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Counts relating to 42 USCA 1981, 1982 and 3601 Et. Seq.

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DAVID B. FURNAL, J.S.C.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - MIDDLESEX COUNTY
DOCKET NO. C - 4122-73 ✓

FRANK SCHACHTMAN
CLERK

URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et al.

Plaintiffs, :

vs :

URBAN LEAGUE VS DUNELLEN

THE MAYOR AND COUNCIL OF
THE BOROUGH OF CARRIERET
et al., :

Defendants :

BRIEF IN SUPPORT OF MOTION BY DUNELLEN TO STRIKE COUNTS RELATING TO 42 USCA
1981, 1982 AND 3601 ET SEQ.

DUNELLEN AND JACOBS
381 North Ave.
Dunellen, New Jersey
201- 968-2525

DENNIS J. CUMMINS, JR.
16-20 St. Anne St.
Fair Lawn, New Jersey
201-707-3415

ARGUMENT AND LAW

It is now settled law that plaintiffs who invoke 42 USCA 1981 1982 and 3601 et seq (Civil Rights Law) must assert a claim of racial discrimination to succeed and gain the benefits of the statutory directives such as injunctive relief and counsel fees. In the case at hand, plaintiff's complaint merely states that there are less blacks and other racial minorities in the 23 communities than there are in the two cities. On the other hand, the plaintiff's pre-trial contentions contain no factual allegations concerning racial discrimination. They do say that the exclusionary zoning practices complained of discriminate against the poor, white and non-white alike:

"Most of the housing that has been made available has been inadequate for plaintiffs and the class they represent, in terms of number of bedrooms and rental and sales prices. This has resulted in the systematic exclusion of low-and moderate-income persons, white and non-white, from the defendants communities."

It is conceded that the New Jersey Supreme Court, speaking in the Mt. Laurel decision, said that it is a denial of a right for the poor to be denied adequate housing in New Jersey. Our federal courts, however, have not so similarly ruled in being called upon to interpret the Civil Rights Laws as they pertain to housing. Circuit courts of appeals now acknowledge that since San Antonio School District vs. Rodriguez 411 US 1 claims of wealth discrimination carry no weight. Cf. Boyd vs Lefrak Org 509 F 2d 1110; Citizens Committee for Faraday Wood vs Lindsay 507 F 2d 1065.

It is therefore asserted that in order for the plaintiffs to gain the benefits of the Civil Rights Laws for their claims for counsel fees, they must specifically allege racial discrimination. Have they done so? No! ! How has Dunell discriminated against blacks and other racial minorities by its zoning practices? What specific section of the Dunellen Ordinance

discriminates against blacks? Spanish speaking? Orientals?

There will be an inquiry into whether Dunellen is capable of meeting its share of its regional obligations pursuant to Mt. Laurel. However, that inquiry will probably focus on Dunellen's obligation to the poor regardless race. Today, due to the devastating effect of inflation, there are many more poor than before, both white and non-white. These are the people who are the objects of the plaintiff's suit.

The Plaintiffs will probably rely heavily on the recent case of U.S. vs City of Black Jack, Mo. 508 F 2d 1179, a case of first impression, which applied the mandate of Title VII of the Civil Rights Act 1968 to a municipality. The Court there held that the act of passing an ordinance banning apartments in a specific area that was all picked out and ready for building was violative of the Act. The particular factual pattern of that case cannot be denied. An all white community was specifically created to deal with the proposed building of low income housing at the site selected by the non-white profit religious group which was the sponsor. The newly created city predictably banned all multi-family housing. Such invidious action is of course, within that context, per se discriminatory and had the desired effect of banning members of the black race which existed in heavy concentration in St. Louis.

Dunellen, it must be remembered, has never banned multi-family housing. It is an older town; its houses are moderate and modest. It is one mile square, about 93% developed with 2 water courses running through the town. It has over 7,000 people per sq. mile and is the second highest town in the county in the ratio of people per dwelling unit. Is there a pattern there

that has actually or predictably or predictably resulted in racial discrimination? The actions of Black Jack had a predictable result. What can the plaintiffs allege with regard to Dunellen?

This is not a case of racial minorities being denied access to Dunellen. Nor is it a case of particular types of housing units being being denied access to the town. In order for the plaintiffs to meet the Black Jack standard of proof, they must show a pattern of discrimination. Here they have not done so.

The defendant Dunellen realizes that the plaintiff had to join Dunellen in the suit where they allege the county as the region to be dealt with. Dunellen further realizes that the plaintiff has a cause of action pursuant Mt. Laurel against some or most of the defendants. But Dunellen does assert that the Plaintiffs seek to continue the Civil Rights Laws aspect of this suit against Dunellen for the primary reason of being able to be awarded counsel fees. As it is now, this present litigation is a financial burden on a small town such as Dunellen. To impose further counsel fees would be devastating.

For the above reasons, Dunellen urges this court to strike that part of the Plaintiffs' complaint and Pre-Trial memo that alleges a violation of the Civil Rights Laws and seek relief that may be afforded pursuant thereto.

Respectfully submitted,

Dennis J. Cummins Jr.
/s/ DENNIS J. CUMMINS, JR.

for HANDELMAN AND JACOBS

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URBAN LEAGUE OF GREATER
NEW BRUNSWICK, ETALS
Plaintiff(s)

vs.

THE MAYOR AND COUNCIL OF
THE BOROUGH OF CARTERET,
ETALS,
Defendant(s)

Docket No. C 4122-73

CIVIL ACTION

PROOF OF MAILING

1. I, the undersigned, am secretary to DENNIS J. CUMMINS, JR., ESQ.

attorney(s) for
BOROUGH OF DUNELLEN

in the above entitled action.

2. On DECEMBER 4 19 75, I mailed in the U.S. Post Office in Fair Lawn,
New Jersey, a sealed envelope with postage prepaid thereon, by first class mail, return receipt
requested, addressed to

1. David H. Ben-Asher, Esq., 134 Evergreen Pl., E. Orange, N.

at said addressee's last known address at
containing

2. Daniel A. Searing, Esq., 1425 H St. N.W.
Washington, D.C. 20005

copy of Brief in support of Motion by Dunellen to strike counts relating to
42 USCA 1981, 1982 and 3601 et seq.

and obtained a receipt of such mailing, which is attached to the original hereof.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing state-
ments made by me are wilfully false, I am subject to punishment.

Dated: / December 4, 19 75 .

