



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

330 HOSPITALITY GROUP, LLC,
a Delaware limited liability
Company,

Plaintiff,

v.

THE CITY OF REHOBOTH BEACH,
et al.,

Defendants.

C.A. No. S22C-11-016 RHR

PLAINTIFF'S ANSWERING BRIEF
IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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STATEMENT OF NATURE OF PROCEEDINGS

On May 13, 2022 Plaintiff filed suit in the Court of Chancery against the City of Rehoboth Beach (as well as other entities and individuals associated with the City, all of whom may be referred to as “the City”, or “Defendants”), stemming from the City’s denial of a rezoning application submitted by 330 Hospitality Group, LLC (“330” or “Plaintiff”). The Complaint included six Counts: violation of the City Code, violation of 22 *Del. C.* §702(d), equitable estoppel, and requests for declaratory judgment, injunctive relief, and damages¹. The City moved to dismiss for various reasons under Civil Rule 12(b)(6), but none asserting lack of jurisdiction.

During oral argument on the City’s motion, the Vice Chancellor raised, *sua sponte*, the question of subject matter jurisdiction. In her bench ruling, the Vice Chancellor dismissed the equitable estoppel claim (Count III), and subsequently concluded that absent that otherwise equitable claim, the Court lacked subject matter jurisdiction². The Final Order (Exhibit A to this brief) directed the dismissal of Count III with prejudice, and the remainder without prejudice, subject to Plaintiff’s right to transfer to this Court pursuant to 10 *Del. C.* §1902.

¹ The Plaintiff’s Complaint in the Court of Chancery was recently uploaded to this Court’s docket (see DI #8).

² The City’s Motion included the bench ruling as Exhibit B.

Within the 60-day window established by §1902, Plaintiff filed a Complaint for Declaratory Relief in this Court that included two Counts from the Chancery Complaint: violation of the City Code, and violation of 22 *Del. C.* §702(d)³. The Court accepted the Complaint, assigned a Superior Court case number, and notified the parties (DI #2).

Defendant has moved to dismiss, asserting that the Plaintiff should have filed this action “as a remedial writ in Superior Court” (Opening Brief, Page 2). This is the Plaintiff’s Answering Brief.

³ The City inaccurately asserts that 330 Hospitality “simply re-stated two causes of action dismissed by the Court of Chancery” (Opening Brief, Page 5). Only the equitable estoppel claim was dismissed with prejudice. As is clear from the Order, the remaining claims were dismissed without prejudice to Plaintiff’s right to transfer.

STATEMENT OF FACTS

The pertinent facts of the underlying rezoning application before the City of Rehoboth can be drawn from the Vice Chancellor's Bench Ruling. Those facts are not pertinent to the legal issues raised in the City's Motion to Dismiss.

ARGUMENT

I. IT WAS NOT NECESSARY FOR THE PLAINTIFF TO PETITION FOR A WRIT OF CERTIORARI WHEN THE CASE WAS BEING TRANSFERRED PURSUANT TO 10 DEL. C. §1902.

It is apparent from several recent decisions that the Court of Chancery is making a conscious and concerted effort to protect its limited jurisdiction, particularly in cases seeking review of municipal zoning decisions. In the recently-decided *Middlecap Assocs. v. Town of Middletown*, 2023 Del. Ch. LEXIS 35 (February 2, 2023), the Court dismissed an action seeking review of a decision by which The Town of Middletown denied an application for a conditional use permit. *Middlecap's* Complaint, like 330 Hospitality's Complaint in Chancery Court, had requested a declaratory judgment, injunctive relief, and damages. In dismissing the Complaint, the Court pointed out that a *writ of certiorari* issued by Superior Court could have provided entry to the Superior Court where an adequate remedy at law existed, thereby divesting the Court of Chancery of jurisdiction.

In her Order the Vice Chancellor also pointed out that earlier the same day she had issued a comprehensive opinion in *Delta Eta Corp. v. City of Newark*, 2023 Del. Ch. LEXIS 36 (February 2, 2023), deciding similar issues. In *Delta* the Vice Chancellor traced the history of "prerogative writs", including the *writ of certiorari*, and eventually concluded that *Delta* had an adequate remedy at law by

way of such a writ. In both *Middlecap* and *Delta* the underlying complaints were dismissed subject to transfer to Superior Court under §1902.

