

RULS-AD-1985-180

7/19/85

- Order, Allen-Deane v. Bedminster (2)
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
SOMERSET/OCEAN COUNTIES

-----X
THE ALLAN-DEANE CORPORATION :
Plaintiff, :
v. :
TOWNSHIP OF BEDMINSTER and :
TOWNSHIP OF BEDMINSTER :
PLANNING BOARD, :
Defendants. :
-----X

Docket Nos. L-36896-70 P.W.
L-28061-71 P.W.

ORDER

LYNN CIESWICK, APRIL DIGGS, :
W. MILTON KENT, GERALD :
ROBERTSON, JOSEPHINE ROBERTSON, :
and JAMES RONE, :
Plaintiffs, :
v. :
TOWNSHIP OF BEDMINSTER and :
TOWNSHIP OF BEDMINSTER :
PLANNING BOARD, :
Defendants. :
-----X

THIS MATTER having been opened to the Court by t
attorneys for Leonard Dobbs (Raymond R. Wiss, Esq. appearing

ORDER
7-19-85

in the presence of the attorneys for defendant Township of Bedminster (Daniel F. O'Connell, Esq. and Gary T. Hall, Esq. appearing), for an order supplementing the Opinion of the Court dated May 1, 1985 and clarifying the status of Leonard Dobbs with respect to his right to take an appeal from said determination; and the Court having reviewed the papers submitted and having heard the arguments of counsel, and good cause having been shown;

IT IS on this 19 day of July, 1985;

ORDERED that the motion of Leonard Dobbs to supplement the opinion of the Court is denied; and it is further

ORDERED that the motion of Leonard Dobbs to clarify his status with respect to his right to take an appeal is disposed of for the reasons set forth by the Court on July 2, 1985 as reflected in the transcript attached hereto; and it is further

ORDERED that the Court's findings are not precedential as to any other case.



Eugene D. Serpentelli, J.S.C.

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July 10, 1985

Honorable Eugene D. Serpentelli
Court House
CN 2191
Toms River, New Jersey 08754

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

Dear Judge Serpentelli:

I enclose herewith an original and two copies of a proposed form of Order with respect to the above matter. You will note that I have merely referenced the transcript of proceedings for July 2, 1985 with respect to the paragraph addressing the Motion which we filed on behalf of Leonard Dobbs seeking to clarify his status. Inasmuch as this transcript has been jointly ordered by the Township of Bedminster and Mr. Dobbs, I believe that it is better to proceed in this fashion rather than to have any attempt at characterization of the nature of the comments which were set forth on the record on July 2, 1985.

Respectfully,

Raymond R. Wiss
Raymond R. Wiss

RRW/ac
Enclosures

cc: Alfred L. Ferguson, Esq.
Daniel F. O'Connell, Esq.
Henry A. Hill, Jr., Esq.

SUPERIOR COURT OF NEW JERSEY
OCEAN COUNTY - LAW DIVISION
DOCKET NO. L-36896-70PW
L-28061-71PW

THE ALLAN-DEANE CORPORATION,)
Plaintiffs,)

-v-)

TOWNSHIP OF BEDMINSTER,)
and THE TOWNSHIP OF)
BEDMINSTER PLANNING BOARD,)

LYNN CIESWICK, et als.,)
Plaintiffs,)

-v-)

TOWNSHIP OF BEDMINSTER,)
et al,)
Defendants.)

Transcript

of

Motions

RECEIVED

JUL 29 1985

JUDGE SERPENTELLI'S CHAMBERS

B E F O R E:

HON. EUGENE D. SERPENTELLI, J.S.C.
Ocean County Courthouse
Toms River, NJ

July 2, 1985.

A P P E A R A N C E S:

MC CARTER & ENGLISH, ESQS.,
BY: GARY T. HALL, ESQ., and
DANIEL O'CONNELL, ESQ.,
For the Township.

WINNE, BANTA, RIZZI, HITHERINGTON &
BASRALIAN, ESQS.,
BY: RAYMOND R. WISS, ESQ.,
For Leonard Dobbs, Intervenor.

DAYETTE J. ZAMPOLIN, C.S.R.
Official Court Reporter
Ocean County Courthouse
Toms River, NJ

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(9:25 A.M..)

