CA - Old Bridge 12/16/87

letter brief ⇒ Civic League TTS joining in points I - III of Brief of TT Woodhaven Village, in support of its motion for Reconsideration of Ct's vacation of order + judgment of repose dated 1/24/86

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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.

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.

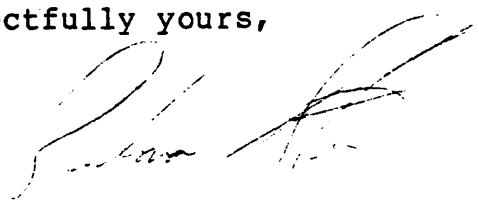
Nor do the alleged wetlands justify Old Bridge's evasion of this obligation. Indeed, the Court's determination with respect to the wetlands renders enforcement of these provisions even more important. Unless Old Bridge is required to abide by the Judgment, the Affordable Housing Trust Fund may well be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

the presettlement negotiations that only 14 acres of its property was wetland.

I should refer also to defendant's exhibit A-21 which is a letter dated December 10th, 1985 from Richard Tomer of the U. S. Corps of Engineers to William Iafe, who is the project engineer, I believe, for O & Y wherein Mr. Tomer states, "Your environmental impact report" -- and I will insert the word "indicates" to make it read grammatically -- "there are approximately 14 acres of wetland on site."

So, while clearly the parties were aware of the existence of wetland, it's just simply not accurate to say that it was an issue at the time of settlement.

It certainly was not central to the settlement agreement. It would be absurd to argue that the parties, especially the Township, recognized a potential for sizable amounts of wetland and then settled the case in the face of that risk.

Yet, while the existence or non-existence of wetland was not in issue at the time of settlement and therefore cannot be said to have been material to the settlement at that time, therefore fitting neatly into the cases regarding mistake under Rule 4:50, the extent of the wetland of which the parties now are aware does affect a material aspect of the settlement,

that being the ability of O & and Woodhaven to build the planned development as depicted in the plates or at least some reasonable facsimile thereof.

Defendant also cites Rule 4:50-1B regarding newly discovered evidence and argue this as another basis for relief.

The facts may fit even more neatly under B than A.

Rule 4:50-1B provides for relief if the newly discovered evidence would probably alter the judgment or order and which, by due diligence, could not have been discovered in time to move for a new trial under Rule 4:49.

In the case of Quick-Chek Food Stores v. Springfield Twp. 83 N.J. 438 (1980), the plaintiff moved for a new trial citing newly discovered evidence.

The Court said, "The law governing motions for a new trial, based on newly discovered evidence, is the same as a motion to vacate, based on newly discovered evidence under Rule 4:50-1B."

The Court said, and I quote: "It is well established that it must appear that the evidence would probably change the result that it was unobtainable by the exercise of due diligence for its use at trial and that the evidence was not merely

cumulative."

That is at page 445, citing cases which I have omitted.

It may be important to point out at this point that a motion to vacate is addressed to the sound discretion of the trial court guided by equitable principles. See Hodgson v. Applegate 31 N.J. 29 at page 37 (1959) citing Shammas v. Shammas 9 N.J. 321 (1952).

Furthermore, the trial court's decision will generally be upheld in the absence of an abuse of discretion. See Hodgson at page 37, Quick-Chek and State v. Speare 86 N.J. Super 565 (App. Div. 1965.)

Rule 4:50-1B requires that the newly discovered evidence be such as it would probably have changed the result.

The Court must use its discretion and attempt to determine if this discovery of vast amounts of wetland would have changed the result of the settlement.

Clearly, defendants claim they would not have settled for the new proposal. They claim that the present package or any alternative that's been given to them constitutes poor planning and the benefits which induced them to settle are gone.

The plaintiffs admit that the plates are no longer

viable, but they argue that the plates will not guarantee to the Township, and even if the plates were approved, that they were not obligated to build them.

They also argue that their alternative will constitute a sound, appropriate approach to the satisfaction of the Mount Laurel fair share obligation, and as well constitute good planning.

The Court accepts the fact that the plans were not a guarantee to the letter.

There can be little doubt that the full build-out with all the details shown on the plates, however, was something that was contemplated with some modification in location, size and so forth, and that is what the parties envision.

