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General

Plaintiffs Brief in Opposition to Defendants' Motion and cover letter

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October 26, 1974

Hon. David D. Furman
Middlesex County Court House
New Brunswick, New Jersey

RE: Urban League of Greater New Brunswick, et als, v. Mayor and Council, Borough of Carteret, et als.
Docket No. C-4122-73

Dear Judge Furman:

Please find enclosed the original and one copy of plaintiff's brief in opposition to the motions to dismiss scheduled for Friday, November 1, 1974.

Sincerely,

David H. Ben-Asher

ck
cc: All defense counsel

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - MIDDLESEX COUNTY
DOCKET No. C-4122-73

URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al ,

Plaintiffs

v.

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

Defendants .

BRIEF OF PLAINTIFFS

IN OPPOSITION TO DEFENDANTS' MOTIONS

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I. INTRODUCTION

The plaintiffs submit this brief in opposition to defendants' preliminary motions. On July 23, 1974, one organizational and seven individual plaintiffs initiated this action against 23 municipal defendants in the Chancery Division of the Superior Court of Middlesex County. The plaintiffs are representatives of a class consisting of low- and moderate-income persons, both white and non-white, residing in Northeastern New Jersey, who seek housing and employment opportunities for themselves and educational opportunities for their children in the 23 defendant municipalities. The plaintiffs are challenging the zoning and other land use practices of the 23 defendants, which exclude housing plaintiffs can afford, prevent them from residing in these municipalities in close proximity to job opportunities, and deprive their children of equal educational opportunities. Plaintiffs seek to enjoin defendants from continuing to engage in these exclusionary practices and to require them to make provision for racially and economically integrated housing within the means of plaintiffs and the class they represent.

The procedural status of the case is as outlined below:

Seventeen of the 23 defendants have answered; six have not. Two motions for a more definite statement have been

filed. One, by Monroe, which has not yet answered the complaint, has been joined by seven other defendants which have answered (Sayreville, Milltown, North Brunswick, Middlesex, South River, Metuchen, Helmetta). The other, by Jamesburg, which has answered, is joined by three defendants who have also answered (South River, Metuchen, Helmetta).

Several motions to dismiss have been filed, and may be summarized as follows:

(1) Failure to state a claim upon which relief can be granted.[1/]

(2) Plaintiffs have failed to join indispensable parties.[2/]

(3) Defendants do not constitute a proper class.[3/]

II. SUMMARY OF COMPLAINT

Plaintiffs initiated this suit for injunctive relief against the 23 municipal defendants because each defendant discriminates against the plaintiffs through the adoption,

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1/South Amboy and Cranbury joined by East Brunswick, Carteret, Monroe, Helmetta, Madison, Sayreville, Milltown, North Brunswick, South Brunswick and Metuchen; Highland Park, joined by Milltown, North Brunswick, Middlesex, South River, Metuchen and Helmetta.

2/South Amboy and Cranbury, joined by East Brunswick, Carteret, Monroe, Helmetta, Madison, Sayreville, Milltown, North Brunswick, South Brunswick and Metuchen; South Plainfield, joined by Sayreville, Milltown, North Brunswick, Middlesex, South River, Metuchen, and Helmetta.

3/South Amboy and Cranbury, joined by East Brunswick, Carteret, Monroe, Helmetta, Madison, Sayreville, Milltown, North Brunswick, South Brunswick, and Metuchen.

maintenance and operation of a variety of exclusionary zoning and land use practices that impede and deter the construction of housing they can afford. The result of this conduct has been to exclude low-and moderate-income households, especially those with children, from residing within defendant communities. The effect of this conduct has been to confine low-and moderate-income persons, both white and non-white, to overcrowded, substandard, and often unsafe, housing within central city areas.

