

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2283CV00585

_____)
TROY CURRENCE <i>et al.</i> ,)
)
Plaintiffs,)
)
v.)
)
A.D. MAKEPEACE COMPANY <i>et al.</i> ,)
)
Defendants.)
_____)

AFFIDAVIT OF JAMES F. KANE

I, James F. Kane, hereby depose and state as follows:

1. My name is James F. Kane. I am the President and CEO of the A.D. Makepeace Company (“Makepeace”). I have worked at Makepeace for over 17 years. Prior to my current role as President and CEO of Makepeace, I served as the Chief Operating Officer at Makepeace.

2. Makepeace is a cranberry grower headquartered in Wareham, Massachusetts. It is the largest cranberry grower in the world. Today, Makepeace operates more than 1,700 acres of cranberry bogs in Massachusetts. Makepeace is a founding member of the cranberry-growers cooperative, Ocean Spray Cranberries, Inc. In a given year, Makepeace produces approximately 375,000 barrels of cranberries.

3. Cranberries grow on vines in what is commonly referred to in New England as a bog. A bog is a low-lying earthen bed. A typical cranberry bog farm can span several acres. Constructing a cranberry bog is a costly and labor-intensive project, which can potentially take many years to complete due to labor and economic circumstances. To construct a cranberry bog, the surrounding land must first be reduced to an appropriate elevation and leveled to reduce overall

water usage. This practice is consistent with the Best Management Practices for Massachusetts Cranberry Production, published by the UMass Cranberry Station in partnership with the Massachusetts Department of Agricultural Resources and the Massachusetts Farm Bureau Federation (“UMass BMPs”). The UMass BMPs instruct cranberry growers to make sure that cranberry bogs are level so that water is evenly dispersed throughout the bog when the bog is flooded. This, in turn, reduces the overall amount of water used in cranberry production. After the surrounding land is brought down to an appropriate height and leveled, additional earth must then be removed to create the bog itself.

4. Cranberry bogs require irrigation. Because of this, a cranberry bog is often supported by a nearby reservoir from which a cranberry grower can draw water. A cranberry bog might also be supported by a tailwater recovery pond, into which runoff irrigation water can be funneled and reused to irrigate the bog. The UMass BMPs encourage the use of tailwater recovery ponds as a means to promote water conservation. The construction of such reservoirs and tailwater recovery ponds is also labor-intensive and costly. To construct or prepare a reservoir or tailwater recovery pond, the surrounding land typically must be brought down to an appropriate elevation and leveled. This allows the water in the pond or reservoir to be evenly dispersed and prevents the reservoir or pond from flooding adjacent, lower-lying land. After the surrounding land is brought down to an appropriate elevation and leveled, additional earth must then be excavated to create the reservoir or pond itself.

5. The sand and gravel that is removed during construction of a cranberry bog, reservoir, or pond is a valuable resource for a cranberry grower. This sand and gravel, for example, can be used to construct another cranberry bog, to construct dikes and canals that help irrigate the bogs, or to maintain bogs during the winter months. It is also common for a cranberry grower to sell that sand and gravel to help finance the construction project or farm operation itself. For

example, a cranberry grower might sell the sand and gravel which it does not need for farming purposes to other cranberry growers or other customers to finance the renovation of existing or the construction of new cranberry bogs.

6. Agricultural projects are an integral part of Makepeace's farming operations. Makepeace is continually renovating its older cranberry bogs. Makepeace also constructs new cranberry bogs. In Carver, Massachusetts, Makepeace is constructing three new cranberry bogs and a dual-purpose reservoir and tailwater recovery pond on land located off 46 Federal Road (Carver Assessors Map 131, Lot 2-4); and four new cranberry bogs and a dual-purpose reservoir and tailwater recovery pond on a lot located off 59 Federal Road (Carver Assessors Map 131, Lot 1-2C). On a lot located off Federal Road and Hammond Street (Carver Assessors Map 131, Lot 1-3), Makepeace is constructing an agricultural reservoir that will be used to supply cranberry bogs with water. To the best of my knowledge, information, and belief, Makepeace does not own the land identified as Carver Assessors Map 131, Lot 1-4.

7. Work on bog construction and maintenance projects has been delayed because of hardships faced throughout the cranberry industry off and on for many years. In the past decade, the price of cranberries has dropped by more than 50% due to market conditions. The cranberry industry has also suffered from a tariff on cranberries that China imposed in 2018. In the beginning of 2020, cranberry growers, including Makepeace, also struggled because of the COVID-19 pandemic and the corresponding economic downturn. Makepeace's ability to work on these projects is limited by, among other things, the amount of equipment it has, the number of employees it can dedicate to these projects, and its finances. During this time, Makepeace has worked strategically on the projects at Sites 1, 2, and 3, at times prioritizing other Makepeace projects located elsewhere.

