

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
GREENTREE REALTY, LLC, and METRO ENVIRO  
TRANSFER, LLC.,

Index No.: 05-11872

Petitioners/Plaintiffs,

-against-

THE VILLAGE OF CROTON-ON-HUDSON, THE  
VILLAGE BOARD OF TRUSTEES OF THE VILLAGE OF  
CROTON-ON-HUDSON, THE VILLAGE OF CROTON-  
ON-HUDSON ZONING BOARD OF APPEALS, and  
DANIEL O'CONNOR, in his official capacity, as the  
VILLAGE BUILDING INSPECTOR,

**VERIFIED ANSWER  
TO SECOND  
AMENDED  
VERIFIED PETITION  
AND COMPLAINT**

Respondents/Defendants.  
-----X

Respondents/Defendants, **THE VILLAGE OF CROTON-ON-HUDSON, THE  
VILLAGE BOARD OF TRUSTEES OF THE VILLAGE OF CROTON-ON-  
HUDSON, THE VILLAGE OF CROTON-ON-HUDSON ZONING BOARD OF  
APPEALS, and DANIEL O'CONNOR, in his official capacity, as the VILLAGE  
BUILDING INSPECTOR**, by their attorneys, MIRANDA SAMBURSKY SLONE  
SKLARIN VERVENIOTIS LLP, answering the Petitioner/Plaintiffs' Second Amended  
Verified Petition and Complaint ("the Complaint"):

**SUMMARY OF ACTION**

1. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the Complaint numbered "1."
2. Denies the allegations contained in the paragraph of the Complaint numbered "2."

### **THE PARTIES**

3. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the Complaint numbered "3."
4. Admits the allegations contained in the paragraph of the Complaint numbered "4."
5. Denies the allegations contained in the paragraph of the Complaint numbered "5," except admits that Respondent Village Board of Trustees of the Village of Croton-on-Hudson (the "Board") is body formed pursuant to New York State law, with offices at 1 Van Wyck Street, Croton-on-Hudson, New York.
6. Denies the allegations contained in the paragraph of the Complaint numbered "6."
7. Denies the allegations contained in the paragraph of the Complaint numbered "7" except admits that the Village of Croton-on-Hudson Zoning Board of Appeals is the quasi-judicial body to which an appeal from an unfavorable determination from the Building Inspector would be made.

### **JURISDICTION**

8. Admits the allegations contained in the paragraph of the Complaint numbered "8."
9. Admits the allegations contained in the paragraph of the Complaint numbered "9."

### **FACTUAL BACKGROUND**

10. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the Complaint numbered "10."
11. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the Complaint numbered "11."
12. Denies the allegations contained in the paragraph of the Complaint numbered "12."
13. Denies the allegations contained in the paragraph of the Complaint numbered "13."
14. Denies the allegations contained in the paragraph of the Complaint numbered "14."
15. Denies the allegations contained in the paragraph of the Complaint numbered "15."
16. Denies the allegations contained in the paragraph of the Complaint numbered "16."
17. Denies the allegations contained in the paragraph of the Complaint numbered "17."
18. Admits the allegations contained in the paragraph of the Complaint numbered "18."
19. Denies the allegations contained in the paragraph of the Complaint numbered "19" except admits that in the mid-1980s, the Village issued a special permit to change from one nonconforming use to another.

20. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the Complaint numbered "20." Furthermore, the allegation is too vague to answer as it is not clear what the statement "these operations" refer.
21. Denies the allegations contained in the paragraph of the Complaint numbered "21."
22. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the Complaint numbered "22" and respectfully refers the Court to the cited regulations for their content.
23. Denies the allegations contained in the paragraph of the Complaint numbered "23" and respectfully refers the Court to the cited regulations for their content.
24. Denies the allegations contained in the paragraph of the Complaint numbered "24."
25. Denies the allegations contained in the paragraph of the Complaint numbered "25."
26. Denies the allegations contained in the paragraph of the Complaint numbered "26" except admit that the Village adopted a negative declaration pursuant to the New York State Environmental Quality Review Act ("SEQRA").
27. Denies the allegations contained in the paragraph of the Complaint numbered "27," except admits that the Village issued a special permit.
28. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the Complaint numbered "28."

29. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the Complaint numbered "29."
30. Admits the allegations contained in the paragraph of the Complaint numbered "30."
31. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the Complaint numbered "31."
32. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the Complaint numbered "32" except admit that Metro Enviro filed a written request with the Board asking that the special permit be renewed.
33. Denies the allegations contained in the paragraph of the Complaint numbered "33."
34. Denies the allegations contained in the paragraph of the Complaint numbered "34."
35. Admits the allegations contained in the paragraph of the Complaint numbered "35" to the extent that the language quoted in that paragraph is contained in that section but refers the Court to the Village Code for the entirety of the language of Section 230-18 of the Village Code.
36. Denies the allegations contained in the paragraph of the Complaint numbered "36," and refers all questions of law to the Court.
37. Denies the allegations contained in the paragraph of the Complaint numbered "37."

