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September 4,1984

Honorable Eugene D. Serpentelli
Superior Court of New Jersey
CN-2191
Toms River, New Jersey 08754

Re: Allan-Deane Corporation, et al v.
Township of Bedminster, et al

Dear Judge Serpentelli:

Enclosed is Leonard Dobbs' Brief and Appendix in connection with the builder's remedy issue.

Very respectfully,

Donald A. Klein

DAK/pmc

Enclosure

BY HAND

cc: Alfred L. Ferguson, Esq.
Henry A. Hill, Jr., Esq.
Kenneth E. Meiser, Esq.
Mr. George M. Raymond, P.P.

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION:SOMERSET COUNTY

| | |
|---|---|
| ALLAN-DEANE CORPORATION, et al.<br><br>Plaintiffs,<br><br>v.<br><br>TOWNSHIP OF BEDMINSTER, et al.<br><br>Defendants. | Docket Nos. L-36896-70 P.W,.<br>L-28061-71 P.W,.<br><br>CIVIL ACTION |

# MEMORANDUM OF LAW IN SUPPORT OF LEONARD DOBBS[1] RIGHT TO A BUILDER'S REMEDY

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## STATEMENT OF FACTS

In November 1980, Leonard Dobbs ("Dobbs") commenced a litigation against the Township of Bedminster ("the Township"), challenging as arbitrary and unreasonable the three-acre residential zoning of the Dobbs tract (i.e., the 2.11 acre tract as to which Dobbs is an optionee) and the Township's refusal to rezone the Dobbs tract or to afford Dobbs an opportunity to fairly present to the Township his development proposal. Prior to the commencement of such litigation, Dobbs had requested that the Township give consideration to rezoning a portion of the Dobbs tract for regional commercial and office development (with the remainder to be zoned for such uses as would provide a balanced development plan). (A copy of Dobbs[1] Complaint commencing such action is included as Exhibit A in the Appendix filed herewith.)

On July 17, 1981, the foregoing litigation was stayed by order of the Honorable Robert E. Gaynor. (A copy of the Stay Order is included as Exhibit B in the Appendix filed herewith.) Such Stay remains in full force and effect.

On August 16, 1982, Dobbs submitted an alternative proposal to the Township's Planning Board, whereunder 49 acres of the Dobbs tract would be made available by Dobbs to the Township for a park and other public purposes and 30 acres would be available for residential uses. (A copy of Dobbs' August 16, 1982 submission is included as Exhibit C in the Appendix filed herewith.)

On January 20, 1983, the New Jersey Supreme Court decided So. Burlington Cty, N.A.A.C.P. v. Mount Laurel Tp., 92 N.J. 158 (1983) ("Mount Laurel II").

On February 24, 1983, the Township filed an application for Green Acres funding to acquire the entire Dobbs tract. (A copy of the Townships[1] Green Acres application is included as Exhibit D in the Appendix filed herewith.)

On June 9, 1983, Dobbs filed with Green Acres his formal objections to the Township's Green Acres application, arguing, inter alia, that the Township's application was a subterfuge to prevent responsible and orderly development of the Dobbs tract and to avoid the Township's Mount Laurel II obligations. (A copy of Dobbs[1] Memorandum to Green Acres is included as Exhibit E in the Appendix filed herewith.)

On June 14, 1983, Dobbs amended the residential component of his August 1982 proposal to provide that forty acres would be utilized for the development of high density multi-family housing, with a substantial percentage of the housing units to be for low and moderate income persons, as defined in the Mount Laurel decision, thereby enhancing the reasonableness of Dobbs[1] development proposal. (A copy of Dobbs[1] June 14, 1983 submission is included as Exhibit F in the Appendix filed herewith.)

On July 28, 1983, Dobbs moved to amend his complaint against the Township to incorporate, inter alia, the changes in his devel-

opment proposal occasioned by the Mount Laurel II decision. (A copy of Dobbs[1] proposed Amended and Supplemental Complaint in Lieu of Prerogative Writ filed with such motion is included as Exhibit G in the Appendix filed herewith.)

Dobbs[1] motion to amend was assigned to Your Honor as the Mount Laurel II judge assigned to the territory which included the Township of Bedminster.

On September 22, 1983, the Township advised Green Acres that "the Township Committee of the Township of Bedminster has decided that because of financial and legal reasons the application submitted earlier this year will need to remain in a 'pending[1] status most likely through the end of the year." (A copy of the Township's September 22, 1983 letter is included as Exhibit H in the Appendix filed herewith.)

Your Honor did not decide Dobbs' motion to amend his Complaint. Rather, Your Honor permitted Dobbs to participate extensively in the Case Management Conferences and related proceedings which have been conducted to date in Allan-Deane Corporation, et al. v. Township of Bedminister (Docket Nos. L-36896-70 P.W., L-28061-71 P.W.). In the Allan-Deane case, Your Honor must determine whether the Township has complied with its Mount Laurel II obligations.

On October 6, 1983, a Status Conference was held before Your Honor. In attendance at the Status Conference were counsel and

other representatives for the various parties in the Allan-Deane litigation and the Dobbs litigation. At the Status Conference, Your Honor directed that the Court-appointed Master, George Raymond, make determinations (i) as to whether Hills[1] proposal for 260 low and moderate income housing units complied with Mount Laurel II, and (ii) as to region, fair share and whether the revised zoning ordinances of the Township provided realistic opportunities for the development of low and moderate income housing. Dobbs was permitted to provide input to the Master with respect to these issues.

The October 6, 1983 directive d'rd^rs were reflected in a Case Management Order entered on November 3, 1983, which provided in relevant part as follows:

> The Court wishes the Master to report on the question of whether the proposal by Allan-Deane Corporation/Hills Development Company complies with all the requirements placed upon a developer receiving the builders remedy and specific corporate relief under Mt. Laurel II.
>
> * * *
>
> The Master shall also determine whether the land development regulations of Bedminster Township with the recent amendments purposed by the Township, make realistically possible Bedminster*s fair share of low and moderate income housing as determined by the Master above, and in general, whether the planned development regulations of Bedminster Township, as existing and proposed, comply with the requirments of Mt. Laurel II.
>
> * * *

> All parties of this action, and all parties to the action entitled "Dobbs v. Bedminster Township, Law Division, Somerset County, Docket No. L-12502-80," shall have the right to forward such written information and documents as they deem appropriate to the Master, with respect to the Master's investigation and report requested in paragraph C above, with copies to all other counsel.

