

Old Bridge (1987)

Letter Brief

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December 16, 1987

VIA LAWYERS SERVICE

The Honorable Eugene D. Serpentelli
Judge, Superior Court
Ocean County Court House
CN 2191
Toms River, New Jersey 08754

RE: Urban League, et al. v. Carteret, et al.

Dear Judge Serpentelli:

The Civic League plaintiffs hereby join in points I through III of the Brief of plaintiff Woodhaven Village, Inc. in support of its Motion for Reconsideration of this Court's vacation of the Order and Judgment of Repose dated January 24, 1986 (the "Judgment"). The Civic League plaintiffs urge the Court to reject the argument set forth at point IV of Woodhaven's brief, in which it contends that "the remainder" of the matter can and should be transferred to COAH, where Woodhaven hopes for a reduction of its Mount Laurel obligation. As Woodhaven argued so persuasively in the first 37 pages of its Brief, since Old Bridge received the benefit of its bargain, it would be unjust to deprive Woodhaven of its equally bargained for benefit. It would be even more unjust to deprive the public interest plaintiffs of their bargained for Mount Laurel component, especially since there would have been no settlement without it.

Unless this Court reconsiders its vacation of the Old Bridge Judgment, however, the Civic League will be the only party deprived of its bargained for benefit. Vacation of the Judgment provides a powerful incentive for the developer plaintiffs to approach the Township and negotiate new scaled-down developments essentially comporting with the plans previously submitted. The main difference between the new plans and those set forth in the Judgment may simply be the omission of any Mount Laurel component in the former. Indeed, O&Y's sudden departure from this litigation is consistent with this scenario.

This Court, as well as the Appellate Division, has firmly rejected demands by towns to transfer their matters to COAH on the basis of COAH's lower fair share numbers. See, e.g., Haueis v. Far Hills (decided October 9, 1986). In rendering its decision in connection with the instant motion, the Court reiterated its refusal to condone such ploys. By granting Old Bridge's motion to vacate the Judgment, however, this Court has effectively permitted the Township to do precisely that which it has criticized other towns for even attempting.

It is respectfully submitted that the wholesale vacation of the Judgment is tantamount to an endorsement of scaled-down development without a Mount Laurel component. The transfer itself thus becomes the cause of a compound injustice; i.e., the loss of affordable units for lower income families, a windfall to developers who but for the vacation would have been responsible for the provision of those units, and a transfer to COAH for Old Bridge, even though the Township may well permit the development decried as "impossible" in its motion papers. This is a blatant and "exceptional" injustice, and no one could argue that it was foreseen by the legislature when it enacted the transfer provisions of the Fair Housing Act. In short, what the Court has before it is the clearest case of "manifest injustice" since the New Jersey Supreme Court defined the term in Hills Development Co. v. Township of Bernards, 103 N.J. 1, 49 (1986). At the very least, plaintiffs should be given the opportunity for a hearing, at which the testimony of the Court-appointed Master, George Raymond, may be heard regarding the scaled-down developments proposed by O&Y and Woodhaven in their briefs in opposition to Old Bridge's motion.

Second, the Civic League urges the Court to reconsider its perfunctory denial of plaintiffs' crossmotion. As the Court will recall, plaintiffs requested that defendant Old Bridge be required to comply with certain provisions of the Judgment pending decision of the Township's motion. Specifically, as Old Bridge conceded in its Reply Letter Brief dated August 11, 1987, the Township failed to collect at least \$15,000 which should have been paid to the Affordable Housing Trust Fund. Even if the Court affirms its vacation of the Judgment, the Township should not be retroactively relieved of obligations incurred during the existence of that Judgment. This is especially egregious since those obligations existed independently of the Judgment, by virtue of the as yet unrepealed ordinance. Old Bridge should be required to account for the entire shortfall, and to deposit immediately the appropriate amount in the Fund with an additional sum representing the interest already lost as a result of its failure to administer the Fund properly, as well as any monies due under paragraph 7(f) of the Judgment.

Hon. Eugene D. Serpentelli
December 16, 1987
Page 3

In the voluminous papers submitted on behalf of the Township in its efforts to avoid its Mount Laurel obligation, neither facts nor argument were presented regarding these provisions. Old Bridge merely suggested in a letter that litigation involving similar funds was pending. The Township, however, has an affirmative obligation to defend its Ordinance and to distinguish it, if possible, from any which may be found objectionable.

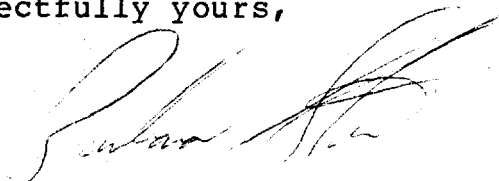
Nor do the alleged wetlands justify Old Bridge's evasion of this obligation. Indeed, the Court's determination with respect to the wetlands renders enforcement of these provisions even more important. Unless Old Bridge is required to abide by the Judgment, the Affordable Housing Trust Fund may well be the only source of any low income housing in Old Bridge.

Under Hills, Court orders entered prior to transfer may be modified by the Court or COAH. Id. at 61. It is respectfully submitted that in the absence of any argument from Old Bridge justifying relief from these provisions, they should remain in effect even if the other provisions of the Judgment do not, pending action by COAH.

Finally, if the provisions of the Judgment regarding Woodhaven are reinstated, and the Civic League plaintiffs agree that they should be, it is respectfully submitted that equity requires that the Mount Laurel component of Woodhaven's plan remain in place. Indeed, reinstatement of the entire Judgment is the only means of preventing the Township and developer plaintiffs from agreeing to precisely the kind of scaled-down development provided for in that Judgment -- lacking only the affordable housing which was the point of the litigation.

For all of the foregoing reasons, it is respectfully requested that the Court reconsider its vacation of the Judgment and its denial of plaintiffs' crossmotion, and schedule a hearing at which the Court-appointed Master may testify.

Respectfully yours,



cc/Old Bridge Service List
C. Roy Epps, President
Civic League of Greater New Brunswick
George Raymond, Court-Appointed Master

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