

Filed with the Court

MAR 22 2024

Eric G. Fikry, J.S.C.

EDITED BY THE COURT:

INDEPENDENT FIRE CO. #1 OF
MAPLE SHADE, INC.,

Plaintiff,

v.

TOWNSHIP OF MAPLE SHADE,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CIVIL PART
BURLINGTON COUNTY
DOCKET NO. L-1162-23

CIVIL ACTION

ORDER

This matter being brought before to the court by Ellen M. McDowell, Esquire of McDowell Law, P.C., attorneys for Plaintiff, Independent Fire Company #1 of Maple Shade, Inc., seeking relief by way of injunction at the return date set forth below pursuant to R. 4:52, based upon the facts set forth in the Second Amended Verified Complaint filed herewith and for good cause shown.

IT IS on this 22nd day of March, 2024 **ORDERED:**

1. Defendant shall file its Answer to Plaintiff's Second Amended Verified Complaint in Lieu of Prerogative Writs no later than **April 19, 2024**.
2. Plaintiff's Reply shall be filed no later than **May 3, 2024**.
3. A Hearing in connection with Plaintiff's Order to Show Cause shall be conducted on **May 13, 2024 at 10:00 a.m.** The Hearing will be conducted **IN PERSON** in Court Room 3 of the Burlington County Courts Facility.
4. **IT IS FURTHER ORDERED** that the parties shall cooperate in good faith to adhere to the terms of Ordinance No. 2023-12.
5. **IT IS FURTHER ORDERED** that during the pendency of this litigation, the Township of Maple Shade shall refrain from taking any action to deactivate or otherwise deter Independent Fire Co. #1

of Maple Shade, Inc. from actively providing fire protection services for the Township of Maple Shade. The Township of Maple Shade shall take measures necessary to restore Independent Fire Co. #1 of Maple Shade, Inc. to active status at the earliest possible date.

6. **IT IS FURTHER ORDERED** that during the pendency of this litigation, the Township of Maple Shade may also choose to activate paid, part-paid and/or volunteer members of the Maple Shade Fire Department to provide fire protection services for the Township of Maple Shade, in supplementation of the services provided by Independent Fire Co. #1 of Maple Shade, Inc. The Township of Maple Shade may similarly enlist the support of firefighting personnel from other municipalities as needed for the protection of residents and property in Maple Shade Township.
7. **IT IS FURTHER ORDERED** that counsel for the parties shall confer regarding the allocation of fire protection apparatus and equipment between or among Independent Fire Co. #1 of Maple Shade, Inc. and paid, part-paid and/or volunteer members of the Maple Shade Fire Department, and shall endeavor to reach an agreement with respect to the allocation of said apparatus and equipment that most closely approximates the allocation that existed at the time Ordinance 2023-12 was adopted, and which best serves the fire safety needs of the community. The parties shall cooperate so as to reach an allocation agreement prior to the restoration of Independent Fire Co. #1 of Maple Shade, Inc. to active status. To the extent that such an agreement is not reached, the parties shall so notify the court in writing and a determination will be made by the court. Similarly, the Township's authorized representatives shall be afforded access to leased spaces referenced in Section 16-2 of Ordinance No. 2023-12.
8. **IT IS FURTHER ORDERED** that in all matters relating to this litigation, the parties shall utilize best efforts to ensure that appropriate fire protection services are provided for the safety, well-being and protection of the residents of the Township of Maple Shade.
9. **IT IS FURTHER ORDERED** that in the event that the Maple Shade Township Council adopts an ordinance that repeals Ordinance No. 2023-23, plaintiff shall file an Amended Complaint no later than twenty (20) days following adoption of such ordinance. Defendant shall then file their Opposition to the Amended Complaint no later than fourteen (14) days after having been served with plaintiff's Amended Complaint, and plaintiff

shall file its reply seven (7) days thereafter. A new hearing date will be set by the court upon filing of an Amended Complaint.

10. **Provisions in Prior Orders Not Modified Herein Remain in Effect.** Any provision(s) in prior Orders of the Court not modified herein remain in full force and effect.
11. **IT IS FURTHER ORDERED** that a copy of this Order shall be deemed served upon all counsel and parties of record upon its being posted to eCourts.

s/ Eric G. Fikry, J.S.C.

HON. ERIC G. FIKRY, J.S.C.

