

RULS-AD-1981-280

7/23/81

Re: Dobbs v. Bedminster

"Notice of Cross-Motion for an order amending
pretrial order + for Protective Order"

Pgs - 11

5-7364

RULS - AD - 1981 - 280

FILED

JUL 23 2 34 PM '81
SOMERSET COUNTY
CLERK

WINNE, BANTA & RIZZI
25 East Salem Street
Hackensack, New Jersey 07602
(201) 487-3800
Attorneys for Plaintiff,
Leonard Dobbs

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SOMERSET COUNTY

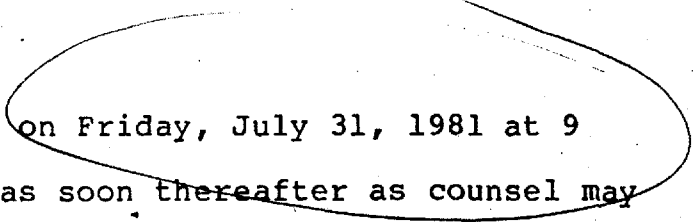
LEONARD DOBBS,	:	Docket No. L-12502-80
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
TOWNSHIP OF BEDMINSTER,	:	CIVIL ACTION
	:	
Defendant.	:	NOTICE OF CROSS MOTION FOR
	:	AN ORDER AMENDING PRETRIAL
ROBERT R. HENDERSON, DIANE M.	:	ORDER AND FOR A PROTECTIVE
HENDERSON, HENRY E. ENGELBRECHT,	:	ORDER
	:	
Defendants-Intervenors,	:	

TO: Alfred L. Ferguson, Esq.
McCarter & English
550 Broad Street
Newark, New Jersey 07102

Herbert A. Vogel, Esq.
Vogel & Chait
Maple Avenue at Miller Road
Morristown, New Jersey 07960

SIRS:

PLEASE TAKE NOTICE that on Friday, July 31, 1981 at 9 o'clock in the forenoon, or as soon thereafter as counsel may



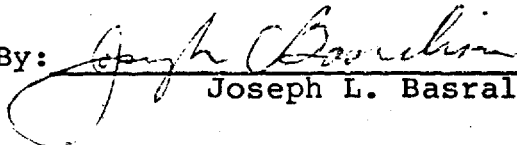
9.31.81 GJM Discovery - granted Cross-Motion To Amend Pre-Trial Order, denied

be heard, the undersigned attorneys for the plaintiff, Leonard Dobbs, will move before the Superior Court of New Jersey, Law Division, Somerset County, for an Order amending the Pretrial Order entered in this matter on April 3, 1981 and restricting the scope of discovery relative to plaintiff's contract to purchase certain property which is the subject matter of this action.

In support of the within motion, movant respectfully relies upon the Certification of Donald A. Klein and the Affidavit of Ralph K. Smith, Jr. filed herewith.

WINNE, BANTA & RIZZI
Attorneys for Plaintiff

By:



Joseph L. Basralian

Dated: July 23, 1981.

WINNE, BANTA & RIZZI
25 East Salem Street
Hackensack, New Jersey 07602
(201) 487-3800
Attorneys for Plaintiff,
Leonard Dobbs

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SOMERSET COUNTY

LEONARD DOBBS, : Docket No. L-12502-80
: :
Plaintiff, : :
: :
v. : :
: :
TOWNSHIP OF BEDMINSTER, : CIVIL ACTION
: :
Defendant. : CERTIFICATION IN SUPPORT OF
: NOTICE OF CROSS MOTION FOR
ROBERT R. HENDERSON, DIANE M. : AN ORDER AMENDING PRETRIAL
HENDERSON, HENRY E. ENGELBRECHT, : ORDER AND FOR A PROTECTIVE
: ORDER AND IN OPPOSITION TO
Defendants-Intervenors, : MOTION TO PRODUCE

Donald A. Klein, 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 Winne, Banta & Rizzi, attorneys for plaintiff, Leonard Dobbs, in this matter.

2. On April 3, 1981, a pretrial conference was held in connection with this matter and the Pretrial Order entered by the Honorable Michael R. Imbriani in connection therewith

directed, among other things, that discovery be completed within the time provided by the Rules and that a copy of plaintiff's contract with respect to purchase of the land in question be furnished to counsel for defendant and counsel for the intervenors by April 17, 1981.

3. On or about the time of the pretrial conference, the parties began to discuss a possible resolution of the within matter, pursuant to which the Township of Bedminster would conduct hearings with respect to plaintiff's proposed development and plaintiff would agree to a dismissal of his action without prejudice.

