

AMG

1-19-82

letter re:

- w/ ps brief in reply to Ds motion
for a stay

pgs. 14

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IN REPLY REFER TO FILE NO 5323

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January 19, 1982

Somerset County Clerk
North Bridge and High Streets
P. O. Box 3000
Somerville, NJ 08876

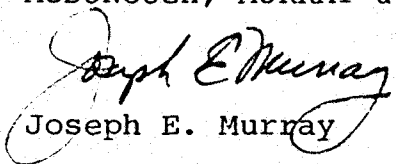
Re: AMG Realty Company, et al., vs. Township of Warren
Docket No. L-23227-80
S-7598 PW

Dear Sir:

Enclosed are original and copy of Plaintiff AMG Realty Company brief in opposition to defendant's motion for a stay of the case returnable January 29, 1982.

Very truly yours,

McDONOUGH, MURRAY & KORN


Joseph E. Murray

JEM:bp
Enclosures

cc: John E. Coley, Jr., Esquire
Richard Neff (AMG Realty Company)
Richard Schindelar
Michael Sorich
Richard Coppola

S-7598

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Entered ✓ Indexed

SOMERSET COUNTY
CLERK

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - SOMERSET COUNTY
DOCKET NO. L-23227-80

AMG REALTY COMPANY, A Partner- :
ship organized under the Laws :
of the State of New Jersey, :
and SKYTOP LAND CORP., A New :
Jersey Corporation, :
Plaintiffs, :
-vs- :
THE TOWNSHIP OF WARREN, A :
Municipal Corporation of the :
State of New Jersey, :
Defendant. :

Civil Action

PLAINTIFF'S BRIEF IN REPLY TO DEFENDANT'S
MOTION FOR A STAY OF THE CASE.

1-29-80

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Attorneys for Plaintiff

On the Brief:

Joseph E. Murray, Esq.

STATEMENT OF FACTS

Plaintiffs in this case seek a review of the validity of the current zoning ordinance of Warren Township, Somerset County, New Jersey under the guidelines established by the Mt. Laurel and Oakwood at Madison cases. (N.A.A.C.P. v. Township of Mt. Laurel, 67 N.J. 151 (1979) and Oakwood at Madison Inc. v. Township of Madison, 72 N.J. 481 (1977)). The Township of Warren has filed its answer to the allegations claiming that actually it is not a developing municipality and is thus not under any affirmative obligation to rezone to provide for the variable types of housing called for in the previously mentioned cases.

This matter had been initially scheduled for trial on January 18, 1982 with the Complaint herein having been filed on December 31, 1980. All pretrial discovery has been completed on both sides and except for the filing of the trial brief on behalf of the Township of Warren as of the date of this memorandum, the matter is ready for trial.

The Township of Warren now seeks to stay the trial of this case pending a further determination by the Supreme Court of the State of New Jersey on six exclusionary zoning cases which have been presented to the New Jersey Supreme Court. The Township's position is that the decision to be rendered at some future date by the Supreme Court respecting the cases before it will enable this case to proceed in an orderly manner and avoid confusion and a waste of effort since the Supreme Court may

"significantly" change the applicable and existing law.

The plaintiffs strenuously oppose any stay of this matter for the reasons herein set forth.

ARGUMENT OF LAW

I. THE INHERENT POWER OF A TRIAL COURT TO STAY PROCEEDINGS BEFORE IT WOULD BE ABUSED IF THE DEFENDANT'S REQUEST FOR A STAY WERE GRANTED.

It is generally recognized that the power to grant a stay is inherent in every court by virtue of its right to control disposition of causes on its docket with economy of time and effort for itself, for counsel, and for the litigants. Landis v. North American Co., 299 U.S. 248, 57 S. Ct. 163 (1936); Annotation: 56 A.L.R. 2d 335 at 339; 1 Am. Jur. 2d, Actions Section 92. This includes the power to stay on the ground of another action pending in a different jurisdiction even if the other action does not involve the same parties or total identity of issues. Landis, Id

This power to stay is, however, a discretionary power to be used sparingly and only upon a clear showing by the moving party of hardship or inequity so great as to overbalance all possible inconveniences of the delay to his opponent. Landis, Id.; Shaw v. Riverdell Hospital, 150 N.J. Super. 585 (Law Div. 1977). The limitation on this discretionary power arises from the constitutional right of litigants to obtain the administration of justice without delay. 16 Am. Jur. 2d, Constitutional Law, Section 613. The New Jersey Constitution, although not specific on this right, provides:

All persons...have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property...(Art. I, par. 1).

This constitutional provision has been held to encompass the right of access to the courts. State in the Interest of D. H., 139 N.J. Super. 330 at 334 (Cty. Ct. 1976), aff'd, 153 N.J. Super. 490 (App. Div. 1977). This right includes the right to institute and maintain an action in the courts as a fundamental right under the Federal Constitution. Charles v. Fisher Baking Co., 14 N.J. Misc. 18, aff'd, 117 N.J. L. 115 (E & A 1935).

