

Middlesex Twp.

10-14-77

UL v. Cartm

Letter opposition to ps notice for  
addtl relief as to conditionally  
dismisses DS

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MARTIN E. SLOANE

October 14, 1977

Honorable David D. Furman  
Middlesex County Court House  
New Brunswick, New Jersey

Re: Urban League v. Mayor and Council of the  
Borough of Carteret DN C 4122 73

Dear Judge Furman:

The Plaintiffs in this case have filed a motion for additional relief with respect to those eleven municipalities which were conditionally dismissed from the suit and this motion has now been scheduled for October 21, 1977.

I represent the Borough of (Middlesex) which is one of the municipalities which was conditionally dismissed from the suit brought by the Urban League, and I am submitting this letter memorandum in lieu of a formal brief in opposition to the motion filed by the Plaintiff's herein.

The Plaintiffs are seeking an Order from this Court requiring a fair share allocation of housing units for the eleven conditionally dismissed municipalities which would include new, rehabilitated and subsidized units. Their contention is that the failure of this Court to grant such requested relief "undermines the effective remedy" which they are seeking. At the time that this case was decided, the Borough of Middlesex, like the other ten conditionally dismissed municipalities was dismissed as Defendant in this case on condition that the Borough adopted certain amendments to its zoning ordinance. These amendments were adopted and approved by both the Plaintiff and by this Court and, as a result of the Borough having adopted the amendments to its zoning ordinance, the Borough of Middlesex was duly dismissed as a defendant in this case.

In their brief, the Plaintiffs refer to language in your original decision to the effect that the proposed defendant municipalities which were not conditionally dismissed were assigned certain "fair share" housing allocations and the defendants "language in the opinion wherein you indicated

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that said defendants were not conditionally dismissed "must do more than rezone not to exclude the possibility of low and moderate income housing" , 142 N.J. Super at 38. The housing allocation was imposed only on those municipalities who were not dismissed from suit and it is submitted that to require and impose a housing allocation on a municipality such as the Borough of Middlesex is not justified in view of the current status of the law in New Jersey.

It is submitted that the Borough of Middlesex is similar to the Borough of Wenonah with respect to being a "developed municipality". The court in the Wenonah case, pointed out that Wenonah's contribution to the housing needs of Gloucester County would be a minor one, because of its limited size and the same argument can be made with respect to the Borough of Middlesex because of its limited size, requiring the Borough of Middlesex to make any contribution to the housing needs of Middlesex County would be a minor one. This Court should therefore follow the lead of the Appellate Division in the Wenonah case and not impose a housing allocation upon a substantially developed municipality such as the Borough of Middlesex.

In their brief, the Plaintiffs agree that it is not the role of the Court "to define the precise contours of the Defendants' remedial measures". The New Jersey Supreme Court has stressed this fact and has stated; "we think it clear that the judiciary should not itself devise a plan as a last resort." Jackman v. Bodine 42 N.J. 453, 473(1964). The Courts should defer "to the local[municipalities] the choice in the first instance among the various solutions.... Booker v. Board of Education Plainfield 45 N.J. 161, 178(1965).

In its brief, the Plaintiffs also pointed out that the Supreme Court in the Oakwood case inumerated a number of measures which municipalities might consider in meeting their obligations to provide opportunities for the construction of "leased cost" housing. Although it is true that the Court in that case did mention certain measures, it is important to note that the Courts did not require participation in public housing programs and provisions for density bonuses which is the type of relief which the Plaintiffs are seeking in this case.

You have previously rendered your decision in this case and you have dismissed the Borough of Middlesex as a defendant in this case based upon the fact that the Borough did amend its zoning ordinance to do away with certain provisions which may have been "exclusionary". The Plaintiffs are now seeking

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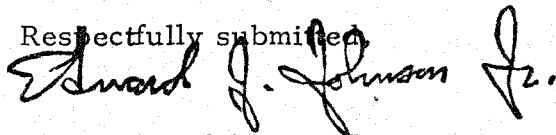
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a modification of your previous order in this case. As your Honor is aware, the Plaintiffs in this case did appeal the dismissal of the Borough of Middlesex as the Defendant to the Appellate Division and the Appellate Division reserved to the Plaintiffs the right to seek "additional relief" but upheld the settlement agreement reached by the parties and ruled that the Borough of Middlesex, together with the other conditionally dismissed defendants, was no longer a party to this action. The Appellate Division did acknowledge that the trial Court retained jurisdiction notwithstanding the transfer of the proceedings to the Appellate Division, but the Appellate Division also indicated that, in order to obtain the relief being sought, the Plaintiffs would have to re-litigate the merits of the question pertaining to a fair share allocation as it affects the eleven conditionally dismissed defendants. At this juncture of the proceedings, re-litigation of this question would appear to be barred by rule 2:9-1(a).

The Plaintiffs have attempted to distinguish the cases of Pascack Association v. Mayor and Council of the Township of Washington, and Fobe Associates v. Mayor and Council of the Board of Adjustment of the Borough of Demerest, both of which were decided this year by the Supreme Court of New Jersey, and both of which cases support the position taken by the conditionally dismissed defendants at the time this case was originally tried before your Honor.

For the reasons hereinabove stated, Defendant Borough of Middlesex requests that this motion be dismissed.

Respectfully submitted,



Edward J. Johnson, Jr.

EJJJr: bgb

cc: All attorneys