Similarly, in her bench ruling, Vice Chancellor Will alluded to the same *writ of certiorari* which the Superior Court is authorized to issue under 10 *Del. C.* §562, as the basis for finding a lack of equitable jurisdiction. Like Vice Chancellor Zurn, she dismissed claims (other than equitable estoppel) without prejudice, and subject to transfer.

Defendants seem to believe that the Plaintiff was obligated to start from scratch by petitioning this Court for a *writ of certiorari* since that was its “only avenue of relief” after the Chancery Court ruling (Opening Brief, Page 8)⁴. But that is not the case.

Rather, both Vice Chancellor Zurn and Vice Chancellor Will referenced *writs of certiorari* (and 10 *Del. C.* §562) as the basis for original jurisdiction in the Superior Court to entertain a review of municipal zoning decisions. Neither was saying that the plaintiffs in those cases were required to petition for a *writ* subsequent to their decisions. Had the plaintiffs in *Middlecap*, *Delta*, and this case made the decision to initially seek review in Superior Court, that would have been a way of doing so.

⁴ Defendants incorrectly argue that Plaintiff was “instructed” by the Court to do so. The Vice Chancellor’s language cannot be read in such a way, and it would have been beyond the power of a Vice Chancellor to direct the procedures to be followed in this Court.

But having begun in Chancery, the appropriate vehicle upon dismissal for lack of jurisdiction was the transfer provisions of §1902. That section prohibits dismissal of any civil action, suit or other proceeding brought in any court, based solely on the ground that such court is without jurisdiction of the subject matter. For matters over which the presiding court lacks subject matter jurisdiction, §1902 provides that such proceeding may be transferred to an appropriate court for hearing and determination. Section 1902 is remedial in nature and designed to prevent a case from being dismissed simply because it was initiated in the wrong court. *Taylor v. George*, 2020 Del. Super. LEXIS 152 (April 6, 2020).

Neither the Superior Court nor the Chancery Court appears to have enacted rules specific to transfers. In fact, only after Defendants' Motion to Dismiss was filed was the Plaintiff's original Chancery Court Complaint uploaded into the Superior Court docket⁵. Section 1902 does, however, authorize a receiving Court to entertain "applications" in the proceeding, and may "by rule or special order" address all matters concerning the course of procedure as justice may require. Essentially, the transfer statute leaves it to the Superior Court in this instance to determine how the case should proceed once the transfer has been accomplished.

The Court may treat the transferred action as if it had been brought in the first instance by way of *writ of certiorari*. It can if it wishes direct that a record

⁵ The rules do not instruct as to what papers from one court should be transferred to another.

below be filed with the Court, and thereupon determine how the review should proceed. Regardless of the procedure, however, the underlying principle of §1902 must be preserved, which is to facilitate a transfer between courts and protect litigants from having their claims dismissed⁶.

Further, any requirement that the Plaintiff initiate a new action (including one requesting the issuance of a *writ of certiorari*) would create something of a “Catch 22”. Defendants are no doubt aware that the statute of repose included within 10 *Del. C.* §8126 requires any challenge of a municipal zoning decision to be filed within 60 days. The City of Rehoboth denied Plaintiff’s application on March 18, 2022. If 330 Hospitality was required to file a new Petition for *Writ of Certiorari*, it would be well beyond the 60-day limit. In *Wilmington Trust Co. v. Schneider*, 342 A.2d 240 (Del. Supr. 1975), the Supreme Court made clear that any interpretation of §1902 must keep in mind its broad remedial purposes – to facilitate transfer between courts and to protect litigants from having claims time-barred by a mistake about the court in which their claims could be filed⁷. Although *Schneider* held that the 60-day time limit at issue in that case could be tolled under appropriate circumstances, it is unnecessary given §1902. Defendants’ argument

⁶ The last line of §1902 requires that “This section shall be liberally construed to permit and facilitate transfers of proceedings between the courts of this State in the interests of justice”.

⁷ The current §1902 formerly appeared as §1901.

would completely undermine §1902. See also *Benge v. Oak Grove Motor Court, Inc.*, 2006 Del. Ch. LEXIS 163 (August 30, 2006).

CONCLUSION

For the reasons set forth herein, Defendants' Motion to Dismiss should be denied. Although Defendants would logically then Answer the Complaint filed by the Plaintiff, should the Court wish, pursuant to §1902, to enter an Order establishing the procedure for review of the City of Rehoboth's decision, it can do so without the need for any additional pleadings.

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