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March 31, 2015

VIA UPS OVERNIGHT MAIL

Joseph Orlando, Clerk
Attn: Shari K. Black, Case Manager
Superior Court of NJ, Appellate Division
Hughes Justice Complex
25 W. Market St.
PO Box 006
Trenton, NJ 08625

RECEIVED
APR 06 2015
ADMINISTRATION

Re: Cranford Development Associates, LLC et.al. v.
Tp. of Cranford, et.al.
Appellate Docket No. A-005822-12T2

Dear Shari:

This office represents the Township of Cranford and the Planning Board of the Township of Cranford (hereinafter collectively "Cranford"), Appellants/Cross-Respondents in the above-captioned appeal. Enclosed for filing please find five copies of Cranford's Notice of Motion for Leave to file a supplemental Cross-Respondents' argument, asking the Court to prospectively apply any adverse ruling concerning Cross-Appellant's counsel fees claim pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(c), together with the supporting Certification of Jeffrey R. Surenian, Esq., Letter Brief and a Proof of Service in the above-captioned matter.

Kindly file and return a "filed" copy of the foregoing documents to my office in the enclosed self-addressed stamped envelope. Thank you for your attention to this matter.

Very truly yours,


Jeffrey R. Surenian

Enclosures

cc: Stephen M. Eisdorfer, Esq. (via email and UPS Overnight mail)
Diane Dabulas, Esq. (via email and regular mail)
Philip Morin, Esq. (via email and regular mail)
Marianne Tolomeo, Esq. (via email and regular mail)
Terence Wall (via email and regular mail)

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Attorneys for Appellants/Cross-Respondents

Tp. of Cranford & Planning Board of the Tp. of Cranford

By: Jeffrey R. Surenian (Attorney ID: 024231983)

Michael A. Jedziniak (Attorney ID: 012832001)

**CRANFORD DEVELOPMENT
ASSOCIATES, LLC, an LLC
organized under the laws of the
State of New Jersey, SAMUEL
HEKEMIAN, PETER HEKEMIAN,
JEFFREY HEKEMIAN, and ANN
KRIKORIAN as trustee for
RICHARD HEKEMIAN, and MARK
HEKEMIAN**

**Respondents/Cross-Appellants
v.**

**TOWNSHIP OF CRANFORD, MAYOR AND
COUNCIL OF THE TOWNSHIP OF
CRANFORD, AND THE PLANNING
BOARD OF THE TOWNSHIP OF
CRANFORD**

Appellants/Cross-Respondents

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION**

Docket No.: A-005822-12T2

Civil Action

**NOTICE OF MOTION FOR LEAVE TO
FILE SUPPLEMENTAL CROSS-
RESPONDENTS' ARGUMENT**

To: Joseph Orlando, Clerk
Attn: Shari K. Black
Superior Court of NJ, Appellate Division
Hughes Justice Complex
25 W. Market St.
PO Box 006
Trenton, NJ 08625


Stephen M. Eisdorfer, Esq.
Hill Wallack LLP
202 Carnegie Center
CN 5226
Princeton, NJ 08543-5226

PLEASE TAKE NOTICE that, on a date and time to be determined by the Appellate Division, the Township of Cranford and the Planning Board of the Township of Cranford, Appellants/Cross-Respondents (hereinafter "Cranford") in the above-captioned matter, by and through its undersigned counsel, will apply to the Superior Court of New Jersey, Appellate Division, for leave to file a supplemental Cross-Respondents' argument, attached hereto, asking the Court to prospectively apply any adverse ruling concerning Cross-Appellant's counsel fees claim pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(c) and 2(f).

PLEASE TAKE FURTHER NOTICE that in support of the motion, Cranford will rely upon the enclosed certification of counsel.

JEFFREY R. SURENIAN & ASSOCIATES
A Limited Liability Company
Attorneys for Appellants/Cross-
Respondents Tp. of Cranford and the
Planning Board of the Tp. of
Cranford

BY:


Jeffrey R. Surenian

DATED: March 31, 2015

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March 31, 2015

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Re: Cranford Development Associates, LLC et.al. v. Tp. of Cranford, et.al.
Appellate Docket No. A-005822-12T2

Dear Mr. Orlando:

This office represents the Township of Cranford and the Planning Board of the Township of Cranford (hereinafter collectively "Cranford"), Appellants/Cross-Respondents in the above-captioned appeal. Pursuant to the Motion filed simultaneously herewith, Cranford requests for the panel deciding the instant cross-appeal to consider the following supplemental cross-responding argument.

IF THIS COURT FINDS THAT BUILDER'S REMEDY PLAINTIFFS LIKE CDA ARE ENTITLED TO COUNSEL FEES UNDER THE NJCRA, SUCH A RULING SHOULD APPLY PROSPECTIVELY UNDER RELEVANT PROVISIONS OF LAW.

For all the reasons set forth in the briefs Cranford previously filed, this Court should affirm the trial court's denial of counsel fees. Nevertheless, should this Court be

inclined to award counsel fees based upon the prior submissions of the parties, we urge the Court to consider the argument set forth herein and affirm the trial court's denial of counsel fees.

