

Consolidated Rail Corporation -)
Abandonment Exemption -) AB 167 (Sub-no 1189X)
in Hudson County, NJ)

237836

ENTERED

Office of Proceedings

March 2, 2015

Part of
Public Record

Motion to Strike

City of Jersey City moves to strike the Reply filed by interveners 212 Marin Boulevard, LLC, et al, on or about February 10, 2015 in this proceeding. 49 C.F.R. 1114.13(c).

Background. This Board long ago rejected the request of Consolidated Rail Corporation ("Conrail") to exempt this proceeding from the OFA remedy and instead directed Conrail to provide City with information necessary to prepare an OFA pursuant to 49 C.F.R. 1152.27(a). Decision in AB 167-1189X, served May 26, 2009. Conrail has supplied no 1152.27(a) information. City filed a motion to compel the information on December 23, 2014. City attached (under seal) a verified statement by a shipper interested in transload services in the relatively near future that could be satisfied using the Harsimus Branch at issue in this proceeding. That statement was provided in order to show that the City had bona fide rail reasons for wishing to proceed.

In reply, Conrail and the LLCs in essence reiterated Conrail's previous request, rejected by STB in 2009, for an OFA exemption. The LLCs in their reply also attacked the veracity

of the shipper (and the integrity of City and its counsel for submitting the shipper statement), and also claimed the City lacked interest in OFA because of failure timely to respond to another round of state court litigation brought by the LLCs against the City (namely, 247 Manila v. City, HUD-L-4954-14).

Because the LLCs attacked the truthfulness of the shipper, and the integrity of the City and its rail counsel in relying on the shipper, City on January 20, 2015, sought leave to file a reply. In the tendered reply (including material under seal), City showed that the LLCs were in error. (In a major blunder, the LLCs' attorney predicated his mistaken allegations on the wrong address for the shipper's relevant facility.) In part IV of the January 20 Reply, City also responded to the LLCs' misleading arguments about 247 Manila.

LLCs' latest reply. The LLCs, without any leave being sought, on February 10 filed a reply to City's January 20 reply. The LLCs' entire February 10 reply should be stricken. The LLCs' February 10 reply adds nothing, appearing instead to call again for an OFA exemption, and purporting to raise more misleading arguments in that regard. Some of the LLCs' claims continue to relate to 247 Manila Ave. v. City of Jersey City, Hudson County Superior Court HUD-L-4954.14. In that state case, the LLCs sued the City to prevent it from using the OFA remedy. The LLCs claimed in their first reply to City's motion to compel

1152.27 information that the City's "default" in 247 Manila allegedly showed City was not interested in OFA. It turns out that the LLCs on February 3 agreed to a consent order lifting the "default" on which they previously relied, and indeed, submitted same to the Hudson County Superior Court. That puts to rest the LLCs' earlier claim that the City was not defending the 247 Manila suit and thus did not care about OFA. All else that the LLCs have to say concerning 247 Manila is misleading or immaterial, as is the suit itself.

The additional reply by the LLCs, for which no leave was sought, filed February 10 should be stricken. It is unjustified and adds nothing.

Respectfully submitted,

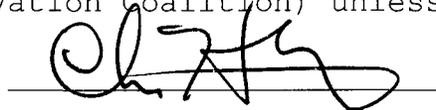


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(206) 546-1936
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Attached: LLCs' February 3, 2015 filing in 247 Manila

Certificate of Service

The undersigned hereby certifies service by posting the foregoing in by deposit with U.S. Mail, postage prepaid first class, on or before the 2d day of March 2015 addressed to the parties or their representatives per the service list below, and by electronic delivery to Andrea Ferster (General Counsel of Rails to Trails Conservancy) and Maureen Crowley (representative of Embankment Preservation Coalition) unless otherwise indicated.



Service List

[AB 167 (Sub-no. 1189X)]

- with address corrections as of August 2014 -

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And the following self-represented individuals or entities:

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February 3, 2015

VIA UPS OVERNIGHT MAIL

Hon. Kimberly Espinales-Maloney, J.S.C.
Superior Court of New Jersey
Hudson County
Administration Building
595 Newark Avenue, Eighth Floor
Jersey City, New Jersey 07306

**Re: 247 Manila Avenue, LLC et al. v. City of Jersey City et al.,
Docket Number HUD-L-4954-14**

Consent Order Vacating Default against Defendants

Dear Judge Espinales-Maloney:

We represent the Plaintiffs in this action in lieu of prerogative writs. On January 13, 2015, Plaintiffs filed a notice of entry of default against Defendants City of Jersey City and Donna Mauer. The Defendants moved to vacate that default.

