

Update

Spring 2006



Appellate Division Determines That A Property Owner Who Expended Costs For Construction Of A Portion Of A Sewer System Is Entitled To Reimbursement Of Its Fair Share Costs Of The System

K-Land Corporation No. 28 (K-Land) acquired approximately 80 acres of land in Vineland, New Jersey that previously had been approved for development of a mobile home park. The mobile home park's completion was conditioned on K-Land's construction of an off-site sewer line (force main) and a pumping station to connect the mobile home park to the existing facilities of the Landis Sewerage Authority (LSA).

In late 1988, K-Land began discussions with LSA regarding sewer services to the mobile home park. LSA recognized that there was a need to service existing and future property owners and therefore requested that K-Land increase the size of the force main from six to eight inches, and increase the size of the pumping station. K-Land agreed, but asked that LSA apply a "fair share" policy allowing for contribution by other users according to their fair share of the cost of the facility. K-Land also requested that LSA provide a credit against connection fees. While these discussions were ongoing, K-Land installed the eight-inch force main before its permit to do so expired, at a cost of approximately \$400,000.

In October 1989, the City of Vineland asked K-Land whether the force main would be dedicated to LSA, to which K-Land responded that it would eventually be owned by LSA. K-Land also noted that the cost of the installation or the allocation of such costs

was a completely different issue. In the meantime, K-Land was engaged in discussions with other potential users of the proposed sewer facility, including Berryman's Branch, Ltd. (Berryman's), a mobile park operator that was seeking to convert from a septic system to sewer service.

In September 1990, LSA agreed with K-Land to utilize a basic "fair share" policy. LSA did not agree, however, to provide K-Land with credits against connection for unreimbursed costs. Despite this fact, Berryman's was willing to proceed in order to obtain sewer service and agreed that K-Land would be compensated by other users until the unreimbursed costs for the construction of the force main correlated to K-Land's, Berryman's, and Lizzio's (another potential user) pro rata shares. An agreement was signed, but was never implemented because LSA would not allow Berryman's to extend payment of its connection fees over time for its existing mobile home pads.

In July 1991, the City of Vineland filed a complaint against K-Land, Berryman's, LSA and the County of Cumberland (County) seeking a declaratory judgment concerning the ownership of the eight-inch force main previously constructed by K-Land. (Apparently, the force main had been installed partially on rights-of-way owned by the City of Vineland and the County.)

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Appellate Division Determines That A Property Owner Who Expended Costs For Construction Of A Portion Of A Sewer System Is Entitled To Reimbursement Of Its Fair Share Costs Of The System (*Continued*)

K-Land failed to answer, and a default judgment was entered in January 1992. The remaining parties executed a consent judgment on June 4, 1992. No provision was made for payment to K-Land of the “fair share” costs of the force main from Berryman’s or any other potential user.

K-Land believed that the terms of the consent judgment were prejudicial to K-Land and, after negotiations proved unsuccessful, K-Land filed a complaint against LSA and Berryman’s in September 1994. The trial court granted LSA’s and Berryman’s motions to dismiss because of K-Land’s failure to assert its claim in the earlier declaratory judgment action brought by the City of Vineland to establish title to the force main. The Appellate Division affirmed, but the Supreme Court reversed, finding that the entire controversy doctrine did not apply to bar K-Land’s lawsuit.¹

On remand, the trial court once again dismissed K-Land’s complaint with prejudice, concluding that LSA had no obligation to assess and collect fair share contributions for the force main from Berryman’s or other users. The trial judge acknowledged that K-Land may be due some reimbursement, but found reimbursement limited to the difference between the cost of an eight-inch main and a six-inch main, the cost of which had been exceeded by the funds expended by LSA to repair the line and make it operational, and that in any event, K-Land’s proofs were

insufficient to prove its construction costs. In an opinion decided on February 7, 2006, the Appellate Division disagreed.

The court observed that there was no dispute that the force main constructed by K-Land was fully operational and being used by numerous property owners. The court further observed that K-Land was never reimbursed the fair share cost of the force main from Berryman’s or other users (and was not given a credit against sewer connection fees for any remaining deficiency), despite the fact that reimbursement to K-Land was always contemplated. The court thus found that the developer was being burdened with more than its pro rata share of the cost, contrary to law. Rather, K-Land was being burdened with the entire cost of constructing the force main, in violation of the equality and uniformity provisions found in the Sewerage Authorities Law, N.J.S.A. 40:14A-1 to -45 and the fact that tentative agreements for reimbursement were never finalized does not act as a bar to K-Land’s claim. The consent judgment, to which K-Land was not a party, also did not preclude K-Land’s right to reimbursement.

Finally, given the operability of the force main and the continuing benefits its users enjoy, there are no principles of estoppel, waiver or laches that justify precluding K-Land’s claim for reimbursement. Accordingly, the trial court’s holding was reversed, and the matter was remanded for a determination of the appropriate amount of reimbursement due to K-Land, as well as the method of its calculation.²

1. *K-Land Corp. No. 28 v. Landis Sewerage Auth.*, 173 N.J. 59 (2001).

2. *The Appellate Division also disagreed with the trial court’s findings that K-Land’s proofs were insufficient to establish its construction costs.*



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