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South Plank

9-10-74

UL v. Carter

- CL

- Answer ~~aff~~

- Letter re: affidavit & brief

- Notice of motion to join more DS

- Affidavit

- Brief

- another NOM

Pgs. 27

P.i. # 2001

CA 002068A

South Plainfield

SANFORD E. CHERNIN

*Counselor at Law*

ASSOCIATE:  
HOWARD FREEMAN

September 10, 1974

FRANKLIN STATE BANK BUILDING  
FRANKLIN MALL OFFICE  
EASTON AVENUE  
SOMERSET, NEW JERSEY 08873

(201) 469-5576

Mortimer G. Newman, Jr., Clerk  
Superior Court of New Jersey  
State House Annex  
Trenton, N.J. 08625

**Re:** Urban League of Greater New Brunswick, etc., et als vs.  
Mayor and Council of the Borough of Carteret, et als,  
Docket No. C 4122-73

Dear Sir:

Enclosed herewith please find the following:

- |  |  |
|--|--|
| <input type="checkbox"/> Summons                               | <input type="checkbox"/> Notice of Depositions                     |
| <input type="checkbox"/> Complaint                             | <input type="checkbox"/> Substitution of Attorney                  |
| <input checked="" type="checkbox"/> Stipulation Extending Time | <input type="checkbox"/> Stipulation of Dismissal                  |
| <input checked="" type="checkbox"/> Answer                     | <input type="checkbox"/> Warrant to Satisfy Judgment               |
| <input type="checkbox"/> Counterclaim/Crossclaim               | <input type="checkbox"/> Releases                                  |
| <input type="checkbox"/> Interrogatories                       | <input type="checkbox"/> Doctor's Report & Bill                    |
| <input type="checkbox"/> Answers to Interrogatories            | <input type="checkbox"/> Brief                                     |
| <input type="checkbox"/> Notice of Motion                      | <input type="checkbox"/> Judgment                                  |
| <input type="checkbox"/> Affidavit                             | <input type="checkbox"/> Return Envelope                           |
| <input type="checkbox"/> Order                                 | <input checked="" type="checkbox"/> Check in the Amount of \$30.00 |
| <input type="checkbox"/> Subpoena                              | <input type="checkbox"/> Other                                     |

Will you kindly:

- |  |   |                 |
|--|---|-----------------|
| <input checked="" type="checkbox"/> File             | <input type="checkbox"/> File                         | and return copy |
| <input type="checkbox"/> Hold same in escrow pending | <input type="checkbox"/> marked "filed" in envelope.  |                 |
| receipt of check in full                             | <input type="checkbox"/> Sign order and return in     | envelope        |
| payment  | <input type="checkbox"/> Sign the enclosed and return | in envelope     |
| <input type="checkbox"/> Acknowledge receipt of same | <input type="checkbox"/> Advise Docket No.            |                 |
| by signing copy here and return                      | <input type="checkbox"/> Advise Date of Service       |                 |
| Received by _____                                    |   |                 |
| Date _____   |   |                 |

Yours very truly,

SANFORD E. CHERNIN

SEC:wk

Enc.

cc: See list attached.

CA002068A

cc: / David H. Ben-Asher, Esq.  
Roland Winter, Esq.  
Martin A. Spritzer, Esq.  
Bert Busch, Esq.  
Guida Brigiani, Esq.  
Andre Wm. Gruber, Esq.  
Joseph Burns, Esq.  
John J. Vail, Esq.  
Samuel G. Inglese, Esq.  
J. Schuyler Huff, Esq.  
Arthur Burgess, Esq.  
Alan Karcher, Esq.  
Edward Johnson, Jr., Esq.  
Edward J. Dolan, Esq.  
Louis Alfonso, Esq.  
Richard F. Plechner, Esq.  
Lawrence Lerner, Esq.  
William Gazzi, Esq.  
Charles Booream, Esq.  
Henry Handleman, Esq.  
Robert Rafano, Esq.  
Roy Oake, Esq.  
Joseph L. Stonaker, Esq.

