

UL v. Carteret (South Plainfield) 7 Apr (1986)

- Certification in opposition to UL's motion
for imposition of conditions on transfer
+ original ~~rest~~. letter memo in ~~XXXX~~

Support thereof

- Letter re proceeds from sales

15 pgs

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Law Offices
FRANK A. SANTORO

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SOUTH PLAINFIELD, NEW JERSEY 07080

MEMBER
NEW JERSEY BAR
U.S. PATENT BAR

AREA CODE 201
561-6868

April 7, 1986

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

Re: Urban League, et al vs. Carteret, et al
(South Plainfield)
Docket No. C 4122-73

Dear Judge Serpentelli:

Enclosed is copy of Defendant Borough of South Plainfield's Certification in Opposition to the Urban League's Motion for Imposition of Conditions on Transfer, together with original Letter Memorandum in Support thereof.

We understand this matter has been scheduled by the Court for April 25, 1986, at 9:00 A.M. If there is any change in that date or time, please advise the undersigned.

Very truly yours,


FRANK A. SANTORO

FAS:sr

Enclosures

cc: South Plainfield Correspondence List (w/Enclosures)- Certified Mail - R.R.R. ✓

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MEMBER
NEW JERSEY BAR
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AREA CODE 201
561-6868

April 4, 1986

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

Re: Letter Memorandum in Support of Defendant
Borough of South Plainfield's Certification
in Opposition to the Imposition of
Conditions of Transfer
Urban League, et al vs. Carteret, et al
(South Plainfield)
Docket No. C 4122-73

Dear Judge Serpentelli:

Within is a Letter Memorandum submitted in support of Defendant Borough of South Plainfield's Certification in Opposition to the Conditions of Transfer being requested by Plaintiff, Urban League of Greater New Brunswick. Please accept same in lieu of a more formal brief.

In "The Hill's Development Co. vs. Township of Bernards" (hereinafter referred to as Mt. Laurel III) the Supreme Court decided in a unanimous opinion that,

"The Fair Housing Act is Constitutional. All matters (including Defendant Borough of South Plainfield) pending before this Court are hereby transferred to the Council on Affordable Housing subject to such conditions as the trial courts may find necessary to preserve the municipality's ability to satisfy its Mt. Laurel obligations."

A reading of the certifications of Eric Neisser and Alan Mallach which were presented to this Court in support of Plaintiff's Motion for the Imposition of Conditions would lead one to believe that Mt. Laurel III had never happened. In both

certifications reference is made to Judge Furman's holding in 1976 of the unconstitutionality of the Borough of South Plainfield's zoning ordinance. Thereafter an exhaustive reiteration of the litigation history which we are certain the Court is all too familiar with, is recited.

Reference is made to statements of the Mayor of South Plainfield at a public hearing on July 29th in a setting which could be deemed nothing but a political arena. The statements therefore of any Mayor or member of the Council at such a public hearing can simply be described as "political puffing". The Stipulation of April of 1984 which resulted in the May 1984 judgment deemed other sites and tracts in the Borough of South Plainfield as unusable and yet the Stipulation is now referred to as the "compromise" stipulation. At the time that this Court was asked to impose certain restraints upon Defendant Borough of South Plainfield this Stipulation was referred to as "The Stipulation".

A great deal of inference is suggested that because the Borough of South Plainfield, after the Stipulation sold certain properties which were thereafter developed in accordance with non-Mt. Laurel densities, that the available land of the Mt. Laurel inventoried areas had been greatly reduced. This simply is not the case. We previously supplied both Plaintiff and this Court by way of certifications that the number of vacant acres reduced by the subsequent development from the "inventoried lands" represented less than 0.5 acres.

Much ado is made from the fact that the Morris Avenue site of the Borough's senior housing complex has not as yet had a shovel put in the ground. The Plaintiff however is aware and has been aware that the last site owned by a private property owner had not as yet been acquired. The Defendant Borough of South Plainfield has introduced on March 24, 1986 an ordinance for land exchange with that property owner to acquire that last tract necessary for its Senior Citizen Housing development. Moreover, the Borough entered into a contract in February of this year to have architectural designs for its Senior Citizen Housing project prepared. The Borough of South Plainfield will comply with the building of the senior citizen housing project because it deems that to be an immediate need for its residents.

Eric Neisser's affidavit suggests that what was done in requesting the payment of the balance of the purchase price under

the time of the essence resolutions of August of 1985 has something to do with the Defendant's actions before this Court in what was then its pending Mt. Laurel lawsuit. The Court made clear that if the purchasers under contract believe that they had been wronged by such action on the part of Defendant Borough of South Plainfield that they should seek relief elsewhere. Such relief has been sought as a separate action is now pending in Superior Court in Middlesex County for specific performance or in the alternative, damages against the Defendant Borough and such action currently remains pending. For the record, the time of the essence resolutions requiring payment of the balance of the purchase price had nothing to do with the Urban League. The bid specifications as advertised required such payments and as such constituted an agreement between the Borough and the contract purchasers. This Court simply has nothing to do and should have nothing to do with the implementation of such contract rights.

