

Old Bridge (1987)

Copies of Cross Motion & Letter Brief

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THE STATE UNIVERSITY OF NEW JERSEY
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School of Law-Newark • Constitutional Litigation Clinic
S.I. Newhouse Center For Law and Justice
15 Washington Street • Newark • New Jersey 07102-3192 • 201/648-5687

August 27, 1987

VIA LAWYERS SERVICE

The Honorable Eugene D. Serpentelli
Assignment Judge, Superior Court
Ocean County Court House
CN 2191
Toms River, NJ 08754

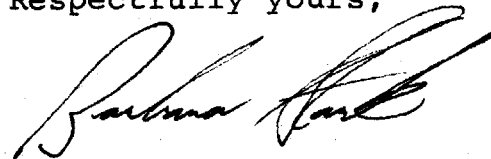
RE: Urban League, et al. v. Carteret, et al.
No. C 4122-73

Dear Judge Serpentelli:

Enclosed please find copies of Notice of Cross Motion, Certification in support thereof, original Letter Brief and original and four copies of a proposed form of Order.

I hereby certify that by copy of this letter the original Notice of Motion and Certification are being forwarded to the Clerk in Trenton for filing and that copies of all of the foregoing are being served on counsel appearing on the attached service list.

Respectfully yours,



encls

cc/John Mayson, Clerk
Old Bridge Service List (w/ all encls)

SERVICE LIST

Urban League v. Carteret, Civ C 4122-73 (Superior Court, Chancery
Div., Middlesex County) (OLD BRIDGE)

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On Behalf of the ACLU of New Jersey

URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et al.,

Plaintiffs,

vs.

THE MAYOR AND COUNCIL OF THE
BOROUGH OF CARTERET, et al.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY

No. C 4122-73

NOTICE OF CROSS MOTION FOR
ENFORCEMENT OF LITIGANT'S
RIGHTS

PLEASE TAKE NOTICE that on September 14, 1987 at 1:30 o'clock p.m. or as soon thereafter as counsel may be heard, the undersigned attorneys for the Civic League plaintiffs shall move before the Honorable Eugene D. Serpentelli for an Order as follows:

1. Requiring Old Bridge to provide the Civic League with the status reports described in paragraph 7(e) of the Final Judgment and Order of Repose dated January 24, 1986 within 10 days of the entry of the Order;
2. Directing Old Bridge immediately to deposit in the Affordable Housing Trust Fund the full amount that should have been deposited in that Fund pursuant to the Judgment, including interest lost as a result of the Township's failure to administer

the Fund properly;

3. Requiring Old Bridge immediately to pay to the Civic League the full amount due under paragraph 7(f) of the Judgment, with interest;

4. Requiring Old Bridge immediately to comply with all other obligations under that Judgment, including its obligations with respect to the review of applications set forth in Section V-F-2 of the Settlement at page 23;

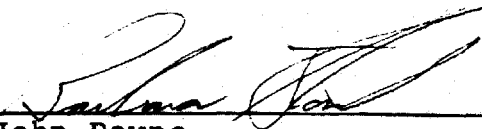
5. Granting the Civic League plaintiffs counsel fees incurred in connection with this cross motion, pursuant to R. 1:10-5, in an amount to be determined following the submission of an affidavit of services; and

6. For such further relief as this Court deems just.

In support of the within motion, plaintiffs shall rely on the Certification of Barbara Stark and the Letter Brief submitted herewith.

A proposed form of Order is submitted herewith pursuant to R.1:6-2.

Dated: August 27, 1987



John Payne
Barbara Stark
Attorneys for the Civic League
Plaintiffs and On Behalf of
the ACLU of New Jersey

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On Behalf of the ACLU of New Jersey

URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et al.,

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY

No. C 4122-73

Plaintiffs,

vs.

THE MAYOR AND COUNCIL OF THE
BOROUGH OF CARTERET, et al.,

Defendants.

CERTIFICATION OF
BARBARA STARK

Barbara Stark, of full age, certifies as follows:

1. I am a staff attorney with the Constitutional Litigation Clinic of Rutgers Law School and one of the attorneys for the Civic League plaintiffs in the above-captioned matter. In this capacity, I am fully familiar with the facts and circumstances of this case. This certification is respectfully submitted in support of the Civic League plaintiffs' cross motion for enforcement of litigants' rights.

