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~~WELLS~~ Cranbury twp

9-Apr-84

Affidavit of Lawrence B.
Zitwin, attorney

pgs. 10.

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SCERBO, KOBIN, LITWIN & WOLFF

10 PARK PLACE
MORRISTOWN, N. J. 07960
(201) 538-4220
ATTORNEYS FOR

BROWING FERRIS INDUSTRIES
OF SOUTH JERSEY, INC., A
Corporation of the State of
New Jersey, RICHCRETE CONCRETE
CO., A corporation of the State
of New Jersey, and MID-STATE
FILIGREE SYSTEMS, INC., A
Corporation of the State of New
Jersey

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Docket No. L 058046-83 P.W.

AFFIDAVIT

Plaintiffs

vs.

CRANBURY TOWNSHIP PLANNING
BOARD AND THE TOWNSHIP
COMMITTEE OF THE TOWNSHIP
OF CRANBURY

Defendants

LAWRENCE ZIRINSKY,
Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

THE TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF CRANBURY, A municipi-
pal Corporation and THE PLANNING
BOARD OF THE TOWNSHIP OF CRANBURY

Defendants

JOSEPH MORRIS AND ROBERT
MORRIS,

Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION

vs.

Docket No. L 054117-83

THE TOWNSHIP OF CRANBURY
IN THE COUNTY OF MIDDLESEX,
A Municipal Corporation of the
State of New Jersey,

Defendant

GARFIELD & COMPANY,
Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

vs.

Docket No. L055956-83 P.W.

MAYOR AND THE TOWNSHIP
COMMITTEE OF THE TOWNSHIP
OF CRANBURY, A Municipal
Corporation and the Members
thereof; PLANNING BOARD OF THE
TOWNSHIP OF CRANBURY, and the
members thereof,

Defendants

CRANBURY DEVELOPMENT
CORPORATION, A Corporation
of the State of New Jersey,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

vs.

Docket No. L 59643-83

CRANBURY TOWNSHIP PLANNING
BOARD AND THE TOWNSHIP
COMMITTEE OF THE TOWNSHIP OF
CRANBURY,

Defendant

URBAN LEAGUE OF GREATER
NEW BRUNSWICK,

Plaintiff

vs.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION

Docket No. C 4122-73

THE MAYOR AND COUNCIL
OF THE BOROUGH OF
CARTERET, et al,

Defendant

CRANBURY LAND COMPANY, a
New Jersey Limited Partnership
Plaintiff

vs.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Docket No. L 070841-83

CRANBURY TOWNSHIP, A
Municipal Corporation of the
State of New Jersey located in
Middlesex County, New Jersey,

Defendant

TOLL BROTHERS, INC., A
Pennsylvania Corporation,
Plaintiff

vs.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Docket No. L 005652-84

THE TOWNSHIP OF CRANBURY
IN THE COUNTY OF MIDDLESEX,
A Municipal Corporation of the
State of New Jersey, THE TOWNSHIP
COMMITTEE OF THE TOWNSHIP OF
CRANBURY AND THE PLANNING
BOARD OF THE TOWNSHIP OF
CRANBURY,

Defendants

LAWRENCE B. LITWIN, of full age, being duly sworn, according to law, upon his oath, deposes and says:

1. I am an attorney at law of the State of New Jersey and a member of the firm of Scerbo, Kobin, Litwin and Wolff, attorneys for the plaintiffs, Browning-Ferris Industries of South Jersey, Richcrete Concrete Co., and Mid-State Filigree Systems, Inc.

2. This Affidavit is made in support of plaintiff's motion to enforce a settlement.

3. Prior to March 2, 1984, William Moran, Esq., of the firm of Huff, Moran and Balint, attorneys for the Township Committee of the Township of Cranbury, (hereinafter the Township Committee) called me to discuss a settlement proposal. These discussions resulted in a meeting in Mr. Moran's office in Cranbury on March 2, 1984. Paul Szymanski, P.P., one of the plaintiffs' experts, and I met with William Moran and George Raymond and others of Raymond, Parish and Pine, planners for the Township Committee.

4. As a result of that meeting, the following proposal was made by Mr. Moran on behalf of the Township Committee:

A. All lands west of plaintiffs' property and south of Brickyard Road up to the highway commercial zone would be zoned light impact industrial. The rezoned property is presently zoned light impact residential.

B. Plaintiffs' land and premises would be a conditional permitted use. This would permit expansion of the plaintiffs' properties provided the use complies with certain conditions. Conditional use designation would avoid the necessity for use variances. Subsequent to the meeting of March 2, 1984 the exact language of such a zoning provision was agreed upon by the planners for plaintiffs and the Township Committee.

C. The land and premises, north of Brickyard Road and South of Indian Run Stream, would be zoned industrial light impact. This land is also presently zoned light impact residential. Cranbury Development Corp., a co-plaintiff, is the owner of the aforesaid lands and premises; Cranbury Development Corp. was required to consent to this rezoning and to abandon a portion of its action.

5. Upon completion of the March 2, 1984 meeting, Mr. Szymanski and I met with Thomas Farino, Esq., the attorney for Cranbury Development Corp. Shortly thereafter, Mr. Farino advised that Cranbury Development Corp. would approve the rezoning referred to in Paragraph 4C hereof as a partial settlement of its case.

6. On or about March 12, 1984, at the time plaintiffs were to take depositions of the defendants, I was advised by Mr. Moran that the settlement had been approved by the Mayor and one member of the Township Committee. Mr. Moran also

indicated that the settlement had been discussed with the defendant Cranbury Township Planning Board (hereinafter Planning Board).

