

- Letters to Judge re costs and attorney's fees
- Memorandum in Opposition to Plaintiff's motion for an order seeking costs

Pg. 10

P.i. 4000

~~→ See Jeff's Possibility Attorney's fees case~~

CA001094D

John J. Vail
Counsellor at Law

121 North Broadway
South Amboy, New Jersey 08879
721-2430 721-2431

November 17, 1976

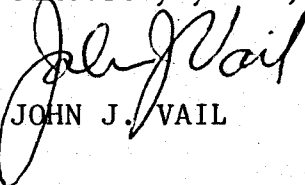
Honorable David D. Furman
Superior Court of New Jersey
Middlesex County Court House
New Brunswick, New Jersey 08903

Re: Urban League vs. Borough
of Carteret, et al.
Docket No. C-4122-73

Dear Judge Furman:

I have received Mr. Spritzer's letter of November 12, 1976 relative to plaintiffs' motion for costs in the above matter, scheduled for hearing on November 19, 1976.

The City of South Amboy adopts the same position as the Borough of Metuchen and takes the position that the dismissal without costs or attorney fees precludes the granting of an award against the City of South Amboy. However, in addition thereto, I also must attend the League of Municipalities convention during this week, and will be unavailable on the return date of the motion to argue same. I have specifically made arrangements to meet with a firm which was recently engaged to codify the South Amboy ordinances, and for that reason request that the motion be rescheduled to a future date.

Sincerely yours,

JOHN J. VAIL

JJV:AMS

cc: All attorneys of record

JOSEPH L. STONAKER
COUNSELLOR AT LAW
245 NASSAU STREET
PRINCETON, NEW JERSEY 08540
TELEPHONE: 921-2155
AREA CODE 609

November 15, 1976

Honorable David D. Furman, Judge
Superior Court of New Brunswick
Court House, Bayard Street
New Brunswick, New Jersey

Re: THE URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al
v. CARTERET, et als
Docket No. C-4122-73

Dear Judge Furman:

May I hereby request that Plaintiff's Motion for Costs, returnable November 19, 1976, be adjourned until the following week or such later date as may be convenient for the Court.

On Wednesday, November 17th; Thursday, November 18th; and most of Friday, November 19th; I will be out of my office attending a conference sponsored by the New Jersey League of Municipalities in Atlantic City. I need not point out to the Court the importance of these conferences considering the impact recent legislation will have on municipalities. As Plainsboro's municipal attorney, my failure to attend would be a slight to the interests of my client and I feel sure most if not all of the counsel for co-defendants have planned to attend these conferences.

I received Plaintiff's notice on November 12th, such notice allowing but four days in which to prepare a Memo to assist the Court in determination of Plaintiff's demands.

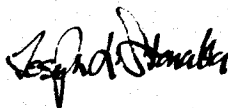
I wish also to concur in the sentiment expressed by counsel for Carteret, Peter J. Selesky, Esquire, that an adjournment would allow Plaintiff to correct its Supporting Affidavit in conformity with R. 4:42-8(c),

Honorable David D. Furman, Judge
November 15, 1976
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such rule requiring proof that taxable costs are reasonable in amount and, where incurred for attendance of witnesses, state the days of actual attendance, distance travelled and whether mileage is charged.

Thank you for your consideration of this request.

Very truly yours,



Joseph L. Stonaker

JLS:mmb

HUFF AND MORAN
COUNSELLORS AT LAW
CRANBURY-SOUTH RIVER ROAD
CRANBURY, NEW JERSEY 08512

J. SCHUYLER HUFF
WILLIAM C. MORAN, JR.

GARY M. LANZARA

TELEPHONE
(609) 655-3600

November 16, 1976

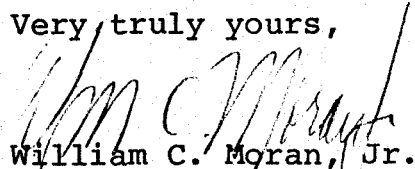
Honorable David D. Furman
Court House
New Brunswick, N. J. 08903

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

Dear Judge Furman:

Plaintiff's Motion for Costs in the above matter arrived while I was attending the New Jersey Bar Association Convention in Florida, which has prevented me from replying thereto earlier than today.

