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10-july-84

Garfield & Company v. Cranbury

- Letter memorandum in opposition to Motion filed by Piscataway

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PLEASE REPLY TO: PRINCETON

rec'd 7/13

July 10, 1984

The Honorable; Eugene D. Serpentelli, J.S.C.
Ocean County Superior Court
Ocean County Courthouse
CN 2191
Toms River, New Jersey 08754

Re: Garfield & Company v. Township
of Cranbury, et al.
Docket No.: L-055956-83

Dear Judge Serpentelli:

Please accept this letter memorandum in opposition to the Motion filed by the Township of Piscataway seeking an Order striking all testimony adduced from witnesses relating to the consensus methodology and granting a new trial. The basis for this motion appears to be Mr. Paley's allegation that on June 21, 1984 he learned for the first time that Mr. Kenneth Meiser and Mr. Stephen Eisdorfer, employees of the Office of the Public Advocate, participated in one of the consensus conferences. In fact, Piscataway was aware long before June 21, 1984 that Mr. Meiser and Mr. Eisdorfer attended this meeting, because one of their employees also attended. Certification of Phillip Lewis Paley dated June 29, 1984 (hereinafter "Paley Certification") at 1(7). Thus, it is difficult to understand why Piscataway waited until a month after the trial of this action was completed to voice its concern at the presence of Mr. Meiser and Mr. Eisdorfer at this meeting.

It is also difficult to understand what is so objectionable about these representatives of the office of the Public Advocate attending one of the consensus meetings. Though experienced in the issues arising in this case, the office of the Public Advocate was not a party. Moreover, Ms. Lerman was testifying as an expert. Would it have been improper for her to communicate informally with Mr. Meiser to seek some information with respect to a specific question? For her to have done so would not have been improper. Experts secure the information which forms the basis for their conclusions from a multitude of sources. If Piscataway is arguing that Ms. Lerman's will was overborne by the Office of the Public Advocate, the proper place to have explored that argument

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would have been at the trial of this action. Counsel for Piscataway could have questioned Ms. Lerman on this issue and even produced testimony from Mr. Meiser and Mr. Eisdorfer as well as from its employee, Richard Scalia, who attended the meeting in question.

In reviewing Mr. Paley's Affidavit, one comes away with the impression that the plaintiffs supported Ms. Lerman's report in every respect and the defendants objected to it in every respect. Paley Certification at If10. This simply was not so. As Your Honor well knows, plaintiffs brought to your attention many objections to the report. These objections ranged from the report's method of staging present need to the wealth allocation formula to the failure to take account of lower income families living in adequate housing but paying a disproportionate share of their income for such housing. If the presence of Mr. Meiser and Mr. Eisdorfer at one of the meetings of the experts was calculated to secure these alternate methodologies as part of the consensus report, it failed utterly to do so.

Piscataway both had and took the opportunity at trial to present extensive testimony from its own expert attacking the consensus report. All positions with respect to the consensus methodology were thoroughly explored at the trial before this Court. If the methodology urged by Ms. Lerman was tainted in any way by the method which gave rise to its creation, and I do not believe for one moment that it was, such a taint was washed away in the extensive cross-examination through which Ms. Lerman suffered and the presentations made by experts produced by both Piscataway and Cranbury. This Court has been shown every weakness in the consensus report by both plaintiffs and defendants. It has, moreover, been presented with alternatives to numerous portions of that report. Under these circumstances, no basis at all exists for striking Ms. Lerman's testimony and requiring a new trial.

Respectfully,



William L. Warren

WLW/st