

RULS-AD-1973-30

5/16/1973

- LETTER + PLAINTIFFS MOTION TO AMEND (LOIS THOMPSON)

PGS-12

# Suburban Action

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May 16, 1973

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SOMERS COUNTY  
L. R. OLSON, CLERK

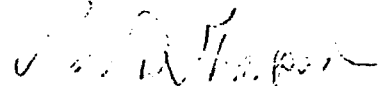
Clerk of the Superior Court  
State House Annex  
Trenton, New Jersey

Re: Cieswick and Allan-Dean v. Bedminster L-36896-70 P.W.

Dear Sir or Madam,

Enclosed for filing please find plaintiffs' motion to amend and supplement the complaint in the above-captioned matter and a memorandum of law in support thereof. As required by the Rules, plaintiffs also file a copy of their proposed amended and supplemented complaint.

Sincerely yours,

  
Lois D. Thompson

LDT:cm  
enc.

cc: Edward Bowlby, Esq.  
William W. Lanigan, Esq.  
Diana & Diana, Esqs.

*Copy*

Peter A. Buchsbaum  
New Jersey Civil Liberties Union  
45 Academy Street  
Newark, New Jersey 07102  
(201) 642-2084  
Attorney for Plaintiffs

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LYNN CIESWICK, et al.,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
Plaintiffs,	:	SOMERSET COUNTY
	:	DOCKET NO. L-36896-70 P.W.
	:	
v.	:	
	:	Civil Action
THE TOWNSHIP OF BEDMINSTER,	:	
et al.,	:	
	:	
Defendants.	:	
	:	

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MEMORANDUM IN SUPPORT OF  
PLAINTIFFS-INTERVENORS'  
MOTION TO AMEND AND  
SUPPLEMENT THE COMPLAINT

Lois D. Thompson,  
on the Memorandum

Plaintiffs-intervenors have moved the Court for an order granting them leave to file an amended and supplemental complaint in this lawsuit pursuant to N.J.R. 4:9-1 and 4:9-4. The motion is made necessary by an event which occurred subsequent to the filing of plaintiffs-intervenors' complaint in the instant action.

The thrust of plaintiffs-intervenors' dispute with defendant the Township of Bedminster is that through its housing and land use laws, policies, and practices Bedminster excludes black and Spanish-speaking and other low and moderate income persons from obtaining housing in the Township. Bedminster excluded at the time the original complaint was filed and Bedminster continues to exclude. The changed facts reflected in plaintiffs-intervenors' supplemental complaint are that Bedminster has enacted a new zoning ordinance which makes certain cosmetic changes in the originally challenged ordinance while continuing to exclude plaintiffs-intervenors and rezoning plaintiff Allan-Deane's land in a manner acceptable to the corporation. Plaintiffs-intervenors will show below that these changes present a situation in which the filing of an amended and supplemental complaint typically has been allowed.

The Amended and Supplemental Complaint - In amending and supplementing their complaint, plaintiffs-intervenors have

added one new cause of action and have revised their allegations to conform to the current status of the litigation. This section summarizes the various revisions encompassed in the amended and supplemental complaint plaintiffs-intervenors now seek leave to file.

Plaintiffs-intervenors have added a cause of action claiming that Bedminster's zoning ordinance is in violation of the general welfare provisions of the Zoning Enabling Act, N.J.S.A. 40:55-30 et seq. This cause of action should have been included in plaintiffs-intervenors' original complaint. Plaintiffs-intervenors have also amended the class action sections of the complaint to conform to the definition of the class which they urged upon the Court in their motion to certify the class. Plaintiffs-intervenors have slightly amended one or two of their factual allegations in order to better set forth their cause of action under N.J.S.A. 40:55-30 et seq.

Plaintiffs-intervenors have supplemented their complaint to show that in response to the various applications and lawsuits initiated by Allan-Deane, Bedminster revised its zoning ordinance in a way which generally would allow Allan-Deane to construct its desired luxury housing community but made no changes in the ordinance which in any way benefit plaintiffs-intervenors. While the particular provisions of the Bedminster zoning ordinance have been changed, plaintiffs-intervenors' challenges to the ordinance and the relief they seek remain

unchanged. Plaintiffs-intervenors have amended their claims for relief only to make more explicit what was already implicit in the original complaint -- they ask the Court to order Bedminster to require all developers of significant amounts of housing to include a certain proportion of low and moderate income housing in their development.

