1L- Morris County Fair Housing
v. Boonton

July 3, 1985

Denville

Plaintiffs letter brief in opposition to motions for leave to appeal and stay appeal

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JUDGE STEPHEN SKILLMAN

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July 3, 1985

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

Re: Morris County Fair Housing Council, et al. v. Boonton Tp., et al., Docket No.

To the Honorable The Judges of the Appellate Division:

This letter brief is submitted by plaintiffs-respondents Morris County Fair Housing Council et al. in opposition to the motions for leave to appeal and stay pending appeal filed by Denville Township, the Denville Township Planning Board, and the Denville Township Board of Adjustment. These parties seek to appeal from the decision of the Law Division, Honorable Stephen Skillman, J.S.C., specially assigned Mt. Laurel judge, sitting, granting plaintiffs' motion to join the Planning Board and Board of Adjustment as parties.

PROCEDURAL HISTORY

This matter arises out of an exclusionary zoning case brought by the Morris County Fair Housing Council, the Morris County Branch of the NAACP, and the Public Advocate of New Jersey in October 1978 against Denville Township and a number of other municipalities in Morris County. The litigation against Denville

Township was settled after two weeks of trial in July 1984. Sometime after settlement, Denville Township repudiated the agreed-upon compliance plan and sought to transfer the case to the Council on Affordable Housing. In Hills Development Corporation v. Township of Bernards, Docket Nos. A 122 to A 133 (Feb. 20, 1986) (hereinafter Hills Development Corp.), the Supreme Court held that Denville Township was entitled to transfer the case to the Council on Affordable Housing pursuant to L. 1985 c. 222 §16(a). The Court, however, held that any such transfer was subject to the right of plaintiffs to seek an order placing conditions upon transfer to preserve "scarce resources," such as vacant developable land, sewerage capacity, and public water supply, that might prove to be necessary to enable the municipality to fully satisfy a Mt. Laurel obligation. Slip op. at 86-88. The Court noted that the inability to impose such conditions might well render such a transfer unconstitutional. Slip op. at 77.

Plaintiffs made a timely application for conditions. (Da 1) Based upon representations previously made by Denville Township in the course of the litigation and expert reports submitted by the municipality to the trial court, plaintiffs alleged that, inter alia, vacant developable land, water supply and sewerage capacity in the municipality were in such short supply and were so much in peril of further exhaustion during the pendency of proceedings before the Council on Affordable Housing, that the trial court should condition any transfer to the Council upon entry of restraints limiting development of vacant land and

additional connections to the public sanitary sewage system. (Da 4) Plaintiffs also moved to join the municipal planning board, board of adjustment, and utilities authority, since those are the municipal agencies that control development of land and connection with the sanitary sewage system. (Da 1)

After briefing and argument, the trial court granted this motion. It issued a lengthy and detailed oral opinion, and entered an order on May 29, 1986.* Defendants have now moved for leave to appeal this decision.

I. DEFENDANTS' MOTION FOR LEAVE TO APPEAL THE TRIAL COURT'S DECISION TO JOIN ADDITIONAL PARTIES SHOULD BE DENIED

Defendants' motion for leave to appeal the decision by the trial court joining as parties the municipal planning board and board of adjustment should be denied because they fail to demonstrate the existence of any special circumstances that would require immediate interlocutory review of this decision.

Under the Rules of Court, appeals from interlocutory decisions of the trial courts are not routinely permitted. R.

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* The respondents have failed to file with their motion the one document that is indispensible under R. 2:5-6 and R. 8-1 -- the opinion of the trial court below. The absence in the record submitted to this Court of the trial court's careful and thorough opinion both deprives this Court of the reasoning and analysis of the trial court and conveys the erroneous impression that the trial court's decision was haphazard or off-the-cuff. A review of the opinion itself would demonstrate that nothing could be further from the truth.

This violation of the Court Rules would be grounds for dismissal of the motion for leave to appeal pursuant to R. 2:8-1 and R. 2:9-9.

2:2-4. To the contrary, the Supreme Court has held that such appeals are strongly disfavored; for they foster the evils of piecemeal and fragmentary adjudication, increase expense and delay in the administration of justice, and aggravate congestion in judicial dockets. In re Appeal of Pennsylvania Railroad Co., 20 N.J. 398, 408-412 (1956). The Supreme Court has recently reaffirmed this principle. Noting with approval that New Jersey courts have generally been regarded as "inhospitable" to appeals from interlocutory rulings, the Court declared that such appeals are to be permitted "only sparingly." State v. Reldan, 100 N.J. 187, 205 (1985).

