

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

S. TINNERELLO & SON, INC.	:	CIVIL ACTION NO.
Plaintiff	:	
	:	3:97-cv-01273(RNC)
vs.	:	
	:	
	:	
TOWN OF STONINGTON, STONINGTON	:	
RESOURCE RECOVERY AUTHORITY;	:	
and DONALD R. MARANELL,	:	
First Selectman	:	
	:	
Defendants	:	

THIRD AMENDED COMPLAINT

INTRODUCTION

This action challenges the constitutional validity of a town ordinance and regulations that immediately prohibit the conduct of a previously lawful occupation under pain of penalty; retrospectively invalidate all contracts entered into regarding that trade; and appropriate the personal property of the business proprietors; all to convert the monetary value of the businesses, contracts and property, to satisfy a Town debt.

PARTIES

1. The plaintiff S. TINNERELLO & SON, INC. occasionally does business under the name of Sal Tinnerello & Sons, Inc. and will be referred to hereafter as ("TINNERELLO"). TINNERELLO became incorporated in September, 1993 after a purchase of all the assets of S. Tinnerello and Sons Disposal, Inc. and has its principal place of business in New London, Connecticut. The

plaintiff is engaged in interstate commerce as a waste hauler which removes, collects, transports, and disposes of waste pursuant to contracts with individual generators of waste.

2. Plaintiff conducts business in Stonington, Connecticut, is a taxpayer in that town, and is registered to do business in the State of Connecticut.

3. The defendant Town of Stonington ("TOWN") is a municipal corporation organized and existing under the laws of the State of Connecticut.

4. The defendant Stonington Resource Recovery Authority ("AUTHORITY") claims to be an authority established by the Town.

5. The defendant Donald R. Maranell is the First Selectman of the Town and the Chairman of the Authority.

JURISDICTION AND VENUE

1. This action arises under the Civil Rights Act of 1871, 42 U.S.C. §§ 1983 based upon violations of the Contract Clause, Substantive and Procedural Due Process, and the Commerce Clause.

Upon removal from State Court, this Court has jurisdiction pursuant to 28 U.S.C. § 1331. This court has pendant jurisdiction over the state causes of action.

2. Venue is proper in this judicial district pursuant to 18 U.S.C. § 1965.

FACTUAL ALLEGATIONS

3. The plaintiff Tinnerello or its predecessor in interest has engaged in the unhindered waste collecting and hauling business in the Town for the past twenty-eight (28) years. Tinnerello has approximately twenty (20) employees in southeastern Connecticut.

4. Tinnerello currently services approximately seventy (70) commercial businesses and numerous residential customers in the Town.

5. Plaintiff provides waste hauling services to its customers located within the Town pursuant to contracts, many of which encompass a minimum period of two (2) years.

6. Pursuant to the contracts, owners of real property located in the Town have authorized plaintiff to utilize a portion of their property on which to place waste containers ("containers").

7. Between ninety and ninety-nine percent (90%-99%) of Tinnerello's contracts extend beyond July 1, 1997.

8. In order to obtain and maintain these customers, the plaintiff has invested substantial sums to market and advertise its business.

9. In order to meet its obligations under the contracts, during the past year, the plaintiff has invested substantial sums in the purchase and insurance of additional equipment including waste hauling trucks and containers.

10. In addition, in order to meet its obligations under the contracts, the plaintiff has employed additional employees during the past year.

11. In addition, in order to meet obligations under several of the contracts, the plaintiff has installed concrete pads upon which to place its containers. These concrete pads are located upon the real property of Town residents and have been placed there pursuant to contracts between plaintiff and Town residents.

12. The income from the contracts with Stonington customers comprises between one-third to one-fourth of the Tinnerello's gross income.

13. Plaintiff had a reasonable expectation, when it invested in building its business in the Town, entered into the contracts with individuals within the Town, and made investments in reliance upon these contracts, that the contracts would be valid and enforceable and that its business and goodwill would continue to grow, unhindered by government intervention.

14. Plaintiff had a reasonable expectation when it purchased containers and placed them on the property of Town residents that it would be able to continue to utilize that property so long as the contract between plaintiff and the residents remained in effect.

15. Plaintiff's expectations were not diminished by the existence of any state or local regulation. The Town did not

require plaintiff to obtain any permit to operate within the Town. Contracts between plaintiff and its customers were not subject to any special regulation.