Plaintiffs-Intervenors' Right to Amend and Supplement the Complaint - Initially, plaintiffs-intervenors note that because Rules 4:9-1 and 4:9-4 of the New Jersey Court Rules are identical to and have been based on the Federal Rules of Civil Procedure, they will rely herein on a number of federal cases and treatises dealing with Federal Rules of Civil Procedure. Plaintiffs-intervenors rely on federal cases which have explicitly dealt with supplemental pleadings made necessary by changed facts very much like those set forth herein and because both the New Jersey and the federal courts recognize that motions for leave to file amended and supplemental complaints are to be liberally granted.

The mandate of Rule 4:9-1 of the New Jersey Court Rules and of Rule 15(a) of the Federal Rules of Civil Procedure is that leave to amend "shall be freely given when justice so requires." In determining "when justice so requires" it should be noted that in the absence of a showing of substantial prejudice resulting from the granting of the motion or some other overriding consideration, it is an abuse of discretion

for a court to refuse to permit a party to amend. Green v. Wolf Corp., 50 F.R.D. 220 (S.D.N.Y. 1970); United States v. Hayward Robinson Co., 430 F. 2d 1077 (2nd Cir. 1970), cert den. 400 U.S. 1021 (1971). Prejudice to the opposing party is ordinarily not considered to have occurred unless the motion is made during or after the actual trial. Jean - Air Products Co. v. Penn Ventilator, Inc., 283 F. Supp. 591 (E.D. Pa. 1968). Plaintiffs-intervenors can conceive of no way that defendant the Township of Bedminster could be prejudiced at this stage in the litigation by amendment of the complaint to incorporate a claim that the local zoning ordinance violates N.J.S.A. 40:55-30 et seq. particularly since plaintiffs-intervenors will rely on the same facts to support this claim which they already have indicated they will rely on in support of their other claims.

Rule 4:9-4 of the New Jersey Court Rules (and Rule 15(d) of the F.R. Civ. P.) states:

"On motion by a party, the court may, upon reasonable notice and on terms, permit him to serve a supplemental pleading setting forth transactions or occurrences which took place after the date of the pleading sought to be supplemented . . . ."

In commenting on the Rule, Moore has written that the "purpose of a supplemental pleading is to bring a controversy up to date; to introduce newly-occurring facts enlarging or changing relief sought in the original complaint." 3A Moore,

Federal Practice and Procedure Section 15.16. It is for just this purpose that plaintiffs-intervenors seek to file a supplemental complaint. And it is precisely to deal with enactments of new statutes or ordinances and other forms of changed official action by governmental defendants that leave to file supplemental pleadings has been allowed, for the Courts have recognized that a claim for relief can remain constant while the specific means by which a right has been denied may have changed.

The use of the supplemental complaint as a vehicle for obtaining meaningful and complete relief in the face of changing official action is best illustrated by Griffin v. County School Board of Prince Edward County, 377 U.S. 218 (1964). Suit was originally filed in 1951 (Davis v. County School Board of Prince Edward County, 103 F. Supp. 337 (E.D. Va. 1952) to desegregate the public schools in Prince Edward County. After the Supreme Court ruled that separate school systems were inherently unequal in Brown v. Bd. of Education, defendants in the Prince Edward County suit engaged in a series of maneuvers including the adoption of laws closing the public schools and providing for public support for private schools which only accepted white students. In 1961 a supplemental complaint was filed which added new parties and sought to enjoin the defendants from refusing to operate a free public school system and to enjoin them from supporting



private schools which discriminated on the basis of race.

Griffin v. County School Board of Prince Edward County, 322

F. 2d 322 (4th Cir. 1963). The Supreme Court ruled that

the motion to supplement the complaint had been properly

granted. In discussing the supplemental pleading, Mr.

Justice Black wrote:

"It is contended that the amended supplemental complaint presented a new and different cause of action from that presented in the original complaint. The supplemental pleading did add new parties and rely in good part on transactions, occurrences, and events which had happened since the action had begun. But these new transactions were alleged to have occurred as part of continued, persistent efforts to circumvent our 1955 holding that Prince Edward County could not continue to operate, maintain and support a system of schools in which students were segregated on a racial basis. ...The amended complaint thus was not a new cause of action but merely part of the same old cause of action arising out of the continued desire of colored students in Prince Edward County to have the same opportunity for state-supported education afforded to white people. ... 377 U.S. at 266.

