

SUPERIOR COURT OF NEW JERSEY
SOMERSET COUNTY
LAW DIVISION, CIVIL PART
DOCKET NO. SOM-L-000903-15,
et al

IN THE MATTER OF:) TRANSCRIPT
DECLARATORY JUDGMENT ACTIONS.) OF
) MOTION DECISIONS
)
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Place: Somerset County Superior Court
20 N. Bridge Street
Somerville, New Jersey 08876

Date: October 28, 2016

BEFORE:

THE HONORABLE THOMAS C. MILLER, P.J.S.C.

TRANSCRIPT ORDERED BY:

JEFFREY R. SURENIAN, ESQUIRE
(Jeffrey S. Surenian And Associates, LLC)

Transcriber:
Geraldine Famularo
19 Cherrywood Circle
Brick, New Jersey 08724
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Sound Recorded By
Theresa Spark

1 (The matter was called at 10:38 a.m.)

2 THE COURT: Okay. We're on the record on
3 multiple motions for immunity, extensions of immunity
4 in the Mount Laurel cases that are pending in this
5 vicinage. That's in Hunterdon, Somerset, and Warren
6 Counties.

7 The majority of those cases are represented
8 by the Vicinage 13 Municipal Group is what they call
9 themselves in which the motion was filed by Michael
10 Edwards of Jeffrey Surenian's office providing a motion
11 to extend immunity as set forth in his moving papers.
12 Those cover many of the municipalities. Those were
13 listed in exhibits to the motion papers as to which
14 municipalities those covered. Several of those
15 municipalities joined in the motion separately. Several
16 parties to that motion even filed separate motions for
17 immunity which I guess was kind of confusing and the
18 municipalities within Vicinage 13 that are not covered
19 by Mr. Surenian's Vicinage 13 Municipal Group, many of
20 them also filed separate motions for immunity, all of
21 which I intend to address today.

22 Originally before the Court there were
23 motions to assure immunity that were made and then
24 various extensions to that were granted by the Court
25 after those occurred last year. Those are all part of

1 the record and are made part of the record for the
2 Court's finding today. I should say that the reasons
3 that immunity was granted and extended in those cases
4 still -- those reasons are still valid today. There's
5 been no showing that any of those municipalities for
6 which I granted immunity have abused that immunity or
7 have taken any actions that would disavow or dissuade
8 me from continuing the immunity as a general statement.

9 Frankly, we expected, I believe, to probably
10 have our compliance hearing prior to this date which is
11 why immunity was not extended longer than October of
12 2016. Because of various delays that have been caused
13 for reasons outside of everyone's control, those
14 hearings have not occurred yet in this County and
15 probably will not occur for at least several months.

16 There have been several appeals taken to the
17 Appellate Division and I believe certifications made to
18 the Supreme Court on various issues that have caused
19 delay; also the fact that there are basically the same
20 lawyers involved in the cases in the other Counties as
21 are involved here, same experts involved in the other
22 Counties as are involved here that the cases can only
23 be tried in each County one at a time. Some of those
24 Counties have tried piecemeal cases for various
25 municipalities I believe in Middlesex, Union, Morris,

1 for instance, but some of the Counties are doing it --
2 or vicinages are doing it just as I chose to do it
3 which is on a vicinage-wide basis; for instance, in
4 Ocean, I believe Monmouth, Burlington, perhaps
5 Atlantic, Mercer, and we are back in the process
6 probably behind most if not all of those other Counties
7 that I mentioned. So we had to wait for those other
8 cases to proceed which has further delayed this
9 proceeding.

10 Recently the Ocean County cases were
11 proceeding, and as they were about to proceed and
12 schedule I'm told that most if not all of those cases
13 have settled. Perhaps one case that was up in the
14 Appellate Division has not. So now the attorneys and
15 experts have basically been released from Ocean County
16 and will go on to the next County, but that is not
17 Somerset either. It would be one of the other Counties.
18 So as a result, there's need for me to address the
19 issue of the extensions of immunity in this case.

20 I've reviewed all of the moving papers. There
21 are papers in support of the immunity provided by
22 several municipalities, but on behalf of the Group by
23 Mr. Surenian's office. He indicates in his papers that
24 the Courts should presume that the municipalities are
25 acting fairly and with proper motives and with valid

1 reasons. In any event, it appears in virtually every
2 case that that is the case that the municipalities
3 appear to be acting in good faith in the processing of
4 these matters. That's what's been reported back to me
5 by the Special Masters in virtually every case. Many of
6 the cases, in fact, are actively mediating the cases
7 with the Special Masters. Many of them have settled. So
8 that indicates the good faith on behalf of the
9 municipalities.