Although judicial decisions normally apply retroactively, "[o]ur tradition is to confine a decision to prospective application when fairness and justice require." Tax Auth., Inc. v. Jackson Hewitt, Inc., 187 N.J. 4, 22 (2006) (quoting Montells v. Haynes, 133 N.J. 282, 297 (1993)); see also Velez v. City of Jersey City, 180 N.J. 284, 296 (2004) ("the primary focus in resolving questions of [prospectivity] is with considerations of fairness and justice, related to reasonable surprise and prejudice to those affected.").

"Prospective application is appropriate when [1] a decision establishes a new principle of law by overruling past precedent or [2] by deciding an issue of first impression." Cox v. RKA Corp., 164 N.J. 487, 514 (2000) (emphasis and bracketed numbers added) (quoting Montells, supra, 133 N.J. at 295); accord Green v. Auerbach Chevrolet Corp., 127 N.J. 591, 600 (1992); and Alderiso v. Med. Ctr. of Ocean Cnty., Inc., 167 N.J. 191, 203 (2001). If so, courts must "weigh whether retroactivity furthers the underlying purpose of the rule and whether retroactive application could produce substantial inequitable results." Reuter v. Bor. Of Fort Lee, 167 N.J. 38, 42

(2001) (quoting Montells, supra, 133 N.J. at 295. "[A]s with any matter in which competing equities are balanced, [the Court's] disposition is a product of the totality of circumstances." Island Venture Assoc. v. NJ Dep't of Env'tl. Prot., 179 N.J. 485, 495 (2004).

Prospective application is far from a rare occurrence. Remarkably, in each of opinions cited above, the Supreme Court weighed the equities and applied its rulings prospectively. Similarly, if this Court finds that builder's remedy plaintiffs are eligible for counsel fees under N.J.S.A. 10:6-2(c), prospective application is clearly *apropos*.

First, such a ruling unquestionably would "establish a new principle of law by overruling past precedent" and is an "issue of first impression." Cox, supra, 164 N.J. at 514. No court to our knowledge has awarded counsel fees to a builder's remedy plaintiff pursuant to any underlying rule of law. Moreover, CDA's counsel certainly would have informed this Court if there was such precedent. His failure to do so speaks volumes. Finally, despite the fact that the NJCRA is over a decade old, the parties have not and cannot provide a single opinion addressing this issue. Therefore, an adverse ruling by this Court on CDA's claim would satisfy both of the threshold standards set forth above.

The totality of the circumstances also weighs heavily in favor of prospective application. As the Township's merits and reply briefs clearly reveal:

1. CDA improperly engaged in plainly pretextual pre-suit negotiations and withheld material information while pressuring the Township for a quick decision, and such actions should not be rewarded through the windfall of counsel fees.

2. The right of any plaintiff, particularly a builder's remedy plaintiff, to counsel fees is a "murky or uncertain area of the law." Montells, supra, 133 N.J. at 298.

3. Since N.J.S.A. 10:6-2(f) was enacted solely to benefit "a citizen deprived of a substantive right, [who] **could not otherwise afford to retain counsel.**" Tumpson, supra, 218 N.J. at 480, developers like CDA that probably spend upwards of \$1 million in counsel fees seeking the profits of a builder's remedy hardly fit that mold.

Given the "underlying purpose" of the Section 2(f), retroactive application in this case would unquestionably "produce substantial inequitable results." Montells, supra, 133 N.J. at 295; Alderiso, supra, 167 N.J. at 204.

Respectfully submitted,


Jeffrey R. Surenian

cc: Stephen M. Eisdorfer, Esq. (via email and UPS Overnight mail)
Diane Dabulas, Esq. (via email and regular mail)
Philip Morin, Esq. (via email and regular mail)
Marianne Tolomeo, Esq. (via email and regular mail)
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Michael A. Jedziniak (Attorney ID: 012832001)

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Appellants/Cross-Respondents

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket No.: A-005822-12T2

Civil Action

**CERTIFICATION OF
JEFFREY R. SURENIAN, ESQ.**

JEFFREY R. SURENIAN, ESQ. of full age, accordingly to law,
duly certifies:

1. I, Jeffrey R. Surenian, Esq., am the managing member
of Jeffrey R. Surenian and Associates, LLC, a New Jersey
limited liability company.

2. My firm practices exclusively in the Mount Laurel
arena, and we represent over 45 New Jersey municipalities as
Special Mount Laurel Counsel.

inclusionary development on property in an established neighborhood that is subject to extreme periodic flooding events. The intensity of the development the trial court authorized is rivaled only by the magnitude of the constraints.

9. If constructed, this project will result in **by far** the largest development in the Township (by a factor of three) at a density that the trial court characterized as an "extremely high urban density."

10. Therefore, win or lose, this appeal will significantly impact not only the local neighborhood, but the entire Township of Cranford.

11. Second, in addition to its builder's remedy, CDA's cross-appeal seeks an award of counsel fees pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-2 ("NJCRA").

12. If successful, CDA may secure an order forcing the residents and taxpayers of Cranford Township to pay many hundreds of thousands of dollars to the developer.

