

CA - Middlesex - 25-Nov-1974
Brief of Defendant, Borough of
Middlesex, in support of
Motion for Severance

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JOHN A. JOHNSON, J.S.C.

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

URBAN LEAGUE OF GREATER NEW
BRUNSWICK, a non-profit corporation
of the State of New Jersey,

Plaintiffs

vs

Civil Action

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

Defendants.

BRIEF OF DEFENDANT, BOROUGH
OF MIDDLESEX, IN
SUPPORT OF MOTION FOR SEVERANCE

JOHNSON AND JOHNSON, ESQS.
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ARGUMENT

THE TRIAL AGAINST DEFENDANT, BOROUGH OF MIDDLESEX,
SHOULD BE SEVERED AND SHOULD PROCEED AS A SEPARATE
CAUSE OF ACTION.

The plaintiffs have instituted a complaint against twenty-three separate defendant municipalities claiming that the Zoning Ordinances of said municipalities are illegal and discriminatory. Each of the twenty-three defendant municipalities has its own separate and distinct Zoning Ordinance and the facts which will be adduced in Court will be different with respect to each municipality, depending, not only on the Zoning Ordinance of the municipality, but on the factual setting within each municipality. This is not a class action instituted by the plaintiffs against all of the defendants and the plaintiffs do not contend that all of the defendants are in the same class for such purpose.

If a trial were to be had involving all of the municipalities at one time, each of the attorneys for the municipalities would have the right to cross-examine each and every witness and this could result in interminable delay.

The Court should exercise its discretion under Rule 4:30 and drop the Borough of Middlesex from the suit which has heretofore been instituted. There should be a separate proceeding against the Borough of Middlesex.

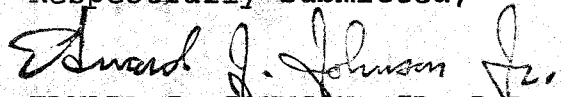
The authority for severing the Borough of Middlesex from this suit is found also in Rule 4:38-2 which provides as follows:

"The Court, for the convenience of the parties or to avoid prejudice, may order a separate trial of any claim, cross-claim, counterclaim, third-part claim, or separate issue, or of any number of claims, cross-claims, counterclaims, third-party claims, or issues."

CONCLUSION

In view of the fact that each municipality has a separate and distinct Zoning Ordinance, and utilizes different land use practices, and because of the several different fact questions which apply to each defendant, the Borough of Middlesex respectfully requests that the trial against the Borough of Middlesex be severed from the trial against the other defendants in this matter.

Respectfully submitted,


EDWARD J. JOHNSON, JR. P.A.