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Sayreville  
Edison

11-15-76

UL v. Cartnet

Memo opposing motions for  
relief of judgment

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

URBAN LEAGUE OF GREATER NEW  
BRUNSWICK, et al.,

Plaintiffs,

v.

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

Defendants.

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: Civil Action  
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:  
: MEMORANDUM IN OPPOSITION  
: TO MOTIONS FOR RELIEF  
: FROM JUDGMENT  
:

On September 17, 1976, defendants Edison and Sayreville moved before this Court for relief from the Judgment in the above captioned case. These defendants argued in essence that their present zoning permitted a large number of single family and multi-family units at densities

suggested by the Court on page 33 of its opinion of May 4, 1976. Plaintiffs responded to these motions with Memoranda dated September 20 and 21, 1976. Oral argument was heard on September 24, 1976. On that date the Court granted both plaintiffs and defendants additional time to brief the issues raised by the defendants and suggested that specific information as to cost and rental ranges for dwelling units be provided by defendants. The return date was originally scheduled for November 12, 1976 but by consent was rescheduled for November 19, 1976.

ARGUMENT

Plaintiffs urge that for the following reasons defendants' contention that they are in compliance with the Judgment should be rejected.

1. Defendants are claiming that their present zoning is not exclusionary. This constitutes a challenge to the earlier decision and Judgment of this Court which is neither timely nor made in the proper forum.

2. Even if the defendants' zoning laws were changed and were no longer constitutionally defective, this would not constitute compliance with the Court's Judgment.

3. Despite the express direction of the Court, these defendants have failed to provide information as to price and rental ranges of housing units in process.

1. Attempt to Reopen Decision and Judgment.

Both defendants, Edison and Sayreville, contend their present zoning, which was in effect during trial and remains unchanged, is not invalid under Mt. Laurel. This argument completely ignores the May 4, 1976, decision of this Court, which followed an extensive trial allowing for full opportunities for both plaintiffs and defendants to present their evidence. This Court found the zoning ordinances of Edison and Sayreville to be constitutionally defective, which the Opinion and Judgment make crystal clear. See Opinion at 22-23 (Edison); 27-28 (Sayreville); Judgment at para. 15, 21.

Thus, the defendants, by contending that their present zoning is in compliance with the Judgment, ignore the express findings and mandate of this Court. This constitutes a challenge to the Judgment by an improper means in an improper forum. Defendants are not seeking, nor can they at this time, a motion to alter or amend the Judgment. The time for such a motion is long past. The proper forum, for challenging the decision and Judgment of this Court is the Appellate Division, to which defendant Sayreville has noticed an appeal, but Edison has not. It is far too late for defendants to attempt to reopen, in this Court, issues the Court has expressly decided. On this ground alone this Court should summarily deny the defendants' motions.

2. Zoning Revision Is Not Full Compliance

Even if the defendant's zoning laws are not now constitutionally defective (which plaintiffs do not concede), this fact alone

does not bring them into full compliance with this Court's Judgment. As the Court stressed in its Opinion:

In implementing this Judgment, the 11 municipalities [including Edison and Sayreville] charged with fair share allocation must do more than rezone not to exclude the possibility of low and moderate income housing in the allocated amounts. Opinion at 34. See also Judgment para. 21.

The Court went on to explain the kinds of actions over and above rezoning which the defendant municipalities should take. Opinion at 34-35. The defendants have failed to show that they have undertaken the actions outlined by the Court. Accordingly, they remain out of compliance with the Court's Judgment.

3. Failure to Furnish Data

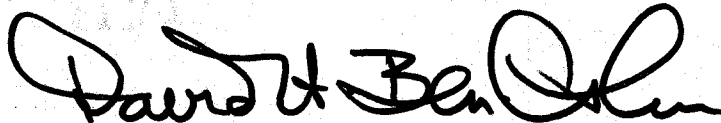
Despite the express direction of the Court, at the end of the earlier hearing on these motions, to provide to plaintiffs information on the proposed sales price and rental ranges for units presently being constructed in each municipality and cited by each defendant as evidence of compliance, neither defendant has, as of this date, provided such information. This is despite repeated requests by plaintiffs immediately following the hearing in late September and again on November 1, 1976. Defendant Edison has simply refused to supply such information, while defendant Sayreville claims that a study is underway. Such information, as the Court indicated at the September 24 oral argument, is essential to determining whether defendants, as they claim,

are, in fact, providing units for low and moderate income persons, in conformance with the Judgment. Plaintiffs submit that if such information was favorable to defendants it would be forthcoming. In the absence of such essential information, defendants clearly have not met their burden of proof showing that they have overcome the constitutional deficiencies found by the Court.

CONCLUSION

For the above reasons, plaintiffs respectfully urge this Court to deny the defendants' motions.

BY:



DAVID BEN-ASHER  
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I, Martin E. Sloane, hereby certify that I have served the preceeding Memorandum in Opposition to Motions For Relief From Judgment on the attorneys listed below by placing copies in the United States mail, postage prepaid, this 15th day of November, 1976.

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