

RULS-AD-1981-300

7/31/1981

Dobbs v. Tp of Bedminster

Transcript

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SOMERSET COUNTY
DOCKET NO. L-12502-80

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LEONARD DOBBS, :
Plaintiff, :
vs. : Stenographic Transcript
of
TOWNSHIP OF BEDMINSTER, :
ET ALS, : Motions
Defendants. :

Place: Somerset County Courthouse
Somerville, New Jersey

Date: July 31, 1981

BEFORE: THE HONORABLE ARTHUR S. MEREDITH, J.S.C.

TRANSCRIPT ORDERED BY:
DONALD A. KLEIN, ESQ.

A P P E A R A N C E S:

WINNE, BANTA & RIZZI, ESQS.
BY: DONALD A. KLEIN, ESQ.
Attorney for the Plaintiff

MC CARTER & ENGLISH, ESQS.
BY: JOSEPH FALGIANI, ESQ.
Attorney for the Defendants

VOGEL & CHAIT, ESQS.
BY: THOMAS F. COLLINS, ESQ.
Attorney for the Intervenors.

Charles R. Senders, C.S.R.
Official Court Reporter
Somerset County Courthouse
Somerville, New Jersey 08876

PENGAD CO., BAYONNE, N.J. 07002 FORM 2046

RUIS-AD-1981-300

1 MR. COLLINS: Thomas F. Collins, for
2 the defendant-intervenors, from the firm of
3 Vogel & Chait.

4 MR. FALGIANI: Joseph Falgiani,
5 McCarter & English, Township of Bedminster.

6 MR. KLEIN: Donald A. Klein, attorney
7 for Leonard Dobbs.

8 THE COURT: All right. Whose motion
9 is this?

10 MR. COLLINS: It is my motion, or
11 cross-motion, from the defendant.

12 THE COURT: I will hear you.

13 MR. COLLINS: Judge, the issue is
14 whether or not the plaintiff should be required
15 to introduce the contract of sale referred to
16 in his complaint and whether or not that should
17 be produced in accordance with the pre-trial
18 order of Judge Imbriani, which indicated that
19 it should be produced by April 17. It is
20 nearly three and a half months late and has
21 not been produced as yet.

22 We have made our motion. There has
23 been a stay of the proceedings because of an
24 appeal by all three parties and by another
25 party. But that stay should not affect this

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particular request, because it relates back to three months ago when the judge ordered that it be produced.

Basically, the issue comes down to whether the document is relevant and whether or not it is likely to lead to the discovery of relevant information.

I presented some certain basic reasons for that in my affidavit in support of my motion and also in my affidavit in opposition to the plaintiff's cross-motion.

It is clearly relevant to the standing issue whether a person has a right to challenge the zoning ordinance. They must have an interest in the property.

On that issue alone, the document was relevant. On that issue alone it should have been produced.

If we go to some of the other issues in the case, the plaintiff has raised questions as to the reasonableness of the zoning ordinance and whether or not the zoning ordinance confiscates the property without just compensation.

The plaintiff may not be claiming

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damages as part of that confiscation claim,
but it is clearly a confiscation claim, it
is one.

Therefore, the contract, the price
and terms of the contract, will directly
relate to what the value of that property is.

If, for example, the plaintiff has
agreed to an alternative price in the contract
for the property, if it is purchased at the
current zoning, residential zoning, or if it
has another price for alternatives, the
purchasers who may be using the property for
residential use, then those statements and
those indications as to the contract will be
directly relevant to both the issue of reason-
ableness and the issue of confiscation.

There may also be direct admissions
on the part of plaintiff indicating that he
admitted that the property has value as to the
current zoning for residential use. This will
go directly to the issues in the case.

It is also important for the
defendants to know what the extent of the consent
of the owners is.

The owners have, apparently, if they

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1 have entered into a contract, have consented
2 to certain things. Have they consented to a
3 site plan application? Have they consented
4 to a variance application by the plaintiff?

