

EXTRACTS FROM COURT DECISION

Extracts from the 10 July 1973 opinion of The Superior Court of New Jersey, Essex County, in re John Cervase and Anthony Imperiale v. Kawaida Towers, Inc.

1. Under the Limited Dividend Non-Profit Housing Corporation Act it is not necessary that the housing project, itself be constructed in a blighted area in order to secure an exemption from real estate taxation...It is sufficient that the project be located in a municipality that has any blighted area, and further, that the project be an improvement made for the purpose of the clearance, replanning, development or redevelopment of any blighted area. Obviously, the project in question will assist in the clearance, replanning and development of any one of a number of blighted areas in the City by relieving the pressure of people and housing therein. Such has already been found as a fact by the Newark Municipal Council in adopting Resolution 7RC...Thus, the tax exemption granted to Kawaida Towers by the Newark Municipal Council on September 15, 1971 was a valid governmental act pursuant to statutory authority... (pp. 9,11)
2. ...Advance planning board approval was not required. There is nothing in the Limited Dividend Non-Profit Housing Corporation Act which required prior approval...The fact of the matter is that the HFA project manager, John C. Chieppa, who was familiar with the North Ward, conducted a site inspection for the agency. He gave consideration to all of the elements required by N.J.S.A. 55:14J-8 and stated that in his opinion the project would upgrade the neighborhood. He was under no obligation to obtain advice or advance approval from the local planning board... (pp. 12,13)
3. ...The HFA mortgage financing which will amount to \$6,424,900 cannot be considered an expenditure of public funds. The HFA was established in 1967 as a separate and distinct corporate body with power to issue bonds for the purpose of raising sufficient funds for the making of mortgage loans such as involved in this case. Its bonds are sold to the public at large. They are not guaranteed by the state...The HFA receives no appropriation from the legislature. The legislative scheme envisioned by N.J.S.A. 55:14J-1 et seq. undoubtedly contemplates a self-sustaining public agency which may only make self-liquidating mortgage loans. Instead of manifesting the "expenditure" of public funds there is evidenced the investment of funds in mortgage paper with every intention that the investment be recouped...The New Jersey Supreme Court held the activity of the agency to be a self-sustaining operation not involving the gift or grant of public funds. The funding was regarded not as an expenditure but rather as repayable borrowing and hence the Court could find no "grant", "subsidy" or "aid" to a religious organization.. The HFA law, related as it is to the financing of a limited dividend non-profit housing corporation sponsored only incidentally by a

religious organization, does not run afoul of the doctrine of separation of church and state. The benefit of the public funding inures to people who need housing rather than to a sponsoring religious group... (pp. 15,16,17,18)

4. The charge that the board of directors of Kawaida Towers, Inc. is dominated by an outside power, LeRoi Jones (Baraka), is without practical substance. Whatever power Jones might ordinarily possess to dominate the board has been effectively dissipated by legislative design in instances where a housing corporation is financed by the HFA. Article II(k) of the certificate of incorporation provides that the affairs of Kawaida Towers, Inc. shall be regulated by the HFA as to rents, tenant occupancy, method of operation and return. A fair reading of its certificate of incorporation indicates that the corporation cannot engage in any business other than the operation and management of Kawaida Towers. As a consequence, the only business which can be managed by the board of directors is subject to heavy regulation by the HFA...In that regard, a Mortgage and Regulatory Agreement was required to be executed by Kawaida Towers, Inc., in favor of the HFA...It contains 12 pages of detailed limitations, restrictions and management functions imposed upon the corporation and its board concluding in paragraph 19 with the right and power to:

"(d) Remove any and all of the existing officers and directors of the Mortgagor and appoint such person or persons who the Agency in its sole discretion deems advisable, including officers and employees of the Agency as new officers or directors to serve in the place of those removed;"

or to:

"(e) Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violation of the Agreement for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Agreement, or for such other relief as may be appropriate, since the injury to the Agency arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain."... (pp. 20,21,22)

5. ...It was developed and argued at the trial that the location of Kawaida Towers at 129-141 Lincoln Avenue offends the official Master Plan of the City of Newark adopted in 1965...Until a master plan or parts thereof have been legislatively adopted by the governing body, its proposals have no binding effect or legal consequences. Its proposals exist only as a hopeful declaration of policy expressing future guidelines for the municipality...In the absence of legislative sanction of the master plan, Kawaida Towers need

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only comply with the current zoning ordinance of Newark...The zoning board's letter, previously referred to, establishes the requisite compliance... (pp. 22, 23)

6. Plaintiff John Cervase is convinced that Kawaida Towers must be stopped because it will breed crime and introduce violence into the neighborhood...Unfortunately, this court can function neither as sociologist nor statistician and thus cannot legally assume that the dire consequences predicted by plaintiff Cervase will come to pass. On the contrary, this court must assume that the future tenants of Kawaida Towers will be law-abiding citizens. Under our system of jurisprudence, people are presumed innocent of crime and it would be unthinkable for a court to condemn an entire project for crimes not yet committed.

The validity of high-rise housing projects as a governmental instrumentality utilized to help alleviate the shortage of low and moderate income living quarters is an issue to be debated and decided in a forum other than the courts. For the purpose of this case at least, that issue has been decided by the HFA and the Newark City Council...In short, the social or economic belief of a court cannot be substituted for the judgment of officials who are either elected or appointed to exercise that judgment...

(pp. 24. 25)