4. During the week following the pretrial conference, I advised Joseph Falgiani of McCarter & English and Thomas F. Collins, Jr. of Vogel and Chait of our intention to file a motion for a protective order with respect to the contract in question. It was our view that the only relevance of the contract was insofar as it established that plaintiff had standing to bring this action, a matter which could be established satisfactorily without production of the contract. I further advised Mr. Falgiani and Mr. Collins that in light of the settlement discussions which, at that time were serious, that we would prefer to avoid the time and expense which would be incurred by all parties with the filing and disposition of such a motion for a protective order and asked their consent to defer the filing of same until the question of whether the

matter would be settled had been resolved. It should be noted that the week after the entry of the Pretrial Order both Alfred L. Ferguson of McCarter and English and my partner, Joseph L. Basralian, who were the attorneys principally involved in this matter and who were the principal attorneys conducting the settlement discussions, were away. Both Mr. Falgiani and Mr. Collins assented to my proposal that our filing of a motion for a protective order await the outcome of the settlement discussions.

5. As mentioned previously, the only relevance of the contract in question to the instant litigation is to establish that plaintiff has standing to bring this action, an action challenging the validity of the Master Plan and Zoning Ordinance of defendant Township of Bedminster and, in the alternative, seeking the rezoning of plaintiff's property to permit retail and commercial use (Pretrial Order, Paragraph 1).

6. The Affidavit of Ralph K. Smith, Jr. filed herewith demonstrates plaintiff's standing to bring this action. Disclosure of the specific terms of the option agreement, which have been treated as confidential by the parties, is unnecessary and irrelevant. The attempt to obtain disclosure of the entire contract is essentially a harassment effort on the part of defendants-intervenors.

7. It should be noted that the contract was initially requested in discovery by counsel for defendant, Township of

Bedminster. Defendants-intervenors moved for intervention on short notice, three days prior to the pretrial conference, and have never propounded any discovery on plaintiff.

8. It is also significant, in assessing the motives of defendants-intervenors with respect to their production motion, that, notwithstanding the fact that defendants-intervenors sought leave to intervene because plaintiff had allegedly not exhausted his administrative remedies, defendants-intervenors resisted and opposed and thereby frustrated a settlement agreed to by the original parties (i.e., plaintiff and defendant, Township of Bedminster) pursuant to which a series of hearings were to be held by defendant municipality with respect to plaintiff's development proposal.

9. Plaintiff submits that the previous representations of counsel and the Affidavit of Ralph K. Smith filed herewith should satisfy defendant municipality's request for discovery (to establish plaintiff's standing) and the directive with respect to same in the Pretrial Order.

10. Accordingly, plaintiff respectfully requests that defendants-intervenors' production motion be denied and that plaintiff's motion for an Order Amending the Pretrial Order and for a Protective Order, pursuant to Rule 4:10-3(d), restricting the scope of discovery relative to the contract in question be granted.

Donald A. Klein

DONALD A. KLEIN

Sworn and subscribed to
before me this 23rd day
of July, 1981.

Kathleen A. Metzger

WINNE, BANTA & RIZZI
25 East Salem Street
Hackensack, New Jersey 07602
(201) 487-3800
Attorneys for Plaintiff,
Leonard Dobbs

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SOMERSET COUNTY

LEONARD DOBBS, :
 :
 Plaintiff, :
 :
 v. :
 :
 TOWNSHIP OF BEDMINSTER, :
 :
 Defendant. :
 :
 ROBERT R. HENDERSON, DIANE M. :
 HENDERSON, HENRY E. ENGELBRECHT, :
 :
 Defendants-Intervenors, :

Docket No. L-12502-80

CIVIL ACTION

AFFIDAVIT IN SUPPORT OF
CROSS-MOTION FOR PROTECTIVE
ORDER

STATE OF NEW YORK)

)SS.:

COUNTY OF NEW YORK)

RALPH K. SMITH, JR., 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 York
and a partner in the firm of Sage Gray Todd & Sims, Two World
Trade Center, New York, New York.

2. My firm is counsel for the owners of that approximate 211 acre tract of property in the Township of Bedminster which is the subject of the above-captioned litigation (hereinafter the "Property") and I am the partner in charge of all matters relating thereto.

3. I am fully aware of the above-captioned litigation, which is being prosecuted with my knowledge and consent, as counsel to the owners of the Property.

4. In addition to being counsel for the owners of the Property, I am co-trustee with Kenneth B. Schley under a trust which owns a 1/3 undivided interest in the Property and am record owner as nominee for certain major educational and medical institutions (Yale University, St. Paul's School, Memorial Hospital for Cancer and Allied Diseases and the New York Association for the Blind) which own a 1/6 undivided interest in the property.