7. Subsequent thereto, on March 14, 1984, I forwarded a proposed form of Consent Order (See Exhibit 1 annexed hereto) to William C. Moran, Esq., Joseph Stonaker, Esq., of Stonaker and Stonaker, attorneys for the Planning Board of the Township of Cranbury and Thomas Farino. In addition, at great cost and expense, plaintiffs filed and served a Notice of Motion to approve said settlement at the pretrial before the Honorable Eugene Serpentelli on March 15, 1984.

8. Simultaneously, on March 14, 1984 I attended a meeting of the Planning Board. At that meeting the Planning Board approved the settlement.

9. On March 15, 1984, at the pretrial, Mr. Farino attorney for Cranbury Development, Corp. and Mr. Stonaker, attorney for the defendant Planning Board, affixed their signatures to the Consent Order.

10. At the pretrial conference on March 15, 1984, all parties found the proposed form of Consent Order to be satisfactory except the Urban League. The Township Committee noted not objection on the record nor did any other party object thereto. By letter dated March 21, 1984 to the Court the Urban League indicated that they had no objection to the settlement.

11. On Monday evening, March 19, 1984, I appeared at the Township Committee meeting. At the executive session I was advised that the matter would be considered. The Township Committee wished to review the plaintiffs' experts reports.

12. Subsequently on Wednesday, March 21, 1984, I was contacted by William Moran who advised that the settlement could be made if plaintiff Mid-State Filigree Systems, Inc., (hereinafter Mid-State) put additional shrubs along Brickyard Road and if Mid-State had three lights, which were recently installed, brought into conformity with municipal ordinance.

13. Thereafter I spoke with plaintiff Mid-State who advised that approximately one (1) year ago, Mid-State put several shrubs along Brickyard Road. These shrubs are having difficulty growing due to percolation. In addition, I was advised that the lights had cleared an electrical inspection required by the Township of Cranbury and no other objection thereto was previously noted by the Township.

14. Shortly thereafter, I advised Mr. Moran of these facts and he responded that he viewed the Mid-State premises and in his opinion Mid-State was proceeding in good faith to comply with the Township Committee's request. Nevertheless, Mr. Moran advised that the Township Committee required additional consideration as a result of a matter entitled Dillon vs. Mid-State, Superior Court of New Jersey, Middlesex

County, Docket No. C 2653-83. Although the Township Committee had not filed a cross claim in that action, it was clear that the Township Committee would require Mid-State to submit a site plan review with respect to the shrubs on Brickyard Road and additional lighting. In order to attempt to accommodate the Township Committee, on April 2, 1984, I met with Philip Shore, Esq., attorney for Mid-State in the Dillon vs. Mid-State, and Mr. Moran. Mr. Shore, Mr. Moran and I spent two hours agreeing upon additional language to be added to the Consent Order. Attached hereto as Exhibit 2 is the additional language. Mr. Moran indicated that the Planning Board would abide his determination.

15. Three days later on April 5, 1984 Mr. Moran advised that the agreed language was not satisfactory. Mr. Moran's client required further refinement to the language which in essence amounted to a renege upon the part of the Township Committee. Mr. Moran advised that even if Mid-State was successful in the Dillon vs. Mid-State, a limited site plan review would still be required.

16. On April 6, 1984, I met with Mr. Moran and we viewed the site. Subsequently I advised Mr. Moran that I could not in good conscience negotiate with him unless the entire Township Committee was present; clearly Mr. Moran has no authority to speak for his client in any meaningful fashion. Mr. Moran advised that the next meeting of the Township Committee was on April 16, 1984, a religious holiday.

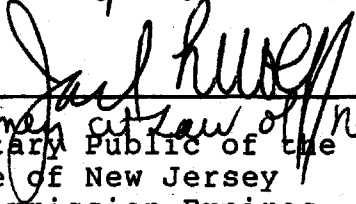
17. Mid-State, however, as a sign of good faith hereby advises the Court that if the Township Committee and the Planning Board agree forthwith, Mid-State will consent to provisions being added to the existing Consent Order which require Mid-State to: 1. Remove the recently installed lighting; 2. Install an additional row of 5-6' white pines on Brickyard Road behind the resently installed plants; alternatively Mid-State is willing to put a 5-6' solid concrete fence behind the existing shrubs. This fence would act as a true buffer since it is possible that shrubs will not grow in the area due to percolation. Mid-State wishes to resolve the matter.

18. The Township Committee has reneged twice; Mid-State has been unable to require the Township Committee to come to the bargaining table. Therefore, Mid-State requests that the Court require the Township Committee to agree to the Consent Order with the revisions referred to in Paragraph 17 hereof. Such revisions comply with the Township's requirements. However, I have not been able to determine from Mr. Moran if this is satisfactory. If the Township Committee is now unwilling to agree, it is clear that the Township Committee is clearly guilty of bad faith and breach of contract.

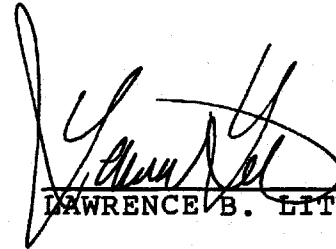
19. Agreements to settle law suits are contracts. Oral agreements to settle law suits are enforceable absent the presence of fraud or other compelling circumstances. The Court should honor and enforce this settlement as it does other

contracts, See Pascarella vs. Bruck 190 N.J. Super 118 (App. Div. 1983), See also Tabaas vs. Atlantic City 174 N.J. Super. 519, 534 (Law Div. 1980).

Sworn to and Subscribed
before me this 9th
day of April 1984



attorney at law of New Jersey
A Notary Public of the
State of New Jersey
My Commission Expires



LAWRENCE B. LITWIN, ESQ.