

CA - South Plainfield

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Brief on behalf of Defendant, Mayor and Council of the Borough of South Plainfield in support of Notice of Motion

3 pages

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South Plainfield

Plaintiff

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

vs.

Defendant

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

RECEIVED & RETURNED
MIDDLESEX COUNTY, N.J.
74 SEP 13 AM 9 14
BOOK FRANK STATE
FRANK SCHALZMAN
CLERK
SUPERIOR COURT OF
NEW JERSEY
CHANCERY DIVISION:
MIDDLESEX COUNTY

Docket No. C 4122-73

CIVIL ACTION

BRIEF ON BEHALF OF DEFENDANT, MAYOR AND
COUNCIL OF THE BOROUGH OF SOUTH PLAIN-
FIELD IN SUPPORT OF NOTICE OF MOTION

STATEMENT OF FACTS

Plaintiffs bring suit, allegedly as representatives of a class, for a determination that the various zoning ordinances enacted by the defendants-municipalities are illegal and violative of the Equal Protection Clause of the State and Federal Constitutions. Other allegations as to general illegality are also asserted and would be equally pertinent and applicable to any municipality enacting zoning laws. On the face of the complaint, the plaintiffs have purposely avoided and eliminated the joinder of the State of New Jersey, (the body enacting the enabling legislation), the County of Middlesex, (which has its own zoning body), and the municipalities of Perth Amboy and New Brunswick. The latter two have for some reason been deemed by the plaintiffs, for their own purposes, not to be in violation of either the State or Federal Constitution or any applicable laws in such case made and provided. The failure to join these parties was a conclusion, unilaterally made, by the plaintiffs for whatever purposes.

The defendant, Borough of South Plainfield, has brought a motion to compel the joinder of the State of New Jersey, the County of Middlesex, and the municipalities of New Brunswick and Perth Amboy inasmuch as they occupy a common interest and enact legislation, rules and regulations in accordance with the

legislative purpose pertaining to zoning and zoning laws.

The municipalities of Perth Amboy and New Brunswick are obliged to enact zoning laws in accordance with both the State and Federal Constitutions together with the statutory enactments in such case made and provided. In this sense they are in a common position with all other defendants. Likewise, so too is the County of Middlesex.

Inasmuch as the source of zoning emanates from actions of the state legislature, they too are necessary parties.

STATEMENT OF LAW

The action brought is one in the nature of a request for a Declaratory Judgment. Effectively, the plaintiffs state that a certain set of facts have arisen which have given rise to a conflict and/or the possibility of personal damage and/or deprivation of rights and have sought relief from this Court. The gravamen of the complaint is that various municipalities have enacted illegal legislation whether the same be in violation of the Equal Protection Code of the State or Federal Constitutions or otherwise. To the extent that they constitute a challenge to the general zoning powers of the municipalities, the effect of a judicial determination would be binding on all.

Rule 4:28-1 provides that any person (party) who would or should be bound or effected by a judicial determination "shall be" joined as an essential party to the litigation. If such party has not been so joined, the Court shall order they so be made a party. The party is deemed to be an "indispensible party" if it has an interest inevitably involved in the subject matter before the Court. See Jennings v. M & M Transportation Co., 104 N.J. Super 265 (Ch. Div., 1969). See also 1966 Amendment of Federal Rules Civil Procedure, 28 U.S.C.A., embodying the same terms.

The term "indispensible party" is not to be literally interpreted. Wherever feasible, the parties materially interested in the subject of an action should be joined so that they may be heard and a complete disposition made. Moreover, the approach should be one of desirability rather than absolute necessity. In this context, it cannot be stated that the State of New Jersey, which enacted the enabling legislation, the County of Middlesex, which has its own zoning powers, and the municipalities of New Brunswick and Perth Amboy, which operate and effect particular zoning laws, have an equal standing with each of the other defendants. Although, each separate municipality has enacted zoning laws peculiar to its own needs, overall there is a common question of legality and constitutionality.

There is no justifiable reason two of the municipalities are so singular in their employment of their zoning powers that they should be excluded from these proceedings.

Rule 4:28-4 provides that if the validity of any statute or constitutional provision of this State is questioned in any action to which the State is not a party, the parties raising the question shall give notice of the pendency to the Attorney General. The pleadings do not reflect that such notice has been given and an opportunity afforded for intervention by the State of

New Jersey, (or the County of Middlesex), as provided under Rule
4:28-4(d).

CONCLUSION

Each of the present defendants together with the State of New Jersey, the County of Middlesex, and the municipalities of New Brunswick and Perth Amboy, have a common interest in these proceedings. Their rights and powers are derived from the actions of the New Jersey State Legislature and are subject to the same limitations as contained in the State and Federal Constitutions as well as such legislative enactments. Their general use and employment of zoning powers is common to all. There is no basic reason justifying the exclusion of these parties as necessary parties to these proceedings.

It is urged that an Order be entered directing that the plaintiffs amend the complaint to include the State of New Jersey, the County of Middlesex, and the municipalities of New Brunswick and Perth Amboy, as necessary parties to this litigation.

Respectfully submitted,

/s/ Sanford E. Chernin
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Council of the Borough of South
Plainfield