

ML

Old Bridge

17-Sep-81

Transcript of Defendant Sewerage
Authority's Motion to grant order to
reinstate Complaint and extension
for time of Discovery.

pgs = 52

ML000513M

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MIDDLESEX COUNTY
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TRANSCRIPT
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O & Y OLD BRIDGE DEVELOPMENT
CORP., et. al., :

Plaintiffs, :

-vs- :

TOWNSHIP OP OLD BRIDGE, et. al., :

Defendants. :

July 2# 1981
Hew Brunswick, New Jersey

B E F O R E :

HONORABLE J. NORRIS HARDING, J. S. C.

A P P E A R A N C E S :

HENRY A. HILL, ESQ., and
GOLLET F. HIRSCH, ESQ.,
For the Plaintiffs.

LOUIS J. ALFOHSO, ESQ.,
For Defendant Township of Old Bridge.

THOMAS NORMAN, ESQ.,
For Defendant Planning Board*

LOUIS E. GRANATA, ESQ.,
For Defendant Sewerage Authority*

Jeanette Voight, C. S. R.
Official Court Reporter
Middlesex County Courthouse
Hew Brunswick, Hew Jersey 08901

1 MR. GRANATAS One minor matter is for the form of
2 the motion that was heard*

3 THE COURT: I'm not sure that's listed today, and
4 I had asked, if you recall, the Court Reporter present
5 at the time to prepare me at least the excerpt trans-
6 cripts* I've not yet been furnished with that, so I
7 really at not prepared to deal with the form of the
8 prior orders.

9 MR. GRAKATAS All I was going to suggest, Your
10 Honor, is that reading both orders, they say the same
11 thing different way.

12 MS* HIRSCH: We don't agree*

13 THE COURTS You want to try informally to discuss
14 it in Chambers?

15 MR. GRANATA: I think it would be fruitful*

16 MR* HILL: Your Honor, we don't have those files*
17 We have a complex filing system*

18 Do we?

19 MS* HIRSCH: Yes, X do.

20 THE COURT: First of all, I have a letter from
21 Miss Hirsch dated June 24th which encloses an original
22 and three copies concerning the libel count*

23 is there any objection to that order by anybody?

24 MR* GRANATA: That does not affect the Sewer
25 Authority, and it is the Township's count*

MR* HIM.: Mr* Alfonso-

THE COURT: I've not received any objection on that, so X think more than the requisite time has elapsed, and X think X can sign this order* Want to conform the copies and give that to Miss Hirsch*

Now, the other--now, Mr* Granata sends me two orders* Are they both objected to?

MR, GRANATA: X don't believe so, Your Honor* The one order allowing reinstatement of the complaint is not objected to*

MS* HIRSCHI That's correct*

MR* GRANATA: And extension of time of discovery,

MS* HXRSCH: That's correct*

THE COURT: So that one X can sign* Want to conform that one and give that back to Mr* Granata*

Wait a minute, X think X gave you too much, Joe*

How, the other thing seems to be Mr* Granata*s proposed form of an order versus plaintiff's proposed form of an order* Is that where we are?

MR* GRAHATA: Yes.

THE COURT: Now, where are the differences?

MS* HIRSCH: Basically, Your Honor, Mr* Granata*s order is framed to grant summary judgment on the ground of failure to exhaust administrative remedies as to several counts of the complaint, except for a specific

1 question which he puts in quotes. My recollection of
2 Your Honor's ruling was that summary judgment was f
3 denied on that ground as to each of the counts of the
4 complaint.

5 Also, we would like a paragraph at the end of the
6 order that would allow us to amend out pleadings to
7 conform to any proofs or later-discovered evidence*
8 Mr, Granata's order would not permit us to do that*

9 THE COURT: You want a paragraph to what? I'm
10 sorry.

11 MS. HIRSCHj Permit us-

12 THE COURT; To amend your pleadings?

13 US* HIRSCH: To amend the pleadings to conform
14 with any later-discovered evidence, or to conform with
15 the proofs,

16 THE COURT: why would it not be more appropriate
17 if you do have such an application to make it at that
18 time? Rather than just kind of a blanket open door*

19 MS. HIRSCH: This isn't really-

20 THE COORTs X mean, is this something new that's
21 being proposed for the first time?

22 MS* HIRSCHs No, it's not* The reason &r that
23 language is basically the way Mr, Granata's order is
24 framed. He leaves us with just one-you know, one
25 specific question in each count, and it could be read,

1 basically, wipe out all of the factual allegations
2 which proceeded in that count of the complaint, f#r
3 prohibit us from amending at some later time without
4 exhausting administrative remedies. X don't believe
5 that was your intention.

