

9/6/22 Contempt Hearing Highlights – Motion denied, TRO Attacked

Present at the zoom hearing were the neighbors Rosario and Greico and their attorney Paul Edinger as well as John Gillick and Aaron Rainone from Rainone, Coughlin, Mincello, PC, attorneys for Long Branch. Coughlin is speaker of the NJ Assembly. Amazingly, prior to the judge and their attorney coming on, the 2 neighbors displayed election signs for congressman Frank Pallone whose brother is Long Branch mayor John Pallone, no doubt to show who is really in control. The judge, Gregory L. Acquaviva was chief counsel to and nominated by Christie in 2017 and approved by the democratic led NJ Senate Judiciary committee and Senate. Prior to that a state lobbyist for United Health. He likes to please politicians of all stripes and is not very well regarded to say the least: <http://www.therobingroom.com/newjersey/Judge.aspx?id=26366>

The motion scheduled is for contempt of the TRO entered by Judge Sheedy. The following week is scheduled private and city defendants motions to vacate defaults for failing to timely answer the complaint.

Nevertheless the court ambushes Plaintiff and seeks to hear the motions to vacate as well. Plaintiff relents though good cause totally lacking for the private defendants and states he wants to get to the merits and summary judgment as soon as possible. The court asks Edinger to add Bruno, E&L Paving and R Brothers Concrete as clients and add to their complaint! Plaintiff points out Mr. Edinger may be a witness and should not also be the attorney under the rules of professional conduct. RPC 3.7

Plaintiff states how his new submissions evidence same behavior and offences as in the TRO. The judge adopts both attorney's mantra mirroring the city attorney at the council hearings and questions if this complaint is different than previous ones. Plaintiff explains it stems from the denial by the zoning board and on appeal of the outdoor use and the indefinite adjournment and that zoning laws still exist & require site plan approval to change the use. These facts were not previously litigated and also, any previous opinions were not published and are not binding on this court.

Gillick contends there's no duty to enforce under tort claims act (TCA) and Plaintiff can't make them issue summonses as 3rd party and no standing to do so. Edinger claims everything previously litigated and many facts about the history and property are cut n pasted, i.e. the word "the" appears in both matters, lol. New issues of blocking driveway, if any are due to narrow street rather than illegal parking across from Plaintiff's driveway. Plaintiff responds if no duty exists, there would be no need for prerogative writs and that Chancery Judge Quinn after hearing from the assignment judge opined it was a prerogative writ matter and transferred it to law div. as such. Plaintiff exhaustively pointed out the new acts of contempt from the submitted record. Normal color photos were uploaded to the courts website and original hard copies of documents and photos and video cds were given to the judge as requested. THE COURT'S WEBSITE NEVERTHELESS SHOW'S BLURRY B&W PHOTOS FOR THE COMPLAINT AND TRO EXHIBITS! Check docket Mon-L-1422-22

on njcourts.com under public -media/find a case/search civil & foreclosure cases.

See actual photo quality of submissions on fairtrialnj.org homepage and here: <https://drive.google.com/drive/folders/14un0cbw27FoxD6C8O67EZvTnQassTV7n?usp=sharing>

The judge begins stating he's going to relax the rules and allow Edinger 10 days to add the others to the answer. Next, despite only brief, conclusory self serving certifications submitted by the 2 neighbors in opposition, and lack of any brief, the court happily constructs one for them after stating "Defendants should show cause why relief should not be granted" citing Crowe DeGoia & Garden State Equality v. Dow standards. He opines he doesn't understand why judge Sheedy's return date was delayed and everything transferred to him and then proceeds to attack and undo judge Sheedy's TRO stating all 4 Crowe factors must be established by clear & convincing evidence, which Plaintiff already did to obtain the TRO. (Plaintiff surmises that's why the TRO was transferred to him) The 4 issues cited by him are: No genuine issues of material facts; Likelihood of success on the merits; Public Interest (from Gardens State Equality matter); Irreparable Harm. He left out Crowe point 4: relative hardships to parties favors relief.

As to issues of fact he claims the color still pictures in his possession are of varying quality/clarity and also unclear as to how related to conduct of defendants. He minimizes the damage stating the apron damage is due to typical industrial use from heavy machinery operated despite photos showing Rosario damaging the apron. (Estimates show \$10k in damage to curbs and apron). As to Irreparable harm: It cannot be redressed adequately if money damages somehow available “or other equitable relief available on back end” (which Plaintiff will pursue.) He doesn’t consider parking issues on narrow street or “modest damage” to apron severe inconvenience justifying injunctive relief or contempt thereof. However per a case submitted to judge Sheedy “Acts destroying a complainant’s business, reputation, custom and profits irreparably injure and authorize the issue of a preliminary injunction.” As to likelihood of success on merits: He ignores the key uncontroverted fact submitted to judge Sheedy that the neighbors use was rejected and should be terminated by law instead opining that there is somehow significant overlap as to where old case ends and new begins (laches?), some issues not addressed in papers, planning board app not addressed, whether issues are ripe, covid protocols, whether administrative remedies exhausted, and whether lack of enforcement is discretionary or no immunity under 1983 action and if full moon or not, lol. Public interest: Government entity only has so many resources, make prosecutorial decisions on where to place their resources. Can’t have zoning officer and police officer for every rule on books no matter how modest or de minimis violation is. He doesn’t see willful conduct due to the “lack of clarity and certitude of the photos”, i.e. showing Rosario filling the dead end loading zone with garbage and equipment, and driving into the barricades and onto the apron with a giant forklift causing damage. Plaintiff told him videos also submitted but he claims not allowed to view them due to court IT protocols. In short he claims the pictures combined with Plaintiff’s words which was sufficient for judge Sheedy now presented a lack of clarity” In summary, the court is obviously biased, distorted the record, advocated for private defendants even providing its own brief points and arguments, and stabbed a fellow judge in the back while dealing a body blow to the rule of law and public interest.

Summary judgment for equitable relief will be Plaintiff’s next step.