

CA: General 20-Feb-75  
Transcript of  
MOTION for a Protective Order for  
the appointment of a discovery  
coordinator AND for certification  
of the class.

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URBAN LEAGUE OF GREATER NEW BRUNSWICK,  
et als.,

Plaintiffs,

vs.

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

Defendants.

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MOTION  
SOLICITOR GENERAL  
FRANK STAMATI  
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New Brunswick, New Jersey  
January 17, 1975

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

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

Dennis J. Cummins, Esq., for Dunellon  
Lawrence Lerner, Esq. for Highland Park  
Edward Sacher, Esq., for Piscataway  
Howard Freeman, Esq., for South Plainfield  
Martin A. Spitzer, Esq., for Metuchen  
Ronald A. Winter, Esq., for Edison  
Edward J. Dolan, Esq., for Carteret  
Alan Karcher, Esq., for Sayreville  
Guido Brigiani, for Spotswood  
William C. Moran, Esq., for Cranbury  
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

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also adequately represent or protect the interests of the class.

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

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

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

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

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

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

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

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

Again, I think on the second position or situation of the depositions, I would be very curious when and where the plaintiffs sought housing within the Borough of Helmetta and were unable to so find.

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

Both of those cases there were actual applications that were made to the various Boards of Adjustment and Planning Boards for housing for the minority groups that were requesting it, and in both of those situations there was a denial by the municipality.

There has been absolutely no proof here or even claim on the part of the plaintiffs that it has made any application to the Township of Monroe, nor that anyone has made any application to the Township of 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 or 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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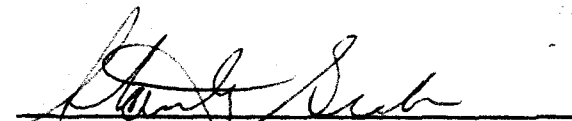
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CERTIFICATION

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