

~~NO. 15~~ - Old Bridge  
New CA

8-MAY-81

OBY

Memo in Opposition to plaintiff's Motion for  
Partial Summary Judgment (Alfonso)

pg 15

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MIDDLESEX COUNTY  
DOCKET NO. L-32516-80

O & Y OLD BRIDGE DEVELOPMENT  
CORP.,

Plaintiff,

-vs.-

THE TOWNSHIP OF OLD BRIDGE,  
et als.,

Defendants.

Civil Action

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- A. LEGAL MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT, Pages 1 to 5
  - B. SUPPLEMENTAL LEGAL MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT, Page 6
  - C. SUPPORTING SUPPLEMENTAL CERTIFICATION OF FINEBERG AND STONE IN OPPOSITION TO PLAINTIFF'S MOTION AND IN SUPPORT OF DEFENDANT'S MOTION, Page 7, et als.
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On The Brief: Louis J. Alfonso, Esq.

A. LEGAL MEMORANDUM IN OPPOSITION TO  
PLAINTIFF'S MOTION

THE COUNTERCLAIMS OF THE DEFENDANT TOWNSHIP  
COUNCIL AND TOWNSHIP OF OLD BRIDGE SHOULD  
NOT BE DISMISSED BECAUSE DISCOVERY IS NOW  
UNDERWAY.

A motion for summary judgment should only be granted with much caution and summary judgment should not be granted when there are genuine issues of material fact to be decided and only when it is shown palpably that there is no genuine issue of fact remaining. SELTZER VS. ISAACSON, 147 N.J. Super. 308 (1977). Additionally, our Courts have made clear that summary judgment should not be used as a substitute for a trial or as a means to determine triable issues by motion without a trial. BATTLE VS. GENERAL CELLULOSE CO., 23 N.J. 538 (1957).

In the case at bar, the position of the Township is that there are numerous genuine issues raised by the counterclaim and its supporting certifications.

Additionally, what is "good for the goose should also be good for the gander". O & Y in their Reply Brief in page 8 to this defendant's motion to dismiss part of their complaint as to an alleged conspiracy quote Rule 4:46-5, JUDSON V. PEOPLE'S BANK, 17 N.J. 67 (1954) and BILOTTI V. ACCURATE FORMING CORP., 39 N.J. 184 (1963) to support their argument that defendant's motion should not be granted to dismiss part of their complaint until discovery proceedings are had to enable the responding party to obtain the material necessary to justify its opposition. Here, too, this defendant takes the same position as to plaintiff's

motion. Discovery is only now begun on this defendant's counter-claims. Interrogatories have only gone out for delivery to plaintiff April 29, 1981. (Plaintiff's Interrogatories were received April 15). Supplemental Interrogatories are now being drafted inquiring as to malice, motivation, who gave background stories to the news media and when, the action of plaintiff's Board of Directors and stockholders, the action of plaintiff's employees in attempting to gain influence by making contributions, who conceived the idea of a conspiracy and when that allegation was made when there is no factual basis for it, etc. Additionally, deposition of plaintiff, its various officials and employees will be scheduled. Therefore, just as plaintiff says summary judgment against it should be withheld, the same argument is applicable as to plaintiff's motion against this defendant.

In SELTZER, Supra., the Court further noted that it is the movant's burden to exclude any reasonable doubt as to the existence of any genuine issue of material fact, and all inferences of doubt are drawn against the movant in favor of the opponent. Here a reading of defendant's Certifications show there is a sufficient factual basis for the counterclaim and there are factual issues to be decided.

The motion of plaintiff for summary judgment to dismiss defendant's counterclaim should not be granted because there are genuine issues of material fact to be decided.

In the certification of Mrs. Fineberg are set forth various statements which form the basis of this defendant's counter-

claim for defamation and libel. The statements in the certification which are not refuted show they go beyond what is in the complaint and as one example specifically charge a "strong indictment of not only the Township's Zoning Ordinance but of the way in which business is conducted in Old Bridge." It is the defendant's position that this statement is itself defamatory and is actionable. The other statements quoted by Mrs. Fineberg in her certification are also defamatory, are not privileged, were not made in the cause of legal proceeding because they were made specifically to news reporters for the purpose of having them published and were not made in Court, and were not fair characterizations of parts of the complaint. Certainly the issue of whether the statements were fair characterizations of what was in the complaint are questions for a trier of fact and not an issue for decision by summary judgment. Plaintiff in its brief says they are fair comment, the certifications of defendant deny this. This does raise a material issue of fact. The mere fact that defendants are public officials does not give plaintiff the right or license to charge whatever they wish and ensure publication of same.