THE COURT: All right. This is the return date of a motion brought by the attorneys for Leonard Dobbs, for an order supplementing the opinion of this Court, dated May 1, 1985, and clarifying the status of Mr. Dobbs with respect to right to take an appeal from that opinion.

Okay, Mr. Wiss?

MR. WISS: Thank you, Judge.

There's really not a lot that I want to add to the certification that I filed. Your Honor has presided over the proceedings, both the procedural stages and the 17-day trial which was conducted.

Apart from the ultimate ruling that your Honor made and how it impacted on Leonard Dobbs, I think the record has demonstrated that Leonard Dobbs fully participated in the proceedings; in fact, contributed substantially to them, both with respect to the participation of his experts, and, I trust, the Cross-examination that was done by his counsel during trial.

Certainly, there's no question, but that the plan, the compliance package as ultimately approved by this Court, does impact and have consequences on the Dobbs' property, which I

1 believe is another one of the components which
2 would indicate that, at least insofar as
3 procedures dictate, we would ask the Court to
4 clarify its ruling, so as to give the Appellate
5 Division at least the benefit of its guidance.

6 And I realize -- your guidance.

7 And I realize that this is probably not the
8 type of application where you can bind the
9 Appellate Division and indicate to them that they
10 either have to or don't have to take cognizance of
11 Mr. Dobbs' status. But I would believe, and in
12 making this application, I would ask this Court to
13 indicate by way of guidance what your Honor's view
14 is of the role of Leonard Dobbs; and whether it
15 was your Honor's intent, apart from the ultimate
16 ruling, that Mr. Dobbs was to be precluded from a
17 right of appeal.

18 Because I think that what we're -- we're
19 staging, and what this application is all about is
20 whether there is going to be, on top of the
21 substantive arguments, a procedural argument as to
22 whether -- whether Leonard Dobbs can take an
23 appeal. And the Appellate Division is going to
24 have to sort that out. But unless they remand to
25 your Honor for some further guidance, they're not

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going to be able to have the benefit of what your Honor's opinion is. And again, I don't want to belabor the arguments, because you did preside throughout -- throughout the trial. It was lengthy, but I think it's fair to say that we were there at every step.

While there was no formal order granting us intervenor status, if we go beyond the form of that -- that particular ruling, other than that, I believe you extended to us full latitude. We did participate virtually as a party would have participated. Our rights are directly impacted by your Honor's ruling. And I believe that those will be my arguments to the Appellate Division. But I would like them to have the benefit of your Honor's opinion on that.

THE COURT: What is it that you would like me to say in an order? Keeping in mind that I -- I don't intend to, in any way, amend the decision not to intervene Mr. Dobbs as a party; and that I would say nothing which would give him party status or give him any -- any benefit that would result in the party status.

And keeping in mind that in other cases, there are people who also come to court and -- and

1 are heard in compliance hearings - not so far, at
2 least in any case, as Mr. Dobbs did participate -
3 but there are people who show up on the day of the
4 compliance hearing, there are other people who
5 show up a short time before and ask to be heard.
6 And they're all heard. As I understand, they
7 should be heard.

8 And I don't intend to limit that right. I
9 think that is part of the process. And I -- as
10 I've said in chambers before, it never occurred to
11 me that there wouldn't be some method by which Mr.
12 Dobbs could not have a review of what's happened
13 here. But what is it -- what is it, specifically,
14 if not in exact words, that you want me to say in
15 an order?

16 MR. WISS: Judge, I would almost be willing
17 to excerpt your last statement and put it in an
18 order. I mean, it would be difficult to couch;
19 but certainly, we don't want to limit anyone's
20 right to come in as an objector and to be heard
21 before the Court. Leonard Dobbs, perhaps, is
22 somewhat of a hybrid, given your Honor's ruling
23 denying the formal motion to intervene; but
24 certainly, well beyond the -- the objector who
25 comes on the day of trial and says, "Please let me

1 be heard, your Honor."

2 We did participate throughout the
3 proceedings. We were permitted to file reports,
4 reports which were submitted to the master, which
5 were submitted to the Court, which adversary
6 counsel submitted replies to, both legally and
7 through their experts' reports. So, we are not
8 the litigant who just shows up on the day of court
9 and says, "I'm an adjoining property owner, Judge,
10 I want to add my comments, and please hear me."
11 We went well beyond that.