One of the suggestions of a condition to be imposed is that the Borough maintain in force the previously adopted under protest ordinances 1009 and 1010. It is suggested that in doing this perhaps some vested interest might accrue to one or more of the contract purchasers. That is all that such a condition would do because either the Borough's case has been transferred to the Council on Affordable Housing where its housing element is to be submitted or Mt. Laurel III is meaningless. Apparently Plaintiff, Urban League would like us all to believe the latter. Either Mt. Laurel III has taken this case out of the courts or it has not. If this Court grants Plaintiff's request as to interim restraints before a plenary hearing, as well as increasing the impact of such restraints after plenary hearing, the Court is also declaring that Mt. Laurel III is meaningless because the imposition of these restraints sought by Plaintiff will bring the Defendant Borough to its knees begging for a compliance hearing and the right to begin immediate construction of all the low- and moderate-income housing that Plaintiff, Urban League, wants.

The certification of Alan Mallach in reliance on the figures derived from the consensus methodology is a reliance on the things of the past. The Council on Affordable Housing has not as yet even adopted its criteria and guidelines for determining a municipality's fair share. In fact, such criteria and guidelines will not be adopted until some time in August of 1986. Why therefore should any claim to Defendant's inability to meet its fair share even be discussed at this time? Why is there no likelihood that Defendant's fair share after the process through the Council would be reduced even further? What is it

April 4, 1986

that Plaintiff and its experts know about the operation of the Council on Affordable Housing that Defendant's are unaware of, that makes Plaintiff's position appear to be the more likely scenario?

Finally, Plaintiff, Urban League is requesting the Court's permission to allow the Constitutional Litigation Clinic of Rutgers Law School to continue as Plaintiff's attorney in this matter. Again, the taxpayers and citizens of New Jersey are being asked to continue funding all sides of the Mt. Laurel controversy. Defendant's residents paid their attorney and experts to help them prepare for all prior litigation and now the Council on Affordable Housing; Defendants residents through their taxes help pay the salaries of those employed by Plaintiff's counsel, Rutgers Law School Constitutional Litigation Clinic, as well as the Defendant's residents' taxes going to the funding of the activities of the Council on Affordable Housing. Finally, Defendant's residents' taxes go also to pay for the judicial system that continues to hold the Defendant ransom from its own citizens. The price is higher density housing which would drastically alter the character of the Defendant Borough of South Plainfield.

For all of the above reasons it is respectfully requested that this Court deny the conditions as sought by Plaintiff Urban League and to extend such denial to the Applicants Massaro, Orazi and Mohan, who have requested relief for their clients at the expense of the taxpayers of the Borough of South Plainfield. Such relief is sought also by Joseph E. Murray on behalf of DeJohn & Son Construction Company and this Defendant opposes any condition requiring the payment into court of land sale proceeds for the reasons above set forth.

Respectfully yours,

FRANK A. SANTORO

cc: See attached list

FRANK A. SANTORO
1500 Park Avenue
P.O. Box 272
South Plainfield, NJ 07080
(201) 561-7778
Attorney for Defendant Borough of
South Plainfield

Plaintiffs,

URBAN LEAGUE OF GREATER NEW
BRUNSWICK, et al.,

vs.

Defendants,

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

: SUPERIOR COURT OF NEW JERSEY
: CHANCERY DIVISION
: MIDDLESEX/OCEAN COUNTY
:
: CIVIL NO. C 4122-73
: (Mount Laurel)
:
:
: CERTIFICATION IN OPPOSITION
: TO PLAINTIFF'S MOTION FOR
: IMPOSITION OF CONDITIONS
: ON TRANSFER
:

FRANK A. SANTORO, of full age, certifies as follows:

1. I am an attorney at law of the State of New Jersey and am attorney for the Defendant, Borough of South Plainfield, and am fully familiar with the facts and circumstances of this litigation. I submit this Certification in Opposition to the Motion for the Imposition of Conditions on Transfer being brought by Plaintiff, Urban League of Greater New Brunswick.

2. On behalf of Defendant, Borough of South Plainfield, I

hereby oppose the imposition of any restraints on development, sale of Borough lands, payment into court of proceeds from pending Borough land sales except possibly with regard to the previously inventoried land deemed suitable for "Mt. Laurel Housing" as set forth in the previous judgment of this Court of May 24, 1986.