16. Within the past year, the Town enacted a Solid Waste Ordinance (the "Ordinance") (attached to the original Complaint as **Exhibit A**) which claims to have created the defendant Authority.

17. The Ordinance provided that:

[e]ffective July 1, 1997 . . . all other persons [than the Authority] are hereby prohibited from removing, transporting and/or disposing of solid waste generated within the Town.

(Exh. A).

18. The ordinance further purported to authorize the Authority to enter contracts or grant franchises to a private waste hauler to remove, transport and/or dispose of all solid waste generated within the Town. (Id.)

19. The Authority thereafter granted one private hauling company exclusive authority to haul waste generated within the Town. The Authority requires the hauler to deposit waste from the Town at a waste disposal facility located in Preston, Connecticut ("the Preston Facility"). The Preston Facility is owned and operated by a private company, American Ref-Fuel.

20. The Authority has failed to obtain timely approval of the Department of Environmental Protection for the Contract as required by C.G.S. § 22a-213.

21. The Authority also promulgated rules and Regulations ("Regulations") (attached to original complaint as **Exhibit B**). The regulations impose a penalty of \$5,000.00 per violation for the "unauthorized collection, transport and/or disposal of Solid Waste generated within the Town" by any company that is not under contract with the Authority. (Exh. B).

22. On June 25, 1997, the Authority notified plaintiff that it must remove all waste containers located within the Town immediately so that plaintiff's collection area would be vacant for use by the Town waste collector.

23. The purpose, intent, and effect of the Ordinance is to direct all waste generated within the Town to the Preston Facility.

COUNT ONE (Violation Contract Clause - Article I, § 10)

24. Paragraphs 1 - 27 of the Complaint are incorporated herein as paragraphs 1 - 27 of this Count as though fully set forth herein.

25. The Ordinances and Regulations that purport to regulate and control plaintiff's conduct are State laws.

26. The Regulations and Ordinances are in violation of Article I, § 10 of the United States Constitution in that, as applied, they will substantially impair plaintiff's existing contracts including but not limited to:

- a. retrospectively render all of plaintiff's contracts void as of July 1, 1997;
- b. impair plaintiff's rights under the contracts to provide waste hauling services to Town residents;
- c. subject plaintiff to fines and sanctions for the exercise of its obligations under the contracts;
- d. impair plaintiff's remedies under the contracts.

27. Purportedly pursuant to authority granted by the Ordinance, the Authority has notified plaintiff that it must remove all waste containers from its customer's property.

28. This action effects a substantial impairment of both plaintiff's contract right to place containers upon the property of Town residents and plaintiff's personal property right in the concrete pads it installed on the real property of Town residents.

29. Plaintiff had a substantial investment backed expectation that these contracts would remain valid and enforceable as set forth herein.

30. Plaintiff did not enter its contracts with the expectation that the Town would render the contracts void in that {neither the State, nor} the defendants, have ever regulated plaintiff's contracts or acted to outlaw the operation of plaintiff's business in its entirety.

31. The Ordinance and Regulations do not have a legitimate public purpose to remedy an important general social, health or safety problem but are aimed at providing a benefit to special interests and preventing the free flow of waste within interstate commerce.

32. The provisions of the Ordinance and Regulations that act to immediately impair plaintiff's contracts are not a reasonable means to achieve any alleged legitimate public purpose in that they are not narrowly tailored to meet any alleged legitimate public purpose and less onerous means of achieving any alleged legitimate public purpose exist.

33. Accordingly, the Ordinance and Regulations are void, unconstitutional, illegal, and unenforceable and their application to plaintiff would cause it irreparable injury in that such application would be in violation of plaintiff's constitutional rights.

COUNT TWO (Violation Fourteenth Amendment - Substantive Due Process).

34. Paragraphs 1 - 37 of the Complaint are incorporated herein as paragraphs 1 - 37 of this Count as though fully set forth herein.

35. Plaintiff has a property right in the continued lawful pursuit of its waste hauling business.

36. Each of the contracts maintained by plaintiff with its Stonington customers has an economic value and therefore constitutes property.

37. The personal property, including waste containers and the space that they lawfully occupy pursuant to contract, constitute property located within the Town. The concrete pads installed by plaintiff constitute property located within the Town.

38. Pursuant to the terms of the Ordinance and Regulations, plaintiff's right to pursue its business, the contracts themselves, and the right to maintain waste containers on property within the Town are void and rendered worthless.