5 Those things go to whether or not
6 the property could be used under its present
7 zoning. They also go to issues relevant in
8 the case.

9 If the contract may also be relevant,
10 if the property -- if only a portion of the
11 property is covered by the contract, thereby
12 excluding some of the portions which may be
13 directly behind our client's property, our
14 clients are people who live right alongside
15 the tract that the plaintiff is seeking to
16 have rezoned. That is directly relevant to
17 our client and it is directly relevant to the
18 case.

19 Finally, in opposition to the cross-
20 motion, I would just like to point out that
21 the plaintiffs have not asserted a sufficient
22 basis for a need for a protective order.

23 There has been no indication what
24 the prejudice or harm would be, what the
25 confidential problem is.

1 There has been -- is no reason to
2 wait until after the stay of the proceedings
3 until after the appeal. Because this particular
4 document was ordered to be produced three and
5 a half months ago and the plaintiffs have
6 done nothing to produce it.

7 Our clients feel that they should
8 know what the contents of that contract are.
9 They will assist them in their defense.

10 It will also assist them in determining
11 the likelihood of the success on the merits
12 and determining how long this litigation will
13 take. That is very important in costly
14 litigation.

15 THE COURT: All right.

16 MR. KLEIN: Your Honor, our motion
17 is a cross-motion for a protective order.

18 Our concern is that there are various
19 aspects.

20 Many aspects, if not most aspects
21 of this particular option agreement, which
22 have no relevance at all to the litigation.

23 The nature of this action, Your Honor,
24 is an action whereby the plaintiff is challenging
25 the validity of the zoning ordinance and master

1 plan of the Township of Bedminster as applied
2 to the property which is the subject of
3 dispute.

4 The only relevance that the option
5 agreement would have with respect to the
6 issues in the case would relate to the standing
7 question.

8 We have submitted an affidavit of
9 counsel for the owners of the property. In
10 his affidavit, he says that the option to
11 purchase the property, which has been given to
12 Mr. Dobbs, the plaintiff in this case, extends
13 to the entire property which is the subject of
14 the dispute, is in full force and effect at
15 the present time. That this matter is being
16 prosecuted with his consent, with the consent
17 of counsel for the owners.

18 We submit that these particular
19 terms of the option agreement, consideration,
20 terms, and other items like that, are not
21 relevant to the issues in the case at this
22 point and are at best only cumulative as to
23 the standing question in the face of the
24 affidavit from the owner, counsel for the owner,
25 which is not contested. There is no affidavit

1 in opposition.

2 As far as the question which was
3 raised on confiscation, the only pleading,
4 the only aspect of the pleading that relates
5 to that question at all, is an allegation that
6 the ordinance is unconstitutionally invalid
7 because it is tantamount to an unlawful taking.

8 There is no request for damages,
9 there is no request for relief in the form
10 of damages or confiscation.

11 It is simply this, an example of
12 how the ordinance is invalid and unconstitutional.
13 That is the thrust, that is the sole purpose
14 of the litigation, if the ordinance is
15 unconstitutional.

16 There is a reference to Rule 4:18-2
17 which provides that if a document is referred
18 to in the pleadings, that it should be produced
19 within five days.

20 There is no reference to this
21 particular document in the pleadings.

22 The only reference in the pleadings
23 is to plaintiff's contract as purchaser, his
24 status as someone having interest in the
25 property.

1 THE COURT: Why would this
2 disclosure really harm you, in what way
3 would it harm you?

4 MR. KLEIN: The contract, as the
5 affidavit of counsel for the owners has
6 indicated, contains many terms which the
7 parties view to be confidential and desire
8 to keep confidential.

9 If there was relevance to issues in
10 the case, that's one thing. But if not
11 related to the issues in the case, there is
12 no way at this point that the consideration
13 is relevant to the issues in this case.