6 For example, Defendant Sewer Authority's motion
7 for summary judgment as to allegations in the sixth
8 count of the complaint is granted as to all issues
9 except whether the application and inspection fees
10 contained in the Authority's rules and regulations are
11 reasonable*

12 MR* GRANATAi That is my understanding, Your Honor,
13 at the hearing that was the only issue left, and rather
14 than make a very complex order, it would be very plainly
15 put forth that that's the issue that Mr* Hill said is
16 left between the Sewerage Authority and 0 4 Y, on that
17 particular allegation*

18 MS. HIRSCHI There may be very few substantial
19 differences between the two orders, except there would
20 be few motions in this case. Although our proposed
21 order may be longer, anyone reading that order can tell
22 what the Sewerage Authority's motion was, and what
23 your specific ruling on it was, and that was our inten-
24 tion,

25 MB* HILL: Your Honor, we get into conceptual

problems, as we got into on the issue of whether or not
the conspiracy count had been dismissed on-

THE COURT: I'm going to have to await the trans-
cript before I'm able to make that determination. Okay?

MR. GRANATA: Only problem I have with Ms. Hirsch's
order is that it appears that her order is dismissing
that issue of application in inspection fees. Conced-
ingly, the Court has denied the motion for dismissal
for exhaustion of remedies. The way the proposed order
is written says it is denied except as to any issue
other than the issue of application and inspection fees,
as I read it, as saying that issue is out.

THE COURT: I'm going to await, before I decide it,
the appropriate form of the order, my transcript. Okay?

As I understand it, I have two formal motions set
down to be determined today. One is the motion made
with respect to the conspiracy count, Count Ten; a
second motion made by plaintiff for partial summary
judgment on the counterclaims alleging abuse of process
by plaintiffs. And then there is an ex-parte matter
which I thought that we should also address ourselves
to today, and that being Old Bridge's motion to dismiss
the complaint in its entirety for failure to answer
interrogatories because sixty days has expired.

I think they're the three motions that I would

1 have* Anybody know of any other motions?

2 MR. ALFONSO: I'm not aware of any others, Your
3 Honor, however X would advise the Court that in today's
4 mail my secretary advises me that we received the
5 interrogatories from--

6 THE COURT: Answers to interrogatories?

7 MR. ALFONSO: x did not think that X had submitted
8 a motion, but rather an ex-parte order for the Court on
9 Tuesday, But, in any event, since it appears either
10 interrogatories were supplied to my office this morning,
11 X withdraw my application for the ex-parte--

12 THE COURT: All right* Harked withdrawn, then*
13 Thank you*

14 MR. ALFONSO: x might also add, Your Honor men*
15 tloned when we were here last time, that there was a
16 motion regarding demand by my clients that plaintiff's
17 post security for costs, and apparently the Court is
18 going to treat that as a motion.

19 We did not file the motion or request that a
20 motion be heard by the Court, but in any event, based
21 on your response that we have received from the plain-
22 tiff in your memorandum, it appears that they do own
23 substantial property in Old Bridge, although X have not
24 yet had an opportunity to have the deeds checked to
25 determine whether or not that is correct* But on that

1 basis, and on the basis that they do have the corporate
2 vice president in the State, and had we received
3 answers to interrogatories--

4 THE COURT: Can X just--

5 MR* ALFOHSOT We're not pressing-

6 THE COURT: Can X say to you my understanding of
7 the agreement between the parties the last we were
8 together, as X decide that on the papers, X have
9 decided, and X think there's a letter opinion in the
10 mall* Okay?

11 Would you give that to Mr* Alfonso* Saving
12 thirty-six cents* Thirty-six cents is important*

13 All right* Which motion--well, X have a preference.
14 1*11 exercise that* On plaintiff's motion for partial
15 summary judgment on counterclaims regarding abuse of
16 process, haven't X already decided this at one point in
17 time, very first motion day?

18 MR. NORMAN: Yes*

19 MS* HIRSCH: It was my recollection that was one
20 of the motions put off until a Judge was permanently
21 assigned to the case* Xs that Incorrect?