12 I do realize that there was a ruling on the
13 formal application. And at least my -- my opinion
14 is that we wound up somewhere between those --
15 those two policies; that is, the -- other day, of
16 trial objector and the formal intervenor.

17 But at the same time, your Honor, I think
18 it is very clear that the Court permitted us to
19 participate; I assume, welcomed our participation;
20 and -- and received some value in our input,
21 despite the fact that you didn't ultimately agree
22 with us on our conclusions; and if only to the
23 comment from your Honor that it was not your
24 intent that Leonard Dobbs would be precluded from
25 a review mechanism, that is exactly the type of

1 comment that we are looking for.

2 THE COURT: It's an unusual thing to put
3 into an order. It sounds like an advisory
4 opinion, or dicta, or something. I don't know --

5 MR. WISS: Perhaps --

6 THE COURT: -- what it is.

7 But, you know, you have the additional
8 question. And I want to guard against this
9 clearly. I'm not at all together sure that in
10 light of what has been said in this opinion,
11 assuming that it holds, and in assuming that the
12 method of compliance review is sustained, that a
13 nonparty, objecting, will have a right of appeal
14 in a typical case.

15 I'm not sure of that. I see -- I see the
16 Bedminster case as being somewhat unique and maybe
17 sui generis. But I'm not so sure that the Mount
18 Laurel process is going to be benefited by holding
19 that every party who comes in and objects, that
20 their property was either included or -- and
21 shouldn't have been, or excluded and shouldn't
22 have been, should have a right of appeal. I'm
23 not -- I'm not clear on that yet.

24 I think the -- the reason that I see why we
25 have an option to have an appeal here is that we

1 were at the very early stages of compliance
2 hearings, at the first compliance hearing,
3 essentially; and that the Court was reaching out
4 to determine an appropriate way to handle it.

5 And while the Court was not ready to permit
6 Mr. Dobbs to intervene formally, it was, in
7 essence, willing to permit him to go along for the
8 ride, if he wished to do so, and participate
9 fully. And he did participate fully, and at
10 substantial expense. And I realize that it was at
11 his risk; but, nonetheless, I think there's some
12 equity in his favor to allow an appeal. That's
13 why I've always felt that he should have a right
14 of review. I don't know, though, my feeling in
15 that regard has any bearing whatsoever on what the
16 Appellate Division would deem to be the
17 appropriate law.

18 MR. WISS: Which, your Honor, is why I
19 prefaced my arguments by saying that I realize
20 that your Honor is not going to bind the Appellate
21 Division by what is said here today. And it could
22 be that, for order purposes, I need no more than
23 to indicate, be it by way of supplementation, or
24 in addition to the record, just add the comments
25 that are made here today.

1 I'm not looking to reargue a motion that
2 your Honor ruled on, in the course of the
3 litigation. I know the Court has to be concerned
4 about precedential value. Frankly, in making this
5 application, I am not. I am only concerned about
6 Leonard Dobbs in these unique circumstances. And
7 I do believe that they were unique. And your
8 Honor has referenced sui generis. That was
9 something that was argued by both counsels
10 throughout the trial itself.

11 This was a unique situation, a unique case,
12 a unique town. And we don't seek leave to go
13 beyond that. I'm only talking about Leonard Dobbs
14 in this context, and I'm willing to say that on
15 the record, so, you know, the Appellate Division
16 is clear on that, as well, when they're reviewing
17 this.

18 So, for order purposes, I really don't need
19 more than -- than to even reference that there is
20 your Honor's comments on the record here today.

21 THE COURT: Okay.

22 MR. O'CONNELL: Your Honor, keeping with
23 what Mr. Wiss has said -- and I think we have to
24 be careful about precedential value, and I think
25 it is a decision for the Appellate Division. I

1 don't know what the law will be, as far as rights
2 of review of nonparty objectors. I know the Court
3 has indicated its feelings.

4 We have set forth Dobbs' participation in
5 the judgment. The opinion of the Court clearly
6 spells that out. The record of this case is, I
7 think, fairly clear as to when Mr. Dobbs began to
8 participate; and the actual involvement, which was
9 extensive; and the due process protection which
10 was provided to Mr. Dobbs at the compliance
11 hearing.

