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Motion Transcript

Subject: certifying class in
ML litigation

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

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4 URBAN LEAGUE OF GREATER NEW BRUNSWICK,
5 et als.,

6 Plaintiffs,

7 vs.

8 THE MAYOR AND COUNCIL OF THE BOROUGH
OF CARTERET, et als.,

9 Defendants.

BOOK FRANK SCHIAZZI CLERK

MOTION
FEB 20 AM 9:51

RECEIVED & ACCORDED
MIDDLESEX COUNTY

10 -----
11 New Brunswick, New Jersey
12 January 17, 1975

13 B E F O R E: Honorable David D. Furman, J.S.C.

14 APPEARANCES: Daniel A. Searing, Esq.,
For the Plaintiffs

15 Dennis J. Cummins, Esq., for Dunellon
16 Lawrence Lerner, Esq. for Highland Park
17 Edward Sacher, Esq., for Piscataway
18 Howard Freeman, Esq., for South Plainfield
19 Martin A. Spitzer, Esq., for Metuchen
20 Ronald A. Winter, Esq., for Edison
21 Edward J. Dolan, Esq., for Carteret
22 Alan Karcher, Esq., for Sayreville
23 Guido Brigiani, for Spotswood
24 William C. Moran, Esq., for Cranbury
25 Bertram E. Busch, for East Brunswick
Robert Rafano, Esq., for Jamesburg & So. River
Edward Johnson, Jr., for Middlesex
Samuel C. Inglese, Esq., for Monroe
Richard F. Plechner, Esq. for Helmetta
Louis Alfonso, Esq., for Madison
Richard Rozanski, Esq., for Woodbridge

1 THE COURT: Urban League versus Carteret. All
2 right, Mr. Searing.

3 MR. SEARING: Your HOnor, plaintiffs are moving
4 today for a protective order for the appointment of a
5 discovery coordinator and for the certification of the
6 class.

7 Plaintiffs feel that the protective order is
8 needed to safeguard them from the undue expense,
9 burden, and harrassment of being deposed on 23 sep-
10 arate occasions, and the discovery coordinator is
11 needed to facilitate the discovery by the defendants.

12 The two issues we feel are actually inter-
13 twined. The Court's order on the 6th of December in
14 Mr. Dolan's draft made clear that a number of questions
15 to be asked by the defendant municipalities will be
16 common for all of the plaintiffs.

17 The crucial facts of the plaintiffs' circum-
18 stances, of their search for housing and of their
19 relationship to the defendants are common to all.

20 The identical ground need not, in our opinion,
21 be covered 23 times. The questions could be more
22 expeditiously handled by a discovery coordinator who
23 would avoid the overlapping and repetition in securing
24 the necessary information from the plaintiffs.

25 We want to stress that plaintiffs are request-

1 ing this only for the purposes of discovery and pre-
2 trial and that we are not seeking to infringe upon
3 any of the rights due the defendants.

4 We want the defendants to have full and
5 appropriate information, however, not at the expense
6 or harrassment of the plaintiffs.

7 We ask that a protective order embodying the
8 selection of a coordinator be issued.

9 THE COURT: All right.

10 MR. SEARING: Our motion to certify the class--
11 We have defined the class as all low and moderate in-
12 come persons, white and non-white in northeastern New
13 Jersey who are unable to secure decent, safe, and
14 sanitary housing within the defendant municipalities
15 at rents and prices they can afford.

16 The rules are quite specific regarding class
17 actions. It must be impractical to join all members
18 because of the numbers.

19 The numbers here we feel underline the impos-
20 sibility of joinder. There must be questions of law
21 or fact common to the class.

22 Now, the plaintiffs here have been unable to
23 locate housing in the County that they can afford,
24 and the same is true of the class.

25 The fourth requirement is that the parties must

1 also adequately represent or protect the interests of
2 the class.

3 Plaintiffs have perceived no conflict among
4 themselves or between themselves and class members.
5 The common goal here is injunctive relief to increase
6 the housing opportunities throughout Middlesex County
7 at prices that the plaintiffs can afford.

8 Now, in addition to these four requirements in
9 the first part of the rule, we must fulfill one of
10 the three in the second part of the rule.

11 Plaintiffs assert that they meet subparagraph
12 two of the second part requiring that the party
13 opposing the class has acted or refused to act on
14 grounds generally applicable to the class.

15 The defendants here have acted to exclude the
16 individual plaintiffs and the class they represent
17 from the municipalities. All of the members of the
18 class have been affected in the same manner.

19 We note that the Madison case, the Mt. Laurel
20 case and the Randolph Township case, all exclusionary
21 zoning actions, have all proceeded as class actions.

22 Plaintiffs request that the proposed class be
23 certified and that the action proceed as a class
24 action.

25 THE COURT: You have any objection to the form

1 of order submitted by Mr. Dolan?

2 MR. SEARING: There was one part, your Honor.
3 Overall, we thought it was a very good one. We would
4 like to have inserted in the second paragraph the
5 fact that the case will continue under one docket
6 number, as you had stated earlier in your order.

