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HARRY N. BAETJER
JOSEPH FRANCE
J. CROSSAN COOPER, JR.
JOHN HENRY LEWIN
JOHN M. BUTLER
HUNTER H. MOSS
STUART S. JANNEY, JR.
NORWOOD B. ORRICK

RICHARD W. EMORY
RAYMOND S. CLARK
EDMUND P. DANDRIDGE, JR.

VENABLE, BAETJER AND HOWARD
ATTORNEYS AT LAW
1409 MERCANTILE TRUST BUILDING
BALTIMORE & CALVERT STS.
BALTIMORE-2, MD.

RICHARD M. VENABLE
1839-1910
CHARLES MCH. HOWARD
1870-1942
EDWIN G. BAETJER
1868-1945

October 6th, 1947.

Hon. Ogle Marbury, Chief Judge,
Court of Appeals of Maryland,
Annapolis, Md.

My dear Judge Marbury:

I am taking the liberty of enclosing herewith an application by The Baltimore Transit Company and its Directors and its wholly owned subsidiary, The Baltimore Coach Company, and the Mayor and City Council of Baltimore, for an order advancing the hearing of the appeal of Wilson C. Warren and Adelaide W. Warren from the decision of the Circuit Court of Baltimore City (Judge Tucker), dismissing the complaint brought by them against the appellees.

The City Solicitor and I, hold ourselves in readiness to appear before Your Honors in support of the petition, if you will hear us and will fix the time.

We have advised counsel for the appellants of the fact that we are filing the application and have sent him a copy of it.

Very respectfully yours,

Harry N. Baetjer

HNB:rfb.
enc-

FILED OCT 6 1947

Morris J. [Signature]

No. 108 - Oct. T. 1947

Appellee's Petition
to advance hearing

VENABLE, BAETJER AND HOWARD
1409 MERCANTILE TRUST BUILDING
BALTIMORE-2, MD.

Filed Oct. 6-1947.

WILSON C. WARREN and
ADELAIDE W. WARREN, his wife,
Appellants,

vs.

E. ROY FITZGERALD, et al.,
Being and Constituting the
Board of Directors of The
Baltimore Transit Company, and:
THE BALTIMORE TRANSIT COMPANY,
a Maryland Corporation, and
THE BALTIMORE COACH COMPANY,
a Maryland Corporation, and
THE MAYOR AND CITY COUNCIL OF
BALTIMORE,
Appellees.

IN THE

COURT OF APPEALS

OF MARYLAND.

October Term, 1947

No. 108

.....
APPELLEES' PETITION TO ADVANCE HEARING DATE

Respectfully submitted,

VENABLE, BAETJER & HOWARD

SIMON E. SOBELOFF, City Solicitor,

Solicitors for Appellees.

FILED OCT 6 1947

Simon E. Sobeloff

IN THE
COURT OF APPEALS OF MARYLAND

October Term, 1947

Case No. _____

APPELLEES' PETITION TO ADVANCE HEARING DATE

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The relief sought by the Bill of Complaint in this cause and which was denied by the Trial Court, was a decree -

(a) "restraining the said The Baltimore Transit Company and each and all of its said Officers and Directors, agents and employees from pursuing the aforesaid illegal and fraudulent plans of 'conversion', whereby the property and assets of said Company are being transferred to The Baltimore Coach Company, another Maryland Corporation, and many millions of dollars worth of trolley car equipment is to be abandoned."

(b) "restraining the said The Baltimore Transit Company and each and all of its said Officers and Directors from changing the corporate function of said Company, from that of a local operating street electric railway company to a mere holding company, or substantially a holding company, without having first obtained the authority or approval of the stockholders of said Company, as by law required."

and an order or decree declaring,

"any and all contracts or agreements, either written or oral, entered into by the said The Baltimore Transit Company with any of the aforesaid manufacturing supplier corporations for the purchase, hire or lease of any equipment required to put into operation the aforesaid plans of 'conversion', from electric trolley car service to motor bus operation, or any agreements or contracts pertaining thereto between said Transit Company and any other parties, to be null and void, unenforceable and of no legal effect."