(A copy of the November 3, 1983 Case Management Order is included as Exhibit I in the Appendix filed herewith.)*

On November 17, 1983, Peter J. O'Connor, counsel for Dobbs, stated Dobbs[1] objections to the Hills proposal and the Township's land development regulations. Among other things, O'Connor argued that the Hills proposal did not provide housing for low and moderate income families which is affordable with 25% of their income, that the proposal failed to meet the 50% and 80% of median income criteria as established in Mount Laurel II, and that the proposal did not provide a range of housing affordable by persons of low and moderate means whose income is below the maximum 50% and 80% ceilings. Further, O'Connor argued that the Township had failed to take affirmative actions, as referred to in the Mount Laurel II decision, to reduce the cost of the units to low and moderate



* The Township's revised land development regulations, referred to in the November 3, 1983 Case Management Order, were contained in an August 1983 document entitled Master Plan Program, Part III, Housing Element, relevant excerpts from which are included as Exhibit J in the Appendix filed herewith. It should be noted that the Township's report recognized that the Township's low and moderate housing obligation ranged between 770 and 853 units.

income families (e.g., tax abatement, application for federal Community Development Block Grant funds, municipal support in various areas, etc). (A copy of O'Connor's November 17, 1983 letter is included in Exhibit K in the Appendix filed herewith.)

On December 5, 1983, Dobbs' planning expert, Dr. David A. Wallace, submitted a report which, inter alia, analyzed and critiqued the 13 sites designated by the Township for low and moderate income housing; emphasized the need for strong affirmative action on the part of the Township in the form not only of rezoning but also in providing sewage treatment, other utilities, tax abatement, and Township applications for State and Federal assistance; and discussed the suitability of the Dobbs tract for the development of low and moderate income housing. (Relevant excerpts from the December 5, 1984 Report are included as Exhibit L in the Appendix filed herewith.) The Report was based on on-site investigations and review of Township materials, tax maps, soil conservation reports, and aerial maps. In addressing the suitability of many of the parcels designated by the Township, the Report referred to existing development on the sites, lack of off site sewage treatment, multiple ownership and consequent difficult and costly land assembly, and owner resistance. The Report also notes that the Township's existing zoning did not provide any low and moderate income set-asides in multi-family districts but that a 35% set-aside was proposed by the Township's planner. (The Township's proposed compliance package provides for a 20% set-aside.)

On December 23, 1983, George Raymond submitted to the Court his draft Report regarding region, fair share and Mount Laurel II compliance. (Relevant excerpts from this December 23, 1983 draft Report are included as Exhibit M in the Appendix filed herewith.) In his draft Report, Mr. Raymond accepted certain of Dobbs' evaluations of the sites designated by the Township for low and moderate income housing (e.g., Sites F and H) and rejected others. Mr. Raymond, moreover, conditioned the development of certain units on whether sewer service could be provided. Mr. Raymond concluded that while less than the Township's fair share number of units was available for immediate development, the Township could achieve Mount Laurel II compliance through phasing.

On December 29, 1983, Peter J. O'Connor wrote to George Raymond to raise certain questions regarding the sewer issue as it affects the housing sites proposed by the Township:

> (1) What is the present capacity of the Township/Sewer Authority sewer system in Bedminster Township?
>
> (2) How much of said capacity is in use and how much is available for development of the subject sites?
>
> (3) How many units of housing can be serviced by the portion of the sewer capacity which is available for said housing development? (Please indicate whether your definition of "currently available capacity" includes outstanding development commitments which have not yet been utilized).
>
> (4) What are the Township/Sewer Authority's plans to up-grade its present treatment system to cure problems which have been

brought to their attention by NJDEP? Has the Township committed financing to address these treatment problems? If so, what is the schedule for curing said problems and what is the financing plan?

(5) Does the Township currently have plans and supportive financing to expand its current sewer system? If so, what are the plans and is there documentation which would indicate financial support by the Township/ Sewer Authority to enable said plans to be implemented? What is the time schedule for said implementation and how does said time schedule comport with and support development on the site selected by the Township for Mount Laurel II opportunities?

O'Connor concluded his letter with the following:

Mr. Dobbs takes the position that the provision of sewer service to the selected sites is essential for their development. If the above information is not within your knowledge, we submit that this information should be requested by you from the Township before making your final recommendations on the likelihood and feasibility of Mount Laurel II development on the selected sites.

(A copy of O'Connor's December 29, 1983 letter is included as Exhibit N in the Appendix filed herewith.)

On January 3, 1984, Dobbs critiqued George Raymond's December 23, 1983 draft Report. (Relevant excerpts from the January 3, 1984 critique are included as Exhibit 0 in the Appendix filed herewith.) In his submission, Dobbs reemphasized the importance of the sewer capacity issue, addressing the issue generally and in the context of particular sites. In addition, Dobbs challenged the "controlled growth" argument made by Mr. Raymond in his draft Report.

On January 10, 1984, George Raymond submitted to the Court his final Report regarding region, fair share, and Mount Laurel II compliance. (Relevant excerpts from the January 10, 1984 Report are included as Exhibit P in the Appendix filed herewith.) Similar in essential respects to his draft Report, the Report suggests that "phasing" is appropriate and relies, in connection with the sewage capacity question, on a letter dated January 8, 1984 from Richard Coppola (a copy of which was included in the Appendix to Mr. Raymond's Report and is included as part of Exhibit P to the Appendix filed herewith.) The Coppola letter suggests, without any basis in fact, that surplus capacity exists in the Environmental Disposal Corporation (EDC) Plant and Bedminster/Far Hills (BFH) Plant to service sites designated for low and moderate income housing development by the Township.

On January 13, 1984, Dr. Robert Hordon, a leading expert in water resources and a consultant to Dobbs, relying on official records, personal interviews, telephone conferences, and on-site investigations, refuted the contents of the Coppola letter in detail and concluded:

> (a) [I]t is apparent that the Bedminster plant is at or near its design capacity of 200,000 gpd. Any additional flow coming into the plant would necessitate expansion.
>
> (b) It is unclear how the EDC plant can accept additional effluent beyond the current allocation of 850,000 gpd for Hills, Pluckemin and City Federal without the construction of additional facilities on land contiguous to the present site.

(c) In my opinion, there is inadequate capacity within the BHF and EDC plants to accomodate the wastewater from any further development beyond that which is already allocated.

