CA - General 8-Sept.-75

Plaintiff's memo in opposition to Defendant's motion for partial Summary Judgment — plus cover letter

pgs = 17

Yellow p.i. # 940

CA0010050

September 8, 1975

Honorable David D. Furman
Post Office Box 788
New Brunswick, New Jersey 08903

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

Dear Judge Furman:

Enclosed please find an original and two copies of Plaintiffs' Memorandum in Opposition to Defendants' Motion for Partial Summary Judgment, to be heard on September 12, 1975.

Sincerely,

David H. Ben-Asher/os
David H. Ben-Asher
Attorney for Plaintiffs

DAS:blt

Enclosure

cc: All Defense Counsel

bcc: Ben-Asher

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.

MEMORANDUM IN OPPOSITION

TO DEFENDANTS' MOTION

FOR PARTIAL SUMMARY JUDGMENT

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I. INTRODUCTION

This action was filed on July 23, 1974, against 23 of the 25 municipalities in Middlesex County, alleging that the defendants have, through various land use practices, effectively excluded low-and moderate-income people, both white and nonwhite. Plaintiffs seek to enjoin the municipalities from continuing to engage in the alleged unlawful conduct, and to require them to design and implement plans which would correct the effects of such unlawful conduct. Plaintiffs' allege that defendants' conduct violates N.J.S.A. 40:55-32; Article one, paragraphs 1, and 5, of the New Jersey Constitution; 42 U.S.C. 1981, 1982, and 3601 et seq.; and the Thirteenth and Fourteenth Amendments to the United States Constitution.

On August 8, 1974, defendant Cranbury (joined in the intervening period by other defendants)[1/] filed a Motion for Partial Summary Judgment, contending that the United States Supreme Court's recent decision in Warth v. Seldin, 95 S.Ct. 2197 (1974) (hereinafter Warth) precludes the plaintiffs, for lack of standing, from asserting their federal claims. Defendants urge that these plaintiffs, as in Warth, are unable to show that they have been sufficiently injured

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1/ Carteret, Helmetta, Middlesex, Milltown, Metuchen, North Brunswick, Sayreville, and Spotswood

by defendants allegedly exclusionary acts. They argue that failure to demonstrate the requisite injury is thus fatal to plaintiffs' attempt to challenge defendants' zoning and other land use policies as violative of federal statutes and the United States Constitution.

Plaintiffs oppose the defendants' motions and urge that it be denied on the following grounds:

First, the Warth decision sets the parameters for the exercise of jurisdiction by federal courts. In denying standing the Court in Warth held that the plaintiffs had presented no "case or controversy" within the meaning of article III of the Constitution. The jurisdictional limitation announced by Warth is not applicable to actions in state courts, even if they are based on federal claims. The standing of plaintiffs in state courts is to be determined by state standards of justiciability.

Second, even if the federal standards set out in Warth are adopted by this court and applied to this case, plaintiffs still have the requisite standing. Unlike the plaintiffs in Warth, the plaintiffs here are:

(a) asserting that the defendants' land use practices are racially discriminatory;

(b) alleging a violation of the Federal Fair Housing Act;

(c) challenging specific provisions of the zoning ordinances rather than a generalized attack upon the entire zoning scheme;

(d) contending they are members of the class injured by the defendants' unlawful conduct.

Third, with respect to the standing of the Urban League, the plaintiffs contend that it has standing in its own right.
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II. ARGUMENT

A. Introduction

At the outset it should be noted that the defendants' motion for partial summary judgment is directed at whether plaintiffs have standing to challenge defendants' conduct as racially discriminatory. The defendants have not contested the facts alleged in the complaint. Thus as with a motion to dismiss, this motion tests the sufficiency of the allegations. It is appropriate to recall the applicable rules in this situation. It is well settled that the material matters of fact in the complaint are generally to be regarded as admitted, Manulli v. Gunagan, 32 N.J. Super. 212 (App. Div., 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 (Law Div., 1962). The New Jersey Supreme Court in Jackson v. Muhlenberg Hospital, 53 N.J. 138 (1969)

warned against disposing of claims without benefit of a substantial record where the ruling requested would have a broad reaching social and legal effect. Federal courts in their consideration of civil rights cases have underlined the intent of the New Jersey holdings. In a fair housing suit challenging exclusionary zoning in Parma, Ohio, the court quoted with approval the opinion of Judge Marovitz in Sisters of Prov. of St. Mary of Woods v. City of Evanston, 335 F. Supp. 396, 399-400 (N.D. Ill. 1971):

> It is especially in civil rights disputes that we ought to be chary of disposing of the case on pre-trial motions and courts do in fact have a predilection for allowing civil rights cases to proceed until a comprehensive record is available to either support or negate the facts alleged.