Evaluated by this standard, the present case is singularly inappropriate for interlocutory review. First, this is not a case in which an interlocutory appeal is necessary to preserve an issue for review. The propriety of the decision of the trial court to join the planning board and board of adjustment will be available for review when and if the trial court renders its decision on whether to impose conditions. Whatever arguments defendants might make now can be made with equal force then.

Second, the ruling of the trial court will not cause injustice for any party. The ruling below concerned a narrow procedural issue. Despite the efforts of the defendants to inject issues as to the merits of the case into this appeal, the trial court was very emphatic in its opinion that it was not ruling on the merits of plaintiffs application for conditions but merely on whether additional parties could or should be brought before the court so that the court could make a ruling on the

merits. No party can suffer injustice as a result of this ruling since it imposes no obligation on any party, establishes no rights or duties, and places no burden on any party other than the burden of appearing to argue the merits. There is therefore no basis for a finding that interlocutory appeal is justified "in the interests of justice" pursuant to R. 2:2-4.

Third, this matter does not involve any issue of broad public importance that requires immediate review. In joining additional parties, in this matter, the trial court exercised no novel powers, decided no novel legal issues, and made no decisions that affect parties other than the defendants in this matter.

Finally, permitting interlocutory appeal in this matter would delay action by the trial court to preserve "scarce resources" which may be essential to the municipality's ultimate ability to satisfy its constitutional obligations and would thwart the intentions of the Supreme Court as set forth in the Hills Development Corp. decision. In that decision, the Supreme Court recognized that in some municipalities resources such as vacant developable land, sewerage capacity and public water supply might be relatively limited and that during the course of any extended proceeding, these resources could diminish to a point that would impair municipality's ability to fulfill its constitutional obligations and thus impair the ultimate vindication of the constitutional rights of lower income persons. Id. at 77, 86-88.

For this reason, the Court remanded this case to the trial court to determine what conditions to preserve scarce resources, if any, should be imposed. Proceedings in the trial court are now nearly complete. Interlocutory review by this court as sought by defendants would delay completion of these proceedings and would permit the risk of further dissipation of "scarce resources" while this appeal is pending to the potential injury of lower income persons. This result would be inconsistent with the mandate of the Supreme Court.

II. THE TRIAL COURT ACTED WITHIN ITS JURISDICTION IN JOINING THE PLANNING BOARD, BOARD OF ADJUSTMENT AND MUNICIPAL UTILITIES AUTHORITY AS PARTIES

The jurisdiction of the trial court in this matter derives from two distinct sources (1) from the explicit terms of the remand by the Supreme Court and (2) from the inherent jurisdictional powers of the Law Division of Superior Court. Under either of these sources of jurisdiction, the trial court acted within its jurisdiction in joining the planning board and board of adjustment as parties.

We shall address each of these sources of jurisdictional authority in turn.

First, the scope of the trial court jurisdiction and power on remand must be analyzed in light of the Supreme Court's expressed rationale for the remand. In Hills Development Corp., supra, the Supreme Court recognized that L. 1985 c. 222 embodies a strong policy favoring disposition of exclusionary cases by an administrative agency rather than by the courts. L. 1985 c. 222

§3. In light of this strong legislative policy, the Supreme Court held that L. 1985 c. 222 §16(a) generally requires that pending exclusionary zoning litigation be transferred to the Council on Affordable Housing on the application of any party. Id. at 46, 74-76.

Notwithstanding this strong legislative policy, however, the Court held that one class of cases could not constitutionally be transferred to the Council on Affordable Housing - those cases in which the consequences of transfer would not merely be a delay of the satisfaction of the municipality's constitutional housing obligation but impairment of the municipality's ultimate ability to satisfy its constitutional obligations. Such a consequence, the Court held, "would warrant, indeed, require, denial of transfer." Hills Development Corp., slip op. at 77.

In a conscious effort to limit the extent of this constitutionally mandated exception to the general legislative intent of transfer of cases to the Council on Affordable Housing, the Court ruled that the trial courts (and ultimately the Council itself, when it is fully operational) have the power to impose conditions upon municipalities that seek to invoke the jurisdiction of the Council. In recognizing this power, the Supreme Court expressed the hope that "the occurrence [of circumstances in which transfer must be denied] is made even less likely by our decision permitting the imposition of appropriate conditions on transfer." Id. at 77.

