

Urban League Plaintiffs' Memorandum of Law in Support of
Motion to Enforce Litigants' Rights

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SUPERIOR COURT OF
NEW JERSEY
CHANCERY DIVISION -
MIDDLESEX COUNTY
No. 4122-73
Civil Action

URBAN LEAGUE OF GREATER]
NEW BRUNSWICK, et al.,]
Plaintiffs,]
vs.]
THE MAYOR AND COUNCIL OF THE]
BOROUGH OF CARTERET, et al.,]
Defendants.]

(South Plainfield)

URBAN LEAGUE PLAINTIFFS' MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO ENFORCE LITIGANTS' RIGHTS

STATEMENT OF FACTS

The Urban League Plaintiffs' June 21, 1985 Motion set forth in detail the sorry history of South Plainfield's non-compliance with the mandate of Mount Laurel II and with the several orders of this Court. As a result of the showing then that the Borough

had been dilatory in adopting complying ordinances and intransigent in selling off municipally owned land that had been designated for Mount Laurel housing, this Court on July 3, 1985, ordered, inter alia, that the Borough complete legislative action by July 30, 1985, or face further sanctions.

On July 30, plaintiffs' attorneys were informed by the South Plainfield Borough Attorney that the council had voted the previous evening, 4-2, to table the pending Mount Laurel compliance ordinances. It therefore becomes necessary to seek the further aid of the Court in achieving Mount Laurel's promise of a "realistic opportunity" for low and moderate income housing in South Plainfield.

LEGAL ARGUMENT

A. Appointment of a master. In the July 3 Order of this Court, plaintiffs were entitled to seek appointment of a Master to recommend appropriate ordinance revisions to bring South Plainfield into compliance. There can be no question but that a Master is now needed, given the outright defiance that has been added to more than a year of unconscionable delay in this matter. See Mount Laurel II, 92 N.J. at 286, 287. It need only be added that the ordinances which were introduced on first reading on July 8 and tabled on July 29 are satisfactory in all respects to the Urban League (except for the technical requirement that specific block and lot numbers be added to the zoning amendments for identification and clarification), having been drafted after

extensive negotiations between the Urban League and Borough representatives. Accordingly, it is likely that the Master should be able to confine his or her review of the South Plainfield situation to the ordinances as submitted and report promptly to the Court.

B. The transfer motion. On July 22, almost a month after the hearing on the Urban League's TRO motion and only a week before the Court's deadline for the Borough to adopt complying ordinances, the Borough filed a motion seeking transfer of this action to the Affordable Housing Council to be created pursuant to the Fair Housing Act, S.2046 (signed by the Governor on July 3, 1985). It appears that the possibility of transfer is being used by the Borough Council as a justification for defying the Court's Order and for creating additional delay.

In effect, South Plainfield appears to be seeking a stay of enforcement proceedings pending the outcome of its transfer motion. Apart from the fact that the Council chose a self-help form of stay, rather than requesting appropriate modification of this Court's Order, its theory is seriously deficient. South Plainfield cannot show either that it is, on balance, harmed by a continuation of these compliance proceedings or that it is likely to prevail on the merits of its transfer motion. See Crowe v. DeGioia, 90 N.J. 126, 447 A.2d 173 (1982). By focusing now on the stay issue, the Court can avoid rendering premature decision on the standards for transfer, a more complex issue in every way.

As to balancing of harms, it might be appropriate under some other circumstances to stay the July 3 Order to allow the transfer motion to be heard first, in the interest of economy of judicial and municipal time, since transfer could delay enforcement to the point of mootness. In the specific circumstances of this case, however, the essence of the problem to be remedied is the past and continuing municipal obstruction, and any delay therefore does harm both to plaintiffs' rights and to the authority of this Court to have its orders obeyed.

Moreover, continuing the compliance process cannot harm the defendant. During the period that the Master is preparing his or her report, the transfer motion can proceed towards briefing and oral argument. After complying ordinances are in place, the Borough can then seek a stay of their implementation if it wishes, and the Court can consider this motion in the light of the likely decision on transfer. Using this procedure, however, if transfer is denied (as in all likelihood we believe it will be), the ordinances will be ready to go immediately, and plaintiffs will not suffer the additional delay of waiting into the autumn for the Master to report. All considerations of balance therefore favor going forward with the compliance process now.

