

Edison  
CA'

5/19/77

~~Notice of Motion~~

Plaintiff's Brief in Support of motion to vacate the Trial  
order of 1/13/77

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET Nos. A-33-76, A-4685-75

URBAN LEAGUE OF GREATER  
NEW BRUNSWICK, et al.,

Plaintiffs-Appellants

v.

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

Defendants-Respondents

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Civil Action

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PLAINTIFFS<sup>1</sup> BRIEF IN SUPPORT OF MOTION TO VACATE THE  
TRIAL COURT'S ORDER OF JANUARY 13, 1977

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## INTRODUCTION

Plaintiffs submit this brief in support of their Motion to Vacate the Trial Court's Order of January 13, 1977. The motion is filed pursuant to R. 2:8 of the New Jersey Court Rules.

On May 4, 1976 Judge David D. Furman, Superior Court, Middlesex County, issued an opinion in the above-captioned case.

On July 9, 1976 Judge Furman signed a judgment order in the case. Plaintiffs subsequently appealed the matter against 14 of the 23 original defendants, including the Township of Edison. The notice of appeal as to these defendants was filed in the Office of the Clerk of the Superior Court, Appellate Division, on September 2, 1976.

On September 14, 1976 the Township of Edison filed a Notice of Motion for an "Order of Dismissal or an Order of Compliance with the Final Judgment dated July 9, 1976" in the Office of the Clerk of the Superior Court. On September 21, 1976 the plaintiffs responded to this motion with an opposing memorandum. On September 24, 1976 the Court heard oral argument on the Edison motion, together with a similar motion filed by the Borough of Sayreville. Reserving a ruling on the motions, the Court granted the parties additional time to brief the issues and suggested that the defendants provide to the plaintiffs specific information as to cost and rental ranges for the proposed dwelling units which the defendants claimed brought them

into compliance with the July 9, 1976 order.

During the period of additional time granted by the Court, plaintiffs submitted a memorandum, dated November 15, 1976, amplifying their opposition to defendants' motions. The Court held a conference in chambers on November 19, at the conclusion of which it declined to sign a "Modified Judgment" submitted by Edison. On December 7, 1976 the Township submitted a new proposed order, which the plaintiffs opposed on December 14, 1976. The Court held a hearing on the new Edison order on January 13, 1977, after which the Court signed the proposed judgment. <sup>y</sup> Subsequently, the plaintiffs filed a motion for relief from this order and a supporting brief, dated February 2, 1977, with the trial court. On February 28, 1977 Judge Furman signed an order denying plaintiffs<sup>1</sup> motion. Plaintiffs filed an amended notice of appeal, dated April 14, 1977, which specifically included entry of this order as a basis for appeal.

ARGUMENT

Plaintiffs have filed this "Motion to Vacate the Trial Court's Order of January 13, 1977" because we believe it is void on essentially two grounds. First, plaintiffs contend that the defendant's notice of motion filed on September 14, 1976 was untimely under the New Jersey Court Rules. Second, we contend that plaintiffs' notice of appeal which was filed

<sup>T7</sup> The trial court is treating the motion made by the Borough of Sayreville separately from the motion made by Edison Township,

September 2, 1916 against the Township of Edison and 13 other defendants, divested the trial court of the jurisdiction to enter the order of January 13, 1976.

I. Timeliness

On September 14, 1976 defendant Township of Edison moved that the Court sign an Order of Dismissal or an Order of Compliance with the Final Judgment dated July 9, 1976. New Jersey Court Rules do permit post-judgment motions to revise or amend a trial court's findings or a final order. R. 1:7-4 (motions to amend or add to the findings); R. 4:49-2 (motions to alter or amend the judgment). However, when a party moves to amend the findings or final order, that motion must be made to the trial court within ten days of the judgment. So too, a motion for a new trial under R. 4:49-1 must be made within ten days of the judgment. Neither the parties nor the Court can enlarge the specified time within which a party may file any of these motions. R. 1:3-4(c).

In the case at hand, defendant Edison did not file any of these motions permitted by the Court Rules within ten days of the judgment. In fact, Edison filed the notice of motion on September 14, 1976, two months after the time to file post-judgment motions had expired. This was almost two weeks after plaintiffs' Notice of Appeal was filed with the Clerk of the Superior Court, Appellate Division.