2. After months of negotiation, this litigation was eventually resolved by the Final Judgment and Order of Repose dated January 24, 1986 (the "Judgment"). Pursuant to that Judgment, Old Bridge was required to keep the Civic League fully

informed as to the status of its implementation. Paragraph 7(e) of the Judgment requires in pertinent part that Old Bridge provide the Civic League with quarterly reports "containing at least" the following:

- i. Details on all residential development applications received by any Township Board or agency, including the name of the applicant, the proposed site, number and type of units, bedroom mix, provision for the development of lower income housing or for financial contributions to the Township of Old Bridge Affordable Housing Trust Fund; and formal actions taken by the Township, its Boards, agencies and officials in response thereto, including preliminary and final approvals, variances, and the number of building permits and Certificates of Occupancy issued for market and lower income housing units; . . .
- ii. Copies of all housing and affirmative marketing plans; . . .
- iii. The sale price and/or the rental charges on all lower income units which have been sold or rented. . .
- iv. Details on all monies received and expended by the Affordable Housing Trust Fund and the purpose of each expenditure. . .
- v. Information on the number, household size, and income category (low and moderate) of households certified as eligible for lower income housing, and the number of contracts, leases, and closings by unit size and income category.

3. As of this date, the Civic League has not received any of the promised reports. Indeed, all that Old Bridge has forwarded are self-serving affidavits and the report of the town

planner filed in support of its instant motion. These demonstrate nothing more than Old Bridge's determination to avoid its obligations under the Judgment.

4. In Old Bridge's Reply Letter Brief dated August 11, 1987, Jerome Convery, Esq. admits that the Township failed to collect \$15,000 which should have been paid to the Affordable Housing Trust Fund (the "Fund"). Whether additional sums are in fact owed cannot be determined until Old Bridge provides the reports described above. At the very least, the Township should be required to account for the entire shortfall, and immediately deposit the appropriate amount in the Fund. Old Bridge should also be required to pay to the Fund an additional sum representing the interest already lost as a result of its failure to administer the Fund properly.

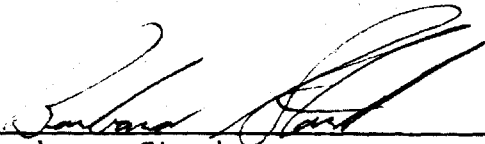
5. Moreover, paragraph 7(f) of the Judgment requires that a fee of \$30 for each lower income unit be paid directly to the Civic League prior to the issuance of a Certificate of Occupancy for any unit within an inclusionary residential development. As of this date, the Civic League has not received any such fees. The amount due, of course, cannot be ascertained until Old Bridge complies with the reporting requirements set forth in the Judgment. Old Bridge should be directed to account immediately for all sums due under the cited provision and to pay the appropriate amount with interest to the Civic League forthwith.

6. Old Bridge has argued at exhaustive length that it

should be relieved of its obligations under the Judgment. It is respectfully submitted that until, and unless, this Court holds otherwise, the Township should be required to abide by its terms.

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 wilfully false, I may be subject to punishment.

Dated: *August 27, 1987*


Barbara Stark



School of Law-Newark • Constitutional Litigation Clinic
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15 Washington Street • Newark • New Jersey 07102-3492 • 201/648-5687

August 27, 1987

VIA LAWYERS SERVICE

The Honorable Eugene D. Serpentelli
Assignment Judge, Superior Court
Ocean County Court House, CN 2191
Toms River, NJ 08754

RE: Urban League, et al. v. Carteret, et al.
(Old Bridge)
Civil No. C 4122-73

Dear Judge Serpentelli:

This Letter Brief is respectfully submitted in support of the Civic League's Cross Motion for the Enforcement of Litigant's Rights. There can be no serious question here of Old Bridge's failure to comply with the terms of the Consent Order reviewed and signed by this Court on January 24, 1986. Indeed, in his letter brief to the Court dated August 11, 1987, Jerome Convery, Esq. concedes that the Township has failed to collect at least \$15,000 which should have been paid to the Affordable Housing Trust Fund (the "Fund"). Mr. Convery seeks to excuse this failure by referring to "pending litigation," (to which the Township is not a party), as well as Old Bridge's instant motion to transfer.

A pending application, of course, does not operate to stay a party's obligations under a pre-existing judgment or order. R. 2:9-5(a). Nor has Old Bridge sought a stay of the Judgment, which remains in full force and effect. The burden is on the Township to justify its persistent failure to abide by its terms. Self-serving claims of "impossibility" cannot excuse Old Bridge's failure to properly administer the Fund, to pay fees due the Civic League under the Judgment and to comply with the reporting requirements set forth therein, especially where the alleged "impossibility" refers to plaintiffs' ability to perform.

