FILED
MAR 2 2 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

375

HOWARD WEINER and METRO CENTER, INC., Appellants, vs. **CITY COUNCIL OF THE CITY OF SIOUX CITY, DONALD LAWRENSON, LOREN CALLENDAR, GEORGE COLE, WILLIAM SKINNER, and LARRY CLAUSEN AS MEMBERS OF SAID CITY COUNCIL, and THE CITY OF SIOUX CITY,** Appellees, **LINCOLNSHIRE COMMERCIAL COMPANY,** Intervenor-Appellees, **GENERAL GROWTH PROPERTIES,** Intervenor-Appellees.	Filed March 22, 1979 39 2-62204

Appeal from Woodbury District Court - James P. Kelley, Judge.

Plaintiffs appeal trial court's order granting defendants' motion for summary judgment. REVERSED.

P. L. Nymann of Jacobs, Gaul, Nymann & Green, Sioux City, Iowa, for appellants.

James L. Abshier, City Attorney of Sioux City, Iowa, for appellees.

Rosemary Sheehan of Crary, Huff, Yates & Clem, P.C., Sioux City, Iowa, for intervenor General Growth Properties.

Stewart, Hatfield, Klass & Whicher of Sioux City, Iowa, for intervenor Lincolnshire Commercial Company.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Plaintiffs appeal from trial court's order granting defendants' motion for summary judgment. Their contentions do not go toward the merits of the trial court's ruling on the motion, but rather concern whether the ruling should have been withheld until the completion of discovery.

Plaintiffs' principal reliance is on the case of Carter v. Jernigan, 227 N.W.2d 131 (Iowa 1975), where the court held it was error to grant summary judgment for defendants prior to plaintiff's completion of discovery. The court in Jernigan was faced with a question of "whether under those rules the depositions and affidavits generate a fact issue for trial and in that connection what effect denial of discovery by plaintiffs has upon the decision." 227 N.W.2d at 134. The words "those rules" in the foregoing quotation from Jernigan refer to the applicable legal rules for deciding the case. There the court was faced with affidavits of the defendants seeking to factually negate a genuine issue under the applicable law. The court held plaintiffs should have been permitted discovery in order to counter defendants' affidavits.

In the present case, the defendants urge that their motion for summary judgment was properly sustained on the ground that even if all of the allegations of plaintiffs' petition be deemed admitted, their claim fails as a matter of law. Under such circumstances it is urged that to have delayed ruling on the motion for summary judgment would have availed plaintiffs of nothing. It is awkward to flatly resolve this contention without appearing to prejudge the ultimate legal issue which has not been fully briefed and argued on this appeal.

The principal thrust of plaintiffs' claim in this action is that defendant Clausen was disqualified from voting on a zoning ordinance of the defendant city because of a personal interest in the result. The basis for the alleged interest is primarily the interest of Clausen's employer in the result of the issue. A somewhat analogous issue was considered by the court in Wilson v. Iowa City, 165 N.W.2d 813 (Iowa 1969), with respect to a statute which has no direct application to the present controversy and which has since been amended. Also pertinent to the issue is the comment made by the court in Dilley v. City of Des Moines, 247 N.W.2d 187, 192, with respect to "real or potential conflict of interest" and its citation of Wilson as still having significance on that issue. On the present state of the record we are not prepared to hold as a matter of law that no right to relief may be had under plaintiffs' theory of the case.

Defendants' motion for summary judgment was filed less than four months after commencement of the action and was ruled upon about five months after the commencement of the action. Prior to the ruling on the motion, plaintiffs' counsel filed an affidavit outlining problems in completing discovery and stated that as a result, plaintiffs were unable to fully present by affidavit facts essential to justify their opposition to the summary judgment motion. Based upon this affidavit, we believe the trial court should have withheld ruling on the motion for summary judgment as advocated in Carter v. Jernigan and permitted by Iowa R. Civ. P. 237(f). Such action would have provided an additional reasonable period of time for the completion of discovery by plaintiffs. We intimate no opinion, of course, on the merits of plaintiffs' claims against defendant. We accordingly reverse the judgment and remand for further proceedings in light of this decision.

REVERSED.