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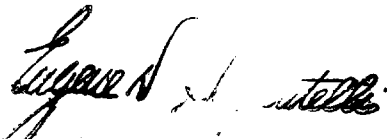
Order

Pgs. 10

conclusions, expressed in its oral opinion of May 8, 1986, upon said claims for relief, the determination of such effect being left for adjudication by the courts of Somerset County; and

5. This Court's order dated December 12, 1985, in the above-captioned matter be and it hereby is vacated; and

6. The above-captioned matter is hereby transferred to the Council on Affordable Housing as per the Supreme Court's Order of February 20, 1986.



EUGENE D. SERPENTELLI, A.J.S.C.

- \_\_\_ NOTICE OF MOTION RETURNABLE \_\_\_\_\_
- \_\_\_ MOVANTS' AFFIDAVITS DATED \_\_\_\_\_
- \_\_\_ MOVANTS' BRIEF DATED \_\_\_\_\_
- \_\_\_ ANSWERING AFFIDAVITS DATED \_\_\_\_\_  
 SUBMITTED ON BEHALF OF \_\_\_\_\_
- \_\_\_ ANSWERING BRIEF DATED \_\_\_\_\_  
 SUBMITTED ON BEHALF OF \_\_\_\_\_
- \_\_\_ CROSS-MOTION DATED \_\_\_\_\_  
 FILED BY \_\_\_\_\_
- \_\_\_ MOVANTS' REPLY DATED \_\_\_\_\_
- \_\_\_ OTHER \_\_\_\_\_

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9/18/16

MAY 20 1986

## BRENER, WALLACK &amp; HILL

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FILE NO.

May 16, 1986

The Honorable Eugene D. Serpentelli, A.J.S.C.  
Ocean County Court House  
100 Washington Street  
Toms River, NJ 08753

RE: The Hills Development Company v. Tp. of Bernards, et al.;  
Docket No. L-030039-84 P.W.

Dear Judge Serpentelli:

We are in receipt of a copy of Mr. Shaw's correspondence of May 14, 1986 addressed to Your Honor. Enclosed with said correspondence was a revised, proposed form of order. Unfortunately, said revised, proposed form of order remains objectionable to plaintiff.

With respect to Paragraph 3 of said proposed order, defendants persist in requesting that claims which were not heard by Your Honor be "denied without prejudice". As Your Honor indicated during the May 8, 1986 oral argument on Hills' Motion on Remand, (see copies of pages 2 and 60 of the transcript, enclosed herewith), issues raised in Points III, IV and V of Hills' brief in support of said Motion were not reached by this Court. The issues were simply not adjudicated and were not denied with or without prejudice. It is therefore respectfully requested that Paragraph 3 of the Order to be entered in this matter read as submitted by Hills.

More importantly, however, defendants also persist in having this Court execute an Order declaring that this litigation is "dismissed with prejudice". As plainly indicated by a reading of section 16(a) of the Fair Housing Act and the Supreme Court's opinion in The Hills Development Company v. Tp. of Bernards, slip op. at 93, this litigation has been transferred to the Council on Affordable Housing; it has not been dismissed. A reading of Daaleman v. Elizabethtown Gas Company, 77 N.J. 267 (1978), cited by defendants, indicates that the case is clearly inapposite and does not call for a different result than that mandated by section 16(a) and the Supreme Court. Therefore, Hills respectfully requests that Paragraph 6 of the Order to be entered by Your Honor

Honorable Eugene D. Serpentelli

May 16, 1986

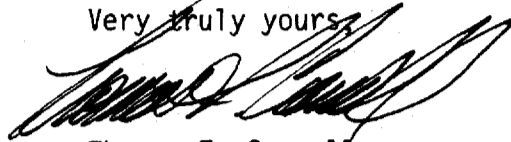
-2-

read as submitted by Hills.

If Your Honor feels that this matter warrants a telephone conference, kindly so advise and I will arrange for same.

Thank you for your kind attention in this matter.

