

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[FILED: January 30, 2015]

ANTHONY COTSORIDIS, :
Plaintiff, :

v. :
:

C.A. No. PC 14-5941

WILLIAM H. LUEKER, ESQ., in his :
Capacity as Deputy Chief of Legal :
Services/Hearing Officer, State of Rhode :
Island Division of Public Utilities and :
Carriers, and THOMAS AHERN, in his :
Capacity as Administrator, State of :
Rhode Island Division of Public Utilities :
and Carriers; and GO ORANGE LLC :
d/b/a ORANGE CAB OF NEWPORT, :
Defendants. :

DECISION

VAN COUYGHEN, J. This case is before the Court on Anthony Cotsoridis’ (Plaintiff) request for declaratory and injunctive relief. Plaintiff challenges the legality of the Rhode Island Division of Public Utilities and Carriers’ (the Division) denial of his motion to intervene. Jurisdiction is pursuant to G.L.1956 § 9-30-1.

I

Facts and Travel

On October 23, 2010, Plaintiff filed a Request for Authority to Transfer a Taxicab Certificate with the Division. In his request, Plaintiff sought to acquire Certificate MCT-59 (the Certificate) from P&P, Inc. The Certificate authorizes six taxicabs in the assigned territory of Newport, Middletown, Portsmouth, and Jamestown.¹ While Plaintiff’s

¹ On December 1, 2014, Plaintiff and P&P, Inc. also filed a Notification of Change of

request for Authority to Transfer the Certificate was pending, Go Orange LLC d/b/a/ Orange Cab of Newport (Go Orange) applied for new authority to operate thirty-four taxicabs in Bristol, Jamestown, Middletown, Newport and Portsmouth (the Go Orange application). Since Plaintiff's pending application for the transfer of the Certificate concerned the same territory for which Go Orange was seeking its new certificate, Plaintiff moved to intervene in the pending Go Orange application pursuant to Rule 17 of the Division's Rules of Practice and Procedure.

On November 18, 2014, the Hearing Officer denied Plaintiff's Motion to Intervene. The Hearing Officer reasoned that since Plaintiff's request for transfer was still pending, he did not have "any existing interest in the taxicab industry . . . in Newport County such that his intervention is necessary or appropriate." As such, the Hearing Officer concluded that Plaintiff had failed to demonstrate a sufficient interest in the Go Orange application to intervene pursuant to Rule 17. Instead, the Hearing Officer welcomed Plaintiff to observe the hearing and to offer public comment, in keeping with Division Rule 18(c)(5).

Thereafter, on December 2, 2014, Plaintiff filed a complaint in this Court seeking declaratory judgment and injunctive relief in accordance with § 9-30-1. Plaintiff also sought a writ of mandamus to compel the Division to grant his motion to intervene.²

Corporate Officers, Directors and Shareholders of P&P, Inc. wherein Plaintiff sought the Division's approval for him to become the sole stockholder, director and officer of P&P, Inc.

² With respect to Plaintiff's writ of mandamus count, it is well-settled that "a writ of mandamus will issue only where the plaintiffs have a clear legal right to have the act done that is sought by the writ, where the defendants have a ministerial, legal duty to perform such act without discretion to refuse and where the plaintiffs have no plain or adequate remedy at law." Plantations Legal Def. Servs., Inc. v. Grande, 121 R.I. 875, 876, 403 A.2d 1084, 1085 (1979). "A ministerial function is one that is to be performed

II

Standard of Review

The Uniform Declaratory Judgments Act provides that this Court “shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” Sec. § 9–30–1. In this regard, “the Superior Court has broad discretion to grant or deny declaratory relief under the UDJA.” Tucker Estates Charlestown, LLC v. Town of Charlestown, 964 A.2d 1138, 1140 (R.I. 2009).

The Rhode Island Supreme Court has stated that “[t]he obvious purpose of the Uniform Declaratory Judgments Act is to facilitate the termination of controversies. Fireman’s Fund Ins. Co. v. E. W. Burman, Inc., 120 R.I. 841, 845, 391 A.2d 99, 101 (1978). Accordingly, “declaratory judgment statutes should be liberally construed; they should not be interpreted in a narrow or technical sense.” Millett v. Hoisting Eng’rs’ Licensing Div. of Dep’t of Labor, 119 R.I. 285, 291, 377 A.2d 229, 233 (1977).