While the so-called Blue Book is clearly a comprehensive document, the plaintiffs cannot argue that it was a fully integrated agreement wherein parole evidence would not be allowed to explain its meaning.

If they argue that the plates are not guaranteed but are subject to change, it cannot be said to be a complete document, because the development itself is not a part thereof.

It is, therefore, appropriate to consider the present, rather the presettlement negotiations as set forth by Eugene Dunlop in his affidavit and Joan

George in her affidavit.

It is also helpful to look at the planning reports for each development, because although submitted in February, 1986, they merely explain what is depicted on the plates and were probably prepared in conjunction therewith.

Clearly, the plaintiffs' planners were intricately involved with the settlement negotiations, and finally it's not inappropriate for the Court to acknowledge its own involvement to the extent that they are matters of record or at least matters undisputed.

It's evident that the parties involved throughout thought and planned with an expectation that there would be a full 20-year build-out.

Everyone expected that that was the result of the settlement with some recognition of future unknowns.

For example, Mr. Brown, vice-president of O & Y, stated in his October 6th, 1987 certification at paragraph 30, and I quote, "In alleging that the settlement agreement is no longer valid, the affidavits filed by Eugene Dunlop, Council President and Joan George, Chairperson of the Planning Board, expressed the Township's loss of expectation from the development in

essentially the same context as the alleged inability of O & Y to perform its obligations under the terms of the settlement agreement.

"Since O & Y shared these grand expectations for its development, we also share to an even greater degree the significant disappointment ensuing from the realization that due to the impact of the Federal Wetlands, the full potential of the development will never be realized."

Mr. Brown goes on to say that what was the ultimate potential and what was actually agreed upon are very different.

Picking up the argument that the parties only bargained for what is spelled out in the Blue Book, which does not include the plates at least in that form.

So, we see that O & Y at least shared defendants views as to what was initially to be produced.

Additionally, the Planning Board reports of both developers are written in terms of full build-out of 10,560 units by O & Y and 5,820 units by Woodhaven.

The plaintiffs refer to the Trans Old Bridge connector as the major circulation spine for the new development providing excellent internal access to the Town's center. That is in the O & Y report of February

28, 1986 at page 3.

As a major element of a circulation system which will serve not only the residents of Woodhaven, but also the Township at large. That's in the Woodhaven report of February 28, 1987 at page 7.

The O & Y planning report further describes the circulation system at page 14, and I quote, "The circulation system connects the villages into a cohesive community. It has been designed based on the existing road network with the goal of maintaining as much independence from the local roads in the area as possible.

"The result is a system comprised of new roads which, not only serve the proposed development, but also enhance circulation in the Township as a whole. Each of these roads is an important component in the overall circulation system."

The report then goes on to describe the Trans Old Bridge Connector and other roads as shown in Plate A, and it is further stated, and I quote, "The traffic network was designed to operate essentially independent of existing local roadways to preserve these 'country roads' in their present state while providing a higher quality of access to all areas of the development."

A review of the most recent planning report submitted on May 26, 1987 by O & Y shows among other changes a greatly changed circulation system.

It provides, and I quote: "Both of the land use alternatives relied primarily on the existing roads -- existing road network, with necessary improvements and the addition of some minor arterial roads.

"While neither of the alternatives is dependent upon the Trans Old Bridge Connector, alternative B includes the Trans Old Bridge alignment because this was a requirement of the settlement."

That quote really has two significant meanings. It says gone are the country roads which were bargained for, and secondly, that indeed the Trans Old Bridge Connector was a bargain for inducement to settlement as O & Y candidly admits.

While the initial circulation system as proposed may no longer be required because of the proposed down-scale in the development, clearly the plans that form the basis of the settlement negotiations are dramatically changed.

It is also interesting to note that O & Y's planner perceived the Trans Old Bridge Connector to be a requirement of the settlement. This simply illustrates that even though the plaintiffs may argue

that there were no guarantees, these benefits were clearly the incentive that the defendants argue about.

A review of the February 1986 plans and the May '87 plans gives a pretty good insight into the magnitude of the changes and just what benefits are lost.