United States v. City of Parma, P.H.E.O.H. Reptr. Para. 13,616, p. 14,016 (N.D. Ohio 1973). Thus plaintiffs' federal civil rights claims in this case should be allowed their day in court.

B. Plaintiffs' Standing in State Courts is to be Determined by State Standards of Justiciability

Defendant Cranbury has urged upon this Court that the United States Supreme Court's decision in Warth, supra, is dispositive of the issue of whether plaintiffs here have standing to press Federal Constitutional and statutory claims in a state court proceeding. Defendant has cited no support for this view. There is none. The Supreme Court's decision in Warth concerned a "case or controversy" problem under federal court jurisdiction derived from article III of the

United States Constitution. Plaintiffs here in state court are entitled to a hearing on their federal claims whether or not there is sufficient standing to invoke the jurisdiction of a federal court. This is because the federal jurisdictional requirements are not controlling on this court; rather we must look to the state standards on this issue. We now turn to an analysis of this point.

It cannot be debated that plaintiffs may properly bring federal claims in state courts. Gray v. Serruto Builders, 110 N.J. Super. 297 (Ch. Div. 1970), a racial discrimination case in which a black applicant for an apartment was turned away only hours before a white couple was offered the dwelling, is illustrative. The plaintiffs in Gray relied upon 42 U.S.C. 1982 for their claim for relief. The court specifically noted that it had jurisdiction to decide plaintiffs' federal claim. Accord, Doe v. Bridgeton Hospital Assn. Inc., 130 N.J. Super. 416 (Law Div. 1974). Indeed, in Testa v. Katt, 330 U.S. 386 (1947) the Supreme Court held that state courts were mandated to enforce claims based on valid federal legislation at least to the extent the state courts hear similar claims on state law. 2/

2/ In addition to this decisional support, it is clear that by statute plaintiffs can bring an action under the Federal Fair Housing Law in the court of their choice. That federal statute specifically provides that "the rights granted by sections 803, 804, 805, and 806 may be enforced by civil actions in an appropriate United States District Court without regard to the amount in controversy and in an appropriate state or local court of general jurisdiction." 42 U.S.C. 3612(a) (emphasis added).

The United States Supreme Court represents the final juridical authority on substantive federal questions such as the constitutionality of an Act of Congress. Stockton v. Dundee Mfg. Co., 22 N.J. Eq. 56 (1871). On matters of procedure, state courts are free to apply their own standards. Thus in Mazza v. Cavicchia, 15 N.J. 498 (1954) the New Jersey Supreme Court was asked to rule on the validity of an order suspending a license to sell alcoholic beverages. The order was issued on the basis of a hearing report that was kept secret from the licensee. The Commission issuing the suspension claimed that the U.S. Supreme Court had decided cases approving the secret report procedure. The New Jersey Court, in addition to denying the applicability of the cited cases said:

> Unless a Federal question is involved, a decision of the United States Supreme Court, while always entitled to great respect, is not necessarily conclusive authority in any state. Id at 516

There are numerous instances in which state courts have properly decided federal statutory and Constitutional issues only to have the Supreme Court refuse an appeal on grounds of lack of federal jurisdiction, i.e., a failure to present a case or controversy or to show sufficient harm to the plaintiffs.

In Doremus v. The Board of Education, 342 U.S. 429 (1952) plaintiffs were challenging a New Jersey State Statute providing for the reading of Biblical verse in school each day as violating the First Amendment of the Federal Constitution. The trial court denied relief based on the pleadings and a pretrial conference. The New Jersey Supreme Court expressed

some doubts about its jurisdiction, but decided the statute did not violate the First Amendment. The Supreme Court dismissed the appeal without reaching the federal question because none of the plaintiffs had asserted sufficient interest to present a case or controversy under federal jurisdictional standards. Accord: Tylver v. Judges of the Court of Registration, 179 U.S. 405 (1900); (Supreme Judicial Court of Massachusetts) Tileston v. Ullman, 318 U.S. 44 (1943); Poe v. Ullman, 367 U.S. 497 Supreme Court of Errors of Connecticut). See Adler v. Board of Education of City of New York, 342 U.S. 485 (1952) (dissenting opinion of Mr. Justice Frankfurter).