The Supreme Court did not attempt to determine for itself what conditions ought to be imposed on each municipal defendant,

how those conditions ought to be implemented, or whether imposition of conditions would be so ineffective in preserving scarce resources that transfer must, as a matter of constitutional law, be denied. These determinations, the Court recognized, are factual in nature and require detailed fact finding and evaluation. Id. at 87-88. The Court therefore remanded the case back to the trial court for determination of these issues. Id. at 88. Thus, while the remand to the trial court is limited in purpose, the Supreme Court intended that the trial court exercise the full scope of jurisdiction and powers to fulfill that purpose. The trial court thus has the power and jurisdiction to take whatever actions are necessary to preserve "scarce resources" so as to protect and assume the municipality's future ability to comply with its Mount Laurel obligations." Id. at 86-87.

The Supreme Court did not limit the power to the trial courts to preservation only of resources within the direct control of a municipal governing body. To the contrary it defined expansively the scope of the "scarce resources" to be preserved. It defined "scarce resources" to include all "those resources that will probably be essential to the satisfaction of [the municipality's] Mount Laurel obligation". Id. at 86. It gave examples of the types of "scarce resources" it had in mind: vacant land, sewerage capacity, transportation facilities, water supply and more generally "any one of the innumerable public improvements that are necessary to the support of housing but are limited in supply." Id. at 86-87. Thus, for example, the Court did not

limit conditions upon development of vacant land to vacant land owned by the municipality itself. To the contrary, the Court contemplated that timely court might impose conditions that would restrict development of land in private ownership suitable for development of lower income housing. Id. at 86, 88. Similarly, where sewage treatment capacity is a "scarce resource," the Court did not limit judicially imposed conditions to sewerage capacity within the direct control of the municipal governing body, instead, it contemplated that the judicially imposed conditions could restrict utilization of sewerage capacity from any source that might otherwise be available for lower income housing.

To reach "scarce resources" such as vacant developable land and sewerage capacity that are beyond the direct control of the municipal governing body, the trial courts must necessarily have the jurisdiction and power to impose conditions upon the public agencies, municipal and otherwise, which in fact exercise control over the development of land and the distribution of sewerage capacity. Any narrower limitation upon the power and jurisdiction of the trial courts would render them incapable of preserving "scarce resources" and helpless to fulfill the purposes of the remand.

In the present case, the municipal planning board and board of adjustment are the agencies that control development of vacant land. To preserve these scarce resources, the trial court must be able to exercise jurisdiction over these municipal agencies. The trial court below properly concluded this was fully within

the scope of its jurisdiction and power under the terms of the remand.

Second, independently of the specific terms of this remand and the specific provisions of L. 1985 c. 222, it is well-established that whenever a court has jurisdiction over a case, it has the jurisdictional power to issue whatever orders are necessary to preserve the subject matter of the litigation pending ultimate resolution of the case on the merits. As the Supreme Court observed in Feraiullo v. Manno, 1 N.J. 105, 108-109 (1958), "the court, having jurisdiction, will always intervene to protect the res from destruction, loss, or impairment, so as to prevent the decree of the court, upon the merits, from becoming futile or inefficacious in operation." Accord Haines v. Burlington County Bridge Co., 1 N.J. Super. 163, 174 (App. Div. 1949); see generally Crowe v. DeGioia, 9 N.J. 126, 133-34 (1982). In exercise of its power and duty to preserve the subject matter of the litigation, the court may exercise ancillary jurisdiction over nonparties to the litigation. See Fidelity Union Trust Company v. Union Cemetary Association, aff'd 134 N.J. Eq. 539 (Ct. of Err. & App. 1944); Kitty Kelly Shoe Corp. v. United Retail Employees of Newark N.J. Local No. 108, 125 N.J. Eq. 250 (Ch. 1934), cf. West Jersey Title & Guarantey Co. v. Industrial Trust Co., 27 N.J. 144, 150 (1958) (ancillary jurisdiction generally). The courts may properly exercise this power even where the case is to be transferred to an administrative agency for decision. See Boss v. Rockland Electric Co., 95 N.J. 33 (1983) (in case challenging cutting of trees by utility company,

the Supreme Court upheld an interlocutory injunction barring the cutting of the trees during the pendancy of proceedings, even though it determined that case should be transferred to Board of Public Utilities for decision).

