STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(Filed: August 10, 2012)

NARRAGANSETT IMPROVEMENT COMPANY; UBS REALTY, INC.; AND RANKIN PATH REALTY, LLC	:	
v.	:	**C.A. No. PC-2008-6504**
VINCENT MARCANTONIO, IN HIS CAPACITY AS CHAIRMAN OF THE TOWN OF NORTH SMITHFIELD ZONING BOARD OF APPEALS; STEVEN SCARPELLI, IN HIS CAPACITY AS VICE-CHAIRMAN OF THE TOWN OF NORTH SMITHFIELD ZONING BOARD OF APPEALS; STEPHEN KEARNS, WILLIAM JUHR, GUY DENIZARD, MARIO DINUNZIO, AND DEAN NAYLOR, IN THEIR CAPACITIES AS MEMBERS OF THE TOWN OF NORTH SMITHFIELD ZONING BOARD OF APPEALS	:	

NARRAGANSETT IMPROVEMENT COMPANY; UBS REALTY, INC.; AND RANKIN PATH REALTY, LLC	:	
v.	:	**C.A. No. PC-2008-7468**
JILL GEMMA, IN HER CAPACITY AS FINANCE DIRECTOR FOR THE TOWN OF NORTH SMITHFIELD, RHODE ISLAND; MICHAEL PHILLIPS, IN HIS CAPACITY AS THE TOWN PLANNER FOR THE TOWN OF NORTH SMITHFIELD, RHODE ISLAND; DONALD GAGNON, IN HIS CAPACITY AS THE CHAIRMAN OF THE TOWN OF NORTH SMITHFIELD CONSERVATION COMMISSION AND IN HIS INDIVIDUAL CAPACITY;	:	

ROBERT V. ROSSI, ESQ., IN HIS CAPACITY AS THE FORMER ASSISTANT TOWN SOLICITOR FOR THE PLANNING BOARD OF THE TOWN OF NORTH SMITHFIELD AND IN HIS INDIVIDUAL CAPACITY; JOSEPH CARDELLO III, IN HIS CAPACITY AS CHAIRMAN OF THE TOWN OF NORTH SMITHFIELD PLANNING BOARD AND IN HIS INDIVIDUAL CAPACITY; BRUCE SANTA ANNA, IN HIS CAPACITY AS A MEMBER OF THE TOWN OF NORTH SMITHFIELD PLANNING BOARD AND IN HIS INDIVIDUAL CAPACITY; JOHN O'DONNELL, JR., EDWARD MCGILL, AND JOHN CZYZEWICZ, IN THEIR CAPACITIES AS MEMBERS OF THE TOWN OF NORTH SMITHFIELD PLANNING BOARD; JOHN DOES 1 THROUGH 5, IN THEIR CAPACITIES AS MEMBERS OF THE TOWN OF NORTH SMITHFIELD TOWN COUNCIL; JANE DOES 1 THROUGH 5, IN THEIR CAPACITIES AS MEMBERS OF THE TOWN OF NORTH SMITHFIELD TOWN COUNCIL; JOHN DOES 1 THROUGH 5, IN THEIR CAPACITIES AS MEMBERS OF THE TOWN OF NORTH SMITHFIELD ZONING BOARD OF REVIEW; JOHN DOES 1 THROUGH 7, IN THEIR CAPACITIES AS MEMBERS OF THE TOWN OF NORTH SMITHFIELD CONSERVATION COMMISSION; JANE DOES 1 THROUGH 7, IN THEIR CAPACITIES AS MEMBERS OF THE TOWN OF NORTH SMITHFIELD CONSERVATION COMMISSION :

