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CA - Sayreville

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Statement in Lieu of Brief

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The Borough of Sayreville

MIDDLESEX COUNTY
167 MAIN STREET
SAYREVILLE, NEW JERSEY 08872
(201) 257-3200

MAYOR:
JOHN E. CZERNIKOWSKI
BOROUGH COUNCIL MEMBERS:
ALVIN W. JOLLY
PRESIDENT
ROBERT E. BAILEY
KENNETH W. BUCHANAN, Sr.
THOMAS R. KUBERSKI
RANIERO TRAVISANO
FELIX WISNIEWSKI
OFFICERS OF THE BOROUGH:
MARY J. KOSAKOWSKI, Clerk
ALAN J. KARCHER, Attorney
HOWARD M. SCHOOR, Engineer
JAMES I. LINDSAY, Controller - Treasurer
J. HOWARD KOLB, Assessor
JAMES P. DOLAN, Tax Collector

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

URBAN LEAGUE OF GREATER NEW
BRUNSWICK, etc., et al., :

Plaintiffs, :

vs. :

THE MAYOR AND COUNCIL OF THE
BOROUGH OF CARTERET, et al., :

Defendants. :

Civil Action

STATEMENT IN LIEU OF BRIEF

This Statement in Lieu of Brief is filed on behalf of the defendant the Borough of Sayreville, a Municipal Corporation, impleaded in the above suit as Mayor and Council of the Borough of Sayreville.

The suit itself has two factors involved, either of which standing by itself would constitute a sufficient problem for the Court and the parties, by virtue of the complexity of same, viz:

a. A consolidated suit by Urban League of Greater New Brunswick and seven individually named plaintiffs who claim that they "constitute a class".

b. The suit has combined 23 separate municipalities in Middlesex County as the defendants.

Consolidation of cases for trial is of course determined by Rule 4:38-1 and Rule 4:38-2. It is conceded that these Rules give the Court discretionary power when a suit is to be consolidated (Rule 4:38-1) and when suits are to be severed for trial (Rule 4:38-2) of the Civil Practice Rules. However, a careful examination of the phraseology of these two Rules will indicate clearly that:

a. They are only applicable where the claims "involve common questions of law and fact arising out of same transaction or series of transactions".

b. The end results sought to be achieved by these Rules was to achieve efficiency and economy for both the Court and the litigants and to avoid consolidation where the end results might prove to be complex and confusing or would not result in any substantial saving of time to either the Court or the litigants.

It is respectfully submitted that in a matter of this type where the posture of both the plaintiffs and the defendants is unusual and unique there would be nothing to be gained by either the Court or the litigants by such consolidation but that both parties and the Court would in all probability suffer by such arrangement. Surely the question of whether or not the seven individual plaintiffs actually represent a clearly determinable "class" as they contend and if so the breadth and scope and number of persons covered by such class, constitutes a legal and factual question which of and

by itself poses serious problems for both the Court and the litigants.

If in addition to the above factor there is to be added the necessary decisions to make certain that each of the 23 municipalities is afforded ample opportunity to present its own individual factual case, it would add a further dimension which would be bound to lead to complexity and confusion.

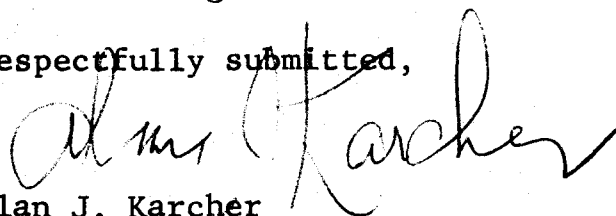
Moreover it is respectfully submitted that an attempt to litigate the matter in its present posture would certainly not save the time of the Court or the litigants. This is true where each of the 23 individual defendants is represented by individual counsel, as they appear to be in this case. It would not take too much difficulty to envision the tremendous amount of time which would be lost by the Court and the other attorneys while each of the individual 23 attorneys was cross examining the plaintiffs and their witnesses.

Furthermore an examination of the Appendix annexed to the Complaint will clearly indicate that there is a lack of similarity in the charges made against each of the 23 separate defendants. From an examination of such Appendix it is clear that there are a greater number of differences between the respective defendants than there are similarities.

In view of the foregoing it is respectfully submitted that the Borough of Sayreville at least should be severed from the remaining defendants for the purpose of trial, since so far as it is concerned there does not exist common questions of law and fact arising out of

the same transaction or series of transactions within the intent and meaning of the Rules hereinabove cited. It is urged that if all defendants are retained within the suit and an attempt is made to try the case on that basis this procedure will add to the complexity and the confusion of the matter and will not result in any substantial saving of time for either the Court or the litigants.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Alan J. Karcher". The signature is written in dark ink and is positioned above the typed name.

Alan J. Karcher
Borough Attorney
Borough of Sayreville