

AM- Howers v. Far Hills

9/2/83

letter of memorandum in lieu of a
formal brief in opposition to Δ 's motion
for leave to amend the answer
of the Δ Planning Board of Far Hills

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September 2, 1983

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HON. DAVID G. LUCAS

Honorable David G. Lucas,
 Judge of the Superior Court
 Somerset County Court House
 P.O. Box 3000
 Somerville, NJ 08876

Re: Haueis, et al. v. Borough of Far Hills, et al.
Docket No. L-73360-80

Dear Judge Lucas:

Please accept this letter of memorandum in lieu of a formal brief in opposition to defendants' motion for leave to amend the answer of the defendant Planning Board of Far Hills. At the outset, we would respectfully urge the Court to hear and decide this notice of motion for leave to amend the answer and pretrial order prior to the September 16, 1983 date as specified in the notice of motion. We would also note that the motion papers filed by the defendant Planning Board of Far Hills do not attach any letter or memorandum in support of the motion and therefore presents no legal basis for the requested amendments to the answer and the pretrial memo. In addition, although the defendant Borough of Far Hills contends that it is joining in the motion, there is no proposed amended pleading filed by the defendant Borough of Far Hills as required by Rule 4:9-1. For the reasons set forth in the letter, we respectfully urge the Court to deny defendants' request for leave to amend the answer and the pretrial order and urge the Court to strike defendants' proposed defenses and issues. We join with defendant in waving oral argument with respect to the defendants' notice of motion.

I. STATEMENT OF FACTS

The original complaint in this matter was filed on August 18, 1981. The original complaint raised allegations regarding a violation of the New Jersey Constitution as interpreted in Mt. Laurel I and Oakwood at Madison. In addition the complaint raised issues of confiscation and violation of the

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Municipal Land Use Law. The answers of the defendant Planning Board and Borough of Far Hills did not raise any defenses seeking to challenge the interpretation of the Supreme Court regarding the responsibility of municipalities or provide their fair share of regional housing needs. In addition, the defendants did not seek to include within the pretrial order any defenses or issues relating to the authority, jurisdiction or power of the Supreme Court of New Jersey to require municipalities to undertake zoning and land use regulations which foster the development of low and moderate income or least cost housing. On January 24, 1983, the trial in this matter was adjourned after nearly seven weeks of trial pending direction from the Supreme Court as to whether the matter should be referred to one of the three Mt. Laurel judges. On July 25, 1983 the Honorable Eugene D. Serpentelli entered an order indicating that the trial in this matter would be continued before Your Honor and that Your Honor would make findings of facts and proposed conclusions of law with respect to this case. On August 15, 1983, nearly six months after the termination of the trial on this matter, the defendant Planning Board filed this motion seeking to amend the answer and pretrial order. The notice of motion is made returnable September 16, 1983, a date after or near the expected date for continuation of the trial on this matter.

II. LEGAL ARGUMENT

POINT I DEFENDANTS' MOTION FOR LEAVE TO AMEND
 ITS ANSWERS AND THE PRETRIAL ORDER
 SHOULD BE DENIED SINCE SAID MOTION IS
 UNTIMELY, WILL NOT BE IN THE INTEREST
 OF JUSTICE, WILL PREJUDICE PLAINTIFFS
 AND IS A FRIVOLOUS PLEADING WITHOUT
 LEGAL JUSTIFICATION OR MERIT.

The case law relating to amendments to pleadings clearly establishes that the trial court has substantial discretion with respect to whether to grant a motion to amend the pleading. See Watson v. Detroit Fidelity and Surety Company, 109 N.J.L. 71 at 73-74 (1932); Bruch v. Carter 32 N.J.L. 554 (1867); Lutlopp v. Heckman, 70 N.J.L. 272; Reid v. Director - General, 95 N.J.L. 525, 532; Garley v. Waddington, 177 N.J. Super 173. In Bruch, the Court upheld the discretion of a trial court in denying defendant's attempt to amend its answer at trial on the grounds said attempt was untimely. In Garley v. Waddington, the Court held that the attempt to amend a pleading after the pretrial order in

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the matter was untimely and should therefore be denied. Similarly, in this matter, defendants are seeking to amend their answer and pretrial order in an untimely fashion after commencement and completion of nearly seven weeks of trial in this matter and long after the preparation and entry of the pretrial order in this matter. In addition, the amended defenses are without legal basis and were never even remotely raised by plaintiffs in prior pleadings, briefs or arguments. Therefore, it is respectfully requested that the Court deny defendants' request to amend the answer and pretrial order since said request is untimely. See Garley v. Waddington, 177 N.J. Super 173 (App. Div. 1981).

The defendants' motion to amend their pleadings by adding additional defenses should also be denied since it will not be in the interest of justice as required by Rule 4:9-1. On the contrary, the proposed amendments will merely add frivolous pleas to the answer of defendant Planning Board of Far Hills* and will unreasonably delay the commencement and termination of the trial in this matter. The case law of New Jersey demonstrates that defendants' plea is frivolous if it ". . . is palpably insufficient as a legal defense to the action; and hence legally insubstantial or frivolous, and therefore presumably interposed for the purpose of delay. 2 BOUV 853." Fidelity and Company v. Wilksbarre and Company 98 N.J.L. 507 (1922). This is precisely the type of plea which defendants in this case seek to add to the pleadings. In essence, the defendants seek to collaterally attack the decision of the Supreme Court of New Jersey in the case of So. Burlington Cty. N.A.A.C.P. v. Mt. Laurel Township 92 N.J. 158 (1983). It is readily apparent that the lower courts of the State of New Jersey lack the jurisdiction and the authority to review such collateral attacks on the principles established by the highest court of the State of New Jersey. Furthermore, it is apparent that the alleged pleas or defenses which defendants seek to add to the answer and pretrial order are palpably insufficient as a legal defense to the plaintiffs' claims, are interposed for purposes of delay and are insubstantial and frivolous. For the above reasons, we respectfully urge the Court to deny defendants' request to amend the answer and pretrial order. We also respectfully urge the

* It is noteworthy that the defendant Borough of Far Hills did not file an amended pleading and apparently does not intend to add the same defenses to its answer. Assuming that the Borough of Far Hills is seeking to amend its pleading to add these defenses, such pleas are also clearly frivolous and without legal basis for justification.

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Court to strike defendants' amended defenses even if defendants' motion for leave to amend is granted.

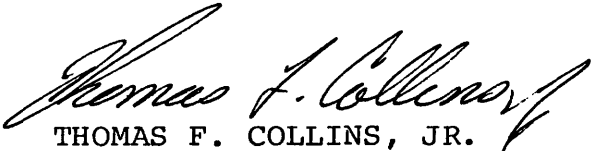
IV. CONCLUSION

For the reasons set forth above, we respectfully urge the Court to deny defendants' motion. Enclosed please find a form of proposed order denying said motion.

Mr. Vogel and I look forward to the continuation of the trial before Your Honor in the near future.

Respectfully yours,

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THOMAS F. COLLINS, JR.

TFS:sr
Enclosure

cc: J. Albert Mastro, Esq.
Robert K. Hornby, Esq.
Mr. John Ochs
Mr. Alois Haueis