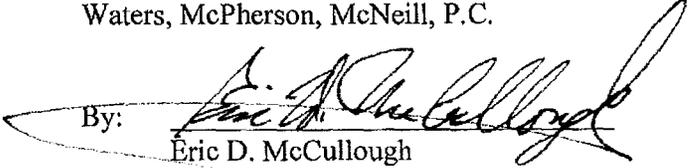
We have agreed to a form of stipulation and consent order with the City's attorney to vacate the default. The order further provides for scheduling of the case management conference pursuant to R. 4:69-4. Enclosed please find the original and one copy of that stipulation and consent order. We respectfully request that the Court enter the form of order. (The City's attorney will be separately confirming the motion to vacate the default will be withdrawn.)

We also enclose a stamped envelope for the return of the filed order.

Respectfully submitted,

Waters, McPherson, McNeill, P.C.

By:


Eric D. McCullough

WATERS, MCPHERSON, MCNEILL
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

Hon. Kimberly Espinales-Maloney, J.S.C.
February 3, 2015
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Enclosures

Cc: John J. Curley, Esq. (*via U.S. mail w/encl.*)
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212 MARIN BOULEVARD; LLC;
280 ERIE STREET, LLC;
317 JERSEY AVENUE, LLC;
354 COLE STREET, LLC;
389 MONMOUTH STREET, LLC;
415 BRUNSWICK STREET, LLC; and
446 NEWARK AVENUE, LLC,

Plaintiffs,

v.

CITY OF JERSEY CITY and DONNA
MAUER, In Her Official Capacity as Chief
Financial Officer of the City of Jersey City

Defendant(s)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, HUDSON COUNTY

Docket Number: HUD-L-4954-14

Civil Action

**STIPULATION AND CONSENT ORDER
VACATING DEFAULT AND PERMITTING
FILING OF ANSWER, AND SCHEDULING CASE
MANAGEMENT CONFERENCE**

This matter having been opened to the Court on behalf of defendants City of Jersey City and Donna Mauer, by and through their attorneys John J. Curley, LLC, for entry of an order vacating the default entered on January 13, 2015 on notice to Plaintiffs by and through their attorneys Waters, McPherson, McNeill, P.C.; and

The parties having reached an agreement for the vacating of the default and filing of an answer on behalf of the Defendants, and having executed this Stipulation and Consent Order Vacating Default and Permitting Filing of Answer, and Scheduling Case Management Conference,

It is, on this _____ day of _____, 2015 ORDERED:

1. The default entered against Defendants City of Jersey City and Donna Mauer on January 13, 2015 is hereby vacated and set aside.

2. The Answer to the Complaint and the Case Information Statement that accompanied Defendants' Notice of Motion shall be promptly filed by the Clerk and entered in the Automated Case Management System.

3. The case management conference pursuant to R. 4:69-4 shall be scheduled for _____, 2015 at _____. The case management conference shall be conducted in person. The parties shall file and exchange their statements of factual and legal issues and exhibit lists on _____, 2015.

4. The execution of this Stipulation and Consent Order Vacating Default and Permitting Filing of Answer, and Scheduling Case Management Conference on behalf of the Plaintiffs shall be without prejudice of their claims and positions, and shall not constitute a waiver of any claim.

5. This Stipulation and Consent Order may be executed by counsel to the parties in counterparts.

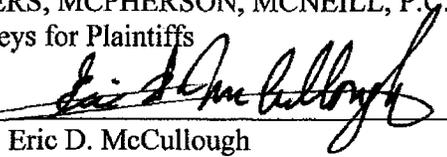
6. A copy of this order shall be served on Plaintiff's counsel by counsel for the Defendants within five (5) days from the date of entry.

HON. KIMBERLY ESPINALES-MALONEY,
J.S.C.

We stipulate to the entry of this Order.

WATERS, MCPHERSON, MCNEILL, P.C.
Attorneys for Plaintiffs

By:

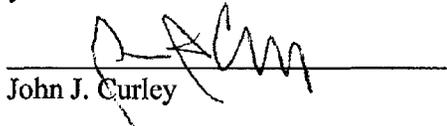

Eric D. McCullough

Dated:

February 3, 2015

JOHN J. CURLEY, LLC
Attorneys for Defendants

By:


John J. Curley

Dated:

January 29, 2015

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