

U.L. v. Carteret

1976

- Woodbridge

Brief & Appendix In Support of Motion For Δ.

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PI # 1123

CA002208B

Superior Court of New Jersey

APPELLATE DIVISION

DOCKET NO. A-4683-75

URBAN LEAGUE OF GREATER NEW
BRUNSWICK, et al,

Plaintiff-Appellant

-vs-

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

Defendants-
Respondents

CIVIL ACTION

~~XXXXXXXXXXXX~~

SAT BELOW

HON. DAVID D. FURMAN

BRIEF AND APPENDIX IN SUPPORT OF MOTION
FOR
DEFENDANT-RESPONDENT, TOWNSHIP OF WOODBRIDGE

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CA002208B

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Judgment entered July 9, 1976 1a.

PROCEDURAL HISTORY

On July 9, 1976, the Honorable David D. Furman entered a judgment in the within matter, With respect to the Township of Woodbridge, as well as ten other co-defendants, the Order for judgment spoke to the future by providing that the Complaint shall be dismissed upon compliance with the terms of the settlement entered into with the plaintiffs and recited in paragraph 13 of the said Order. (Da 7-13).

Pursuant to the agreement entered in open Court (See Exhibit "A" annexed to the Affidavit submitted herewith) the Township of Woodbridge amended its zoning ordinance on April 6, 1976. Subsequently, this defendant applied to the Court for an Order of Dismissal pursuant to the aforesaid judgment. Plaintiffs objected to the form of the Order submitted and, therefore, a date has been set to settle the form of that Order.

On or about August 31, 1976, plaintiffs filed a Notice of Appeal. To date, an Order of Dismissal has not been entered with respect to the Township of Woodbridge.

STATEMENT OF FACTS

On March 3, 1976, plaintiffs and the Township of Woodbridge entered into a settlement agreement with respect to the relief sought by plaintiffs.

On July 9, 1976, the Superior Court, Chancery Division, entered Judgment conditionally dismissing the Township of Woodbridge from the suit. This dismissal would be finalized upon the entry of an Order of Dismissal entered upon proof that the Township had amended its zoning ordinance in accordance with the settlement agreement referred to in the affidavit submitted herewith.

The Township of Woodbridge has amended its zoning ordinance pursuant to the said agreement. An Order of Dismissal has not yet been entered by the Court. Rather, a Motion is pending to settle the form of Order.

ARGUMENT

POINT I.

PLAINTIFFS ARE ESTOPPED FROM REPUDIATING THE SETTLEMENT VOLUNTARILY ENTERED INTO WITH DEFENDANT.

On March 3, 1976, during the trial of this action, plaintiffs and the defendant, Township of Woodbridge, entered into a settlement agreement. (Exhibit "A" annexed to the affidavit submitted herewith). That agreement encompassed and set forth all of the requirements to be performed by the Township of Woodbridge. Pursuant to that agreement, and in reliance thereon, this said defendant amended its zoning ordinance. (Exhibit "B" annexed to the affidavit submitted herewith.)

Now, plaintiffs have attempted an appeal from the terms of that agreement.

It has long been recognized that one may "by voluntary conduct be precluded from taking a course of action that would work injustice, and wrong to one who with good reason and in good faith has relied upon such conduct." Summer Cottagers' Ass'n of Cape May v. City of Cape May, 19 N.J. 493, 503-4 (1955). Here, defendant relied upon plaintiffs' representations as to the sufficiency of the amendment necessary for dismissal, and effected those agreed upon changes to the local zoning ordinance. Addi-

tionally, with that agreement on the record, this defendant, in reliance upon the apparent sincerity of plaintiffs' agreement, put forth no defense.

Hence, all of the essentials elements of estoppel are present. Clark v. Judge, 84 N.J. Super. 35,54 (Ch.Div.1964), affirmed 44 N.J. 550 (1965). Therefore, this defendant maintains that plaintiffs are, and by this Court should be, estopped from repudiating the said agreement upon which this defendant, in good faith, relied.

POINT II.

PLAINTIFFS' APPEAL IS NOT RIPE FOR
APPELLATE REVIEW.

"The general key to determining whether a particular order is interlocutory or final turns on the question of whether it disposes of all of the issues in controversy and as to all parties." In Re Old Colony Cool Co., 49 N.J. Super.117, 123 (App.Div.1958) In the present matter there has been no final Order entered with respect to this defendant. In fact, a Motion is yet pending in the Chancery Division! The Judgment entered on July 9, 1976, cannot be deemed final. Paragraph 23 of that Judgment (Da 15) specifically sets forth the procedure to be followed by this defendant before an Order of Dismissal will be entered by the trial court.

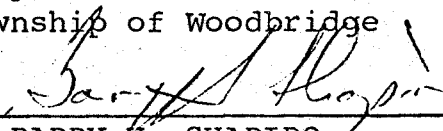
Plaintiffs have no right to appeal "the incomplete judgment without leave of court." Frantzen v. Howard, 132 N.J. Super 226, 227 (App.Div.1975). Plaintiffs have made no such application. Therefore, since no "application for leave to appeal having been made under R.R. 2:2-3(b), the appeal must be dismissed." Thatcher v. O'Mahony, 37 N.J. Super 139, 143 (App.Div.1955).

CONCLUSION

For the reasons set forth above, it is respectfully submitted that plaintiffs' appeal with respect to this defendant, Township of Woodbridge, must be dismissed.

Respectfully submitted,

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BY 
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