It should be noted that Plaintiff’s complaint seeks declaratory relief and does not appeal the Division’s denial of his motion to intervene pursuant to G.L. 1956 § 42-35-15 of the Administrative Procedures Act (APA).³ “It is well settled that a plaintiff aggrieved

by an official in a prescribed manner based on a particular set of facts ‘without regard to or the exercise of his own judgment upon the propriety of the act being done.’” New England Dev., LLC v. Berg, 913 A.2d 363, 368-69 (R.I. 2007) (quoting Arnold v. R.I. Dep’t of Labor and Training Bd. of Review, 822 A.2d 164, 167 (R.I. 2003)). Here, the Hearing Officer’s denial of Plaintiff’s motion to intervene was an exercise of his judgment and, as such, is not a ministerial function subject to a writ of mandamus. Accordingly, Plaintiff’s request for such relief is denied. See City of Providence v. Estate of Tarro, 973 A.2d 597, 604 (R.I. 2009) (“It is well settled in this jurisdiction that the issuance of a writ of mandamus is an extraordinary remedy.”).

³ Sec. 42-35-15 states that “[a]ny person, including any small business, who has exhausted all administrative remedies available to him or her within the agency, and who is aggrieved by a final order in a contested case is entitled to judicial review under this chapter.”

by a state agency's action first must exhaust administrative remedies before bringing a claim in court.” R.I. Emp't Sec. Alliance, Local 401, S.E.I.U., AFL-CIO v. State, Dep't of Emp't and Training, 788 A.2d 465, 467 (R.I. 2002). However, our Supreme Court has “made exceptions when the exhaustion of administrative remedies would be futile.” Arnold v. Lebel, 941 A.2d 813, 818 (R.I. 2007) (quoting R.I. Emp't Sec. Alliance, 788 A.2d at 467); see also § 42-35-15 (“Any preliminary, procedural, or intermediate agency act or ruling is immediately reviewable in any case in which review of the final agency order would not provide an adequate remedy.”).

With respect to Plaintiff's claim for injunctive relief, it is well-settled that this Court, in deciding whether to issue an injunction, considers “whether the moving party (1) has a reasonable likelihood of success on the merits, (2) will suffer irreparable harm without the requested injunctive relief, (3) has the balance of the equities, including the possible hardships to each party and to the public interest, tip in its favor, and (4) has shown that the issuance of a preliminary injunction will preserve the status quo.” Iggy's Doughboys, Inc. v. Giroux, 729 A.2d 701, 705 (R.I. 1999).

III

Analysis

As an initial matter, this Court must determine whether Plaintiff's request for declaratory relief is proper, given that he did not appeal the Division's denial of his motion pursuant to the APA. The Rhode Island Supreme Court has stated that, “[a]lthough exhaustion of administrative remedies is a mandatory condition precedent to judicial review under § 42-35-15, this Court has recognized that in certain instances a party may seek declaratory relief in the Superior Court.” Town of Richmond v. R.I.

Dep't of Env'tl. Mgmt., 941 A.2d 151, 156 (R.I. 2008). The Rhode Island Supreme Court has also “recognized that the validity or applicability of an agency rule or practice may be decided in an action for declaratory relief, notwithstanding the fact that an administrative hearing was requested.” Id. In fact, § 42-35-15(a) specifically provides that “utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law” is not precluded by its provisions.

Moreover, Plaintiff has exhausted his administrative remedies because, in being denied the right to intervene, Plaintiff has not been able to seek a remedy in the administrative forum.⁴ In addition, judicial economy would not be served by requiring Plaintiff, who is not a party, to wait until Go Orange’s application was finalized, since, if Plaintiff is successful, a new hearing would have to be held. See Almeida v. Plasters’ & Cement Masons’ Local 40 Pension Fund, 722 A.2d 257, 259 (R.I. 1998) (noting that a thorough administrative process “promotes judicial economy by avoiding needless repetition of administrative and judicial factfinding”) (internal quotation marks omitted). In light of the forgoing, this Court shall consider Plaintiff’s request for declaratory relief.

As indicated above, Plaintiff claims that the Division erroneously denied his motion to intervene pursuant to the Division’s Rule 17(b). Rule 17(b) reads, in pertinent part, as follows:

⁴ Go Orange argues that Plaintiff did not exhaust his administrative remedies since he did not file a protest pursuant to Rule 18 of the Division’s Rules of Practice and Procedure. However, Rule 18 states that “[a]ny person other than a party who objects to the approval of an application, petition, motion, or other matter which is, or will be, under consideration by the Division may file a protest.” (emphasis added). Accordingly, filing a protest is merely optional, not mandatory. As such, Go Orange cannot rely on Plaintiff’s failure to file a protest pursuant to Rule 18 as a basis for applying the exhaustion doctrine.