12 But whether that gives rise to a right to
13 re-- an appeal, whether in equity or in law, I
14 think is for the Appellate Division. And I know
15 your Honor has indicated to us, both in chambers
16 and elsewhere, that you feel because of Dobbs'
17 participation, that some right of review should
18 be -- be afforded to him. But I think, clearly,
19 any order that would be entered at this time would
20 do nothing more than confuse the issue. I think
21 the record is very clear. I think the next step
22 is for an Appellate Court to decide the question
23 of rights of appeal with respect to nonparty
24 objectors.

25 So, I think what we're struggling with, as

1 a Township, is what could the Court do here, more
2 than has been done in the opinion, more than has
3 been done in the judgment, which wouldn't go
4 beyond what's already been done, and add just
5 confusion to an issue that has not been answered
6 yet by the Appellate Courts.

7 And I think -- I understand Mr. Wiss'
8 position. He doesn't want to be in a position on
9 appeal, where a procedural argument is made, and
10 the Appellate Division doesn't have the Judge's
11 thoughts below. I think your thoughts are spelled
12 out in the opinion clearly.

13 THE COURT: What happens if the Appellate
14 Division says the trial Court should have ruled as
15 a matter of law whether Mr. Dobbs has the right of
16 appeal? Or isn't that a matter of law?

17 MR. O'CONNELL: I think you ruled at one
18 point that they didn't have intervenor status.
19 Now, in other cases where there were compliance
20 hearings, this Court has denied rights to
21 intervene. Those parties have taken appeals. And
22 the Appellate Court has a procedural method for
23 dealing with that. I think as far as Mr. Dobbs is
24 concerned, he could have appealed that decision of
25 the Court in 1984, May of 1984. He didn't.

1 I realize he did spend a lot of money to
2 participate in the compliance hearing, but he did
3 do that at his risk, that he may not have a right
4 of a appeal as a matter of law. And I think
5 that's for the Appellate Courts to decide. We
6 have cases, we have the Rules; and I think Mr.
7 Dobbs is bound by those, unless the Appellate
8 Courts decide otherwise.

9 So, I think it's really for the Appellate
10 Court to decide what the law is, as far as rights
11 of appeal and compliance hearings.

12 THE COURT: But my question is: What if
13 they say, well, shouldn't the Mount Laurel Judge
14 establish principles concerning rights of appeals
15 of nonparties participating in the compliance
16 hearing? Forget whether it's 18 days or one day.
17 That kind of stuff.

18 Is that -- is that within my power, or is
19 it my obligation? In all fairness, let me say
20 that the law should act justly, if not -- if it
21 can't satisfy everybody. And Mr. Dobbs did
22 participate in this case beyond the 18 -- the
23 17-day trial, in conferences. One could argue - I
24 recognize it - he did so at his peril. And the
25 opinion addresses that a little bit.

1 On the other hand, he should be treated as
2 fairly and justly as any other litigant in terms
3 of his rights. And I don't want to see him get in
4 the Appellate Division, and have the Appellate
5 Division say, "Well, before we even hear you,
6 we're going to find out -- we're going to send it
7 back to Judge Serpentelli and find out something
8 else." I'd like to avoid that.

9 Just because a party loses, doesn't mean I
10 don't think he should be entitled to justice in
11 that sense. And I'm bothered by the potential, at
12 least, that the case could get up there, and then
13 the Appellate Division would say, "Well, we think
14 that that should be supplemented. And what's the
15 Judge's thinking, concerning this issue?"

16 MR. O'CONNELL: I understand the dilemma,
17 but I think the Fairness Doctrine, I think, also
18 applies to a municipality. Mr. Dobbs'
19 participation in various conferences certainly
20 wasn't with our consent. We would prefer to have
21 not had him participate.

22 THE COURT: You made that clear.

23 MR. O'CONNELL: I think we did. And as far
24 as the intervenor status, again, I believe it's
25 for the Appellate Court. If they send it back to

1 the trial Courts, to the Mount Laurel Judges, to
2 establish procedure, then we may have to come back
3 and do that.

4 But I think we have spelled out a record
5 here, which says we have parties. We have
6 Plaintiffs. We had the Public Advocate, and we
7 had nonparty objectors; not only Mr. Dobbs, but
8 Timbers. And they have acquired whatever rights,
9 at the compliance hearing, to due process that
10 this Court as a trial Court afforded them, which
11 was full and unbridled right to present witnesses
12 and to cross-examine.

