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Letter from Mastro to Judge Serpantelli re: reply to P's brief
opposing motion to transfer in Motzenbecker v. Bernardsville.

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Hon. Eguene D. Serpentelli
Superior Court of New Jersey
Ocean County Court House
CN 2191
Toms River, New Jersey 08753

Re: Motzenbecker vs Borough of Bernardsville, et als

Dear Judge Serpentelli:

Please accept this letter memorandum in lieu of a formal reply brief to plaintiff's brief opposing defendants' motion to transfer. Plaintiff's legal argument misstates defendants' contentions and thereby seeks to circuitously avoid addressing the issues presented therein. With regard to relief affordable pursuant to R. 4:50-1(f), defendants' brief correctly states the law wherein it notes that "The very essence of (f) is its capacity for relief in exceptional situations. And, in such exceptional cases, its boundries are as expansive as the need to achieve equity and justice." Court Invest. Co. v. Perillo, 48 N.J. 334, 342 (1966) (See defendants' brief p.9) The entire thrust of defendants' argument is that the instant motion presents an exceptional situation. (See defendants' brief p.9) Once an exceptional situation is established to exist, R. 4:50-1(f) permits relief in the Court's discretion, however, relief is not automatic. Because the Court may exercise its discretion, equitable principles are the appropriate guide in deciding whether or not to grant a pending motion if an exceptional situation is presented. (See defendants' brief p.8) In seeking to avoid the issues raised by defendants' brief, plaintiff contends that defendants' argument urges vacation of the stipulation merely on simple balancing of equities test. (See plaintiff's brief p.5) One can only assume that plaintiff's fallacious argument was a calculated attempt to skirt the reality of the existing exceptional situation; i.e., that the intervention of the Fair Housing Act will result in defendant Borough being treated in a grossly disparate fashion from resisiting communities. (See defendants' brief p.10, 11)

In support of defendants' assertion, one must recognize that although a mere change in decisional law will not alone create an exceptional situation, In re Estate of Wehrhane, 149 N.J. Super. 41 (Ch. Div. 1977), "if the change is coupled with considerable equity and extreme hardship for the applicant, ground for relief from a judgment...can be established." In re Estate of Cory, 98 N.J. Super. 208 (Ch. Div. 1967), "Such a case would constitute an 'exceptional situation'..." id. (See defendants' brief p.9)

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In further support of the proposition that the Fair Housing Act combined with the unique facts of this case constitute an exceptional situation, defendants cite Castiglioni v. Castiglioni, 192 N.J. Super. 594 (Ch. Div. 1984). Therein, it was held that passage of a federal statute (USFSPA) providing for equitable distribution of military pensions created grounds pursuant to R. 4:50-1(f) to reopen a judgment rendered prior to the Act's passage. As in the instant matter, the Castiglioni case had originally been resolved pursuant to a settlement. Notwithstanding the consensual nature of the judgment the Court held that R. 4:50-1 applies equally to both negotiated settlements and a full bench trial.

The procedural history of Castiglioni and the instant matter arise from virtually identical occurrences. In both cases a Supreme Court ruling was seen as dispositive of pertinent issues subject to litigation. In both cases subsequent to a settlement of those issues intervening legislation was promulgated. As in Castiglioni, defendants urge that application of R. 4:50-1(f) be granted due to the exceptional situation herein.

Respectfully submitted,



J. Albert Mastro
Attorney for Defendants

JAM/jc

cc: Douglas K. Wolfson, Esq.(via Express Mail)

Reply Ltr.
10-10-88