

Ull v. Carteret, Old Bridge

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- letter brief on behalf of Oakwood

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MEZEY & MEZEY

COUNSELLORS AT LAW
93 BAYARD STREET
P.O. BOX 238
NEW BRUNSWICK, N.J. 08903
(201) 545-6011

LOUIS A. MEZEY (1929-1982)
FREDERICK C. MEZEY*
JEFFREY L. SHANABERGER**
DEBORAH A. COHEN

SUITE 100
ELM RIDGE RD., R.D. 2
PRINCETON, N.J. 08540
(609) 921-1743

*MEMBER OF N.J. & D.C. BAR
**MEMBER OF N.J. & N.Y. BAR

OUR FILE NO.

February 17, 1987

The Honorable Judges of the Appellate Division
Superior Court of New Jersey
CN 006
Hughes Justice Complex
Trenton, N.J. 08625

Re: Urban League of Greater New Brunswick, et al
vs. The Mayor and Council of Carteret, et al
and Oakwood at Madison, et al
Docket No.: A-3795-85T1
(Consolidated Cases)

Dear Honorable Judges:

Please accept this letter brief on behalf of the defendant-appellants Oakwood at Madison, Inc. [Oakwood] and Beren Corp. [Beren] in opposition to plaintiff-respondents' motion to dismiss or stay the instant appeal.

On May 31, 1985, Oakwood and Beren were made parties defendant in the Urban League's Mount Laurel II lawsuit against the Township of Old Bridge for the sole and limited purpose of ensuring that Oakwood and Beren implemented phasing, resale, re-rental and income requirements in the Oakwood at Madison project, which contained 350 units of lower income housing. This Urban League case was already

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consolidated in the Law Division with two 1984 cases brought by developers alleging Old Bridge failed to provide for its fair share of its region's lower income housing need. Thus, unlike the 1984 cases, Oakwood and Beren's participation in the Mount Laurel II cases did not involve the substantive issues of fair share, compliance and builder's remedies. Instead, Oakwood and Beren's involvement was limited to permit a judicially supervised implementation of a phasing schedule and other restrictions that were first promulgated in the Mount Laurel II decision.

It is because of Oakwood and Beren's limited participation in the Urban League case, ordered on May 31, 1985, that the Township's and the Planning Board's motions to transfer were not directed to Oakwood and Beren nor were they even noticed upon this office. There is, therefore, no reason for this Court to dismiss or stay the instant appeal because of the mere possibility that the substantive issues of fair share and builders remedy may be transferred to the Council of Affordable Housing. The issues that may be raised upon a transfer of the Mount Laurel II cases have no bearing upon the narrow issue that Oakwood and Beren and the Urban League are concerned with.

Moreover, the mere filing of a R.4:50-1 motion in no way renders an appeal moot or the order or judgment

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appealed from nonfinal. No one knows how Judge Serpentelli will dispose of the vacation and transfer motions now before him. Indeed, as noted by the Civic League, these motions have not yet been listed for hearing. Oakwood and Beren have properly invoked the jurisdiction of the Appellate Division and are, therefore, entitled to a resolution of their appeal on the merits. We respectfully submit that it would be inappropriate to dismiss or stay the appeal based upon the mere fact that a R.4:50-1 motion has been filed.

For the foregoing reasons, Oakwood and Beren respectfully request that the instant motion be denied.

Respectfully submitted,

MEZEY & MEZEY

BY _____
FREDERICK C. MEZEY

JLS:ck
cc: All Counsel of Record