As to the indictment statement noted above which was published as a result of a charge levied by plaintiff's representative to a news reporter and not a quote of part of the complaint the term "Strong Indictment" and of "How business is conducted in Old Bridge" is obviously actionable. Webster's dictionary defines indictment "as a formal accusation usually required for felonies and other serious crimes". It defines accusation as "a charge of wrongdoing, imputation of guilt or blame.

Thus, by common meaning, this statement led readers to believe that criminal action or wrongdoing was being done by the defendant Old Bridge officials. Taken in context with the other statements given to the press by representatives of plaintiff as shown in defendant certification we see a series of articles with various serious charges of violating Court Orders and wrongdoing attributed to the defendant Old Bridge officials by plaintiff's representatives. Those statements made by council were not privileged because as Mrs. Fineberg's Certification shows they go beyond the complaint and constitute separate charges. At least this is a factual issue which must be decided subsequently and they are not mere opinions as set forth in GERTZ V. ROBERT WOLCH, INC., 418 U.S. 323 (1974), OILMAN V. EVANS, 479 F. Supp. 292 (D.D.C. 1979).

This defendant has also filed other counterclaims which allege that this action is malicious, was brought for improper motives, is done to harass and to get even with defendant because of defendant's action in not adopting an Ordinance tailor made for plaintiff. It is submitted that first of all discovery should be allowed to continue as to these claims and additionally, the Certifications of defendant show there are material issues based on plaintiff's actions which support the allegations of this defendant's counterclaim.

As to these counterclaims, they are tort actions based upon plaintiff's use of false and defamatory statements made after the suit was filed which constitute the improper act after the issuance of process which were as Mrs. Fineberg's Certification

show done to harass defendant's reputation and standing when defendants are up for election and as an improper attempt to influence that election by bad press. Plaintiff in its own Brief admits it has no facts and is aware of no meetings to support its charges of conspiracy and improper acts by the Old Bridge officials. Yet these statements were made after the suit was filed. Certainly this supports defendant's counterclaims and the matter should proceed with discovery, etc. In conclusion, the certifications of defendant show there are factual basis in plaintiff's actions to support the counterclaims and they should not be dismissed.

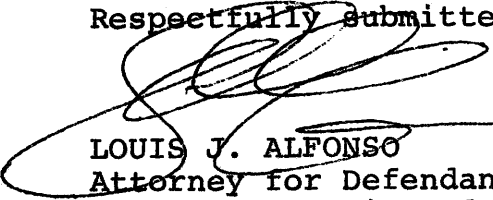
B. SUPPLEMENTAL LEGAL MEMORANDUM IN SUPPORT  
OF DEFENDANT'S MOTION

PLAINTIFF'S TENTH COUNT OF PLAINTIFF'S  
COMPLAINT SHOULD BE DISMISSED AND  
PARTIAL SUMMARY JUDGMENT GRANTED DEFENDANT

The Reply Certification of Councilwoman Fineberg and the Certification of Councilman Stone show without a doubt that no conspiracy existed. Plaintiff in its brief after reviewing the initial certification of Davis and Fineberg did not refute these but rather, raised potential areas they did not cover. The two new Certifications answer those points in Plaintiff's Brief and show in fact there are no issue and that discovery on this Count would not lead to any facts upon which plaintiff could base its claims. It would be unfair to the citizens and taxpayers of Old Bridge to permit discovery to continue when plaintiff has no facts and in fact admits this is its brief upon which to support its conclusions set forth in its brief of conspiracy.

Since the pleadings and certifications show there just is no genuine material issue of fact outstanding as to Count Ten and there was no deliberate action to promote exclusionary zoning or violate Court Orders partial summary judgment should be granted defendant and Count Ten dismissed.

