

Bernards Twp

(1986)

Civil Action Order - motion for partial
Summary judgment

4 pgs

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
SOMERSET/OCEAN COUNTIES
DOCKET NO. L-012580-85 P.W.

SPRING RIDGE ASSOCIATES, a)
New Jersey Partnership, and)
LAWRENCE ZIRINSKY, Individu-)
ally,)
)
Plaintiffs,)
)
v.)
)
TOWNSHIP COMMITTEE OF)
BERNARDS TOWNSHIP and)
PLANNING BOARD OF BERNARDS)
TOWNSHIP,)
)
Defendants.)

Civil Action

ORDER

This matter having been opened to the Court by a motion for partial summary judgment to enforce the terms of a May 10, 1979 Consent Judgment in the matter of Lorenc, et al. v. Township of Bernards, (Docket No. L-6237-74 P.W.) by Sterns, Herbert & Weinroth, Attorneys for Plaintiffs, (Michael J. Herbert, Esq. appearing), and Susan Kaplan, Esq., appearing as Corporate Attorney for Spring Ridge Associates, and by cross-motions brought by

6-29-86
DKD

Farrell, Curtis, Carlin & Davidson, Attorneys for Defendant, Township Committee of Bernards Township, (Howard P. Shaw, Esq. appearing), and by Kerby, Cooper, Schaul & Garvin, Attorneys for the Defendant, Planning Board of Bernards Township, (Arthur Garvin, III, Esq. appearing), to transfer this cause to the Council on Affordable Housing pursuant to Section 16 of Chapter 222 of the Laws of 1984 (N.J.S.A. 52:27D-316), or alternatively for certain rulings in limine, and the Court having considered the pleadings, briefs, and arguments of counsel, and for the reasons set forth in the Court's oral opinion of May 19, 1986, and for good cause showing,

IT IS on this 29 day of May, 1986, ORDERED AND DECLARED:

1. That Section 6(e) of the May 10, 1979 Consent Judgment entered in Lorenc, et al. v. Township of Bernards, providing that as to the Plaintiffs' Spring Ridge development site, it would "run with the land and may not be changed or modified by any future ordinance by the Township until completion of development" and the defendants' agreement thereto, were ultra vires and unenforceable.

2. That since Section 6(e) was ultra vires, the Plaintiffs' Motion for Partial Summary Judgment to enforce the aforesaid Lorenc judgment as it affects the Plaintiffs' Spring Ridge development site on the grounds of res judicata, is denied.

3. That the Plaintiffs' Motion for Partial Summary Judgment on grounds other than res judicata, is also denied.

4. That there is a genuine issue as to whether the defendants can be estopped from imposing a mandatory set aside

of low and/or moderate income housing on the Spring Ridge development site, which would require a plenary hearing.

5. That the parties will be granted the opportunity to submit legal memoranda to the Court no later than May 29, 1986 as to the issue of whether the appropriate forum to conduct such a plenary hearing on the issue of estoppel is this Court; or the Superior Court, Law Division, Somerset County; or the Council on Affordable Housing, established pursuant to Chapter 222 of the Laws of 1985.

6. That defendants' Motion in limine is carried pending a determination as to such appropriate forum.



Eugene D. Serpentelli, A.J.S.C.

CHECKLIST PURSUANT TO R.1:6-2

- Notice of Motion
- Movant's Certification
- Movant's Brief
- Answering Certification(s)
- Answering Brief(s)
- Cross Motion(s)
- Other

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May 21, 1986

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Handwritten note

noted 5 days ago

Honorable Eugene D. Serpentelli, A.J.S.C.
Ocean County Court House
Toms River, New Jersey 08754

RE: Spring Ridge Associates, et al. v. Township Committee of Bernards
Township, et al., Docket No. L-012580-85 P.W.

Dear Judge Serpentelli:

consent not yours

I am enclosing herewith a form of order which has been
consented to by Howard Shaw, the attorney for the Defendant, Township
Committee of Bernards Township, on behalf of both Defendants.

I believe that this form of order accurately reflects Your
Honor's decision of May 19, 1986, and we would respectfully ask that
you sign the original and two copies of the Order and transmit one
executed copy indicating the appropriate filing in the enclosed self-
addressed stamped envelope.

Respectively yours,

Michael J. Herbert
MICHAEL J. HERBERT

MJH:mjf
Enclosures as stated

cc: Howard P. Shaw, Esquire
Arthur Garvin, III, Esquire
Susan Kaplan, Esquire

RECEIVED

MAY 22 1986

JUDGE SERPENTELLI'S CHAMBERS