ORDER 435704

DOCKET NO: LLICV580015459S

SUPERIOR COURT

ANN ADAMS Et Al
V.
B.FRANKLIN VAILL Et Al

JUDICIAL DISTRICT OF LITCHFIELD
AT LITCHFIELD

9/27/2016

ORDER

ORDER REGARDING:
10/06/2015 105.00 MOTION FOR STAY

The foregoing, having been considered by the Court, is hereby:

ORDER:

The intervening plaintiff, Lime Rock Citizens Council, LLC (the Council) has moved to stay this action based upon the doctrine of primary jurisdiction. The Council claims that the issues presented by the instant proceedings in this case are within the jurisdiction of administrative bodies of the Town of Salisbury and that actions of those bodies may supplant or moot issues in the instant proceedings. The defendant, Lime Rock Park, LLC (the Park) disagrees, arguing that the administrative bodies lack the authority to grant the Park the relief it desires because the Park is seeking legal relief that the Town of Salisbury's administrative bodies at issue cannot grant. Specifically, the Park seeks a modification of the amended judgment in this case and argues, in partial support of this requested modification, that the regulation of hours of race track operation is strictly a legal matter. For the reasons stated below, the court denies the Council's request to stay this action under the doctrine of primary jurisdiction, but stays this action, sua sponte, under the court's inherent power to control the disposition of the causes on its docket to promote judicial economy and economy of time and effort for counsel and for litigants.
The court begins its analysis by reviewing the procedural posture of this case.
As explained in greater detail below, judgment entered in this case on May 12, 1959. This judgment was modified three times, twice by stipulation and once by court order, the last time being on January 14, 1988. The Park filed a motion to modify injunction and judgment on September 4, 2015. This motion is contained within filing # 103. The motion to modify, citing changed circumstances, requests, inter alia, the court to allow one or two days of unmufflered racing (1) on Sundays after 12 noon, (2) on Fridays when unmufflered testing, qualifying and race preparation are presently allowed and (3) on five Thursdays per year in place of Tuesdays when unmufflered racing is presently permitted. The motion also expresses a willingness on the part of the Park to reduce the numbered of Tuesday unmufflered race days from 52 to 20 per year. The Council filed this motion to stay this proceeding on October 6, 2015. This motion was argued on June 2, 2016 and additional evidentiary submissions were filed with the court on June 10, 2016.
Before discussing the merits of the Council's motion to stay, however, the court must review the manner in which the unique historical facts concerning the regulation of the Park's racetrack have informed the procedural posture of this case and a related case, Lime Rock Park, LLC v. Planning and Zoning Commission of the Town of Salisbury, Docket Number LLI-CV-15-601-3033-S (the P & Z Appeal). Lime Rock Corporation, a prior owner and operator of the race track in Lime Rock, Salisbury, began racing operations at the track in 1957. At the time, Salisbury had not adopted any zoning regulations. According to allegations found in the Park's P & Z Appeal, the Salisbury Development Plan, adopted by the Town Planning and Zoning Commission (Commission) on August 3, 1958, called the track "an established recreation business of major proportions" which "legitimately exists as an enterprise operated by citizens of the town." P & Z Appeal, para. 20. According to the Park's allegations, the Development Plan also recognized (1) that the track was not likely to be developed for residences because its topography had value for "business and industry as a large flat area on gravelly soil," and (2) "many of the nuisance factors objected to by local residents are not within the jurisdiction of the