Respectfully submitted,

  
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Attorney for Defendant,  
Township Council and  
Township of Old Bridge



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O & Y OLD BRIDGE DEVELOPMENT CORP.,	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION
	:	MIDDLESEX COUNTY
Plaintiff,	:	DOCKET NO. L-32516-80
-vs.-	:	Civil Action
THE TOWNSHIP OF OLD BRIDGE, et als.,	:	OPPOSING AND SUPPLEMENTAL CERTIFICATION
Defendants.	:	

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SONJA FINEBERG, of full age, hereby certifies as follows:

1. I make this Certification in opposition to plaintiff's motion for summary judgment and to support the Township's motion for summary judgment.

2. A number of libelous statements were published in the newspapers as a result of this suit. These statements were made by employees, servants and agents of plaintiff. They were made in response to questions from newspaper reporters and/or were made in statements to the news media with the full knowledge that they would be published. Also background information was given the news media by plaintiff's servants, agents and employees which was used as part of published news accounts of plaintiff's

Court action and in subsequent news stories and accounts.

3. The libelous statements which were published as a result of the above include but are not limited to the following:

A. The News Tribune, February 20, 1981. An employee, servant or agent of plaintiff said and was quoted as telling a reporter for direct publication "The 63-page suit was a **STRONG INDICTMENT** (Emphasis added) of not only the Township's Zoning Ordinance but the way in which business is conducted in Old Bridge". Obviously this is libelous because an indictment by all definitions and by common understanding in the charging of a criminal offense or a public offense and therein he says I have engaged in conduct requiring an indictment. No where in the Complaint is the word indictment used and the statements by the representatives are not truthful representation of the content of plaintiff's complaint.

B. The News Tribune, February 20, 1981. Again a representative of plaintiff specifically told a reporter for publication that in relation to the Oakwood at Madison decision and Court Order where Old Bridge was to provide least cost housing "Old Bridge had no intentions of permitting this kind of development". This is libelous because it says that Old Bridge (and I am on the governing body of Old Bridge) intended to violate a Court Order and decision of the Supreme Court of New Jersey. This is in violation of my sworn oath as a public official to obey the laws and obviously hurts my reputation as a public official.

C. The News Tribune, February 20, 1981. A representative of plaintiff was quoted for publication as stating "after two years, Olympia & York hasn't EVEN (Emphassis added) been able to get an application in". This is libelous as the clear implication and design of the statement when taken in content with what was said in the rest of the article because it amounts to saying the Council and governing body of which I am a member somehow operate to defeat the plan and scheme of State Law and don't even permit a developer to file an application. This statement is also not a truthful representation of the matters in the complaint.

D. The News Tribune, February 20, 1981. A representative of plaintiff said for publication in relation to the Oakwood at Madison decision "Old Bridge is ignoring the second most famous land use decision in the State, Oakwood at Madison, which came out of its own town". Again this says that I have ignored Court Orders in violation of my oath of office and holds me up to ridicule for ignoring a famous Court decision. This statement too goes beyond the complaint and is not a fair characterization of any one part of it.

E. The Star Ledger, February 21, 1981. A representative of plaintiff gave background information to a reporter which directly led to the following statement which in the context of the entire article is libelous "The Township Ordinance violates two Court Orders ...". The representative then went on and outlined for the reporter and for publication what the cases were and areas where the violations allegedly occurred.

F. The Home News, February 19, 1981, contained a statement that the governing bodies "have conspired to violate the specific directions of the New Jersey Supreme Court in the Oakwood at Madison decision and the 1976 Urban League case ..." and "the firm said the Township has not complied with the Oakwood decision and the Urban League case ...". While no specific member of plaintiff is quoted as making this statement, it should be noted that the complaint was filed in Trenton February 18 and these statements were already in print one day afterwards in a New Brunswick paper. In that article, the reporter notes a conversation with Lloyd Brown, a Vice President of plaintiff. It appears obviously that Brown gave the paper the background information and charges for publication and this defendant intends to show this by discovery.

4. Regarding the other counterclaims, plaintiff has proposed an amendment to our Zoning Ordinance which would allow them or any owner of a large tract (600 acres) to receive a ten (10) year approval from the Planning Board for a "general development plan" before seeking preliminary and final subdivision approval. A majority of the Council did not feel this particular idea was good because it would tie up future Planning Boards and governing bodies for a ten year period. Representatives of plaintiff attended and spoke at the meeting regarding this and became very upset when it didn't go through and plaintiff could not get its way and have a tailor made amendment adopted for them. As a result of their becoming incensed and upset, they began

sending people to townhall to gather information for this suit. Their action was based on a desire to get back at us for not adopting what they wanted and to cause us grief and much expense. They know a majority of the Council are up for election this year and that the publication of bad news and libelous statements could adversely effect our election chances. They want to have a governing body that will go along with them and allow them to build whatever and whenever they want regardless of the public interest in the rest of the town and the over 50,000 persons we represent.