DECISION

GIBNEY, P.J. This litigation arises from the efforts of Plaintiffs Narragansett Improvement Company, UBS Realty, Inc., and Rankin Path Realty, LLC (collectively "Plaintiffs") to gain approval to develop a residential subdivision in the Town of North Smithfield, Rhode Island. North Smithfield Neighborhood Coalition, Inc. ("the Coalition") is a non-profit corporation comprised of North Smithfield residents, including abutters to Plaintiffs' proposed subdivision. The Coalition opposes Plaintiffs' development plans. Plaintiffs presently move for an Assessment of Attorneys' Fees against the Coalition following this Court's denial of the Coalition's Motions to Intervene in Plaintiffs' lawsuits against the Town of North Smithfield ("the Town"). The Coalition objects. Jurisdiction is pursuant to this Court's inherent authority to award attorneys' fees and Super. R. Civ. P. 11. For the reasons stated herein, Plaintiffs' Motions for an Assessment of Attorneys' Fees are denied.[1]

[1] Plaintiffs filed two Motions for an Assessment of Attorneys' Fees. One Motion relates to the Coalition's attempt to intervene in Plaintiffs' appeal from an adverse decision of the Town of North Smithfield Zoning Board of Appeals. This action is captioned Narragansett Improvement Co. v. Marcantonio (PC-2008-6504). The other Motion for fees relates to the Coalition's attempt to intervene in Plaintiffs' declaratory judgment action against the Town. This action is captioned Narragansett Improvement Co. v. Gemma (PC-2008-7468).

For the sake of simplicity, this Court shall refer to Marcantonio and Gemma collectively as "The Narragansett Improvement Cases." All citations to this Court's March 30, 2012 Decision denying the Coalition's Motions to Intervene in Plaintiffs' litigation shall appear as follows: The Narragansett Improvement Cases, 2012 WL 1141481 (R.I. Super. Mar. 30, 2012). Because Westlaw has yet to issue a version of the March 30, 2012 Decision with star pagination however, all citations to the March 30, 2012 Decision will refer to pages in the slip opinion.

I

Facts and Travel

In 2008, Plaintiffs filed two actions: (1) an appeal from an adverse decision of the Town of North Smithfield Zoning Board of Appeals and (2) a declaratory judgment action against the Town. On September 2, 2011, individual members of the Coalition moved to intervene in both of Plaintiffs' lawsuits. On October 5, 2011, this Court issued an Order denying the individual Coalition members' Motions as untimely ("October 5 Order"). Two months later, on December 16, 2011, the Coalition itself moved to intervene in the two actions as of right and/or permissively.

In a comprehensive Decision issued March 30, 2012 ("March 30 Decision"), this Court denied the Coalition's Motions to Intervene. In doing so, this Court conceded that the Coalition had a demonstrated interest in the disposition of Plaintiffs' litigation with the Town. The Narragansett Improvement Cases, 2012 WL 1141481, slip op. at 15-17, 30-31. Nonetheless, this Court also concluded that the Coalition could not satisfy multiple prongs of the intervention analysis and consequently denied the Coalition's Motions.[2] Id. at 8-15, 18-30, 31-36. In particular, this Court highlighted the Coalition's lack of timeliness in seeking to intervene and observed that such delay implied that the

[2] More specifically, this Court denied the Coalition's Motions to Intervene as of right for (1) lack of timeliness; (2) failure to demonstrate that disposition of Plaintiffs' actions would impede the Coalition's ability to defend its interests; and (3) failure to show that the Town did not adequately represent the Coalition's interests. The Narragansett Improvement Cases, 2012 WL 1141481, slip op. at 8-24, 28-34. This Court denied the Coalition's Motions to Intervene permissively because the Motions were (1) untimely and (2) did not identify a claim or defense that differed from those already in the action, but also featured a question of law or fact in common with the original parties' claims or defenses. Id. at 24-27, 34-36.

Coalition was merely interested in impeding settlement negotiations between Plaintiffs and the Town. Id. at 8-15.

Following the defeat of the Coalition's Motions to Intervene, Plaintiffs moved for an assessment of attorneys' fees against the Coalition. In support of this request, Plaintiffs argue that the Coalition filed its Motions to Intervene solely for the purpose of harassing the parties and causing undue delay. The Coalition objects to Plaintiffs' characterization of its Motions to Intervene. The Coalition argues that this Court found the efforts of individual Coalition members to intervene untimely in the October 5 Order partly because Plaintiffs and the Town were on the verge of settlement. The Coalition states that settlement talks collapsed following the October 5 Order and contends that this change in facts justified the Coalition's Motions to Intervene. Thus, this Court now adds a postscript to this litigation's seemingly interminable "intervention" chapter.