Therefore, regardless of the Supreme Court's holding in Warth, the New Jersey courts can pass on plaintiffs' federal claims. As demonstrated by the cases above, the applicable standards of justiciability to hear those claims are those of the state in which the action is brought. We turn to a brief examination of the standing concept as applied in New Jersey courts. As shown in the cases above, state standards of justiciability are frequently less restrictive than federal standards. As Doremus shows, New Jersey courts are no exception, having traditionally taken a more liberal view of standing requirements than the federal judiciary. To be sure, the plaintiffs' interest with the litigation must show "a sufficient stake and real adverseness." Individual justice, the public interest and "just and expeditious determinations on the ultimate merits" have been the uppermost concerns.

Crescent Park Ten. Assn. v. Realty Equities Corp of N.Y., 58 N.J. 98 (1971) (granting standing to tenants association suing landlord on matters of interest common to all tenants).

More recently in Southern Burlington County NAACP v. Township of Mt. Laurel, 67 N.J. 151 (1975) (hereinafter cited as Mt. Laurel) the Supreme Court noted specifically that plaintiffs such as the ones in the instant case have standing to challenge zoning ordinances. In a footnote directly meeting the standing issue the court, in addition to approving the standing of present residents, confirmed that former residents and nonresidents living in unsuitable housing in the region also had standing. Mt. Laurel, Id. at 159, n. 3

In view of this ruling and the above demonstration that state standards of justiciability are applied when state courts are entertaining federal claims, plaintiffs urge that defendants' argument that Warth is determinative of standing is in error. Defendants' motion for partial summary judgment should be denied on this point alone.

C. Plaintiffs have Standing Even If the Federal Standards Set Forth in Warth are Adopted by This Court

A comparison of the legal and factual situations in Warth and the litigation here reveals four areas of substantial difference - and any one of the four would be sufficient for a finding that plaintiffs here do not come within the holding of Warth. Each of the four will be briefly discussed.

First, plaintiffs here are asserting that defendants' land use practices are racially discriminatory. This is one of the key distinctions between plaintiffs here and in Warth. In Warth the issue of racial discrimination was only incidential to the alleged economic discrimination; here racial discrimination is an integral yet independent allegation. Plaintiffs allege, and will prove, that the zoning policies and other land use practices of defendants are racially discriminatory. Race here is a major element, not an incidential factor as in Warth (see Warth, supra at 2212, n 21.)

The factual allegations in the complaint are replete with statements that reflect the exclusion of minorities from defendant municipalities. Thus, paragraph 16 notes that while 85 percent of the total county population lives in the defendant municipalities, less than 50 percent of the minority population so resides. Paragraph 18 and 19 states that population increases have been nearly all white families, and that those minorities that have moved into the county have been confined to New Brunswick and Perth Amboy. Paragraph 20 alleges that those minorities moving into defendant municipalities have been confined to areas where minorities already live - often characterized by poorer housing and less restrictive zoning.

In addition, paragraph 22 outlines the disparity between median income for Blacks living in the two central

city areas and the residents of the 23 defendants. Paragraph 26 details the employment situation of minorities in the county. Paragraph 31 notes the racial disparity between central city schools and those in defendant municipalities. Paragraph 33 states:

> the defendants' zoning and other land use policies and practices have denied or otherwise made unavailable to low-and moderate-income persons, both white and nonwhite equal access to housing and employment opportunities and denied educational opportunities to their children.

Paragraph 34, in outlining the results of defendants' conduct alleges, inter alia, that they have maintained "white isolated elite communities of high-income households" and deprived "middle and upper-income white residents of the benefits of racial and economic integration."

Accepting these allegations as true, as the court must, plaintiffs have outlined a systematice practice of excluding minorities from residing within defendant communities. It is upon this foundation that plaintiffs have based their federal statutory and Constitutional protections here challenged by defendants.

Second, plaintiffs here are alleging a violation of the Federal Fair Housing Act. This is the second key distinction between Warth and here. Plaintiffs allege that defendants' conduct violates federal statutory prohibitions against housing discrimination. The complaint in Warth never

mentioned this statue, and indeed at one point the Court specifically noted the absence of a contention that the Fair Housing Act was involved. Warth, supra at 2212, n. 21. There is no such question here, as plaintiffs have repeatedly invoked the provisions of Title VIII.