13. Simply stated, the stakes in this appeal are extremely high.

***An Overlength Brief Is Needed For
Several Important Reasons***

14. The Appellate Division should consider the proposed argument for a number of sound reasons.

15. First, this is a Mount Laurel matter. Even in the most-straightforward cases, Mount Laurel lawsuits involve an array of important public interests and complex issues, which often require the parties and the courts to carefully analyze interplay between esoteric administrative regulations, statutory provisions, and over three decades of common law legal precedent.

16. This case, however, is particularly complex and involves extremely fact-sensitive Mount Laurel issues, a number of issues of first impression for the Appellate Division, and other issues that require analysis of areas of Mount Laurel jurisprudence that have received limited judicial attention over the years.

17. Second, CDA's cross-appeal raises a novel issue of first impression (i.e. whether builder's remedy plaintiffs are entitled to counsel fees under the NJCRA) which, as stated above, could have an enormous negative impact on the Township's finances and, by extension, on the taxpayers of Cranford Township.

18. Moreover, the outcome of this appeal could be a bellwether for future Mount Laurel lawsuits all over New Jersey.

19. If the Appellate Division reverses the trial court and finds that developers seeking a lucrative "builder's

remedy" are also eligible for counsel fees under the NJCRA, then it is a virtual certainty that such a ruling will dramatically expand Mount Laurel lawsuits.

20. However, since such a ruling would break new ground in the Mount Laurel arena, the Township asserts that the panel deciding this cross-appeal should have the benefit of full-briefing on all the relevant arguments concerning the issue raised.

21. Therefore, due to the complexity of the issues and the high local and statewide stakes, Cranford contends that the most appropriate approach would be to permit it to submit one additional brief argument which will not only benefit the Township, but will also result in the most comprehensive briefing possible by each side of the issue.

22. Third, CDA will not be prejudiced by the addition of this argument, because the Township, of course, consents to a responding argument from the cross-appellant.

23. Finally, given the complex and novel issues and the high stakes in this case, it is almost certain that the losing party will petition the Supreme Court for certification of one or more issues.

24. It is also possible that this Court's opinion will include a dissent or the constitutional issues in this matter will give rise to an as-of-right appeal to the Supreme Court.

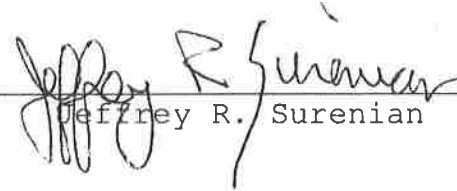
25. In any of those cases, it would be clearly preferable for the Supreme Court to consider all the germane arguments and review the Appellate Division's response to those arguments.

26. Therefore, in light of the above, the Township respectfully urges this Court to grant leave to consider the additional argument attached as Exhibit A and to therefore permit Cranford to proffer its best analysis of the important and far-reaching issues presented in this appeal and cross appeal.

I hereby certify that the foregoing statements made by me are accurate and true. I am aware that if any of the foregoing statements made by me are false, I am subject to punishment.

JEFFREY R. SURENIAN & ASSOCIATES
Attorneys for Appellants/Cross-
Respondents Tp. of Cranford and
the Planning Board of the Tp. of
Cranford

BY:


Jeffrey R. Surenian

DATED: March 31, 2015

JEFFREY R. SURENIAN AND ASSOCIATES, LLC

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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION**

Docket No.: A-005822-12T2

Civil Action

PROOF OF SERVICE

Jeffrey R. Surenian, Esquire, an attorney at law of the State of New Jersey, hereby certifies as follows:

1. I am the Managing Member of the law firm of Jeffrey R. Surenian and Associates, LLC, which represents the Township of Cranford and the Planning Board of the Township of Cranford (hereinafter collectively referred to as "Cranford") in the above-captioned appeal.

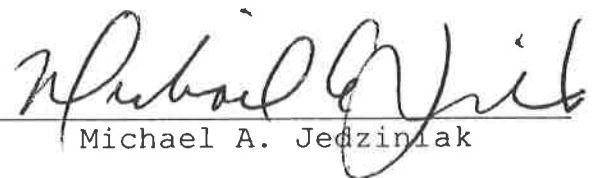
2. On March 31, 2015, I caused to be delivered via UPS overnight mail five (5) copies of a Notice of Motion for Leave to

file a supplemental Cross-Respondents' argument, asking the Court to prospectively apply any adverse ruling concerning Cross-Appellant's counsel fees claim pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(c), together with the supporting Certification, Letter Brief and a Proof of Service, to Joseph Orlando, Clerk, Superior Court of New Jersey, Hughes Justice Complex, 25 Market Street, Trenton, New Jersey, 08625, ATTENTION: Shari K. Black, Case Manager.

3. On March 31, 2015, I caused to be served by email and UPS Overnight mail two (2) copies of the above-referenced documents to the following:

Stephen M. Eisdorfer, Esq.
Hill Wallack LLP
202 Carnegie Center
CN 5226
Princeton, NJ 08543-5226

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are false, I am subject to punishment.


Michael A. Jedziniak

Dated: March 31, 2015