Woodhaven did not submit for the Court's review a new proposal, but clearly even though they state they will still provide the full build-out.

Due to the fact that they have at least twice the amount of wetland they believed they had, they must be proposing a significant modification of their plan.

This review of the various changes was undertaken to illustrate the extent of change now proposed and to consider the same in light of the requirements of the rule under which the defendants move, that the new evidence be such as would have changed the result.

It is clear that the plans are greatly changed.

Mr. Raymond indicated in our brief discussion on the record that this is a very different plan, and in the Court's judgment it appears to be of such a magnitude as would compel the Court to conclude that it could have and would have changed the result.

The plaintiffs' argument that all the defendants are entitled to is residential development, if it

occurs, being lock stepped with commercial development is simply not persuasive.

The defendants bargained for much more than that, and the concept plans were clearly without any question in the Court's mind, the inducement to settle even if the parties did not contemplate that there would be no change. The parties certainly understood that there would be some.

The parties contemplated that there could be a reduction, but they didn't contemplate that there would be a reduction in half the proposed development which would result in a wholesale modification of the plan even before, by the way, the first approval was granted.

The plaintiffs' argument that the Township could not rely in any way on the concept plans is very troublesome.

The plaintiffs state approval of these plans permits but does not obligate the plaintiffs to build one unit.

The defendant is said to be protected by this arrangement from overdevelopment by the maximums set forth, and, of course, there is an argument to be made that I alluded to in oral argument, if anything that the parties anticipated that the plaintiffs would

build even more than is set forth in the plan if they could, because the settlement agreement provides that the plaintiff may acquire additional lands, the in-fill or out-parcels and that these lands would be treated as a part of the plaintiffs' initial holdings and may be developed as the land would be at the time of settlement.

Had the Court not believed that this settlement represented a binding promise exchanged by the parties, it may not have approved the settlement.

The case law which I will discuss in a minute does not support the plaintiffs' argument in this regard.

Plaintiffs' argument with respect to the non-binding nature of the concept plans is somewhat belied by the various provisions in the settlement agreement itself.

I pointed already to A-13, concept plan approval hearings which provides, and I quote: "The Planning Board Attorney shall instruct the Board as to the limited nature of the Board's jurisdiction and the nature of the plans to be reviewed and shall indicate that the plates are at the master plan concept level and are part of the settlement of litigation and cannot be changed without sound reasons."

Additionally, Appendix C beginning at C200 illustrates that the parties were relying on the concept plans more than the plaintiffs will admit.

Thus, I believe, that the parties have relied on plans to a very great degree making allowance for minor variations due to planning considerations and minor unknown conditions.

Therefore, the existence of wetlands which reduce development, this substantially would in all likelihood have changed the outcome of the settlement.

Additionally, the plaintiffs argue that the defendants could have discerned the existence of the wetland with the exercise of due diligence. As I have already indicated in oral argument, perhaps, more cryptically this is totally without merit.

The plaintiffs themselves state that until they received some preliminary approval, they did not know the type of, or they did not engage in the type of investigation so as to waste money and time on it. That's the plaintiffs' reasoning, although the Court finds it somewhat difficult given the magnitude of the investment in this case.

It wasn't the defendants' responsibility to discover the extent of the wetland by going out into the field and surveying four and a half miles of

property. That burden is on the developer.

Clearly, the defendants had some obligation, and their master plan, indeed, mapped wetland area in accord with the data available to them.

It is certainly not the standard in the marketplace to have municipalities survey all of the property within its town or with regard to any application before it, before it approves a plan, because had the Town approved the plan, the plaintiffswere still subject to State and Federal regulations either implicitly or by operation of law which would have meant approval by all agencies having appropriate jurisdiction in the matter.

Thus, it appears that the defendant is entitled to a vacation of the final judgment, based on mistake and/or newly discovered evidence.

Yet, due to the magnitude of this case and the magnitude of the defendants' request, it is appropriate to discuss some of the other relevant considerations in a little more detail.

The Court is, in light of the fact that the Township also seeks to transfer this case to the Council on Affordable Housing because of a greatly reduced fair share number. If that was not one of its motivations, it could simply enter into a

modification of this plan with the plaintiff.