It is respectfully submitted that weighing the two considerations, i.e., the inherent power to stay versus the right of a litigant to access to the courts, the defendants have not shown sufficient proofs to warrant the stay of this case.

Specifically, the following reasons are given:

1. This is not a Landis situation:

The Township of Warren has relied upon the Landis decision of the United States Supreme Court which was previously referred to. Landis involved multiple law suits concurrently pending at the trial level of the Federal District Court wherein each case presented the identical legal issue to be resolved, this being the constitutionality of the Public Utility Holding Company Act of 1935. Thus, the court being requested to stay its matter was faced with the possibility of inconsistent decisions arising out of the pending cases and a duplication of trial effort in both cases wherein the United States Government was a party.

In the present case, the legal issues to be applied and the determination of the claim made by the plaintiffs have

already been judicially determined, not by a collateral trial court, but by the New Jersey Supreme Court. The decisions of the New Jersey Supreme Court are not under appeal and, in fact, the pending cases now before the Supreme Court are newly filed cases (Mt. Laurel II being among them) and we are thus not dealing with the same factual posture as existed in Landis. The policy behind the issuance of a stay in Landis was based upon the existence of multiple cases wherein the same undecided issue was to be determined. The Township of Warren urges that the cases now pending before the New Jersey Supreme Court may, at some uncertain future date, result in a decision which changes existing law. The plaintiffs have a right to proceed in the court under existing law and can do so in an orderly manner without confusion or waste of effort. What the Township of Warren is really saying is that if this matter were tried under existing law, the defense of Warren Township zoning ordinance would be a waste of effort and result confusion to its present zoning desires. The utilization of the courts, as the plaintiffs are entitled to, would be frustrated if Warren Township or any litigant were permitted to obtain a stay of the proceedings until such time as the law might change. There must be hundreds of situations now pending before appellate courts involving legal issues which are present in thousands of cases pending before a trial court. If a stay could be obtained on each of those cases it can be readily seen that the litigant's rights to court access would be frustrated and there would be terrible confusion in the administration of the law.

Accordingly, it is respectfully submitted that if the defendants rely upon the Landis decision as authority for the exercise of the inherent power to grant a stay, the facts upon which Landis ruled and purpose of that decision are totally inconsistent with this matter.

II. THE ISSUES BEFORE THE SUPREME COURT ARE NOT THE ISSUES BEFORE THIS COURT.

The Township of Warren urges that the New Jersey Supreme Court, in the six zoning cases now pending before it, have presented various issues which the Supreme Court may rule upon. These issues being referred to in the Township's brief as "Questions". Assuming that these Questions are before the New Jersey Supreme Court it is respectfully submitted that the issues set forth in those questions are not matters which will be litigated before this court. For example, one of the questions pending before the Supreme Court (Question 6) is "Whether the goal of Mt. Laurel is economically feasible or whether it will effect this State's goal of rehabilitation of its cities". Clearly, even if the trial court felt that it could answer this question it is irrelevant to the issues in this case since the trial court is bound to apply the existing principles established by Mt. Laurel and Oakwood at Madison. To modify those principles requires either legislative action or further "policy" ruling by the Supreme Court of New Jersey. This is an example of the Township's hope that the court will change the existing law, not explain it.

The additional questions referred to by the Township, Questions 10, 13, 14, 19, 22 and 23 all relate to a policy analysis of the Mt. Laurel decision, which again is either a legislative or Supreme Court area of comment and not a trial court's legitimate area of ruling. These questions which are purportedly before the Supreme Court are raised therein presumably for the purpose of answering issues which have risen as a result of Mt. Laurel and not for the purpose of answering issues which are raised because the filing of this case. The parties to this case can complete the trial and have all issues before this court answered without further word from the New Jersey Supreme Court. Such further word is not "an absolute prerequisite to the orderly" preparation of this case for trial as urged by the Township of Warren.

In the event that this case does proceed to trial and a determination is made either in favor of the plaintiff or in favor of the defendant there may or may not be an appeal from that decision. There may or may not be, at that time, any further word from the New Jersey Supreme Court which would encourage either party to proceed in a different manner than it did at the time of the trial or proceed differently in respect to its decision concerning a possible appeal. In the event that an appeal is taken and the New Jersey Supreme Court has acted pending that appeal it is understood that the law as set forth by the New Jersey Supreme Court during the course of that appeal may or may not be applicable to this case. The retroac-

tive application of the law on judicial decisions is presumed and if it is retroactive, it does not necessarily follow that this case will be thrown into a state of confusion or chaos. It often occurs that pending an appeal the law by judicial decision changes requiring possibly a remand of the case for further evidence.

The case as presented in this matter is not one which will take an undue length of time to try. It is estimated that this matter could proceed to completion within a matter of one week.