Mr. Justice Black went on to conclude:

"Rule 15(d) of the Federal Rules of Civil Procedure plainly permits supplemental amendments to cover events happening after suit ... Such amendments are well within the basic aim of the rules to make pleadings a means to achieve an orderly and fair administration of justice." (377 U.S. at 227)

Similarly, the adoption of a new zoning ordinance by Bedminster represents part of a continuing effort to exclude plaintiffs-intervenors and plaintiffs-intervenors' effort to

supplement the complaint arises from their continuing desire to secure access to decent housing at prices they can afford in a decent environment in the Township. To the same effect see Wright v. Council of City of Emporia, 407 U.S. 451 (1972).

The Supreme Court's position in Griffin has been followed by other courts. Thus even before Griffin was decided, in Schempp v. School District of Abington Township, Pa., 195 F. Supp. 518 (E.D. Pa. 1961) the court granted without discussion plaintiffs' motion to supplement the complaint when the Commonwealth of Pennsylvania amended the substance of the statute whose constitutionality plaintiffs had been challenging. The statute dealt with Bible reading in the public schools. The issue of the separation of church and state was a continuing one despite the fact that the means by which Bible reading was to be accomplished was altered. Similarly, in the instant case the issue of exclusion is a continuing one despite the fact that such exclusion is to be accomplished through three acre zoning rather than five acre zoning.

Plaintiffs-intervenors' motion to supplement the complaint should be granted in order to permit them and the court to deal expeditiously with the issue of their continuing exclusion from Bedminster and to avoid both the unnecessary complication of a multiplicity of lawsuits dealing with the same issue and the expense to plaintiffs-intervenors inherent in the need to file and serve a new complaint if the instant

motion is denied.

May 16, 1973

Respectfully submitted,

*Peter A. Buchsbaum*

Peter A. Buchsbaum  
by Lois D. Thompson

S-9153

FILED

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Attorney for Plaintiffs

MAY 16 10 39 AM 1973

SOMERSET COUNTY  
CLERK


LYNN CIESWICK, et al.,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
Plaintiffs,	:	SOMERSET COUNTY
	:	DOCKET NO. L-36896-70 P.W.
v.	:	
	:	Civil Action
THE TOWNSHIP OF BEDMINSTER,	:	
et al.,	:	
	:	<u>NOTICE OF MOTION</u>
Defendants.	:	

PLEASE TAKE NOTICE that on May 24, 1973, the undersigned attorney will move before the Honorable B. Thomas Leahy, JCC, T/A, at the Somerset County Court House in Somerville, New Jersey, at 2:30 P.M., or as soon as counsel may be heard, for an order pursuant to New Jersey Court Rules 4:9.1 and 4:9.4 permitting plaintiffs to amend and supplement the complaint in the above-captioned matter. A copy of plaintiffs' amended and supplemented complaint is annexed hereto. In support of their motion, plaintiffs rely on the annexed memorandum of law and all prior proceedings in this matter.


Dated: May 16, 1973

*Peter A. Buchsbaum*  
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 PETER A. BUCHSBAUM

A copy of the within Notice of Motion has been filed with the Clerk of the County of Somerset at the Somerset County Administration Building in Somerville.

  
\_\_\_\_\_  
LOIS D. THOMPSON for PETER A. BUCHSBAUM


The original of the within Notice of Motion has been filed with the Clerk of the Superior Court in Trenton.

  
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LOIS D. THOMPSON for PETER A. BUCHSBAUM

On May 16, 1973, I mailed copies of the within Notice of Motion in a sealed, properly stamped envelope to William W. Lanigan, Attorney for Plaintiff Allan-Deane in the instant action at 59 South Finley Avenue, Basking Ridge, New Jersey, to Nicholas Conover English, Esq., McCarter & English, Attorneys for Defendant Bedminster in this action, at 550 Broad Street, Newark, New Jersey, and to Edward Bowlby, Bowlby, Woolsen & Guterl, Attorneys for Defendant Bedminster in this action, at 17 East High Street, Somerville, New Jersey.

I certify that the foregoing statements made by me are true.

Dated: May 16, 1973.

  
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LOIS D. THOMPSON for PETER A. BUCHSBAUM