

Brief in support of Δ^2 's motion for stay
pending the disposition on Δ^2 's motion
for leave to appeal
(COAH transfer)

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Township Board of Adjustment

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MORRIS COUNTY FAIR HOUSING
COUNCIL, et. al.

Plaintiff

vs.

) SUPERIOR COURT OF
NEW JERSEY
) LAW DIVISION
MORRIS COUNTY/
) MIDDLESEX COUNTY
(MT. LAUREL II LITIGATION

THE TOWNSHIP OF BOONTON, a
Municipal Corporation of the
County of Morris and State of
New Jersey, et. al.,

Defendant

) DOCKET NO. L-59128-85 P.W.
L-6001078 P.W.

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RANDOLPH MOUNTAIN INDUSTRIAL
COMPLEX, A New Jersey
Partnership

Plaintiff

vs.

THE TOWNSHIP OF RANDOLPH, A
Municipal Corporation of the
County of Morris and State of
New Jersey, et. al.

Defendant

MIDDLESEX COUNTY CLERK
NEW BRUNSWICK, N.J. 08901

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BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR STAY
PENDING THE DISPOSITION ON DEFENDANTS' MOTION FOR
LEAVE TO APPEAL

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On the Brief:
Edward J. Buzak, Esq.

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STATEMENT OF FACTS

At this posture in the case, the trial court and the parties are fully familiar with the facts in this matter. As it relates to this application for a stay, Defendants, Township of Randolph, Randolph Township Planning Board, Randolph Township Board of Adjustment and Randolph Township Municipal Utilities Authority have filed a Motion for Leave to Appeal the May 29, 1986 Order of this Court joining the Planning Board, Board of Adjustment and Municipal Utilities Authority to this action. The joinder was made for the purposes of binding said additional Defendants to the injunctive relief sought by Plaintiff Public Advocate which includes an injunction preventing the Planning Board from granting any final approvals unless the development is a Mt. Laurel development, enjoining the Board of Adjustment from granting any use variances unless the same involves a Mt. Laurel development and enjoining the Municipal Utilities Authority from granting any sewerage allocation unless it is for a Mt. Laurel development or to relieve an existing health hazard. The Public Advocate has filed a motion to impose such conditions, which motion was filed on March 21, 1986 and on April 17, 1986 filed a letter brief and supporting documentation in connection with the motion. The Court ordered that the Advocate file supplementary data by May 23, 1986, which to this date has not been received, and

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that the Defendants respond thereto by June 11, 1986. The moving parties will then have an opportunity to reply by June 18, 1986 and the Court will thereafter set a hearing date on the motions.

In light of the motion being made to the Appellate Division by Defendants, it is respectfully requested that this Court stay further proceedings on the issue of conditions until such time as the Appellate Division disposes of Defendants' motion. If Defendants' motion is granted and they successfully challenge the Order entered by this Court on May 29, 1986 joining additional parties, the relief requested in its present form by the Plaintiff cannot be granted and therefore any proceedings held in connection therewith would be moot. To avoid the loss of judicial time and to further prevent needless filings and activity resulting in additional documentation and expenses, it is respectfully requested that this Court issue a stay pending the disposition of the motion. As has been stated in the past, Plaintiff had 7 and one-half years to add these parties and it is not until now that they have felt the need. Surely an additional short waiting period to permit the Appellate Division to dispose of the motion would do no harm to the Plaintiffs.

Pursuant to R.2:9-5(a) and 2:5-6(a) the filing of a Motion for Leave to Appeal does not constitute a stay in

any Civil Action and the party seeking a stay must move first before the Court which entered the order for the stay. The foregoing motion is submitted in accordance with said rules.

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LEGAL ARGUMENT

THIS COURT SHOULD STAY ALL FURTHER PROCEEDINGS AND ACTIVITY IN THE CAPTIONED CASES BECAUSE THE FAILURE TO DO SO MAY CAUSE IRREPARABLE INJURY TO THE DEFENDANT AND THE PUBLIC, THE BENEFIT OF THE STAY OUTWEIGHTS THE HARM WHICH MIGHT BE IMPOSED, THE DENIAL OF A STAY WILL RENDER IT IMPOSSIBLE FOR THE APPELLATE COURT TO SET THE APPELLANT RIGHT AND NO HARDSHIP, PREJUDICE OR INCONVENIENCE WOULD RESULT TO THE ONE AGAINST WHOM THE STAY IS SOUGHT.

The grounds for the entering of a stay by the trial court are the same as they are for the Appellate Division. The grounds for exercising such power are set forth in various precedents. Yakus v. United States, 321 U.S. 414, 88 L. Ed. 834, 64 S. Ct. 660 (1944); Ammond v. McGahn, 532 F. 2d 325, 329 (3rd Cir., 1976); Jewett v. Dringer, 29 N.J. Eq. 199 (1878); New Jersey State Bar Association v. Northeast Mortgage Association, 22 N.J. 184 (1956); Accident Index Bureau, Inc. v. Male, 95 N.J. Super. 39 (App. Div. 1967), appeal dismissed 393 U.S. 530, 21 L. Ed. 2d 754, 89 S. Ct. 872 (1969). The moving party must show that it is likely to suffer immediate and irreparable injury if relief is not granted and that the public interest favors the granting of the relief requested. In weighing the effect of the relief, the benefit of the relief requested must outweigh the harm such relief will cause to the other interested parties. Moreover, if the

enforcement of the judgment would render it impossible to set the appellant right if he is successful in his appeal, it is clear that a stay should be granted. Finally, such a stay should be granted if the appellant has a substantial likelihood of prevailing on the merits.

