

Supreme Court
No. 05-343-M.P.
(PC/05-3772)

Town of Richmond :
v. :
Rhode Island Department of Environmental :
Management, et al. :

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JAN 19 2006

RIDEM OFFICE OF LEGAL SERVICES

ORDER

This case came before the Court in conference on the motions of the Department of Environmental Management (DEM) and Charbert, Division of NFA Corporation (Charbert), to stay a Superior Court Order and Final Judgment vacating a Consent Agreement between Charbert and DEM which had resolved a Notice of Violation previously issued by DEM. The motions seek to stay further administrative proceedings in that matter pending the instant appeal. Upon consideration of the memoranda and exhibits filed by counsel for the parties, we hereby direct that the following Order shall enter:

1. The motions to stay the Superior Court Order and Final Judgment are granted until further Order of this Court.
2. Counsel for the appellants are further directed to address *inter alia*, in their prebriefing statements, memoranda, and/or briefs submitted in accordance with Rules 12A and/or 16 of the Rules of Appellate Procedure, the issue of the status and rights of the intervenor in a DEM administrative proceeding of the kind commenced against Charbert in the instant case.

Entered as an Order of this Court this 6th day of January 2006.



By Order,

Clerk

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

TOWN OF RICHMOND,
Plaintiff

v.

RHODE ISLAND DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT,
Defendant

and

CHARBERT, INC., Division of NFA CORP.,
Defendant/Intervenor

C.A. No. 05-3772

NUNC PRO TUNC ORDER AND FINAL JUDGMENT
IN FAVOR OF THE PLAINTIFF ON COUNT II OF THE COMPLAINT

This Court having entered an Order and Final Judgment in Favor of the Plaintiff on Count II of the Complaint on November 4, 2005, and that Order and Final Judgment having thereafter been lost or misplaced, the Court now hereby enters this *Nunc Pro Tunc* Order and Final Judgment in Favor of the Plaintiff on Count II of the Complaint as follows:

This action initially came before the Court for hearing on September 14, 2005. The Court continued the hearing until October 17, 2005 to allow Defendant and Defendant/Intervenor an opportunity to file briefs on Plaintiff's entitlement to relief under Count II of the Complaint and, in particular, whether or not the Department of Environmental Management Administration Adjudication Division ("AAD") hearing officer could allow a consent agreement resolving all issues to enter between Defendant and Defendant/Intervenor without any input from Plaintiff. The Court determined it would consider first the claims in Count II and, thereafter, rule on the merits of Count I, if necessary.

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Environmental Management
Office of Compliance & Inspection

After having reviewed the memoranda of the parties and allowed additional oral argument, the Court grants Plaintiff's request for declaratory relief for the reasons stated in the decision provided by the Court from the bench.

Accordingly, it is hereby Ordered, Adjudged and Decreed that

- (a) The Plaintiff, upon having been granted Intervenor status, became a full party to the AAD proceedings for all purposes; that the AAD proceedings were terminated improperly and in violation of applicable statutes and the AAD's procedural rules; and that the so-called consent agreement between Defendant and Defendant/Intervenor is null and void and without effect;
- (b) The consent agreement between Defendant and Defendant/Intervenor shall be and the same is hereby vacated; and
- (c) This action is remanded to the AAD for further proceedings consistent with the decision of the Court, providing that no settlement or consent agreement will be effective without the consent of all parties and that, absent consent of all parties, the matter shall proceed to hearing.
- (d) Inasmuch as the relief sought by Plaintiff as to Count I is effectively granted by virtue of the Court's ruling as to Count II, no action on the merits of Count I of the Complaint will be taken.

Entered *nunc pro tunc* as an Order and Final Judgment of the Superior Court this ____ day of November, 2005, to be deemed for all purposes as an Order and Final Judgment entered on November 4, 2005.

Enter:

Per Order:

Presented by:

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CERTIFICATION

I hereby certify that on this ____ day of November, 2005, I caused to be served by first class mail, postage prepaid, a true copy of the within *Nunc Pro Tunc* Order and Final Judgment in Favor of the Plaintiff as to Count II of the Complaint to:

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