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July 18, 2022

Via eCourts

Hon. Peter G. Geiger, J.S.C.
Superior Court of New Jersey
Bergen County Courthouse
10 Main Street, 2nd Floor
Hackensack, NJ 07601

Re: Michael Akerman, *et al.* v. Township of Teaneck, *et al.*
Docket No. BER-L-2234-22

Dear Judge Geiger:

This firm represents proposed-intervenor, Holy Name Medical Center, Inc. (“HNH”) in connection with the above action. We respectfully submit this reply letter brief, in further support of HNH’s motion to intervene pursuant to Rule 4:33-1 or, in the alternative, Rule 4:33-2.

LEGAL ARGUMENT

1. The Court Should Permit HNH to Intervene to Protect its Rights and Defend Against Plaintiffs’ False Allegations Against HNH.

Plaintiffs argue that the Court should deny HNH’s application to intervene in this matter because, according to Plaintiffs, HNH’s interests are adequately protected by the Township of Teaneck (the “Township”). Plaintiffs’ argument – which is premised on a gross mischaracterization of its own allegations and unsupported conclusions – is meritless.

Shockingly, Plaintiffs first contends that the disposition of this action will not affect HNH’s interests whatsoever. (*See* Opp. Br. at p. 3.) That argument is belied by Plaintiffs’ own allegations. Indeed, even a cursory review of Plaintiffs’ 200-plus paragraph Complaint demonstrates that Plaintiffs’ argument is baseless. The initial paragraphs in the Complaint allege that: (i) this lawsuit challenges Ord. 9-2022, which expands the Township’s Hospital “H” Zoning District, (ii) all of the property zoned and re-zoned by Ord. 9-2022 is “owned and/or controlled by” HNH, and (iii) the “H-Zone only contains properties owned and/or controlled by HNH.” (*See* Cmplt. ¶¶ 1-3.) Clearly, HNH has an interest in the “expansion,” and “zoning and re-zoning” of its property. The fact that Plaintiffs do not seek direct relief against HNH does not mean that HNH does not have an interest at stake in this litigation.

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Next, Plaintiffs argue that “[t]he fact [*sic*] HNH and the Township are directly and completely aligned with one another in this dispute shows HNH’s interests are already adequately represented.” That argument fails for several reasons. First, there is no evidence whatsoever to support Plaintiffs’ self-serving conclusion that “HNH and the Township are directly and completely aligned.” The fact that HNH supports the Ordinance at issue does not mean that its interests are “directly and completely aligned” with the Township. Moreover, as explained in HNH’s moving papers, the Complaint is rife with allegations, both direct and indirect, of alleged wrongdoing *by HNH*. For example, the Complaint alleges, among other things:

- HNH agreed to confer a “financial benefit” to the Township in exchange for the Township “facilitat[ing] the redevelopment and expansion plans for the HNH Property sough by HNH” (Cmplt. ¶ 39);
- HNH constructed a parking lot without proper authorizations (*Id.* ¶¶ 60-63); and
- HNH constructed the parking lot “without complying with the New Jersey Department of Environmental Protection storm water quality or for storm water runoff” (*Id.* ¶ 66).¹

HNH should be permitted to address those false allegations head on. It should not be forced to sit idly by and hope that the named defendants will defend against those allegations. In other words, while the named defendants may defend the propriety of Ordinance No. 9-2022, there is no guarantee they will, or are even able to, defend against the allegations of purported wrongdoing against HNH.

2. HNH Should Be Permitted To Intervene Pursuant To Rule 4:33-2.

Despite admitting (as it must) that permissive intervention under Rule 4:33-2 is liberally granted, Plaintiffs nevertheless argue that HNH should nevertheless be denied the right to intervene under Rule 4:33-2. Plaintiffs’ argument is unpersuasive.

First, Plaintiffs argue that “[a]dding HNH will only complicate and lengthen the time necessary for discovery, motion practice, and trial.” (*See* Opp. Br. at 5.) Plaintiffs, however, fail to articulate *how* HNH’s inclusion would result in any added confusion or delay. In reality, it would not. In fact, Plaintiffs admit that, at a bare minimum, HNH officials possess relevant information and are “witnesses” in this matter. (Opp. Br. at p. 3.) Thus, to the extent Plaintiffs are even entitled to discovery in this prerogative writ matter, HNH will be involved in discovery and at trial.

¹ Plaintiffs’ statement that “[t]here are no ways the Complaint is an attack against HNH” is absurd. In addition to the direct allegations referenced above, HNH is referenced over 20 separate times in Plaintiffs’ Complaint.

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Second, Plaintiffs take the indefensible position that this matter does not involve “any public interest, let alone an important one.” (*See* Opp. Br. at p. 5.) While Plaintiffs attempt to depict HNH as a property owner simply attempting to develop its own property, that is not at all true. HNH is not a private developer seeking to expand and develop property for private gain – HNH owns and operates a public hospital and is seeking to improve and expand its facilities to be used for patient care. It is simply inconceivable that Plaintiffs claim that HNH’s interest are “decidedly personal” and “do not implicate any important public interest[.]” The only parties seeking personal gain at the expense of the public is Plaintiffs, not HNH.

CONCLUSION

For all the foregoing reasons and authorities, as well as those set forth in HNH’s moving papers, HNH respectfully requests that its motion to intervene be granted in its entirety.

Respectfully submitted,

/s/ Michael R. Yellin

Michael R. Yellin

MRY:mck

cc: All Counsel of Record (via eCourts)