(A copy of Dr. Hordon's January 13, 1984 report is included as Exhibit Q in the Appendix filed herewith.)

Also, on January 13, 1984, Dobbs' planning expert. Dr. Wallace, submitted a Report detailing how Dobbs[1] proposed regional commercial center would permit the 264 low and moderate income housing units. (A copy of this Report is included as Exhibit R in the Appendix filed herewith.)

On January 20, 1984, Dobbs[1] planning expert, Dr. Wallace, critiqued the final Raymond Report. (A copy of this report is included as Exhibit S in the Appendix filed herewith.) Dr. Wallace, after reviewing the individual sites designated for low and moderate income development by the Township, concluded that only 260 units (Hills) would be built without expanded sewer treatment capability.

A second Case Management Conference was conducted on January 25, 1984. At the Conference, Your Honor, inter alia, rejected the "phasing" approach proferred by George Raymond and challenged by Dobbs, the approach upon which the Township's Mount Laurel II "compliance" had been premised. Moreover, in response to a comment by Richard Coppola concerning possible consideration of a portion of the Dobbs site for low and moderate income housing development

and possible additional low and moderate income housing development by Hills, Your Honor directed Dobbs and Hills to submit, if they wished, proposals for residential development, including provision for low and moderate income housing, and further directed the Township to respond within ten days of receipt of the proposals.

By memorandum dated January 30, 1984, Your Honor memorialized the directives made at the January 25, 1984 Case Management Conference. (A copy of this memorandum is included as Exhibit T in the Appendix filed herewith.)

On February 7, 1984, Dobbs[1] planning expert, Dr. Wallace, submitted a Report to the Court suggesting three alternative plans; two purely residential (utilizing 120 acres and 145 acres respectively) and one mixed use. (A copy of the February 7, 1984 Report is included as Exhibit U in the Appendix filed herewith.) Plan B, utilizing 145 acres for residential development, was and remains Dobbs[1] preferred plan in that it makes better use of the land and takes better account of the economic and practical considerations in developing the total project. Plan B, utilizing the 145 developable acres not in flood plain or Green Acres easement, contemplates 1160 dwelling units, at 8 units per acres, of which 232 will be low and moderate income units. Also, Plan B contemplates an on-site tertiary sewage treatment plant to be located in the southeast corner of the Dobbs tract, using as a subsurface disposal field approximately 12 to 18 acres of land on the Dobbs tract with

Birdsboro soils.

In a companion Report dated February 7, 1984, Dr. Robert Hordon, Dobbs' sewer expert, described Dobbs• proposed sewage plant and detailed its advantages:

> (1) The treated effluent recharges the ground water and is therefore available for further use within the watershed.
>
> (2) A ground water discharge permit from NJDEP would be required. It is estimated, based on the previous approval, to take only 6-12 months compared to several years for a surface water discharge permit.
>
> (3) All mechanical components of the STP can be housed in an architecturally compatible structure.
>
> (4) The disposal field can be landscaped and does not require any fencing. The home-owners would see only a grassy area with trees and therefore residential units can be located nearby.
>
> (5) There is no odor generated either at the plant or in the disposal field area.

(A copy of Dr. Hordon's February 7, 1984 Report is included as Exhibit V in the Appendix filed herewith).*

On March 19, 1984, the Township responded to the Dobbs February 7, 1984 proposal and the additional residential proposal made by Hills ("Hills II"). (A copy of Alfred Ferguson[f]s March 19, 1984 letter to the Court reflecting such response is included



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* Also, included as Exhibit W in the Appendix filed herewith is a copy of the letter transmitting the two February 7, 1984 Reports, emphasizing Dobbs[1] preference for Plan B.

as Exhibit X in the Appendix filed herewith.) Recognizing 820 as the Township's fair share number (inclusive of a wealth factor), the Township added Hills II to its compliance package but deleted five sites which had been previously challenged by Dobbs as unsuitable (Sites $A_f$ B, E, F, and G). Other zoning modifications were made by the Township with respect to other sites previously designated for low and moderate income housing (Sites D, $H_f$ I, $j_f$ and L). As to the sewer issue, the Township's response was as follows:

> This facility [EDC] has unused capacity, and this capacity, could also be increased.

The Township rejected rezoning of the Dobbs tract as unnecessary to meet its Mt. Laurel II obligations and stated, for the first time to this Court and inconsistently with the discussion at the January 25, 1984 Case Management Conference, that rezoning of the Dobbs tract would be contrary to the Township's "longstanding" proposal to acquire the property for open space and municipal purposes.

On March 22, 1984, a Case Management Conference was held, at which Dobbs and his counsel provided input on such topics as prioritization of applicants for housing, the nature and corporation of the non-profit corporation to be established, and re capture. (Dobbs was permitted to participate and did participate on March 28, 1984 in a subsequent meeting relating to prioritization.) Dobbs was provided at the Case Management Conference with a copy of Richard Coppolla's Fair Share Housing Analysis, wherein

he applied the consensus methodology to the Township's obligation and summarized the Township's revised compliance package. (Copies of relevant portions of this Analysis are included as Exhibit Y in the Appendix filed herewith.) On the sewer issue, Mr. Coppola commented:

> It also should be noted that with the exception of sites "C", "D", and "I", each of the proposed parcels is within the franchise are sewered by the currently constructed plant of the Environmental Disposal Corporation (858,000 gpd capacity). Moreover, parcels "C" and "D" can be accommodated within the existing Bedminster - Far Hills sewage treatment plant when the infiltration problems are solved. Finally, parcel "I" though currently outside of the franchise area of the Environmental Disposal Corporation is in close proximity to the plant and adjacent to other tracts which will be developed for multiple family housing.

At the March 22, 1984 Case Management Conference, Dobbs, through his representatives, challenged the Township's Green Acres application as a sham and argued that the Township's revised plan still did not solve the sewage capacity problems, a position concurred in by Hills' representatives. Also, at this Conference, Your Honor indicated that Dobbs may well be in the position of a plaintiff seeking a builder's remedy. Your Honor set deadlines, at the conference, for submission of the Township's final proposal (this in light of disagreement between the Township and Hills at the conference as to the "Hills II" development), of Hills' response, and of sewer analyses by the Township and Hills.