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Commission and can best be dealt with by other legal procedures." Id.
Shortly thereafter, by complaint filed on August 20, 1958, twenty-six individuals, as well as a neighboring cemetery association and church, initiated this lawsuit. This lawsuit was brought against the individual and entity that owned and operated the race track at that time. Neither the Town of Salisbury nor the Commission were named as parties in this lawsuit. The plaintiffs claimed nuisance, requested noise abatement and sought permanent injunctive relief. This court, W. Shea, J. granted detailed injunctive relief on May 12, 1959. The order regulated the use of the race track by (1) enjoining racing on Sundays, (2) limiting mufflered racing to weekdays between 9 a.m. and 10 p.m., with the exception of six days a year when racing could continue after 10 p.m. and (3) restricting unmufflered racing to Tuesdays, between 12 noon and 6 p.m., with the exception of 10 Saturdays a year and the 10 Fridays before them, and specified holidays, such as Memorial Day, the Fourth of July and Labor, between 9 a.m. and 6 p.m. The original injunction was subsequently amended three times: by stipulation on March 2, 1966, by order of the court, R. Wall, J. on August 26, 1968 and by stipulation on January 14, 1988. Each of the amendments modified the regulation of the operation of the race track, adding limitations on noise producers such as engine revving, the use of loudspeakers and motorcycle racing, and continued to regulate the issues of hours and days of mufflered and unmufflered racing.
Shortly after Judge Shea's injunction, on June 8, 1959, Salisbury adopted zoning regulations. According to the Park's allegations in the P & Z Appeal, the 1959 regulations permitted a motor vehicle race track in the district in which the Park was, and is located, permitted uses accessory to a race track, did not require a permit to operate a race track, allowed racing to be conducted during statutorily-permitted hours, which, at the time were any reasonable hour of any week day and after 2 p.m. on Sunday, as long as such racing hours did not conflict with town ordinances. P & Z Appeal, para. 8—15, inclusive; para. 17—18, inclusive. Salisbury's zoning regulations pertaining to race track operation have been amended several times since 1959. The Park alleged that, prior to the most recent round of amendments, the zoning regulations provided that races could only be conducted during the hours set forth in the May 12, 1959 order as amended by related court orders and that these court orders, as they pertain to hours of reference were incorporated into the zoning regulations. Id., para. 24—25, inclusive.
The Park's P & Z Appeal arises from the most recent zoning amendments concerning the race track. These amendments were approved by the Commission, according to the Park, on November 16, 2015. The Park filed the P & Z Appeal shortly thereafter by service dated December 8, 2015. The P & Z posits several allegations claiming that the Commission acted illegally, arbitrarily, capriciously and in abuse of its discretion in adopting the recent amendments. Several of these allegations are relevant to the court's consideration of this motion. The Park claims that (1) provisions limiting days and hours of racing are pre-empted by statute, §14-164a, Conn. Gen. Stat.; (2) the Commission cannot require a property owner operating as an existing, permitted use to apply for a special permit to operate as it currently does; (3) there is no evidence in the administrative record to support the modified amendments, which deal with topics including hours of operation and whether mufflers are required; (4) the amendment regulations attempt to incorporate the nuisance lawsuit judgment from this case into zoning regulations, without considering whether these provisions constitute valid and appropriate land use regulations, and despite evidence in the record that circumstances have changed significantly; (5) the provisions pertaining to mufflered and unmufflered racing are illegal attempts to regulate noise; (6) the amended regulations constitute illegal spot zoning; (7) the amendments regulate a user and not a use and (8) the amendments contravene Conn. Gen. Stat. §8-2(a)'s requirement that zoning regulations be in conformity with the town's Comprehensive Plan.
The allegations of the Park's P & Z Appeal constitute an acknowledgement that the provisions of the judgment in this case and its amendments have been incorporated into Salisbury's zoning regulations, in the versions that existed both immediately before and after the adoption of the most recent amendments. The P & Z Appeal also recognizes that the zoning regulations of Salisbury govern permitted activities at the race track. Additionally, the Park's P & Z Appeal raises many of the same issues set forth in this case. As set forth above, the original judgment in this case prohibited Sunday racing and regulated the hours and days of mufflered and unmufflered racing. The later amendments responded to other noise issues by prohibiting motorcycle racing, and limiting revving of engines and the use of loudspeakers. The P & Z Appeal, as set forth in the last paragraph, will argue that the regulations' attempt to limit hours of operation is pre-empted by statute and that noise is an issue not within the purview of the Commission. The P & Z Appeal will attempt to marshal what appears to be the same evidence of changed circumstances (which the Park claims is in the administrative record) to attempt to overturn the Commission's adoption of the new regulations as it would to support an amendment to the judgment in

this case. The P & Z Appeal will also attempt to claim that the Commission does not have authority to require permitting for an ongoing use, one that the Park will doubtlessly claim was allowed, at least in part, under the judgment in this case and under the Plan of Development. The P & Z Appeal will also attempt to distinguish between areas that may be regulated under zoning from those that are regulated under the injunction in this case.

