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196 Va 80

Record No. 4192

In the
Supreme Court of Appeals of Virginia
at Richmond

TOWN OF LEESBURG, VIRGINIA, &C.

v.

H. ASHTON TAVENNER

FROM THE CIRCUIT COURT OF LOUDOUN COUNTY

RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

H. G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

196 VA 80

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 4192

VIRGINIA:

In the Supreme Court of Appeals held at the Court-Library Building in the City of Richmond on Thursday the 4th day of June, 1953.

TOWN OF LEESBURG, VIRGINIA, &C., Appellant,
against

H. ASHTON TAVENNER, Appellee.

From the Circuit Court of Loudoun County.

Upon the petition of the Town of Leesburg, Virginia, a municipal corporation, chartered by an act of the General Assembly of Virginia, an appeal and *supersedeas* is awarded it from a decree entered by the Circuit Court of Loudoun County on the 19th day of December, 1952, in a certain chancery cause then therein depending wherein H. Ashton Tavenner was plaintiff and the said petitioner was defendant, and it appearing from the record of the said court that a *supersedeas* bond in the penalty of three hundred dollars conditioned according to law, has heretofore been given in accordance with the provisions of sections 8-465 and 8-477 of the Code, as amended, no additional bond is required.

RECORD

* * * * *

Filed. 5/29/53.

J. T. MARTZ, Clerk.

BILL OF COMPLAINT.

To the Honorable J. R. H. Alexander, Judge of the said Court:

Humbly complaining, showing unto your Honor, your orator, H. Ashton Tavenner, who alleges the following grounds of his complaint:

1. Complainant, H. Ashton Tavenner, avers that Urcell M. Bradfield is seized of a certain lot or parcel of land, improved by a store building thereon, situated, lying and being in the Town of Leesburg, on West Market Street, on the North Side thereof, which tract of land was devised to her in fee by her late husband, G. B. Bradfield, as will show from that certain will probated in the Clerk's Office of Loudoun County, and of record in Will Book 3 W's, Page 21.

2. Complainant, H. Ashton Tavenner, further avers that the heretofore described property has been leased to him by the said Urcell M. Bradfield for a period of many years, and he is using the said premises for a general mercantile business in said Town.

3. Complainant, H. Ashton Tavenner, further avers unto your Honor that the said Town of Leesburg by an ordinance adopted by its Council at a regular meeting of the said Council at the Town Hall in Leesburg on Monday, April 14, 1952, a copy of which ordinance is attached hereto and made a part of this proceedings, did make a bus zone for buses and/or common carriers on the sidewalk or street adjacent to and fronting his property where the buses could load or unload passengers, baggage or freight.

4. Your complainant further avers that the ordinance does
 page 2 } permit vehicles other than common carriers of pas-
 sengers to park in the space on the North side of
 Market Street, beginning 20 feet from the West line
 of King Street and extending westwardly for a distance of 80
 feet, providing such use does not interfere with or prevent
 the parking therein of motor vehicles operating as common
 carriers of passengers.

5. Your complainant further avers that the ordinance passed by the Town of Leesburg on the 14th day of April, 1952, is contrary to the general law granted Municipal Corporations under the legislative enactments in such cases in that his property thereto is rendered less desirable as business property and his right of ingress and egress to said premises has been substantially abridged and the members of the Town Council of Leesburg acted in excess of their jurisdiction and illegally, arbitrarily and unreasonably in adopting their ordinance and that the same constitutes the taking of property without compensation and that the establishment of the bus zone in front of his premises denied to your complainant and other citizens of this Town, similarly situated, a right which was permitted to the bus company and other common carriers to park in a zone restricted as to the use of other persons.

6. Your complainant further avers that in so restricting the parking of vehicles, other than common carriers of passengers, so that said other vehicles did not interfere with or prevent the parking therein of motor vehicles operated as common carriers of passengers, did discriminate against as to the rights of your complainant and cause him irreparable injury.

7. Your complainant further avers that in prohibiting him and other citizens to have the same right and privileges as given the common carriers of passengers under the ordinance adopted by the said Town on the 14th day of April, 1952, the said Council of the Town of Leesburg did contravene its power granted it under the general law governing Municipal Corporations and in so doing, passed an ordinance that was repugnant to the policy of this State as declared page 3 } in the general legislation as to the rights of its citizens.