14 There may be other aspects of the
15 contract which have no bearing on the case.

16 We are not saying that we can sit
17 back and not do anything, just ignore the
18 request for the contract.

19 What we are suggesting is that some
20 means be established to accommodate their
21 interest in getting information that they
22 believe to be relevant and that would accommodate
23 the interests of the parties that entered into
24 this contract and preserving the confidentiality
25 of those aspects, which have no relation to

1 this case.

2 For example, with respect to the
3 question of admission, as one of the arguments,
4 then maybe the admission of the contract,
5 to the effect if the property can't be zoned
6 for commercial use, then plaintiff will still
7 take it for residential use.

8 I suggest that that kind of concern
9 can be satisfied without production of the
10 documents in its entirety.

11 One of the suggestions that we had
12 would be to submit certifications.

13 Another possibility would be that
14 we would urge on the Court, that in light of
15 the arguments for relevancy made by the
16 defendants, that we submit the document to
17 Your Honor in camera, with a view to determining
18 whether or not any of the document does, in
19 fact, have any relevance based on the arguments
20 that are made.

21 To the extent that there is a deter-
22 mination that something is relevant, only that
23 portion of the contract be produced. That it
24 be produced subject to the protective order.

25 That it be limited for the purposes

1 of the litigation.

2 One of the concerns is that these
3 matters will not become a matter appearing in
4 newspapers and other items.

5 If something is relevant to the
6 protective order, limit it to the application
7 in this particular case.

8 There have been situations in this
9 case where aspects of this litigation have been
10 the subject of the press, where counsel for
11 defendants have made statements indicating
12 what they view to be the motives of plaintiff
13 in bringing this action, ones which we don't
14 agree with at all, so forth.

15 Our concern is that the matter, which
16 is relevant, be produced. But that which is
17 not relevant and which is just confidential,
18 not only to the parties in this case but also
19 to the owners of the property.

20 The stay is important, though,
21 because the present situation is that appeals
22 are being taken with respect to the inter-
23 vention issue.

24 There are three different parties
25 that moved to intervene. One was permitted

1 to intervene. Even Mr. Collins' clients, too,
2 were denied intervention. That is all before
3 the Appellate Division.

4 At this point, Judge Gaynor entered
5 a stay about two weeks ago of all of the
6 proceedings in this case.

7 The effect of that stay is to stay
8 discovery going to the central issues in this
9 case as to the validity of the zoning ordinance.

10 As to these issues, I would say at
11 this point to require production of the
12 contract, which at best peripheral, which has
13 arguable relevance, in light of the fact that
14 we have submitted an affidavit showing that
15 we have standing to bring this action, at this
16 point would be inappropriate.

17 The discovery that is being stayed
18 at this point was discovery that was ordered
19 back at the time of the pre-trial order as well.
20 So I don't think this is the central issue in
21 the case.

22 Your Honor, the only relevance is on
23 the standing question.

24 The affidavit I submitted certainly
25 for the present status of this litigation,

1 satisfies the standing question.

2 Our recommendation would be, or our
3 suggestion, with all deference, Your Honor,
4 is in light of the stay, that the document
5 be submitted in camera.

6 At the time the stay is dissolved
7 or a determination as to whether any of it is
8 relevant to the litigation, to the extent it
9 is relevant to the litigation, which is not
10 going to proceed until the stay is lifted
11 anyway. That whatever portion of the document
12 is either produced or summarized, or whatever,
13 be subject to the protective order, and that
14 there be disclosure.

15 Your Honor, I think that this is a
16 reasonable request and it can be made without
17 prejudice to their right in the future to seek
18 further relief.

19 THE COURT: Does the township want
20 to say anything about this?

21 MR. FALGIANI: Yes, sir.

22 Judge, you asked a few minutes ago
23 about what the damage to the plaintiff by
24 submitting this contract would be. I don't
25 think we really received an answer.

1 The answer that counsel gave is that
2 essentially the information is going to hit
3 the press. It may prove to be embarrassing,
4 it may prove to upset the confidentiality
5 that they had between purchaser and buyer.