II

Analysis

Rhode Island steadfastly adheres to "the American Rule" of attorneys' fees. Under this regime, each party must generally pay its own attorneys' fees, "even if the party prevails in the lawsuit." Blue Cross & Blue Shield of R.I. v. Najarian, 911 A.2d 706, 711 n.5 (R.I. 2006). Given a proper contractual or statutory authorization, however, this Court may award attorneys' fees to the prevailing party.[3] Women's Dev. Corp. v. City of Central Falls, 764 A.2d 151, 162 (R.I. 2001). This Court may also award attorneys' fees pursuant to its inherent authority to sanction "contumacious conduct."

[3] See, e.g., G.L. 1956 § 9-1-33 (2012) (authorizing reasonable attorneys' fees upon a showing that insurer refused to pay or settle a claim in bad faith); § 9-1-45 (authorizing reasonable attorneys' fees to prevailing party in contract action when court finds a complete absence of a justiciable issue of law or fact).

Nunes v. Meadowbrook Dev. Co., 24 A.3d 539, 543 n.6 (R.I. 2011). Where an appropriate basis for an award of attorneys' fees exists, the award "rests within the sound discretion of the trial justice." Blue Cross, 911 A.2d at 710.

Plaintiffs seek to hold the Coalition responsible for Plaintiffs' attorneys' fees relative to Plaintiffs' opposition to the Coalition's Motions to Intervene. Plaintiffs argue that this Court should award attorneys' fees against the Coalition pursuant to this Court's inherent authority and/or Super. R. Civ. P. 11 ("Rule 11"). This Court shall address each of Plaintiffs' proposed grounds for an award of attorneys' fees in turn.

A

Attorneys Fees Pursuant to this Court's Inherent Authority

Absent contractual or statutory authority for an award of attorneys' fees, this Court possesses inherent power to award such fees as a sanction for contumacious conduct. Nunes, 24 A.3d at 543 n.6. After considering the circumstances surrounding the Coalition's Motions to Intervene however, this Court concludes that an award of attorneys' fees pursuant to this Court's inherent authority is not warranted.

The expression "contumacious conduct" is of limited applicability. The term arises mainly in the context of a party's "willful disobedience of a court order." Black's Law Dictionary 337 (9th ed. 2009). More generally, "contumacious conduct" connotes behavior that impugns the integrity of the court or its officers. See, e.g., In re McLarty, 263 S.E.2d 194, 196 (Ga. App. 1979) ("[A] motion which contains knowingly false accusations against the court and which is filed for the purpose of denigrating the court or impugning its integrity must certainly be characterized as contumacious.").

Plaintiffs do not contend that the Coalition's Motions flouted a prior Order of this Court, nor has this Court ever found the Coalition in breach of such an Order. The mere fact that the Coalition sought to intervene months after this Court denied a similar effort by individual Coalition members does not mean that the Coalition acted in disregard of a court Order. Moreover, when this Court rejected the individual Coalition members' attempts to intervene, this Court did not bar future motions to intervene in this litigation by all other persons and entities.[4] The Coalition's actions did not violate a court Order and therefore do not approach "contumacious conduct." Black's Law Dictionary 337; see Nunes, 24 A.3d at 543 n.6. Accordingly, Plaintiffs may not avail themselves of this Court's inherent authority to assess attorneys' fees.

The thrust of Plaintiffs' Motions accuses the Coalition of acting in bad faith and for improper purposes. Such allegations are most appropriately discussed in the context of Rule 11 sanctions. Thus, this Court turns to Plaintiffs' second proposed ground for an award of attorneys' fees: Rule 11.