This conduct violates the general welfare clause of the New Jersey Zoning Enabling Act, N.J.S.A. 40:55-32. This conduct also discriminates against low-and moderate-income minorities and perpetuates white, isolated, and elite communities in violation of the 1968 Federal Fair Housing Act, 42 U.S.C. 3601, et. seq. and the Civil Rights Act of 1866, 42 U.S.C. 1981, 1982. In addition this conduct denies persons the equal protection of the laws and perpetuates incidents and badges of slavery, in violation of Article 1, paragraphs 1 and 5 of the New Jersey Constitution, and the Thirteenth and Fourteenth Amendments to the United States Constitution.

III. ARGUMENT

A. A More Definite Statement

Defendant Monroe has moved for a more definite statement and is properly delaying its answer until this motion is ruled upon. However, seven other defendants

(Sayreville, Milltown, North Brunswick, Middlesex, South River, Metuchen, and Helmetta) which have filed answers have also joined in this motion. In addition, by separate motion, Jamesburg has both answered and moved for a more definite statement. This motion is joined by South River, Metuchen, and Helmetta.

Plaintiffs urge that filing an answer and a motion for a more definite statement are inconsistent. The purpose of a motion for a more definite statement is to provide defendant with additional facts, and is predicated on the grounds that without such facts a responsive pleading cannot be prepared. Of course, it goes almost without saying that the plaintiff must allege sufficient facts with enough particularity that defendants are able to admit, deny, or otherwise plead to the allegations. Evangelista v. Public Service Transport, 7 N.J. Super. 164 (1950). If the eight defendants which moved for a more definite statement were able to answer the complaint, there is no need for additional allegations. Additional information that is necessary for a full and complete defense is available through traditional discovery mechanisms. Thus Monroe is the only defendant whose motion for a more definite statement is properly before the court.

Plaintiffs oppose Monroe's motion, and contend that the complaint spells out the facts relied on in ample detail,

so that Monroe needs nothing further to frame a responsive answer. The fact that 17 of the 23 defendants including eight of the nine that moved for a more definite statement, have answered the complaint strongly supports our contention that a more definite statement is unnecessary. In addition, five of the six defendants which have not answered did not join in this motion. We underscore the well settled principle that a motion for a more definite statement should be denied except in extreme cases. Voltube Corporation v. B&C Insulation Products, 20 N.J. Super. 150 (1952). The force of that princip was demonstrated in the case of Edelstein v. City of Asbury Par 51 N.J. Super. 368 (1958) (an action attacking a consent judgment rescinding the sale of city land) where the pleader alleged only the ultimate fact of illegality. Nonetheless, the court denied the motion for a more definite statement. Here plaintiffs have done much more. In both the complaint and appendix the specific facts relied on and the practices challenged have been spelled out in detail. Twenty-two defendants at least impliedly have conceded that they possess sufficient information to answer; and as with the other defendants, discovery is available to Monroe to obtain detailed information.

B. Defendant Class Action[4/]

Defendants Cranbury and South Amboy, joined by ten others[5/] assert that plaintiffs' complaint should be dismissed for attempting to deceive the court by disguising a defendant class action "by naming as large a group of Defendants as possible" (Cranbury brief at 16).

Plaintiffs emphatically reject the assertion that plaintiffs are attempting to deceive the court and the characterization of a "hidden" class action. Indeed, plaintiffs are befuddled by defendants' entire argument of this issue. Defendants' argument that plaintiffs do not satisfy R. 4:32-1, is irrelevant, since this is not a defendant class action. Plaintiffs do not intend to designate or characterize defendants as representative of a class, nor is there anything in the complaint to suggest any such intention.

In Garnick v. Serewitch, 39 N.J. Super. 486 (1956), a landowner brought an action against neighboring landowners for a declaratory judgment to determine the validity of a

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4/Defendant Cranbury, in Point Three of its brief (at p. 16) argues as an alternative to dismissing the complaint as an improper class action, that defendants should be severed. Plaintiffs note that this issue is not properly before the court, since no motion requesting severance of defendants has been made.

