

CA - South River . 21-Nov-74

Brief in Support of Notice of Motion
by the Def. Borough of South River
for Severance.

pgs = 3

CA002156B

RECEIVED & RECORDED
MIDDLESEX COUNTY, N.J.

FILED

NOV 21 1974

'74 NOV 21 PM 2:49

DAVID R. FERNAL, J.S.E.

BOOK _____ PAGE _____
FRANK SCHATZMAN

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

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

Plaintiff :

v. :

MAYOR AND COUNCIL OF THE
BOROUGH OF SOUTH RIVER :

Defendants :

Civil Action

BRIEF IN SUPPORT OF NOTICE OF MOTION BY DEFENDANT BOROUGH
OF SOUTH RIVER FOR SEVERANCE.

WILLIAM H. GAZI
Attorney for Defendant
Borough of South River
1430 Oak Tree Road
Iselin, New Jersey 08830
201/283-0900 968-5100

WILLIAM H. GAZI
On the Brief

ARGUMENT

Rule 4:38-2 provides in (a) Separate Trials:
Severance of Claims.

"The Court, for the convenience of the parties or to avoid prejudice, may order a separate trial of any claim, cross-claim, counterclaim, third-party claim, or separate issue, or of any number of claims, cross-claims, counterclaims, third-party claims, or issues."

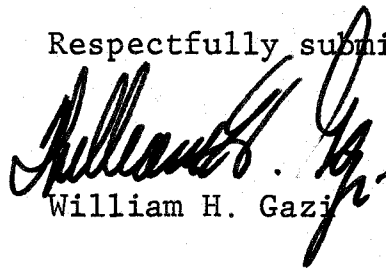
The Rule is meant to appeal to the sound discretion of the Court and in light of the various provisions of the respective Zoning Ordinances adopted by Defendants, different factual and legal issues have been raised which are not of common application to all Defendants.

It would seem that the prayers for relief contained in the Plaintiff's opening papers seek permanent injunctions against all of the Defendants and their officers, agents and employess from actively engaging in what the Plaintiffs characterize as "land use policies and practices which have the effect of excluding low and moderate income persons, both white and nonwhite." It would appear that it would be necessary for the trier of fact to determine whether as to each Defendant this allegation may be sustained which would of necessity require a review of the factual situation in each municipality separately. No common question of law or fact appears to be raised which lends

itself to an expeditious common trial. On the contrary, it would be unduly burdensome to the Borough of South River to be caught up in protracted discovery proceedings involving all of the other Defendants and a financial burden would surely be visited upon the taxpayers of the Borough of South River which would be unjustified and realistically amount to an unjust burden.

Therefore since the action does not involve a common question of law or fact, and since pre-trial discovery and trial of the issues raised as against the Borough of South River would be much more effectively handled separately, it is respectfully submitted that the Court should order, pursuant to the provisions of R4:38-2 a severance of the claims made against this Defendant.

Respectfully submitted,


William H. Gazi