ML Old Bridge 1986

Rondinelli v. O.B.

Memo by Old Bridge why P's motion to Intervene should be denied.

Pgs = 10

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MIDDLESEX COUNTY
Docket No. L-082456-85

EDWARD J. RONDINELLI and ALEXANDRIA RONDINELLI and DALERON ASSOCIATES, a New Jersey Partnership,

Plaintiffs,

vs.

TOWNSHIP OF OLD BRIDGE, a Municipal Corporation,

Defendant.

CIVIL ACTION

MEMORANDUM OF LAW

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INTRODUCTION

The Motion to Intervene by the Civic League of Greater New Brunswick, is totally unconnected to an interest relating to the property or transactions, which is the subject of the action sub judica.

The action is a suit by a taxpayer, who has acquired options on property in Old Bridge, additional to property previously acquired and owned by him, to set aside and declare as invalid an ordinance, which seeks to reduce the density of the Planned Development I Zone, which the Township Council sought to adopt.

What the applicant for intervention is attempting is to assert rights in an administration or quasi judicial proceeding of the Board of Adjustment of Old Bridge, which had terminated by its Resolutions of April 17th and September 5, 1985 and the expiration of the time for appeal or, in the alternative, what would be a collateral attack in an action against the Township of Old Bridge against the Resolution of the separate Board of Adjustment of the Township of Old Bridge.

FACTS

The background facts are basically set forth in the Certification of Edward J. Rondinelli in opposition to the matter for Intervention.

There is related in said Certification, the application for approval of variances as to use, the hearings, the completion, the Resolutions and the fact of no appeal from any of such proceedings to establish the finality of the variance.

There is also established the fact of the pendency of Urban League of Greater New Brunswick (now Civic League) vs. The Mayor and Council of the Borough of Carteret, and other cases, and on the one side while all the parties thereto were very well aware of all zoning activities and proceedings occurring in Old.Bridge, Edward J. Rondinelli was allowed to proceed with his variance and to enter into irrevocable commitments, without intervention by the Civic League. And while the Mount Laurel fate of his lands was being dealt with and settled away, no one considered it to be a lack of propriety or due process to notify Mr. Rondinelli that he was a specific target of their actions.

Only in February, 1986, after what the Civic League and the Township considered to be a fait accompli, did Mr. Rondinelli receive a copy of the Order of the Honorable Eugene D. Serpentelli that incorporated a settlement between the parties to the action which, without input from Mr. Rondinelli, contains a specific requirement of forty (40) Mount Laurel housing units without any opportunity to set forth his position of special extremely costly conditions of his lands, without consolidation of proceedings, without regard to the fact that Mr. Rondinelli, as a condition to his variance approval, agreed to build, for his own expectations of success and risky undertaking, 100,000 square feet of office building, without pre-leases, and to build and/or pay for a little league field and committed to provide bond funds for large scale improvement funds, and also to assume the making of large amounts of lands available for office and other advantages civic and com*

mercial improvements. All of these are and will be to the great use and benefit of the development of the Township of Old Bridge and to the progress of its citizens.

The actions of the Town and of the Civic League, in their failure to disclose, is completely unjustifiable. Why wasn't Mr. Rondinelli able to present his facts and, if Mount Laurel was inevitable, to strike a fair bargain which would compensate him, in addition to all other costs and expenses he would incur for the approximately one million dollar loss he would sustain, if he were, in fact, compelled to build forty (40) low-cost and/or moderate Mount Laurel housings.

Despite the above, which goes very much to the merits, it is our position that there is no jurisdiction in the subject matter of this case for the allegation of the Counterclaim attached to its Motion, it is a non-issue in this case to set aside an ordinance which seeks to restrict density.

LAW

POINT I

APPLICANT'S MOTION FOR INTERVENTION DOES NOT COMPLY WITH THE REQUIREMENTS OF R.4;33-1

Civic League's Motion is for Intervention as a matter of right pursuant to R. 4:33-1.

The rule is very explicit in its terms,

"R.4:33-1. Intervention as of Right

> Upon timely application anyone shall be permitted to intervene in an action if the applicant claims an interest relating to the property or transaction which is the subject of **the** action and he is so situated

> that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties".

There is no brief filed by the applicant and there is no showing of any of the elemental requirements of the Rule.

a) Untimely: If the applicant, Civic League, intends to attach the results of the variance, it is certainly untimely, nor is it an excuse for a collateral attack of other proceedings. The Resolutions were adopted April 17th and September 5, 1985 and there is no longer nor can there be a pending action.

b) Claim of Interest: Applicant cannot claim an interest relating to property for there is no specific property involved in this action. The issues of this case (see the Demands of the Complaint) is to hold the ordinance to be invalid or invalidly adopted. That is the transaction, so to speak. In fact, there are no property rights nor transaction involved in this case which Rule 4:33-1 is intended to protect. Its position is not comparable to plaintiff's, who attack the ordinance nor to the Township, which seeks to sustain it. It is just not a Mount Laurel case.

c) As to impairing or impeding ability to protect the defined interest. There is absolutely no showing that Civic League's desires, not interest relating to property, will be impaired or impeded by the disposition of this action as to the validity of the ordinance which reduces density.

d) Adequate representation. Again, there is no showing of interest, but even changing it to objective, the forum of the

I Mount Laurel claims has already been decided in another case in another forum and the issues in this case are adequately represented by existing parties.

There is no attack, in this case, of the Urban League (Civic League) case, which was settled by the parties to that action, application to the vested rights of the plaintiff in this action. That action must stand on its own, with whatever rights may be attributed or stem therefrom.