38. Denies the allegations contained in the paragraph of the Complaint numbered "38."
39. Denies the allegations contained in the paragraph of the Complaint numbered "39," except admit that the Board voted to deny Metro Enviro's application to renew the special permit and issued a Statement of Findings.
40. Denies the allegations contained in the paragraph of the Complaint numbered "40," except admits that Metro Enviro commenced an action and Greentree was not a party to that action.
41. In response to the allegations contained in the paragraph of the Complaint numbered "41," the Court is referred to the record of that Article 78 proceeding.
42. Admits the allegations contained in the paragraph of the Complaint numbered "42."
43. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the Complaint numbered "43."
44. The Village admits that it appealed the Supreme Court's order to the Appellate Division Second Department and respectfully refers the Court to the record of that appeal.
45. Denies the allegations contained in the paragraph of the Complaint numbered "45."
46. Admits the allegations contained in the paragraph of the Complaint numbered "46."

47. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the Complaint numbered "47," and refers all questions of law to the Court.
48. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the Complaint numbered "48," except admits that on or about July 20, 2005, Greentree and Metro Enviro commenced this action and refers the Court to the record herein.
49. With respect to the allegations contained in the paragraph of the Complaint numbered "49", the Court is respectfully referred to the decision and order dated August 26, 2005.
50. Denies the allegations contained in the paragraph of the Complaint numbered "50," and refers the Court to the decision and order dated August 26, 2005.
51. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the Complaint numbered "51" except admits that Metro Environs ceased its operations and that the operations have not been continuous at the property.
52. Denies the allegations contained in the paragraph of the Complaint numbered "52," and refers all questions of law to the Court.
53. Denies the allegations contained in the paragraph of the Complaint numbered "53," except admits that in December 2005, the Village commenced an action against Greentree and Northeast Interchange Railway, LLC.

54. Denies the allegations contained in the paragraph of the Complaint numbered "54" except admits that by decision and order dated April 27, 2006, this Court granted the Village's motion for a preliminary injunction and otherwise refer the Court to its decision.
55. Denies the allegations contained in the paragraph of the Complaint numbered "55," to the extent Greentree is asserting it reserved its claims and refers all questions of law to the Court.
56. With respect to the allegations set forth in the paragraph of the Complaint numbered "56", the Court is respectfully referred to its decision and order dated July 3, 2006 for its terms.
57. With respect to the allegations contained in the paragraph of the Complaint numbered "57," the Court is respectfully referred to the decision and order dated December 4, 2007 issued by the Appellate Division, Second Department.
58. Admits the allegations contained in the paragraph of the Complaint numbered "58."

**AS AND FOR GREENTREE'S FIRST CAUSE OF ACTION  
(PRE-EXISTING, LEGAL NONCONFORMING USE)**

59. As to paragraph "59," Respondents/Defendants repeat, reiterate, and reallege the denials set forth above in answer to the allegations contained in paragraphs of the Complaint numbered "1" through "58," with the same force and effect as if fully set forth at length herein.

60. Denies the allegations contained in the paragraph of the Complaint numbered "60," and refers all questions of law to the Court regarding the 2001 zoning amendment.
61. Denies the allegations contained in the paragraph of the Complaint numbered "61," and refers all questions of law regarding the Village Code to the Court.
62. Denies the allegations contained in the paragraph of the Complaint numbered "62."
63. Denies the allegations contained in the paragraph of the Complaint numbered "63."

**AS AND FOR GREENTREE'S SECOND CAUSE OF ACTION  
(DECLARATORY JUDGMENT/PRE-EXISTING,  
LEGAL NONCOMFORMING USE)**

64. As to paragraph "64," Respondents/Defendants repeat, reiterate, and reallege the denials set forth above in answer to the allegations contained in paragraphs of the Complaint numbered "1" through "63," with the same force and effect as if fully set forth at length herein.
65. Denies the allegations contained in the paragraph of the Complaint numbered "65."
66. Denies the allegations contained in the paragraph of the Complaint numbered "66" and refers all questions of law to the Court.
67. Denies the allegations contained in the paragraph of the Complaint numbered "67."