As noted earlier, Congress permitted actions brough under Title VIII to be heard in state courts. It defined those entitled to invoke Title VIII in broad terms in section 810(a) "(a)ny person who claims to have been injured by a discriminatory housing practice." When Congress has provided an express statute to remedy discrimination in housing, the courts are prone to accord standing to plaintiffs seeking its protection. In Trafficante v. Metropolitan Life Insurance Company, 409 U.S. 205 (1972) the Court granted standing to a white and a black tenant of an apartment complex charged with discrimination. The injury - loss of important benefits from interracial associations - was held to have been alleged with particularity.[3/] The Court pointed out that the victim of discriminatory housing practices was "the whole community", and the law was intended "to replace the ghettos by truly integrated living patterns."Id. at 211. Because it is precisely in this context and with this aim that plaintiffs here claim under Title VIII that they should be granted standing. See

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3/ The injury suffered by the white plaintiff in Trafficante is the same as that alleged by plaintiff Tuskey here.

Park View Heights Corp. v. City of Black Jack, 467 F.2d 1208 (8th Cir. 1972).

Third, plaintiffs are challenging specific sections of defendants' zoning ordinances. This is the third difference between Warth and the instant case. Plaintiffs' complaint when read together with the Appendix details the specific discriminatory items plaintiffs challenge. Paragraph 33 of the complaint summarizes the complained of exclusionary devices and techniques in stating that defendants have:

(a) Forbidden or severely restricted provision of mobile homes, the development of multiple dwellings, especially those with more than one bedroom, and single-family attached housing that plaintiffs can afford;

(b) imposed zoning and building requirements for single-family detached houses, such as large lot sizes, minimum floor areas, and excessive frontage requirements, which have increased housing costs;

(c) refused or otherwise failed to provide federally or State subsidized housing for low-income families; and

(d) zoned vacant land for industrial purposes in excess of need to the exclusion of residential usage.

In Warth a more generalized challenge to the entire zoning ordinance was attempted. Painting with such a broad brush made it difficult to focus upon exactly those provisions of the ordinance that were central to plaintiffs' case. In the case at bar it is clear what plaintiffs are challenging.

Fourth, plaintiffs are in fact injured. The final difference between Warth and plaintiffs here discussed arises out of the third. The broad challenge in Warth made it hard for the Court to perceive precisely how the plaintiffs were injured. Plaintiffs here can point to specific zoning provisions and land use practices that preclude them from obtaining housing adequate to meet their needs. This has caused direct and specific injury in a number of ways. Plaintiffs have been unable to find housing with sufficient room (Benson and Cruz) at prices they could afford; housing that is available is often crowded or located in an area of poor environment (Cruz, Champion, Benson); the lack of suitable housing has meant hardships in the employment area and denial of equal educational opportunities (Tippett). All plaintiffs have been harmed by the racial discrimination inherent in defendants' conduct.

Thus plaintiffs here are unlike Warth in a number of important ways. They are alleging racial discrimination, they are invoking the Federal Fair Housing Act, their attack on defendants' zoning ordinance is specific rather than general and they allege and are prepared to prove injury in fact as a direct result of defendants' conduct. Thus, whether viewed separately or together, the above four points remove questions of standing under article III. There remains one final issue.

D. Plaintiff Urban League Has Standing

Defendants have challenged the standing of plaintiff Urban League, stating that Urban Leagues' status "must rise or fall on whether or not the individual plaintiffs have the prerequisites to be granted standing." Defendant Cranbury's brief at 4. Plaintiffs disagree with this assertion. Organizations are granted standing in their own right. Such independent standing is based on showing of injury or harm to members of the organization. As the Supreme Court stated in Sierra Club v. Morton, 405 U.S. 727, 739 (1972):

> It is clear that an organization whose members are injured may represent those members in a proceeding for judicial review.

Accord, NAACP v. Button, 371 U.S. 415 (1963); United States v. SCRAP, 412 U.S. 669 (1973).

The New Jersey Supreme Court has given the same latitude to organizations availing themselves of state courts. Crescent Park Tenants Assn. v. Realty Equities Corp. of New York, supra. In that case the Court found that a tenants' association had standing to represent members in an action against a common landlord. The court noted the importance of problems common to all tenants. Plaintiff here represents members with common housing problems identical to those faced by the individual plaintiffs. It thus acquires standing in its own right.

CONCLUSION

Plaintiffs therefore respectively request that the Court deny defendants' motion for partial summary judgment.

Respectfully submitted,

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DATED: September 8, 1975