

UL v. S. Plainfield

22 Apr (1986)

Copies of Brief renewing motion to intervene
~~note of motion to intervene, as~~

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LAW OFFICES

JOHN GEORGE

277 SOUTH PLAINFIELD AVENUE

P. O. BOX G

SOUTH PLAINFIELD, NEW JERSEY 07080-0507

(201) 755-7050

JOHN GEORGE
PHILIP G. GEORGE
MEMBER N. J. AND OHIO BARS

REFER TO OUR

FILE NO. C-3719

BARBARA STARK, ESQ.
Constitutional Litigation Clinic
Rutgers law School
15 Washington Street
Newark, NJ 07102

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April 22, 1986

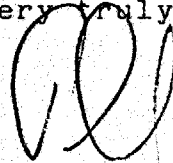
RE: Motion Papers, Urban League v. South Plainfield

Dear Ms. Stark:

Enclosed please find copies of brief renewing motion to intervene, notice of motion to intervene, certification in support of motion, and brief in support of notice of motion in the above matter after our discussion of this morning.

Thank you for your cooperation in this matter.

Very truly yours,



PHILIP G. GEORGE
for the Office

cc: file

LAW OFFICES
JOHN GEORGE

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P. O. BOX G
SOUTH PLAINFIELD, NEW JERSEY 07080-0507
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March 26, 1986

HONORABLE EUGENE D. SERPENTELLI, A.J.S.C.
Superior Court of New Jersey
Ocean County Court House
Toms River, NJ 08754

RE: Docket No. C-4122-73, Urban League of Greater New Brunswick v. Mayor and Council of Carteret, et al. and Docket No. C-5204-85, Massaro, et al. v. Borough of South Plainfield, et al.

Civil Action: Motion to Allow Intervention and Lift Restraints Brief of Plaintiffs/Intervenors.

Dear Judge Serpentelli:

Would you kindly accept this letter brief in lieu of a formal brief renewing Plaintiffs/intervenors' motion for leave to intervene and to lift restraints in the above actions, and joining with the motion of Eric Neisser, attorney for the Urban League, for imposition of conditions on transfer to the Fair Housing Council pursuant to the decision in the Hills Development case?

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Intevenors will rely on the material already of record for Procedural History and Statement of Facts, incorporating their motion papers of October 25, 1985, brief of October 29, 1985, and the moving papers of the Urban League plaintiff on motion April 4, 1986.

LEGAL ARGUMENT

POINT-I PLAINTIFFS/INTERVENORS' MOTION FOR LEAVE TO INTERVENE SHOULD BE GRANTED BECAUSE THEY HAVE VESTED INTERESTS IN CONVEYANCE AND THOSE INTERESTS CANNOT BE PROTECTED SAVE THROUGH INTERVENTION IN THE URBAN LEAGUE LITIGATION.

As a procedural point, these intervenors first moved to intervene in late October, 1985. Since that time, although their attorney has participated in numerous conferences with the Court regarding this case's myriad issues and concerns particularly, the Supreme Court certification of the transfer issues, no resolution of the motion for leave to intervene has been made. This was due primarily to the uncertainty about what course the Supreme Court would chart for the Fair Housing Council, but now that decision has been rendered and the parties know what will happen next. Therefore, this motion for intervention is ripe for resolution.

To reach the substantive, limited issue of lifting restraints on conveyance of these parcels, the Court, intervenors submit, must first grant leave to intervene. As was argued in intervenors' brief of October 29, 1985, in support of their motions, no other parties can fairly represent them; Gene and Debra Mohan are not parties at all, and while Lawrence Massaro's larger purchase is the Mount-Laurel targeted Pomponio tract, his other parcel is not. They have no party status, therefore.

Further, because this Court imposed the restraints in the Urban League litigation, only this Court can lift those restraints, thereby allowing title to pass. Plaintiffs/intervenors therefore have no other avenue of recourse except to intervene in this action for the limited purpose of lifting restraints. They respectfully renew their motion to intervene, for these reasons and the reasons stated in the prior brief of October 29, 1985.

POINT II - RESTRAINTS SHOULD BE LIFTED AGAINST CONVEYANCE OF BOROUGH PROPERTY TO INTERVENORS BECAUSE FURTHER DELAY OF CLOSING OF TITLES WILL NO LONGER SERVE TO PROTECT ANY INTERESTS IN THE URBAN LEAGUE CASE

At the early December, 1985, conference before this Honorable Court, litigation status and ramifications of Supreme

Court action on the appeal of demial of motions to transfer all litigations to the Fair Housing Council were discussed extensively. However, as particularly regards these intervenors, theirs motions were continued, and the Court declined to lift restraints and other conditions imposed upon the Borough of South Plainfield pending the decision on appeal. Thus, the sale of these particular subject properties has been in limbo for over 6 months.

The Supreme Court, in deciding that the matters should be transferred, allowed that conditions could be imposed upon the transfers to preserve the municipalities' ability to provide fair-share housing during the council decision process. Hills Development Co. v. Twp. of Bernards, N.J., slip op. at 87 (1986). Council for the Urban League has moved for the imposition of conditions upon the transfer of the South Plainfield matter. To the point, however, is their position that these particular properties which are the subject of intervenors' motion should be released from restraints on transfer of title. Brief of Eric Neisser, Esq., at 34.