22 THE COURT* It's incorrect as to my recollection*
23 What X thought X had done with that Is that X denied
24 it without prejudice to your renewing it after discovery
25 had been completed*

1 MS* HIRSCH: That may well be.

2 THE COURT: Anybody want to relltigate that? I'll
3 set forth my reasons again, as I understood then to be
4 at that time, and still understand them to be.

5 Apparently all counsel concede that in order to
6 proceed on a counterclaim of abuse of process, the two
7 elements are bad faith and, secondly, some act committed
8 by the defendant on the counterclaim after the process
9 has been issued that would somehow be construed to
10 subvert the purpose of the process itself*

11 I have received affidavits# X thought, from town
12 officials* X can't recall exactly whom, but the thrust
13 of the affidavits had to do with at least in part the
14 concept of conducting the press conference after filing
15 the original claim was at least alleged to be an act
16 Intended to duress or put pressure on various town
17 officials, either to remedy the zoning law or Influence
18 the election, or something of that nature# and at least
19 in part it was the thrust of that affiant that he or
20 she felt that could be construed as the act after the
21 service of process, mainly the discussion with the presjs,
22 intended to subvert some of the given purpose*

23 Whether that ultimately is going to bear any fruit
24 or hold water or what, X don't know, but it would seem
25 to me it would at least raise the factual question at

1 least to deny application for summary judgment until
2 after we've had discovery and explored those issues.

3 Okay?

4 There's nothing new to be added then, and I will
5 simply reaffirm the denial of the partial summary
6 judgment on that basis without prejudice to it being
7 remade.

8 Okay. That leaves us with other—the last motion
9 made, I guess, by all defendants with respect to count,
10 conspiracy count*

11 May X ask counsel whether there are any cases that
12 you found in your research that address a conspiracy
13 count in the setting of a prerogative writ action?

14 HE* ALFONSO: X could not find any in this as far
15 as prerogative writ action.

16 MR. HORMAN: x found none, either.

17 THE COURTS What about plaintiff? X understand
18 there's such a thing as civil conspiracy, but is there
19 really one in the setting of a prerogative writ action?

20 MS. HIRSCH: There are cases under Section 19-83,
21 Federal Civil Rights Statute, which involve—

22 THE COURTS Don't they seek money damages?

23 MR* ALFONSO: Not only do they seek money damages,
24 but they're not allowed on the basis of conspiracy, and
25 this would be part of my argument; that they're allowed

1 on the basis of violation of the Fourteenth and Fifteen
2 Amendments, nothing to do with Section 19-33 of the
3 U.S. Code 43, 19-33. So they do not address themselves
4 to the conspiracy, but rather due process*

5 So I just don't think there's any authority at all,
6 not only in the context of prerogative writ action, but
7 in larger context to addressing the proceeding against
8 the governmental entities itself*

9 MS, HIRSCH: Your Honor, X did forget to mention
10 one case* Alan Dean Corp. v. Township of Bernards
11 (phonetic spelling), which was recently settled\$ but
12 that litigation did involve conspiracy claim against
13 a Somerset County Planning Board and governing bodies
14 of four or five Municipalities in Somerset Hills*
15 Additionally, we're alleging claim of violation of the
16 Hew Jersey Constitution and Supreme Court orders pur-
17 suant to the Court's interpretation of the constitu-
18 tional requirements. I think it is necessary to keep
19 the conspiracy count in, in order to connect up the
20 actions of all of these defendants, which would other-
21 wise seem to be independent actions.

22 X mean, we need the right to get discovery, to
23 find out if indeed all of these were pursuant to a
24 common goal* They appear to be at this time.

25 MR. ALFONSO: I'm not saying that they can't bring

1 conspiracy action, but it's a two-edged sword. Just
2 as they can't bring an action against the township
3 council, can't bring an action for libel against them,
4 but the individual council members/perhaps could.

5 If they're alleging conspiracy, the conspiracy
6 action has been addressed to the individual council
7 members and not the governing body itself. And in one
8 of the cases cited in their own brief, they list number
9 of cases on Page 2, and I went through each of those
10 cases, the Page 2 Number B, Sixth Caaden Corp. v.
11 Township of Evesham, and I'm quoting on Page 730 of
12 that case where the Federal Court said: In addition
13 to naming the Individual members of the township council
14 as defendants, plaintiff has named the council itself
15 as an entity, a defendant. The council is joined in
16 the township's motion and then goes in and gives back-
17 ground what a township is in Hew Jersey.

