

CA

Old Bridge

3-26-87

NOM to vacate the suppression of
a brief & appendix note pro tunc.

-w/ Cert of Barbara Stark

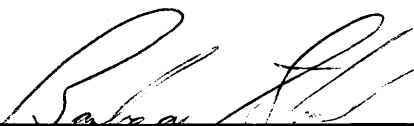
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CA 002363N

TO: CLERK OF THE COURT
OLD BRIDGE SERVICE LIST

PLEASE TAKE NOTICE that the Civic League plaintiffs-respondents hereby move before the Superior Court of New Jersey, Appellate Division, for an Order vacating the suppression of their brief and appendix nunc pro tunc and allowing an extension of time for said plaintiffs-respondents to serve and file said brief. The Civic League shall rely upon the Certification of Barbara Stark submitted herewith.

Dated: March 26, 1987



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ATTORNEYS FOR THE ACLU and ON
BEHALF OF THE CIVIC LEAGUE

Barbara Stark, of full age, certifies as follows:

1. I am an attorney at law of the State of New Jersey and a staff attorney with the Rutgers Constitutional Litigation Clinic. In this capacity I am fully familiar with the facts and circumstances of this case. I submit this Certification in support of plaintiffs' motion to vacate the suppression of their brief nunc pro tunc and for an extension of time in which to serve and file their brief in opposition to defendants' appeal, which is submitted herewith. I have been advised by defendants' counsel that he has no objection to plaintiffs' request for an extension of time in which to file their brief.

2. The instant appeal concerns an Order and Judgment of Repose entered in this Mount Laurel II action on January 24, 1986. There have been several extensions of time in this matter because the parties were attempting to reach settlement. In fact, the Civic League and Oakwood at Madison and Beren Corp ("Oakwood and Beren") have done so and on February 13, 1987 they filed a joint application seeking the approval of the trial court in connection with same (Pa1).

3. Paragraph 20 of that Consent Judgment provides for the dismissal of this appeal upon approval of the Settlement by the Court. That application has been opposed by the Township of Old Bridge and the Old Bridge Planning Board, which have argued that no consent can be given in view of the pending motions before the Honorable Eugene D. Serpentelli to reopen the Judgment in issue (Pa20).

4. Prior to their settlement, on February 9, 1987, the Civic

League filed a motion with this Court requesting the dismissal of the within appeal, on the grounds that the Township of Old Bridge and the Old Bridge Planning Board, who were also parties to the Judgment, had sought to reopen same in the court below. In the alternative, the Civic League requested a stay of this matter pending the determination of the court below. By Order dated March 10, 1987, which we did not receive until March 19, 1987, the Appellate Division denied the Civic League's application (Pa38). On March 19th, in response to my inquiry as to the time in which the Civic League's brief should be filed, I was advised by Michael Malloy, Esq. that an Order of Suppression was being entered that day with respect to such brief.

5. While the foregoing applications for extensions, dismissal and stay were pending, the time in which plaintiffs should have filed their brief in opposition to defendants' appeal expired. It is respectfully submitted that the suppression of plaintiffs' brief should be vacated and an extension of time should be granted nunc pro tunc permitting it to be filed simultaneously with this application.


6. If plaintiffs' main brief is suppressed, defendants' demand to vacate the January 24, 1986 Judgment will be considered unopposed. As set forth in Respondent's Brief submitted herewith, defendants' argument is completely without merit and the grant of the relief demanded by defendants will have disastrous consequences for the other parties to this litigation. Defendants contend that the January 24, 1986 Judgment should be vacated because they were not properly notified. This argument must fail because the defendants were only

permitted to intervene in that matter for the specific purpose set forth in the May 31, 1985 Order. Since defendants' interests as set forth in the Order were not affected by the Judgment in dispute, they were not entitled to notice in connection with same. In any case, as set forth in the accompanying Brief, the issue is now moot since the Civic League and Oakwood and Beren have in fact settled their dispute (Pal).

7. Defendants demand that that Judgment be vacated and remanded. As set forth in plaintiffs' letter brief of February 9, 1987, motions to vacate or reopen that Judgment are presently pending before the Honorable Eugene D. Serpentelli, who is fully familiar with the complex facts of this particular Mount Laurel litigation. It would be a grave injustice if the proceedings below were preempted because of a procedural technicality, especially since the party complaining of that technicality has no real interest in the Judgment in issue. It is respectfully submitted, accordingly, that the suppression should be vacated nunc pro tunc and Respondent should be permitted to file the Brief submitted herewith.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I may be subject to punishment.

Dated: March 26, 1987


Barbara Stark