

Attorney's Fees

11-10-83

Gardner & Co. v. J. W. Cranbury

- request for conference

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November 10, 1983

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PLEASE REPLY TO: PRINCETON

Honorable Eugene D. Serpentelli, J.S.C.  
Ocean County Court House  
C.N. 2191  
Toms River, New Jersey 07728Re: Garfield & Company v. Mayor and Township  
of Cranbury, et al - Docket No. L-055956-83 P.W.

Dear Judge Serpentelli:

We are submitting this letter in response to the R. 4:38-1 Motion by the Township of Cranbury for consolidation. The Motion is returnable before you on November 18, 1983.

We believe this matter should be discussed in a Case Management Conference to be held before you. While in some respects consolidation might be desirable, we would oppose consolidation of each of the cases listed by Mr. Moran for all purposes. The complaints submitted by Mr. Moran are different in numerous ways and an amalgamation of all the cases for all purposes would undoubtedly produce an unmanageable lawsuit. Thus, for example, the Morris lawsuit raises no Mount Laurel issues as it is directed only to the TDR phase of the Ordinance. The Cranbury Development Corporation lawsuit and the Browning-Ferris Industries lawsuit, while directed at the transfer credit scheme, are also directed at the rezoning of the plaintiffs' property to light impact residential and light impact industrial, respectively. In contrast, the suit filed by this office on behalf of Garfield & Company, while challenging the transfer provisions, is the only one which seeks the right to build residential units in excess of those currently permitted by ordinance. It is also the only case seeking relief pursuant to the Federal Civil Rights Act, 42 U.S.C. Sec. 1983 and for inverse condemnation.

Finally, the Urban League lawsuit involves a number of towns in addition to Cranbury. It is also the subject of a special remand Order from the Supreme

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Court. 92 N.J. at 350.

In view of the above, it is apparent that consolidation of the five cases for all purposes would create an unmanageable situation in which allegations involving different pieces of land, different aspects of the Zoning Ordinance, different requests for relief, and even different communities would be grouped together in one lawsuit. Garfield & Company sees little to be gained, and much to be lost in terms of confusion and expense, if it must attend a lengthy trial involving, for example, the details of the Zoning Ordinances of six other communities, and aspects of the Cranbury Ordinance, such as the conversion of certain land to light impact residential, which are not covered in its lawsuit. Such a result is contrary to the purpose of R. 4:38-1 which is to seek efficiency and economy for the Court and the litigants. See Holmes v. Russ, 113 N.J. Super. 445, 449-450 (L. Div. 1971) and cases cited therein.

However, consolidation could be of some benefit if it were strictly limited to common issues. For example, there could be consolidation with respect to the ultra vires challenges to the transfer development credit provisions of the Cranbury Ordinance.

The issues of appropriate region, amount of housing needs and fair share, raised in the Urban League suit, the Garfield & Company suit, and perhaps in several of the other cases as well, could also be handled in a common proceeding. The Court's initial rulings on these issues may well influence any litigation which happened to be tried later. Therefore, all the litigants concerned with these issues might well be joined in the initial proceeding since the results of that proceeding will heavily influence any subsequent cases and might even foreclose alternate findings with respect to region, fair share and need in Cranbury.

However, there is the problem of discovery timing as to the "fair share" issues. The Urban League lawsuit was filed in 1974. It is nine years older than the other four cases. If the cases are to be consolidated in any respect whatsoever, care will have to be taken to develop a discovery schedule that will neither delay litigation of the Urban League case, nor require the litigants in the other matters to meet a trial date for which they may be unprepared.

Since it is difficult to deal with the timing and other issues in the absence of substantial discussion, we believe that the Court should call the Case Management Conference suggested above. Accordingly, we respectfully request that the Court hold such a Conference to determine the extent of common issues and the conditions which should apply to any consolidation of the cases.

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However, to the extent that Cranbury's Motion seeks complete consolidation of all the cases, the Motion should be denied since such consolidation would be inconsistent with the policy of R. 4:38-1. Further, if the Court determines not to conference this matter, we would respectfully request that the Motion be rescheduled for the next return date so that we could file a formal brief in opposition to the consolidation.

Thank you for your attention to this matter.

Respectfully,

WARREN, GOLDBERG, BERMAN & LUBITZ  
A Professional Corporation

  
Peter A. Buchsbaum

PAB:mpb

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