18 A township is municipal corporation of the State
19 of New Jersey adopted council-manager plan, and Old
20 Bridge has a council with a manager. And then it says
21 it's apparent from the statutory scheme for the purposed
22 of a Federal Civil Rights action, there is no meaningful
23 distinction to be made between the township and the
24 council*

25 It follows that disposition of the council's motiob

1 must be in all regards parallel to that of the township,
2 and again it says, quoting a number of cases, the
3 governing body is indistinguishable from the municipi-
4 palities. Then it goes on to say an action for con-
5 spiracy under 42, 42 U* S* 19-83, are not permitted in
6 this line of cases. But what is permitted is an action
7 under 28 U, S. C. 13-31, and that is the section which
8 just says that Federal Courts have jurisdiction in all
9 civil actions arising under constitutional laws or
10 entreaties of the U. S., and then they allowed some
11 of these cases to proceed if there's an alleged viola-
12 tion of the Fifth or Fourteenth Amendment, the so-
13 called due process argument, and in there they use the
14 federal zoning standard, whether or not the action of
15 the council deviated and deprived the applicant of our
16 violated public health safety morals or welfare* That
17 would be tantamount In New Jersey whether you have
18 different standard, whether the action is arbitrary,
19 unreasonable and capricious. That would be allowed
20 against our township council* Just as federal where
21 they have their own standards where there's due process
22 arguments, but they don't allow a conspiracy count to
23 exist* She says, well, we're not alleging conspiracy,
24 we're alleging constitutional argument* X have to go
25 by what's in front of the Court* Count Ten does not

1 make out a constitutional argument. It alleges a con-
2 spiracy and alleges entered into an unlawful agreement
3 to serve. It alleges specific violation of the
4 Defendant Township Council, and I quote: The Council,
5 Planning Board, Sewer Authority and Utilities Authority
6 have conspired to violate the specific directions of
7 the New Jersey Supreme Court in Oakwood at Madison*
8 Now, council can't do that against governing body* If
9 they want to make that allegation, the allegation
10 should be addressed in the individual members ~~of the~~
governing body*

12 There's no distinction both-and as the Federal
13 Court says-between the municipality itself and a
14 municipality's governing body, and that's why we agreed
15 last time we were here, as far as that libel suit is
16 concerned, the governmental body represents the people
17 and is the sovereign that cannot maintain an action
18 against the plaintiff-yeah, against the defendant in
19 those cases, but the individual members might be able
20 to*

21 So if they want to allege a conspiracy, not only
22 allege it, but not against these defendants, let them
23 allege it against the individual defendants* We should
24 not be held to a different standard than they are held
25 to.

1 Our standard is we're governmental entity; there-
2 fore, we can't file counterclaim for libel; sane thing
3 ought to apply to them. He're ft governmental entity*
4 We're a soverign. Our rights and obligations are set
5 by State Statute, and it would be ultra vires for
6 governmental entity to conspire to violate court action
7 or court order> that if that conspiracy is going to
8 exist, there are mental processes that are going to
9 occur. Those mental processes would be done by the
10 individual members of the council, a separate entity*
11 And a lot of these federal cases that they list here,
12 Steel Hill Development and Sixth Camden itself, a
13 number of defendants are Included. Hot only the
14 governmental entity, but the individual defendants.

15 They did not put the individual defendants in here.
16 There's whole line of cases* Steel Hill, Sixth. Camden,
17 etcetera. Hone of those cases allow conspiracy* Hot
18 single one allow conspiracy against government entity*

19 THE COURTS What was the nature, though, of the
20 remedy in all those remedies?

21 MR, ALFONSO: They were damages* Confined pre-
22 rogative writ* X spent lot of hours and couldn't find
23 it*

24 THE COORTs Does any defendant contend that the
25 plaintiffs here do not have a right to allege that

1 their various boards or agencies, whatever they repre-
2 sent, does anybody contend that the plaintiffs do not
3 have a right to allege that such boards or agencies
4 brought about jointly unreasonable rules, regulations
5 or ordinances?

