Hen Island, located in the Long Island Sound off the coast of Rye, New York. I also assessed the cistern water collection systems currently utilized by the Hen Island residents for household water use.

3. On May 3, 2007, I conducted a site visit to Hen Island, an approximately thirty (30) acre island (twenty-five (25) acres at high tide) located between Milton and Mamaroneck Harbors along the Eastern Shore of the Long Island Sound. It consists of a single till covered bedrock island with thirty-three (33) residences located on the “North Island,” “Middle Island” and “South Island.” The North Island currently has fifteen (15) homes situated on it, the Middle Island has four (4) homes on it, and the South Island has fourteen (14) homes on it. Thirty-two (32) of the residences use subsurface disposal systems, or privies and one residence on the South Island is served by an outhouse.<sup>1</sup>

4. As observed, none of the residences comply with the applicable Westchester County Department of Health (“WCDOH”) Codes and Regulations, for the design and Construction of Residential Subsurface Sewage Treatment Systems (effective January 1, 2002). None of the existing systems are engineered with appropriate septic tanks and leaching fields designed in accordance with WCDOH Codes, New York State Regulations or the Department of Environmental Protection Regulations as they relate to location and distance from residential structures, depth to groundwater, depth to bedrock, proximity to wetlands and surface body water.<sup>2</sup>

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<sup>1</sup> For example, Exhibit J, Photographs, at photograph #2 shows a trough used for the collection of drinking water situated above an open cesspool. As more clearly shown in photograph # 15, a white PVC pipe is depicted coming out of the residence out of which household waste water, including untreated sewage flows directly into the ground. Another open cesspool is depicted in photograph # 24, underneath the black water troughs used by this resident to collect rainwater for household use. Photographs #23 and #26 depict an operational outhouse.

<sup>2</sup> For example, the Westchester County Sanitary Code requires that water supplies be “protected from actual or

5. These illegal systems are therefore discharging high concentrations of nitrates and phosphates, as well as pathogens and other bacteria associated with wastewater to the groundwater beneath Hen Island, as well as to the nearby surface water of the Long Island Sound, thus contaminating the ground water and the surface waters of the Long Island Sound, and creating a dangerous and noxious condition, not only for the resident shareholder-licensees, but also for the public at large. *See*, photographs of unsanitary conditions annexed hereto as Exhibit “J.”

6. In addition, I observed that all of the thirty-three (33) residences currently obtain water for household use by means of cisterns, filled by drainage from rooftop leaders and gutters. The means of collection are antiquated at best and poorly maintained. In their current condition many of the collection cisterns are exposed to the atmosphere and act as breeding grounds for mosquitoes. Such collection cisterns are also subject to impacts from surface water runoff and contaminants, and expose the users to additional unsanitary conditions as they are exposed to the atmosphere, contain bird droppings, and are subject to surface water runoff and contaminants. As such, these so-called “systems” of water collection are unsanitary, are possible vectors of viral infections, and otherwise fail to meet current regulations that apply to residences.

7. In my expert considered opinion, based upon my personal observation and experience, I would recommend certain actions in order to ensure the sanitary and safe disposal of household waste water and sanitary household potable water supply. Those recommendations would include the use of an existing easement with the City of Rye to allow hookup to the sanitary sewer and municipal water supply system. Such a hookup would mitigate the discharge of untreated sewerage into the ground water and Long Island Sound and ensure a safe and sanitary potable drinking water supply for all Hen Island residents. As an interim measure, the residents should be

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potential pollution and so maintained as to deliver at all times potable water.” It also provides that “no person shall construct or maintain any privy, cesspool, sewage disposal system, pipe or drain so as to expose or discharge the sewage contents or other deleterious liquid or matter therefrom to the atmosphere or on the surface of the ground . . . so as to endanger any source of supply of drinking water nor so as to discharge into any water course or body of water. . . .” Westchester County Sanitary Code §§ 873.701 and 873.731. Similarly, the State of New York prohibits the use of an unapproved or contaminated water supply sources and further prohibits pollution of the waters of the Long Island Sound by sewage, among other things. A copy of the relevant provisions of the Westchester County Sanitary Code is annexed hereto as Exhibit “M.” *See generally*, New York Environmental Conservation Law §§ 17-0501 and 17-0503.

required to use composting toilets to ensure public health and safety until the Island can be connected to municipal sewer and water facilities offered by the City of Rye. In addition, the existing homes should not use cistern collected water for household use.

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WILLIAM A. CANAVAN

Sworn to before me this

\_\_\_\_ day of May, 2007

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NOTARY PUBLIC