

U.L. v. Carter

1-12-1977

- South Amboy

PI # 1090

Pgs 4

Brief in Opposition To its Pet. to
cert.

1091

Pgs 4

Exhibit A. Transcript by Rendon

1092

Pgs 1

Exhibit B. Letter

1093

Pgs 2

Exhibit C. order of Dismissal.

CA 001996B

~~Pgs. 11~~

*also filed by Helmetta
1/12/77*

SUPREME COURT OF NEW JERSEY
DOCKET NO.

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

Plaintiffs,

vs.

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

Defendants.

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Civil Action

BRIEF IN OPPOSITION TO PLAINTIFF'S PETITION
FOR CERTIFICATION AND IN SUPPORT OF DEFENDANT
CITY OF SOUTH AMBOY'S MOTION TO DISMISS

John J. Vail, Esq.
121 North Broadway
South Amboy, New Jersey 08879
Attorney for Defendant City of
South Amboy

STATEMENT OF FACTS

During the course of the trial below, the City of South Amboy and counsel for the plaintiffs agreed to a settlement of all claims, which was approved by the Honorable David D. Furman. The City of South Amboy was granted a conditional dismissal; i.e., it was necessary to change various sections of South Amboy's zoning ordinance for a final order of dismissal to be entered.

As a result of a conference with Mr. Searing in the presence of Judge Furman, the sections of the zoning ordinance to be changed and the specific changes required were decided upon.

The City of South Amboy, in reliance upon the settlement, has amended its zoning ordinance and has submitted an order for dismissal, which has been executed and is attached hereto. In the event that the court chooses to hear plaintiffs' appeal, it will be prejudicial to the City of South Amboy, as said city never introduced its affirmative defense to plaintiffs' claims due to the apparent settlement.

ARGUMENT

POINT: PLAINTIFFS ARE PRECLUDED FROM APPEALING THE SETTLEMENT

Plaintiffs seek, in effect, an order setting aside the settlement entered into by their attorney and the attorney for the City of South Amboy. To permit this would be a gross injustice.

The parties agreed voluntarily on the offensive sections of the zoning ordinance in court. The City of South Amboy

has relied to its detriment on the settlement, since the ordinance has been changed as required, and the city subsequently ceased its affirmative defense.

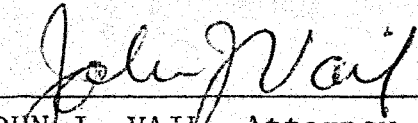
This appeal is untimely and improper. If plaintiffs are dissatisfied with the settlement, they should move to have it set aside by the trial court on whatever grounds they feel exist. In the event their motion succeeds, the defendants should then be permitted to go forward with their defense before that court.

The plaintiffs never applied to Judge Furman for an order setting aside the settlement, nor did they caution the City of South Amboy not to curtail its defense, due to their dissatisfaction with the settlement. Plaintiffs remained silent while the City of South Amboy changed the sections of the zoning ordinance in question. Mr. Searing knew or should have known through massive answers to interrogatories that the city intended to present defense witnesses, but did not do so due to the settlement.

In support of the defendant City of South Amboy's application for a dismissal, attached hereto are the transcript of the proceedings involving the settlement of the matter on February 26, 1976, labelled Exhibit A; letter dated August 27, 1976 from plaintiffs' attorney to Judge Furman agreeing that South Amboy had complied with the terms of the settlement, labelled Exhibit B; true copy of Judge Furman's order of dismissal dated September 24, 1976, labelled Exhibit C.

Based upon the above, the court should vacate, strike, and dismiss the notice of appeal of plaintiffs filed against this defendant.

Respectfully submitted,



JOHN J. VAIL, Attorney for
Defendant City of South Amboy

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URBAN LEAGUE OF GREATER NEW BRUNSWICK,
et al,

Plaintiffs

-vs-

South Amboy

BOROUGH OF CARTERET, et al

Defendants.

New Brunswick, New Jersey
February 26, 1976

B E F O R E:

HONORABLE DAVID D. FURMAN, JSC

A P P E A R A N C E S:

DANIEL SEARING, ESQ.,
MARK SLOANE, ESQ.,
Attorneys for the Plaintiffs.

JOHN VAIL, ESQ.,
Attorney for Deft. South Amboy.

Daye F. Fenton,
Official Court Reporter.

Exhibit "A"

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MR. VAIL: Your Honor, I'd like to indicate, sir, all that I have received from your Clerk. P-154, the South Amboy Zoning Ordinance and I have signed for it, since it's the only copy in existence to my knowledge and I'll need it to make some changes.