13 Whether that goes beyond, to some right on
14 appeal, I think is truly for the Appellate Courts.
15 And if the Appellate Courts don't deal with that
16 and send it back to this Court, then I think
17 that's -- that's unfortunate. But I think, for
18 the purposes of deciding procedure on appeal, I
19 think that's really for the Appellate Courts. I
20 think you've done everything you can in the
21 opinion and in the judgment, to give Mr. Dobbs
22 whatever status the law provides him. And
23 anything else beyond this would, I think, confuse
24 the issue.

25 THE COURT: Mr. Hall, do you wish to be

1 heard?

2 MR. HALL: No.

3 THE COURT: Mr. Wiss.

4 MR. WISS: Judge, in brief response to the
5 comments which Mr. O'Connell has made, it seems to
6 me that there are at least two ways that the Court
7 can look at this. One is to deal with the
8 question of the status of parties who par -- or
9 individuals or entities who participate either as
10 parties, objectors, intervenors, in a Mount Laurel
11 proceeding; or to give some indication to the
12 Appellate Division of your opinion in this case.

13 I, for one, had sought to make an
14 application, limited to the protection of my
15 client, and was not at this juncture concerned
16 about any binding principle or precedent.

17 Mr. O'Connell has opened up issues beyond
18 that. It could be that we're going to be arguing
19 those same grander issues before the Appellate
20 Division. I don't know whether your Honor wants
21 to take on, at this juncture, the challenge of
22 delineating standards for the manner in which
23 objectors, intervenors, parties are going to
24 participate, and delineate those. That was not my
25 purpose in making this application, although I do

1 agree that it may be something that is going to be
2 addressed as part of the appeal.

3 All I was concerned about, and I think that
4 your Honor has given us the benefit of some of --
5 of your viewpoint this morning on the issue, was,
6 given this unique case, given the role of Leonard
7 Dobbs in this case, given the participation of his
8 experts, of his attorneys, where does Leonard
9 Dobbs stand in your Honor's viewpoint. And that's
10 all we sought to have addressed. We don't seek
11 more than, perhaps, an order referencing your
12 Honor's comments. If we want to go beyond that --

13 THE COURT: What would that order say?

14 MR. WISS: I think, nothing more than --

15 THE COURT: I mean, normally, a motion is
16 granted or denied. And I really -- I'm not -- I'm
17 floundering as to say whether I grant or deny this
18 motion, you know?

19 MR. WISS: The difficulty, your Honor, is
20 that the arguments that we raised were first
21 raised in part in the context of the -- the entry
22 of the judgment. And the determination was made
23 that it would be easier or better for all
24 concerned to come before the Court on this one
25 narrow issue, than to hold up the entry of the

1 judgment.

2 It could be by way of amendment of that --
3 of that judgment that was entered. We're not
4 seeking to open the - you know - the bigger can of
5 worms. I'm not trying to do this by way of a
6 collateral attack. That's really not my purpose.

7 All we want to do, is make it clear that
8 there is not going to be that procedural
9 impediment. Obviously, we don't want to come back
10 down on a remand on a limited issue to get your
11 Honor's -- your Honor's opinion. And I don't know
12 whether -- whether an order can be framed in terms
13 of either the opinion or the judgment is amended,
14 so as to reflect the Court's considerations as
15 expressed on the record on whatever today's date
16 is, July 2d.

17 And then the Appellate Division can take
18 that for whatever it's worth. Mr. O'Connell will
19 be free to make his arguments. And I will, also.
20 But at least the Appellate Division will have the
21 benefit of your Honor's opinions. And they, in
22 turn, will choose to either echo them or to put
23 them aside.

24 THE COURT: Well, I didn't come out on the
25 bench with an order in mind, because I really have

1 been attempting to -- to deal with what is really
2 a very unusual motion. In a very real sense, it
3 calls for some advisory opinion; or may, in fact,
4 call for me to make a ruling which is not properly
5 within my power; that is, which rests with the
6 Appellate Division.

7 There are a couple of things that are clear
8 to me; one is that nothing that I will say or have
9 said today is intended to, in any way, modify the
10 decision which I made to deny intervention. And
11 to the extent that I suggest that Mr. Dobbs should
12 have a right of appeal, it does not mean that I
13 intend in any way to reverse the ruling which I
14 made with respect to intervention.