The Bill of Complaint was filed on the 12th day of June, 1947. Many months prior to that date the public had been advised by notices in the public press that pursuant to an Ordinance of the Mayor and City Council of Baltimore approved on July 1, 1946, the City of Baltimore would restrict traffic to one direction on St. Paul Street from Center Street to University Parkway, on Charles Street from Twenty-Ninth Street to Fayette Street, on Liberty Street from Fayette Street to Saratoga Street and on Cathedral Street from Saratoga Street to Mt. Royal Avenue; that the change would go into effect on June 22, 1947; the public had been further so advised that in order that such restrictions could be effective, The Baltimore Transit Company had agreed with the City to discontinue the operation of its electric cars on those streets and to substitute buses and that in order to preserve the continuity of the lines which were affected, the Transit Company would continue the operation of the buses to the terminus of the electric car lines which would be discontinued.

The public had also been advised through the press, of the passage of a resolution by The Mayor and City Council of Baltimore in October of 1945 requesting the Transit Company to study the feasibility and practicability of replacing street cars with free-wheel transportation on either Fayette Street or Baltimore Street for the purpose of facilitating the movement of traffic through the downtown section of the City; that the City had likewise arranged to commence in the fall of 1947 the construction of a boulevard through Druid Hill Park to extend Park Heights Avenue into McCulloh Street and Madison Avenue at the easternmost boundary of the Park, in order that McCulloh Street and Druid Hill Avenue could be made one-way streets; this improvement involved, of course, the abandonment of the operation of car lines on Park Heights Avenue and on Druid Hill Avenue; for many months the press reflected the demand that the City restrict to one-way traffic some of the main arteries south of Baltimore Street preferably Lombard Street and Pratt Street which involved the discontinuance of the use of either of those streets or any part thereof, for the operation thereon of electric cars.

Finally, the Public Service Commission by an order passed on the 9th of November, 1946, after due and extended hearing and after due advertisement in the public press, had made a finding that the public convenience and necessity permitted the abandonment of electric railway service along the routes specified in the order and that the public welfare and

convenience required the granting of a permit to The Baltimore Coach Company, a wholly owned subsidiary of The Baltimore Transit Company, to operate motor vehicles over the routes therein listed. The order directed the abandonment of operations in their entirety or in part, of fifteen lines and the substitution of motor bus service involving eight existing motor bus lines and the establishment of six new such lines; the order also required extensive rerouting involving eight lines and the abandonment of service with respect to fifty-one locations scattered throughout the City: a copy of the order is attached hereto.

The Complaint was filed as above stated on the 12th of June, 1947, eight months after the order had been signed, and during all of that period, the Company had been preparing to carry the order into effect.

It was not feasible to cancel the change in operation that was scheduled for June 22, 1947, in view of the action of the City declaring that the streets affected (Charles, St. Paul, Calvert and Cathedral Streets) be limited to one-way traffic commencing on that day; the electric railway operation was, therefore, suspended on those streets and bus operation substituted on that day; all further conversion that had been planned and approved by the Public Service Commission, was suspended and remains suspended at this time except that the purchase of equipment that could not be cancelled has been completed and contracts that had been entered

into many months before the Complaint was filed, for the erection of two garages and the conversion of railway shops into garages and offices, were continued. Orders for equipment which could be cancelled were cancelled.

The equipment purchased, the contracts for which were not subject to cancellation, covered 600 buses the contract price of which was about \$10,000,000; the contract for the garages and for the transformation of shops involves an expenditure of approximately \$2,500,000.

The Transit Company in order to carry out the conversion plan as directed by the Public Service Commission, has materially reduced its expenditure for depreciation and maintenance on property that is to be abandoned; this cannot be continued indefinitely and it is essential in the interest of efficient and safe transportation, that this deferment of maintenance be restricted to as short a period of time as is reasonably practicable. Although the contracts for the purchase of equipment cannot be cancelled nor can the contracts for the erection of the garages and the transformation of the shops be terminated, if the conversion is not to be permitted, all the equipment on order will not be needed and it may be advisable to take steps looking to such changes in the garages and shops as might be found practicable to adapt them to a more general use than for the housing and servicing of motor buses and trackless trolleys. Each day that the decision with respect to these matters is delayed, involves a serious loss financially to the Transit Company and must

result in a curtailment or lack of efficiency in the service until the electric railway operation can be resumed; each day's delay involves as well further deterioration and depreciation of equipment, track and overhead structures for lack of current maintenance, and finally it is essential that the conversion be made as far as can be before the setting in of winter. And each day's delay prevents or at least postpones the carrying into effect by the municipality of its plans for the establishment of one-way streets for the relief of traffic congestion.

