10-17-77

Metuchen

UL v. Cartent

letter
1. Opposition to Ps motion for add'tl relief as to conditionally dismissed Ds

- w/ Brief

Ass. 5

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October 17, 1977

Honorable David D. Furman
Middlesex County Courthouse
New Brunswick, New Jersey

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

Dear Judge Furman:

I enclose a Statement in Lieu of Brief in opposition to plaintiffs' motion for additional relief, scheduled for October 21st, 1977.

I further join in the arguments advanced by Lawrence Lerner, attorney for the Borough of Highland Park, another conditionally dismissed municipality.

Because of a commitment on a criminal matter in the Union County Court on October 21st, I may not be present at any argument on the above motion, but will join in any arguments made by Mr. Lerner and/or other attorneys arguing for the conditionally dismissed municipalities.

Very truly yours,

MARTIN A. SPRITZER

MAS/eh
Encl.

cc: All Attorneys

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ATTORNEYS FOR Defendant Borough of Metuchen

Plaintiff

URBAN LEAGUE OF GREATER NEW BRUNSWICK et als

vs.

Defendant

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

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - MIDDLESEX COUNTY

Docket No. C-4122-73

CIVIL ACTION
STATEMENT IN LIEU OF BRIEF

Defendant, Borough of Metuchen, makes this Statement in opposition to Plantiffs' Notice of Motion for Additional Relief.

Plantiffs appealed this Court's order of July 9, 1976 conditionally dismissing Plantiffs' case against eleven Defendants. The conditions pertained solely to revision of exclusionary zoning ordinances. The Court denied affirmative relief for fair share allocations, subsidized housing, and a variety of other recommendations. Plantiffs' appeal to the Appellate Division was dismissed. Their subsequent petition

for Certification to the New Jersey Supreme Court was not granted. That should have ended the case. Plaintiffs certainly thought so. In that regard, it is instructive to read Plaintiffs' argument on Page 6 of their Brief supporting their petition for Certification.

> "The plaintiffs contend that the order dismissing the appeals against five defendants (now 10) improperly divides the case so that plaintiffs must now litigate in two forums. But more important, the Appellate Division, in remanding the action to the Chancery Division for further proceedings, is requiring the plaintiffs to perform a futile act. The notation on the order of the Appellate Division authorizes the plaintiffs to seek further relief from the trial judge. But, as we pointed out above, the plaintiffs have already applied to the trial judge for such additional relief, which was denied.
>
> Indeed, on two occasions, the plaintiffs requested the lower court to order the 22 defendants to take appropriate and reasonable affirmative steps to correct the continuing effects of their past exclusionary practices. At the conclusion of the trial, we sought that relief in our post-trial briefs. When it was granted only in part for 11 defendants and denied altogether for 11 others, we moved to amend the findings of the trial court. Thus it makes little sense to send the plaintiffs back to the trial court to request additional relief when that judge has already twice denied it."

We agree with plaintiffs that their present motion makes little sense; again, plaintiffs misread the Appellate Division's Order of Dismissal which obviously refers to the revision of zoning ordinances and not to the myriad of other burdensome requests which the Court had already denied.

Of equal importance is the fact that subsequent to Plantiffs' appeal, the New Jersey Supreme Court ruled that the Mount Laurel exclusionary zoning prohibitions did not apply to substantially developed communities. Pascack Assoc. v. Mayor & Council of the Tp. of Washington, decided March 23, 1977, and Fobe Associates v. Mayor and Council & the Board of Adjustment of the Borough of Demarest, decided March 23, 1977. This had been the argument in the Borough of Metuchen's Brief for summary judgment in 1975. Plantiffs feeble attempts to distinquish the Supreme Court's cases from the situation with the eleven Defendant muncipalities defies reality.

First of all, Metuchen's zoning ordinance does not become exclusionary because Plantiff has joined it in a suit with 23 other muncipalities. Secondly, Plantiffs seem to think that the Supreme Court's decision applies to communities of one square mile or less. This is untrue. Washington Township comprises of 3 1/4 square miles while Demarest is approximately 2 1/2 square miles. (Metuchen is 2.9 square miles). Also see Windmill Estates v. Zoning Board of Adjustment of the Borough of Totowa, 147 N.J. Super 65, (Law Division 1976).

Finally, Plantiffs argue that Washington Township and Demarest's total ban on multiple housing puts them in a better position zoning-wise than most of the other eleven defendants which have provided for multiple housing. This is the most

ironic twist of all and deserves no further comment.

This court ruled, despite plaintiffs' claims to the contrary, that only one provision of the Metuchen zoning ordinance was prima facie ---unconstitutional--1,400 square feet minimum living area. Rather than litigate, Metuchen settled by removing that provision. It is inconceivable, based on the ruling of the Appellate Division and the Supreme Court in this case and in the Washington Township - Demarest cases, that any further action should be taken by this court except the dismissal of plaintiffs' motion and the awarding the eleven defendant municipalities costs.

Respectfully submitted,

MARTIN A. SPRITZER
Attorney for Defendant Borough
of Metuchen