

U.L. v. Carter

Ascotway

Memorandum In Opposition To Motion For Temp.  
Rest. Order & Interlocutory Injunction.

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SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION-MIDDLESEX/OCEAN  
COUNTIES

URBAN LEAGUE OF GREATER  
NEW BRUNSWICK, et al.,

Plaintiffs,

vs.

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

Defendants.

) Docket No. C-4122-73  
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MEMORANDUM IN OPPOSITION TO MOTION FOR TEMPORARY  
RESTRAINING ORDER AND INTERLOCUTORY INJUNCTION

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PHILLIP LEWIS PALEY, ESQ.  
On the Brief

This memorandum is submitted in opposition to plaintiff's motion seeking temporary restraints and an interlocutory injunction against the Township of Piscataway Council, Planning Board, and Zoning Board of Adjustment (collectively "Defendant").

As a preliminary matter, it is noted that contrary to the requirements of Rules 4:52-1(c) and 4:52-2, plaintiff has failed to submit a brief in support of its motion. The memorandum of law attached to plaintiff's motion is one previously submitted by plaintiff in connection with a motion for temporary restraints and interlocutory injunctive relief with respect to specific parcels of land in Piscataway which were identified as "satisfactory" for Mount Laurel development in the preliminary report of the court-appointed expert, Carla Lerman, P.P.; it fails to offer any explanation of why the far broader relief sought by plaintiff in its current motion, i.e. restraints with respect to all parcels declared "satisfactory" for Mount Laurel development, should be granted. Nor does the Affidavit of Barbara J. Williams in support of plaintiff's motion shed any light on the need for the blanket relief sought; it merely focuses on two specific parcels - Sites #44 and 76 - and fails to state any factual or legal basis for restraints with respect to all "satisfactory" parcels.

In order to be entitled to the relief sought, plaintiff must establish, among other things, (a) that if relief is not granted plaintiff will suffer irreparable harm, not adequately redressable by money damages, and (b) failure to grant the relief sought will result in greater harm to plaintiff than a grant of relief will cause to defendant. Crowe v. De Gioia, 90 N.J. 126 (1982). Plaintiff has failed to demonstrate that either of these criteria exist.

First, through its previous orders, this Court has already established a system to protect plaintiff's rights with respect to "satisfactory" parcels of undeveloped land in Piscataway. That system, currently in use, operates on a case by case basis. It permits developers to obtain all necessary approvals in connection with a proposed construction project, but renders those approvals ineffective against plaintiff pending outcome of this litigation. The present system also requires defendant to notify plaintiff when applications with respect to "satisfactory" sites are scheduled for discussion, thereby providing plaintiff an opportunity to take whatever action it deems necessary to protect its interests.

Plaintiff now asks this Court to enjoin defendant from taking any action with respect to any site pronounced "satisfactory" by Carla Lerman, P.P. in her preliminary

report, despite the fact that testimony has not yet been given and a hearing has not been held. Plaintiff also asks this Court to shift the burden of proof to applicant - developers to show cause why the proposed restraints should be lifted.

The extraordinary relief sought by plaintiff is unwarranted. Plaintiff is adequately protected against "irreparable harm" by the system previously devised by this Court and currently in effect, and plaintiff has failed to demonstrate otherwise. In fact, the moving papers submitted by plaintiff illustrate the effectiveness of the present system: plaintiff received adequate notice of the applications with respect to Sites #44 and 76 referred to in the Affidavit of Barbara J. Williams and has had an opportunity to protect its interests in connection therewith. Given the requirements of the present system - notice by defendant and scrutiny by plaintiff - there is little or no risk that plaintiff will suffer "irreparable harm" as long as it takes the steps legally available to it to protect its rights on a case by case basis.

Plaintiff has also failed to demonstrate that the "balance of harm" resulting from a grant or denial of relief tips in its favor. The ability to regulate land use has traditionally been vested in the several municipalities of this State. (See N.J.S.A. 40:55-D-62 and New Jersey Con-

stitution Article IV, Section 6, Paragraph 2). In its exercise of that power, the municipality acts as the voice of its residents and as a representative of the public interest. In that sense, it is a principal, not only a mere regulator. When the power of a municipality to regulate land use is curtailed, its rights as well as the rights of its residents, are impaired. While not directly monetary in nature, the rights of the 43,500 residents of Piscataway and their municipal government representatives are significant and should not be down-played in the manner attempted by plaintiff.

Plaintiff, on the other hand, stands to suffer no harm at all if the relief requested is denied. Under the present system plaintiff is entitled to notice and an opportunity to scrutinize and be heard with respect to any application presented to defendant. Denial of the relief requested will not jeopardize plaintiff's said rights; a grant of the relief requested will leave defendant powerless to perform its functions.

Moreover, the even-handedness of the present system is endorsed in plaintiff's Memorandum of Law. There, in support of its argument that a temporary restraint with respect to specific parcels would not prejudice defendant, plaintiff (at pages 5-6) emphasized the fact that "the restraint sought by plaintiffs allows the Planning Board to

continue to process and approve the applications, subject only to the plaintiff's right to request rezoning of the tract as part of the remedy in this case." If the relief sought by plaintiff in the subject motion were granted, defendant would be stayed from taking any action on applications, and would indeed be prejudiced.

Our courts have long recognized that great care must be exercised in considering applications for injunctive relief. As our Supreme Court stated in N.J. State Bar Assn. v. Northern N.J. Mortgage Associates, 22 N.J. 184, 194 (1956)

"An injunction is an extraordinary equitable remedy utilized primarily to forbid and prevent irreparable injury. It must be administered with sound discretion and always upon the considerations of justice, equity, and morality evolved by the given case. Canada Realty Co. v. Carteret, 136 N.J. Eq. 550, 556 (Ch. 1945). No court of equity will exercise its power to grant injunctive relief merely upon a showing that the party proceeded against is committing or is intending to commit an unlawful or improper act. To obtain equitable cognizance there must be imminence of irreparable damage to the property or rights of the plaintiff..."

It has also been widely acknowledged that "there is no power, the exercise of which requires greater caution, deliberation and sound discretion, and which is more dangerous in a doubtful case, than the issuing of an injunction." Benton v. Kerman, 126 N.J. Eq. 343, 346 (E&A, 1939).

The relief sought by plaintiff is indeed extraordinary. It is in the nature of a blanket prior restraint against any action on the part of defendant in connection with applications to develop certain parcels of land within the Township of Piscataway. The severity of the requested restraint vis-a-vis defendant is not justified by any imminent or irreparable harm to plaintiff. In fact, plaintiff has failed to demonstrate that any harm whatsoever will come to it if the requested relief is not granted. Plaintiff is amply protected by the present system of case-by-case scrutiny.

For the foregoing reasons, it is respectfully requested that the relief sought by plaintiff be denied.

Respectfully submitted,

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By

  
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