39. In addition, the Authority has notified plaintiff that it intends to utilize and appropriate plaintiff's concrete pads for its own use.

40. The Town, pursuant to the Regulations and Ordinances has attempted to effect a taking of plaintiff's property rights under existing contracts, including the right to collect,

transport and dispose of the waste of Town residents; the right to maintain containers on the real property of Town residents; and plaintiff's concrete pads, purportedly for public use.

41. This taking is substantial in light of plaintiff's reasonable expectation that it would be permitted to pursue its business without interference and that its contracts would be valid and enforceable.

42. Depriving the plaintiff of its goods and rights to freely contract and conduct its business does not benefit the health, safety, or welfare of the residents of the Town of Stonington. Alternatively, any such benefits to the Town, if any, are outweighed by the harm to the property interests of waste haulers such as the plaintiff.

43. The Town's condemnation of plaintiff's property constitutes a violation of plaintiff's substantive due process rights.

44. Accordingly, the Ordinance and Regulations are void, unconstitutional, illegal, and unenforceable and their application to plaintiff would cause it irreparable injury in that such application would be in violation of plaintiff's constitutional rights.

COUNT THREE (In the Alternative: Violation Fourteenth Amendment - Taking Without Just Compensation).

45. Paragraphs 1 - 48 of the Complaint are incorporated herein as paragraphs 1 - 48 of this Count as though fully set forth herein.

46. Defendants conduct, if justified by a legitimate public purpose, is in violation of the Fourteenth Amendment in that it constitutes a taking of plaintiff's property without just compensation.

47. Accordingly, the Ordinance and Regulations are void, unconstitutional, illegal, and unenforceable and their application to plaintiff would cause it irreparable injury in that such application would be in violation of plaintiff's constitutional rights.

COUNT FOUR (Violation of the Commerce Clause of the United States Constitution)

48. Paragraphs 1 - 51 of this Complaint are incorporated herein as paragraphs 1 - 51 of this Count as though fully set forth herein.

49. The Ordinance and Regulations regulate the business of collecting, transporting, processing and disposing of waste. Solid waste and the service of processing and disposing of solid waste are articles of interstate commerce. Thus the Ordinance and Regulations regulate interstate commerce.

50. The Ordinance and Regulations violate the Interstate Commerce Clause of the United States Constitution as applied because they:

- a. Discriminate against interstate commerce;
- b. Impose burdens on interstate commerce that are excessive in relation to the putative local benefits; and
- c. Attempt to expand the police powers of the Town beyond its borders.

51. The law does not serve a legitimate local purpose because its sole purpose is to control the flow of waste and interrupt the free flow of interstate commerce to direct the tipping fees for local waste toward the Preston Facility.

52. The defendant Authority is not exempt from the Commerce Clause prohibitions as a market participant because the Authority has no ownership or control over the Preston Facility which is owned and operated by a private company.

53. The defendants' sole interest in the Preston Facility is the Town's debt obligation incurred pursuant to a contract dated November 13, 1985, with the Southeastern Connecticut Regional Resources Recovery Authority ("**SCRRRA**"), an instrumentality and subdivision of the State of Connecticut.

54. Pursuant to the Contract, the Town is required to pay fees to the SCRRRA to subsidize the operating and amortization costs of the Preston Facility based upon an anticipated volume of waste generated within the Town and expected to be delivered to Preston.

55. Defendants may not assign this debt as they are liable to pay it regardless of whether that volume of waste is actually delivered to the Preston Facility.

56. As a result of the excessive fees charged for disposing of waste at the Preston Facility, waste haulers often dispose of waste at facilities other than the Preston Facility, thereby depriving the Town of fees that otherwise would be received and made available to subsidize the Town's obligation under the SCRRRA contract.

57. Thus, the sole purpose of the Ordinance and Regulations is to ensure that all waste generated within the Town is delivered to the Preston Facility and is thereby made available to subsidize the Town's obligations under the SCRRRA contract.

58. This purpose is not a legitimate basis to burden interstate commerce.

59. Any purported legitimate local purpose could be served by less restrictive means.

60. Accordingly, the Ordinance and Regulations are void, unconstitutional, illegal, and unenforceable and their application to plaintiff would cause it irreparable injury in that such application would be in violation of plaintiff's constitutional rights.

COUNT FIVE (Violation Fourteenth Amendment - Procedural Due Process)

61. Paragraphs 1 - 64 of the Complaint are incorporated herein as paragraphs 1 - 64 of this Count as though fully set forth herein.