8. Despite these difficulties within the cranberry industry, Makepeace is still working to bring the projects at Sites 1, 2, and 3 to completion. It is hoped that, when complete, these cranberry bogs will be used for many decades to cultivate cranberries, thereby increasing Makepeace's cranberry output. The initial excavation and leveling of Site 2 is largely complete, and the agricultural reservoir has been partially excavated.

9. If work on the projects at Sites 1, 2, and 3 were to cease Makepeace would be forced to lay off approximately 32 employees who work at the project sites. That equals approximately \$3.7 million dollars annually in lost payroll to these employees. It is my understanding that these individuals rely on their jobs at Makepeace to support themselves and their families.

10. If work on the projects at Sites 1, 2, and 3 were to cease Makepeace itself would also suffer significant hardship. This would include further delay of the work on these cranberry projects and the loss of substantial revenue.

11. Makepeace sells sand and gravel that it does not use on its own farms to approximately 30 other cranberry growers located in Massachusetts. It is my understanding that if Makepeace were not allowed to sell sand and gravel to these cranberry growers, it would disrupt their farming operations significantly as the high quality sand needed for farming is not plentiful.

12. Makepeace sells sand and gravel to approximately 12 customers in Massachusetts involved in manufacturing concrete and asphalt. In addition, Makepeace sells earth materials to numerous other customers in Massachusetts and New England, including youth sports leagues, towns, school districts, colleges and universities, and Massachusetts state agencies. If Makepeace were barred from selling earth materials removed from the project Sites to these customers, it would significantly disrupt Makepeace's relationships with these customers and potentially disrupt the operations of these customers themselves.

13. Approximately 60 independent truck operators also help transport materials from these project Sites. If work were to cease on the projects located at Sites 1, 2, and 3, these small, family-owned independent truck operators would lose this work.

14. The earth removal work associated with the projects at Sites 1, 2, and 3 generates substantial revenues to the Town of Carver in the form of quarterly inspection fees paid under the relevant earth removal permits. If work were to stop on these projects, the Town of Carver would lose this stream of revenue.

15. The work performed at Sites 1, 2, and 3 also contributes to the local economy, as, among other things, the machines and trucks involved in these projects require fuel and repairs. If work on these projects were to cease, such expenses would not be needed. Based on past years, Makepeace estimates that this would result in the loss of millions of dollars of spending.

16. I am aware that the Plaintiffs in this lawsuit have alleged that “the agricultural plans for Sites 1, 2 and 3 were concocted as a ruse to obtain earth removal permits.” This allegation is false. The projects underway at Sites 1, 2, and 3 are agricultural projects intended to expand and maintain Makepeace’s operations as a cranberry grower. The claim that Makepeace never intended to build the cranberry bogs and reservoirs located at Sites 1, 2, 3 is not true. Makepeace has always intended to construct – and, in fact, is working to construct – the proposed cranberry bogs and agricultural reservoirs designed by GAF Engineering, Inc.

17. I have reviewed the Affidavit of Patrick Garner. I was with Mr. Garner (who had been retained by Save the Pine Barrens, Inc.) when he visited Sites 1, 2, and 3, on May 3, 2021. On that day, Mr. Garner and members of the Carver Earth Removal Committee (“ERC”) were shown the work being performed at Sites 1, 2, and 3. The earth removal that Mr. Garner saw at Sites 1 and 3 was being done to construct the cranberry bogs and reservoirs that will be located at these Sites. Mr. Garner is incorrect when he claims to have not seen “any evidence of the construction of the

cranberry bog or reservoir” being built at Site 1 and Site 3. At Site 2, Mr. Garner was likewise shown earth removal work being done to build to agricultural reservoir to be located at this Site. The earth removal that Mr. Garner saw at Site 2 was being done to construct the agricultural reservoir to be located at Site 2.

18. I have reviewed the Affidavit of Jimmy L. Powell. The pictures included in his affidavit appear to show work at Sites 1, 2, and 3 being done to construct the cranberry bogs and reservoirs that are intended to be located at these Sites.

19. I have reviewed the Affidavit of Rebecca Lipton. The first seven pictures included in her affidavit appear to show work being done to construct the cranberry bogs and reservoirs that are intended to be located at these project Sites, along with stockpiles of organic material being stored at the Sites for future use in Makepeace’s farming operations.

20. I have reviewed the October 10, 2010 letter from the Massachusetts Historical Commission submitted as Plaintiffs’ Exhibit 10. It is my understanding that the design of the cranberry project located at Site 1 was modified to avoid impacting the Wankinco Bog Findspot referenced in this letter.

Signed under the pains and penalties of perjury this 24th day of October 2022.



James Kane