These intervenors take no position regarding any conditions to the transfer; what the Borough of South Plainfield does or is forced to do with sale proceeds is simply irrelevant to closing of title. Further, the Orazi and Mohan properties are under one acre. The Pomponio Avenue tract is designated for Mount-Laurel housing and will therefore likely be embroiled in discussions over its use for some time, stalling development. However, none of these facts, considerations, positions or requests for conditions relate in any way to the simple closing of title to these lands. If the Urban League plaintiffs is now willing to lift the restraints to the extent that title can close, then, intervenors submit, the necessity for such restraints has passed and the properties should be released for closing. Intervenors look to this Honorable Court for no other relief at this time except for attorney fees as discussed in Point III. They do not seeks litigation of any issues, either against the Borough for any of its actions, or against any parties in the Urban League litigation. They simply want to close title.

For the foregoing reasons as well as the substantially similar arguments advanced back in October, 1985, intervenors respectfully request this Honorable Court to lift the restraints on transfer of title to these parcels and allow title to pass. The Urban League supporting this limited condition, no further impediments to closing exist.

POINT III - ATTORNEY FEES SHOULD BE AWARDED TO INTERVENORS
BECAUSE SOUTH PLAINFIELD'S DEMAND FOR TENDER OF PAYMENT
WHEN IT COULD NOT CONVEY IS THE SOLE REASON FOR THIS
MOTION, AND SUBSEQUENT COURT PROCEEDINGS AND
APPEALS HAVE NOT ALTERED THE STATUS OF THESE
PROPERTIES OR CHANGED THE CIRCUMSTANCES OF
THE LIFTING OF RESTRAINTS

Intervenors renew their application for award of attorney fees originally presented in their motion of October 25, 1985. Up until the time the motion was to be first heard, intervenors incurred legal fees of \$1,537.50 solely in an attempt to get title to their property after the Borough made time of the essence while under restraint from conveying title. The motion to intervene was, as described in Point I, above, held pending results of the Borough's appeal.

Now the appeal is complete, the Hills Development decision is rendered . . . and nothing has changed for these intervenors. The Urban League still has no objection to closing title. Neisser brief at 34. Yet the Borough has not entered into any consent order with the League, as its attorney has apparently offered. The Supreme Court has decided that conditions can be set on transfer, and the Urban League requests as one such condition that future sales be restrained and proceeds from sales be escrowed . . . and still nothing has changed. Three months have passed, however, during which intervenors have been deprived of their property or money, and once again must petition this Honorable Court for relief.

In transfer of this case to the Fair Housing Council this small but real issue should not be allowed to be swallowed in the greater concerns. Intervenors' motion has been held in limbo even while the Urban League has been willing to carve a small exception to its position to accommodate intervenors. Mount-Laurel litigation is complex, correspondingly expensive, and intervenors have been forced to go to great lengths even to be heard on the matter of their interests, caught between the principals in this case. And once again they must seek intervention so they may be heard as the issues again shift focus.

The Urban League case is a matter of equity jurisdiction in this Honorable Court. "[I]n equity costs are allowable at the court's discretion according to the reason and justice of the cause." Looman Realty Corp. v. Broad Street National Bank, 74 N.J. Super. 71, 85 (App. Div. 1962), citing In Re: Caruso, 18 N.J. 26, 38 (1955). Intervenor's recognize that R. 4:42-9 does not specifically provide for awards of attorney fees in this action; however R. 4:42-9(a)(7) allows an award where "expressly provided by these rules with respect to any action . . ." R. 4:52-3 provides that a Court may fashion appropriate, equitable terms in granting a temporary restraining order or interlocutory injunction or at any time thereafter, which presumably includes the dissolution of the same restraints. Therefore, intervenors submit, attorney fees may be awarded under the Court's general equity powers since such an award is permitted by Court Rule.

The Court should exercise its equitable powers to award attorney fees because of the problems detailed above and in intervenors' prior brief, which will not be belabored again. Yet the Court should note that the Urban League, the party who successfully obtained the restraints, has even been willing to allow intervenors to close! Neisser brief at 34. They respectfully request, therefore, that the Court exercise its discretion to award attorney fees as part of its permitted equitable powers.


CONCLUSIONS

For the foregoing reasons, Plaintiffs/intervenors urge this Honorable Court to grant them leave to intervene in order to challenge the restraints imposed by the Court on completing certain real estate sales upon the Borough of South Plainfield. Intervenor's have the requisite standing because they have a high stake in the matter of conditions, particularly restraints on land transfers, to be imposed on transfer of this matter to the Fair Housing Council. These are common issues of law and fact in the issue of restraints. Further, this matter having been transferred to the Council, it is appropriate to dissolve the restraints; at least as to closing of these particular properties, and the Urban League plaintiff does not oppose this limited gesture. Intervenor's have no position to take regarding any other proposed condition and thus the application is a limited one and will not affect the litigation or transfer.

Intervenors are entitled to an award of attorney fees under R. 4:42-9 and general equity principles since it is only the Borough's contumely behavior which continues to necessitate this application.

Respectfully submitted
JOHN GEORGE
Attorney for Plaintiffs/Intervenors

by:



PHILIP G. GEORGE
for the Office

cc: Peter J. Calderone, Esq.
Angelo H. Dalto, Esq.
William V. Lane, Esq.
Lawrence J. Massaro
Honorable John M. Mayson
Raymond Miller, Esq.
Gene and Debra Mohan
Eric Neisser
Vincent Orazi
Frank A. Santoro, Esq.
Leonard H. Selesner, Esq.