Naturally, the Township of Cranbury objects to the allowance of costs - particularly to reimbursement for the expert witnesses fees. In this regard I join in the comments of Mr. Busch in his Memorandum in Opposition to Plaintiffs' Motion, and adopt the same on behalf of the Township of Cranbury.

Very truly yours,

William C. Moran, Jr.

WCM/ko's

cc: All Attorneys of Record

Siegel & Farino
Counsellors at Law

STEPHAN SIEGEL
MEMBER: N. J. AND PATENT BARS

THOMAS R. FARINO, JR.
MEMBER: N. J., D. C. AND PATENT BARS

6 HALF ACRE ROAD
(COR. FORSGATE DR.)
JAMESBURG, N. J. 08831
201 - 521-1112

November 17, 1976

The Honorable David D. Furman
Judge of Superior Court
Middlesex County Court House
New Brunswick, New Jersey 08903

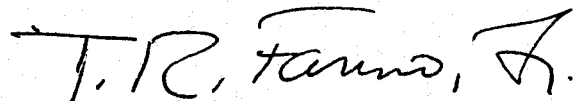
RE: Urban League of Greater New Brunswick, et al
vs. Mayor and Council of the Borough of Carteret, et al
Docket No. C-4122-73

Dear Judge Furman:

The Township of Monroe objects to plaintiff's Motion for costs in the above captioned matter presently scheduled to be heard on November 19, 1976, particularly with respect to reimbursement for expert witness fees. Accordingly, I join and fully support the comments of Mr. Busch in his Memorandum in Opposition to plaintiff's Motion and adopt same on behalf of the Township of Monroe.

Very truly yours,

SIEGEL & FARINO



THOMAS R. FARINO, JR.

TRF/eeg

cc: All Attorneys of Record



Township of North Brunswick
NEW JERSEY

711 HERMANN ROAD
POST OFFICE BOX 182
NORTH BRUNSWICK, N. J. 08902

Reply to:
103 Bayard Street
New Brunswick, N. J. 08901
(201) 545-6700

November 18, 1976

The Honorable David D. Furman
Middlesex County Court House
New Brunswick, N. J. 08903

Re: Urban League of Greater New Brunswick vs.
The Mayor and Council of the Borough of
Carteret, et al
Docket No. A-4685-75

Dear Judge Furman:

The Township of North Brunswick joins in
the comments of Mr. Busch in his Memorandum in Oppo-
sition to the Motion.

Very truly yours,

Joseph H. Burns
Joseph H. Burns

JHB:MM

Copy to All Attorneys of Record

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY

DOCKET NO. C-4122-73

URBAN LEAGUE OF GREATER :
NEW BRUNSWICK, et al

Plaintiff :

vs.

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

Defendants :

Civil Action

MEMORANDUM IN OPPOSITION TO
PLAINTIFFS MOTION FOR AN ORDER SEEKING COSTS

BUSCH AND BUSCH
Attorneys for Defendant,
Township of East Brunswick
99 Bayard Street
New Brunswick, NJ 08903

BERTRAM E. BUSCH
On the Brief

LEGAL ARGUMENT

Plaintiffs, who have filed an appeal from the Trial Court's Judgment against all of the defendant municipalities, now come into Court seeking an Order assessing costs against the 22 defendants. Plaintiffs previously applied for an Order directing the payment of legal fees and fees for witnesses who testified during depositions. Both of these applications were denied.

Plaintiffs clearly were not the unqualified winners in the trial as evidenced by their own Notice of Appeal. The Affidavit of Daniel A. Searing fails to furnish a total of the expenses claimed, but rather shows it on a prorated basis, presumably so it will not seem too high. In fact the plaintiffs are seeking \$9,200.57 costs in a case in which they filed a Notice of Appeal. Aside from that, there is no legal basis whatsoever for the Court to render the relief now requested.

Plaintiffs quote N.J.S.22A:2-8 in its entirety. Whether intentionally or otherwise, they distort the language of that statute. The term "legal fees of witnesses, including mileage for each attendance," does not mean the experts' fees for testifying in court and preparation prior thereto. At most the plaintiffs would be entitled to the fees permitted under N.J.S.22A:1-4 which speaks in terms of \$2.00 per day plus \$2.00 for every 30 miles of travel between place of attendance

and place of residence.