B

Attorneys' Fees via Rule 11 Sanctions

Plaintiffs argue that this Court should grant them attorneys' fees in the form of Rule 11 sanctions against the Coalition. Rule 11 of the Superior Court Rules of Civil Procedure states in pertinent part:

> "The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading,

[4] This Court shall not speculate here as to its response had the individual Coalition members renewed their efforts to intervene in lieu of or in addition to the Coalition's independent Motions. Moreover, today's observation that this Court did not expressly bar future motions to intervene in its October 5 Order should not be construed as a signal that this Court invites such motions or will treat them favorably.

> motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation . . . . " Super. R. Civ. P. 11.

To comply with Rule 11, therefore, counsel must make a "reasonable inquiry to assure that all pleadings, motions and papers filed with the court are factually well-grounded, legally tenable and not interposed for any improper purpose." Pleasant Mgmt., LLC v. Carrasco, 918 A.2d 213, 218 (R.I. 2007) (quoting Mariani v. Doctors Assocs., Inc., 983 F.2d 5, 7 (1st Cir. 1993)).

Rule 11 balances counsel's duty to press all arguments on behalf of his client zealously against his "duty to advance those arguments in good faith, without factual misrepresentations, and after proper consideration." Id. at 219. The Rule boasts dual purposes: (1) to deter repetition of the harm caused by counsel's failure to perform reasonable inquiry and (2) to remedy the harm. Id. at 217. To that end, Rule 11 imbues this Court "with broad authority to impose sanctions against attorneys for advancing claims without proper foundation." Michalopoulos v. C & D Restaurant, Inc., 847 A.2d 294, 300 (R.I. 2004). The Rule, moreover, expressly lists "a reasonable attorney's fee" among possible sanctions. Super. R. Civ. P. 11.[5]

[5] Rule 11 specifically provides:

> "If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, any appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the

After examining the circumstances of the Coalition's Motions to Intervene, this Court declines to impose Rule 11 sanctions on the Coalition's counsel. Rule 11 sanctions most frequently arise where counsel knowingly makes false accusations or recklessly fails to ground his arguments in fact. See, e.g., Pleasant Mgmt., 918 A.2d at 218-19 (holding Rule 11 sanctions proper where defense counsel accused plaintiffs' counsel of fraud without basis for the accusation); Michalopoulos, 847 A.2d at 302 (imposing Rule 11 sanctions where counsel made accusations of judicial misconduct "without proper judgment and necessary regard for the truth"). The Coalition's actions do not fall within either category and Plaintiffs do not mount a serious argument otherwise.

Plaintiffs do argue, however, that the Coalition only intended "to harass the parties, cause undue delay, and . . . impede any potential settlement discussions" through its Motions to Intervene. In other words, Plaintiffs argue that the Coalition filed its Motions in bad faith. Allegations made in bad faith and unsupported by "reasonable inquiry" are sanctionable under Rule 11. See Super. R. Civ. P. 11.

This Court, however, does not consider Rule 11 sanctions appropriate here. This Court concluded in its March 30 Decision that the Coalition had an interest in the disposition of Plaintiffs' litigation because the Coalition's membership included abutters to Plaintiffs' proposed development. The Narragansett Improvement Cases, 2012 WL 1141481, slip op. at 15-17, 30-31. The Coalition's possession of such an interest defeats Plaintiffs' suggestion that the Coalition moved to intervene for the sole purpose of harassing Plaintiffs or delaying the litigation.

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filing of the pleading, motion, or other paper, including a reasonable attorney's fee." Super. R. Civ. P. 11.

Plaintiffs, nonetheless, cite numerous passages from this Court's March 30 Decision discussing the Coalition's lack of timeliness. Plaintiffs contend that these segments of the March 30 Decision support their contention that the Coalition acted in bad faith. That this Court concluded that the Coalition's Motions failed for lack of timeliness, however, does not equate to a holding that the Coalition acted with intent to harass and delay this litigation. See id. at 9-14, 25-26, 28-30, 34-35. A motion not filed in a timely fashion does not constitute a motion filed in bad faith simply because it is untimely.