5. The other owners of the Property are Kenneth B. Schley, Jr. (1/6 undivided interest), Anne C. Stradling (1/6 undivided interest) and Evander D. Schley (1/6 undivided interest).

6. By Option Agreement dated August 20, 1979, as amended June 9, 1980, the foregoing owners of the Property have granted to Leonard Dobbs, plaintiff in the above-entitled action, an option to purchase the property. The parties to the

Option Agreement have further agreed to the form of a Contract of Sale, appended to the Option Agreement, which Contract of Sale is to be executed by the optionee simultaneously with his exercise of the option.

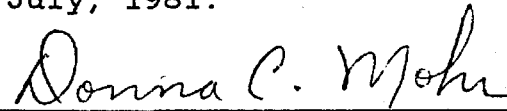
7. Leonard Dobbs has, to date, fully complied with the terms of the Option Agreement and the option still remains in full force and effect.

8. The parties to the Option Agreement have treated the terms of the Agreement as confidential and desire to continue to do so.



RALPH K. SMITH, JR.

Sworn and subscribed to
before me this *23rd* day
of July, 1981.



DONNA C. MOHR
NOTARY PUBLIC, State of New York
No. 31-4720353
Qualified in New York County
Commission Expires March 30, 1982

WINNE, BANTA & RIZZI

COUNSELLORS AT LAW

25 EAST SALEM STREET

P.O. Box 647

HACKENSACK, NEW JERSEY 07602

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T. THOMAS VAN DAM
RAYMOND R. WISS
PHILIP SCALO
EDWARD R. KOCH
VIRGINIA ANNE GLYNN

HORACE F. BANTA
OF COUNSEL

WALTER G. WINNE
1889-1972

NEWFOUNDLAND, N.J. OFFICE
(201) 697-4020

July 23, 1981

W. Lewis Bambrick, Clerk
Superior Court of New Jersey
State House Annex
Post Office Box 1300
Trenton, New Jersey 08625

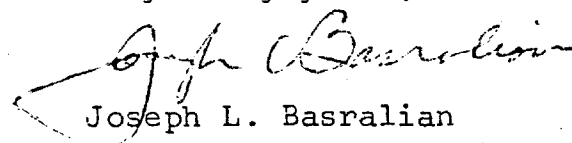
Re: Leonard Dobbs v. Township of Bedminster
Docket No. L-12502-80

Dear Sir:

Enclosed please find the original and two (2) copy of the Notice of Cross Motion for an Order amending Pretrial Order and for a Protective Order, Certification of Donald A. Klein and the Affidavit of Ralph K. Smith in the above-entitled matter returnable on July 31, 1981. Please file the original and return a copy to me in the enclosed self-addressed stamped envelope.

By copy of this letter, copies of the Motion, Certification and Affidavit are being forwarded to the Somerset County Clerk and our adversaries.

Very truly yours,


Joseph L. Basralian

JLB:vjs
Enclosures

cc: Somerset County Clerk (Hand Delivered on 7/23/81)
McCarter & English, Esqs. (Hand Delivered on 7/23/81)
Vogel & Chait, Esqs. (Hand Delivered on 7/23/81)

file

WINNE, BANTA & RIZZI

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HACKENSACK, NEW JERSEY 07602

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REC'D AT CHAMBER

JUL 17 1981

Robert E. Gaynor

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1889-1972

NEWFOUNDLAND, N. J. OFFICE
(201) 697-4020

July 16, 1981

Honorable Robert E. Gaynor
Court House
Somerville, New Jersey 08876

Re: Dobbs v. Bedminster, et al.

Dear Judge Gaynor:

This letter will serve to confirm my several telephone conversations with your Honor and your law clerk, relative to the above-captioned matter.

It is my understanding that the motion filed by the office of Vogel & Chait seeking to compel the plaintiff to produce his Contract to Purchase has been adjourned until July 31, 1981.

As I indicated to the Court, it is my intention to file a motion to amend the Pre-trial Order and to secure a Protective Order as to such Contract. These motions will be heard by the Court on July 31st, despite the entry of an Order staying the Law Division proceeding, pending a determination by the Appellate Division on several related matters.

The cooperation of the Court is greatly appreciated.

Respectfully yours,

Raymond R. Wiss
Raymond R. Wiss

RRW/cs

cc: Vogel & Chait
Brener, Wallack, Rosner & Hill
McCarter & English

Ltr from P's
counsel stating
intent file
motion for
protective order
re: discovery

7/16/81