

CA - North Brunswick / Old Bridge

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Memorandum of Law in Support of Plaintiffs' Motion
to Modify and Enforce Judgment Against North
Brunswick and Old Bridge

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CA 0023282

URBAN LEAGUE OF GREATER NEW
BRUNSWICK, et al.,

Plaintiffs,

vs.

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

Defendants.

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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-MIDDLESEX
COUNTY

Docket No. C-4122-73

Civil Action

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS'
MOTION TO MODIFY AND ENFORCE JUDGMENT AGAINST
NORTH BRUNSWICK AND OLD BRIDGE

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other defendants and that a separate compliance hearing be held thereafter to determine what revisions in the townships' zoning ordinances are necessary to satisfy its constitutional obligation as embodied in the modified Judgment.

On May 4, 1976, Judge Furman, after the first trial in this action, declared the zoning ordinances of North Brunswick and Old Bridge to be unconstitutional. Urban League v. Carteret, 142 N.J. Super 11, 31-32/(1976). On July 9, 1976, he entered a Judgment in accordance with that opinion requiring the defendant towns to amend their ordinances and take affirmative steps to meet their fair share of the regional housing need for lower income families. Neither North Brunswick nor Old Bridge appealed that Judgment as did seven other townships, nor did they obtain an order of dismissal or compliance, as did two other townships that did not appeal (Sayreville and Edison). They/^{also} did not seek relief from the Judgment. Under ordinary circumstances the only issue would be enforcement of the Judgment. But this is no ordinary case.

In the appeal taken by the seven other defendants, the New Jersey Supreme Court clearly affirmed Judge Furman's holding that the zoning ordinances were unconstitutional. However, the Court found fault with certain aspects of his approach to the fair share allocation of housing need. South Burlington County NAACP v. Mount Laurel Township, 92 N.J. 158, 349-350, 456 A.2d 390, 489 (1983). In light of this, plaintiffs submit that it would be unfair to both plaintiffs and the two defendant townships and perhaps an error of law blindly to enforce the Judgment's original fair share allocation to these two townships.

Plaintiffs therefore request that the Court initially modify the fair share allocation in the Judgment.

The Court's power to make such a modification is beyond question. As the Supreme Court has said

"Quite apart from the rule [now R. 4:50-1], a court of equity has inherent jurisdiction to vacate or modify an injunction when by reason of a subsequent alteration in the rights and interests of the parties or a change in circumstances, the continued enforcement of the injunctive process would be inequitable, oppressive or unjust, or in contravention of the policy of the law. ... Even without a reservation of power to modify the decree for an injunction, 'power there still would be by force of principles inherent in the jurisdiction of the chancery. A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need.'

Johnson & Johnson v. Weissbard,
11 N.J. 552, 555-56, 95A.2d 403, 405 (1953),
quoting United States v. Swift & Co.,
286 U.S. 106 (1931).

But quite apart from this inherent power, this Court expressly "retain[ed] jurisdiction over the pending litigation for the purpose of supervising the full compliance with the terms and conditions of this Judgment," in paragraph 17 of its Judgment.

The modification of the fair share allocation of North Brunswick and Old Bridge should be made in a manner consistent with that applied to the other seven defendants. Plaintiffs submit that the fairest and most efficient method of doing so is to have the townships participate with the other seven defendants in the joint trial on the common issues of region, regional need, and fair share which is set for March 19, 1984.

Although there is no explicit Rule of Court addressing the question of joint trial for multiple defendants in the same lawsuit, relevant authority is drawn from the analogous rules for consolidation of different actions and for separate trials of different issues in a single action--Rules 4:38-1 and 4:38-2. A leading case in the area sets forth the relevant considerations:

The test under the rule is whether these actions involve common questions of law or fact arising out of the same transaction or series of transactions. The plain purpose of the rule was to eliminate multiplicity of litigation and to enable the courts so to arrange pending cases that the same facts and transactions would not undergo the inconvenience of double litigation."

Judson v. Peoples Bank & Trust Co.,
17 N.J. Super. 143,144, 85 A.2d 545, 546
(Ch. Div. 1951).

See also Flanagan v. Foster, 182 N.J. Super. 282, 287-88, 440 A.2d 1147, 1149-50 (App. Div. 1981); Quaglioto v. Bodner, 115 N.J. Super. 133, 278 A.2d 500 (App. Div. 1971); Kernbach v. Kernbach, 174 N.J. Super. 544, 417 A.2d 70 (Ch. Div. 1980).

"A practical test for the existence of an adequate common question is whether the same witnesses, evidence, exhibits or experts would have to be paraded again before the court at separate trials." 2 Schnitzer & Wildstein, N.J. Rules Service A IV-1500 (1967).

Clearly this case meets that practical test. If the Townships of North Brunswick and Old Bridge are not compelled to participate in the joint trial on common issues, and this Court does not give presumptive validity to its initial

determinations of region and regional need, then

"the court will find itself in a position where it will hear two lengthy and protracted trials in which the same witnesses, the same facts and the same testimony will be adduced.

Judson, supra, 17 N.J. Super. at 145,
85 A.2d at 546.

This would be both highly inefficient for the Court and, we submit, very unfair to plaintiffs, who are represented by public interest attorneys with limited resources. On the other hand, if North Brunswick and Old Bridge do not participate in the joint trial, and the Court does give presumptive effect to its ruling on the trial of the other seven defendants, the result might be unfair to the townships. The law provides a clear and simple solution to this problem--a joint trial.

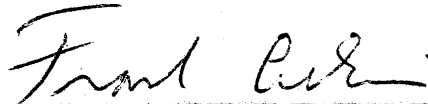
Participation in the joint trial scheduled for March 19 would not be unfair to the two townships. Like the Cranbury plaintiffs, they were aware at least as of the latter part of November that they might have to participate. They have received the reports of the court-appointed expert and the plaintiff's expert. Although they will clearly need some additional time to file answers to interrogatories and to submit any expert report they plan to rely upon, plaintiffs submit that, as with the Cranbury plaintiffs, sufficient time remains for them to complete these preliminary matters in time to participate in the joint trial. In any case, defendants which have neither appealed the Judgment, sought orders of

compliance with the Judgment, nor sought relief from the
Judgment, ^{for} options available to them/over seven years, should
not be heard to complain that they now are under some
pressure to comply with a Judgment that their law is un-
constitutional.

In any case, the townships need not be rushed
into preparing for the individual compliance hearings
on revision of their ordinances. Plaintiffs understand
that preparation of individualized defenses takes longer
than preparation of a general position on region and regional
need. We therefore have no objection to having the compliance
hearings on North Brunswick and Old Bridge held last and to
having a slight delay between the last of the first seven
compliance hearings (including the consolidated hearing on
Cranbury) and the commencement of the compliance hearings
for these two towns.

We believe that a prompt joint trial and slightly delayed individual compliance hearings will fairly and efficiently accommodate the competing needs and interests of the parties and the Court.

Respectfully submitted



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