10 The municipalities that are represented here
11 have all filed D.J. actions within the thirty-day
12 window. So they've all been proactive. The
13 municipalities that failed to file D.J. actions would
14 not be insulated by approvals. But in any event, the
15 Supreme Court decision in Mount Laurel IV and in the
16 language provided in that decision indicates that those
17 municipalities that have are entitled to, if they're
18 acting in good faith, to an immunity, and that's what
19 I've done in the past for the reasons set forth in
20 those Opinions.

21 I believe that the municipalities that have
22 filed for the extension are entitled to the insulating
23 protection that the Supreme Court promised in Mount
24 Laurel IV and that there's been no showing in any of
25 the individual cases that such a finding would be

1 inappropriate or unwarranted.

2 I note that several of the interveners have
3 filed objections. Most prominently is Fair Share
4 Housing. Fair Share Housing in their letter to me of
5 October 19th, 2016 referenced several issues which I
6 wanted to address.

7 First, they argue that it's not clear which
8 municipalities are seeking relief in this case,
9 particularly with the ones represented by Mr. Surenian
10 and they think that there's some confusion about that.
11 Actually, I have no confusion about it and those
12 municipalities are listed on a schedule. I believe that
13 they, in fact, clearly indicate which ones he has moved
14 on behalf of. The ones that he has not moved on behalf
15 of will require a separate motion, and I think in
16 virtually every one of those cases that's been done.

17 Second, they indicate it's not clear that Mr.
18 Surenian represents those municipalities. In fact, I'm
19 clear that he does represent those municipalities on
20 behalf of the Group. The Group has placed on the record
21 before me at other hearings that they were designating
22 counsel and that Mr. Surenian was likely to be that
23 person. Clearly, he has authority to act on their
24 behalf. Some of the municipalities, in fact, have
25 corroborated that by separate letters. But even the

1 ones that have not corroborated by separate letters I
2 believe would be covered by it.

3 Third, they indicate there's no factual basis
4 provided for the requests. There's been no submission
5 indicating that the municipalities are negotiating in
6 good faith, or preserving scarce resources, or taking
7 steps to meet their obligations. I agree with Mr.
8 Surenian that I think that is presumed. I can't assume
9 that they are not acting in good faith. It has to be
10 shown to me that they have not. In individual cases,
11 particularly in Branchburg, I believe, there's been
12 motions to me in the past that the municipality was not
13 acting in good faith and the specific reasons were
14 advanced for me to consider in that regard. I
15 considered that and ultimately found that Branchburg
16 Community would be extended. But I think that would be
17 required here and that has not been done. There's been
18 no individual -- indication on any individual
19 municipality basis that any municipality has not
20 proceeded in good faith. I can't make the assumption
21 certainly that as a group or that any individual has
22 not acted in good faith.

23 Fourth, Fair Share indicates that the
24 requested relief of providing immunity until 45 days
25 after the Supreme Court issues a decision in the

1 pending appeal for prospective need contravenes Mount
2 Laurel and rewards inaction. Frankly, I agree with that
3 and I do not intend to extend relief on that open-ended
4 basis. And I'm going to make it a specific date thereby
5 keeping the incentive for each municipality to continue
6 to work with the mediators and negotiate in good faith
7 and work towards compliance. So that particular reason,
8 I agreed with that.

9 It should be noted I received separate
10 objections I believe on behalf of a letter from Day,
11 Pitney on behalf of 3361 Route 22, LLC in Branchburg
12 and a certification of Craig M. Gianetti about that
13 specific case. There's also an objection filed by
14 Bisgaier & Hoff, Mr. Richard Hoff, regarding the
15 several interveners that he represents. He filed a
16 letter brief in opposition, as well. Certainly I have
17 considered those matters and the issues raised therein.

18 I still believe that temporary immunity
19 should be extended. Frankly, there's been no indication
20 on any basis to indicate that for any particular
21 municipality that immunity should not be granted.

