

CA - general

6/27/78

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(appeal pleadings) ~~6/27/78~~ ~~6/27/78~~ ~~6/27/78~~

letter re: transmitting for filing

documents relevant to J. Furman's

(attached) Supplemental order to be made part of
trial ct record for review by Appellate Division
from 6/27/78

P.i. 1163

pg ~~17~~ 18

CA0011540

NATIONAL COMMITTEE AGAINST DISCRIMINATION IN HOUSING, INC.

1425 H Street, N.W., Washington, DC 20005 • (202) 783-8150

June 27, 1978

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Ms. Elizabeth McLaughlin
Clerk of the Appellate Division
State House Annex, Room 316
C.N. 006
Trenton, New Jersey 08625
ATTN: Dennis Carroll, Esquire

Re: Urban League of Greater New Brunswick, et al., v. Mayor and Council of the Borough of Carteret, et al., Docket No. A-4681-75

Dear Ms. McLaughlin:

On May 30, 1978 Judge David D. Furman signed a Supplemental Order in the above-captioned case supplementing the original Judgment of July 9, 1976.

Plaintiffs have enclosed for filing documents relevant to this Supplemental Order in order that they may be made part of the trial court record for review by the Appellate Division in the case at hand. These documents include the original and 3 copies of the transcript of the hearing held before Judge Furman on October 21, 1977, five copies of the Order of November 14, 1977 which resulted from that hearing, and five copies of the Supplemental Order of May 30, 1978 signed pursuant to the November 14 Order. Two copies of these documents have been sent to all attorneys of record before the Appellate Division in this case and to the attorney for South Amboy.

Thank you in advance for your assistance.

Sincerely,

Roger C. Rosenthal

Roger C. Rosenthal
Attorney for Plaintiffs

cc: All Attorneys

MARILYN J. MORHEUSER
Attorney for Plaintiffs
569 Mt. Prospect Avenue
Newark, New Jersey 07104
201-642-2084

Pleading
ORIGINAL FILED

6-14-78

W. LEWIS BAMBRICK
Clerk

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
COUNTY OF MIDDLESEX

URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et al.,

Plaintiffs,

v.

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

Defendants.

:
: Docket No. C-4122-73

: Civil Action

:
: SUPPLEMENTAL JUDGMENT

*ORDER To Cooperate
In Programs*

Having considered and denied plaintiffs' motion for additional affirmative relief as to the conditionally dismissed municipalities in the above-captioned case on October 21, 1977, this Court signed an order on November 14, 1977 denying plaintiffs' motion and, inter alia, permitting plaintiffs to supplement the Judgment of July 9, 1976 as set forth below;

It is therefore, on this 30 day of May, 1978, ORDERED AND ADJUDGED that

1. The defendant, Borough of Carteret, should also make good faith efforts to pursue and cooperate in available federal and state subsidy programs for new housing and rehabilitation of substandard housing.

2. The defendant, Borough of Helmetta, should also make good faith efforts to pursue and cooperate in available federal and state subsidy programs for new housing and rehabilitation of substandard housing.

3. The defendant, Borough of Highland Park, should also make good faith efforts to pursue and cooperate in available federal and state subsidy programs for new housing and rehabilitation of substandard housing.

4. The defendant, Borough of Jamesburg, should also make good faith efforts to pursue and cooperate in available federal and state subsidy programs for new housing and rehabilitation of substandard housing.

5. The defendant, Borough of Metuchen, should also make good faith efforts to pursue and cooperate in available federal and state subsidy programs for new housing and rehabilitation of substandard housing.

6. The defendant, Borough of Middlesex, should also make good faith efforts to pursue and cooperate in available federal and state subsidy programs for new housing and rehabilitation of substandard housing.

7. The defendant, Borough of Milltown, should also make good faith efforts to pursue and cooperate in available federal and state subsidy programs for new housing and rehabilitation of substandard housing.

8. The defendant, City of South Amboy, should also make good faith efforts to pursue and cooperate in available federal and state subsidy programs for new housing and rehabilitation of substandard housing.

9. The defendant, Borough of South River, should also make good faith efforts to pursue and cooperate in available federal and state subsidy programs for new housing and rehabilitation of substandard housing.