There is nothing that the Township is required to do in the Judgment that it cannot do. Old Bridge has simply decided to renege on its agreement. Its wilful refusal to abide by its terms, prior to any determination by this Court, cannot be condoned.

The precise extent of Old Bridge's contravention of the January 1986 Order is impossible to ascertain because the defendant municipality has not even complied with the reporting requirements, set forth at paragraph 7(e), effectively preventing the Civic League from monitoring the settlement. Moreover, considered in conjunction with the sequence of events, or nonevents, described in the Certification submitted herewith, it suggests that Old Bridge believes it can disregard the Order of this Court with impunity. It is apparently the Township's view that it can avoid its obligations merely by filing self-serving "reports" by municipal employees and affidavits by members of the Town Council, claiming that Old Bridge is "unable" to achieve a fair share number that the Township alone argues is written in stone.

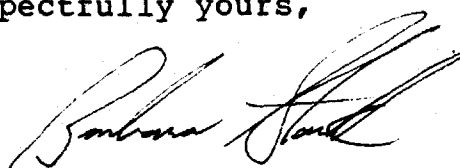
This is exactly the kind of municipal conduct decried by the New Jersey Supreme Court in Mount Laurel II. As Justice Wilentz noted: "We have learned from experience, however, that unless a strong judicial hand is used, Mount Laurel will not result in housing, but in paper, process, witnesses, trials and appeals." So. Burlington County N.A.A.C.P. v. Tp. of Mount Laurel, 92 N.J. 158. Old Bridge's deliberate efforts to delay implementation of the agreed upon settlement have been all too successful. It is respectfully submitted that the Township's hypocritical conduct should be condemned by this Court and that specific performance pursuant to the terms of the Judgment should be directed forthwith.

Finally, since Old Bridge's wilful refusal to comply with the Order of this Court compelled the instant application, as a matter of fundamental fairness it should be charged with the Civic League's enforcement expenses. As Judge Pressler has observed:

"Although the general rule continues to require each party to bear his own counsel fees except as otherwise provided by R. 4:42-9, [R. 1:10-5], recognizes that as a matter of fundamental fairness, a party who wilfully fails to comply with an order or judgment entitling his adversary to litigant's rights is properly chargeable with his adversary's enforcement expenses."
Pressler, Current N.J. Court Rules, Comment R. 1:10-5.

It is respectfully submitted that the Civic League plaintiffs should accordingly be awarded counsel fees pursuant to R. 1:10-5 in connection with enforcing the Order of this Court, the amount to be determined following the submission of an affidavit of services.

Respectfully yours,



cc/Old Bridge Service List

John Payne
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Attorneys for Civic League Plaintiffs and
On Behalf of the ACLU of New Jersey

URBAN LEAGUE OF GREATER
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Plaintiffs,

vs.

THE MAYOR AND COUNCIL OF THE
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Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX

No. C 4122-73

O R D E R

This matter having been opened to the Court by John Payne and Barbara Stark, attorneys for the Civic League plaintiffs, on notice to Jerome J. Convery, Esq., Thomas Norman, Esq., Thomas Hall, Esq., Stewart M. Hutt, Esq., Dean Gaver, Esq., William Flynn, Esq., and Frederick Mezey, Esq., and the Court having considered the papers appearing at the foot hereof, and for good cause shown, it is, on this ____ day of September, 1987, ORDERED:

1. That Old Bridge provide the Civic League with the status reports described in paragraph 7(e) of the Final Judgment and Order of Repose dated January 24, 1986, within 10 days of the entry of this Order;

2. That Old Bridge immediately deposit in the Affordable Housing Trust Fund the full amount that should have been deposited

in that Fund pursuant to the Judgment as well as all interest already lost as a result of the Township's failure to administer the Fund properly

3. That Old Bridge immediately pay to the Civic League the full amount due under paragraph 7(f) of the Judgment, with interest;

4. That Old Bridge immediately comply with all other obligations under that Judgment, including its obligations with respect to the review of applications set forth in Section V-F-2 of the Settlement at page 23; and

5. That the Civic League plaintiffs be awarded counsel fees incurred in connection with this motion, pursuant to R. 1:10-5, in an amount to be determined following the submission of an affidavit of services.

Hon. Eugene D. Serpentelli, A.J.S.C.

PAPERS CONSIDERED:

_____ Notice of Motion
 _____ Movant's Affidavit
 _____ Movant's Brief
 _____ Answering Affidavits
 _____ Answering Brief
 _____ Cross Motion
 _____ Movant's Reply
 _____ Other _____