7 THE COURT: I don't think that we need to
8 specify that. That would be clear in the absence
9 of it.

10 MR. SEARING: All right. And on the second
11 page where Mr. Dolan is talking about the proofs to
12 the individual municipalities, our only concern is
13 that the-- we are not seeking proofs as to the val-
14 idity of the zoning ordinance, but we thought the
15 word, the justification for might fit in there some-
16 what better. Otherwise, we found the order very
17 acceptable, your Honor.

18 THE COURT: Is there anybody who wishes to be
19 heard in opposition to the form of order submitted by
20 Mr. Dolan?

21 (No response.)

22 THE COURT: All right. That form of order will
23 be approved. The word validity, I believe, would
24 cover fully the legal and factual issues as to-- or
25 the-- that are raised by the plaintiff. Validity of

1 the zoning ordinance.

2 Is there anybody who wishes to be heard in
3 opposition to the certification of the class?

4 MR. CUMMINS: If your Honor please, I do. I
5 had a brief submitted heretofore on that issue. I'm
6 looking for it right now, Judge. May I just have
7 a minute?

8 THE COURT: All right. Mr. Plechner?

9 MR. PLECHNER: I would object on the basis
10 that I think that the class as set forth by the plain-
11 tiffs is in itself contradictory. I represent the
12 Borough of Helmetta where somewhere between a quarter
13 and a half of the homes are in a category generally
14 considered in the low cost bracket. By this I mean
15 that they are assessed at generally under \$20,000.

16 It would mean that a substantial portion of the
17 population of the defendant, Helmetta, is considered
18 as a portion of the class plaintiff that is suing it.
19 I do think that--

20 THE COURT: They have housing, don't they?

21 MR. PLECHNER: Pardon me?

22 THE COURT: They have housing now. The classes
23 would be persons seeking to find adequate housing
24 within their means.

25 MR. PLECHNER: I would also doubt that there

1 are very many people in that class who have sought
2 housing within the Borough of Helmetta and have been
3 unable to find housing within the Borough of Helmetta.

4 Again, I think on the second position or situ-
5 ation of the depositions, I would be very curious
6 when and where the plaintiffs sought housing within
7 the Borough of Helmetta and were unable to so find.

8 MR. INGLESE: Your Honor, the Township of
9 Monroe would object to it. I think that counsel has
10 made two references in regards to the class. One was
11 that the plaintiffs here were unable to find any
12 housing in each of the municipalities and has cited
13 the two cases, the Oakwood case which was before your
14 Honor and the Mt. Laurel case, and he was referring to
15 both of them wherein there were classes.

16 Both of those cases there were actual applica-
17 tions that were made to the various Boards of Adjust-
18 ment and Planning Boards for housing for the minority
19 groups that were requesting it, and in both of those
20 situations there was a denial by the municipality.

21 There has been absolutely no proof here or even
22 claim on the part of the plaintiffs that it has made
23 any application to the Township of Monroe, nor that
24 anyone has made any application to the Township of
25 Monroe for low income housing and has actually been

1 denied, at this point.

2 Therefore, we should not be made part of this
3 class because there has been no proof that we should
4 be part of this, and there is no application that
5 has been made.

6 MR. WINTER: In behalf of Edison, we object
7 because we feel that the plaintiffs lack the common-
8 ality that the cases and the statutes require. I
9 just don't think that factually they meet the legal
10 standards to qualify as a class.

11 MR. KARCHER: Your Honor, on behalf of the
12 Borough of Sayreville, we also object, primarily on
13 the basis that certification at this time we feel at
14 this time would be premature because I think a part
15 of it would rely upon the facts that are developing.

16 For instance, one of the plaintiffs does, in
17 fact, live within the Borough of Sayreville at this
18 moment, and although it is listed in the application
19 as South Amboy, it is the Borough of Sayreville where
20 they reside. We would like to find out how many
21 others have applied, and if they can move into the
22 same neighborhood or other neighborhoods in Sayreville,
23 etc., etc.

24 I think that's true with other towns. I think
25 that the application for certification is very pre-

1 mature.

2 MR. BUSCH: In behalf of East Brunswick, I
3 would join the Borough of Sayreville's position and
4 add that with regard to discovery, we don't know
5 whether these people are, in fact, members of the
6 class, and if they are not members of the class at
7 the time of trial, they might disqualify the plain-
8 tiffs entirely. I think that we are entitled to have
9 discovery before we have a class certification.

10 MR. LERNER: The Borough of Highland Park will
11 also join in Mr. Karcher's objection.

12 MR. DOLAN: And the Borough of Carteret also
13 joins with Mr. Karcher that the application is pre-
14 mature in view of the fact that discovery is not com-
15 pleted.

16 MR. RAFANO: I would also join in that as be-
17 ing premature.

18 MR. MORAN: I have one other thing, your Honor,
19 and that is that it appears to me that the designa-
20 tion of all people in northeastern New Jersey is too
21 vague by reason of geography and that the region should
22 be more precisely defined as to either municipality or
23 county as to the area that we are talking about.