Conceivably another interpretation of the words "legal fees of witnesses" would be the witnesses' attorneys fees. In this case there were none. This would dispose of \$7,822.23 of plaintiffs' claims.

Plaintiffs seek to justify the cost of exhibit reproduction, together with the fees charged by expert witnesses under the words "other reasonable and necessary expenses as are taxable according to the course and practice of the Court or by express provision of law or rule of Court." Plaintiffs come under none of the categories in the statute.

Plaintiffs also seek to recover \$82.00 for public documents. They fail to identify the certified copies which were necessary for the trial. Accordingly their claim should be denied.

Plaintiffs completely miss the point of what taxed costs should be. In N.J.S.22A:2-10, the following language would seem to limit plaintiffs if costs are to be awarded at all. That section reads in relevant part as follows:

"Upon the completion and determination of the following actions and proceedings in the Chancery Division of the Superior Court, the costs awarded to a party therein for the drawing of papers, including orders, writs and judgments, shall be as stated below:

...Plaintiff's costs, cause of action for other relief...\$65.00."

The Court's attention is directed to Long v. Mertz, 21 N.J. Super. 401, 91 A.2d 341 (App. Div. 1952). This was an accounting action in which a consent judgment was entered and plaintiff appealed from so much of the final judgment as denied counsel fees and accounting expenses. The Appellate Division refused to include such fees in the statement of taxed costs.

In U.S. Pipe and Foundry Co. v. United Steelworkers of America, 37 N.J. 343, 181 A.2d 353 (1962), a case cited by the plaintiffs, the Court considered the allowance of costs and counsel fees both generally and under the Anti-Injunction Act. The following language is instructive:

"...[T]he amounts allowable in both Trial and Appellate courts are prescribed by statute, either expressly therein or as may be provided by court rule. N.J.S.22A:2-2,3,5,8,9 and 10, N.J.S.A.; RR1:9-2 and 2:9-2. Such costs comprise principally certain statutory allowances, amounts paid the Clerk in fees, and various other specified disbursements of counsel including Sheriff's fees, witness fees, deposition expenses and printing costs. Allowance is controlled by Court rule and is ordinarily discretionary with the court in the particular case." 181 A.2d 353 at page 359.

The New Jersey Supreme Court affirmed the judgments of the Chancery Division which refused to permit the award of costs.

In Alexander's Department Stores v. Arnold Constable Corp., 105 N.J. Super. 14, 250 A.2d 792 (Ch. Div. 1969)(Judge

Mintz) the Court noted that our Court rules embrace the view that sound judicial administration will best be advanced by having each litigant bear his own counsel fee except in those few situations specially designated in RR4:55-7 (now 4:42-9).

In Finch, Pruyn and Company v. Martinelli, 108 N.J. Super. 156, 260 A.2d 259 (Ch. Div. 1969) Judge Lane distinguished between claims for deposition expenses based upon fraud or other reprehensible conduct and those which were the normal expenses undertaken by litigants in the prosecution of their causes of action. He refused to award the cost of depositions unless they dealt with questions of fraud.

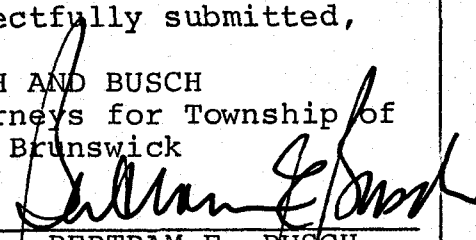
N.J.S.2A:15-59 provides that costs may be allowed or disallowed in the discretion of the Court to any party. Plaintiffs have not shown that they are entitled to costs and in any event, would be limited to the costs which can be taxed according to law.

CONCLUSION

For the reasons set forth above it is submitted that plaintiffs are not entitled to costs and their motion should be denied.

Respectfully submitted,

BUSCH AND BUSCH
Attorneys for Township of
East Brunswick

BY: 
BERTRAM E. BUSCH
A Member of the Firm