3. The opposition to the imposition of restraints set forth in the request of Plaintiff, Urban League, are on the following grounds:

(a) That such restraints as they affect private property owners not parties to this action are unconstitutional.

(b) That the previous inventoried lands are more than sufficient to satisfy what was stipulated by the Urban League to be through its Urban League methodology South Plainfield's fair share of low- and moderate-income housing.

4. Any conditions to be imposed after a plenary hearing in accordance with the opinion of Hill's Development Co. vs. Bernards, (hereinafter referred to as Mt. Laurel III) are not for the benefit of any particular builder. It is argued that in this instance and the record will amply demonstrate the Urban League's particular interest in the development of the Massaro site. The record is replete with demonstrations of Plaintiff, Urban League's request for special treatment to be given to this particular site which would enable the construction of 15 to 15.3 units per acre. The Court may wish to review that part of the record which indicates that the purchaser-under-contract-Massaro

has in fact contracted to sell the land to be acquired from the Borough to a well-known Mt. Laurel builder.

4. We oppose the provision that the Defendant, Borough of South Plainfield should be prohibited from selling land on the grounds that with reference to non-Mt. Laurel inventoried properties that such restraints are unconstitutional restraints on the alienation of property and would have an immediate and irreparable impact upon the Defendant, Borough of South Plainfield's budgeting process. For example, the Borough of South Plainfield has a long history of utilizing land sale proceeds to offset budget increases and cap restraints. In the 1986 Municipal budget the Mayor and Council of the Defendant, Borough of South Plainfield has included some \$600,000 in land sale proceeds from previously sold land.

5. We oppose the payment into court of the proceeds of previously contracted sales as a separate escrow account already established contains the proceeds of the now-pending land sales involving the Borough of South Plainfield and parties Cardamone, Massaro, Mohan (see copy of letter of Charles C. Haus, Treasurer for Defendant, Borough of South Plainfield attached to this Certification). We further oppose such a condition since it (the payment into court of proceeds of previously contracted sales) presumes a Municipal obligation to build low-income housing. Clearly in no instance in either Mt. Laurel I or Mt. Laurel II, and particularly Mt. Laurel III, has such a suggestion ever been


made by the Supreme Court.

6. We further oppose any interim restraints upon the Defendant, Borough of South Plainfield until the Court has held its plenary hearing and in that regard we oppose any condition requiring further discovery being made available to Plaintiff, Urban League. Ample discovery in this matter has already been obtained both prior to and after the May 24, 1984 judgment.

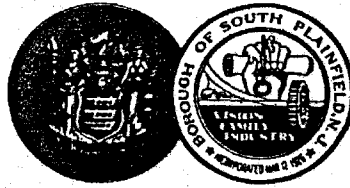
7. We further oppose Rutgers Constitutional Litigation Clinic's continued representation of the Plaintiff, Urban League of Greater New Brunswick on the grounds that the representation violates the specific provisions of the New Jersey Conflict of Interest Law and in particular the provision of New Jersey Administrative Code governing officials and employees of the state colleges and state universities under New Jersey Department of Higher Education.

For all of the above reasons, we respectfully request the Court to deny Plaintiff's request for the conditions as stated by it and transfer the case as per the finding in the Mt. Laurel III decision with restraints only affecting the development of the prior inventoried Mt. Laurel lands.

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


FRANK A. SANTORO
Attorney for Defendant Borough of
South Plainfield

DATED: April 4, 1986



MAR 25 1986

LAW OFFICES
FRANK A. SANTORO, ESQ.

BOROUGH *of* SOUTH PLAINFIELD.

MIDDLESEX COUNTY • NEW JERSEY

March 24, 1986

Frank Santoro, Esq.
1500 Park Avenue
South Plainfield, N.J. 07080

Re: Proceeds from Land Sales

Dear Frank:

I have received a copy of a resolution dated February 24, 1986 authorizing me "to open up any separate escrow accounts as may be required by the Court to enable the Borough to finalize pending land sale transactions." Please be advised that up to this date, all land sale monies have been deposited to the current account. This has been the normal procedure followed historically.

Last August certain purchasers paid money to the Borough in full payment of the purchase price of certain land sales and requested to close title. Due to the Mt. Laurel litigation, the Borough was unable and remains to this date unable to convey title. The attorneys for these purchasers requested that their money be deposited in an interest bearing account.

The properties involved together with the respective amounts of monies involved are listed below:

Block 315, Lot 6			
Block 315, Lot 8 & 9	-	Cardamone	- \$33,750.00
Block 427, Lot 1.01			
Block 448, Lot 4.01	-	Massaro	- \$1,143,286.65
Block 310, Lot 26			
Block 438, Lot 6	-	Massaro	- \$143,662.50
Block 398, Lot 2.04	-	Mohan	- \$13,950.00

Frank Santoro
Re: Land Sale Proceeds

2

March 24, 1986

Please be advised that the total figure of \$1,334,649.15 has been invested since August 27, 1985 and continues to be invested in various certificates of deposit.