As above stated, the Complaint was filed on the 12th of June, 1947; on the 27th day of June, 1947, The Mayor and City Council of Baltimore applied for and was granted leave to intervene on account of the public interest involved. On the 27th day of June, 1947, the answers of The Mayor and City Council were filed and on the same day the answers of the Transit Company and of its Directors were also filed. At the request of counsel for the Transit Company and counsel for the City the case was called for trial on the 6th day of July and was continued through the 9th day of that month; on the 10th of July the decree was signed.

The appeal in this cause was not prayed until the 6th day of August, 1947, twenty-seven days after the signing of the decree and the record was delivered to the Clerk of the Circuit Court of Baltimore City on the 22nd day of September, 1947. The Bill seeks to prevent the carrying out


of a conversion authorized by order of the Public Service Commission after due hearing but in addition, it seeks to prevent the cessation of electrical railway operation and the substitution of bus operation which is essential to the carrying out of the plan of the City of Baltimore for the establishment of one-way streets to relieve traffic congestion.

It is respectfully submitted that in view of what has been stated above, The Mayor and City Council of Baltimore and The Baltimore Transit Company without violating any duty of fairness to the plaintiffs, may ask this Honorable Court to advance the hearing of the appeal in the instant case to the earliest date that is available and to fix a time within which briefs of the respective parties shall be filed and exchanged in accordance with Rule 40, subsection 3 and it is respectfully prayed that the date for the hearing may be fixed during the month of October.

RESPECTFULLY SUBMITTED,



(Venable, Baetjer & Howard)



(Simon E. Sobeloff)
City Solicitor.

SOLICITORS FOR APPELLEES.

No. 108

LAW OFFICES OF
HERBERT E. WITZ
215 NORTH CHARLES STREET
BALTIMORE-1, MD.

October 6, 1947

Mr. Maurice Ogle, Clerk,
Court of Appeals of Maryland,
Annapolis, Maryland

Dear Mr. Ogle:

Will you please file the enclosed Answer of the Appellants to the Appellees' Petition to advance the hearing date in the case of Wilson C. Warren, et al. v. E. Roy Fitzgerald, et al., No. 108, October Term, 1947. We understand that the Appellees' Petition was mailed to your office today.

Yours very truly,

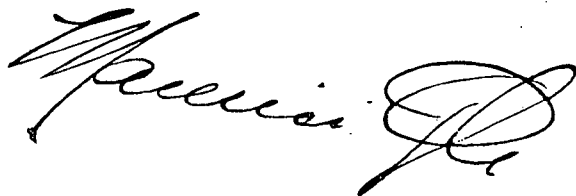


Herbert E. Witz,
Solicitor for Appellants

HEW:w

Enc.

FILED OCT 17, 1947



WILSON C. WARREN and
ADELAIDE W. WARREN, his wife,

Appellants,

vs.

E. ROY FITZGERALD, et al.,
Being and Constituting the
Board of Directors of The
Baltimore Transit Company, and:
THE BALTIMORE TRANSIT COMPANY,
a Maryland Corporation, and
THE BALTIMORE COACH COMPANY,
a Maryland Corporation, and
THE MAYOR AND CITY COUNCIL OF
BALTIMORE,

Appellees.

IN THE

COURT OF APPEALS

OF MARYLAND

October Term, 1947

No. 108

APPELLANTS' ANSWER TO

APPELLEES' PETITION TO ADVANCE HEARING DATE


Respectfully submitted,

HERBERT E. WITZ

J. MORFIT MULLEN,

Solicitors for Appellants.

FILED OCT 7, 1947



No. 108 - Oct. 7, 1947

Appellants' Answer
to Appellee's Petition

Filed: Oct. 7-1947

IN THE
COURT OF APPEALS OF MARYLAND

October Term, 1947

Case No. 108

APPELLANTS' ANSWER TO
APPELLEES' PETITION TO ADVANCE HEARING DATE

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The Appellees' Petition attempts to present the idea that the Appellants have not exercised diligence in the prosecution of this cause, and also that they are unduly delaying a great public "improvement" in the City of Baltimore, and therefore this case should be advanced for an early hearing and the time allowed for the filing of briefs in this Court should be reduced.