As to the merits of the transfer motion, that issue is not now before the Court except insofar as a stay of proceedings is implicated, and nothing said in this context should preclude a much fuller presentation of views on a much wider set of issues when the transfer motion (or motions) are formally considered.

Even with the strictest and narrowest focus on the facts of this case, however, it risks understatement to describe the South Plainfield request to transfer as frivolous.

Under the Fair Housing Law, transfer is to be denied where "manifest injustice" would result. Sec. 16. It can safely be said that manifest injustice does not exist as a legal concept if it cannot be invoked to prevent transfer on the facts of this case.

This action recently celebrated (if that is the appropriate word) its eleventh birthday, having been filed in July, 1974. In more recent times, based on a voluntary stipulation of the parties, this Court entered a Judgment and Order finding South Plainfield in non-compliance and detailing the necessary site-specific relief on May 22, 1984. The 120-day period allowed by this Order for remedying the constitutional violation has stretched to more than a year, and such "progress" as has been made towards compliance has been achieved only after the Urban League twice sought the further aid of the Court. Had South Plainfield shown even a modicum of cooperation after the entry of judgment against it, a judgment of compliance and repose could have been entered many months ago, leaving nothing to transfer.

Under the new law, it will be 1986 at the earliest before the Affordable Housing Council can review individual cases, and the bulge of transferred cases during the start-up period will undoubtedly make further delays inevitable. While the intent of the Legislature to shift to an administrative procedure must be recognized, and while delay is a necessary consequence of the

creation of new structures such as the Affordable Housing Council, the drafters of the Act understood that during the transition period some cases would have to remain in the Courts. Unconscionable obstructionism is the essence of the problem in South Plainfield; whatever else "manifest injustice" may mean when that phrase is fully construed by the Courts, it at least means that South Plainfield must face the fact that compliance cannot be delayed any longer.

C. Costs and fines. While the Urban League Plaintiff's principal interest in this case is not monetary, we do believe that intransigence requires sanction, in order to preserve the integrity of the judicial process for further litigation.

As to fines, enforcement of litigants' rights pursuant to R.1-10-5 allows the Court to impose any of the sanctions permitted under Rules 1-10-1 through 1-10-4, although the decision to seek these sanctions are under the control of the Court rather than the individual litigant. As noted by the Supreme Court in In re Fair Lawn Education Association, 63 N.J. 112, 121 (1973):

The question is what may be done when, as here, a corporation persists in defying the judicial process. We must return to the principle of necessity upon which the summary power rests and depends. . . . Necessity, the ultimate test in this controversy, counsels that there be no artificial monetary limitation upon the summary process when an injunction is defied.

In Fair Lawn, a \$17,350 fine was approved by the Court for violation of a no-strike order. Plaintiffs thus submit that the Court, in its discretion, should consider a proceeding to settle a substantial penalty against South Plainfield for its unconscionable defiance of the Court's previous Orders.

In addition, the Urban League Plaintiffs are equitably entitled to compensation for their damages in connection with these proceedings. As an institutional, non-profit organization seeking to vindicate the constitutional interests of unidentified individuals, actual damages in the customary sense of lost profits cannot be shown, of course. Nonetheless, the cost to plaintiffs in terms of attorney time has been substantial, particularly in that the hours necessary to prepare, argue and police these restraining motions against South Plainfield diverts the limited amount of time available for preparation of the substantive matters involved in the eight other defendant municipalities.

Private compensation for damages resulting from violation of a Court order has been recognized in "numerous cases, both federal and state," Mantell v. International Plastic Harmonica Corporation, 138 N.J. Eq. 562, 578 (Ch. 1946), modified on other grounds, 141 N.J. Eq. 379 (E. & A. 1947), and the basic ground rules have been set out by the Supreme Court in Department of Health v. Roselle, 34 N.J. 331 (1961). The cost of bringing enforcement proceedings has been recognized as an element of compensable damages. See Leman v. Krentler-Arnold Hinge Last Company, 284 U.S. 448, 455 (1932). Plaintiffs ask an opportunity to prove these costs by an appropriate supplemental submission.