22 The only municipality that there's been a
23 specific complaint about again has been Branchburg
24 Township. I had special motions on Branchburg in the
25 past, I believe last May or June -- April, May, or

1 June, concerning the issues in Branchburg. I believe
2 that what's been reported to me by the Special Masters
3 that they are acting in good faith in order to comply.
4 Branchburg has provided to me a couple of letter briefs
5 in support of their application for an extension. I
6 believe that they are entitled to that extension. They
7 appear to me to be acting in good faith, and immunity
8 should be granted as it is for the other
9 municipalities.

10 For instance, there's been question about one
11 of the projects that Branchburg had considered and, in
12 fact, the recent letters to me of October 25th, 2016
13 from Branchburg's counsel Mark S. Anderson indicates to
14 me that Branchburg has been moving along slowly but
15 steadily with the approval of that particular site that
16 was questioned and I believe that it appears to me that
17 it is in good faith, their attempt to comply in that
18 matter.

19 Just noting for the record I did receive
20 separate inquiries or letters from Jonathan Drill on
21 behalf of the five municipalities he represents,
22 Alexandria, Clinton Township, Milford Borough, Union
23 Township, Greenwich Township, and each of those he
24 supports the application of Mr. Surenian; John Pigeon's
25 letter from Borough of Bernardsville in which he joins

1 in the request; Steven Kunzman's letter on Warren
2 Township, Rocky Hill Borough, Watchung Borough, all in
3 Somerset County, and Frenchtown Borough in Hunterdon
4 County; also joining in Thomas Collins on behalf of
5 Bridgewater; John Belardo on behalf of Raritan Township
6 in Hunterdon County, Bernards and Bedminster Township
7 in Somerset County, all for the same reasons. Kevin A.
8 Van Hise, Esq. for Montgomery Township. So those
9 requests certainly support the application of Mr.
10 Surenian and would be granted. And Mr. Cushing on
11 behalf of the Town of Clinton, Township of Lebanon,
12 Township of West Amwell, Township of East Amwell, all
13 Hunterdon County municipalities also joining in. And
14 those all, of course, will be granted as part of Mr.
15 Surenian's application.

16 I received a separate cross motion for
17 extensions from the firm of DeCotis, Fitzpatrick & Cole
18 on the petition for Greenbrook and for Franklin
19 Township both. Those basically for the same reasons ask
20 for the extension of immunity which I would grant as
21 part of this entire application.

22 Probably there is some confusion because I
23 think Mr. Surenian wanted to get the motion filed in
24 each of the three Counties which comprise this vicinage
25 so that he filed in just the name of Hopatcong, or at

1 least that's how the motion is listed, but that is his
2 same motion the way I read it. That, of course, is
3 granted. He filed on behalf of Readington Township in
4 Hunterdon which is his client, Far Hills in Somerset
5 which is his client.

6 I also received a separate motion for
7 Bethlehem Township from the firm of Hoagland, Longo.
8 For the same reasons they ask for extension.
9 Hackettstown from the firm of Florio, Perrucci,
10 Steinhardt & Fader asking for extension and White
11 Township from that same firm. So all of those are
12 included within this motion cycle and will be granted.

13 The grant I'm going to give is -- originally
14 I was hoping to hear these matters by January 31st of
15 2017. I think under the circumstances that's probably
16 unrealistic to think it's going to be that soon. I'm
17 going to extend immunity, therefore, to a fixed date of
18 the end of February for each of these municipalities
19 until February 28th, 2017. If it looks like for
20 whatever reason our compliance hearing is delayed or
21 does not occur by that date, certainly I would
22 entertain extensions for immunity beyond that. I would
23 hope it could be done more simply than simply filing
24 these mass motions and that the parties would consider
25 short extension, sixty, ninety days, depending on what

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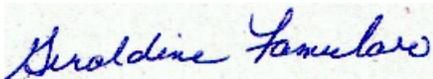
the circumstances indicate as to what would be reasonable under the circumstances depending on the Court's schedule to schedule these matters. But I think certainly counsel should consider lessening the paperwork and trying to do them more cooperatively because, frankly, the way I look at it, unless there are particular instances with a municipality that there's a showing that they have not acted diligently or in good faith, that I probably would not consider not extending. I would always consider extending under those circumstances unless there's particular circumstances shown to me. That's it.

(The matter concluded at 10:56 a.m.)

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CERTIFICATION

I, Geraldine Famularo, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on Courtsmart 10/28/16, index 10:38:51 to 10:56:41 is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded.



GERALDINE FAMULARO

#154
AOC NUMBER

Dated: November 21, 2016