6 I simply want to point out to the
7 Court that plaintiff has negotiated for several
8 hundred acres of prime land in Bedminster.

9 The development that occurs there
10 and the development that occurs, whether or not
11 we successfully defend our ordinance, is going
12 to have a significant impact on the entire
13 region. There are significant public policy
14 issues.

15 The construction of a 1.2 million
16 square foot shopping center in the heart of
17 Bedminster is going to affect, not just
18 Bedminster, but the entire region.

19 It is simply unfounded for plaintiff,
20 who brings that kind of suit to say that the
21 press ought to be -- that that information
22 of this case ought to be shielded in some
23 way.

24 Public policy litigation ought to
25 be in the public light.

1 There is absolutely no reason
2 suggested by counsel why any element of this
3 contract should be shielded.

4 There may very well be relevant
5 evidence in there. We suspect that there is.
6 We shouldn't have to play a guessing game in
7 defending our ordinance.

8 THE COURT: It seems to me that the
9 suggestion made by the attorney for the
10 plaintiff may be the best here. It will
11 protect all parties and stay the discovery
12 according to the stay order.

13 With regard to all other matters,
14 once that stay is lifted, the judge handling
15 it at that time view this contract in camera
16 to determine whether it is relevant, what
17 portions of it are relevant, or whether the
18 whole contract should be discoverable, or
19 whether part of the contract should be and
20 other parts be subject to a protective order.

21 I think that this would be the
22 fairest situation to both sides, certainly
23 for a businessman who is involved in buying
24 and selling land, contracts, options, and
25 what have you, and doesn't necessarily want

1 his whole business run by everybody.

2 The claim of confidentiality,
3 obviously, has to give way to relevant use of
4 the contract. But I think that might be the
5 best compromise situation at this time and
6 still protect the interests of the intervenor.

7 MR. COLLINS: Might I just ask one
8 question. Would it be possible to have that
9 reviewed perhaps by you immediately, or in
10 the near future, as opposed to waiting until
11 after the stay, because the information may
12 help our clients in knowing how long this
13 litigation will go on?

14 MR. FALGIANI: One of the reasons for
15 the stay is the determination as to whether or
16 not Mr. Collins' clients will be parties to
17 this case. At the time the stay is dissolved.

18 That is one of the reasons, although
19 articulated before, it is premature to make
20 the decision of whether information should be
21 turned over or not until the stay question is
22 resolved.

23 THE COURT: Well, the difficulty
24 with me at this point, I assume the judge
25 who gets it at a later time, has more background

1 in this case than I.

2 For me to sit down and read a
3 contract right now and determine what is
4 relevant and what is not relevant, is not
5 merely knowing all of the issues involved in
6 this case. I think it would be difficult and
7 that is my reluctance to do so.

8 I would think that at a later time,
9 when he gets this case, a judge will be much
10 more familiar with the issues and be able to
11 determine more knowledgeably than I am at this
12 time.

13 If the appeals are involving, among
14 other things, even your status, the intervenor's
15 status, you may well be out. Then your
16 application as far as you are concerned --

17 MR. COLLINS: That is more of an
18 indication of why there was prejudice to us.
19 Because this particular document was ordered
20 to be produced by Judge Imbriani at the pre-
21 trial conference. At the same time that we
22 were both granted permission to intervene.

23 THE COURT: I have so ruled and we
24 will do it in that fashion.

25 We will take a brief recess.

(Whereupon, the matter is concluded.)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SOMERSET COUNTY
DOCKET NO. L-21502-80

LEONARD DOBBS, :
Plaintiff, :
vs. :
TOWNSHIP OF BEDMINSTER, :
ET ALS, :
Defendants. :

C E R T I F I C A T E

I, CHARLES R. SENDERS, C.S.R., one
of the Official Court Reporters in and for the State of
New Jersey, certify that the foregoing is a true and
accurate transcript of my original stenographic notes
to the best of my knowledge and ability.



CHARLES R. SENDERS, C.S.R.

DATED: 9/4/81

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