Copy of the within Answer has been sent to the following:

David H. Ben-Asher, Esq.  
134 Evergreen Place  
East Orange, New Jersey 07018

Roland Winter, Esq.  
940 Amboy Avenue  
Edison, New Jersey 08817

Martin Spritzer, Esq.  
414 Main Street  
Metuchen, New Jersey 08840

Bert Busch, Esq.  
99 Bayard Street,  
New Brunswick, New Jersey 08901

Guido Brigiano, Esq.  
175 Smith Street  
Perth Amboy, New Jersey 08862

Andre Wm. Gruber, Esq.  
1215 Livingston Avenue  
North Brunswick, New Jersey

Joseph Burns, Esq.  
103 Bayard Street  
New Brunswick, New Jersey 08901

John J. Vail, Esq.  
Box 238  
South Amboy, New Jersey 08879

Samuel Inglese, Esq.  
406 Main Street  
Metuchen, New Jersey 08840

J. Schuyler Huff, Esq.  
Cranbury-South River Road  
Cranbury, New Jersey

Alan Karcher, Esq.  
61-67 Main Street  
Sayreville, New Jersey 08872

Edward Johnson, Jr., Esq.  
1 Greenbrook Road  
Middlesex, New Jersey

Sanford E. Chernin, Esq.  
1848 Easton Avenue  
Somerset, New Jersey 08873

Edward J. Dolan, Esq.  
1 Holmes Street  
Carteret, New Jersey 07008

Louis Alfonso, Esq.  
325 Highway 516  
Old Bridge, New Jersey 08857

Richard Plechner, Esq.  
351 Main Street  
Metuchen, New Jersey 08840

Lawrence Lerner, Esq.  
101 Bayard Street  
New Brunswick, New Jersey 08901

William Gazi, Esq.  
1430 Oak Tree Road  
Iselin, New Jersey 08830

Charles Booream, Esq.  
199 North Main Street  
Milltown, New Jersey

Henry Handleman, Esq.  
380 North Avenue  
Dunellen, New Jersey 08812

Robert Rafano, Esq.  
129 Main Street  
South River, New Jersey 08882

Roy Oake, Esq.  
463 South Washington Avenue  
Piscataway, New Jersey 08854

Joseph Stonaker, Esq.  
245 Nassau Street  
Princeton, New Jersey 08540

SANFORD E. CHERNIN  
FRANKLIN STATE BANK BLDG.  
FRANKLIN MALL OFFICE  
1848 EASTON AVENUE  
SOMERSET, N. J. 08873  
(201) 469-5576

ATTORNEY FOR Defendant, Mayor and Council of the Borough of  
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,

SUPERIOR COURT OF  
NEW JERSEY  
CHANCERY DIVISION:  
MIDDLESEX COUNTY

Docket No. C 4122-73

CIVIL ACTION

ANSWER

Defendant, Mayor and Council of the Borough of South  
Plainfield, by way of answer to the complaint filed herein, says:

1. This defendant has no knowledge as to the  
identification of the parties contained in Paragraphs #1, #4, #5,  
#6, #7, #8, #9, #10, #11, #30 (e), and, therefore, provides no  
answers to the same and leaves plaintiffs to their proofs.

2. The allegations contained in Paragraphs #13 and  
#14 of the complaint are denied.

3. As to the Appendix to the complaint, and  
particularly, Paragraph #20 is denied. No answer is made to the  
remaining paragraphs of the Appendix to the complaint as the same  
does not pertain to this defendant.

4. Each and every other allegation contained in the complaint is denied.

FIRST SEPARATE DEFENSE

The complaint filed does not set forth a cause of action upon which relief can be granted.

SECOND SEPARATE DEFENSE

The plaintiffs do not constitute a true and legal class who should be brought together in one cause of action.

THIRD SEPARATE DEFENSE

The complaint as it pertains to this defendant should be severed as each municipality has enacted separate and independent zoning ordinances.

FOURTH SEPARATE DEFENSE

The complaint is defective as it has failed to join indispensable parties to this litigation.

FIFTH SEPARATE DEFENSE

The complaint must be dismissed as the same is premature.