For all of the foregoing reasons, the Urban League Plaintiffs respectfully request the relief sought against the Borough of South Plainfield.

Respectfully submitted,

John M. Payne by Bgw

BARBARA J. WILLIAMS, ESQ.

JOHN M. PAYNE, ESQ.

ERIC NEISSER, ESQ.

Attorneys for the Urban League
Plaintiffs

Dated: August 1, 1985

FILED 8-2-85
IN CHAMBERS
EUGENE D. SERPENTELLI, A.J.S.C.

DRAWER
8-2-85

ABRAMS, DALTO, GRAN, HENDRICKS & REINA

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ATTORNEYS FOR Baker, Oshins, Silverman, Suchman, March, Scala, Ferry and Stepic

URBAN LEAGUE OF GREATER NEW BRUNSWICK,
ET ALS.,

Plaintiffs,

vs.

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

Defendants.

SUPERIOR COURT OF NEW JERSEY

CHANCERY DIVISION
MIDDLESEX COUNTY
No. C-4122-73

ELDERLODGE, INC., a New Jersey
Corporation,

Plaintiff

vs.

SOUTH PLAINFIELD BOARD OF ADJUSTMENT
BY ITS MAJORITY MEMBERS, etc., et als.

Defendants.

LAW DIVISION
MIDDLESEX COUNTY
No. 56349-81

Civil Action

ORDER

This matter having been opened to the Court on Motion based on an Order to Show Cause, pursuant to Rule 1:6-2, filed by ABRAMS, DALTO, GRAN, HENDRICKS & REINA (Angelo H. Dalto, Esq. appearing on behalf of moving parties); and ERIC NEISSER, Esq., appearing on behalf of the plaintiff, Urban League, and said plaintiff having opposed the Motion; and defendant Mayor and Council of the Borough of South Plainfield through counsel, FRANK A. SANTORO, Esq., having expressed no opposition to the Motion; and the Court having reviewed the moving papers, together with affidavit in support thereof, and being satisfied that all affected parties have received notice of the Motion, together with the pleadings related thereto, and for good cause shown;

It is, on this 2 day of August, 1985, ORDERED
AS AMENDED BY THE ORDER OF JULY 19, 1985
that the Order of this Court, dated July 3rd, 1985, be modified to the extent that building permits and accompanying inspections, etc., shall be specifically issued to the moving parties for the affected properties known as:

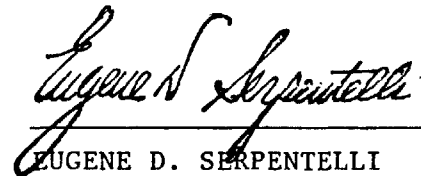
(a) Lot 67, in Block 528, South Plainfield, relative to the "Hadley Plaza" and more particularly for a building permit to be issued, and the accompanying inspections, to the Somerset Trust Company, to construct a branch bank.

(b) Lot 46.24, in Block 528, South Plainfield, building permits shall be issued and the accompanying inspections made with respect to the completion of interior accommodations for individual tenants, and more particularly, but not restricted to, Wagner Associates Inc., the New Jersey Education Association, and First Jersey National Bank.

(c) Lot 46.21, in Block 528, South Plainfield, any and all building permits and accompanying inspections shall be issued with respect to the

existing building located on said property, and more particularly with respect to, but not restricted to, building permits and inspections for Sterling Electronics Inc. to occupy the existing building on said property.

It is FURTHER ORDERED that the remaining requests for relief included in said moving papers be held in abeyance pending action by the defendant Mayor and Council of the Borough of South Plainfield on July 29th, 1985, relating to the final adoption of certain amendatory Zoning Ordinances encompassed within the Final Judgment entered by this Court on May 22nd, 1984. In the event the Mayor and Council of the Borough of South Plainfield do not adopt the amendatory Ordinances then and in that event the moving parties may request further action by this Court, regarding the remaining requests for relief contained within the moving papers submitted to the Court, from the terms and conditions of the Order of this Court entered on July 3rd, 1985.