On March 30, 1984, Dobbs' planning expert, Dr. Wallace,

submitted a Report commenting on the suitability of the sites proposed by the Township for low and moderate income housing in its revised compliance package. (A copy of such Report is included as Exhibit Z in the Appendix filed herewith.) In the Report, Dr. Wallace concluded:

> (1) There is inadequate-sewer capacity even with correction of the infiltration problem at the Bedminster-Far Hills plant for sites C and D.
>
> (2) There is inadequate sewer capacity for the remaining sites even with complete reallocation of the EDC plant capacity to eliminate Bernards Township and the 350,000 square feet of commercial in the Hills PUD.
>
> (3) The proposed sites will all have to be developed at their highest capacity in order to meet the Fair Share obligation. The lack of overzoning inflates the price and reduces the likelihood of building low and moderate income units.
>
> (4) Several of the sites (H, I, N) are immediately adjacent to Route 287 thus subject to high noise levels.
>
> (5) The sites (except C and D) are all clustered in one part of Bedminster, creating higher densities than are necessary.
>
> (6) The reliance on the EDC, a private utility, to sewer all of the sites except C and D puts them in a position of dictating connection and service fees which could easily inflate costs for other sites.
>
> (7) The assembly of parcels required for sites I, N and C will delay their development.
>
> (8) Site H is outside the EDC service area, thus could not be served until the franchise area is expanded, which expansion would require a lengthy approval process.

Dr. Wallace aljso submitted a Report received from Dobbs' sewage expert, Dr. Hordon, which addressed in detail the comments made by Mr. Coppola in his March 21, 1984 Analysis as to sewage capacity and specifically refuted such comments. (A copy of Dr. Hordon's Report is included as Exhibit AA in the Appendix filed herewith.) More particularly, Dr. Hordon concluded;

> (1) The 3,669 or 3,819 new units proposed by Coppola for Parcels "H-N" will generate an estimated effluent flow of 880,560 or 916,560 gpd, respectively. Either value will be in excess of the design capacity of 850,000 gpd for the EDC plant.
>
> (2) Coppola makes no mention of what will happen to the effluent generated by the Hills development in Bernards or the 350,000 sq. ft. of commercial development in Bedminster which is part of the Hills proposal.
>
> (3) The 201 new units proposed by Coppola for Parcels "C and D" will generate an estimated effluent flow of 48,240 gpd. Without expansion, this anticipated flow could not be accommodated in the existing Bedminster plant which is close to its design capacity.

On April 11, 1984, George Raymond submitted his "Compliance Report," in which he commented on the Township's revised compliance package. (A copy of this Report is included as Exhibit BB in the Appendix filed herewith).

On the same day, April 11, 1984, Dobbs took strong exception, in a letter to Your Honor, to many of the conclusions reached by Mr. Raymond and many of the factual assumptions made by Mr. Raymond. (A copy of such letter is included as Exhibit CC in the Appendix

filed herewith.) Also, with such submission, Dobbs provided the Court with the form of its proposed Amended and Supplemental Complaint, formally incorporating Dobbs[1] Plan B residential proposal made to the Court on February 7, 1984. Dobbs further argued his entitlement to a builder's remedy. Dobbs asked the Court to consider such complaint as the subject of his pending motion to amend and supplement.

On April 13, 1984, a Case Management Conference was held. At the the Conference, Your Honor, inter alia, established a schedule for the filing of a formal intervention motion by Dobbs and of a motion by the Township to compel production of Dobbs[1] option agreement.

On April 18, 1984, Dobbs[1] representatives participated in a conference call held with Your Honor and other counsel concerning the formal Order to be entered in the Allan-Deane case, this on the stated basis that the Dobbs property could be part of the property which would have to be rezoned after a compliance hearing.

On May 10, 1984, Dobbs filed his formal motion to intervene. Such motion was supported by a Certification for Leonard Dobbs, in which he, inter alia, emphasized the contributions which he and his representatives had made with respect to such matters as the sewer question, particular deficiencies with the Township's proposed sites, and the affordability ranges of the proposed housing. Dobbs also reiterated the fact that he was ready, willing, and able

to proceed with his Mount Laurel II development formally submitted months before. (A copy of the Dobbs Certification is included as Exhibit DD in the Appendix filed herewith.) Also filed with Dobbs[1] motion to intervene was Dobbs[1] proposed Complaint incorporating the Plan B Mount Laurel II residential development proposal submitted on February 7, 1984. (A copy'of the Complaint is included as Exhibit EE in the Appendix filed herewith.)

On May 10, 1984, the Township filed its motion to dissolve the stay and to compel production of Dobbs[1] option agreement.

On May 11, 1984, Dobbs participated in a Case Management Conference relating to the proposed form of Order to be signed in the Allan-Deane case. At this Conference, the Township maintained its position that any compliance order including Hills II must exclude Dobbs.

On May 25, 1984, Your Honor heard Dobbs[1] motion to intervene and the Township's motion to dissolve the stay and compel production of Dobbs[1] option agreement. (A transcript of the proceedings is included as Exhibit FF in the Appendix filed herewith.) Your Honor denied the Township's motion, ruling, after in camera review of Dobbs[1] option agreement, that Dobbs had demonstrated sufficient interest in the property in question. Your Honor further set a thirty-day deadline for the Township and the Public Advocate to work out a settlement as to fair share and compliance. In the event no settlement was worked out during this time, Dobbs was per-

mitted to revive his motion to intervene. Your Honor held that even in the event of a settlement (excluding him), Dobbs would have the right to assert his claim for a builder's remedy and his claim as to the invalidity of the Township's condemnation action. Significantly, Your Honor set down guidelines to govern future proceedings in this matter:

> The ordinance revision must include adequate over-zoning. It must not provide for phasing by site availability, which I have previously found to be unacceptable notwithstanding the recommendations of the Master, and it must consider the availability of sites most readily developable at this time, including Dobbs and Timber.
>
> Now, what I mean by the second condition, that is, that it must not provide for phasing by site availability, is that I deem it improper to provide as a compliance package sites which are not readily available if other sites are readily available and usable for implementation of Mount Laurel purposes.
>
> As you'll recall, Mr. Raymond recommended acceptance of a compliance package which included sites that would not be usable for Mount Laurel purposes into the 1990's. If those are the only sites available in Bedminster, then that's the way it has to be. But it's been represented to this Court that there are other sites much more readily available, and in my view that it a very significant element in the selection of sites. I don't preclude the possibility that there might be one site more available and implemental at this time than another which should be rejected because of some sound planning or environmental purpose, but the municipality would have to have the burden of demonstrating that clearly to me before it could be passed over in preference to a site for which Mount Laurel housing would have to wait much longer.

