

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

LEGEND’S CREEK LLC, JON RESTIVO and)	
ADEN MOTT)	
Plaintiffs)	
Vs.)	C.A. No. 22-cv-309
)	
THE STATE OF RHODE ISLAND and the)	
RHODE ISLAND DEPARTMENT OF HEALTH)	
Defendants)	

COMPLAINT

Plaintiffs bring this complaint alleging violation of their rights under the Fifth and Fourteenth Amendments of the United States Constitution, Article 1, Sections 2 and 16 of the Rhode Island Constitution, and 28 U.S.C. §§ 1981, 1983, and 1988. Plaintiffs allege that Defendants violated their civil rights by a wrongful taking of their property.

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff Legend’s Creek LLC is a limited liability company formed under Rhode Island law and which operated as Legend’s Creek Farm. At the time of the relevant events, it was located and operating in Rhode Island. Legend’s Creek LLC’s principal place of business is now located in Vermont.
2. Plaintiffs Jon Restivo and Aden Mott are the members of Legend’s Creek LLC. At the time of the relevant events, they were citizens and residents of the State of Rhode Island. They are now citizens and residents of the State of Vermont.
3. Defendant Rhode Island Department of Health (“RIDOH”) is an agency of the Defendant State of Rhode Island. RIDOH regulates the installation and use of commercial kitchens and public water supply systems in Rhode Island, including the issuance of permits for such facilities.

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because Plaintiffs allege Defendants have violated the United States Constitution.
5. Venue in this Court is appropriate pursuant to 28 U.S.C. § 1391 because Defendants are located in this district and the events giving rise to Plaintiffs' claims occurred here.

FACTS

6. Restivo and Mott have been married since 2007.
7. Restivo and Mott formed Legend's Creek Farm on March 16, 2012 for the purpose of selling personal care products through the internet.
8. Restivo is an attorney with Darrow Everett in Providence, Rhode Island.
9. Mott attended Norfolk County Agricultural High School and managed Legend's Creek Farm with Restivo's assistance.
10. Restivo originally purchased a property at 38A Hartford Pike, Foster, Rhode Island ("the Hartford Pike Property") at which Mott and he resided and operated Legend's Creek Farm. However, Plaintiffs wanted to grow raw materials and process food products using those raw materials as well as materials provided by third parties on their own property and operate a commercial kitchen on the property. A RIDOH official told Mott that the Hartford Pike Property could not accommodate these uses because of wetlands on the Property.
11. Accordingly, in July 2014, Restivo purchased the property at 27 Mill Road in Foster ("the Mill Road property") for \$396,750. It was zoned Agricultural Residential with a legal, pre-existing non-conforming commercial use. Restivo and Mott resided at the property and operated Legend's Creek Farm at that location until 2020.
12. Plaintiffs initially grew some raw materials on the farm, including honey as well as some herbs used in herbal salves, and originally made bar soap using soap from goats raised on the farm,

but they also purchased other materials. They processed the personal care products on the property to varying degree depending on the product.

13. In 2014, the Mill Road Property had two dug wells and one drilled well at the time. The drilled well was not operable according to Plaintiffs' engineer, Robert Ferrari. One of the two dug wells was contaminated with bacteria because of a pond on the property. The other dug well serviced a separate building on the property but was otherwise usable. Much of the Property is wetlands and wetland buffer areas under Rhode Island law and cannot be used for other purposes.

14. Under RIDOH regulations, to process and sell food, Legend's Creek Farm needed a commercial kitchen. Legend's Creek Farm built a new barn but RIDOH will not let them put the commercial kitchen in the barn without a public water supply permit. This permit required a public water supply from a well on the property. RIDOH indicated that the existing dug well that was Plaintiffs' water source would not meet RIDOH requirements.

15. In 2018, Legend's Creek Farm filed an application with RIDOH for a new public water supply source in the form of a drilled well.

16. Plaintiffs also filed applications with other state and local governmental entities for necessary permits and approvals, including the Rhode Island Department of Environmental Management ("RIDEM") for a septic system, and the Town of Foster for a building permit.

17. The RIDOH regulations state that the well must be on their property and that it must be 200 feet or more from their property line. However, RIDOH has granted variances from this requirement to others.

18. The RIDOH regulations also require applicants to identify all potential sources of pollution within 1750 feet of the proposed drinking water source (the well) on a map. Legend's Creek

Farm understood that the purpose of this requirement is to provide for testing to determine whether the water on the property to be used is contaminated by nearby sources of pollution. The RIDOH regulations do not state the well must be 1750 feet from any possible source of pollution and RIDOH has admitted that the regulations do not so state. RIDOH has granted other applications for public water supply systems despite the presence of a potential source of contamination within 1750 feet. Moreover, even when a public water supply system permit is granted, the permit-holder must test the well for contamination periodically and report the result to RIDOH.

19. On July 12, 2018, Legend's Creek Farm filed the application and identified an adjoining junk yard, Wright's Auto Salvage ("Wright's" or "the junkyard"), on the map as a possible source of pollution. Wright's has been in business for about 60 years. It is regulated by RIDEM.
20. On information and belief, RIDOH asked RIDEM about Wright's. RIDEM said it had done a visual inspection of Wright's and Wright's had reported it was not polluting but RIDEM had no information on the groundwater under Wright's. RIDEM has the authority to test the groundwater and the water in Hemlock Brook which separates Wright's from the Mill Road Property. RIDOH did not feel RIDEM's inspection addressed the issue of possible groundwater contamination.
21. Based on their discussions with RIDOH personnel and to establish that the proposed well could produce potable water, Legend's Creek Farm proceeded to hire a company to drill the well. Ferrari, who provides training for RIDOH officials, selected the site for the well as set forth in the application. It is 800 feet deep and produces potable water.
22. Legend's Creek Farm also proceeded with the other work necessary to operate the food processing business including building the septic system, constructing the barn and outfitting

the space where the commercial kitchen is intended to go with code-compliant building materials.

23. On October 5, 2018, RIDOH denied the application stating that “The existence of this significant source of pollution [Wright’s] within the wellhead protection area, is inconsistent with the Regulations.” RIDOH was unable to identify with what part of the Regulations this was inconsistent.

24. RIDOH admits it has no data showing any actual contamination of the Mill Road Property’s groundwater. However, it took the position that the possibility of groundwater contamination by Wright’s is sufficient reason to deny Legend’s Creek Farm’s application.

25. With regard to surface water, the Legend’s Creek Farm property is upgradient from Hemlock Brook, the stream separating Legend’s Creek Farm from Wright’s. Most of the Wright’s property slopes away from the Brook but some does slope towards the Brook. The Brook would carry any pollution in surface water towards Barden Reservoir which feeds into the Scituate Reservoir and which is the largest reservoir in the State. RIDOH ensures that the water from the Scituate Reservoir meets drinking standards. RIDOH states it has no concerns that Wright’s is contaminating Hemlock Brook and causing significant contamination in the Scituate Reservoir. Accordingly, it is highly unlikely that any pollution in surface water would move from the junkyard to the Legend’s Creek Farm property.

26. With respect to groundwater, RIDOH does not know in what direction it would flow from Wright’s. Ferrari believes it is much more likely that any groundwater pollution from the junkyard would move downgradient toward the Barden Reservoir.

27. On November 5, 2018, Legend’s Creek Farm submitted a written appeal of RIDOH’s initial decision.



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