5/East Brunswick, Carteret, Monroe, Helmetta, Madison, Sayreville, Milltown, North Brunswick, South Brunswick, and Metuchen.

building restriction imposed on his lot by a restrictive covenant in the deed. The defendants moved to dismiss the complaint because the plaintiff had failed to sue all the neighboring landowners affected by the common restriction. In response, the plaintiff contended that his complaint was, in effect, a class action against the defendants and thus he need not sue all of them. The court rejected this contention on the grounds that the complaint did not designate the suit as a class action (at 499). In the absence of a class action allegation, the Court would not read one into the complaint.

The Garnick case is fully applicable here. An examination of the complaint reveals that the individual municipalities have been named severally, not as representatives of a class. Plaintiffs do not intend to use defendants as representatives of municipalities in other counties. The municipalities named are the only ones plaintiffs are claiming against. In short, defendants in this action represent no class, but only themselves. It is their conduct that plaintiffs challenge and relief is sought only with respect to them, no one else.

C. Persons Needed for Just Adjudication

Defendants have moved for the joinder of New Brunswick, Perth Amboy, Middlesex County, the State of New Jersey, and all other towns in the immediate region of defendants and all

remaining towns in Northeastern New Jersey[6/], under R. 4:28-1, which outlines the requirements for joining parties needed for a just adjudication of the action.

We must first examine exactly what the rule says in order to analyze properly defendants' contention. The rule first requires joinder of a party if complete relief cannot be granted to the other parties without him or in the alternative if he claims an interest in the subject matter. Both formulations require the movant to show that the party sought to be joined may be brought before the court. If this is not possible, the court must evaluate several factors to decide whether to proceed with the parties before it or whether to dismiss on grounds that the absent party is indispensable.

Defendants are claiming under the provision that says in pertinent part that a person shall be joined as a party if "in his absence complete relief cannot be accorded among those already parties". Plaintiffs urge that this places a two-part burden upon defendants. First, they must show that the party can be brought before the court in which the action is filed, and second, they have to show that complete relief cannot be accorded in his absence. Under this analysis, only Perth Amboy, New Brunswick, Middlesex County, and the State are subject to service. Defendants

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6/The defendants have failed to name specifically those municipalities, outside Middlesex County, which they believe should be joined as defendants.

have not shown that the other municipalities outside Middlesex County can be brought before this court. Therefore, defendants' motion as to them should be denied.

But even if all the parties which the defendants now seek to join may be brought before this Court, the defendants' motion to join them should be denied because they are not necessary for complete relief.[7/] First, as to Perth Amboy and New Brunswick, the central cities of Middlesex County, plaintiffs point out that there is no complaint as to their conduct. On the contrary, they are the only two municipalities in the County that maintain zoning and other land use policies and practices that facilitate residence of low-and moderate-income persons and minorities. In fact, Perth Amboy and New Brunswick are now bearing disproportionate responsibility for housing low-and moderate-income persons and minorities. A judgment favorable to plaintiffs would hardly operate to prejudice the interests of these two municipalities, but rather, would benefit them and the people who live there by allowing the impacted residents housing options. It would also ease the burden presently upon them as the only two municipalities providing equal housing opportunities.

Second, and more important, they are not necessary for purposes of providing adequate relief. Their land use policies and practices already facilitate residence of

7/Dismissal of the complaint is seen authorized under Rule 4:28-1 for failing to join persons needed for a just adjudication, except in the rare circumstances set forth in Rule 4:28-1(b).

low-and moderate-income persons and minorities. It is the policies and practices of the 23 defendants that exclude such persons and it is precisely their policies and practices that need to be changed. Defendant South Plainfield in its brief argues that New Brunswick, Perth Amboy, and the State have an interest inevitably involved in the matter before the court and should be joined as parties, citing Jennings v. M&M Transportation Co., 104 N.J. Super. 265 (1969). Actually, Jennings stands for the proposition that a party with an interest in a matter before the court is not necessarily needed for a just adjudication.