EUGENE D. SERPENTELLI A.J.S.C.

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On Behalf of ACLU of NJ

N/M
; AFF

SUPERIOR COURT OF NEW JERSEY

URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et al.,

Plaintiffs,

vs.

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

Defendants.

ELDERLODGE, INC., a New Jersey
Corporation,

Plaintiff,

vs.

SOUTH PLAINFIELD BOARD OF ADJUSTMENT
BY ITS MAJORITY MEMBERS (Ronald
Hepburn, Chairman; Carl Abbruzzese;
Robert Horne; Carl La Ferrara;
Cynthia GaNun, First Alternate);
BOROUGH OF SOUTH PLAINFIELD BY ITS
MAYOR AND COUNCIL; JOHN GRAF,
BUILDING INSPECTOR OF THE BOROUGH OF
SOUTH PLAINFIELD; and PLANNING BOARD
OF THE BOROUGH OF SOUTH PLAINFIELD,

Defendants.

CHANCERY DIVISION
MIDDLESEX COUNTY
No. C 4122-73

LAW DIVISION
MIDDLESEX COUNTY
No. 56349-81

NOTICE OF MOTION

TO: The Honorable Eugene D. Serpentelli
Assignment Judge, Superior Court
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Toms River, N.J. 08754

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Clerk, Superior Court
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PLEASE TAKE NOTICE that upon short notice to be
determined by the Court, the Urban League Plaintiffs will move
for an Order enforcing litigants' rights for having violated

this Court's Judgment As To South Plainfield, filed May 22, 1984; this Court's Order of December 13, 1984; and this Court's Order of July 3, 1985.

TAKE FURTHER NOTICE that Plaintiffs will also move, pursuant to ¶2 of the Order of this Court, entered on July 3, 1985 for the appointment of a Master to submit forthwith a proposed compliance plan for South Plainfield for the Court's immediate consideration.

TAKE FURTHER NOTICE that the Urban League Plaintiffs will also move for award of costs and counsel fees against the Township of South Plainfield, South Plainfield Planning Board and South Plainfield Board of Adjustment.

Plaintiffs will rely on the Affidavit of the undersigned annexed hereto and all documents filed in support of Plaintiffs' Motion dated June 21, 1985.

Dated: July 30, 1985


Barbara J. Williams
Co-Counsel for Plaintiffs

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 201/648-5687
 ATTORNEYS FOR URBAN LEAGUE PLAINTIFFS
 On Behalf of ACLU of NJ

SUPERIOR COURT OF NEW JERSEY

URBAN LEAGUE OF GREATER]
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 THE MAYOR AND COUNCIL OF THE]
 BOROUGH OF CARTERET, et al.,]
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CHANCERY DIVISION
 MIDDLESEX COUNTY
 No. C 4122-73

ELDERLODGE, INC., a New Jersey]
 Corporation,]
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 Plaintiff,]
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 vs.]
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 SOUTH PLAINFIELD BOARD OF ADJUSTMENT]
 BY ITS MAJORITY MEMBERS (Ronald]
 Hepburn, Chairman; Carl Abbruzzese;]
 Robert Horne; Carl La Ferrara;]
 Cynthia GaNun, First Alternate);]
 BOROUGH OF SOUTH PLAINFIELD BY ITS]
 MAYOR AND COUNCIL; JOHN GRAF,]
 BUILDING INSPECTOR OF THE BOROUGH OF]
 SOUTH PLAINFIELD; and PLANNING BOARD]
 OF THE BOROUGH OF SOUTH PLAINFIELD,]
]
 Defendants.]