6 MR* ALFONSO: That X think they can say, but
7 they're not saying that* They are saying we speci-
8 fically conspired, governmental body and entity con-
9 spired*

10 THE COURTS What happens, the term *conspiracy*
11 became a buzz35 word, become stigmatized*

12 MR. ALFONSO? Becomes we won't allow you conspiracy
13 under one federal statute, but we'll allow you to go in
14 under constitutional argument and due process Fifth and
15 Fourteen* They haven't made that argument here* What
16 they made before the Court here is conspiracy argument.

17 X submit there's no constitutional allegation here.

18 MR* NORMAN: x take that position. X think that
19 each board acts independently*

20 THE COURTS X realise that may be your position
21 ultimately, but do you deny the plaintiff the right to
22 make an argument that the boards acted jointly in
23 bringing about something that was unreasonable or
24 arbitrary, and if so, why do you say that they can't
25 allege that? X know that you don't agree that they did

1 that, but why can't they allege that?

2 MR, ALFONSO: Because it*8 ultra vires what a
3 board can do,

4 THE COURT: Well, is it ultra vires for a board to
5 do something unreasonable?

6 MR* ALFONSO: No, it's not.

7 THE COURT: It's not? Isn't it arbitrary?

8 MR. ALFONSO: There's wide band of discretion, and
9 whether there*s abuse of that discretion. But they're
10 saying the board sat down, specifically said that we're
11 going to violate a constitutional mandate of the
12 Supreme Court. X got to go by what's in the complaint.
13 They don't allege what you say*

14 MR* NORMAN: Public policy argument, basically.

15 I agree they have a right to allege that, but direct
16 implication of that is very complex and costly in
17 litigation that we're going through right now* The
18 implication of that sort of a count basically involves
19 three or four or five agencies in any municipality, and
20 it has to, because there's agencies do jointly operate
21 by mandate of statute* And X think as a public policy
22 argument, much in the same vein as the case which was
23 brought before the Court at our last hearing, concern-
24 ing conspiracy, the ability of a governmental entity
25 to bring a conspiracy charge should hold, and that is

1 that given the public policy against multiple complex
2 litigation, particularly with respect to municipalities
3 and given the statutory requirements of cooperation
4 among the various bodies, X think this Court can find
5 while it's possible, it really should not be permitted*

6 THE COURT: If you concede, as X think you must,
7 that an agency, within their own members, can concep-
8 tually and have in the past, through their meetings and
9 through their discussions, come up with rules, regula-
10 tions or ordinances which are unreasonable, arbitrary
11 and in violation of the Constitution, X mean that's a
12 justiciable issue, why is it improper to allege that
13 multiple agencies who have a mandate to cooperate with
14 each other could not have illegally cooperated to come
15 up with the same result?

16 MR. NORMAN: First of all, I'm not sure it's
17 necessary. I'm not sure what it is in the case, in any
18 respect.

19 THE COURT: Seems to me what the plaintiff wants
20 to say here, that because of the requirements the
21 boards cooperate, it's also possible that boards will
22 not cooperate, or will cooperate to achieve something
23 that should not be their proper and lawful aim* And
24 if they so do that, and that the result is something
25 unreasonable, why they can't allege that the boards

1 have crossed their own individual agency lines to bring
2 that about*

3 Wouldn't you agree that they have to cross their
4 own individual agency and body lines under the Land Use
5 Act to bring about something that should be brought
6 about?

7 MR. GRAHATA; If X may answer that.

8 THE COURT: Sure.

9 HE. GRANATAi That would necessarily require an
10 allegation that that occurred and something to indicate
11 that it did occur. What we are faced with here is an
12 allegation that there was a violation of a 1977 Supreme f-
13 Hew Jersey Supreme Court case that there are certain
14 constitutional requirements that are violated.

15 If we look at the rules and regulations of each
16 one of these bodies, their ordinances and their res|q|Lu-
17 tions, none of that fits into any pattern that could
18 even indicate that there was such a joining or meeting
19 of the minds.

20 THE COURT; But I'm not here to argue the point
21 whether or not they can prove it. I think we're at the
22 threshold question whether they can allege it.

23 MR. GRAHATA: They may allege it as in a conspiracy
24 where there is an indication that there is something of
25 that sort going on. There has to be at least a prima

1 facie showing in order to withstand any motion to
2 dismiss for failure to state a claim upon which it
3 could be granted. There has to be some prima facie
4 showing.