In the case at bar, Defendants contend that all the grounds for granting of a stay are satisfied. As was the case when the Defendants herein sought leave to appeal this Court's denial of Defendants' motion to transfer these matters to the Council on Affordable Housing, the focus of Defendants' position pierces the heart of the jurisdiction of the Court in this matter. Defendants contend that the trial court lacks the jurisdiction to join the parties it has joined, based upon the Supreme Court's decision in The Hills Development Company v. Township of Bernards, (A-122-85)___ N.J. ___ (1986). There, the Supreme Court afforded the trial court the limited jurisdiction to consider the imposition of conditions to preserve scarce resources. The motion brought by the Advocate and Plaintiff Randolph Mountain Industrial Complex to join additional parties and its granting by this Court carries the matter beyond this Court's limited jurisdiction as conferred by the Supreme Court in The Hills case. If Defendants are successful, the trial court will be unable to grant the type of conditions being sought by Plaintiffs in this case since the Defendants against whom they are sought will not be parties

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to this litigation. Accordingly, for this Court to continue the proceedings and consider the imposition of these conditions which might turn out to be moot if Defendants are successful before the Appellate Division suggests that the stay be granted. The expense of proceeding and the effect of the proposed conditions on the parties and, even more substantially on non-parties who have applications pending before the various Defendants against whom the injunction is sought support this Court's exercise of its discretion to grant the stay pending the outcome of the Defendants' motion for leave to appeal the joinder of these parties.

It is respectfully submitted that the benefit of the relief requested outweighs any harm that will be caused to other interested parties. It is anticipated that the Appellate Division will expeditiously rule on the Motion for Leave to Appeal this important issue. The issue raised to the Appellate Division is of significant public importance and is one of first impression to the Appellate Division. Recognizing the importance of this case and its impact on the citizens of the Township of Randolph, as well as the citizens of this State, it is suggested that little actual delay will be experienced if the stay is granted. Any delay that might be caused as a result of the entry of the stay should be minimal and is far outweighed by the benefit that will accrue to the public by the entry of such

stay. The fact that the Advocate did not move before this Court in seven and one-half years to obtain the type of relief it is now attempting to obtain is testimony to the validity of the contention that the benefit far outweighs the burdens.

Moreover, the Council on Affordable Housing has promulgated an initial number establishing the Township of Randolph's obligation under the Fair Housing Act. That fair share number is 452, almost 50% less than the figure as suggested by Plaintiffs and the Court appointed expert (872) and almost one-third less than the figure tentatively settled upon by the parties. If the Advocate was satisfied that the Township could realistically provide the opportunity for the construction of 634 units of low and moderate income housing, there is little to support the proposition that it cannot satisfy an obligation of 452 units. The supporting documentation to the Advocate's motion was prepared and developed prior to the tentative settlement wherein the Advocate agreed that the Township of Randolph could realistically satisfy an obligation of 634 units. Nothing new has been thus far submitted and consequently it is maintained that there will be no harm experienced by the Plaintiff if this stay is granted.

Furthermore, if this Court fails to grant the stay pending the outcome of the appeal, and conducts the hearing as anticipated, Defendants will be in a position of

not being able to ever be made whole as the trial court will have ruled in a case where Defendants might not be proper parties, to the extreme prejudice of said parties. It would seem to be a much more cautious course of action to suspend further proceedings on the conditions pending the outcome of Defendants' Motion for Leave to Appeal the joinder of these additional parties.

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Finally, for the reasons as set forth in the brief accompanying the Motion for Leave to Appeal which has been filed with this Court and all parties, it is respectfully submitted that Defendants have a substantial likelihood of prevailing on the merits and having this Court's jurisdiction to join additional parties to the litigation obviated.

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It can also be argued that although most courts have agreed that a Motion for a Stay is the type of interlocutory injunctive relief which should be granted only if the standards for the issuance of an interlocutory injunction have been satisfied, it has also been written that the standards for a stay are less than those which apply to the granting of an interlocutory injunction. Typically, an interlocutory injunction applies against certain non-judicial actions that are anticipated to be undertaken by an opposing party. The stay sought herein is a stay of the judicial proceedings pending the determinations by the Appellate Court of the very

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jurisdiction of the trial court as conferred by the Supreme Court in The Hills case. For example, the Supreme Court in Devlin v. National Broadcasting Co., Inc., 47 N.J. 126 (1966) has indicated that the power to grant a stay is unquestioned and that in that particular case, ". . .the circumstances equitably call for such action." In Devlin, the issue is whether a New Jersey proceeding would be stayed pending the termination of a California action involving multi-state communications. The Chancery Division in Insurance Company of North America v. Allied Crude Vegetable Oil, 89 N.J. Super. 518 (1965) stated at 541:

"Our decisions indicate that a stay of an action, like many other forms of preliminary injunction, is to be sparingly granted [citations omitted]. The basic applicable principle is that no stay is to be granted unless no hardship, prejudice or inconvenience would result to the one against whom the stay is sought."

In the case sub judice, it is respectfully maintained that no hardship, prejudice or inconvenience will result to the parties to the action against whom the stay is sought. In no way are the parties prejudiced by the stay. No hardship is worked on the Plaintiffs, especially in view of the fact that Plaintiffs failed to bring any application to add parties to the litigation for over seven and one-half years from its inception and now,

at the eleventh hour, when the matter is closest to being resolved, he now attempts to add parties to the case.

Likewise, the Plaintiffs cannot now be heard to argue that they would be inconvenienced by the stay when they waited seven and one-half years to bring their application.

For all the foregoing reasons, it is respectfully requested that this Court grant a stay of all further trial activity, including the submission of responding documentation pending the Appellate Division's determination on the Motion for Leave to Appeal the Interlocutory Order joining additional Defendants entered by this Court on May 29, 1986.

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