

CA - general

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Appeal pleading ~~11/3/77~~ ~~11/3/77~~

Supplemental Statement in support
of motion for certification of an appeal
pending unheard in the appellate
division from 11/3/77

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CA001144D

appeal

SUPREME COURT OF NEW JERSEY

URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al.,
 Plaintiffs,
 v.
 THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, et al.,
 Defendants.

: Docket No. 15,018, Term 1977
 :
 : Civil Action
 :
 : Sat Below:
 : Hon. David D. Furman, J.S.C

SUPPLEMENTAL STATEMENT IN SUPPORT OF
 MOTION FOR CERTIFICATION OF AN APPEAL
 PENDING UNHEARD IN THE APPELLATE DIVISION

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 SUPREME COURT
 OF NEW JERSEY

URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al.,	:	Docket No. 15,018, Term 1977
	:	
Plaintiffs,	:	Civil Action
	:	
v.	:	
	:	Supplemental Statement in
THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, et al.,	:	Support of Motion for Certifi- cation of an Appeal Pending
	:	Unheard in the Appellate
Defendants.	:	Division

To the Honorable Chief Justice and Associate Justices of
the Supreme Court of New Jersey:

Plaintiffs, Urban League of Greater New Brunswick and four
individuals, have moved for certification of their appeal and
cross-appeal which are pending unheard in the Superior Court,
Appellate Division. Three defendants, of the twelve presently
before the Appellate Division, have filed statements in opposi-
tion to plaintiffs' motion. Plaintiffs file this additional
statement in order to inform the Court of a very recent develop-
ment in this case and also to clarify for the Court the nature of
this case.

First, on October 21, 1977, Judge David D. Furman, the trial
judge in this case, heard plaintiffs' motion for additional
relief as to those municipalities which were dismissed solely
upon their adoption of appropriate amendments to their zoning
ordinances, and which were excluded from the court's fair share
plan. ^{*} Judge Furman denied plaintiffs' motion "upon the

^{*} Plaintiffs moved for this relief at the foot of the judgment,
following the suggestion of the Appellate Division, upon dis-
missing the appeals against all but one of these "conditionally
dismissed" municipalities.

condition that [plaintiffs] may supplement the individual judgments against these conditionally dismissed municipalities [with language calling upon them to exercise all good faith efforts to pursue and cooperate with federal and state programs for new housing and rehabilitation of deteriorated housing] and also reserve the right against each of these municipalities to proceed for so-called affirmative relief in the event of an appellate outcome on that issue favorable to the plaintiffs." (emphasis supplied.) Transcript of hearing, at 10-11.

Thus, the ordering of affirmative relief as to the conditionally dismissed municipalities now turns on the ultimate decision on appeal regarding affirmative relief as to the municipalities made subject to the fair share plan. Under Judge Furman's recent ruling of October 21, 1977, a decision in favor of plaintiffs on the issue of affirmative relief will also affect the "conditionally dismissed" municipalities. Accordingly, expeditious appellate process becomes all the more crucial so that the respective rights and obligations of both plaintiffs and the "conditionally dismissed" defendants may be determined as quickly as possible.

Second, in their statements in opposition to plaintiffs' motion for certification, defendants have attempted to portray this case as one no different from those already decided by this Court. This Court has itself indicated that the nature of a suit against all exclusionary municipalities in a region differs from an exclusionary zoning suit against only one municipality,

particularly in the area of remedy. Oakwood at Madison, Inc.
v. Tp. of Madison, _____ N.J. _____ (1977), n.38. It
is the aggregate impact of exclusionary land use policies
practiced by almost all municipalities in a region which is at
issue here. Furthermore, it is this aggregate impact, which
bars plaintiffs from securing housing and employment opportuni-
ties throughout suburban Middlesex County, which plaintiffs have
sought to remedy.

This is no isolated case, but rather, it is one where the
trial court dealt with a "comprehensive, pre-determined region"
Oakwood, at 64. It is beyond dispute that this is the first time
in New Jersey that all exclusionary municipalities in a region
have been sued. It is thus the first opportunity for this Court
to determine how such a suit differs from one against a single
municipality, particularly as to the issue of remedy to be
afforded successful plaintiffs.

CONCLUSION

Judge Furman's most recent ruling indicating that the issue
of affirmative relief currently on appeal will affect all the
"conditionally dismissed" municipalities as well as those munici-
palities currently subject to the appeal, underlines the regional
nature of this suit. The case presents a unique opportunity for
the Court to consider these issues for municipalities constituting
an entire region. Therefore, plaintiffs again respectfully request

that this Court grant their Motion for Certification of an Appeal Pending Unheard in the Appellate Division.

Respectfully submitted,

Marilyn Morheuser
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Attorney for Plaintiffs

Dated: November 3, 1977

CERTIFICATE OF SERVICE

I hereby certify that service of this Supplemental Statement in Support of Motion for Certification of an Appeal Pending Unheard in the Appellate Division was made by mailing the original and nine copies to the Clerk of the Supreme Court of New Jersey, and two copies of the Motion to counsel for the defendants listed below:

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Dated: November 3, 1977