

letter written in support of Piscataway's  
application for a stay of trial court  
proceedings

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November 19, 1985

\*MEMBER N.J. & N.Y. BARS  
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Honorable Eugene D. Serpentelli  
 Judge, Superior Court of New Jersey  
 Ocean County Court House  
 Toms River, New Jersey 08754

Re: Urban League of Greater New Brunswick, et al.  
 v. The Mayor and Council of the Borough of  
 Carteret, et al.  
 Docket No. C-4122-73

My dear Judge Serpentelli:

Kindly accept the within letter in support of Piscataway's application for a stay of trial court proceedings pendant before Your Honor, which application will be argued before the Court on Friday, November 22, 1985.

This application is brought before the Court in light of an Order dated November 13, 1985, entered in the Supreme Court of New Jersey (A-131-September Term, 1985 - 24-787), a copy of which is appended hereto.

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By way of summary of the most recent aspects of the procedural history of this litigation, during September, 1985, Piscataway applied before this Court to transfer this matter from the Superior Court of New Jersey to the Affordable Housing Council, an administrative entity created by the Fair Housing Act. On October 3, 1985, extensive argument was heard in support of and in opposition to Piscataway's obligation; the argument was consolidated with similar arguments brought by the municipalities of Cranbury, Monroe, South Plainfield, and Warren. This Court determined that Piscataway's application to transfer should be denied, and it executed an Order to that effect on October 11, 1985.

On October 23, 1985, Piscataway filed with the Appellate Division of the Superior Court a Notice of Motion seeking leave to appeal, among other things. Piscataway also sought an emergent stay of all trial court proceedings as to it, in light of the Judgment entered in this Court directing that Piscataway submit a compliance package by October 23, 1985. That application was denied; the remainder of Piscataway's applications were lodged for filing with the Appellate Division.

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Thereafter, the plaintiff Urban League moved in this Court for an Order directing Carla Lerman, Court-appointed Master, to immediately commence work on a compliance plan for Piscataway. Piscataway, by way of Cross-Motion, sought an extension of time within which to file its compliance plan. On November 8, 1985, this Court granted Piscataway an extension until December 2, 1985, upon certain conditions including the clear possibility that, if Piscataway demonstrated reasonable progress, the extension would be continued until December 23, 1985. A form of Order reflecting the relief granted by this Court has been submitted to the Court under the five day rule but has not yet been executed.

On Thursday, November 14, 1985, I received a telephone call from Stephen Townsend, Clerk of the Supreme Court, advising that the Supreme Court had determined, pursuant to R. 2:12-1, to certify all appeals of Orders relating to applications to transfer litigation to the

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Affordable Housing Council directly. On Monday, November 18, 1985, I received a copy an Order dated November 13, 1985, reflecting that direct certification and granting leave to appeal, among other things. The Supreme Court did not stay the trial court proceedings but did address that issue:

...jurisdiction in these matters otherwise remains in the Superior Court, Law Division; provided, however, that any party may make an application to the Law Division to stay further proceedings in that Court pending the resolution of the within appeal and provided further that the direct review of the disposition of such a stay application may be sought from this Court by any aggrieved party.

The Supreme Court's Order of November 13, 1985, was transmitted by letter dated November 15, 1985. That letter, a copy of which is appended hereto, provides that initial briefs are to be exchanged between the parties on or before December 2, 1985, with responsive briefs to be submitted before December 11, 1985. The letter delineates a number of issues to be addressed by each party. The

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accompanying exhibits make clear that the Court intends to consider the various appeals expeditiously.

With respect to the instant application for a stay, Piscataway wishes to emphasize the following points:

A. In light of the extraordinary attention given this matter by the Supreme Court of New Jersey, it may be clearly inferred that the Supreme Court intends to brook no delay in the prosecution of these appeals. Therefore, even if the Supreme Court is likely to decide this case adversely to Piscataway, the likelihood of extensive delay to be sustained by any plaintiff in Piscataway's case is remote, if at all existent. Therefore, no plaintiff will suffer any irreparable harm as a result of the grant of any stay.

B. The Supreme Court clearly intends to review with care and deliberation the language employed by the State Legislature in adopting the Fair Housing Act, an act made effective on July 2, 1985, and never before inter-

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preted by any court of appellate jurisdiction. Substantial constitutional and interpretational questions are presented in this process which may render prior Orders entered in this and other courts academic.

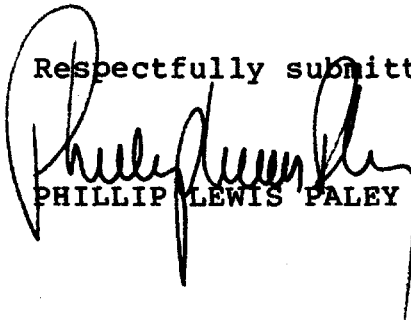
C. Piscataway is presently under order to actively pursue the preparation of a compliance package, in coordination with the Master. This entails substantial attention, time, and effort. To comply with this Court's earlier Order, Piscataway must pay the Master for her time, its Planner, for his, its attorney, and other professionals who may become involved in this proceeding. If there is any possibility that much of the work involved might be rendered academic, it would appear wiser to defer the completion of that work until the Supreme Court renders its interpretive decision.

D. Plaintiffs suffer no hardship whatever by the granting of a stay, particularly where non-Mt. Laurel development on the bulk of suitable parcels has been restrained by Order of this Court dated December 11, 1984.

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Therefore, pursuant to Crowe v. DeGioia, 90 N.J. 126 (1982), this Court should grant a stay in this matter, pending the proceedings before the Supreme Court of New Jersey.

Respectfully submitted,  
  
PHILLIP LEWIS PALEY

PLP:bhp  
Enclosures