> Now, if the Court finds that either a right to condemn exists or there is no right to builders remedy, a hearing will be held with notice to Dobbs, Timber, and the public, why the settlement should not be approved. At this time I will not indicate the scope of that hearing. I will only do that in the event we reach that point.
>
> If the Court finds that there is either no right to condemn and a right to a builders remedy, that is, if Bedminster may not condemn against Dobbs, or there is a right of builders remedy in Dobbs that may not be cut off by condemnation, or that Timber has a right of a builders remedy, then the application for intervention will be reconsidered at that time.

Also, Your Honor advised the Township that if it did not move promptly on its threatened condemnation action (i.e., within thirty days), you would view this as an abandonment by the Township. (The Township has not complied with this directive.)

On June 11, 1984, Your Honor signed an Order reflecting the rulings made on May 25, 1984. (A copy of such Order is included as Exhibit GG in the Appendix filed herewith.)

The Township and the Public Advocate failed to reach a settlement within the prescribed thirty day period.

In early July 1984, Dobbs received the proposed Compliance Agreement between the Township and the Public Advocate. (A copy of such proposed Agreement is included as Exhibit HH in the Appendix filed herewith). The proposed Agreement was predicated on an arbitrary 20% reduction in the Township's consensus methodology

fair share figure and referenced a Report dated June 1984 prepared by Richard Coppola. (A copy of such Report is included as Exhibit II in the Appendix filed herewith.) The proposed Agreement excluded the Dobbs site and was conditioned on a ruling that Dobbs is not entitled to a builder's remedy or otherwise entitled to zoning or lower income housing and on a judgment of repose.

On July 17, 1984, Dobbs critiqued the proposed Compliance Agreement and requested a hearing on his right to a builder's remedy. (A copy of such correspondence for Dobbs' counsel dated July 17, 1984 is included as Exhibit JJ in the Appendix filed herewith.)

A Case Management Conference was held on August 2, 1984, at which the parties and George Raymond commented on the proposed Compliance Agreement. At the outset of the conference, the Township representatives reported to the Court that the Township had been informally advised that it had been approved for Green Acres funding in the amount of $4 million over a four-year period. Dobbs has, through his representatives, made inquiry to Green Acres and has been informed unequivocally that no such action has been taken on the Township's Green Acres application. At the Conference, Your Honor rejected the compromise approach taken to fair share in the proposed Compliance Agreement, noting that it is totally in conflict with the fair share number previously stipulated in the

case and was inconsistent with the approach taken by the Court in the Warren Township case. Once again, Your Honor rejected the concept of phasing under the circumstances as they appeared in this case. Finally, Your Honor discussed the format of the hearing to be held and the submissions to be made by the various parties.

By letter dated August 3, 1984, Your Honor summarized the directives made at the August 2, 1984 Case Management Conference. (A copy of the August 3, 1984 letter is included as Exhibit KK in the Appendix filed herewith.)

In compliance with such directives, Dobbs is simultaneously herewith submitting, in addition to this brief, reports relating to site suitability, sewage, and the issue of whether the Township's land development ordinance, including the proposed amendment, complies with Mount Laurel II.

## PRELIMINARY STATEMENT

The New Jersey Supreme Court has, in the Mount Laurel II decision, emphasized, as has this Court, the importance of the builder's remedy as a means of implementing and effecting compliance with Mount Laurel II principles. The policies underlying this remedy – recognition that is is the only effective method of enforcing compliance, that principles of fairness require that developers who have invested substantial time and resources in such effort be compensated, and that it is the most likely means of ensuring that lower income housing is actually built – are demonstrably applicable to Dobbs[1] participation in this matter.

Dobbs[1] primary argument is that he is entitled to a builder's remedy because he has successfully challenged the Township's compliance package of August 1983 (the Township's land development regulations, including site selection, sewer plans and capacity, lack of affirmative municipal actions, and Mount Laurel II affordability issues). The Township's August 1983 compliance package was the proposal before the Court at the time Dobbs was permitted by the Court to participate and challenge the Township's proposal and was also the proposal before the Court when Dobbs was invited to and did submit his purely residential Mount Laurel II proposal. Dobbs[1] efforts, as reflected in the foregoing chronology, demonstrate that he successfully challenged the Township's compliance package and that he played a substantial role in bringing about

the revisions to the Township's compliance package (both the March 1984 revisions and the June 1984 revisions). Even if the Court accepts the Township's revised compliance package, Dobbs would be entitled to a builder's remedy as a result of his successful challenge. (There is no question that Dobbs expended the requisite time and effort and proposed a plan which would produce substantial low and moderate income housing and a plan which is not clearly contrary to environmental or other substantial planning concerns).

Alternatively, if, as Dobbs contends, the Township's present compliance package is determined by the Court to be inadequate under Mount Laurel II, Dobbs is entitled to a builder's remedy because, as he contends, his property is necessary for the Township to meet its fair share obligations. This determination must be made under the guildelines set by Your Honor on May 25, 1984, pursuant to which Your Honor must consider the availability of sites most readily developable at this time. It should also be noted that Dobbs[1] right to a builder's remedy, under this alternative argument, must be granted even if Dobbs had not expended the very substantial time and effort which he, in fact, did in successfully challenging the Township's compliance package.

Finally, Dobbs[1] right to a builder's remedy cannot be and should not be defeated by a spurious, bad faith proceeding to condemn his property. To sanction this would be to totally emasculate the builder's remedy as a means to ensure Mount Laurel r£ compliance.

## ARGUMENT

### I. THE BUILDER'S REMEDY IS A VITAL AND ESSENTIAL MEANS OF ENSURING MOUNT LAUREL II COMPLIANCE AND IS TO BE LIBERALLY CONSTRUEJDT

In Mount Laurel 11/ the New Jersey Supreme Court, commenting on its earlier decision in Oakwood at Madison, Inc. v. Township of Madison, 172 N.J. 481 (1977), stated:

> In Madison, this Court, while granting a builder's remedy to the plaintiff appeared to discourage such remedies in the future by stating that "such relief will ordinarily be rare.[11] 72 N.J. at 551-52 n.50. Experience since Madison, however, has demonstrated to us that builder's remedies must be made more readily available to achieve compliance with Mount Laurel.

Mount Laurel II, supra, 92 N.J. at 279. (Emphasis added.)