15 I consider intervention to have some
16 significance in a Mount Laurel proceeding. It
17 doesn't necessarily equate to a builder's remedy
18 or anything of that sort. But it may have some
19 significance. And, therefore, I want to repeat
20 that the order with regard to intervention is not
21 in any way affected by anything I say, and that no
22 arguments should be made in that regard.

23 I think, probably, the most that I can say
24 is that to the extent that this Court is empowered
25 to determine or even suggest what rules should be

1 followed concerning Mr. Dobbs' right to appeal,
2 that the Court considers this case to be unique;
3 that in light of the special equities involved in
4 the case, that Mr. Dobbs should be granted the
5 right of Appellate review; not because of any
6 Mount Laurel principles, not because of any
7 intervention, because that was specifically
8 denied - and I reaffirm that denial - but because
9 we were in the early process of Mount Laurel
10 compliance review. And his substantial
11 participation in the case, as a matter of equity,
12 warrants a right of review in light of the result.

13 I don't believe I can say more than that.
14 And I think whether that constitutes a grant or a
15 denial of the motion, I am not sure. And for that
16 reason, the clerk is resigning. So, I . . .

17 If you can fashion an order which
18 incorporates that, Mr. Wiss, I would be happy to
19 sign it.

20 MR. WISS: Judge, I hope I can do it
21 without a hearing on the form of the order.

22 THE COURT: Yeah. I think -- are you
23 prejudiced by saying that the motion is dismissed,
24 but for the reasons set forth on the transcript?
25 Would that be appropriate? I mean, at least

1 you've now reserved all of your rights. You've
2 got the benefit of the Court's thinking.

3 It certainly can't be granted, because I
4 haven't supplemented the opinion. And I can't --
5 I can't order a right of appeal. I don't want to
6 deny it, because I don't want to say that there's
7 no right of appeal. And I can't think of another
8 term for it within the lexicon of our normal
9 procedures.

10 MR. WISS: Certainly, the aspect which
11 would have addressed supplementing the opinion, I
12 could probably, for purposes of framing an order,
13 indicate a denial; if I could, with respect to the
14 clarifying of the status request, just reference
15 your comments.

16 THE COURT: All right. In other words, the
17 motion is -- the motion to clarify the opinion is
18 denied. The motion -- the --

19 MR. WISS: Motion to supplement.

20 THE COURT: The motion to supplement the
21 opinion is denied. The motion relating to the
22 clarification is what?

23 MR. O'CONNELL: I thought your Honor's
24 suggestion to just have it dismissed for the
25 reasons set forth --

1 THE COURT: How about: Is disposed of, for
2 the reasons -- it is disposed of, by the reasons
3 set forth on the record.

4 MR. WISS: That's fine. I just don't want
5 to have the further procedural argument that:
6 Whatever that application was, was denied; don't
7 look any further.

8 THE COURT: No.

9 MR. WISS: I respect my adversaries too
10 much, to know that they wouldn't do that to me.

11 THE COURT: I don't want to do that to you.
12 I don't want to -- I want to -- I don't want to
13 affect your client that way. And, you know, I'm
14 sure he's not happy with the outcome. But I -- I
15 want him and you to know that I want to be fair
16 about it. And I think fairness dictates your
17 right of review, that that's -- that's the long
18 and short of it.

19 I want to add, and I think we should add to
20 the order, that the Court's findings in this case
21 should not be deemed precedential with respect to
22 any other case, because I'm not sure where we're
23 going in those cases. And who knows where we're
24 going with any case, in light of what has occurred
25 most recently in the Legislature.

1 MR. WISS: I'll use the words "disposed of"
2 then, in the order.

3 THE COURT: Okay. I don't know, Mr. Wiss,
4 whether I ever said that on the record, and I hope
5 I did say it to you personally, but I want to say
6 it in your client's presence, that I think you and
7 your firm did an outstanding job of presenting
8 this case. And you, particularly, accorded
9 yourself the highest degree of professionalism,
10 and it's really a pleasure to have you in court.

11 MR. WISS: Thank you, sir. I appreciate
12 it.

13 THE COURT: All right. Thank you.

14 (Matter concluded.)
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25

C E R T I F I C A T E

I certify the foregoing to be a true and accurate transcript of the proceedings in the above-entitled cause.