SIXTH SEPARATE DEFENSE

The allegations and the demands contained in the complaint request action from this Court which would constitute an expenditure of public funds for private purposes and, therefore, the same is unconstitutional.

SEVENTH SEPARATE DEFENSE

The plaintiffs in this action are represented by counsel not authorized to appear in these proceedings.

EIGHTH SEPARATE DEFENSE

The complaint must be dismissed as in violation of Rule 4:32-2.

NINTH SEPARATE DEFENSE

The complaint must be dismissed as there has been no established proof or authority to act on behalf of a class.

TENTH SEPARATE DEFENSE

The complaint should be dismissed as it does not properly fall within the "Declaratory Judgment" act in such case made and provided, as there is a separate and available remedy as to each defendant which should be pursued.

ELEVENTH SEPARATE DEFENSE

The zoning laws enacted by this defendant constitute a valid exercise of the police power and there has been no assertion that such exercise has been arbitrary, unreasonable or prejudicial and, accordingly, the complaint must be dismissed.

TWELFTH SEPARATE DEFENSE

This Court does not have jurisdiction over the subject matter.



CERTIFICATION

I hereby certify that the within Answer has been  
duly filed and served in accordance with the provisions of Rule  
4:6.

/s/ Sanford E. Chernin

SANFORD E. CHERNIN

Attorney for Defendant, Mayor  
and Council of the Borough of  
South Plainfield

SANFORD E. CHERNIN

*Counsellor at Law*

HOWARD FREEMAN

FRANKLIN STATE BANK BUILDING  
FRANKLIN MALL OFFICE  
1848 EASTON AVENUE  
SOMERSET, NEW JERSEY 08873

(201) 469-5576

September 10, 1974

Mortimer G. Newman, Jr., Clerk  
Superior Court of New Jersey  
State House Annex  
Trenton, New Jersey 08625

Re: Urban League of Greater New Brunswick,  
etc., et als vs. Mayor and Council of  
the Borough of Carteret, et als  
Docket No. C 4122-73

Dear Sir:

Enclosed herewith please find Notice of  
Motion with supporting Affidavit and Brief for filing  
in the above matter.

Yours very truly,

SANFORD E. CHERNIN

SEC:wmk

Enc.

cc: Clerk, Middlesex County Superior Court

cc: All counsel listed on attached  
Proof of Mailing

C  
O  
P  
Y

SANFORD E. CHERNIN  
FRANKLIN STATE BANK BLDG.  
FRANKLIN MALL OFFICE  
1848 EASTON AVENUE  
SOMERSET, N. J. 08873

(201) 469-5576  
ATTORNEY FOR Defendant, Mayor and Council of the Borough of  
South Plainfield

*Plaintiff*

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

vs.

*Defendant*

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

SUPERIOR COURT OF  
NEW JERSEY  
CHANCERY DIVISION:  
MIDDLESEX COUNTY

Docket No. C 4122-73

CIVIL ACTION

NOTICE OF MOTION

TO: DAVID H. BEN-ASHER, ESQ.  
BAUMGART & BEN-ASHER, ESQS.  
Attorneys for Plaintiffs  
134 Evergreen Place  
East Orange, New Jersey 07018

ROLAND WINTER, ESQ.  
JACOBSON & WINTER, ESQS.  
Attorneys for Defendant, Township Committee of the  
Township of Edison  
940 Amboy Avenue  
Edison, New Jersey 08817

MARTIN A. SPRITZER, ESQ.  
Attorney for Defendant, Mayor and Council of the  
Borough of Metuchen  
314 Main Street  
Metuchen, New Jersey 08840

BERT BUSCH, ESQ.  
BUSCH & BUSCH, ESQS.  
Attorneys for Defendant, Township Committee of the  
Township of East Brunswick  
99 Bayard Street  
New Brunswick, New Jersey 08903

TO: GUIDO BRIGIAMI, ESQ.  
Attorney for Defendant, Mayor and Council of the  
Borough of Spotswood  
175 Smith Street  
Perth Amboy, New Jersey 08861