5 THE COURT: What you're talking about now in terms
6 of showing whether they're entitled to summary judgment,
7 I don't think that's the thrust of the motion that you've
8 made.

9 MR. GRAN ATAJ My motion is summary judgment for
10 failing to make a prima facie statement*

11 THE COURT: Well, someone made the same type of
12 motion in terms of failure to state a cause of action.

13 MR. NORMAN; Yes.

14 THE COURT: I'm not sure that I'm prepared to
15 deal with summary judgment, particularly since the
16 discovery isn't complete. But on failure to state a
IX cause of action-

18 MR* NORMAN; That was my argument. X think it's
19 this: It finds its genesis in the federal line of
20 cases. Up until Hondale ys« New tork City, federal
21 law was that a municipality was not a person and,
22 therefore, could not be charged with violation of
23 civil rights.

24 Federal Supreme Court decided that a municipal
25 entity is a person under the act and, therefore,

1 chargeable under conspiracy doctrine for damages*

2 My position that the municipality is a body
3 politic and is the entity-

4 THE COURT: Nobody is seeking money damages*. The
5 plaintiff is not seeking money damages because of a
6 conspiracy. What they simply seem to be saying is
7 that you--that your boards--this is their allegation--
8 jointly acted together in an improper manner*

9 Now, what's wrong with saying that if that's what
10 they really mean?

11 MR. ALFONSO: Because the board itself, there's
12 a threshold point, and when that threshold point is
13 reached, the board as a governmental entity can't do
14 it. You could make the argument on a respondeat superior
15 analogy•

16 If X have a cop who works for me And I'm in the
17 municipality, if that cop injures somebody, the muni-
18 cipality is responsible by agency relationship. If
19 the cop goes completely crazy and we had no notice of
20 it, and whips out his gun and shoots somebody, and he's
21 off duty, and you're bringing punitive action against
22 both the police officer and the town, the town is not
23 going to be liable as far as the punitive damages are
24 concerned, because you reach a point, you reach a point
25 where the entity itself cannot be responsible for the

1 actions of the individual members of the entity, or
2 what the employees or agents of the entity did; because
3 the entity itself is a sovereign unit. The entity
4 itself could perhaps act unreasonable, but to say that
5 the entity itself conspired to violate a Court Order,
6 that action could not be done by the entity itself.

7 Therefore, we go over this threshold point* That
8 action has to be done if it's going to be done* And
9 if the allegation is going to be made not by the entity,
10 the—because the entity can only do what the law says
11 it can do; it's made by the individual members of the
12 entity«

13 It*s just so far beyond the scope of what a muni-
14 cipal entity is supposed to do, so far beyond the
15 threshold point, that you can't allege that it did it*

16 You can make the allegation, but you make it
17 against the individual members who did the action,
18 rather than against the entity itself*

19 MS. HIRSCHI That argument goes much too far. If
20 that was—if you follow that argument to its logical
21 conclusion, then the whole Mt» Laurel theory disappears
22 because a township council, planning board, other •
23 governmental entities could never be held responsible
24 for the violation of the State Constitution, because
25 that would be void ab initio, that would be ultra vires

1 and that is not what the law says.

2 If we discover individual council members, we
3 discover the names of the council members who are
4 involved in this conspiracy, we will so amend our com-
5 plaint to name those individuals. But we have the
6 right to maintain the action now against the council.

7 THE COURT: Okay. Let me ask you a question that
8 bothers me about the allegation that you're making.
9 It's my understanding that a prerogative writ action,
10 generally, has as its purpose to review conduct of
11 some governmental entity, or require conduct of some
12 governmental entity. I think the key word in a pre-
13 rogative writ action is to do something with respect
14 to conduct of public officials. Either make them do
15 something or tell them whatever they did, they did
16 wrong*

17 Can you have a count where the sole thrust of the
18 count is not that they did anything wrong, but they
19 met together, even assuming it was for an illegal
20 purpose, but they didn't do anything to bring it into
21 fruition, because essentially conspiracy is that you
22 meet together for an illegal purpose and somebody ~~does~~
23 some act to bring it into fruition, but it's not
24 brought into fruition yet*

25 If that's all the municipal bodies did, met

1 together, and assuming what they were going to meet for
2 is to do something illegal, and somebody did something
3 in furtherance of it, but nothing occurred, can you
4 talk in terms of conspiracy since there is no conduct
5 that they--no action that they've taken, or nothing
6 that you want to correct, can you have a--postulate
7 a cause of action simply because they met?

