

CA - Piscataway 25-Nov-74

Brief of Defendant, Township of
Piscataway + IN support of
motion for severance
-W/CL

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Severance."

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REPLY TO NEW BRUNSWICK OFFICE

FILE NO.

November 19, 1974

The Honorable David D. Furman
Court House
New Brunswick, New Jersey

RE: Urban League of Greater New Brunswick, et als,
vs. Township of Piscataway, et als,
DOCKET NO. C-4122-73

Dear Judge Furman:

Enclosed herein please find original Brief of Defendant,
Township of Piscataway, which is in support of a Motion
for Severance returnable December 6, 1974.

By copy of this letter, I am serving all attorneys of
record.

Very truly yours,

M. Roy Oake
M. ROY OAKE

MRO:DS
Encls.

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DAVID O. FURMAN, J.S.C.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY
DOCKET NO. C4122-73 ✓

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

Plaintiffs,

vs.

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

Defendants.

Civil Action

.....
BRIEF OF DEFENDANT, TOWNSHIP OF
PISCATAWAY, IN SUPPORT OF
MOTION FOR SEVERANCE
.....

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RULS - MTL - 431

ARGUMENT

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

Plaintiffs, as a class action, are challenging the zoning and other land practices of twenty-three defendant municipalities.

On October 29, 1974, the plaintiffs submitted a Brief in opposition to defendants' motions. These motions were argued on November 1st, 1974.

The plaintiffs, on page 7 of said Brief, admitted that this suit is not a defendants' class action. The fact that the plaintiffs have selected a group of defendants does not of itself change the law or the facts. No two communities named as a defendant have the same zoning ordinance, the same factual situation, the same alleged land uses and practices. For example, what might apply to Piscataway, with part of Rutgers University within its borders, which lands are not subject to its zoning law, does not apply to other communities.

Whether a particular ordinance is illegal because of unreasonableness must depend upon the particular facts as to each community and the relationship of such facts to the particular ordinance and practices under attack. An appendix to the Complaint, pages 1 through 16, is incorporated by reference and made part of the Complaint,

as if fully set forth therein (Complaint, page 14). This appendix sets forth Complaint's description of allegations of various exclusionary zoning and other land use policies and practices for each defendant municipality. A reading of the same shows that no defendant municipality has the same zoning ordinance as that of the Township of Piscataway, the same complaint, nor the same facts as they relate to the Township of Piscataway, or even to each other. A reading of the allegations against each defendant indicates the differences as among each municipality. This would require a separate trial for each of said defendants on the different issues raised and on the different defenses set forth in the answers by each defendant, based on the factual situations which also differ for each defendant municipality. To compel the Township of Piscataway to sit through weeks of trial on matters that do not concern it would be inconvenient, prejudicial and an undue burden on the township.

The reasonableness of each ordinance cannot be determined as a matter of law, but they are factual in nature. As to each municipality, there must be a plenary hearing on its own particular ordinance and practices in relation to the facts of that municipality. The facts are different as well as the ordinances and practices.

To permit plaintiff to pick and choose his particular defendants and ignore others, and to try this case by lumping all of

these defendants instead of keeping each defendant separate will lead to an intermingling of facts as to each community, which facts and issues must be kept separate and related to said community. It would hamper the trial of the issues raised by the parties and cause an unreasonable and undue burden on each community, if there is no severance.

It would prejudice the rights of each defendant, and it would cast an undue burden upon each defendant. It would be unreasonable for each municipality to have to participate as to whether or not any other defendants' zoning ordinance and land use practices are reasonable or unreasonable. The different allegations do not apply to each defendant community.

This court should exercise its discretion and order a separate trial under the rules of the court. Under Rule 4:30, . . . any claim against a party may be severed and proceeded with separately by court order. And under Rule 4:38-2(a), "the court for the convenience of the parties or to avoid prejudice may order a separate trial of any claim, . . . , or separate issue".

CONCLUSION

Because of the numerous questions of fact as to each defendant, because of the differences in each of their zoning ordinances and land use practices; because of the complexities of the

issues, the defendant, Township of Piscataway, respectfully contends that a trial involving the twenty-three municipalities herein listed as defendants would be onerous, prejudicial and an undue burden upon it, as well as the other defendant municipalities. Defendant respectfully requests this Honorable Court to sever the trial as against the Township of Piscataway from the other defendants herein.

Respectfully submitted,
HAMILTON & OAKE

By M. Roy Oake
M. Roy Oake,
Attorneys for Defendant, Township
of Piscataway.

SACHAR, BERNSTEIN & ROTHBERG

By Edward Sachar
Edward Sachar, Co-Counsel