CA - South Plainfield 5-Dec.-75

Plaintiff's memorandum in response to defendants' Motion to Amend the Pretrial Order.

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David H. Ben-Asher
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December 5, 1975

Honorable David D. Furman
Post Office Box 788
New Brunswick, New Jersey 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:

Enclosed please find an original and one copy of Plaintiffs' Memorandum in Response to Defendants' Motion to Amend the Pretrial Order in the above-captioned case.

Sincerely,

David H. Ben-Asher
Attorney for Plaintiffs

Enclosure

cc: All Attorneys of Record

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.

PLAINTIFFS' MEMORANDUM IN RESPONSE TO

DEFENDANTS' MOTION TO AMEND THE PRETRIAL ORDER

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INTRODUCTION

This action, filed on July 24, 1974, has been before this Court many times on motion of both plaintiffs and defendants. Most recently, on November 14, 1975, the Court entered a Pretrial Order, setting February 2, 1976, as the trial date. Paragraph 7 of the Order specified the issues to be determined at trial. Two of the defendants have now moved to amend the pretrial order.[1/]

On November 18, 1975, South Plainfield moved to amend the Pretrial Order in two respects. The first concerns adding as an issue whether plaintiffs can obtain an order requiring defendants to seek help from various county, state, and federal agencies in developing and implementing a plan to facilitate racially and economically integrated housing. (See Complaint, page 17, Section V, paragraph 2). The second seeks to compel plaintiffs to provide specific allegations to support their contention of discrimination based on race or, in the alternative, to strike such contention from the pretrial order.

1/ Pursuant to the statement by the Court on September 12, 1975, motions of general nature filed by any one defendant are deemed to be joined by all other defendants unless there is specific notification to the contrary.

On December 2, 1975, defendant Dunellen moved to amend the Pretrial Order by striking plaintiffs' claim that their complaint is based upon any violation of 42 U.S.C.A. §§ 1982, 1983, and 3601 et seq.[2/]

ARGUMENT

On South Plainfield's concern about whether defendants can be required to seek assistance from certain governmental entities and agencies, plaintiffs have no objections to adding this as an issue. We note however, that this specific point would seem to be included under "remedy by way of county wide plan", which is already contained in paragraph 7. Certainly the development and implementation of such a plan could not go forward without the assistance of the agencies with substantive expertise and possible financial support. In school desegregation cases, the courts have regularly relied on government agencies with expertise in the subject to provide assistance in designing an appropriate plan of desegregation. See Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969); Carter v. West Feliciana Parish School Board, 396 U.S. 226 (1969), subsequent order 396 U.S. 290 (1970) (per curiam).

Plaintiffs object to South Plainfield's second request -- to compel specific allegations to support our contention of racial discrimination -- for the following reason:

2/ Dunellen's motion is in error in that plaintiffs are claiming under 42 U.S.C. 1981, 1982 and 3601 et seq. No claim under 42 U.S.C. 1983 has been made.

Such allegations are contained in the complaint, as filed on July 24, 1974. Complaint paragraphs 1, 12, 20, 33, and 34 specifically refer to the racially discriminatory impact of the defendants' exclusionary practices. Others present factual material on such items as population and income broken down into racial components. Defendants fail to support their tardy assertion that the allegations of racial discrimination are insufficiently specific. Indeed, an examination of the complaint demonstrates that their assertion is unsupportable. Furthermore, if defendants deemed the allegations of racial discrimination as not sufficient, the proper procedure would have been a motion for more definite statement at the outset, not on the eve of trial.

Secondly, with respect to the motion to strike plaintiffs' allegations of racial discrimination asserted in the alternative by South Plainfield and frontally by Dunellen, there should be a summary denial. The applicable test is found in Rule 4:6-5, Motion to Strike, which states that the court may strike any "redundant, immaterial, impertinent, or scandalous matter". Plaintiffs' claims of racial discrimination fall into none of the four criteria. These allegations are founded upon well recognized federal claims and are given sufficient factual basis in the complaint.

Dunellen argues that the issue should be stricken because it has not been proven. This is not the time to raise such an assertion, because there has been no evidentiary hearing. Such questions are to be decided after trial.

Plaintiffs respectively request that defendants' motion to strike as an issue plaintiffs' allegations of racial discrimination be denied.

BAUMGART & BEN-ASHER
Attorneys for Plaintiffs

BY: David H. Ben-Asher
DAVID H. BEN-ASHER

12-05-75