8 MS* HXRSCH: I believe so* And the conduct we're
9 alleging by each individual defendant is pursuant to
10 this illegal conspiracy* The adoption of the zoning
11 ordinance.

12 THE COURT: Now, we're getting into conduct* You
13 say that they did something as a result of the meeting*

14 MS. BXRSCHS Yes.

15 THE COURT: But can you have a cause of action in
16 a prerogative writ setting where they just meet and
17 don't do anything? Isn't what you really want to say
18 that they met together and did something and then are
19 you really truly talking about a pure conspiracy?
20 Aren't you talking about that they acted in concert,
21 the various boards acted either jointly or severally
22 to do something improper? Isn't that what you really
23 mean to allege, even though you termed it "conspiracy?"

24 MS. HIRSCH: I believe that at this point it's ?
25 almost semantics. I do agree with the way you're

1 characterizing our claim. The conspiracy count is
2 necessary to connect up the actions of all of these
3 individual defendants. In other cases—

4 THE COURTS Do you recall a conspiracy?

5 US. HIRSCH: Yes, Your Honor, there is a ease in
6 lay brief, X believe it's quoted in my brief, where the
7 Court said that even if you're not asking for any
8 damages or any relief, pursuant to that conspiracy,
9 even if the Court could look alb it as surplusage, the
10 conspiracy count was necessary to connect up the action[^]
11 of the individual defendants in the case.

12 THE COURT: Couldn't the Court just as easily have
13 said that count is necessary to allege joint action?

14 MS. HIRSCH: Additionally in this case, though,
15 Your Honor, we are seeking specific corporate relief,
16 a very particular remedy which falls within the com-
17 plete discretion of the Court. In other cases the
18 Courts have looked at the conduct of the defendants*

19 THE COURTS what is the relief that you're seek-
20 ing/ that you make allusion to?

21 MS. HIRSCH: Specific corporate relief. Rezoning
22 of our land or a grant of building permits for a Site
23 plan that we will submit during the course of the dase,
24 and an order from the Court as discussed in Mt> Laurel
25 and the Oakwood at Madison cases.

1 THE COURT: What you generally want me to do is to
 2 generally declare the enactments of the various boards
 3 and agencies to be unreasonable, arbitrary and capri-
 4 cious.

5 MS. HIRSCiii That and specific corporate relief
 6 as discussed in Oakwood at Madison where the Court says
 7 that given the amount of time this case has been in
 8 the Courts and given the actions of this particular
 9 municipality, we think it's appropriate in this case,
 10 in order to encourage developers to bring this kind of
 11 public interest litigation, that we grant specific
 12 corporate relief to the party before us.

13 In other words, an order that building permits
 14 conventionally be granted to that defendant—excuse ~~me~~
 15 to the plaintiff, in accordance with this site plan,
 16 development plan, that was submitted to the Court during
 17 the course of the hearings*

18 THE COURTi X think we're too far down the road
 19 at this point*

20 HE. ALFONSOS What they¹re asking for in Count 10
 21 is no different than what they*re asking in the other
 22 counts, if you just look from A to 0, A to G they don't
 23 ~~mnk~~ anything different in 10 than they do in any other.

24 THE COURT: I agree how far you want to phrase
 25 what the relief sought is, it really ammmn to bey*?,

1 different in the first nine counts than tenth count,

2 MR. NORMALS Your Honor, X make—I'd like to
3 allege my initial statement that there are no preroga-
4 tive writ cases. I can't get a feel for whether
5 there*s joint action or conspiracy* I'm not sure
6 myself. X think the essence of it is basically moti-
7 vation of governmental bodies*

8 In the context of land use and regulations, there
9 are cases, reported cases which indicate that the
10 motivation of the legislators enacting regulations are
11 not relevant in any proceeding. X think basically
12 that's what they're arguing; that the motives were bad
13 in adopting the regulations.