Furthermore, even after the ten days had expired, Edison had full opportunity to alter, amend, modify or revise the July 9, 1976 order of the Chancery Division. If it was dissatisfied with the trial court's order, it could have filed a notice of appeal within 45 days following the entry of the judgment order. Edison chose not to pursue this alternative, and is now barred from seeking relief with a post-judgment motion.

## II. Divesting of Jurisdiction

The plaintiffs also urge that the trial court is without jurisdiction to rule on the motion made by defendant Edison. It is a long-standing principle, established both by the New Jersey Court Rules and New Jersey case law, that the trial court loses its jurisdiction to decide motions, such as the one at issue, once a notice of appeal is filed. Rule 2:9-1(a) reads:

The supervision and control of the proceedings on appeal or certification shall be in the appellate court from the time the appeal is taken or the notice of petition for certification filed unless otherwise provided by rule. The appellate court may at any time entertain a motion for directions to the court or courts or agencies below or to modify or vacate any order made by such courts or agencies or by any judge below.

As the Appellate Division made clear in interpreting this rule, when notice of appeal is filed, the trial court loses jurisdiction in the matter since the supervision and control of the

proceedings on appeal rest with the Appellate Division.

Sturdivant v. General Brass & Machine Corp., 115 N.J. Super. 224, 227 (App. Div.\*1971), certif. den. 59 N.J. 363 (1971).

Moreover, this principle antedates the adoption of Rule 2:9-1. In In re Plainfield-Union Water Co., 14 N.J. 296, 302-303 (1954),<sup>2/</sup> the Supreme Court, relying on over 40 years of case law, stated the applicable rule:

The filing of the notice of appeal invokes the jurisdiction of the appellate tribunal. [Citation omitted] The rules of court provide for the taking of an appeal by notice served and filed as therein specified. R.R. 1:2-8; 2:2-5; 4:88-8. And, by the same token, the appeal divests the lower court of jurisdiction save as reserved by statute or rule. [Citations omitted] Jurisdiction is restored by the mandate of the appellate court, but not in derogation of the judgment of the appellate tribunal embodied therein. The lower tribunal's exercise of jurisdiction thereafter is ex necessitate conditional by the terms of the judgment on appeal. . .

To be sure, it should be noted that this divesting of jurisdiction is not absolute. The trial court does retain jurisdiction for certain incidental matters. For example, in Morrison v. Morrison, 93 N.J. Super. 96, 101 (Ch. Div. 1966), the trial court held that it had jurisdiction to award attorneys'

2yThat the appeal in in re Plainfield arose from an administrative rather than a judicial tribunal has no legal significance. See Kramer v. Bd. of Adjust. Sea Girt, 80 N.J. Super. 454, 463 (Law Div. 1963K)

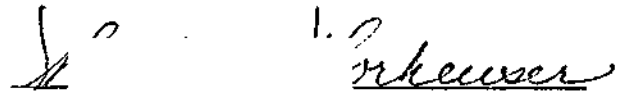
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fees and costs, even though an appeal was pending. Plaintiffs stress that the issue involved in this motion is no incidental matter, but one which goes to the heart of the judgment already rendered.

CONCLUSION

Based on the above reasons, plaintiffs respectfully request that this Court grant plaintiffs' Motion to Vacate, by vacating the order of January 13, 1977 entered by the trial court.

Respectfully submitted,



MARILYN MORHEUSE'R  
Attorney for Plaintiffs-Appellants

DATED: May 19, 1977

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3/ Furthermore, pursuant to R. 2:9-1(a), the trial court retains jurisdiction as to those matters specifically authorized by the court rules for disposition after a notice of appeal has been filed. See, e.g., R. 2:9-3, 2:9-5 (granting or denial of a stay); R. 2:9-4 (granting or denial of bail); R. 2:9-6 (approval of supersedeas bonds).



CERTIFICATE OF SERVICE

I hereby certify that service of this Plaintiffs' Brief In Support Of Motion To Vacate Th3 Trial Court's Order of January 13, 1977 was served by regular mail upon:

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DATED: May 19, 1977