24 MR. BRIGIANI: Spotswood joins for the same
25 reasons.

1 MR. CUMMINS: If your Honor please, I have
2 looked at the Master Plan of the County of Middlesex
3 and they, the Master Plan, alludes to three different
4 ring areas in Middlesex County.

5 Now, I think the Court is sufficiently aware
6 of what the pattern is in the County, and I think that,
7 if your Honor please, that at this juncture to certify
8 the class as to all the defendants would be unjust
9 and unfair in light of the County's own Master Plan
10 and the County's own designation of the particular
11 trouble spots in housing.

12 The fact, if your Honor please, that, let's
13 say, in Dunellen, whom I represent, that the plain-
14 tiffs might find a house that is perhaps too costly.
15 That should not necessarily create in them a class
16 designation for the whole County.

17 There are many houses in Dunellen that are
18 moderately priced. Perhaps they are in the twenty
19 to thirty thousand dollar range.

20 Now, it is not the Borough of Dunellen's fault
21 if you will, that houses --

22 THE COURT: You are taking too much time, Mr.
23 Cummins, going into details about the Borough of
24 Dunellen.

25 MR. CUMMINS: All right, your Honor. I object

1 at this juncture, if your Honor please, to the clas-
2 sification for the reasons that I have stated before.

3 THE COURT: All right. Is there any disposi-
4 tion on the part of the defendants voluntarily to
5 agree to designate a discovery coordinator?

6 MR. DOLAN: I think, your Honor, that implicit
7 in your ruling and implicit in the order that appar-
8 ently has been approved, that I think that the appli-
9 cation is not objectionable to the Borough of Carteret,
10 provided that we have certain safeguards built into
11 it.

12 For instance, I don't know if counsel-- counsel
13 is asking for a coordinator. I assume he means a
14 coordinator or committee of coordinators to coordinate
15 the taking of depositions, and I am certain that he
16 doesn't mean that we can all participate in it, in the
17 taking of depositions general to all parties, and then
18 when it comes to the question of the Borough of Car-
19 teret, they will have to submit to depositions to the
20 Borough of Carteret, Edison, and Sayreville, and so
21 on. There is still going to be 23 sets of depositions
22 plus the general set. If that's what they want, I
23 don't object to it.

24 THE COURT: All right. The Court is ready to
25 make rulings now.

1 This appears to fit within a class, and would
2 so certify it. A person seeking and unable to find
3 adequate or suitable housing within their means in
4 the 23 municipalities are represented by the plain-
5 tiffs.

6 It may be, of course, that discovery establishes
7 that one or more of the plaintiffs are not themselves
8 truly members of the class, in which case there could
9 be an application to dismiss as to that plaintiff.

10 I believe that the plaintiffs are premature.
11 They are anticipating problems as to discovery. The
12 plaintiffs have pursued this case against 23 separate
13 municipalities. It seems to the Court unavoidable
14 that there would be discovery as to the general issues
15 and then discovery as to each of the 23 separate
16 zoning ordinances and factors applying to each
17 municipality.

18 I believe that the severance and the basis of
19 the severance is clear in the order submitted by Mr.
20 Dolan that has just been signed by the Court.

21 This, of course, is without prejudice to an
22 application, an application which might be made on
23 short notice by the plaintiffs to quash any notice of
24 taking of depositions which would be repetitious or
25 a hardship or otherwise amount to harrassment in viola-

1 tion of the discovery rules.

2 Now, so that there will be no order at this
3 time limiting discovery, except as I have already
4 stated, limiting discovery on the general issues to
5 one deposition, one set of interrogatories and so
6 forth and permitting discovery as to the issues rele-
7 vant to each municipality 23 times.

8 I know of no basis to join the County of
9 Middlesex and the State of New Jersey as third party
10 defendants. I don't understand any claim against
11 either the State or the County, and those motions are
12 denied.

13 MR. CUMMINS: Did you want to hear any argument
14 on that, Judge?

15 THE COURT: No.

16 MR. MORAN: Your Honor, I was rather surprised.
17 In fact, the plaintiffs didn't do this, but the same
18 rule provides for certification of class, provides
19 that the Court fix the form of notice to the class,
20 which is a requirement, either on its own motion or
21 on the motion of the plaintiffs. I thought that they
22 would have done that at the same time. Is your Honor
23 going to fix a form of notice to be given to the
24 class?

25 THE COURT: I don't believe so, Mr. Moran.

1 MR. INGLESE: Can the order certifying the class
2 so provide that your Honor is denying that notice be
3 given to the members of the class?

4 THE COURT: All right.

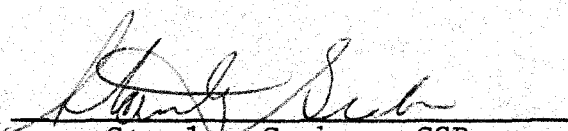
5 MR. INGLESE: Thank you.

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CERTIFICATION

I, STANLEY GRABON, a Certified Short-
hand Reporter of the State of New Jersey, do
hereby certify that the foregoing is a true
and accurate transcript, as was reported by
and before me on the date aforementioned.


Stanley Grabon, CSR
Official Court Reporter