The defendants have even indicated that they believe that they may be able to reduce their fair share number to zero which certainly didn't help this Court in its subjective analysis of this case.

Plaintiffs argue that to allow such a result would be an injustice to the Mount Laurel doctrine.

Clearly, if the defendants sought to transfer it, based solely on the Council's fair share number, the Court would reject such a motion similarly.

As I have suggested, the fact that they even argue is disturbing.

While the reopener clause may appear to support such an argument, the colloquy on the record at the compliance hearing would preclude any relief of that type.

The Court specifically inquired whether the fair share number was solid and there was no dispute that it was.

Yet, if the defendant is entitled to a vacation of the judgment as opposed to a modification due to impossibility of performance in accordance with the reopener clause, clearly then they are entitled to a transfer to the Council pursuant to the language in Hills Development v. Bernards 103 N.J. 1(1986),

that point was virtually conceded by the plaintiffs with some hesitation.

So, the question becomes whether the defendants should be allowed to vacate or does the reopener clause cover this situation, and must the defendants abide by that agreement as plaintiffs argue?

The Court has made it clear, I hope, that the concept plans were more integral to the agreement than the plaintiffs will admit. In fact, the plans provided the basis for the settlement. That is not to say that any rights vested pursuant to the plans, because the Municipal Land Use Law provides to the contrary. See N.J.S.A. 40:55D-10.1.

However, they are strong evidence of what the parties agreed to. Granted there was room for some flexibility, some unknowns, to find that the plates were practically irrelevant as to -- as the plaintiffs seem to argue would be to find that the defendants were bound by the terms of agreements to which the plaintiffs were not bound.

The plates were said to bind the Planning Board, but not the defendants.

In fact, Woodhaven states in its brief, "It is not as though defendants have a right to specific performance from the plaintiffs with regard to

construction. Woodhaven states that all the Blue Book guaranteed was proportionality.

It says the Blue Book only requires that if there is to be any residential development, then the commercial development must be lock-stepped with any residential development pursuant to the staging performance schedule. This lock-step development is all the Township has been promised and is exactly what the Township will get. That's at page 26 of the brief.

If the proposals as set forth on the plates were not seen as integral to the settlement, it's doubtful whether all the essential ingredients of the contract would be present.

The duties of the parties must be to set forth with enough specificity that the Court can determine what performance was to be rendered.

See Heim v. Shore 56 N.J. Super 62 at page 72 (App.Div. 1959.)

While the mechanism for dealing with the application is present and certain necessary ordinances, a major element is missing, and that is what, in fact, is being proposed if it is not the plates as attached.

A concept judgment -- I am sorry -- a consent judgment is a form of contract as stated in Stonehurst

Freehold v. The Township Committee of Freehold 139 N.J. Super 311, 313 (Law Division) and I quote: "While a consent judgment is of the nature of both a contract and a judgment, it is not strictly a judicial decree, but rather in the nature of a contract entered into with the solemn sanction of the Court.

"A consent judgment has been defined as an agreement of the parties under the sanction of the Court as to what the decision shall be."

I have omitted citations.

In the case of -- and I will spell it: G-i-u-m-a-r-r-a v. Harrington Heights 33 N.J. Super 178, 190 (App. Div. 1954) affirmed 18 N.J. 548 (1955), the Appellate Division stated, "The modern concept is that in the case of bilateral contracts not only are the promises consideration for one another, but the parties also contemplate that the performances promised shall be exchanged one for the other.

"Failure of consideration exists wherever one, who has promised to give some performance, fails without his fault to receive in some material respect the agreed exchange for that performance.

"Where the counter promise to perform relates to a material matter, the disappointed party has the right

to rescind the contract."

Plaintiffs argue that they are permitted, but not required, to build one thing. If this was the case, clearly there would be a failure of consideration.

Lock-stepping is not all that the defendants bargained for. The concept plans are representing of the presettlement negotiations and evidence of what induced the defendants to settle.

The parties contemplated and planned for one of the largest, if not the largest development in the State of New Jersey.

The magnitude of the change, and particularly at the very initial step of development in the Court's opinion results in a totally new plan, be it appropriate, be it sound planning, it is not what we have when we began and it is not in any sense truly comparable to what we have when we began.