ANDRE WM. GRUBER, ESQ.  
SEIFFERT, FRISCH & GRUBER, ESQS.  
Attorneys for Defendant, Township Committee of the  
Township of South Brunswick  
1215 Livingston Avenue  
North Brunswick, New Jersey 08902

JOSEPH BURNS, ESQ.  
Attorney for Defendant, Township Committee of the  
Township of North Brunswick  
103 Bayard Street  
New Brunswick, New Jersey 08901

JOHN J. VAIL, ESQ.  
Attorney for Defendant, Mayor and Council of the  
City of South Amboy  
Box 238  
South Amboy, New Jersey 08879

SAMUEL C. INGLESE, ESQ.  
MOSS & INGLESE, ESQS.  
Attorneys for Defendant, Township Committee of the  
Township of Monroe  
406 Main Street  
Metuchen, New Jersey 08840

J. SCHUYLER HUFF, ESQ.  
HUFF & MORAN, ESQS.  
Attorneys for Defendant, Township Committee of the  
Township of Cranbury  
Cranbury-South River Rd.  
Cranbury, New Jersey 08512

ARTHUR BURGESS, ESQ.  
TOOLAN, ROMOND, BURGESS & ABBOTT, ESQS.  
Attorneys for Defendant, Township Committee of the  
Township of Woodbridge  
214 Smith Street  
Perth Amboy, New Jersey 08861

TO: ALAN KARCHER, ESQ.  
KARCHER, REAVEY & KARCHER, ESQS.  
Attorneys for Defendant, Mayor and Council of the  
Borough of Sayreville  
61-67 Main Street  
Sayreville, New Jersey 07762

EDWARD JOHNSON, JR., ESQ.  
JOHNSON & JOHNSON, ESQS.  
Attorneys for Defendant, Mayor and Council of the  
Borough of Middlesex  
1 Greenbrook Road  
Middlesex, New Jersey 08846

EDWARD J. DOLAN, ESQ.  
Attorney for Defendant, Mayor and Council of the  
Borough of Carteret  
1 Holmes Street  
Carteret, New Jersey 07008

LOUIS ALFONSO, ESQ.  
ALFONSO, GROSSMAN & ALFONSO, ESQS.  
Attorneys for Defendant, Township Committee of the  
Township of Madison  
325 Highway 516  
Old Bridge, New Jersey 08857

RICHARD F. PLECHNER, ESQ.  
Attorney for Defendant, Mayor and Council of the  
Borough of Helmetta  
351 Main Street  
Metuchen, New Jersey 08840

RUBIN & LERNER, ESQS.  
LAWRENCE LERNER, ESQ.  
Attorney for Defendant, Mayor and Council of the  
Borough of Highland Park  
101 Bayard Street  
New Brunswick, New Jersey 08903

WILLIAM GAZI, ESQ.  
FOLEY & GAZI, ESQS.  
Attorneys for Defendant, Mayor and Council of the  
Borough of South River  
1430 Oak Tree Rd.  
Iselin, New Jersey 08830

TO: CHARLES BOOREAM, ESQ.  
Attorney for Defendant, Mayor and Council of the  
Borough of Milltown  
199 North Main Street  
Milltown, New Jersey 08850

HENRY HANDELMAN, ESQ.  
HANDELMAN & JACOBS, ESQS.  
Attorneys for Defendant, Mayor and Council of the  
Borough of Dunellen  
380 North Avenue  
Dunellen, New Jersey 08812

ROBERT RAFANO, ESQ.  
RAFANO & WOOD, ESQS.  
Attorneys for Defendant, Mayor and Council of the  
Borough of Jamesburg  
129 Main Street  
South River, New Jersey 08882

ROY OAKE, ESQ.  
Attorney for Defendant, Township Committee of the  
Township of Piscataway  
463 So. Washington Avenue  
Piscataway, New Jersey 08854

JOSEPH L. STONAKER, ESQ.  
Attorney for Defendant, Township Committee of the  
Township of Plainsboro  
245 Nassau Street  
Princeton, New Jersey 08540

S I R S:

PLEASE TAKE NOTICE that on Friday, October 18, 1974,  
at 9:00 A.M. in the forenoon or as soon thereafter as counsel may  
be heard, the undersigned attorney for the defendant, Mayor and  
Council of the Borough of South Plainfield, shall apply before  
the Superior Court of New Jersey, Chancery Division, Middlesex  
County, at the Court House, New Brunswick, New Jersey for an Order  
directing that the plaintiffs join the City of Perth Amboy, the

City of New Brunswick, County of Middlesex and State of New Jersey,  
as necessary and essential parties to this litigation, or in the  
alternative dismissing the complaint for failure to join such  
indispensible parties.

Defendant shall rely upon the affidavit and brief  
annexed hereto at the time of hearing.

Dated: September 11, 1974

/s/ Sanford E. Chernin  
SANFORD E. CHERNIN  
Attorney for Defendant, Mayor and  
Council of the Borough of South  
Plainfield





in any way discriminating against any of the plaintiffs and the class which they allegedly represent.

3. The State of New Jersey, through the legislature, has permitted the Boroughs to enact appropriate zoning laws and ordinances and for regulations which peculiarly pertain to the limitations upon such zoning laws. The effect of the charges as set forth in the complaint would be to destroy the overall zoning laws and the standards created thereby on which the State of New Jersey has an express and implied interest. Therefore, the State of New Jersey becomes a very interested and indispensable party to this litigation.

4. Likewise, the County of Middlesex approves much of the zoning procedures enacted in every municipality and has an inherent interest in the same.

In the event that there is a challenge to the zoning laws as they presently exist, the entire zoning structure of the County would be affected. Accordingly, the County of Middlesex is also a necessary party to this litigation.

5. The plaintiffs have, for reasons best known to themselves, come to the decision that the cities of Perth Amboy and New Brunswick are not acting in any discriminatory fashion. There is no factual support at this juncture for such conclusion. As a matter of fact, any conclusions made by the plaintiffs are not

binding upon the Court nor any of the present or proposed defendants. A determination made or to be made concerning the legality or constitutionality of the present zoning structure and its effect should be also equally binding upon these two municipalities and they should be obliged to participate in these proceedings. These two municipalities, namely New Brunswick and Perth Amboy, have enacted and will continue to enact zoning laws, rules and regulations as authorized by the legislature of the State of New Jersey. They too would be affected by any decision of this Court and should be made party to this litigation as necessary parties.

6. There can be no true and just adjudication of the allegations contained in the complaint unless and until the State of New Jersey, through the Attorney General's Office, the County of Middlesex, and the municipalities of Perth Amboy and New Brunswick are joined and obliged to participate.

7. This affidavit is made in support of the Motion now pending by the Borough of South Plainfield to join these parties as necessary and essential parties to this litigation.

8. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated: September 11, 1974

/s/ Sanford E. Chernin  
SANFORD E. CHERNIN

SANFORD E. CHERNIN  
FRANKLIN STATE BANK BLDG.  
FRANKLIN MALL OFFICE  
1848 EASTON AVENUE  
SOMERSET, N. J. 08873

(201) 469-5576  
ATTORNEY FOR Defendant, Mayor and Council of the Borough of  
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,

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 & H 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  
\_\_\_\_\_  
SANFORD E. CHERNIN  
Attorney for Defendant, Mayor and  
Council of the Borough of South  
Plainfield

Attorney(s): SANFORD E. CHERNIN, Franklin State Bank Bldg.,  
Office Address & Tel. No.: Franklin Mall Office, 1848 Easton Avenue, Somerset,  
N.J. 08873 (201) 469-3576  
Attorney(s) for Defendant, Mayor and Council of the Borough of South Plainfield

URBAN LEAGUE OF GREATER NEW BRUNSWICK,  
etc., et als, Plaintiff(s)  
vs.  
MAYOR AND COUNCIL OF THE BOROUGH OF  
CAMERET, et als, Defendant(s)

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION:  
MIDDLESEX COUNTY  
Docket No. C 4122-73  
CIVIL ACTION

A copy of the within Notice of Motion has been filed with the Clerk of the County of Middlesex  
at the Court House, New Brunswick, New Jersey

~~/s/ Sanford E. Chernin~~  
SANFORD E. CHERNIN /*ut*  
Attorney(s) for Defendant, Borough of  
South Plainfield

The original of the within Notice of Motion has been filed with the Clerk of the Superior Court in Trenton, New Jersey.

