VL v. Carteret (S. Plainfield) (1984)

Memo of law in support of Π's motion to Hold S. Plainfield in ~~Contempt~~ and for temporary restraints

9 pgs

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SUPERIOR COURT OF NEW JERSEY

URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al.,

Plaintiffs,

v.

THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, et al.,

Defendants.

CHANCERY DIVISION
MIDDLESEX COUNTY

No. C-4122-73

ELDERLODGE, INC.,
a New Jersey Corporation,
Plaintiff,

v.

SOUTH PLAINFIELD BOARD OF ADJUSTMENT BY ITS MAJORITY MEMBERS (Ronald Hepburn, Chairman; Carl Abbruzzese; Robert Horne; Carl La Ferrara; Cynthia GaNun, First Alternate); BOROUGH OF SOUTH PLAINFIELD BY ITS MAYOR AND COUNCIL; JOHN GRAF, BUILDING INSPECTOR OF THE BOROUGH OF SOUTH PLAINFIELD; and PLANNING BOARD OF THE BOROUGH OF SOUTH PLAINFIELD,

Defendants.

LAW DIVISION
MIDDLESEX COUNTY
No. 56349-81

MEMORANDUM OF LAW IN SUPPORT OF URBAN LEAGUE PLAINTIFFS' MOTION TO HOLD SOUTH PLAINFIELD IN CONTEMPT AND FOR TEMPORARY RESTRAINTS

Urban League plaintiffs move to hold South Plainfield in contempt and for temporary restraints against any further development approvals because South Plainfield, a town that purportedly settled over a year ago, has repeatedly and willfully violated this Court's Judgment and implementing Order and has denied plaintiffs their Court-ordered remedy for over 8 months. Unlike South Plainfield, plaintiffs do not take such drastic action lightly; but at this point we feel we have no choice if the integrity of the Court process and the Supreme Court's mandate in this very case are to be preserved.

South Plainfield has violated this Court's Judgment of May 22, 1984 and Order of December 13, 1984 in two basic respects.

First, it has failed to pass the zoning and affordable housing ordinances required by the Judgment. Paragraph 11 of the Judgment stated that it would become final and deadlines set therein would begin to run 5 days after the Court-appointed expert's report, which was submitted on May 30, 1984, and Paragraph 3, 5, 6, and 7 of the Judgment required enactment within 120 days of the specified zoning and affordable housing ordinances. Because no ordinances had been adopted in the specified time, but the Board of Adjustment had granted a variance for the Elderlodge project inconsistent with the Judgment, this Court entered a further order on December 13, 1984 directing passage of the ordinances on first reading by January

10, 1985 and on final reading by January 31, 1985. As set forth in detail in the letter of June 17, 1985 to the Court from Barbara Williams, Urban League co-counsel, which is attached as Exhibit C to her Affidavit submitted in support of this motion, the Borough has stalled repeatedly in violation of the December 13 Order and as of this date has still not enacted either ordinance in final form.

In its latest promise, the Borough has stated that the Planning Board will review the final ordinances at a meeting on June 24 and the Council will review the ordinances, presumably on first reading, on July 6. However, the Planning Board Agenda for May 21, 1985, attached as Exhibit K to Ms. Williams' Affidavit, clearly sets forth the summer schedule, which shows that the Planning Board is not even scheduled to meet between June 18 and July 3. Moreover, there is no reason for the Planning Board to review the matter again. The Planning Board has already recommended on at least one occasion, and in some instances two occasions, all of the provisions of the ordinances now scheduled for adoption. There are no substantive changes, only technical conforming amendments. There is only one substantive disagreement remaining between the parties-- the Planning Board's desire to define "senior citizens" as persons at least 55 years old and the plaintiffs' view that 62 should be the minimum age. But the

Planning Board has already passed on that at its April 16, 1985 meeting. Thus, because there have been no substantive changes since the last consideration by the Planning Board and Council, there is no need for further Planning Board review and the Council may pass both ordinances on final reading. We thus request that the Court order final passage within 10 days, subject to stiff monetary fines for any further delay. Such a remedy is clearly within the Court's broad discretion under Rule 1:10-5.

Plaintiffs would not, however, have burdened the Court with a request for such drastic relief merely because of continued delay in passing the ordinances. Indeed, by letter dated June 17, 1985, Urban League plaintiffs merely outlined the delay and asked for "appropriate" Court action. However, later the same day and over the subsequent three days, we have learned of a much more significant, direct and fundamental set of violations of this Court's Judgment, which calls into question the good faith of the Borough. First, we have learned that the Borough of South Plainfield has sold at least three and possibly as many as six separate portions of the Pomponio Avenue site expressly reserved for Mount Laurel rezoning in Paragraph 3(C) of the Judgment. See Williams Affidavit, Paragraphs 8-17.1 Second, the Planning Board