In the present case, plaintiffs have asserted that limited resources essential to enable the municipal defendant to meets its constitutional obligations are in peril of being lost or dissipated during the pendency of proceedings. The loss of these resources will deprive the Council of Affordable Housing and, ultimately, the courts from vindicating the constitutional rights of lower income persons. Under these circumstances, the trial court has the jurisdictional power in the present proceeding to issue orders to preserve the status quo and prevent dissipation of resources whose availability will be essential to the grant of relief. A fortiori, the court has the jurisdictional power to bring before it the parties who control those resources so that it may determine whether such interlocutory relief to preserve the status quo is justified.

III. THE TRIAL COURT PROPERLY JOINED ADDITIONAL PARTIES UNDER R. 4:30 AND R. 4:28

The trial court properly joined the Randolph Township Planning Board, the Randolph Township Board of Adjustment, and the Randolph Township Municipal Utilities Authority as defendants in this matter under Rules 4:30 and 4:28 so as to have before it all parties who might be necessary to protect the ability of the

Council on Affordable Housing and, ultimately, the courts to grant full relief to plaintiffs.

A. The Trial Court Properly Determined That Full Relief Could Not Be Granted In The Absence Of These Parties Under R. 4:28-1(a) And Therefore Properly Joined These Parties "To Be Joined If Feasible"

The trial court properly joined these parties as parties defendant under R. 4:28-1. In pertinent part, that rule states:

> 4:28-1. Joinder of Persons Needed for Just Adjudication
>
> (a) Persons to be Joined if Feasible. A person who is subject to service of process shall be joined as a party to the action if (1) in his absence complete relief cannot be accorded among those already parties,* * * If he has not been so joined, the court shall order that he be made a party.

This rule is identical to, and modeled upon, Federal Rule of Civil Procedure 19(a). S. Pressler, Rules Governing the Court of the State of New Jersey, Comment to R. 4:28-1 at p. 810 (1986 ed.)

If it comes to the attention of the trial court, whether by motion or otherwise, that it does not have before it all the parties necessary to grant full relief, this rule requires the court to joint the requisite additional parties if feasible.*

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* The trial court charaterized the additional parties in this case as "indispensible" parties. Strictly speaking, the term "indispensible party" applies ony to parties without whom the case cannot proceed forward under R. 4:28-1(b). The court need not have found these parties to be "indispensible" to join them under R. 4:28-1(a). It need merely find that they are parties to
(Footnote continues on next page)

While there appear to be few reported state court decisions discussing the circumstances under which a party should be joined under R. 4:28-1(a)(1) to enable full relief to be granted, the federal courts have employed this rule in this context on many occasions. Three examples are illustrative.

In Fernandez-Roque v. Smith, 535 F. Supp. 741 (N.D. Ga. 1981), former Cuban prisoners detained by the federal Immigration and Naturalization Service brought suit against the INS seeking their release. On plaintiffs' motion, the trial court subsequently added as defendants government officials responsible for resettlement of Cuban refugees. It did so under F.R. Civ. Pro. 19(a)(1) on the grounds that as a matter of law, Cuban detainees could not be released without a sponsor, so that action by the resettlement officials responsible for securing sponsors would be essential for any meaningful relief, if the court ultimately determines that relief should be granted.

Similarly in Mandino v. Lynn, 357 F. Supp. 169, 277 (W.D. Mo. 1973), an applicant for federally subsidized low income housing challenged the legality of policies of the federal Department of Housing and Urban Development concerning minimum income levels for residents of such housing. The court joined the private management company that was managing the apartment building in question. It did so under F.R. Civ. Pro. 19(a)(1) on

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be joined if feasible. See Marquez v. Hardin, 339 F. Supp. 1364, 1371 (N.D. Cal. 1969).

the grounds that in the absence of the management company, the court would not be able to preserve the status quo until it reached the merits of the claim against HUD.

Finally, in Marquez v. Hardin, 339 F. Supp. 1369, 1371 (N.D. Cal. 1964), plaintiff low income children brought suit against the U.S. Department of Agriculture alleging failure to implement the federal free school lunch program in accordance with federal law. The Court joined state officials under R. Civ. Pro. 19(a)(1), on the grounds that the state actually administers the program and complete relief would require action by the state as well as by the federal government.