LAW DIVISION
 MIDDLESEX COUNTY
 No. 56349-81

AFFIDAVIT OF
 BARBARA J. WILLIAMS

STATE OF NEW JERSEY)
 : ss.:
COUNTY OF ESSEX)

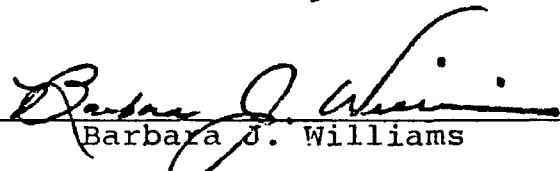
I, Barbara J. Williams, being duly sworn according to law,
on oath, depose and say:

1. I am an attorney at law of the State of New Jersey and
co-counsel for the Plaintiffs in the above-captioned matter.


2. The July 3, 1985 Order of this Court required, inter
alia, the Council of the Borough of South Plainfield to adopt
the final versions of the zoning and affordable housing ordinances
no later than July 30, 1985.

3. The article annexed hereto as Exhibit A was published
in the Home News of July 30, 1985.

4. On July 30, 1985, I telephoned Frank Santoro, Esq.,
attorney for South Plainfield. He confirmed that at its meeting
of July 29, 1985, the Council of the Borough of South Plainfield
by a 4-to-2 vote tabled the Zoning and Affordable Housing Ordinances.


Barbara J. Williams

SWORN TO and SUBSCRIBED
before me this 30th day of
July, 1985.


Attorney at Law, State of N.J.

Home News 7/30/85

S. Plainfield council votes to defy judge on Mt. Laurel

By Lenny Melisurgo
Home News staff writer

SOUTH PLAINFIELD — The borough has defied a judge's order to revise its zoning laws by today, in the hope that the same judge will allow the borough to take its case before a state panel formed to consider affordable housing issues.

The Borough Council voted 4-2 last night to table two ordinances that would have helped South Plainfield comply with the state Supreme Court's Mount Laurel II ruling, which requires developing communities in New Jersey to zone for their "fair share" of housing for families with low and moderate incomes.

The four council members who supported the move argued that the borough should not revise its zoning laws, as the state ruling requires, until Superior Court Judge Eugene Serpentelli takes action on a recent appeal by South Plainfield to go before a new state housing panel that was formulated under legislation signed July 3 by Gov. Thomas Kean.

The legislation gives municipalities involved in Mount Laurel litigation the option of appealing to the new housing panel, which will develop a set of guidelines that municipalities must follow in conformance with the court's affordable housing orders.

The borough filed its appeal two weeks ago, but Serpentelli has not yet ruled on it.

The two council members who voted "no" last night, Democrats Addie Levine and Daniel Gallagher, feared that the voting delay will prompt Serpentelli to impose harsh sanctions on the borough.

They said the judge could fine South Plainfield \$5,000 a day and appoint a state planner to rezone the

borough.

"Judge Serpentelli said we must make a decision to revise our zoning ordinance by July 30 — that's tomorrow," Levine said last night at a public hearing. "If we don't vote tonight, they're going to send a planner here and we're going to have our whole town rezoned."

Gallagher said the judge also may make the borough pay all the legal fees incurred by the Civic League of Greater New Brunswick, the party that filed a suit 11 years ago to force suburban municipalities to provide housing for low-income families. Those fees, he said, could amount to hundreds of thousands of dollars.

Because of the borough's resistance to Serpentelli's 1984 order to rezone, the judge earlier this month issued a court order that prohibits South Plainfield from issuing any building permits for new construction until the council agrees to amend the borough's zoning laws.

That court order is still in effect.

Mayor Michael English, who is not eligible to cast a vote unless a tie emerges, was outraged by the outcome of the voting last night.

"The actions taken by the council tonight were pre-planned commitments to state publicly that they (the Republican council members) are against what they conceive to be Mount Laurel II, with total disregard for what happens to the people of South Plainfield," English said after the hearing. "They are putting their misguided political concept before realistically approaching a problem that could still be solved."

One ordinance would authorize the borough to revise its zoning laws to provide for 280 affordable housing units required immediately under Serpentelli's 1984 order. The other would authorize South Plainfield to create an Affordable Housing Agency.