Very truly yours,



Thomas F. Carroll

TFC:klp

enclosures

CC: James E. Davidson, Esq. (w/enclosure)  
Arthur H. Garvin, III, Esq. (w/enclosure)

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JUDGE SERPENTELLI'S CHAMBERS

THE COURT: All right. The purpose of this hearing this morning is to deal with two aspects of the order of remand in the Supreme Court, specifically the issue of any alleged development rights of the plaintiff arising out of an alleged settlement and/or estoppel.

The plaintiff has, in fact, raised other issues in their moving papers, and both parties have been advised that the Court will not hear those today.

Just as a threshold here, I'd like to get both parties' understanding of the meaning of the Supreme Court order of remand, and specifically the language which says that the plaintiffs may seek relief before this Court in the form that the Court deems appropriate, and now I quote, "asserting plaintiff's alleged development rights arising out of any alleged settlement, estoppel or otherwise, provided, however, that such application shall not affect this Court's order transferring the matter to the Council on Affordable Housing, and provided further that this Court granting leave to file such an application shall not preclude the assertion by defendants that this Court's order of transfer forecloses such claims by the plaintiff."

1 to demonstrate that much of their reliance was, in  
2 fact, based upon what they perceived to be a settle-  
3 ment. But I don't have to decide that, because the  
4 plenary hearing is not necessary.

5 In my view, under the well-established  
6 law both with regard to settlements and with regard  
7 to municipalities' right to change ordinances, there's  
8 no basis at all for a justified reliance in this  
9 case; and therefore, there cannot either be rights  
10 accrued by virtue of a settlement agreement or by  
11 virtue of estoppel.

12 Now, there's some remaining issues in the  
13 case which have been briefed, and counsel has in-  
14 dicated in their moving papers, plaintiff has, that  
15 they have started an action in Somerset County.

16 I believe that those issues are properly  
17 before the Somerset County Court, and not before me.  
18 They're not Mount Laurel issues at this point which  
19 I need to decide or should decide, and this Court  
20 is supposed to divest itself of jurisdiction.

21 The limited remand I have dealt with; and  
22 therefore, those other issues will not be decided  
23 by this Court.

24 MR. HILL: Your Honor, one question,  
25 technical question. Some of the issues that we have

PENGAD CO., BAYONNE, N.J. 07002 FORM 2045

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22 therefore, those other issues will not be decided  
23 by this Court.

24 MR. HILL: Your Honor, one question,  
25 technical question. Some of the issues that we have

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MAY 15 1986

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May 14, 1986

Honorable Eugene D. Serpentelli, A.J.S.C.  
Ocean County Court House  
Toms River, New Jersey 08754

Re: Hills Development Company  
v. Bernards Township  
Docket No. L-030039-84 P.W.

Dear Judge Serpentelli:

In response to Mr. Carroll's letter of May 12, 1986, we object to his proposed form of Final Order for the reasons stated below, but we submit a revised form of Order addressing some of the pertinent issues.

(a) As regards paragraph 3, we believe that Mr. Carroll's form of Order leaves the "other pending motions" in a state of limbo. If they are not denied, then presumably they would remain open on the docket of Your Honor's court, a result contrary to Your Honor's rulings. The fact that the motions have not been adjudicated is adequately reflected in the provisions of paragraph 4 (of both parties' Orders) which leaves to the Somerset County court the determination of the effect which Your Honor's rulings might have upon such motions.

(b) We do not object to plaintiff's substituted language for paragraph 4.

(c) As regards paragraph 6, plaintiff's proposed language is superfluous, because the Supreme Court already has ordered such transfer. However, the Supreme Court left open certain limited matters for disposition by this court, which matters have now been disposed of. There being nothing further before this court, a dismissal is appropriate to remove the case





MAY 1 1986

*OBJ*

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L. STEPHEN PASTOR\*\*  
GUY P. LANDER+  
RUSSELL U. SCHENKMAN+  
MITCHELL NEIDER\*\*  
JOEL D. ROSEN\*