These cases demonstrate that R. 4:28-1 authorizes, and, indeed, requires, joinder of parties who are needed if full relief is to be granted. They also exemplify two other important principles in the application of R. 4:28-1(a)(1). First, the decisions as to whether to join additional parties under this rule is distinct from the question of whether relief is justified on the merits. Thus, in Ferandez-Roques, the court expressly rejected objections to joinder based on claims that plaintiffs were not entitled to relief against these additional defendants, reserving judgment on the propriety and scope of any relief. Indeed, an important rationale for joinder of additional parties who may be necessary for full relief is to enable the court to hear all relevant points of view on what the scope of relief, if any, should be. This purpose would be defeated if a court could not join such additional parties until after it had determined what the scope of relief should be.

Second, as these cases demonstrate, joinder is not dependent on any claim that the additional parties have themselves engaged in wrongful action. To the contrary, in none of these cases was it alleged that the additional defendants were independently engaged in wrongful conduct, merely that they were necessary for full relief.

In the present case, the municipality planning board and the board of adjustment conceded - indeed, insisted - below that no relief could be granted in their absence. They are therefore parties who should be joined if feasible under R. 4:28-1(a)(1). The trial court acted appropriately in joining them as parties.

B. The Joinder Of These Parties Was A Proper Exercise Of Discretion By The Trial Court Under R. 4:30

Although the trial court based its decision to join these parties on R. 4:28-1, the plaintiffs also grounded their request on R. 4:30. The trial court's action would have been authorized and proper under that rule as well.

In pertinent part, R. 4:30 states: "Parties may be dropped or added by court order on motion by any party or on its own motion." This rule is identical to, and modeled upon, F.R. Civ. Pro. 21. Schnitzer and Wildstein, New Jersey Rules Service AIV-1055 (Sp. Reprint Ed. 1982). It represents one of the major innovations of the new procedures adopted to implement the judicial reforms in the Constitution of 1947. It was expressly designed to give the courts very broad discretion to join additional parties whenever the ends of justice so require.

Sperry & Hutchinson Co. v. Margetts, 25 N.J. Super. 568, 579 (App. Div. 1953), aff'd 15 N.J. 203 (1954); Maddox v. Horne, 7 N.J. Super. 15, 18 (App. Div. 1950). It may be used to join either additional plaintiffs or additional defendants. See Atlantic Seaboard Co. v. Borough of Seaside Park, 8 N.J. Super. 188, 193-94 (App. Div.) certif. denied 5 N.J. 571 (1950); Maddox v. Horne, supra, and depending on the circumstances of the case, may be invoked at any time in the litigation, including after judgment, Gentry v. Smith, 487 F. 2d 571, 587 (5 Cir. 1973), or even on appeal, Mullaney v. Anderson, 342 U.S. 415 (1952) (additional parties joined before U. S. Supreme Court).

Joinder of additional parties under this rule is placed within the discretion of the trial court. Trial court decisions under this rule are reviewable only for abuse of discretion. United States v. Elfer, 246 F. 2d 941, 946 (9 Cir. 1957); Gentry v. Smith, 487 F. 2d 571, 580 (5 Cir. 1973).

Federal court decisions under F.R. Civ. Pro. 21 illustrate the broad discretionary power of the courts under this rule to join additional parties whose presence may be relevant to the granting of relief. The leading case is DuShane v. Conlish, 583 F. 2d 965 (7 Cir. 1978). In previous litigation, the courts had ruled that plaintiff had been suspended unconstitutionally from his job as a police officer. He brought a second suit against municipal officials to secure reinstatement to all the benefits of his job, including eligibility for promotion to sargeant. During the course of the litigation it emerged that promotions could only be authorized by the state civil service commission.

The trial court dismissed the suit on the grounds that, in the absence of the state civil service commission, it could not grant any meaningful relief to plaintiff. The Court of Appeals reversed, holding that F.R. Civ. Pro. 21 was designed to deal with just this type of situation and empowered the trial court to join the state civil service commission.