In so holding, the Supreme Court in Mount Laurel II accepted plaintiffs' arguments and acknowledged the important policy reasons underlying the builder's remedy:

> [T]hese remedies are (i) essential to maintain a significant level of Mount Laurel litigation, and the only effective method to date of enforcing compliance, (ii) required by principles of fairness to compensate developers who have invested substantial time and resources in pursuing such litigation; and (iii) the most likely means of ensuring that lower income housing is actually built.

Mount Laurel II, supra, 92 N.J. at 279.

Having recognized the indispensability of the builder's remedy, the Supreme Court in the Mount Laurel II decision estab-

lishes a broad entitlement to a builder's remedy for a developer who has succeeded in challenging a municipality's zoning and has a Mount Laurel II development proposal:

> We hold that where a developer succeeds in Mount Laurel litigation and proposes a project providing a substantial amount of lower income housing, a builder's remedy should be granted unless the municipality establishes that because of environmental or other substantial planning concerns, the plaintiff's proposed project is clearly contrary to sound land use planning. We emphasize that the builder's remedy should not be denied solely because the municipality prefers some other location for lower income housing, even if it is in fact a better site. Nor is it essential that considerable funds be invested or that the litigation be intensive.

Mount Laurel II, supra, 92 N.J. at 279-80. Further, the Court noted:

> If builder's remedies cannot be profitable, the incentive for builders to enforce Mount Laurel is lost.

Id. at 279 (n. 37).

Throughout the Mount Laurel II decision, the Supreme Court refers to the new, broader standard for entitlement to a builder's remedy. See, e.g., id. at 280 (referring to the "decision to expand builder's remedies"), 308 (referring to the "new standard enunciated" for builder's remedies), and 330 (referring to the fact that builder's remedies "will no longer be 'rare[1]").

*

Your Honor has, in the Case Management Conferences conducted in this case and in decisions rendered in other cases, recognized the importance of builder's remedies and the liberality with which

they should be granted. Significant is Your Honor's decision in Orgo Farms & Greenhouses v. Colts Neck Tp., 192 N.J. Super,, 599 (Law Div. 1983), wherein Your Honor held that the location of a developer's property in a "limited growth" area did not preclude his entitlement to a builder's remedy. Noting that the Supreme Court determined in Mount Laurel II that "unless a strong judicial hand was applied, Mount Laurel would not result in the housing which had been expected" and that the Court in Mt. Laurel II "sought to strengthen, clarify and facilitate the application of the principles involved in the Mount Laurel doctrine," Your Honor noted that "as another means of making the Mount Laurel doctrine work, the Court directed that a builder's remedy would ordinarily be afforded to a developer who institutes Mount Laurel litigation if three elements . . . are established." Orgo, supra, 192 N.J. Super, at 601-2. The three elements were described as follows:

> (1) The developer must succeed in the litigation, that is, demonstrate that the zoning ordinance fails to comply with Mount Laurel II.
>
> (2) The developer must propose a substantial amount of lower income housing as defined in the opinion.
>
> (3) The impact of the proposal on the environment or other substantial planning concerns must not be clearly contrary to sound land use planning.

Id. at 603. (Emphasis added.) Moreover, Your Honor noted:

> A review of that portion of Mount Laurel II specifically devoted to the builder's remedy amply evidences the Court's desire to liberally apply that device"! For example, the

> Court places the burden on the municipality of proving the negative planning or environmental impact of the proposed development, rather than placing the burden on the builder to prove that the site is appropriate. Further, merely because the municipality prefers some other location or because it can prove that a better site is available does not justify denial of the remedy. Finally, the Court stresses that "(e)xperience . . . has demonstrated to us that builder's remedies must be made more readily available to achieve compliance with Mount Laurel." (at 279) This emphasis possibly suggests that Mount Laurel's objective may not be achievable unless adequate economic incentives are held out to developers so that they will seek to enforce the Mount Laurel obligation of our municipalities. The remedy is the carrot. *** In summary, the Court's placement of the burden of proof on the municipality, the discouragement of the alternative site defense and the use of the builder's remedy as an incentive, all evidence a desire to liberally apply builder's remedies.

Orgo, supra, 192 N.J. Super, at 605-6.

Similarly, see AMG Realty Company v. Township of Warren, Nos. L-23277-80 P.W., L-67820-80 P.W. (Law Div. July 16, 1984), Slip Opinion at 68, wherein Your Honor noted:

> Mount Laurel II requires that a builder's remedy be granted if the builder has succeeded in the litigation and proposes to construct a substantial amount of lower income housing, and if the municipality has failed to prove that the proposed project would either substantially harm the environment or be otherwise clearly contrary to sound land use planning.

In sum, as the Supreme Court has held and as Your Honor has held, builder's remedies are vital and essential to ensure Mt. Laurel II compliance and therefore must be broadly and liberally construed.

## II. DOBBS IS ENTITLED TO A BUILDER'S REMEDY.

The policy reasons underlying the builder's remedy clearly support Dobbs• entitlement to a builder's remedy in this case. As is clear from the history of this matter, reflected in the foregoing Statement of Facts, Dobbs has been instrumental in pushing the Township toward Mount Laurel II compliance. Dobbs has expended very substantial time and resources in successfully challenging the Township's zoning, and principles of fairness mandate his entitlement to a builder's remedy. In addition to proposing a substantial Mount Laurel II development (one which would produce 232 low and moderate income units), Dobbs' input has been critical — on such issues as suitability, sewage, and affordability. Your Honor need only consider what the Township's compliance package would be absent Dobbs' Mount Laurel II proposal and absent Dobbs' participation. In any case, Dobbs[1] proposed development is necessary to ensure the Township's compliance with Mount Laurel II.

Dobbs clearly meets the three elements for a builder's remedy outlined in Mount Laurel II and summarized by Your Honor in Orgo:

> (1) Successful challenge to the zoning ordinances of the municipality on Mount Laurel II grounds.
>
> (2) A substantial amount of Mount Laurel II lower income housing.
>
> (3) Absence of clearly contrary land use planning considerations.