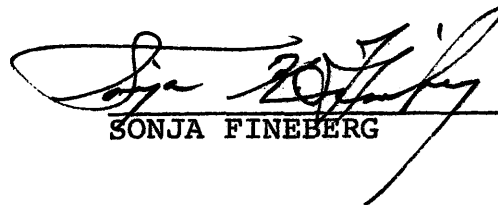
5. Regarding my previous Certification about the allegations of a conspiracy, I supplement it as follows. The plaintiff raises a number of possibilities in his answering Brief when he alleges a conspiracy could have occurred. These allegations are mere speculation. I firmly say the Township Council did not modify the draft of the Ordinance the Planner put together. The Council in no way made that Ordinance exclusionary or made any amendment to violate any Court Orders and plaintiff has not alleged this nor can plaintiff because it did not occur. Additionally, there were no meetings of the Township Council or any of its members or any other defendants for the purpose of discussing and creating a policy of not planning for future sewer and water facility needs of development. Plaintiff cannot allege anything to the contrary because it did not occur. It would be unfair to these defendants to not dismiss this part of the complaint and make us go to the expense of discovery and a continuation of this part of the suit. As our

Certifications show there are no material genuine issues of fact in dispute as to the conspiracy Count and it ought to be dismissed.

6. Additionally, large contributions or money donations have been made by plaintiff in Old Bridge. I believe to get zoning leverage and plaintiff then attempted to have us amend our Zoning Ordinance to give them the right to build in accordance with a ten year plan which we could not approve. They then became upset and angry and began this suit. Their action based on the above and our refusal to make this change and turn Old Bridge into a company town is the reason this action was brought. I will not adopt ordinances and change our laws to give builders and developers special treatment contrary to what I believe is the public interest.

7. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

DATED: April 29<sup>th</sup>, 1981

  
SONJA FINEBERG

LOUIS J. ALFONSO, ESQ.  
Township Attorney  
325 County Highway 516  
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Attorney for Defendant, Township of Old Bridge

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O & Y OLD BRIDGE DEVELOPMENT CORP.,	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION
	:	MIDDLESEX COUNTY
Plaintiff,	:	DOCKET NO. L-32516-80
-vs.-	:	Civil Action
THE TOWNSHIP OF OLD BRIDGE, et als.,	:	CERTIFICATION
Defendants.	:	

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GEORGE STONE, of full age, hereby certifies as follows:

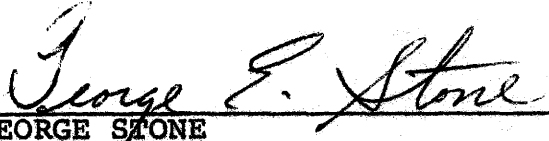
1. I am a councilman and former Mayor of Old Bridge and have been since January 1974.
2. There have been no meetings or agreements among the Old Bridge Council, Sewer or Water Authority for the purpose of directly or indirectly advancing or promoting exclusionary zoning or zoning against plaintiff's interests. The complaint of the plaintiff contains a number of conclusions but no facts alleging a conspiracy. They allege no facts because there are none to allege. In fact, I have discussed with officials of plaintiff the possibility of amending our Zoning Ordinance to permit them to develop their land in accordance with a ten (10) year plan which I have been told they favor. There were also no meetings as above with the other defendants.

3. I have done all I could to advance non-exclusionary zoning in Old Bridge and to insure all Court Orders are followed and was quite upset as a result of plaintiff's allegation that I have violated Court Orders.

4. There was one preliminary meeting plaintiff had with representatives of the Water and Sewer Authority to try and answer their questions which I attended in regard to availability of sewerage and water. I am aware of no other said meetings. We met in a cooperative spirit with them to help resolve their problems. It was not our intention to harm them in any of their future or pending applications. I was very surprised they allege I have engaged in a conspiracy against them.

5. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

DATED: April 29, 1981

  
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GEORGE STONE