Plaintiffs also allege that the Coalition only wished to intervene to disrupt settlement talks between Plaintiffs and the Town. Plaintiffs contend that such conduct constitutes bad faith on the part of the Coalition and they cite portions of the March 30 Decision in support of this claim. This Court concedes that it opined in the March 30 Decision that the Coalition's conduct suggested that the Coalition wished to intervene so that the Coalition could block a settlement. See id. at 14.

Nonetheless, such behavior does not signal "bad faith" under the facts of this case. The Coalition had a demonstrated interest in the disposition of Plaintiffs' litigation with the Town. Thus, the fact that the Coalition hoped to attain influence over settlement talks between Plaintiffs and the Town through intervention is not particularly egregious in the context of Rule 11 sanctions.[6] Again, Rule 11 penalties generally arise where

[6] Plaintiffs construe the March 30 Decision to hold that one who moves to intervene to gain influence over settlement negotiations and/or stop an unfavorable settlement acts improperly. This Court disagrees. As part of the intervention analysis, this Court examined the timeliness of the Coalition's Motions to Intervene. Timeliness of intervention is judged principally by two criteria: "(1) the length of time during which the proposed intervenor has known about his interest in the suit without acting and (2) the harm or prejudice that results to the rights of other parties by delay." Marteg Corp. v.

counsel makes false accusations or recklessly raises arguments devoid of factual or legal grounds. See Pleasant Mgmt., 918 A.2d at 218-19. The Coalition did not engage in such conduct.

Rather, as the comprehensiveness of this Court's March 30 Decision implies, the Coalition's Motions to Intervene raised a justiciable, non-frivolous question. "Rhode Island law on intervention is sparse." The Narragansett Improvement Cases, 2012 WL 1141481, slip op. at 7 n.7. Therefore, although Plaintiffs ultimately defeated the Coalition's Motions, Plaintiffs' victory was hardly guaranteed under Rhode Island law at the time of the Coalition's Motions. Some federal cases, in fact, suggest that abutting landowners may properly intervene in a zoning/planning appeal for the pure purpose of

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Zoning Bd. of Review of the City of Warwick, 425 A.2d 1240, 1242 (R.I. 1981). In the March 30 Decision, this Court concluded that the Coalition knew or should have known in 2008 that settlement of Plaintiffs' litigation "in a way unfavorable to the Coalition's interest was not entirely out of the question." The Narragansett Improvement Cases, 2012 WL 1141481, slip op. 13. Nonetheless, the Coalition waited three years before seeking to intervene in 2011. This Court concluded that allowing intervention after such delay would prejudice the parties. The fact that intervention could disrupt progress toward settlement of this litigation was one of the factors this Court considered in resolving the prejudice prong against the Coalition.

However, a conclusion that the Coalition's intervention would prejudice the parties and a conclusion that the Coalition's actions violated Rule 11 are two very different things. Rule 11 targets failures to make "reasonable inquiry" as to the basis for one's claims. See Super. R. Civ. P. 11. A finding of prejudice within the intervention context, therefore, only intersects with Rule 11 where the motion is in violation of a court order, interposed for an improper purpose, or utterly frivolous. See id.

That is not the case here. The Coalition's desire to intervene to block settlement between Plaintiffs and the Town only impacted the intervention analysis because the Coalition waited three years to do so, and grant of the Motion after such delay could have disrupted resolution of this litigation. See id. at 13-14. This Court did not hold that the sheer desire to influence a settlement agreement is an improper basis for a motion to intervene, nor did it conclude that a motion to intervene filed on such grounds is made in bad faith and sanctionable under Rule 11. Accordingly, to the extent that the Coalition sought to intervene for the purpose of exerting an influence over Plaintiffs' settlement negotiations with the Town, the Coalition's actions were not improper for Rule 11 purposes.