**AS AND FOR GREENTREE'S THIRD CAUSE OF ACTION  
(DECLARATORY RELIEF/DAMAGES/**

**REGULATORY TAKING)**

68. As to paragraph "68," Respondents/Defendants repeat, reiterate, and reallege the denials set forth above in answer to the allegations contained in paragraphs of the Complaint numbered "1" through "67," with the same force and effect as if fully set forth at length herein.
69. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the Complaint numbered "69."
70. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the Complaint numbered "70."
71. With respect to the allegations contained in the paragraph of the Complaint numbered "71", all questions of law are respectfully referred to the Court.
72. Denies the allegations contained in the paragraph of the Complaint numbered "72."
73. Denies the allegations contained in the paragraph of the Complaint numbered "73."
74. Denies the allegations contained in the paragraph of the Complaint numbered "74."

**AS AND FOR GREENTREE'S FOURTH CAUSE OF ACTION  
(DECLARATORY RELIEF/DAMAGES/  
DENIAL OF SUBSTANTIVE DUE PROCESS)**

75. As to paragraph "75," Respondents/Defendants repeat, reiterate, and reallege the denials set forth above in answer to the allegations contained in paragraphs of the

Complaint numbered "1" through "74," with the same force and effect as if fully set forth at length herein.

76. Denies the allegations contained in the paragraph of the Complaint numbered "76."
77. Denies the allegations contained in the paragraph of the Complaint numbered "77."
78. Denies the allegations contained in the paragraph of the Complaint numbered "78."
79. Denies the allegations contained in the paragraph of the Complaint numbered "79."
80. Denies the allegations contained in the paragraph of the Complaint numbered "80."
81. Denies the allegations contained in the paragraph of the Complaint numbered "81."
82. Denies the allegations contained in the paragraph of the Complaint numbered "82."
83. Denies the allegations contained in the paragraph of the Complaint numbered "83."

**AS AND FOR GREENTREE'S FIFTH CAUSE OF ACTION  
(DECLARATORY RELIEF/DAMAGES/  
DENIAL OF PROCEDURAL DUE PROCESS)**

84. As to paragraph "84," Respondents/Defendants repeat, reiterate, and reallege the denials set forth above in answer to the allegations contained in paragraphs of the

Complaint numbered "1" through "83," with the same force and effect as if fully set forth at length herein.

85. Denies the allegations contained in the paragraph of the Complaint numbered "85."
86. Denies the allegations contained in the paragraph of the Complaint numbered "86."
87. Denies the allegations contained in the paragraph of the Complaint numbered "87."
88. Denies the allegations contained in the paragraph of the Complaint numbered "88."
89. Denies the allegations contained in the paragraph of the Complaint numbered "89."
90. Denies the allegations contained in the paragraph of the Complaint numbered "90."
91. Denies the allegations contained in the paragraph of the Complaint numbered "91."
92. Denies the allegations contained in the paragraph of the Complaint numbered "92."

**AS AND FOR GREENTREE'S SIXTH CAUSE OF ACTION  
(PREEMPTION)**

93. As to paragraph "93," Respondents/Defendants repeat, reiterate, and reallege the denials set forth above in answer to the allegations contained in paragraphs of the

Complaint numbered "1" through "92," with the same force and effect as if fully set forth at length herein.

94. Denies the allegations contained in the paragraph of the Complaint numbered "94," and refers al questions of law to the Court.
95. Denies the allegations contained in the paragraph of the Complaint numbered "95," and refers al questions of law to the Court.
96. Denies the allegations contained in the paragraph of the Complaint numbered "96," and refers al questions of law to the Court.
97. Denies the allegations contained in the paragraph of the Complaint numbered "97."
98. Denies the allegations contained in the paragraph of the Complaint numbered "98."

#### **AFFIRMATIVE DEFENSES**

##### **AS AND FOR A FIRST AFFIRMATIVE DEFENSE TO THE ENTIRE COMPLAINT, THE ANSWERING DEFENDANTS/RESPONDENTS ALLEGE:**

99. That the individual defendants/respondents are entitled to qualified immunity.

##### **AS AND FOR A SECOND AFFIRMATIVE DEFENSE TO THE ENTIRE COMPLAINT, THE ANSWERING DEFENDANTS/RESPONDENTS ALLEGE:**

100. That the defendants/respondents are entitled to legislative immunity.

##### **AS AND FOR A THIRD AFFIRMATIVE DEFENSE TO THE ENTIRE COMPLAINT, THE ANSWERING DEFENDANTS/RESPONDENTS ALLEGE:**

101. That the statute of limitations bars the remaining claims of Greentree in whole or in part.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE TO THE ENTIRE COMPLAINT, THE ANSWERING DEFENDANTS/RESPONDENTS ALLEGE:**

102. That the doctrine of collateral estoppel bars the remaining claims.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE TO THE ENTIRE COMPLAINT, THE ANSWERING DEFENDANTS/RESPONDENTS ALLEGE:**

103. That the doctrine of res judicata bars the remaining claims.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE TO THE ENTIRE COMPLAINT, THE ANSWERING DEFENDANTS/RESPONDENTS ALLEGE:**