Although to engage upon an argument of this charge is tantamount to an argument of the case on its merits, we feel that this Honorable Court should be apprized of the fact that to this very day, the stockholders of The Baltimore Transit Company have never been advised that about \$24,000,000 worth of their assets are to be abandoned, and that the

proposed new motor bus business is to be conducted by another corporation and at the expense and on the credit of their Company. These facts, among others, have never been published, even as news items, in the public press. The Appellants first received an inkling of these fundamental changes to take place in their Company at the regular annual meeting of stockholders held on April 9, 1947, and they immediately thereupon engaged counsel to investigate the propriety and legality of these proposed plans of the directors.

Each of the Appellees was requested by the Appellants in good faith, in May, 1947, to defer the execution of their proposed "conversion plan" until it had properly been submitted to the stockholders for their consideration, but this, the Appellees refused to do, and thereupon this suit was instituted.

In order to accommodate the Appellees, and at a sacrifice to ourselves, we agreed to have this cause set down immediately for trial before the Chancellor. Had we availed ourselves of the prerogative of pre trial practice under the rules, we would have been much better informed as to certain documents in evidence, which consequently could not be examined by us, except at the trial table.

Notwithstanding these charges of the Appellees, we have not had, and we do not now have any desire or intention to delay the prosecution of this cause, and have tried to accommodate the Appellees in every reasonable way in this respect.

We have no objection to having this case advanced for hearing by this Honorable Court to the earliest date that

is available, after briefs by all parties have been filed with this Court.

We do earnestly object, however, to any reduction of the time allowed for the filing of briefs in this Court.

The rules of practice and procedure were promulgated after careful study and consideration, and are founded upon experience with the average case. We submit that this is not an average case, and if any waiver of the rules of this Court is considered, it would be proper to extend the time required for the filing of briefs, rather than reduce it. The Appellants have valuable property rights involved and every opportunity should be afforded them to carefully and adequately prepare this case to properly present to this Honorable Court. We do not ask, however, that the time be extended for the filing of our brief.

In order to expedite this matter, we delivered the copy of the appendix to our brief to the printer even before the transcript of the record was filed in this Court. As soon as the appendix is completed by the printer, we will be prepared to insert certain page references thereto in our brief and then proceed with the printing of the brief. With a threatening strike by a typesetters union, The Daily Record Company, Printers, will give us no assurance as to exactly when they may complete their work.

To further expedite this matter we suggested to the Appellees that if they would care to submit a draft of their brief to us before our brief is printed and allow us to answer

any of their arguments which we might deem necessary to answer, that perhaps we could eliminate the additional time necessary to file a reply brief. But in the absence of their willingness to heed this suggestion, we would have to insist upon our right to have the opportunity to file a reply brief if the same is deemed necessary. It is neither physically nor mechanically possible to properly prepare these briefs and have them printed in any less time than is prescribed by Rule 40, subsection 1. We repeat, however, that after all briefs have been submitted and there has been a reasonable time to read and study that of the Appellees, we certainly have no objection to having this case advanced for hearing if it please this Court.

It is therefore, respectfully submitted that in order to properly prepare and present this case and in all fairness to the Appellants as well as to this Honorable Court, the time allowed for the filing of briefs in this cause should not be reduced, and Rule 40, subsection 1 should be applied here.

RESPECTFULLY SUBMITTED,



Herbert E. Witz



J. Moffit Mullen

Solicitors for Appellants

No. 108 - Oct. T. 1947

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Stipulation
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Filed: Nov. 21-1947

WILSON C. WARREN, et al.,	:	IN THE
Appellants	:	COURT OF APPEALS
	:	OF
vs.	:	MARYLAND
E. ROY FITZGERALD, et al.,	:	October Term, 1947
Appellees	:	No. 108

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STIPULATION EXTENDING TIME FOR FILING BRIEF OF APPELLEE, THE MAYOR AND CITY COUNCIL OF BALTIMORE.

Pursuant to the authority contained in Rule 40, Section 4, of the Rules and Regulations Respecting Appeals of the Court of Appeals of Maryland, it is hereby stipulated, by and between counsel in the above captioned case that the time for filing Brief of Appellee, the Mayor and City Council of Baltimore, be, and it is hereby extended from November 20, 1947, to and including December 1, 1947, this additional time being necessary in order to have the Appellee, the Mayor and City Council of Baltimore's Brief printed, and such extension will not delay the argument of the case.

W. Earl E. Eitz 11/20/1947
Attorney for Wilson C. Warren, et al.,
Appellants.

Donald Blair Howard

William E. Sobeloff
Attorneys for Appellees.