As mentioned above, the Council claims that the Park's attempt to modify this judgment should be stayed by operation of the doctrine of primary jurisdiction. "The doctrine of primary jurisdiction is a rule of judicial administration created by court decision in order to promote proper relationships between the courts and the administrative agencies charged with particular regulatory duties....Its basis is the concept that courts and administrative agencies are, as Justice Frankfurter suggested, collaborative instrumentalities of justice....Under this doctrine, a trial court has original subject jurisdiction of the questions raised in the complaint filed in that court. Primary jurisdiction...applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such a case the judicial process is suspended pending referral of such issues to the administrative body for its views....In deciding whether to apply the primary jurisdiction doctrine to a given case, a court must take into account the need for uniform decisions and the specialized knowledge of the agency involved....([p]rimary jurisdiction applies where a claim is originally cognizable in the courts, but enforcement of the claim requires, or is materially aided by, the resolution of threshold issues, usually of a factual nature, which are placed within the special competence of the administrative body." City of Waterbury v. Town of Washington, 260 Conn. 506, 574—75, 800 A.2d 1102 (2002) (citations and internal quotations omitted). The doctrine of primary jurisdiction, as opposed to the doctrine of exhaustion of administrative remedies, applies when "the plaintiffs, prior to filing their complaint, had sought no administrative action," and provides "an orderly process of administrative adjudication and judicial review in which a reviewing court will have the benefit of the agency's findings and conclusions." Sharkey v. City of Stamford, 196 Conn. 253, 256, 492 A.2d 171 (1985).

As mentioned above, the Council filed this motion to stay on October 6, 2015. At that time, the doctrine of primary jurisdiction may very well have applied. The Commission did not approve the amended regulations until November 16, 2015, and, under those circumstances, the court would have been on firm footing to have stayed the Park's motion to modify to allow for a conclusion of the Commission's administrative proceeding. Doing so would have allowed the court the benefit of the agency's finding and conclusions. However, as of the date of argument of this motion, the Commission has adopted the amended regulations, and the administrative record will provide at least some insight as to why. The administrative decision has already been appealed in the P & Z Appeal, and that appeal is already before this court. Therefore, the court declines to stay the Park's motion to modify based on the doctrine of primary jurisdiction.

However, In Connecticut, "[t]he court has the inherent power to stay proceedings before it in the interest of the just resolution of controversies. See, e.g., Success Centers v. Huntington Learning Centers, Inc., 223 Conn. 761, 771, 613 A.2d 1320 (1992); Gores v. Rosenthal, 148 Conn. 218, 220 (1961)." Hilb Rogal & Hobbs Co. v. Siech, Superior Court, judicial district of Hartford, Docket No. CV-04-4004817-S (March 23, 2005, Beach, J.) (38 Conn. L. Rptr. 706). Connecticut courts have, on many occasions, stayed proceedings when actions for the same, or very similar, relief are pending in other jurisdictions. Ruisi v. O'Sullivan, Superior Court, judicial district of Stamford-Norwalk at Stamford, Docket No. CV-11-5013596-S (May 2, 2011, Karazin, J.); KI, Inc. v. KP Acquisition Partners, LLC, Superior Court, judicial district of Stamford-Norwalk at Stamford, Complex Litigation Docket, Docket No. X05-CV-09-6002747-S (September 24, 2010, Blawie, J.); Lincoln Life & Annuity Co of New York v. Lockwood Pension Services, Inc., Superior Court, judicial district of Hartford, Docket No. CV-08-5019142-S (November 28, 2008, Domnarski, J.).