*Handwritten: H<sup>ed</sup> 5-21*

*Handwritten: Talia*

\* MEMBER OF N.J. & D.C. BAR  
\*\* MEMBER OF N.J. & PA. BAR  
+ MEMBER OF N.J. & N.Y. BAR  
++ MEMBER OF N.J. & GA. BAR  
^ MEMBER OF PA. & MA. BAR ONLY  
\* MEMBER OF CONN. BAR ONLY  
^ CERTIFIED CIVIL TRIAL ATTORNEY

May 12, 1986

FILE NO. 3000-0042

The Honorable Eugene D. Serpentelli, A.J.S.C.  
Ocean County Court House  
100 Washington Street  
Toms River, NJ 08753

RE: The Hills Development Company v. Tp. of Bernards, et al  
Docket No. L-030039-84 P.W.

Dear Judge Serpentelli:

This office is in receipt of a proposed form of Order submitted by Howard P. Shaw, Esq. in reference to the above-captioned matter. Plaintiff finds the form of the Order objectionable for three reasons.

First, Paragraph 3 of Defendants' Order provides that issues not adjudicated by Your Honor have been denied without prejudice. In fact, Your Honor did not evaluate the issues and the enclosed proposed form of Order (Paragraph 3) provides that those issues have not been adjudicated.

*Handwritten: Will*

Second, as Plaintiff advised Your Honor by way of letter dated May 6, 1986, Plaintiff has already filed a Complaint in Somerset County raising the issues which Your Honor felt was outside of the scope of the remand directed by the Supreme Court. Thus, Hills does not require leave to amend the Complaint as provided in Paragraph 4 of Defendants' proposed Order. However, as requested during the May 8, 1986 oral argument in this matter, Hills does request that the Order provide that claims raised before Your Honor not be found to be time-barred as per R. 4:69-6. Paragraph 4 of the enclosed proposed form of Order so provides.

*Handwritten: OK*

Third, Paragraph 6 of Defendants' proposed Order provides that this matter is "dismissed with prejudice". As held in the Supreme Court's Order of February 20, 1986, this litigation is not "dismissed" but is transferred to the Council on Affordable Housing. Paragraph 6 of the enclosed proposed form of Order so provides.

*Handwritten: OK*

If the proposed form of Order enclosed herewith meets with no objection from counsel for Defendants, I request that the Order be entered and a conformed

Honorable Eugene D. Serpentelli

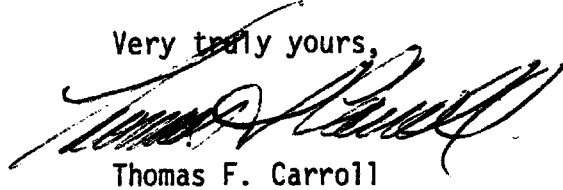
May 12, 1986

-2-

copy returned to me in the stamped, self-addressed envelope enclosed herewith.

Thank you for your kind attention in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Tom Carroll", written in a cursive style.

Thomas F. Carroll

TFC:klp

CC: Howard P. Shaw, Esq. (w/enclosure)  
Arthur H. Garvin, III, Esq. (w/enclosure)

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MAY 1 1986

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May 9, 1986

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

Re: The Hills Development Company  
v. The Township of Bernards, et al  
Docket No. L-030039-84 P.W.  
(Mount Laurel II)

Dear Judge Serpentelli:

Enclosed are an original and two copies of a proposed form of Order, incorporating Your Honor's rulings at the motion hearing on May 8, 1986. We have now received a copy of the plaintiff's new Complaint in Somerset County, and for clarity we have taken the liberty of inserting the docket number of that case in the appropriate place in the enclosed Order.

This Order is submitted pursuant to the 5-day Rule. A copy of the Order is being served upon counsel for plaintiff by copy of this letter.

If no written objection to the form of the Order is received within 5 days, we respectfully request that the Order be entered and filed, and that a conformed copy be returned to us in the enclosed post-paid envelope.

Respectfully yours,

FARRELL, CURTIS, CARLIN & DAVIDSON

By:



Howard P. Shaw

HPS/sjm

Encl.

cc: Henry A. Hill, Esq.  
Arthur H. Garvin, Esq.  
(all w/encls.)