In reaching this conclusion, the Court of Appeals emphasized two points. First, the decision to join the additional defendants under F.R. Civ. Pro. 21 is independent of any decision as to whether relief will ultimately prove to be justified. 583 F. 2d at 967. Second, the decision to join additional defendants under this rule does not depend upon any claim that the additional defendants have themselves engaged in wrongdoing. The Court of Appeals declared that the power of the trial courts extends "to persons who though not parties to the original action or engaged in wrongdoing are in a position to frustrate the implementation of a court order or the proper administration of justice, . . . and encompass even those who have not taken any affirmative action to hinder justice." Id. (quoting United States v. New York Telephone Co., 434 U.S. 159, 174 (1977); elipsis in original).

Applying these principles to the present case, the trial court acted properly and within its authority under R. 4:30 to join additional parties when it brought before it the planning board and board of adjustment, so as to ensure that it had before it all parties who might be relevant to the granting of relief.

IV. DEFENDANTS ARE NOT ENTITLED TO A STAY PENDING APPEAL

Under the New Jersey Rules of Court, an appeal does not itself stay proceedings in the trial court. To the contrary, proceedings below automatically proceed forward without abatement unless the court makes an affirmative determination that a stay is justified. R. 2:9-5(a). This is true regardless of whether the appeal is sought as a matter of right or on leave granted.

A party seeking a stay pending appeal must satisfy essentially the same requirements as an applicant for an interlocutory injunction:

1. The proponent of the stay will suffer irreparable injury if the stay is not entered.

2. The injury which the proponent will suffer if stay is not granted exceeds injuries which other parties will suffer as a result of entry of the stay.

3. The proponent has a substantial likelihood of prevailing on appeal.

4. Entry of the stay is not inconsistent with the public interest.

Virginia Petroleum Jobbers Association v. Federal Power Commission, 259 F. 2d 921, 925 (D.C. Cir. 1958). See generally C. Wright and A. Miller, 11 Federal Practice and Procedure, §2904 nn. 37-39 (1973 Ed. and 1985 Supp.) Cf. Crowe v. DeGioia, 90 N.J. 126 (1982) (applying same standard to award of interlocutory injunctions). If the party seeking a stay pending appeal does not satisfy these requirements, the court must deny the stay application.

The defendants in this proceeding cannot demonstrate that they satisfy any of these requirements. First, because the ruling below is purely procedural and interlocutory, the defendants suffer no irreparable injury if the stay is not granted. The only harm that they can allege is that they will be required to appear in the trial court and respond to plaintiffs' application for conditions. It is however well-established that the mere cost and inconvenience of proceedings in the trial court pending appeal does not constitute irreparable injury justifying a stay. See Virginia Petroleum Jobbers Association v. Federal Power Commission, 254 F. 2d at 925; Mesabi Iron Company v. Reserve Mining Company, 268 F. 2d 782 (8th Cir. 1959) (the fact that, in absence of stay, appellants will have to proceed with court ordered arbitration does not constitute cognizable injury). In every case involving an interlocutory appeal, the continuation of proceedings in the trial court during the pendency of the appeal will result in some cost and inconvenience to the appellant. If such costs and inconvenience were sufficient to justify the entry of a stay, a stay would be mandatory in every instance of an interlocutory appeal. R. 2:9-5, however, makes continuation of proceedings in the trial court the rule and a stay of such proceedings the exception. To grant a stay to defendants in this matter on the basis of their slender showing of harm is wholly inconsistent with the language of and policies underlying this rule

Moreover, the defendants have already completed their briefing in the trial. All that remains to be completed is oral

argument. Granting a stay at this point will not preserve the defendants from any harm.

Second, granting a stay at this point would cause injury to plaintiffs that would far outweigh any injury that defendants might suffer in the absence of a stay. A stay would bar the court below from acting to preserve "scarce resources" in the municipality and expose plaintiffs to the risk that resources essential to the satisfaction by Randolph Township of any Mt. Laurel obligation will be lost or dissipated.

Third, for the reasons set forth above, defendants do not have substantial likelihood of prevailing on appeal.

Fourth, entry of stay would not further the public interest. To the contrary it would thwart the intentions of the Supreme Court that the trial courts act promptly to preserve scarce resources in municipalities seeking transfer to the Council on Affordable Housing.

For all these reasons, a stay must be denied, regardless of whether the motion for leave to appeal is granted.

CONCLUSION

For all the reasons set forth above, defendants' motions for leave to appeal and for a stay pending appeal ought to be denied.

Respectfully submitted,

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SE:id
cc: All Counsel