The Jennings case involved a work dispute between a transportation company and two local unions. An arbitration agreement between the company and one local (478) gave jurisdiction over certain work to Local 478. Thereafter the International Union awarded jurisdiction over the same jobs to another Local (#773). Employee members of local 478 then sued the Company to enforce the arbitration agreement. The defendant company moved to join the other local as a party necessary for a just adjudication.

The Court denied the motion on the grounds that, while Local 773 had an interest in the dispute, its presence was not essential. Looking to the plaintiffs' complaint, the Court held that its thrust concerned the arbitration agreement in which Local 773 was not involved. Similarly, in the present case, the plaintiffs' dispute is with the 23 defendants, not Perth Amboy, New Brunswick, and the State of New Jersey.

While these entities may have an interest in the outcome, it is not of such a nature which makes them persons needed for a just adjudiciation within the meaning of Rule 4:29-1, as amplified by the Jennings case.

The defendants' claim as to the State and the County should also fall. Upon the basis of evidence presently known, the plaintiffs have no quarrel with either body. We do not claim that the State legislation is faulty, only the implementation by defendants; neither are we challenging any conduct of the County, for it has no zoning or other land use implementation powers delegated to it; the power is in the defendant municipalities. Further, neither State nor County presence is necessary to obtain adequate relief against defendants.[8/] They already possess ample power to take necessary corrective action.

Two cases which held that superior officials and governmental bodies are not needed for relief against subordinates further illustrate why joinder of the County and State are unnecessary. In an action against a local postmaster to enjoin enforcement of a fraud order, the Postmaster

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8/To be sure, at some point the assistance and advice of both State and County officials may be helpful, for example in formulating a decree, if plaintiff should succeed. But that fact does not make them persons necessary for a just adjudication either within the meaning of the rule.

General was held not to be an indispensable party, because complete relief could be obtained through an injunction against the local official. The Postmaster General was not needed to make the decree effective. Williams v. Fanning, 332 U.S. 490, 92 L.Ed. 95, 68 S.Ct. 188 (1947). The parallel between Williams and this case is that an effective decree need run only to the municipal officials. Thus there is no need to join the County or State, because complete relief can be had without necessitating any affirmative action on the part of the State or the County governments.

As a further illustration, in an action against subordinate federal officials charged to have exceeded powers granted them by statute and to have acted without statutory authority, the superior federal officer and the United States were held not to be indispensable parties. Rank v. Krug, 90 F. Supp. 773 (D.C.N.D. Cal., 1950). Here the 23 defendant municipalities have failed in the implementation of powers granted to them by the state; and they can correct such failures.

As to the municipalities in Northeastern New Jersey, even assuming that they can be brought before the court, defendants' argument not only misses the point of plaintiffs' claim but fails to illustrate why such municipalities are needed for complete relief.

Plaintiffs challenge the zoning and other land use policies and practices of 23 defendant municipalities in Middlesex County. While the practices of other governmental entities may also adversely affect plaintiffs' rights, those acts are

not the subject of this lawsuit. Only the 23 defendants are charged with unlawful exclusionary practices and only they are necessary for complete relief in this case.

D. SUFFICIENCY OF THE COMPLAINT

Defendants assert that plaintiffs fail to state a claim upon which relief can be granted. They move for dismissal under this argument on the grounds that plaintiffs are requesting an advisory opinion, that the issues raised are political in nature, and that the relief sought would place an undue burden upon the court. These grounds will be examined seriatim below.

First, it is appropriate to recall at the outset the applicable rules for the purpose of testing the sufficiency of the complaint. It is well settled that the material matters of fact in the complaint are generally to be regarded as admitted, Mainulli v. Gunagan, 32 N.J. Super. 212 (1934), and the inquiry is confined to a consideration of the legal sufficiency of the alleged facts. P and J Auto Body v. Miller, 73 N.J. Super. 207 (1962). Under these standards, viewing plaintiffs' allegations as true, does the complaint surmount the three obstacles posed by defendants?

1. Advisory Opinion

Plaintiffs are not seeking an advisory opinion. Defendant Cranbury's brief asserts that there is no "actual, specific concrete controversy before the Court" (Defendant Cranbury's brief at 13).