10. The defendant, Borough of Spotswood, should also make good faith efforts to pursue and cooperate in available federal and state subsidy programs for new housing and rehabilitation of substandard housing.

11. The defendant, Township of Woodbridge, should also make good faith efforts to pursue and cooperate in available federal and state subsidy programs for new housing and rehabilitation of substandard housing.

David D. Furman, J.S.C.

DAVID D. FURMAN, J.S.C.

I hereby certify that the foregoing
is a true copy of the original on file
in my office.

J. Van Dambrik

Clerk

Plating

RECEIVED AND FILED
NOV 21 1977
COUNTY OF MIDDLESEX

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FRANK SHATZMAN
COUNTY CLERK

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
COUNTY OF MIDDLESEX

URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et al.,

Plaintiffs,

v.

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

Defendants.

:
:
: Docket No. C-4122-73
:
: Civil Action

:
: O R D E R

Plaintiffs having moved before this Court for additional affirmative relief as to the conditionally dismissed municipalities in the above-captioned case, and Marilyn J. Morheuser, Esq. and Roger C. Rosenthal, Esq. having appeared for plaintiffs and Guido J. Brigiani having appeared for defendants Jamesburg and Spotswood, Gary M. Schwartz for defendant South River, Edward J. Johnson, Jr. for defendant Middlesex, Paul E. Strapp for defendant Woodbridge, Lawrence Lerner for defendant Highland Park, John J. Vail for defendant South Amboy, Robert C. Seiger for defendant Milltown and Marc J. Bressler for defendant Helmetta on October 21, 1977,

IT IS, on this 14 day of November 1977

ORDERED that plaintiffs' motion is denied upon the condition that plaintiffs may supplement the individual judgments against these conditionally dismissed municipalities with the advisory or precatory language toward the end of this Court's opinion, 142 N.J. Super. 11, 39, calling upon the municipalities who remained in the case, against whom judgment was entered invalidating zoning ordinances, 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 with the right reserved to plaintiffs to proceed against each of these conditionally dismissed municipalities for affirmative relief in the event of an appellate outcome on that issue favorable to the plaintiffs.

David D. Furman, J.S.C.
DAVID D. FURMAN, J.S.C.

pleading

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URBAN LEAGUE OF GREATER :
NEW BRUNSWICK, et als, :

Plaintiffs, :

- vs -

MOTION

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

Defendants. :

October 21, 1977
Middlesex Co. Courthouse
New Brunswick, New Jersey

B E F O R E:

THE HONORABLE DAVID D. FURMAN, J.S.C.

A P P E A R A N C E S:

MARILYN J. MORHEUSER, ESQ. -and-
ROGER C. ROSENTHAL, ESQ.
Attorneys for Plaintiff

GUIDO J. BRIGIANI, ESQ.
Attorney for Jamesburg & Spotswood

GARY M. SCHWARTZ, ESQ.
Attorney for South River

EDWARD J. JOHNSON, JR., ESQ.
Attorney for Middlesex

PAUL E. STRAPP, ESQ.
Attorney for Woodbridge

LAWRENCE LERNER, ESQ.
Attorney for Highland Park

JOHN J. VAIL, ESQ.
Attorney for South Amboy

ROBERT C. SEIGER, ESQ.
Attorney for Milltown

MARC J. BRESSLER, ESQ.
Attorney for Helmetta

BY: GAIL G. MUMBER, C.S.R.
Official Court Reporter

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MS. MORHEUSER: Mari~~on~~ Morheuser
representing the plaintiffs.

Your Honor, before we get into the motion
brought today, I wish to move admission pro hac
vice of Mr. Roger Rosenthal who is from N.C.D.H.
He has brought a certificate of good standing
of the Bar of the District of Columbia, which I
wish to present to the Court.

May I do that now?

THE COURT: All right.

(At this time Ms. Morheuser presents
the referred-to document to the Court.)

MS. MORHEUSER: Mr. Rosenthal essentially
has taken over Mr. Searing's role in doing a lot
of the work in this litigation, your Honor.

THE COURT: All right. That application
is granted.