## Dobbs[1] Successful Mount Laurel II Challenge.

### A. Dobbs[1] Successful Challenge to the Township's Compliance Package (August 1983).

It cannot seriously be disputed that Dobbs has challenged — and challenged successfully — on Mount Laurel II grounds, the Township's August 1983 compliance package. Even if the Township's presently proposed compliance package met Mount Laurel II requirements — and Dobbs strenuously contends that it does not — Dobbs would, because of his role in causing the Township to abandon and revise its patently inadequate August 1983 compliance package, be entitled to a builder's remedy. Judge Skillman recognized this in Morris County Fair Housing Council, et al. v. Boonton Township, et al., Nos. L-6001-78 P.W., L-54599-83 P.W. (Law Div. 1984):

> Hubschman [a developer] may seek to demonstrate at the hearing that its lawsuit played a substantial part in bringing about the rezoning of Morris Township embodied in the proposed settlement and that consequently approval of the settlement would be inconsistent with the Court's "decision to expand builder's remedies," in order to maintain a significant level of Mount Laurel litigation, "to compensate developers who have invested substantial time and resources in pursuing such litigation" and to ensure that "lower income housing is actually built." Mt. Laurel II at 279-280.

Id. at 14 (n.3).

As should be manifest from the history of this matter, reflected in the foregoing Statement of Facts, Dobbs has been the

only true adversary of the Township with respect to the Township's Mt. Laurel II compliance. The input from Dobbs• experts, since the initial October 6, 1983 Status Conference, has been extensive and informative and has been critical to the Court in its evaluation of the Township's Mount Laurel II compliance. Similarly, Dobbs[1] submission on February 7, 1984, of a purely residential proposal providing for Mount Laurel II housing (Plan B) has been instrumental in causing the Township to abandon its previous "paper compliance" efforts. In the absence of Dobbs[1] participation, the Court would have been faced with a compliance package which may have appeared reasonable on paper but which zoned sites which clearly did not offer a realistic opportunity for low and moderate income housing* and could not be sewered on existing capacity (notwithstanding the initial representations of the Township's representatives to the contrary).**

Dobbs challenged the Township's August 1983 compliance package on a variety of grounds — site suitability, sewage capacity, affordability, ordinance provisions. See, for example, Peter O'Connor's November 17, 1983 letter concerning affordability. Dr. Wallace's December 5, 1983, January 3, 1984, and January 20, 1984 Reports concerning site suitability and sewage capacity, Peter O'Connor's



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* Your Honor has recognized this at earlier Case Management Conferences.

** Dobbs' ongoing correction of misstatements and false impressions by the Township with respect to the sewage issue is clear from the history of this matter, reflected in the foregoing Statement of Facts.

December 29, 1983 letter concerning sewage capacity, Dr. Hordon's January 3f 1984 Report concerning sewage capacity. The Township ultimately revised its compliance package — as to each of these issues — in response to the Dobbs[1] critique. See, for example, the Township's March 1984 and June 1984 revisions.

It is clear that Dobbs was instrumental in causing these modifications — through his critique and through his Mount Laurel II development proposal. Dobbs is entitled to a builder's remedy as a result of such effort. If a municipality could exclude a developer who had expended such substantial time and effort in successfully challenging the municipality's zoning simply by subsequently rezoning other sites, then the builder's remedy would be a meaningless and hollow remedy.

B. Dobbs' Alternative Right to a Builder's Remedy.

The Township[1] compliance efforts have, notwithstanding certain revisions, been inadequate. The Township's presently proposed compliance package does not meet Mount Laurel II requirements, especially when evaluated in light of the guidelines established by Your Honor on May 25, 1984. See, for example, the critiques filed simultaneously herewith. Among other things, the Township's present compliance package does not "include adequate over-zoning," does not "consider the availability of sites most readily developable at this time," and provides for sites which are not readily available" while "other sites are readily available and usable for implementation of Mount Laurel purposes." Transcript of May 25,

1984 proceedings, at 3.

In addition to his entitlement to a builder's remedy because of his substantial role in bringing about the rezoning by the Township, Dobbs is alternatively entitled to a builder's remedy because of the failure of the Township to submit a compliance package which meets the Township's Mount Laurel II obligations — its stipulated fair share figure of 819 — absent development of the Dobbs site.

The Substantial Amount of Low and Moderate Income Houses Provided by Dobbs' Proposal.

Dobbs' February 7, 1984 development proposal (Plan B) provides for 1160 residential units, 20% of which (or 232 units of which) will be low and moderate income units, thereby enabling the Township to meet more than 25% of its stipulated fair share obligation. Such a proposal clearly meets the "substantiality" requirement set forth in the Mount Laurel II decision:

> What is "substantial" in a particular case will be for the trial court to decide. The court should consider such factors as the size of the plaintiff's proposed project, the percentage of the project to be devoted to low and moderate income housing (20% appears to be a reasonable minimum), what proportion of the municipality's fair share allocation would be provided for the project, and the extent to which the remaining housing in the project can be characterized as "least cost." The balance of the project will presumably include middle and upper income housing. Economically integrated housing may be better for all concerned in various ways. Furthermore, the middle and upper income units may be necessary to render the project profitable.

Mount Laurel II, supra/ 92 N.J. at 279 (n.37).

The Absence of Clearly Contrary Land Use Planning Considerations.

Dobbs has, in his various submissions to this Court, addressed the suitability – indeed the particular suitability – of his site for the low and moderate income housing project. See, for example, the December 5, 1983 submission, the February 7, 1984 submissions, the March 30, 1984 submissions, the April 11, 1984 submission, the July 17, 1984 submission, and the submission made simultaneously herewith. As noted in these submissions, the Dobbs tract is suitable for this type of development and, in fact, his proposed sewage treatment plant provides a unique and preferable way of enabling the Township to meet its present fair share obligation. The Township clearly cannot establish that "because of environmental or other substantial planning concerns," Dobbs[1] proposed project "is clearly contrary to sound land use planning." Mount Laurel II, supra, 92 N.J. 299-80.

In sum, Dobbs clearly meets the requirements for a builder's remedy as set forth by the New Jersey Supreme Court in the Mount Laurel II decision and as described by Your Honor in the Orgo case.

## III. DOBBS[1] RIGHT TO A BUILDER'S REMEDY CANNOT BE DEFEATED BY THE TOWNSHIP'S BAD FAITH GREEN ACRES APPLICATION.

As noted in Point I, supra, the New Jersey Supreme Court has recognized, as has Your Honor, the importance and indeed indispensibility of the builder's remedy as a means to ensure Mount Laurel II compliance. For this reason, the Supreme Court in Mount Laurel II expanded the availability of builder's remedies and determined that such remedies should be made more readily available than had been the case in the past. It is in this context that the Township's Green Acres application must be considered — its effect on Dobbs* right to a builder's remedy.