It's proposed, your Honor, that the City of South Amboy will amend it's zoning ordinance in so far as multifamily is concerned, in the following manner. Number one, remove bedroom restrictions in their entirety.. Number two, provide, instead of a special exception use that applications for multifamily will be to the Planning Board. Number three, in so far as open space is concerned, that will be ten percent of the entirety, plus a playground for children to be determined by the market. Number four, remove the two story limit. Number five, the minimum floor area in the three or four bedroom will be in accordance with F.H.A. requirements.

We will rezone 55 acres of industrial land or commercial or whatever for multifamily use.

THE COURT: I believe specifically industrial, Mr. Vail.

MR. VAIL: Industrial.

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THE COURT: Yes.

MR. VAIL: Let me make that note, then.

With reference to garden apartments, we would change the ordinance in so far as it refers to density and provide for either 15 or 16 per acre.

We will eliminate the two story height requirement. Once again on the open areas per unit, there will be ten percent of the sight plus a playground for children as required.

That is my understanding of the City's proposal. I expect that the City will ratify it and the necessary procedures will be implemented at its business meeting this coming Monday and the public meeting is on the Tuesday immediately following. As your Honor, knows, the procedure is not short, the matter must be referred to the Planning Board, must be studied for 31 days, recommendation made to the governing body at which time the governing body will act.

I ask that the Court conditionally dismiss the matter, subject to the governing body acting affirmatively on all of the matters that I have stated in court today.

THE COURT: Mr. Searing, Mr. Sloane wish to be

1 heard?

2 MR. SLOANE: Your Honor, we are in full
3 agreement with this settlement of the South
4 Amboy aspect of the case.

5 THE COURT: All right, a dismissal is
6 granted in favor of the City of South Amboy,
7 conditional upon the amendment of the Zoning
8 Ordinance, as stated by Mr. Vail.

9 MR. VAIL: Thank you, Judge.

10 * * * *

11 CERTIFICATE

12
13 I, DAYE F. FENTON, do hereby certify that the
14 foregoing is a true and accurate transcript of
15 the proceedings as taken by me stenographically
16 at the time and place hereinbefore set forth.

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19 DAYE F. FENTON, CSR

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NATIONAL COMMITTEE AGAINST DISCRIMINATION IN HOUSING, INC.

1425 H Street, N.W., Washington, DC 20005 • (202) 783-8150

August 27, 1976

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Middlesex County Courthouse
New Brunswick, N.J. 08903

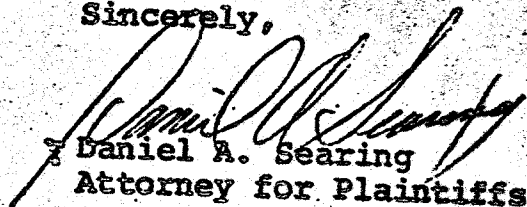
Re: Urban League of Greater New Brunswick, et al.,
v. The Mayor and Council of the Borough of
Carteret, et al.
Docket No. C-4122-73

Dear Judge Furman:

This letter concerns the Order of Dismissal pertaining to the City of South Amboy submitted by Mr. Vail on August 11, 1976.

Plaintiffs believe that the ordinance as passed by defendant conforms to the terms of the opinion and judgment as issued by the Court.

Sincerely,


Daniel A. Searing
Attorney for Plaintiffs

cc: John J. Vail, Esq.

DAS:da

Exhibit "B"

FIELD OFFICE:

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FILED

SEP 24 1976

DAVID D. FURMAN, J.S.C.

JOHN J. VAIL, ESQ.
121 North Broadway
South Amboy, New Jersey 08879
201-721-2430
Attorney for Defendant City of South Amboy

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

URBAN LEAGUE OF GREATER NEW
BRUNSWICK, et al.,

Plaintiffs,

Civil Action

vs.

ORDER OF DISMISSAL

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

Defendants.

The court having entered an order for judgment on July 9, 1976, and said judgment providing that certain individual municipalities shall submit separate orders of dismissal upon enactment of a zoning ordinance eliminating certain alleged prima facie exclusionary provisions of their respective zoning ordinances, and the attorney for the defendant City of South Amboy having presented proof to the court and to the attorneys for the plaintiffs that the City of South Amboy has amended its zoning

Exhibit "C"

ordinance to delete the aforesaid provisions in accordance with the aforesaid judgment, it is on this 24 day of Sept 1976;

ORDERED that all claims against the defendant City of South Amboy, based on the complaint and pre-trial order in the above captioned matter, be and are hereby dismissed.

David D. Furman, J.S.C.

DAVID D. FURMAN, J.S.C.