62. Plaintiff has a property interest in its contracts, business, and physical property.

63. Plaintiff has a liberty interest in the pursuit of its business.

64. The Ordinance and Regulations and their adoption deprive plaintiff of its property and liberty interest without procedural due process in that they have been promulgated in the absence of legislative authority or pursuant to a delegation of authority that, as applied, is unconstitutionally vague and overbroad.

65. The Town and Authority claim to be authorized by C.G. S. §§7-273aa through §27-273oo to enact the Ordinance and Regulations.

66. Neither C.G.S. §7-273aa, et seq nor any other provision of the Connecticut General Statutes authorized the Town to:

- a. Prohibit the lawful business of private waste hauling;
- b. Prohibit private waste haulers from collecting, removing, transporting, and/or disposing of solid waste generated within the Town;

- c. Abrogate private waste haulers' contractual rights to place and maintain containers on the property of Town residents;
- d. Convert private waste haulers' concrete pads to Town use;
- e. Establish an Authority with powers described in the Ordinance and Regulations;
- f. Charge a fee to the generator of waste for the collection and removal of waste.

67. The contracts entered by the Town for the collection, transportation and disposal of waste in Preston was also completed in excess of defendants' authority in that it was neither reviewed or approved of by the Department of Environmental Protection (DEP) as required by C.G.S. § 22a-213.

68. The "Order" that plaintiff remove its lawfully placed containers from the real property of Town residents, and from plaintiff's concrete pads, and thereby make the property and concrete pads available for use by the Town was made in the absence of any legislative conduct or authority.

69. Accordingly, the Town and Authority, in promulgating, acting upon, and seeking to enforce, the Ordinance, Regulations, and "Order" have exceeded their powers as a municipal corporation, or subdivision thereof, and the Ordinance, Regulations and contract entered thereunder are illegal, invalid,

and unenforceable and their application to plaintiff is in violation of its right to procedural due process.

COUNT SIX (Connecticut Anti-Trust Violations)

70. Paragraphs 1 - 73 of this Complaint are incorporated herein as paragraphs 1 - 73 of this Count as though fully set forth herein.

71. The defendants have engaged in actions to restrain trade and commerce, tending to or actually creating a monopoly, lessening competition, and fixing or controlling prices, rates or fees, all in the waste hauling business in violation of the Connecticut Anti-Trust Act, C.G.S. §§ 35-24 et seq.

72. As a direct and proximate result of the defendants actions, the plaintiff has and will suffer antitrust injuries and plaintiff is entitled to an injunction against the defendants pursuant to C.G.S. § 35-24.

COUNT SEVEN (Declaratory Judgment)

73. Paragraphs 1 - 76 of Count Seven are incorporated in this Count as paragraphs 1 - 76 of this Count as though fully set forth herein.

74. An actual controversy exists between the plaintiff and the defendants and the plaintiff requests that the Court declare the rights and other legal relations of the parties by declaring that the Ordinance and Regulations are illegal, invalid, unenforceable and unconstitutional.

WHEREFORE, the plaintiff seeks:

1. A temporary and permanent injunction preventing the defendants from enforcing the Ordinance and Regulations;
2. A temporary and permanent injunction preventing the defendants from prohibiting the plaintiff from engaging in the private waste hauling and collection business in the Town of Stonington;
3. A temporary and permanent injunction preventing the defendants from prohibiting the plaintiff from collecting, removing, transporting, or disposing of waste generated in the Town;
4. A temporary and permanent injunction preventing the defendants from requiring that waste generated in the Town be delivered to the Preston Facility;
5. A temporary and permanent injunction preventing the defendants from converting plaintiff's concrete pads and right to place containers on the property of Town residents to public use;
6. A declaratory judgment declaring that the Ordinance and Regulations and the defendants' conduct in connection thereto are illegal, invalid, unenforceable and/or unconstitutional as applied to plaintiff; and

7. Attorneys' fees pursuant to 42 U.S.C. Section 1983 and C.G.S. Section 35-24, et seq.

8. Damages

9. Any other relief, legal or equitable, that the court deems appropriate.

PLAINTIFF,
S. TINNERELLO & SON, INC.

By _____
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Its Attorney

CERTIFICATION

This is to certify that a copy of the foregoing Third Amended Complaint has been sent to the foregoing parties via first class mail, postage prepaid, on _____.

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