

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

CHRISTIANA TOWN CENTER, LLC,)
A Delaware Limited Liability Company,))
Plaintiffs,))
v.) C.A. No. 03A-04-006 RSG
) 03A-04-007 RSG
)
NEW CASTLE COUNTY, a political)
subdivision of the State of Delaware,)
NEW CASTLE COUNTY BOARD OF)
LICENSE, INSPECTION & REVIEW,)
and NEW CASTLE COUNTY)
DEPARTMENT OF LAND USE,)
Defendants.

Submitted: June 12, 2003
Decided: June 16, 2003

ORDER UPON MOTION

Now this 16th day of June, 2003, Upon Motion of the Plaintiff it appears to the Court as follows:

- 1) This Court by Order dated April 23, 2003 found that Plaintiff's petition for Writ of Certiorari and issuance of such Writ constituted a Stay of the effectiveness of the decision below.
- 2) Plaintiff asserts that in spite of such stay, New Castle County has denied "at least four separate applications for permits or other approvals."
- 3) Plaintiff alleges the denial is based upon the "clean hands" provision of the development code and that the purported unclean hands relates to the findings on review in this case.
- 4) New Castle County has countered with the argument that A) The unclean hands relates to another matter involving this developer and home warranties (currently in litigation in Chancery Court), and, B) that it is entitled to rely upon the unclean hands as to violations in this case as plaintiff is not appealing the decision below that found it to be in violation of the code, but only the remedies imposed.

- 5) The parties in this case have been litigating for many years, in many cases and in many courts.
- 6) This action cannot be used to issue a mandate to New Castle County to issue permits. This action relates only to matters decided below.
- 7) As New Castle County alleges an independent basis to apply the “unclean hands” doctrine to this developer, the court cannot act upon those permits that are not before it.
- 8) The Court does make clear that the County would be in error to rely upon the findings under review in this Court by Certiorari. That decision below is not final unless or until it is affirmed by this Court. Certiorari reviews the entire case. Thus the decision below cannot be used as the basis for “unclean hands.”

IT IS SO ORDERED.

The Honorable Richard S. Gebelein

cc: Prothonotary
All Counsel of Record