Date: _____

DAYETTE J. ZAMPOLIN, C.S.R.
License No. XI00674



State of New Jersey
DEPARTMENT OF THE PUBLIC ADVOCATE
DIVISION OF PUBLIC INTEREST ADVOCACY

CN 850

TRENTON, NEW JERSEY 08625

JOSEPH H. RODRIGUEZ
PUBLIC ADVOCATE

RICHARD E. SHAPIRO
DIRECTOR
TEL: 609-292-1693

July 1, 1985

Honorable Eugene D. Serpentelli
Superior Court of New Jersey
Ocean County Court House
Toms River, N.J.

Re: Alan-Deane Corporation v. Township of Bedminster
Docket No. L-28061-71 P.W.

Dear Judge Serpentelli:

We are in receipt of the application by Leonard Dobbs for clarification of the court's opinion in the above entitled matter. Plaintiff-intervenors Cieswick, et al. take no position as to this application.

Yours truly,


STEPHEN EISDORFER
Assistant Deputy Public Advocate

SE:id
cc: All Counsel
Kenneth E. Meiser, Esq.

RECEIVED

JUL 3 1985

JUDGE SERPENTELLI'S CHAMBERS

RECEIVED

JUN 18 1985

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GARY M LUKS
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*MANAGING PARTNER
*MEMBER NEW YORK BAR

June 17, 1985

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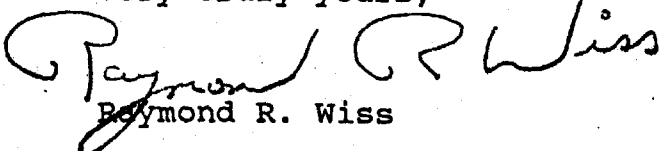
Brian D. Schwartz, Esq.
Weinberg & Schwartz
40 Stirling Road
Watchung, New Jersey 07060

Re: The Allan-Deane Corporation, et al.
v. Township of Bedminster, et al.
Docket Nos. L-3689-70 P.W. and L-28061-71 P.W.

Gentlemen:

This letter will serve to confirm that the Motion which we have filed on behalf of Leonard Dobbs seeking a clarification of the Opinion of the Court as to the status of Dobbs for purposes of appeal has been adjourned from Friday, June 21, 1985 to Tuesday, July 2, 1985 at 9 a.m.

Very truly yours,


Raymond R. Wiss

RRW/ac

cc: Honorable Eugene D. Serpentelli
Mr. Leonard Dobbs

RECEIVED

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June 12, 1985

*MANAGING PARTNER
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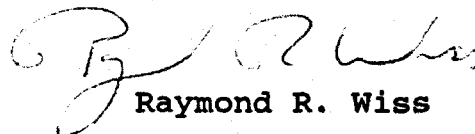
Honorable Eugene D. Serpentelli
Court House
Toms River, New Jersey 08754

Re: The Allan-Deane Corporation, et al.
v. Township of Bedminster, et al.
Docket Nos. L-3689-70 P.W. and L-28061-71 P.W.

Dear Judge Serpentelli:

I enclose herewith two copies of Motion and Certification with respect to the above matter. The original Motion and Certification are being simultaneously filed with the Clerk of the Superior Court in Trenton, and a copy of the Motion and Certification are being served upon all counsel. It is my understanding from my conversation with your law clerk that the Motion date which I have scheduled (June 21) is acceptable to the Court. However, if alternative arrangements are required, we would certainly consent to the same, subject to the fact that Your Honor has entered a Judgment dated June 6, 1985 which necessarily commences the running of the 45-day time period in which any appeal must be taken.

Respectfully,


Raymond R. Wiss

RRW/ac
Enclosures

cc: Superior Court Clerk
Alfred L. Ferguson, Esq.
Daniel F. O'Connell, Esq.
Brian D. Schwartz, Esq.
Henry A. Hill, Jr., Esq.
Public Advocate Office

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Attorneys for Leonard Dobbs

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
SOMERSET/OCEAN COUNTIES

Docket Nos. L-36896-70 P.W.
L-28061-71 P.W.