Plaintiffs' return promise was to develop a project such as depicted in Plates A and B.

An essential characteristic of an enforceable contract is that its obligations be specifically described in order to enable a court to know what was promised and what was undertaken.

See the Malaker Corporation v. First Jersey

National Bank 163 N.J. Super 463, 474 (App. Div. 1978).

As Woodhaven itself put it: If the developers were able to prove to the Planning Board that the plates work in a planning sense, and in accordance with the standards set forth in the Blue Book appendices, then the Planning Board could not have required something else. That's at page 5 of the brief.

Thus, while conceptual approval does not vest rights, apparently these plates resulted in their being incorporated into a settlement agreement, and the Planning Board review was limited to sound planning considerations.

So, it is clear that the concept plans were indeed material to the settlement, allowing the same type of flexibility as one might expect in dealing with nuts and bolts as opposed to major concepts.

With this in mind I return to the reopener clause and whether it covers the present situation.

In the landmark case of Tessmar v. Grosner 23 N.J. 193 (1957), Chief Justice Vanderbilt said, "In the quest for the common intention of the parties to a contract, the court must consider the relations of the parties, the attendant circumstances and the objects they were trying to obtain.

"An agreement must be construed in the context of the circumstances under which it was entered into, and it must be accorded a rationale meaning in keeping with the express general purpose."

At page 201.

The reopener provided in relevant part for modification, based on impossibility of performance. Clearly, performance is as initially contemplated, is no longer possible, yet at various -- as various parties have argued, modifications were contemplated because of the size of the project and the fact that it would take 20 years to build.

What might happen to the market and what regulations might come into play which would affect its ability to perform, were really what was covered by the reopener agreement as has been argued by the plaintiffs here.

It would be disingenuous to argue that the parties contemplate having to totally revise the plans before any approvals were received.

Really, what is proposed is not a modification, but it is a brand new plan. Both developers admit the plans designated as Plates A and B are no longer viable due to the magnitude of the change and in light of what the Court believes the parties reasonably

intended, given the circumstances at the time the reopener clause does not cover the situation.

Mr. Convery points out in his brief that the Court denied the motion to transfer, based on mootness but stated on the record that a change in the terms of the settlement may justify a renewal of the motion.

While the Township -- I am sorry -- while the Court spoke in terms of the Township opposing the modification requested by the plaintiffs, in fact, this is what has happened. And, as I said earlier, the plaintiffs would have had to make an application to this Court for modification sooner or later.

The Township argues and the Court agrees that the change is so significant that the Township is entitled to vacate the judgment and to have its case transferred to the Housing Council.

I say that sentence with a great deal of reluctance with a full knowledge of the enormous amount of effort and time that has gone into this, and I presume in good faith from all parties.

The fact of the matter is the Court cannot interpose any sense of what is just and fair in this case and have it comport with what the Supreme Court has felt to be just and fair in all of the cases which

were in a similar posture which were transferred.

Many cases were at the brink, so to speak, of housing, and nonetheless, were transferred.

This case is now without a final judgment, and the Court believes that it has no alternative but to transfer the case to the Council on Affordable Housing pursuant to the Hills decision.

The plaintiffs' motion is therefore moot. I recognize there could theoretically be some obligation on behalf of this Township to pursue the non-payment of fees that has apparently admittedly occurred here. That is not something which the Court need deal with at this particular juncture.

I also recognize that there is pending an appeal with regard to the validity of the collection of those fees in another setting, and the Court will not at this time entertain any motion to enforce that aspect of the judgment.

Of course, it's a substantial question whether I have jurisdiction to enforce anything at this point given the vacation of the judgment which I have.

Lastly, the plaintiff Woodhaven did argue that if the settlement is vacated as to O & Y, it need not be vacated as to Woodhaven for the reasons which I have stated, perhaps, in too much length.

The defendant is entitled to a vacation as to both plaintiffs. The settlement with respect to the two parties is totally inter-related and inter-dependent.

The defendant was induced to settle with two parties, based upon the total package because of what each could contribute towards an integrated development.

Therefore, the vacation will apply to both of the plaintiffs.

All right. Counsel can submit an order.

MR. NORMAN: Thank you, your Honor.