“Subject to the provisions of these rules, any person with a right to intervene or an interest of such nature that intervention is necessary or appropriate may intervene in any proceeding before the Division. Such right or interest may be:

“(1) A right conferred by statute.

“(2) An interest which may be directly affected and which is not adequately represented by existing parties and as to which movants may be bound by the Division’s action in the proceeding. The following may have such an interest: consumers served by the applicant, defendant, or respondent and holders of securities of the applicant, defendant, or respondent.

“(3) Any other interest of such a nature that movant’s participation may be in the public interest.”

In denying Plaintiff’s motion, the Hearing Officer concluded that Plaintiff failed to meet the above-stated criteria since Plaintiff’s Request for Transfer of the Certificate had not yet been approved. However, in reviewing Plaintiff’s petition for declaratory judgment, this Court notes that Plaintiff’s pending application concerns the same territory for which Go Orange is seeking to operate thirty-four new taxicabs.⁵ It is axiomatic that should the Division grant Go Orange’s application, Plaintiff’s interest would be affected as there would be thirty-four new cabs operating and competing with Plaintiff in the same area.

Additionally, this Court finds that it is in the public interest for Plaintiff to intervene in the Go Orange application. As mentioned above, it would be a waste of judicial and agency resources for the Division to possibly have to conduct another hearing regarding Go Orange’s application should Plaintiff’s Request for Transfer be

⁵ As noted above, at the time Plaintiff moved to intervene, he had filed an application to transfer the Certificate authorizing P&P, Inc. to operate six taxicabs. However, Plaintiff has since filed for approval to transfer all stock of P&P, Inc. to himself. See supra n.1. Regardless of the administrative procedure, the fact remains that Plaintiff seeks to operate taxicabs in the same territory which is the subject of the Go Orange application.

granted. It is in the public's interest to have these hearings proceed efficiently. See Rule 17.

Moreover, G.L. 1956 § 39-14-3 states that “[n]o person, association, or corporation shall operate a taxicab . . . until the person, association, or corporation shall have obtained a certificate from the division certifying that public convenience and necessity require the operation of a taxicab” With respect that section, our Supreme Court has stated that “a condition precedent to issuing a certificate . . . is a finding that the public convenience and necessity warrants the increase in service that would result therefrom.” Yellow Cab Co. of Providence v. Pub. Util. Hearing Bd., 96 R.I. 247, 254, 191 A.2d 23, 27 (1963). Go Orange’s application states that “public convenience and necessity support approval” of [its] request because the grant of its application “would maintain the level of service required to meet the present need and necessity in the requested territories.” Unlike Go Orange’s application for a new certification, Plaintiff seeks to acquire an existing certification. Thus, Plaintiff represents at least part of the current taxicab market in the relevant area and can represent how Go Orange’s requested influx in taxicabs would affect the present market. Therefore, Plaintiff’s intervention would be in the public interest, enabling the Division to accurately consider the present public necessity for taxicabs in the relevant area. See Murray v. LaTulippe’s Serv. Station, Inc., 108 R.I. 548, 549, 277 A.2d 301, 302 (1971) (“Before a certificate of public convenience and necessity may be issued, the Commission must have before it evidence that there is a public need for the proposed additional service.”).

As such, Plaintiff’s request for declaratory relief is granted. It necessarily follows that Plaintiff is entitled to injunctive relief to prevent Go Orange’s application from

proceeding in violation of this Court's Decision. Plaintiff has established a substantial likelihood of success on the merits since this Court has already determined he had interest sufficient to intervene pursuant to Rule 17. Second, Plaintiff would suffer irreparable harm without the requested relief since Go Orange's application would proceed and possibly be granted, without affording Plaintiff the opportunity to protect his interests. Third, as explained above, it is in the public interest to have the Division accurately consider the present public necessity for taxicabs in the relevant area. Lastly, the issuance of an injunction will preserve the status quo as Plaintiff's intervention does not alter the fact that Go Orange must still establish the required public convenience and necessity before the Division can approve its application.

IV

Conclusion

Plaintiff's request for declaratory judgment and injunctive relief pursuant to § 9-30-1 is granted. Counsel shall submit an order consistent with this Decision.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: **Cotsoridis v. Lueker, Esq.**

CASE NO: **PC 14-5941**

COURT: **Providence County Superior Court**

DATE DECISION FILED: **January 30, 2015**

JUSTICE/MAGISTRATE: **Van Couyghen, J.**

ATTORNEYS:

For Plaintiff: **Michael F. Horan, Esq.**

For Defendant: **Christy L. Hetherington, Esq.**
J. Russell Jackson, Esq.