

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

CHRISTIANA TOWN CENTER, LLC,)	
A Delaware Limited Liability Company,)	
Plaintiff,)	
)	C.A. 03A-08-007 RSG
v.)	
)	
NEW CASTLE COUNTY, a political)	
subdivision of the State of Delaware,)	
and NEW CASTLE COUNTY)	
DEPARTMENT OF LAND USE,)	
Defendants.)	

Date Submitted: September 8, 2003
Date Decided: September 10, 2003

OPINION AND ORDER

This action is a petition for a Writ of Certiorari filed by a developer, Christiana Town Center, LLC, hereinafter "Christiana" against New Castle County and the New Castle County Department of Land Use, collectively hereinafter "County." On August 15, 2003, a county code official issued a decision finding Christiana to be in violation of the county code and issued a stop order directing Christiana to cease all activity on the site in question. On August 19, 2003, Christiana filed its Complaint in Certiorari. The Writ issued on August 21, 2003, and on August 25, 2003, the court entered an order affirming the common law stay of proceedings below pending resolution of the Certiorari.

On August 27, 2003, the Court of Chancery heard argument on the county's motion for a temporary restraining order to "enjoin continuing violations" alleged by the County. The Chancellor directed

the parties to seek clarification of the stay order in Superior Court and that same day an emergency hearing was held before another judge of Superior Court. The judge imposed a condition of a bond being placed for work to continue and a hearing was scheduled for argument on the county's objection to the Certiorari being issued. That hearing on September 8, 2003, resulted in argument being presented to this Court with respect to the nature of the stay and whether it was granted in accordance with law and procedure.

The Court will not here detail the extensive litigation history between Christiana and its principal on one hand; and the County on the other hand. Suffice it to say it is not a pleasant history but it is certainly a long and active one.

Many arguments were presented to the Court as to the nature and breadth of the Stay imposed where Certiorari is sought. In addition, both sides have argued irreparable consequences if they do not prevail.

This Court has consistently upheld the common law that provides for a stay of all proceedings below upon issuance of a Writ of Certiorari. Indeed, it has recently done so in litigation between these very same parties.¹

However, the County in this case points out that Christiana did not first appeal the decision of the code official to the New Castle County,

¹ See *Christiana Town Center, LLC v. New Castle County, et al.*, Del. Super., C.A. Nos. 03A-04-006, 007, Gebelein, J. (April 22, 2003). See also *Christiana Town Center, LLC v. New Castle County, et al.* Del. Super., C.A. Nos. 03A-04-008, Gebelein, J. (August 1, 2003).

License, Inspection and Review Board. Christiana argues that given the history such an appeal would be futile, and more importantly that their arguments are of a constitutional nature that could not be considered by the Board. While history might indicate that the Board has not been friendly to Christiana, this Court cannot assume that appointed officials will fail to act fairly in accordance with their statutory duties. Likewise, the Court is not convinced that Christiana with experienced counsel will be unable to preserve constitutional issues at the Board proceeding.

This Court is extremely wary of extending consideration by Certiorari to decisions of officials where administrative appeals remain available to the party. The Court notes the holding of the Supreme Court that there are threshold qualifications for a Certiorari review; in particular that the judgment below is final, and that there must be no other available basis for review.²

In this case, the Court is convinced that there exists an alternative basis for review. The Writ of Certiorari is hereby VACATED.

The case is DISMISSED.

The Honorable Richard S. Gebelein

² *Shoemaker v. State*, 375 A.2d 431, 438 (Del.1977); *In re Butler*, 609 A.2d 1080, 1081 (Del. 1992).

cc: Prothonotary
All Counsel of Record