May we have the appearances of defendants
on the record, please?

MR. BRIGIANI: Guido Brigiani, Borough
of Jamesburg and Spotswood.

MR. SCHWARTZ: Gary Schwartz, Borough
of South River.

MR. JOHNSON: Edward Johnson, Jr.,
Borough of Middlesex.

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MR. STRAPP: Paul Strapp, Township of Woodbridge.

MR. LERNER: Lawrence Lerner, Borough of Highland Park.

MR. VAIL: John Vail for South Amboy.

MR. SEIGER: Robert Seiger, Borough of Milltown.

MR. BRESSLER: Mark Bressler, Borough of Helmetta.

MR. WINTER: Roland Winter. I simply want to say that I just ascertained that this doesn't affect Edison, so I'm not going to appear.

THE COURT: All right. Who will present the argument for the plaintiff?

MS. MORHEUSER: I will, your Honor.

THE COURT: All right.

MS. MORHEUSER: Today, your Honor, we're here pursuant to the suggestion of the Appellate Division at the oral argument on the first motion to dismiss plaintiff's notice of appeal, which five of the conditionally dismissed municipalities were arguing that motion.

Judge Matthews advised that what we should do is seek relief at the foot of the judgment, so that's what we are here doing today.

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2046

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In dismissing plaintiff's appeals against the conditionally dismissed municipalities, the Appellate Division advised that the dismissal was without prejudice to our right to apply to you, your Honor, for such additional relief as may be appropriate to carry out the terms both in letter and in spirit of the settlement reached by the parties hereto.

And as your Honor recognizes and did recognize during the trial, it was necessary to remedy exclusionary aspects of the ordinances of the municipalities involved.

Essentially plaintiffs are asking for an effectuation of that remedy in terms of affirmative requirements, and is set out more fully in our brief in support of this motion for the setting of specific goals with -- with actions that the municipalities themselves might submit in terms of a plan for what they can do to provide housing so desperately needed in the entire county, with the understanding that in some cases the achievement of the goals might be slower because there are indeed physical differences in the acreage for new housing available among the towns who are here as defendants today, your Honor.

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THE COURT: Well, it does seem an attempt to relitigate a point, Miss Morheuser.

MS. MORHEUSER: Well, your Honor, the objections were raised to our appealing, originally, and among those objections raised was the one of lack of ripeness.

Since the time we did appear before the Appellate Division, there has been a signing of final orders and, as I said earlier, it was at the suggestion of the Appellate Division that we came seeking additional relief at the foot of the judgment in this case.

THE COURT: With respect to the so-called fair share allotment, the opinion makes clear that part of the total calculation of housing needs takes into account the low and moderate income housing that would be supplied in the eleven municipalities that were conditionally dismissed.

MS. MORHEUSER: We recognize that, your Honor, and it's to assure the provision of such housing that we are seeking additional relief.

THE COURT: So that even though the zoning ordinances are now -- except perhaps in the case of Carteret --

MS. MORHEUSER: That's right, your Honor.

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2045

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That's the only exception.

THE COURT: -- amended, modified to conform to the requirements of the opinion, in other words the zoning is now valid --

MS. MORHEUSER: Yes, your Honor.

THE COURT: You would ask beyond that that affirmative steps are taken to cooperate with federal and state programs, --

MS. MOREHEUSER: Yes, your Honor. That's right.

THE COURT: -- for rehabilitation, and so forth.

MS. MORHEUSER: Yes, your Honor. That's I think especially true in some of these municipalities where there is a rather large supply of aging housing and where rehabilitation could indeed provide needed housing units.

THE COURT: Now there is, toward the end of the opinion, advisory or precatory language as to calling upon the municipalities who remained in the case against whom judgment was entered invalidating zoning ordinances, 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

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using.

Of course, that sort of language could be added to the individual judgments against these defendants.

But you're seeking something beyond that. Is that right?

MS. MORHEUSER: Yes, your Honor. That would be helpful, but we are seeking something beyond that.

THE COURT: All right. Now, is there one, perhaps two limited number of spokesmen for the municipalities? Confer among yourselves a minute, would you please, off the record.