influencing settlement talks.[7] See Nextel Commc'n of the Mid-Atl., Inc. v. Town of Hanson, 311 F. Supp. 2d 142, 160-61 (D. Mass. 2004) (permitting abutting property owners to intervene in part because their interests could be adversely affected by a settlement agreement between the parties). Given the paucity of Rhode Island law on intervention, it was not unreasonable for the Coalition to think that a perceived change in factual circumstances—such as a collapse in settlement talks between Plaintiffs and the Town—might justify a Motion to Intervene where an earlier Motion by some Coalition members had failed. The Coalition, in other words, did not file its Motions to Intervene knowing that the Motions would not succeed.[8]

This Court, of course, ultimately disagreed with the Coalition's reading of the law and held that the Coalition's Motions failed multiple prongs of the intervention analysis. The Narragansett Improvement Cases, 2012 WL 1141481, slip op. at 8-36. Nonetheless, the sheer fact that a party is on the losing side of an argument does not entitle the prevailing adversary to attorneys' fees under Rule 11. Blue Cross, 911 A.2d at 711 n.5. To hold otherwise would undo the American Rule. See id. The Coalition raised a

[7] Federal law on intervention is not binding on this Court, but only serves as persuasive precedent. See Credit Union Central Falls v. Groff, 871 A.2d 364, 367 (R.I. 2005) (noting that Rhode Island courts "may properly look to the federal courts for guidance" regarding intervention).

[8] In the March 30 Decision, this Court declined to review a proposed draft settlement between Plaintiffs and the Town which the Coalition had submitted in support of its Motions to Intervene. The Narragansett Improvement Cases, 2012 WL 1141481, slip op. at 19-20. Plaintiffs note that this Court concluded that the "rules of evidence and our Supreme Court's caselaw bar consideration" of a proposed draft settlement agreement. Plaintiffs argue that this somehow indicates that the Coalition acted in bad faith. As noted above, however, Rhode Island law on intervention is sparse. Our Supreme Court has never held that courts cannot consider evidence of settlement agreements in the context of a motion to intervene. Further, this Court had not held so prior to its March 30 Decision. The Coalition thus submitted the draft settlement agreement in good faith and this Court cannot sanction such conduct. See Super. R. Civ. P. 11.

justiciable question and pressed its case in good faith. It did not make false accusations, advance claims without a proper foundation, or otherwise act in bad faith. Super. R. Civ. P. 11; Pleasant Mgmt., 918 A.2d at 218-19. Accordingly, a proper ground for Rule 11 sanctions—in the form of attorneys' fees or otherwise—does not exist. Plaintiffs' Motions for an Assessment of Attorneys' Fees by way of Rule 11 sanctions are denied.[9]

III

Conclusion

For the foregoing reasons, this Court concludes that no circumstances exist to merit deviation from the American Rule. Plaintiffs' Motions for an Assessment of Attorneys' Fees are therefore denied. Counsel shall submit an appropriate Order for entry.

[9] Plaintiffs' Motions for an Assessment of Attorneys' Fees signal a chutzpah on the part of Plaintiffs that is inappropriate given the "intervention" quagmire from which this Court recently extricated the parties. This Court recognized in its March 30 Decision that the Coalition had an interest in the disposition of Plaintiffs' litigation. Although Plaintiffs successfully objected to the Coalition's Motions to Intervene, they should not take their victory as a sign that their Objection was free of flaws. See, e.g, The Narragansett Improvement Cases, 2012 WL 1141481, slip op. at 17 n.13 (observing that Plaintiffs improperly cited to caselaw which had been legislatively overridden). Plaintiffs, therefore, are in no position to rub salt in the Coalition's wounds.

Awards of attorneys' fees pursuant to this Court's inherent authority or Rule 11 are serious remedies for conduct of an inimical, willfully disobedient, or reckless character. See Nunes, 24 A.3d at 543 n.6; Michalopoulos, 847 A.2d at 301-02. That a party's legal argument fails does not mean that the party acted improperly in raising the argument, nor does the party's defeat entitle the winning party to attorneys' fees. See Blue Cross, 911 A.2d at 711 n.5. Accordingly, just as Plaintiffs should not have interpreted the March 30 Decision as an invitation to move for attorneys' fees, the Coalition should not construe its successful Objection here as an entitlement to such fees.