THE ALLAN-DEANE CORPORATION, :
x

Plaintiff, :

v. :

TOWNSHIP OF BEDMINSTER and :
TOWNSHIP OF BEDMINSTER :
PLANNING BOARD, :

Defendants :
x

LYNN CIESWICK, APRIL DIGGS, :
W. MILTON KENT, GERALD :
ROBERTSON, JOSEPHINE ROBERTSON, :
and JAMES RONE, :

Plaintiffs, :

v. :

TOWNSHIP OF BEDMINSTER and :
TOWNSHIP OF BEDMINSTER :
PLANNING BOARD, :

Defendants. :
x

Civil Action
NOTICE OF MOTION

N/M; CERT

PLEASE TAKE NOTICE that on Friday, June 21, 1985 at 9 o'clock in the forenoon, or as soon thereafter as counsel may be heard, the undersigned attorneys for Leonard Dobbs shall make application to the Superior Court of New Jersey, Law Division, Ocean County, before the Honorable Eugene D. Serpentelli, for an Order supplementing the Opinion of the Court dated May 1, 1985, and clarifying the status of Leonard Dobbs with respect to his right to take an appeal from said determination.

In support of the within application, movant respectfully relies upon the annexed Certification of counsel.

Oral argument on this Motion is respectfully requested.

WINNE, BANTA, RIZZI
HETHERINGTON & BASRALIAN

By: 
Raymond R. Wiss

Dated: June //, 1985

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

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
SOMERSET/OCEAN COUNTIES

THE ALLAN-DEANE CORPORATION, :

Plaintiff, :

v. :

TOWNSHIP OF BEDMINSTER and
TOWNSHIP OF BEDMINSTER
PLANNING BOARD, :

Defendants :

Docket Nos. L-36896-70 P.W.
L-28061-71 P.W.

Civil Action

CERTIFICATION

LYNN CIESWICK, APRIL DIGGS, :
W. MILTON KENT, GERALD :
ROBERTSON, JOSEPHINE ROBERTSON, :
and JAMES RONE, :

Plaintiffs, :

v. :

TOWNSHIP OF BEDMINSTER and
TOWNSHIP OF BEDMINSTER
PLANNING BOARD, :

Defendants. :

x

I, Raymond R. Wiss, being of full age, do hereby certify as follows:

1. I am a partner in the law firm of Winne, Banta, Rizzi, Hetherington & Basralian, counsel for Leonard Dobbs. I make this Certification in support of the Motion filed by Dobbs seeking a clarification of his status with respect to his right to take an appeal from the Judgment entered by this Court on June 6, 1985, as a result of its Opinion dated May 1, 1985.

2. As the Court is well aware, Leonard Dobbs actively participated in the numerous procedural conferences which were conducted by the Court throughout this matter. Further, Dobbs actively participated in the seventeen-day trial and was indeed the most vocal, if not only, critic of the Township's proposed compliance package. During the course of the trial, Dobbs, through his experts, specifically challenged the proposed compliance package and submitted reports with respect to the same.

3. Although Dobbs was not afforded formal intervenor status, he was afforded and exercised all of the rights of a party during the compliance and builder's remedy proceedings. In fact, the record reflects that both prior to trial, and at the time of trial, Dobbs, through his attorneys and experts, conducted the only "cross-examination" of the Township's experts.

4. To permit Dobbs to exercise these rights, at very considerable effort and expense, and then deny him the ability to appeal from an adverse decision would not only be anomalous but would also be contrary to the dictates of justice and fair play. Presumably, if Dobbs had prevailed on the issue in question, the Township would have asserted its right to appeal from this Court's determination as it affected Dobbs. Basic fairness and equity require that Dobbs have the same right.

5. It was the reasonable assumption of Dobbs, based on the conduct of the proceeding throughout and especially through the compliance and builder's remedy proceedings, that he would be able to pursue the arguments which he advanced before this Court to their ultimate disposition. We assume that this was also the intention of the Court, especially given the fact that Your Honor's ruling directly impacts upon Dobbs and his ability to develop his property. We would, therefore, ask the Court to clarify Dobbs' status vis-a-vis an appeal in this matter.

6. I hereby certify that the foregoing statements made by me are true and correct. I am fully aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment in accordance with the Rules of Court.

WINNE, BANTA, RIZZI
HETHERINGTON & BASRALIAN

By: 
Raymond R. Wiss

Dated: June 12, 1985