104. That Greentree lacks standing to pursue the claims at bar.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE TO THE ENTIRE COMPLAINT, THE ANSWERING DEFENDANTS/RESPONDENTS ALLEGE:**

105. That the doctrine of ripeness bars the claims at bar.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE TO THE ENTIRE COMPLAINT, THE ANSWERING DEFENDANTS/RESPONDENTS ALLEGE:**

106. That Greentree has failed to exhaust its administrative remedies.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE TO THE ENTIRE COMPLAINT, THE ANSWERING DEFENDANTS/RESPONDENTS ALLEGE:**

107. Greentree's claims are barred by the doctrine of laches.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE TO THE ENTIRE COMPLAINT, THE ANSWERING DEFENDANTS/RESPONDENTS ALLEGE:**

108. Use of the property for construction and demolition debris processing is not a prior legal nonconforming use of the property.

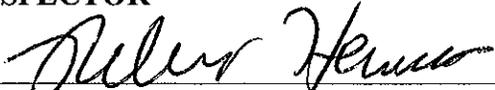
**AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE TO THE ENTIRE COMPLAINT, THE ANSWERING DEFENDANTS/RESPONDENTS ALLEGE:**

109. Greentree's claims are barred by the doctrines of res judicata and collateral estoppel.

**WHEREFORE**, Defendants/Respondents, **THE VILLAGE OF CROTON-ON-HUDSON, THE VILLAGE BOARD OF TRUSTEES OF THE VILLAGE OF CROTON-ON-HUDSON, THE VILLAGE OF CROTON-ON-HUDSON ZONING BOARD OF APPEALS, and DANIEL O'CONNOR, in his official capacity, as the VILLAGE BUILDING INSPECTOR** request judgment dismissing the Complaint and denying all relief requested therein, together with such other and further relief as the Court deems just and proper.

DATED: Mineola, New York  
January 2, 2014

MIRANDA SAMBURSKY SLONE  
SKLARIN VERVENIOTIS LLP  
Attorneys for Defendants  
**THE VILLAGE OF CROTON-ON-HUDSON, THE VILLAGE BOARD OF TRUSTEES OF THE VILLAGE OF CROTON-ON-HUDSON, THE VILLAGE OF CROTON-ON-HUDSON ZONING BOARD OF APPEALS, and DANIEL O'CONNOR, in his official capacity, as the VILLAGE BUILDING INSPECTOR**

By:   
Michael A. Miranda  
Robert Hewitt  
240 Mineola Blvd.  
Mineola, NY 11501  
(516) 741-7676  
Our File No.: 05-280

TO: John M. Flannery, Esq.  
WILSON ELSER MOSKOWITZ EDELMAN  
& DICKER, LLP  
Attorneys for Petitioner/Plaintiff  
1133 Westchester Avenue  
White Plains, New York 10604

**ATTORNEY'S VERIFICATION**

The undersigned, an attorney admitted to practice in the Courts of the State of New York, hereby affirms:

That Affirmant is associated with the firm of MIRANDA SAMBURSKY SLONE SKLARIN VERVENIOTIS the attorneys of record for the answering defendants/respondents in the within action; that Affirmant has read the foregoing Answer and knows the contents thereof; that the same is true to Affirmant's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, Affirmant believes same to be true. Affirmant further states that the reason this Verification is made by Affirmant and not by defendant is that said defendant does not reside or have an office in Nassau County wherein Affirmant maintains offices.

The grounds of Affirmant's belief as to all matters not stated upon Affirmant's knowledge are as follows:

1. Records and correspondence in Affirmant's possession.

The undersigned affirms that the foregoing statements are true under the penalties of perjury.

Dated: Mineola, New York  
January 2, 2014

  
\_\_\_\_\_  
**ROBERT HEWITT**

**AFFIDAVIT OF SERVICE BY MAIL**

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF NASSAU     )

**APRIL DEL CASTILLO**, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at **East Meadow, New York**.

That on the 2<sup>nd</sup> day of January, 2014 deponent served the within **VERIFIED ANSWER TO SECOND AMENDED VERIFIED PETITION AND COMPLAINT** upon:

John M. Flannery, Esq.  
WILSON ELSER MOSKOWITZ EDELMAN  
& DICKER, LLP  
Attorneys for Petitioner/Plaintiff  
1133 Westchester Avenue  
White Plains, New York 10604

attorneys in this action, at the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

  
\_\_\_\_\_  
**APRIL DEL CASTILLO**

Sworn to before me this  
2<sup>nd</sup> day of January, 2014.

  
\_\_\_\_\_  
**NOTARY PUBLIC**

**NICOLE RUBINO**  
Notary Public, State of New York  
No. 01RU5085248  
Qualified in Queens County  
Commission Expires September 15, 2017