In Dolan v. Borough of Tenafly, 75 N.J. 163, a case decided under Mount Laurel I, the New Jersey Supreme Court held that a municipality's "good faith" acquisition of property for park land purposes was not contrary to Mount Laurel, even where the acquisition of such tract would effectively remove the last substantial unimproved residentially-zoned tract of land in the municipality from the reach of future development. Subsequent to the Mount Laurel II decision, however, the Appellate Division faced the issue of the relationship between Mount Laurel principles and Green Acres considerations in Borough of Far Hills v. Schneirla, et al, No. A-2641-82T2 (App. Div. March 19, 1984). Prior to the Mount Laurel II decision, the trial court had held that even if the municipal-

ity was primarily motivated to condemn for park purposes in order to prevent defendant's development, the approval given the project by the Department of Environmental Protection established the bona fides of the park public. Subsequently, however, the Supreme Court decided the Mount Laurel II case, and the Appellate Division's comments are significant:

> A month after Judge Diana's letter, the Supreme Court decided So. Burlington Cty. N.A.A.C.P. v. Mount Laurel Tp., 92 N.J. 158 (1983) (Mount Laurel II), in which the Court established sweeping guidelines all municipalities must follow in discharging their constitutional obligation to provide all citizens, including those having low and moderate incomes, a place to live. The Court has designated three trial judges, each having jurisdiction over a different region of the State, to implement those guidelines by hearing all cases in which Mount Laurel considerations have been raised.
>
> On this appeal defendants have identified their cause with Mount Laurel principles and argue that the condemnation is a thinly guised effort to evade the Borough's constitutional responsibilities. Respondents reply that Green Acres considerations prevail over Mount Laurel considerations, relying on Dolan v. Tenafly, 75 N.J. 163, 175-175 (1977)Tl>ee also Mount Laurel II, 92 N.J. 227-228, and N.J.gT.^T 40:55D-2(c)• The record below, developed before Mount Laurel II, does not elucidate these arguments or contain sufficient evidence for us to tell whether defendants are correct. Our judgment will therefore be without prejudice to defendants' applying to a Mount Laurel judge in the prerogative writs proceeding within 30 days for a consideration and adjudication of their argument.

~~Far Hills~~, ~~supra~~, Slip Opinion at 3.

Implicit in the ~~Dolan~~ decision was the requirement that the

municipality was proceeding in good faith. The Far Hills decision suggests that the Court, faced with a municipality's condemnation of property as to which a builder's remedy is being sought, must make a determination as to whether Mount Laurel II considerations or Green Acres considerations prevail, especially where the condemnation is challenged as a thinly guised effort to evade the municipality's constitutional responsibilities.

Viewed in the context of these decisions, the Township's condemnation effort cannot be allowed to deprive Dobbs of his right to a builder's remedy. As is evident from the chronology, the Township's Green Acres application was filed after the Mount Laurel II decision, has been used by the Township sporadically as an attempt to blunt development of the Dobbs tract, and has been resurrected this past year when it became clear to the Township that Dobbs seriously intended to develop his tract in a manner which would include low and moderate income housing. The bona fides of the Township's Green Acres application are addressed in Dobbs[1] memorandum dated June 9, 1983 to Green Acres critiquing the application, and will therefore not be repeated herein.

In sum, the Township's bad faith use of the Green Acres application as a means of deterring Dobbs from development of his property should not be sanctioned. Moreover, even if the Township were not proceeding in bad faith, Dobbs' Mount Laurel II contribution, manifested in his entitlement to a builder's remedy, takes

precedence over the Township's threatened condemnation. Any contrary result would frustrate and render meaningless the builder's remedy, essential to implementation of the Mount Laurel II decision, for Dobbs and developers in similar situations. If a municipality can defeat a builder's remedy by simply condemning a developer's property, this important element of Mount Laurel II enforcement — the builder's remedy — would be seriously jeopardized.

Finally, the Township's representations at the August 2, 1984 Case Management Conference mandate a response. As Your Honor will recall, the Township's representatives, at such conference, advised the Court that the Township had been informally advised that Green Acres had approved the Township's application for $4,000,000, over a four year period. We have conferred with Green Acres, and particularly with The Grant Administrator for the Township's application, and have been advised in no uncertain terms that the Township has not received any approvals with respect to its Green Acres application. The misleading information provided to the Court at the last Case Management Conference as to the Township's pending application requires correction so that any implication of favorable disposition of Green Acres toward the Township application derived therefrom be dispelled.

## CONCLUSION

For the reasons hereinabove set forth, Leonard Dobbs is entitled to a builder's remedy.

Very respectfully,

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Attorneys for Leonard Dobbs

By: _____
Joseph L. Basralian

Dated: August 31, 1984

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SOMERSET COUNTY

ALLAN-DEANE CORPORATION, et al
*Plaintiff(s)*

*vs.*

TCWNSHIP OF BEDMINSTER, et al
*Defendant(s)*

L-36896-70 P.W.
*Docket No.* L-28061-71 P W
***CIVIL ACTION***

***A*** *copy of the within Notice of Motion has been filed with the Clerk of the County of* *New Jersey* *at*

.....

*Attorney(s) for*

*The original of the within Notice of Motion has been filed with the Clerk of the Superior Court in Trenton, New Jersey.*

.....

*Attorney(s) for*

*Service of the within*

*is hereby acknowledged this* *day of* *19* .

.....

*Attorney(s) for*

*I hereby certify that a copy of the within Answer was served within the time prescribed by Rule 4:6.*

.....

*Attorney(s) for*

SERVICE
*PROOF* OFMXXK3Q00Q *On* September 4, *19* 84 , /, *the undersigned,im$&®m* caused to be hand delivered to Judge Serpentelli; McCarter & English, Esqs., 550 Broad Street, Newark, New Jersey; Henry A. Hill, Jr., Esq., 204 Chambers Street, Princeton, New Jersey; Kenneth E. Msiser, Esq., Public Advocate, CN850, Trenton, New Jersey; and mailed to George M. *J&yi^nd^i®@$$?m&mP®m(&* 555 White Plains Road, Tarrytown New York; the within Memorandum of Law and Appendix in Support of Leonard Dobbs[1] Right to a Builder's Remedy.

R. 1:5-3 *The return receipt card is attached to the original hereof.*

*/ certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.*

*Dated:* September 4, *19 84* .

Pamela M. Chick
PAMELA M. CHICK (Sec'y to Donald A. Klei