1 One of the sales, for 23.33 acres, was to Larry Massaro. We

has already granted final subdivision approval to two of the purchasers for construction of single family homes, and apparently one of those purchasers has already obtained building permits and is right now constructing single family homes on the site.2 (The second site was approved on June 18, but, because plaintiffs' counsel expressly warned the Board's attorney of the impending violation, the Planning Board expressly made the approval subject to the claims of the Urban League.) See Williams Affidavit, Paragraphs 16. Third, the South Plainfield Board of

have been informed that Mr. Massaro has recently contracted to re-sell the parcel to Hovnanian, with the sale contingent upon the Borough rezoning the parcel for 15 units per acre as required by Paragraph 3(C) of the Judgment. Williams Affidavit, Paragraph 12. Urban League plaintiffs are, therefore, not as concerned with the Borough's sale of this parcel and do not seek to enjoin the transfer of title to Mr. Massaro. We note, however, that the procedure chosen by the Borough of selling first to a non-Mount Laurel builder creates needless extra costs for the Mount Laurel developer and thus is an unusual cost-generating feature of the Borough's land use policies.

2 If in fact building permits have been issued to Tonsar Corp. for construction of three single family homes on the eastern portion of Block 448 Lot 4.01, as represented to us by the developer's attorney on June 20th, see Williams Affidavit, Para. 13, then Urban League plaintiffs would not ask the Court to rescind the building permits, because of the inequity to the apparently innocent third party. Rather, the appropriate remedy would appear to be, as set forth in Paragraph 4 of our proposed Order, a municipal contribution of money necessary to subsidize the number of lower income units that would have been constructed on the land that the Borough improperly authorized for development in contravention of the Judgment. The amount of that contribution could be determined hereafter upon appropriate expert and other evidentiary proofs as to the number of units lost and the cost of subsidizing lower income units in high density developments.

Adjustment has granted a variance to the private owner of a small portion of the Morris Avenue site specified in Paragraph 3(F) of the Judgment permitting construction of a single family home, even though the Borough expressly represented in a formal Stipulation filed with this Court that it owned the site and intended to develop a senior citizens project of approximately 100-150 units on it.

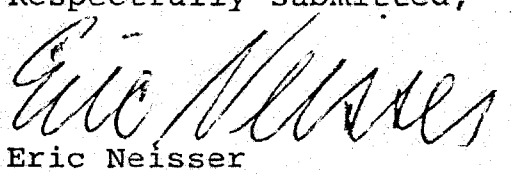
The Borough will no doubt allege, as it has over the telephone with plaintiffs, that it was not aware that these sites were covered by the Judgment, that it did not consciously intend to violate the Judgment, or that there was ambiguity in the Judgment permitting them to interpret it in a way that made the sales permissible. Such claims might be worth entertaining if the Judgment spoke in vague and general terms about the land, if the Stipulation was negotiated hastily, or if the Judgment were rendered orally or was the outgrowth of intense litigation in which the underlying facts or the interpretation of the Judgment were in disupte. Quite simply, as set forth in Eric Neisser's Affidavit submitted in support of this motion, none of that is the case here. The Judgment was based on a Stipulation signed by the Borough's attorney at the Council's express direction. The Stipulation was a result of a series of written as well as oral negotiations. At all times, designation of the land was by block

and lot number. Acreage was expressed as "approximate" only because of the approximation in tax maps, assessment rolls, and the defendants' answers to interrogatories. Statements as to the approximate acreage were expressly derived from the defendants' answers to interrogatories which were never supplemented, modified or withdrawn. At no time did the defendants even suggest that the precise block and lot descriptions should be superseded by the approximate acreage statements. Statements as to Borough ownership were also principally based upon the interrogatory answers, except that as to the Morris Avenue site there were oral representations, subsequently embodied in writing in the Borough's authorized Stipulation, that the Borough had acquired ownership of all the Morris Avenue sites, mainly through land swaps, some of which had occurred subsequent to the service of the interrogatory answers.

In sum, the Borough has made repeated misrepresentations of fact to the plaintiffs and more importantly to this Court, has failed to seek interpretation or, more correctly, modification of the Judgment which was based on a voluntary signed Stipulation, and has chosen wilfully and consciously to ignore the perfectly clear Judgment in a manner which was designed to and has already irreparably harmed the plaintiffs' clearly established legal rights.

The problem in South Plainfield from the first has been the lack of sufficient vacant land to satisfy its regional fair share obligation. This problem arose because, in all the years since Judge Furman's original judgment of unconstitutionality, the Borough has failed even to enact a multi-family housing zone, not to mention a density bonus, set-aside requirement or any form of municipal contribution. There are no rental apartments in the entire Borough, which consists of over 5200 acres. For a town like this to then ignore a formal Court Judgment by selling off municipally owned land and granting approvals for inconsistent development is even more egregious than the other circumstances that have forced the Urban League plaintiffs to seek and the Court to grant temporary restraints in the past in this litigation. Quite simply, the combination of conscious stalling and underhanded violation of this Court's year-old Judgment is intolerable. Nine years without a constitutional ordinance, nine years in which land has been repeatedly given away for other, inconsistent purposes, is enough. It is time that South Plainfield is made to understand that the Constitution of the State of New Jersey is applicable even in its Borough.

Respectfully submitted,



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