"The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." (Internal quotation marks omitted.) Lee v. Harlow, Adams and Friedman, P.C., supra, 116 Conn. App. 311-12. A stay should be denied where injustice or prejudice would be caused to a party. Sauter v. Sauter, 4 Conn. App. 581, 585, 495 A.2d 1116 (1985). One must remember, however, that "an order staying proceedings does not terminate the action but merely postpones its disposition. It may be modified or vacated by the court whenever, in the exercise of sound

discretion, it is considered necessary or proper to do so." (Internal quotation marks omitted). Success Centers, Inc. v. Huntington Learning Centers, Inc., supra, 223 Conn. 771. Further, a "stay, unlike a dismissal, leaves the court in a position to monitor the progress being made in the parallel litigation, and to reassert its jurisdiction over the parties' dispute if the interests of justice so dictate." (Internal quotation marks omitted.) KI, Inc. v. KP Acquisition Partners, LLC, Superior Court, supra, Superior Court, Docket No. X05-CV-09-6002747-S.

A number of Connecticut courts have, sua sponte, ordered stays under circumstances similar to those presented in this case and in the P & Z Appeal. Ruisi v. O'Sullivan, supra, Superior Court, Docket No. CV-11-5013596-S; Marshall v. Marshall, Superior Court, judicial district of Stamford-Norwalk at Stamford, Docket No. FA-07-4012382 (February 27, 2008, Munro, J.); Connecticut Ins. Guaranty Assn. v. Harbec, Superior Court, judicial district of New London, Docket No. 529690 (June 3, 1997, Handy, J.); Lowe v. Lowe, Superior Court, judicial district of Danbury, Docket No. FA-94-0066876-S (June 14, 1996, Axelrod, J.). In fact, in Lee v. Harlow, Adams and Friedman, P.C., supra, 116 Conn. App. 305, the court commented that a stay would be appropriate in a legal malpractice case when the client was also pursuing a third party for fraud under the same facts because, when the case against the lawyer proceeded to judgment against him, "the fraudulent party, who was most responsible for the plaintiff's loss, received a windfall from the malpractice case against the plaintiff's former lawyer." Id., 310.

Although the issues in this case and the P & Z Appeal are not identical, overlapping issues abound. Both cases, of necessity, will deal with issues of the Commission's authority to set hours of racing operation and to regulate noise. In both, the Park will adduce evidence of changed circumstances in the racing industry. Both cases will consider the issue of whether the judgment in this case or the zoning regulations which now incorporate the judgment in this case is the proper manner in which to regulate racing at the track.

It makes no sense to the court to allow this case and the P & Z Appeal to proceed simultaneously. Doing so would result in judicial inefficiency and a tremendous waste of counsel and party resources. Staying this case, however, and allowing the P & Z Appeal to proceed will serve beneficial purposes. The P & Z Appeal will, at the very least, resolve at least some of the factual and legal issues fundamental to this case. Further, the Commission is a party in the P & Z Appeal, and the court will benefit from its input during that proceeding. The court does not foresee any way that a party will be prejudiced; given the fact that courts rarely take evidence outside the administrative record in an administrative appeal, it is more likely that the P & Z Appeal will be ready for a hearing before this case is. Further, as mentioned above, staying this proceeding will likely result in a savings of resources for the parties. Moreover, the court's order to stay this proceeding may be modified or vacated by the court whenever, in the exercise of sound discretion, it is considered necessary or proper to do so." (Internal quotation marks omitted). Success Centers, Inc. v. Huntington Learning Centers, Inc., supra, 223 Conn. 771. Finally, because the P & Z Appeal is pending in this judicial district, the court can easily monitor its progress.

For all of the abovementioned reasons, the court denies the Council's motion to stay this proceeding on primary jurisdiction grounds, but stays this action, sua sponte, based upon the court's inherent powers, until the P & Z Appeal is decided by this court.

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Judge: JOHN DAVID MOORE