I am conveying this information to you so that you will know what has transpired and what land sale purchase monies have been invested. Any other purchase money that may be involved would have been deposited to the current account and would have been invested along with other available funds in our normal investment program.

The resolution of February 24, 1986 refers to separate escrow accounts as may be required by the Court. As of this time, I am unaware of any land sale whereby the Court has required a separate account. I assume any such information will come from you and will identify specifically the land sale involved by date, block, and lot number and amount of money. Unless I hear from you, I assume no immediate action will be required by me with respect to this resolution.

Very truly yours,



Charles C. Haus
Treasurer

CCH:bjc

Law Offices

FRANK A. SANTORO

1500 PARK AVENUE, SUITE ONE

P. O. BOX 272

SOUTH PLAINFIELD, NEW JERSEY 07080

AREA CODE 201

561-6868

MEMBER
NEW JERSEY BAR
U.S. PATENT BAR

April 7, 1986

John M. Mayson, Clerk
Superior Court of New Jersey
Hughes Justice Complex
CN-971
Trenton, New Jersey 08625

Re: Urban League of Greater New Brunswick, et al. vs. Borough of Carteret, et al.
C 4122-73

Dear Sir:

Enclosed herein please find original and copy(ies) of the document(s) listed below:

<input checked="" type="checkbox"/> Proof of Service	_____ Warrant for Satisfaction
_____ Complaint	_____ Answer
_____ Notice of Motion	_____ Judgment
_____ Affidavit	_____ Check in the sum of \$
_____ Stipulation	<input checked="" type="checkbox"/> Return Envelope
_____ Order	_____ Closing Statement
_____ Interrogatories	_____ Notice to take Oral Depositions
_____ Answers to Interrogatories	<input type="checkbox"/> 0+1 Certification in Opposition
_____ Release	<input checked="" type="checkbox"/> Copy of Letter Memorandum

With respect to said matter, would you kindly:

_____ File	<input checked="" type="checkbox"/> File orig. and return copy
_____ Hold same in escrow pending my receipt of check in full payment.	marked "filed" in envelope.
_____ Acknowledge receipt of same on copy of this letter and return.	_____ Sign Order and return in envelope.
_____ Charge fee to our account.	_____ Sign Order, file original, return conformed copy marked "filed" in envelope.
	_____ Answer and return 0 + 2.

Very truly yours,

FRANK A. SANTORO

Receipt is hereby acknowledged.

Date: _____

Enclosures
cc: South Plainfield Correspondence List ✓

1500
FRANK A. SANTORO
2013 PARK AVENUE
P. O. BOX 272
SOUTH PLAINFIELD, N. J. 07080
(201) 561-6868
ATTORNEY FOR DEFENDANT
BOROUGH OF SOUTH PLAINFIELD

Plaintiff

URBAN LEAGUE OF GREATER NEW BRUNSWICK,
et al.

vs.

Defendant

BOROUGH OF CARTERET,
ET AL.

SUPERIOR COURT OF
NEW JERSEY
CHANCERY DIVISION
MIDDLESEX/OCEAN COUNTY


Docket No. C 4122-73
(Mount Laurel)

CIVIL ACTION

PROOF OF SERVICE

SONYA S. ROSS hereby certifies and says:

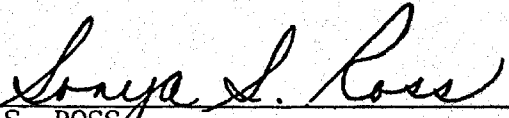
1. I am a legal secretary with the office of Frank A. Santoro, attorney for Defendant, Borough of South Plainfield, in this matter.
2. On April 7, 1986, I personally caused to be delivered by certified mail, return receipt requested, a copy of a Certification in Opposition to Plaintiff's Motion For Imposition of Conditions on Transfer and a copy of a Letter Memorandum in Support of Defendant Borough of South Plainfield's Certification in Opposition to Plaintiff's Motion for Imposition of Conditions on Transfer, to all parties on the attached South Plainfield Correspondence List.



SONYA S. ROSS

Dated: April 7, 1986

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.


SONYA S. ROSS

Dated: April 7, 1986

SOUTH PLAINFIELD CORRESPONDENCE LIST

The Honorable Eugene D. Serpentelli
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Ocean County Court House
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Joseph Buccellato
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Mayor and Council
Borough of South Plainfield
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South Plainfield, New Jersey 07080