The Civic League seeks to circumvent its own failure to deal, in proper time and manner, with plaintiff's application for a variance in a case where Mount Laurel units were not fixed or defined, dealt with, or even mentioned.

See ~~U.S. Lehigh Valley Co-op Farmers, Inc.~~, D.C. Pa., 1968 294 F. Supp. 140, which deals with the Federal similar Rule (224), holds that intervention is not proper to litigation an issue or issues which do not exist or are not available in an action between original parties.

Also see ~~Babcock v. Town of Erlanger,~~ D.C. Ky., 1940, 34 F. Supp. 293, that intervention introducing litigation having no relation to that opened in original complaint will not be permitted. See, also, Salem Engineering Co. v. National Supply Co., D.C. Pa. 1948, 75 F. Supp. 993; Slusarski v. U.S. Lines Co., D.C. Pa. 1961, 28 F.R.D. 388.

See, also, Equal Employment Opportunity Commission v. United Air Lines, Inc., C.A. 111. 1975, 515 F. 2d 946, as prohibition against introducing broader questions.

Jefferson County Sav. Bank v. Coperra Gardens Highland Development Corp., D.C. Puerto Rico 1971, 53 F.R.D. 178, stands for the proposition that the rule for intervention does not contemplate intervention when entirely new issues will be introduced.

See Athens Lumber Co., Inc. v. Federal Election Com'n., C.A. Ga. 1982, 690 F. 2d 1364, that intervention of right must be supported by direct, substantial, legally protectable interest in the proceeding and, in essence, intervenor must be at least a real party in interest in a transaction which is subject of the proceeding.

There is no way that the invalidity or validity of the particular ordinance, which is the subject matter of this proceeding will affect any interest of the Civic League. If it is impaired, it is not by this proceeding or its outcome. See ~~Newport News Shipbuilding and Drydock Co. v. Peninsula Shipbuilders' Ass'n~~., C.A. Va. 1981, 646 F. 2d 117; ~~U.S. Postal Services v. Brennan~~, C.A. N.Y. 1978, 579 F. 2d 188.

An "interest" of a proposed intervenor required under ~~Rule~~ 24(a) governing intervention, must be direct and substantial. See ~~Lake Investors Development Group, Inc. v. Egedi Development Group,~~ C.A. 111. 1983, 715 F. 2d 1256.

A claim of "interest" in a transaction which is the subject of the action, is more than the proposed intervenor being merely "interested" in the litigation. ~~US ex rel Carmona v. Ward~~, D.C. N.Y. 1976, 416 F. Supp. 276.

As to adequacy of representation, there must be a clear showing rather than an obligation that an interest is not

adequately represented by an existing party to a suit. U.S.V. International Tel. & Tel. Corp., D.C. Conn. 1972, 349 F. Supp. 32, aff'd. 93 S.Ct. 1363, 410 U.S. 919, 35 L. Ed. 2d 582.

Compare Dodson v. Salvitti, D.C. Pa. 1977, 77 F.R.D., 674 as to denying intervention to owners of adjoining or close properties intervening in a pending action by displaced persons who seek to compel HUD and city redevelopment authorities to comply with Federal statutes on replacement housing.

Compare with Hanover Tp. v. Town of Morristown, 121 N.J. Super. 536 (H.D. 1972) that denied right to intervene after final judgment and after time for appeal expired.

Since the plaintiff here has made a substantial change of position, he would be prejudiced to have to deal with an issue, which is not a part of the pending action.

Under old Chancery Rules as to intervention, the word "interest" contemplated a property right or share, and is not a synonym for "concern". Jenkins v. McGovern, 136 N.J. Ew. 563, Rev. 140 N.J. Eq. 99 (Ch. 1945).

POINT II

APPLICANT'S RIGHT, IF ANY, SHOULD BE FORFEITED IN THIS CASE

Although there was ample opportunity for Civic League to have become involved in Rondinelli's application before the Board of Adjustment of Old Bridge, it, for some unexplicable interest, did not do so and permitted him to make legal promises and implement them based upon a demand of the Board of Adjustment.

It is just downright unjustifiable and inexcusable that a suit would be pending and Rondinelli thrown in to the lions, to make up a quota, without a fair hearing as to his change of position and to be heard as to compensable exchanges for Mount Laurel compliances.

There is no way, except by the granting of benefits to make up the loss, that plaintiffs can be restored to their position. It is not only a primary case of estoppel but such a right, if one exists in this case, should be denied on the basis of forfeiture, by reason of the doctrines of "unclean hands", fraud and, certainly, by "unconscionable conduct". See Goodwin Motors Corp. v. Mercedes-Benz of N.A., Inc., 172 N.J. Super. 263 (App. Div. 1980).

To keep plaintiff in the dark, to let him proceed on his legal way, and then spring upon him a secret and undisclosed mandate, and then use an unrelated action, at a time beyond which appeals may be made, to foist an appendage by requirements to the Resolution of the Board of Adjustment, in a retroactive manner, would be unconscionable, unsupportable and illegal, that shocks the conscience of fair play.

CONCLUSION

It is respectfully submitted on the application that, for the reason stated, intervention should be denied. It is also apparent that the merits of the case, leave serious doubts as to applicant's ability, under all these circumstances, to sustain its

ill-gotten position. Nevertheless, that issue is not the subject of this suit and will be pursued at an appropriate time, in an appropriate manner.

This is just not the place or time, and the issue herein involved should not be delayed, by unconnected matters.

Respectfully submitted,

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By _____
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