III. THE DEFENDANT WILL NOT INCUR IRREPARABLE HARM IF THIS MATTER IS NOT STAYED.

As stated in the authority cited by the defendant, the stay requested can only be issued upon a clear showing by the moving party of hardship or inequity so great as to overbalance all possible inconvenience of the delay to his opponent. In support of this position, Warren Township contends that it has expended an "enormous" amount of time and effort by its counsel and expert witnesses in this case. It is difficult for the plaintiff to understand where this enormity of time was expended since there were no depositions, one set of interrogatories answered by each side and fairly short experts' reports from a planner and Township Engineer, which reports were apparently part of an overall study being undertaken by the Township of Warren in connection with matters not related directly to this case. Specifically, there are several Board of Adjustment matters for variance relief for townhouses before the Township

and these experts have prepared their reports for submission in those cases and to the extent that reports from these experts were required in this case there was obviously only a need to slightly amend previously existing analyses.

Irreparable harm would appear to be one which can't be repaired. In the event that this matter proceeds to trial in the relatively short time as expressed above, and the Township of Warren wins its case, notwithstanding the fact that the Supreme Court has not yet spoken, where is the harm? If the Township loses the cases and decides to appeal, there is no harm of an irreparable nature inasmuch as the Township is then concededly carrying out the law of this State as expressed by existing Supreme Court decisions. If the Township loses the case, and appeals, with the Supreme Court giving its decisions pending that appeal, necessitating a possible retrial of the matter, there is still no irreparable harm when that retrial is weighed against the right of the plaintiff to have access to the courts within a reasonable time of the presentment of its claim.

The defendant has not urged that it cannot prepare its case or that it cannot prepare its witnesses under the existing judicial decisions of this state. The defendant is only urging that it hopes that some word will be issued by the New Jersey Supreme Court which would enable it to create and present a better defense to the claim now presented. The potential loss of the case based upon the existing law of this State is

essentially what the defendant urges as the irreparable harm. This does not seem to be the type of harm encompassed within the equitable principle of irreparable harm.

IV. THIS STAY, IF GRANTED WOULD BE UNCERTAIN AS TO ITS DURATION.

The defendant has not presented any indication to this court as to the timing or scheduling of the proposed New Jersey Supreme Court decisions. It is to be noted that the case now pending before the Supreme Court has been there for more than two years as evidenced by the dating of May 19, 1980 on the "Questions" that were referred to the Supreme Court. It may well be that an additional one or two year period could transpire before any ruling is given or it could be a much shorter period of time.

The discretionary power of a court to stay proceedings to abide the outcome of other litigation is abused if the stay is not kept within the bounds of moderation. In Landis, supra, it was requested that a stay be issued until final Supreme Court action was given respecting potential appeals from the collateral cases. In respect to this request, the United States Supreme Court stated:

We are satisfied that the limits of a fair discretion are exceeded insofar as the stay is to continue in effect after the decision by the District Court...and until the determination by this court of any appeal therefrom...for the moment we fix the uttermost limit as the date of the first decision in the suit...(emphasis supplied) laying to one side the question whether it should even go so far... The stay is immoderate and hence

unlawful unless so framed in its inception that its force will be spent within reasonable limits, so far at least as they are susceptible of prevision and description... To put the thoughts in other words, an order which is to continue by its terms for an inmoderate stretch of time is not to be upheld as moderate because conceivably the court that made it may be persuaded at a later time to undue what it has done.

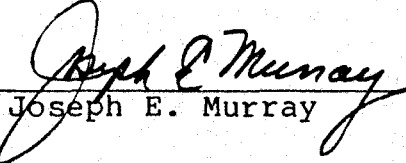
CONCLUSION

Based upon the reasons set forth above, it is respectfully submitted that the plaintiff's right to proceed in the prosecution of its prerogative writ action challenging the zoning ordinance of the Township of Warren is a right which supercedes the right of the Township to stay this action until a hopeful change in the law. The court's inherent power to issue a stay is to be exercised sparingly and the Township of Warren has not presented any concrete reasons, other than a possible change in the law by future Supreme Court action, which would justify a stay at this point. The court will not be inconvenienced beyond reason by having this matter proceed to trial at the present time.

Respectfully submitted,

McDONOUGH, MURRAY & KORN

BY:


Joseph E. Murray

DATED:

SENDING MUNICIPALITIES

NUMBER AND PERCENT OF
WORKERS FROM WARREN

Hudson County

Jersey City		13	(0.4%)
Secaucus Town		13	(0.4%)
Harrison Town		6	(0.2%)
Hoboken City		6	(0.2%)

Hudson County Totals: 38 (1.2%)

Passaic County

Wayne Township		14	(0.4%)
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Passaic County Totals: 14 (0.4%)

Other Destinations

Holland Tunnel		111	(3.5%)
Lincoln Tunnel		96	(3.0%)
Interstate Route 80		8	(0.2%)
Brooklyn		7	(0.2%)
Connecticut		6	(0.2%)
Philadelphia		6	(0.2%)
Staten Island		6	(0.2%)

Other Destinations Totals: 240 (7.5%)

TOTALS: . . . 3,195 (100.0%)

SOURCE: Tri-State Planning Commission, 1970 Census Information.