8. And your complainant further avers that the ordinance passed by the said Town is unreasonable, oppressive and prejudicial to the rights of the citizens of the said Town and by passing the said ordinance the Town of Leesburg erred in making the said ordinance applicable only to common carriers of passengers, instead of, as the law requires, general in its application.

9. And your complainant further avers that any ordinance enacted by a Municipal Corporation in pursuance of the powers granted it by the legislature must not be inconsistent with the general laws, particularly to those pertaining or relating to the liberty and rights of the people guaranteed by the Constitution.

10. Your complainant further avers that the Town of Leesburg in passing the ordinance as heretofore referred to has permitted the common carriers of passengers to carry on its business in a public street in such a way as to obstruct the said street and prevent the private use thereof, which in any degree detracts from, hinders, or prevents its free use as a public way to its full extent, is within the meaning of the law an obstruction and encumbrance.

11. Your complainant further avers that unless so provided by statute a Municipal Corporation is without implied power to grant a common carrier of passengers the right to use the street fronting your complainant's property for a place to load or unload passengers, baggage or freight.

WHEREFORE, being without remedy, save in court of equity, your complainant comes and asks leave to file this his bill of complaint and prays that the Town of Leesburg, a Municipal Corporation, organized, chartered and existing under the laws of the Commonwealth of Virginia, be made a party defendant hereto and required to answer this bill, but not under oath, the same being hereby waived; that proper process issue; that the Court will grant an injunction enjoining and restraining the said defendant, the Town of Leesburg, a Municipal Corporation, organized, chartered and existing under the laws of the Commonwealth of Virginia, its officers, agents and employees, from permitting common carriers of passengers from parking in front of and adjacent to the heretofore described property for the purpose of loading and unloading passengers, baggage and freight, thereby doing irreparable injury to your complainant and exceeding its powers as granted municipal corporations by the laws of the Commonwealth of Virginia in the bill and proceedings herein described, and further enjoining and restraining the said Town from changing the previous situation which permitted the parking of vehicles other than common carriers of passengers in front of and adjacent to the heretofore described premises, and that your complainant may have such other, further and general relief in the premises as the nature of his case may require or to equity shall seem meet.

And he will ever pray, etc.

H. ASHTON TAVENNER,
Leesburg, Virginia.

* * * * *

BE IT ORDAINED by the Council of the Town
page 6 } of Leesburg, in Virginia, as follows:

(1) That no motor or other vehicle shall be parked on Market Street within a distance of 100 feet of either side of King Street except that motor vehicles operated as common carriers of passengers, while discharging or receiving passengers, shall be permitted to park in the space on the North side of Market Street beginning 20 feet from the West line of King Street and extending Westwardly for a distance of 80 feet and other motor vehicles shall be *premitted* to park on the North side of Market Street while loading or unloading freight or merchandise in the said space beginning 20 feet from the West line of King Street and extending Westwardly for a distance of 80 feet when such use does not interfere with or prevent the parking therein of motor vehicles operated as common carriers of passengers as hereinbefore authorized, and that motor vehicles operated as common carriers of passengers, while discharging or receiving passengers, shall be permitted to park in the space on the South side of Market Street, beginning 20 feet from the East line of King Street and extending Eastwardly for a distance of 80 feet.

(2) That all parking meters on the pavements abutting on Market Street within 100 feet of either side of King Street shall be removed.

(3) That all motor or other vehicles using the parking spaces herein permitted shall be parked parallel to the curb with the right wheels not more than 10 inches therefrom.

(4) The violation of any of the provisions of the ordinance shall constitute a misdemeanor and shall be punishable by a fine of not less than \$1.00 nor more than \$50.00 for each offense.

(5) This ordinance shall be effective on and after the date of its passage.

(6) That all ordinances or parts of ordinances in conflict herewith are hereby rescinded and revoked.

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page 9 }

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Filed. 6/10/52.

J. T. MARTZ, Clerk.

MOTION TO DISMISS.

Now comes the defendant, the Town of Leesburg, in Virginia, a municipal corporation, appearing specially and moves the Court to deny the relief prayed for by the complainant in his bill and stated in his notice for an injunction, and moves the Court to dismiss the complainant's suit for the following reasons, among others:

(1) The gist of the prayer in the complainant's bill and the notice, which state the grounds for asking an injunction against the defendant, merely ask that the defendant be enjoined from doing what it would have a right to do if the ordinance passed by the Council of the defendant on April 14, 1952, had not been passed.

