

Statement in Opposition to Motion for Certification of an
Appeal Pending Unheard in the Appellate Division

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SUPREME COURT OF NEW JERSEY

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| URBAN LEAGUE OF GREATER NEW |) | DOCKET NO. |
| BRUNSWICK, et al., |) | TERM 1977 |
| |) | |
| Plaintiffs, |) | |
| |) | Civil Action |
| v. |) | |
| |) | |
| THE MAYOR AND COUNCIL OF THE |) | |
| BOROUGH OF CARTERET, et al., |) | Sat Below: |
| |) | |
| Defendants. |) | Hon. David D. Furman, J.S.C. |

STATEMENT IN OPPOSITION TO MOTION FOR CERTIFICATION OF AN APPEAL
 PENDING UNHEARD IN THE APPELLATE DIVISION

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 Plainsboro

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey:

The Plaintiff organization and individuals move for certification of their appeal and cross-appeal pursuant to R. 2:12-2. As grounds for their motion, Plaintiffs recite the long procedural history of this matter which commenced with the trial before the Honorable David D. Furman, J.S.C., in February of 1976. The Trial Court's judgment was entered July 9, 1976. Timely appeals and cross-appeals were filed by both defendants and plaintiffs in the Appellate Division, the last briefs due from any party to the Appellate litigation having been filed on or before October 3, 1977. Plaintiffs conclude their argument for certification with two brief paragraphs of conclusory statements.

The grounds justifying certification of appeals pending unheard in the Appellate Division under R.2:12-2 are found in R. 2:12-4. Certification is possible only if:

"... the appeal presents a question of general public importance which has not but should be settled by the Supreme Court or is similar to a question presented on another appeal to the Supreme Court; ... the decision under review is in conflict with any other decision of the same or higher court or calls for an exercise of the Supreme Court's supervision and in other matters if the interest of justice requires..."

While conceding that the sheer number of co-defendant municipalities gives the case at bar a geographically broad impact, this case is of no greater public importance than many other cases in which the actions or inactions of municipalities are judicially questioned. Any case involving a number of municipal governments would, under Plaintiff's apparent definition, qualify as a case of "great public importance". Such a result cannot be the intent of R.2:12-4

in its use of the phrase "general public importance".

Further, Plaintiffs argue that questions of law raised in the case at bar present issues of first impression in New Jersey. Yet this Court has just recently decided a number of cases dealing with exclusionary zoning. Surely those recent decisions ought to result in a reluctance by this Court to grant certification to similar zoning cases pending unheard in the Appellate Division. The application of this Court's newly promulgated case law to the facts presented in the present litigation is properly the business of the Appellate Division.

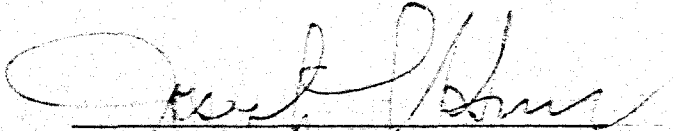
The Plaintiffs also state that the "unique nature" of the case at bar will cause the parties to seek this Court's review ultimately. This is a conclusion to which the Plaintiffs have leaped as if by faith. Given the sheer size of this case, it is very doubtful that the case as presently pending before the Appellate Division would appear on review before this Court in its present form. Judicial restraint should clearly temper the discretionary powers of this Court under R.2:12-2.

Finally, Plaintiffs have failed to show that they are in fact suffering any irreparable harm to their constitutional rights pending adjudication of this matter. Plaintiffs were unable to show irreparable harm at the time Plaintiffs opposed the Stay of Judgment ordered by the Appellate Division. They are still unable to show what grievous injury suffered by them justifies certification of the case prior to review by the Appellate Division.

CONCLUSION

For the reasons stated above, Defendant, Township of Plainsboro respectfully requests this Court to deny the Motion for Certification made by Plaintiffs pursuant to R.2:12-2.

Dated: October 12, 1977


Joseph L. Stonaker
Attorney for Defendant, Township
of Plainsboro.

CERTIFICATION

I hereby certify that service of this Statement in Opposition to Motion For Certification of An Appeal Pending Unheard In the Appellate Division was made by mailing the original and nine copies to the Clerk of the Supreme Court of New Jersey, and two copies of the Statement to counsel for the Plaintiffs listed below:

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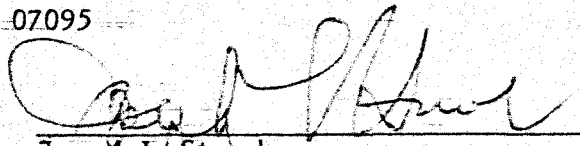
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Dated: October 12, 1977