

SUPREME COURT OF CONNECTICUT

Moutinho v. Planning and Zoning Commission of the City of Bridgeport, 278 Conn. 660

899 A.2d 26 (2006) · No. No. 17558 · Decided June 20, 2006

SUMMARY

The Supreme Court of Connecticut held that a nonowner developer with an oral agreement to lease property upon approval of a proposed project could be classically aggrieved by the denial of zoning applications. The court also held that the property-owning partnership was statutorily aggrieved under General Statutes § 8-8 and could appeal despite not having been the applicant before the commission. The judgment dismissing the zoning appeal was reversed and the case was remanded.

CASE DETAILS

COURT	Supreme Court of Connecticut
WRITING FOR THE COURT	Sullivan, C.J.; Norcott, J.; Katz, J.; Palmer, J.; Vertefeuille, J.
JURISDICTION	Connecticut
DECIDED	June 20, 2006
DOCKET	No. 17558
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs appealed from the Superior Court's dismissal for lack of subject matter jurisdiction of their zoning appeal from the Planning and Zoning Commission's denial of applications for a special permit, site plan review, and coastal site plan review.
STANDARD OF REVIEW	The Supreme Court reviewed the trial court's factual determination of aggrievement for clear error, while reviewing legal conclusions for consistency with law, logic, and reason.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Connecticut
PARTIES	Manuel Moutinho, J.R.R.C. Associates v. Planning and Zoning Commission of the City of Bridgeport, Brian Hariskevich, Annette Mathews, John Percell

TOPICS

[zoning](#)[judicial review of agency action](#)[appellate jurisdiction](#)[administrative law](#)[standard of review](#)

PRACTICE AREAS

administrative law

real estate

municipal law

appellate procedure

QUESTIONS PRESENTED

1. Whether Moutinho was classically aggrieved by the commission's denial of the zoning applications despite having only an oral agreement to enter into a lease upon satisfaction of a contingency.
2. Whether the statute of frauds prevented Moutinho from establishing aggrievement based on the oral lease agreement.
3. Whether J.R.R.C. Associates, as the owner of the affected property and a statutorily aggrieved person, could appeal the commission's decision even though it had not been listed as an applicant before the commission.

HOLDINGS

1. A nonowner developer is classically aggrieved when credible evidence establishes an oral agreement with the landowner and the parties' intent to abide by that agreement, because those circumstances establish a specific, personal, and legitimate interest in the property.
2. The statute of frauds did not apply because the proceeding was not a contract dispute between Moutinho and J.R.R.C.; the oral agreement could therefore establish Moutinho's aggrievement even though it was not enforceable as a contract.
3. A person who is statutorily aggrieved under General Statutes § 8-8 may appeal a zoning decision even if that person was not an applicant before the commission.

KEY QUOTATIONS

*“Classical aggrievement requires a two part showing. First, a party must demonstrate a specific, personal and legal interest in the subject matter of the decision, as opposed to a general interest that all members of the community share.... Second, the party must also show that the agency's decision has specially and injuriously affected that specific personal or legal interest.” (*30)*

*“We are persuaded by the reasoning of these opinions that an agreement between a landowner and a non-owner developer need not be in writing to establish the developer's aggrievement in a zoning appeal.” (*33)*

*“Under the plain language of § 8-8, however, a person who is statutorily aggrieved may take an appeal.” (*34)*

FACTUAL BACKGROUND

In 1998, Manuel Moutinho applied for zoning approvals to construct a batch asphalt plant on property in Bridgeport that was owned by a trust. The application identified Moutinho as a lessee, and the property owners consented to the application. The evidence established an oral agreement under which Moutinho would enter into a long-term lease if the asphalt plant applications were approved. After the property was conveyed to J.R.R.C. Associates, a partnership owned by members of the Julian family, the commission denied the applications.

PROCEDURAL HISTORY

Moutinho applied to the Bridgeport Planning and Zoning Commission to construct a batch asphalt plant. After the commission denied the applications, Moutinho and the property's trustee appealed to the Superior Court. The property was subsequently conveyed to J.R.R.C. Associates, which was substituted as a plaintiff. The trial court found J.R.R.C. statutorily aggrieved but held that it could not appeal because it had not been an applicant, and held that Moutinho was not aggrieved because his oral lease agreement was unenforceable under the statute of frauds. The Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded for further proceedings according to law.

CASES CITED

- Stauton v. Planning & Zoning Commission, 271 Conn. 152, 157, 856 A.2d 400 (2004)
- Bongiorno Supermarket, Inc. v. Zoning Board of Appeals, 266 Conn. 531, 538, 833 A.2d 883 (2003)
- Lewis v. Planning & Zoning Commission, 275 Conn. 383, 391, 880 A.2d 865 (2005)
- LePage Homes, Inc. v. Planning & Zoning Commission, 74 Conn. App. 340, 344-45, 812 A.2d 156 (2002)
- Primerica v. Planning & Zoning Commission, 211 Conn. 85, 92-95, 558 A.2d 646 (1989)
- DiBonaventura v. Zoning Board of Appeals, 24 Conn. App. 369, 370-77, 588 A.2d 244, cert. denied, 219 Conn. 903, 593 A.2d 129 (1991)
- Marinelli v. Board of Appeal, 275 Mass. 169, 171-73, 175 N.E. 479 (1931)
- State v. Skakel, 276 Conn. 633, 721, 888 A.2d 985 (2006)
- RYA Corp. v. Planning & Zoning Commission, 87 Conn. App. 658, 667, 867 A.2d 97 (2005)
- Bossert Corp. v. Norwalk, 157 Conn. 279, 285, 253 A.2d 39 (1968)
- Rodriguez v. Henderson, 217 Ill. App. 3d 1024, 1036-37, 160 Ill. Dec. 878, 578 N.E.2d 57 (1991)
- Ralston Purina Co. v. Zoning Board, 64 R.I. 197, 199, 12 A.2d 219 (1940)