- ☒ Opposed
☐ Unopposed

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**STATEMENT OF REASONS
PURSUANT TO RULE 1:6-2(f)**

CONCISE PROCEDURAL HISTORY

Plaintiff, Independent Fire Co. #1 of Maple Shade, Inc. (“IFC”) is a New Jersey nonprofit corporation and volunteer fire company that previously served as the exclusive provider of fire protection services for Defendant, Township of Maple Shade (“Maple Shade” or “Township”). IFC initiated this action by filing a Complaint in Lieu of Prerogative Writs which sought to void Ordinance No. 2023-09 adopted by the Maple Shade Township Council on June 8, 2023. Ordinance No. 2023-09 proposed the creation of the position of Director of Fire Safety Operations. Thereafter, the Maple Shade Township Council adopted Ordinance No. 2023-12, which repealed Ordinance No. 2023-09, but which established a Township Fire Department for Maple Shade and contained other provisions to which IFC objected.

IFC filed an Amended Complaint in Lieu of Prerogative Writs on August 24, 2023 seeking to void Ordinance No. 2023-09 and Ordinance No. 2023-12. The court established a briefing schedule and a hearing date was set to resolve the parties’ dispute.

On November 9, 2023, the Maple Shade Township Council introduced yet another ordinance, No. 2023-23, which amended the prior ordinances, in part, by deleting references to Independent Fire Company #1. IFC again objected, and on December 15, 2023, IFC filed an

Order to Show Cause pursuant to Rule 4:52 seeking to void Maple Shade Ordinance No. 2023-23.

On December 19, 2023, a Committee of Petitioners representing a group of local residents filed a “Petition for Remonstrance of Ordinance 2023-23” challenging the ordinance with Maple Shade Township.

On December 20, 2023, the parties were ordered to mediation with the Hon. John E. Harrington, J.S.C. (Ret./Recall). The parties thereafter participated in extensive negotiations facilitated by Judge Harrington, but were unable to reach a settlement. On March 13, 2024, counsel for defendant, Township of Maple Shade, notified the court in writing of its intention to withdraw from the mediation. Thereafter, on March 14, 2024, counsel for plaintiff, Independent Fire Co. #1 of Maple Shade, Inc. contacted the court to request that a case management conference be scheduled to address various issues relating to the litigation upon termination of the mediation process. On March 22, 2024, an Order was entered terminating the mediation.

During the March 21, 2024 Case Management Conference, counsel for Maple Shade advised that the Township Council intended to introduce still another ordinance on March 28, 2024, which would have the effect of repealing Ordinance No. 2023-23, and which would amend Ordinance No. 2023-12 in a fashion that would moot many, if not all of the issues raised in IFC’s Amended Complaint. Counsel for IFC, in turn, advised that based upon her understanding of what the Maple Shade ordinance would provide, that the new Ordinance will simply be challenged with another Petition, and additional litigation.

LEGAL ANALYSIS

Currently pending before the court is IFC’s Order to Show Cause seeking to void Ordinance No. 2023-23. While it appears that this specific request for relief may be mooted by

the introduction of a new ordinance by the Township, it is nevertheless ripe for adjudication at this point in time, in light of the termination of court-ordered mediation. In addition, during the case management conference, counsel for the parties confirmed that throughout the pendency of the litigation, Maple Shade has been dependent upon surrounding municipalities for fire service protection, while IFC as well as the fire service personnel and volunteers engaged by the Township remain idle.

Although IFC's Order to Show Cause did not set forth any request for the imposition of temporary restraints, the court will consider the request for same made by IFC's counsel during the March 21, 2024 case management conference in the interest of public safety and for purposes of maintaining the status quo during the pendency of the litigation. Counsel for the Township may seek to dissolve temporary restraints on two (2) days notice per Rule 4:52-1(a).

At the time IFC filed its Order to Show Cause, the Maple Shade Township Council had adopted Ordinance No. 2023-23. The citizens' Petition for Remonstrance of Ordinance No. 2023-23 was filed shortly thereafter, which both parties acknowledge results in the suspension of Ordinance No. 2023-23 pursuant to N.J.S.A. 40:69A-189. As a consequence of the Petition for Remonstrance of Ordinance No. 2023-23, maintenance of the status quo during the pendency of the litigation would require that the parties adhere to the terms of Ordinance No. 2023-12 during the pendency of this litigation.

Accordingly, the court's determination is set forth in the Order accompanying this Statement of Decision.