~~/s/ Sanford E. Chernin~~  
SANFORD E. CHERNIN /*ut*  
Attorney(s) for Defendant, Borough of  
South Plainfield /

Service of the within

is hereby acknowledged this day of 19

Attorney(s) for

I hereby certify that a copy of the within Answer was served within the time prescribed by Rule 4:6.

Attorney(s) for

PROOF OF MAILING: On September 11 19 74 , I, the undersigned, mailed to

Attorney(s) for  
at  
by

SEE LIST ATTACHED

mail, the following:

First Class Mail, a copy of the within Notice of Motion  
with affidavit and supporting brief.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated: September 11 19 74

/s/ Weslie M. Kunz  
WESLIE M. KUNZ

David H. Ben-Asher, Esq.  
Baumgart & Ben-Asher, Esqs.  
134 Evergreen Place  
East Orange, N.J. 07018

Martin A. Spritzer, Esq.  
414 Main Street  
Metuchen, N.J. 08840

Guido Brigiani, Esq.  
175 Smith Street  
Perth Amboy, N.J. 08861

Joseph Burns, Esq.  
103 Bayard Street  
New Brunswick, N.J. 08901

Samuel C. Inglese, Esq.  
Moss & Inglese, Esqs.  
406 Main Street  
Metuchen, N.J. 08840

Arthur Burgess, Esq.  
Toolan, Romond, Burgess & Abbott, Esqs.  
214 Smith St., Perth Amboy, N.J. 08861

Alan Karcher, Esq.  
Karcher, Reavey & Karcher, Esqs.  
61-67 Main Street  
Sayreville, N.J. 07762

Edward J. Dolan, Esq.  
1 Holmes Street  
Carteret, N.J. 07008

Richard F. Plechner, Esq.  
351 Main Street  
Metuchen, N.J. 08840

William Gazi, Esq.  
Poley & Gazi, Esqs.  
1430 Oak Tree Road  
Iselin, N.J. 08830

Roland Winter, Esq.  
Jacobson & Winter, Esqs.  
940 Amboy Avenue  
Edison, N.J. 08817

Bert Busch, Esq.  
Busch & Busch, Esqs.  
99 Bayard Street  
New Brunswick, N.J. 08903

Andre Wm. Gruber, Esq.  
Seiffert, Frisch & Gruber, Esqs.  
1215 Livingston Avenue  
North Brunswick, N.J. 08902

John J. Vail, Esq.  
Box 238  
South Amboy, N.J. 08879

J. Schuyler Huff, Esq.  
Huff & Moran, Esqs.  
Cranbury-South River Rd.  
Cranbury, N.J. 08512

Edward Johnson, Jr., Esq.  
Johnson & Johnson, Esqs.  
1 Greenbrook Road  
Middlesex, N.J. 08846

Louis Alfonso, Esq.  
Alfonso, Crossman & Alfonso, Esqs.  
325 Highway 516  
Old Bridge, N.J. 08857

Lawrence Lerner, Esq.  
Rubin & Lerner, Esqs.  
101 Bayard Street  
New Brunswick, N.J. 08903

Charles Boorean, Esq.  
199 North Main Street  
Milltown, N.J. 08850

Henry Handelman, Esq.  
Handelman & Jacobs, Esqs.  
380 North Avenue  
Dunellen, N.J. 08812

Roy Calk, Esq.  
463 So. Washington Avenue  
Fiscataway, N.J. 08854

Robert Rafano, Esq.  
Rafano & Wood, Esqs.  
129 Main Street  
South River, N.J. 08882

Joseph L. Stonaker, Esq.  
245 Nassau Street  
Princeton, N.J. 08540

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