Plaintiffs agree that New Jersey courts should not render advisory opinions. N.J. Turnpike Authority v. Parsons, 3 N.J. 234, 241 (1949). This was a case in which the court determined that the testing of the constitutionality of the

New Jersey Turnpike Authority Act by the Authority itself, did present a justiciable controversy. We contend, however, that under any realistic assessment of our complaint, the issues raised by plaintiffs pose a genuine controversy and call not for an advisory opinion but for an adjudication of real issues.

The standards as noted by defendants, in quoting Anderson v. Sills, 56 N.J. 210, 220 (1970), are that "the prospect of wrongful conduct must be real and not fanciful", and that "the litigant's concerns with the subject matter evidence a sufficient stake and real adverseness." Crescent Park Tenants Assoc. v. Realty Eq. Corp. of N.Y., 58 N.J. 98 (1971). Plaintiffs contend that the allegations of our complaint satisfy these criteria. Defendants' exclusionary zoning and other land use practices have operated and are now operating to keep plaintiffs out. Plaintiffs have searched for good housing and are now searching for good housing in the defendant municipalities. They can find none within prices or rents they can afford because of defendants' zoning and other land use policies and practices. In many cases the housing they now occupy is overcrowded, unsafe and segregated.

Thus, according to the complaint, plaintiffs are being deprived of good housing, good schools and good jobs because of defendants' unlawful conduct. There is nothing fanciful about their plight - or any doubt in the complaint that defendants' wrongful conduct is its direct cause.

Defendant Cranbury argues that the case would be sufficiently concrete if plaintiffs would propose a low- or moderate-income housing project and seek a variance (Cranbury brief at 15). This, of course, is asking the impossible of plaintiffs. They are not builders or developers, but low- and moderate-income home seekers. If the court could not rule on the legality of defendants' zoning and other land use practices until such time as plaintiffs acquired the resources and expertise to become housing developers (or could persuade someone else to run the gauntlet of defendants' exclusionary policies), defendants would in effect insulate themselves indefinitely from court challenge.

This contention makes neither practical nor legal sense. In Southern Burlington County NAACP v. Tp. of Mt. Laurel, 119 N.J. Super. 164 (1972), certif. granted 62 N.J. 190 (1972), the court was not in the least troubled by the fact that the plaintiffs were, for the most part, individual home seekers or that there was no specific housing project at issue. That case was deemed sufficiently concrete to be justiciable and a decision on the merits was reached.[9/]

9/ Plaintiffs cannot respond to Defendant East Brunswick's reliance on Baylis v. Borough of Franklin Lakes (East Brunswick brief at 7-8) in view of the fact that it is apparently an unreported decision and defendant did not attach a copy to its brief.

2. Political Question

The issues raised are not political in nature. Defendant Hyde Park's motion to dismiss for failure to state a claim upon which relief can be granted is based upon the claim that the relief sought is political in nature and that the issue is therefore non-justiciable. Defendant Cranbury discusses the issue under the heading of "Mandamus relief" in its brief at pp. 10-12. East Brunswick raises its arguments on this point starting at p. 14 of its brief.[10/]

Basically, the issue of political question raises two separate concerns: the first being whether the claim asserted and relief requested can be judicially resolved; and the second, should it be, in view of the differing powers allocated to the three branches of government. See Baker v. Carr, 369 U.S. 186 on both points.

In New Jersey the same concerns were stated in Grogan v. De Sapio, 15 N.J. Super. 604 (1951). This was an action by two city commissioners and a taxpayer to set aside as illegal reorganizational resolutions adopted by a vote of the majority of the commissioners, on the ground that the votes only rubber stamped prior secret agreements. The court, denying defendant's motion to strike the amended

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10/Plaintiffs note that defendants treat this issue under failure to state a claim upon which relief can be granted, when it more properly is raised under a motion to dismiss for lack of jurisdiction over the subject matter.

complaint for failure to state a cause of action, stated that it existed solely to declare and enforce the law. If a government action is legal, but unpopular - relief was available at the polls. If officials were violating the law, however, the courts would act. Grogan at 610.