(At this time defense counsel confer off the record.)

MR. LERNER: All pointed a finger at me, your Honor. I submitted a letter to the Court, Lawrence Lerner of the Borough of Highland Park.

The phrasing of the application before this Court, although it seems straight-forward, implies a relitigation. There is no way that the Court could conceivably order matters against the conditionally dismissed municipalities, who in fact never offered proof at the trial, but in fact arranged or worked out settlements with the

PENGAD CO., BAYONNE, N.J. 07002 • FORM 2046

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plaintiffs and, pursuant to those arrangements, entered into voluntary agreements, and the voluntary agreements were then reported back to our various towns, acted upon by our various councils, and in every case that I know of -- and I was present, I guess, for eighty-five per cent of the entire proceeding -- represented that which we thought would conclude the matter satisfactorily before the Urban League, the plaintiffs, and the Court.

Now, after we have already agreed to all of these terms, taken all the legislative remedies that were asked of us to do, we are now being said to, well, that's fine; now that we've got that, now let's go on again. And I don't think it's right.

I don't think it was intended by the parties at the time the steps were entered into. I think that the statement of doing that which we -- that which we should do in best interest is innocuous, but Mrs. Morheuser is not satisfied with that, you see, because what in effect she is asking this Court to do is to reopen the entire matter. They're attempting to submit a case against each individual conditionally discharged town after they've gotten the remedies they've

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already sought from us in the bank.

I think that our letter states the case law that we've had, and I think that the Court was right in its decision. I think the settlement was worked out fairly and spoke to the merits of the matter.

I don't know if anyone else has anything to say.

They cited my letter which we sent in, in response to her brief. I rely upon my letter also.

MS. MORHEUSER: Your Honor, could I respond in short fashion? First of all, I don't think it's technically correct to call the dismissals "settlements".

While plaintiffs have commented on the ordinances, plaintiffs made clear at any time when these proposed conditions of dismissal were discussed that we were seeking affirmative relief, and so that the remedies sought by the parties -- and the parties include the plaintiffs -- do indeed go to what we are speaking of today, because our clear intention was -- our intention was made clear at all relevant points during the trial of this action.

THE COURT: Let me ask you, Miss Morheuser,

1 the appeal involving some - I guess not all of
2 the eleven municipalities -- the plaintiffs are
3 counter-appealing, are they, on the ground of failure
4 to order so-called affirmative action?

5 MS. MORHEUSER: Yes. Sufficient affirmative
6 action.

7 THE COURT: So that issue would be resolved
8 at that level.

9 MS. MORHEUSER: For the eleven municipalities
10 that were not conditionally dismissed, your Honor.

11 And, quite frankly, your Honor, it was our
12 desire and hope to get the entire case before the
13 Appellate Division, which is one of the problems
14 with our appeals against the conditionally dismissed
15 townships being denied and our being advised to return
16 to you, because now just half of the case is there,
17 except for Carteret. Carteret is still there.

18 THE COURT: Well, I'd have to deny your
19 application today, Miss Morheuser. That would be
20 upon the condition that you may supplement the
21 individual judgments against these conditionally
22 dismissed municipalities.

23 MS. MORHEUSER: With the language you
24 noted today, your Honor?

25 THE COURT: Yes. And also reserving the

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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.

MS. MORHEUSER: Thank your, your Honor. I'll submit an order to that effect.

MR. LERNER: Your Honor, I'd just like to add one comment only because we're in open Court.

Many of the towns, including the Borough of Highland Park, has continually made the applications for the various federal funds and programs and have been continually applying for said funds, and the Community Development Sharing Act, et cetera, and I wouldn't want it to be inferred that because I didn't address any of the remarks to the fact that we have been continuing our efforts in this matter, that we have been derelict in our duties.

We have in fact taken all affirmative reliefs that have been made available to us.

THE COURT: All right. Thank you.

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C E R T I F I C A T I O N

I, GAIL G. MUMBER, an Official Court Reporter of the State of New Jersey, certify that the foregoing is a true and accurate transcription of my stenographic notes, to the best of my knowledge and ability.

Gail G. Mumber, C.S.R.

DATED: *October 28, 1977*