

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SHAWN GOWDER,) Docket No. 11 C 1304
)
Plaintiff,)
) Chicago, Illinois
vs.) June 28, 2011
) 9:00 o'clock a.m.
CITY OF CHICAGO, a municipal)
corporation, et al.,)
)
Defendants.)

TRANSCRIPT OF PROCEEDINGS - Motion
BEFORE THE HONORABLE SAMUEL DER-YEGHIAYAN

APPEARANCES:

For the Plaintiff: FORD & BRITTON PC
BY: MR. STEPHEN KOLODZIEJ
33 North Dearborn Street
Suite 300
Chicago, Illinois 60602

For the Defendants: CITY OF CHICAGO
BY: MS. REBECCA ALFERT HIRSCH
30 North LaSalle Street
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Chicago, Illinois 60602

LAURA LACIEN, CSR, RMR, FCRR, CRR
Official Court Reporter
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1 (The following proceedings were had in open court:)

2 COURTROOM DEPUTY: 11 C 1304, Gowder versus City of
3 Chicago.

4 MR. KOLODZIEJ: Good morning, your Honor. Stephen
5 Kolodziej for the plaintiff.

6 THE COURT: Good morning.

7 MS. HIRSCH: Good morning, your Honor. Rebecca
8 Hirsch for defendant.

9 THE COURT: Good morning, both.

10 Plaintiff has filed a motion for judgment on the
11 pleadings. Defendant, have you received it?

12 MS. HIRSCH: We did receive it, your Honor.

13 THE COURT: And obviously there's a motion to stay
14 discovery pending the ruling on judgment on the pleadings.
15 How much time do you need to answer, defense?

16 MS. HIRSCH: Your Honor, I would just respectfully
17 state that I think it makes more sense to resolve the
18 discovery issue first because basically he's saying we should
19 bar discovery because I should -- you know, no discovery is
20 needed and I think that we should resolve that issue and then
21 we can respond to the judgment on the pleadings
22 appropriately.

23 THE COURT: The Court set on April 14th discovery
24 dates of July 15th and dispositive October 14th.

25 MS. HIRSCH: That's right.

1 THE COURT: But now I've received plaintiff's motion
2 for judgment on the pleadings. And, plaintiff, I believe
3 you're saying that in 1995, your client was convicted of a
4 misdemeanor --

5 MR. KOLODZIEJ: That's correct.

6 THE COURT: -- and that's the sole basis of the
7 denial by the City of a permit.

8 MR. KOLODZIEJ: Correct; and that's admitted by the
9 City.

10 THE COURT: Gun permit.

11 MR. KOLODZIEJ: Yes.

12 THE COURT: Why do we need discovery, defense, to
13 discover whether it's a misdemeanor or what?

14 MS. HIRSCH: No. We -- there's two issues here --

15 THE COURT: Okay.

16 MS. HIRSCH: -- your Honor, and I would like an
17 opportunity to respond in writing to plaintiff's motion in
18 writing as well on this issue. But just briefly, he has an
19 as-applied challenge and I think we --

20 THE COURT: He has what?

21 MS. HIRSCH: An as-applied constitutional challenge
22 to this provision and it's our position -- and we'd like to
23 set this forth in writing -- that because of that, we need to
24 look at the under -- what the underlying conviction was and
25 the events surrounding that to see whether it's

1 constitutional or not. This is not for the administrative
2 review claim.

3 Secondly, we are exploring some expert discovery on
4 the -- to defend the constitutionality of the City's
5 provision and that's something that we continue to explore
6 and we would probably like to rely on so I wouldn't want to
7 be barred from using that in response to a dispositive
8 motion.

9 THE COURT: Plaintiff, you did file a constitutional
10 claim, correct?

11 MR. KOLODZIEJ: Correct.

12 THE COURT: But now you're just filing a judgment on
13 the pleadings to say the City erroneously did not issue the
14 permit based on their own facts based on their own rules?

15 MR. KOLODZIEJ: And their interpretation of the
16 ordinance.

17 THE COURT: If your motion judgment on the pleadings
18 is granted, that would be the end of your case, right?

19 MR. KOLODZIEJ: That would be --

20 THE COURT: You're not going to go into any
21 constitutional issues?

22 MR. KOLODZIEJ: That would moot the constitutional
23 issues.

24 THE COURT: I agree with plaintiff's counsel that
25 this needs an answer of the judgment on the pleadings. We

1 don't need any discovery on that issue based on the facts.
2 If that does not succeed, then the case stands on the
3 constitutional issues and then we'll do the discovery and you
4 could get all the discovery and the expert. But first thing
5 is first, there is a judgment on the pleadings motion and
6 that needs to be answered.

7 MS. HIRSCH: Okay.

8 THE COURT: How much time?

9 MS. HIRSCH: I wouldn't normally ask for this much
10 but given what I have going on, may I have four weeks?

11 THE COURT: Four weeks, of course.

12 MS. HIRSCH: Thank you.

13 THE COURT: By August 2nd. I'm throwing extra few
14 days because of the holidays.

15 MS. HIRSCH: Thank you.

16 THE COURT: How much time to reply, counsel?

17 MR. KOLODZIEJ: 14 days, please.

18 THE COURT: That's fine. By August 16th to reply.

19 And the City might want to review this motion and see if you
20 want to go along with it if the facts are what they are
21 without going into any -- you know, if the guy's entitled to
22 a permit, issue him the permit. If you have a felony
23 conviction, then show it to him.

24 MS. HIRSCH: Okay. We'll take that under
25 advisement. Thank you.

1 MR. KOLODZIEJ: One issue for the record, Judge, is
2 after I filed the motion, I got a call from your chambers
3 about one of the exhibits not being legible. I believe it's
4 Exhibit H to our complaint.

5 THE COURT: Probably from the Clerk of the Court's
6 office through my courtroom deputy.

7 MR. KOLODZIEJ: Yes. I wanted to bring this up just
8 because that exhibit is the envelope that the disposition
9 order from the Department of Administrative --

10 THE COURT: So it's not legible you're saying?

11 MR. KOLODZIEJ: It was only attached to show that
12 the review claim was timely filed and the City admitted that
13 so I don't think it's germane but we've tried to copy it
14 legibly and can't. I have the original if the Court wants to
15 see it. I don't think it's germane to this motion but I
16 can't make a better copy than the last one.

17 THE COURT: Unless it becomes an issue, then we'll
18 address it. Otherwise, we'll let it stand as it is.

19 MR. KOLODZIEJ: Okay. Thank you.

20 THE COURT: Okay. I'm going to set another status
21 hearing date. Right now as the case stands, I set September
22 22nd status hearing. I will keep that date.

23 MR. KOLODZIEJ: 9:00 o'clock, your Honor?

24 THE COURT: Correct.

25 MR. KOLODZIEJ: Thank you.

1 MS. HIRSCH: Thank you.

2 (Which concluded the proceedings in the above-entitled
3 matter.)

4 C E R T I F I C A T E

5 I hereby certify that the foregoing is a transcript
6 of proceedings before the Honorable Samuel Der-Yeghiayan on
7 June 28, 2011.

8

9 /s/Laura LaCien

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Laura LaCien
Official Court Reporter

April 27, 2012
Date

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