As in Grogan, plaintiffs challenge the conduct of the defendant municipalities as unlawful. The issue raised in the complaint is that of discrimination -- an issue that is well within the power of the court to adjudicate. In Mt. Laurel, supra, the court, faced with a similar issue commented on its power to adjudicate it:

> It must be conceded that there is a general principle against judicial inquiry into the exercise by a legislative body of its police powers. Courts have always had the power to scrutinize the issue of discrimination. The pleadings, the evidence and the issues framed in this action evoke judicial review beyond that posed by a generalized exercise of police power. Id. at 175.

Plaintiffs submit their case falls under the same principle. The charge here is one of discrimination, both economic and racial. As the New Jersey court pointed out in Molino v. Mayor and Council of the Borough of Glassboro, 116 N.J. Super. 195, 204 (1971): "There is a right to be free from discrimination based on economic status." That right, we contend, is entitled to judicial protection.

In specific response to Highland Park, plaintiffs note that its reliance on Yates v. Kelly, 113 N.J. Super 533 (1971) is misplaced. Yates speaks of the creation or re-creation

of legislative districts; defendant by analogy applies this to the creation and re-creation of municipalities. Plaintiffs, however, are not asking for the re-creation or reformation of municipalities; we are not asking for any divestiture of municipal police powers. Rather we are asking that these police powers be exercised in a manner that will satisfy the requirements of the general welfare clause of the Zoning Enabling Act and the State and Federal constitutions.

3. Relief

Defendants further contend that the complaint should be dismissed because the relief sought by the plaintiffs would place an undue burden upon the court and that the requested relief would improperly involve this Court in the administration of the zoning laws.

Plaintiffs are not asking the Court to exercise the functions of the legislature or to become a super board of adjustment. We contend that if plaintiffs prevail on the merits, we are entitled to relief that would enjoin defendants from continuing to engage in exclusionary practices that discriminate on the basis of race and economic status, and would require them to take reasonable steps to correct the effects of their past discriminatory conduct. This could be accomplished by a simple, general injunction prohibiting discrimination, coupled with an order for remedial plans, to be devised, not by the court, but by the defendants. The court's function would be to review the adequacy of the plan

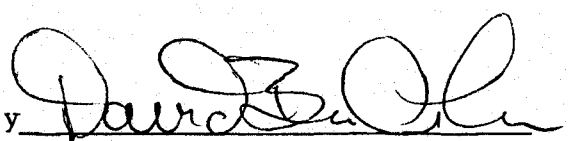
as an effective means of correcting the effects of past discrimination. This is well within the court's competence. Further, it would hardly place the court in the position of legislating "an end to the concept of 'homerule'" (Cranbury brief at 11) or otherwise assuming legislative functions. Rather, it would be well within the traditional judicial function of seeking to assure an adequate remedy to right a wrong. We call the court's attention to the fact that in Mt. Laurel, supra, the court required precisely this kind of relief, ordering the defendant, after a finding of unlawful conduct, to develop a plan to meet the housing needs of low- and moderate-income persons.

CONCLUSION

Plaintiff's therefore respectfully request that the Court deny defendants' motions to dismiss complaint herein.

Respectfully submitted,

BAUMGART & BEN-ASHER
Attorneys for Plaintiff

By 
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October 29, 1974

Honorable David D. Furman
Middlesex County Court House
New Brunswick, New Jersey, 08903

RE: Urban League of Greater New Brunswick, etc., et al.
vs.
The Mayor and Council of Borough of Carteret, et als.,
Docket No. C-4122-73

Dear Judge Furman:

In reference to the above matter, please be advised that I join in the filing of the Brief of Mr. Busch and Mr. Moran and make the same part of my Motion.

Very truly yours,

Joseph L. Stonaker

JLS:ns