(2) The bill does not allege in which State the acts complained of occurred.

(3) The bill fails to allege that the complainant is at the present time lessee of the premises described in his bill.

(4) The defendant did not exceed its authority in passing the said ordinance; but on the contrary, the council of said town acted under a grant of authority from the Legislature of Virginia as expressed in the Constitution of Virginia, the statute laws of said State and town charter in passing said ordinance.

(5) The defendant has an adequate remedy at law, if he has a remedy.

(6) And for various and sundry other reasons on the face of complainant's bill and the record.

page 10 } THEREFORE, this defendant moves the Court to dismiss the complainant's bill and suit.

THE TOWN OF LEESBURG, IN VIRGINIA
A Corporation, Leesburg, Virginia.

By STILSON H. HALL,
Of Counsel for Defendant.

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DECREE.

This cause came on this day to be heard on the Bill of Complaint filed herein and exhibit filed therewith, which is an ordinance adopted by the defendant April 14, 1952, the de-

defendant's motion to dismiss, and was argued by counsel.

On consideration whereof, the Court having maturely considered the pleadings and the exhibit filed therewith, and motion of defendant to dismiss the suit, is of the opinion that the said ordinance is null and void and the complainant is entitled to the relief prayed for; the Court doth ADJUDGE, ORDER and DECREE that the injunction prayed for in the said Bill of Complaint is hereby granted and the defendant is enjoined and restrained from enforcing said ordinance passed April 14, 1952, by the Council of the Town of Leesburg, Virginia, and filed with said bill as an exhibit.

And the defendant having indicated its intention to apply to the Supreme Court of Appeals of Virginia for an appeal, the operation of this decree shall be suspended for a period of sixty days from the date of the entry of this decree in order that said defendant may have time to apply for such appeal, provided that such suspension shall not be effective unless within ten days from the date of entry of this decree the said defendant shall enter into bond in the sum of page 35 } \$300.00, without surety, no surety being required by law.

To all of which findings and action of the Court the defendant, by counsel, excepts.

And this cause is left open for further proceedings to be had herein.

Enter.

J. R. H. ALEXANDER, Judge.

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Filed. 2/5/53.

J. T. MARTZ, Clerk.

DEFENDANT'S NOTICE OF APPEAL AND ASSIGNMENT OF ERROR.

To J. T. Martz, Clerk of the Circuit Court of Loudoun County, Virginia:

Notice is hereby given that the Town of Leesburg, Virginia, a municipal corporation, defendant in the above captioned Chancery Cause, No. 1216, instituted and prosecuted against

it by H. Ashton Tavenner, wherein a decree determining and adjudicating the issues in the cause was entered December 19, 1952, is appealing from the said decree to the Supreme Court of Appeals of Virginia.

ASSIGNMENT OF ERROR.

The defendant in the aforesaid chancery cause, the Town of Leesburg, Virginia, a municipal corporation, hereby assigns as error in said chancery cause by entering said decree on the 19th day of December, 1952, the following:

1. By finding and adjudicating the ordinance passed April 14, 1952, null and void the Court determined and adjudicated matters beyond the relief prayed for in the complainant's bill.

2. The said decree was based solely on the allegations in the bill of complaint without any evidence.
page 38 } 3. The defendant was not permitted to file further pleadings or submit evidence.

4. There was no basis either in fact or in law for the Court to hold that the said ordinance was null and void.

5. The said ordinance is a reasonable exercise of police powers and serves to promote the best interest of the community by permitting common carriers of passengers to stop *vehicles* at convenient locations to discharge and receive passengers.

6. The said ordinance applies alike to all common carriers of passengers and is not "unreasonable, oppressive and prejudicial to the rights of the citizens of said town," and is not discriminatory.

7. The Council of said town is empowered to regulate traffic within the corporate limits by the provisions of the town's charter, statutes and general laws of the Commonwealth of Virginia.

THE TOWN OF LEESBURG, VIRGINIA,
a Municipal Corporation.

By STILSON H. HALL,
Its Attorney.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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