14 THE COURTS But X think that the thrust of what
15 remedies they're seeking is to have proper regulations
16 within the Township of Old Bridge, and does it really
17 make a difference whether they say at this point that
18 the improper regulations, which they allege exist, are
19 there because the board made a mistake, or because they
20 intentionally try to draw it that way*

21 The thrust of what they¹re attacking, however it
22 came about, is the regulations themselves*

23 MR* NORMANI That's correct, Your Honor*

24 THE COURTt Now, should they be limited in trying
25 to demonstrate that the regulations are improper?

1 Should they be limited from being able to deal with
2 the hows and the whys that came about, of how they
3 came about?

4 MR. NORMAN: x think they should be limited to
5 demonstrating the regulations are improper, because the
6 converse of that, if the regulations are found to be
7 proper, the conspiracy fades away.

8 MR. HILL: The conspiracy count is important for
9 three separate reasons. First is Mt, Laurel mod
10 Oakwood at Madison are two principal exclusionary
11 zoning oases are basically directed against munici-
12 palities, governing body and planning boards., and they
13 focus on zoning. But the Court goes further than just
14 talking about zoning.

15 The Court talks about the concept of least-cost
16 housing and bringing down the cost of housing, and the
17 Court says some things in Oakwood at Madison that they
18 don't focus on, the Supreme Court*

19 They say, when they¹re analysing the PUD zones,
20 they say the short answer to the issue of sewers, is
21 the township has responsibility to bring in sewers.
22 There are many dicta statements in Oakwood at Madison/
23 but the only defendants in Oakwood at Madison, only
24 defendants at Mt. Laurel, are the governing bodies and
25 planning board*

1 This is a second generation, Ht« Laurel-Madison
2 case, and here we have every notice that development
3 requires not only cooperation by the governing body
4 and the planning board, but it also whereas in the case
5 in Old Bridge they have a sewer authority and water
6 authority and they require that every new development
7 purchase water from that water authority, and every
8 new development sewer through that sewer authority,
9 that those authorities have franchises or monopolies
10 within the town, they too control development.

11 And for us to focus on the sewer authority, for
12 instance, or the water authority, and say a regulation
13 is unfair because of the constitutional concept, and
14 the constitutional concept here is the least-cost
15 housing, we say to charge thousand dollars per unit
16 to hook up in a dense development is unreasonable, and
17 it's a question of proofs.

18 But in context of bringing in housing at lower
19 cost, a thousand dollars from the sewerage authority,
20 a thousand dollars from the water authority and other
21 thousand dollars to inspect the pipes per unit, becomes
22 significant, and it becomes significant in millions of
23 dollars when you're talking about development this size.

24 And so our—our conspiracy count really brings the
25 constitutional principle down to the real actors in the

1 development game. The real actors are the sewer
 2 authority and the water authority, and it links a
 3 constitutional principle which, you know, what worries
 4 me is that if the conspiracy count went, Mr. Granata
 5 could logically argue there's nothing in the sewer law
 6 that requires a sewer authority to be efficient and
 7 reasonable and to charge reasonable fees*

8 The constitutional prerogative, that is, the
 9 effect of the schedule and the effect of the regulation
 10 on housing costs, goes directly to the constitutional
 11 obligation of this municipality.

12 He might argue that there's nothing in the sewer
 13 law requiring them to plan for the sewer in new develop-
 14 ments, or in the water law requiring them to affirma-
 15 tively plan to for the water needs of new developments,
 16 but under the context of a municipality which has been
 17 ordered to—which has been found not to be constitu-
 18 tionally deficient, and it's been ordered to rezone
 19 and do those things necessary to promote housing, all
 20 of those things become important*

21 So the principal reason for the conspiracy count
 22 is to bring the constitutional directive down to all
 23 of the actors that influence the development game*

24 The second, frankly and equally important, or
 25 almost as important goal of the conspiracy count, is to

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1 allow us to discover what kind of planning went on
2 between one municipality agency and another municipal
3 agency.

4 As you get into this kind of litigation, we're
5 going to be—we may be taking discovery of a council
6 member, or of a planning board member, and the question
7 will be did you meet with so and so, and there is a
8 body of law that says a legislative member doesn't, you
9 know, you can only ask him who he voted for and what he
10 did, and his intentions and his thoughts and his side
11 conversations are all Irrelevant*

12 I can't question a member of the State Legislature
13 in order to interpret a statute* X can't depose him
14 and find out what he meant and what he intended* How-
15 ever, in a conspiracy where there's a conspiracy count,
16 that kind of discovery is permitted* I could question
17 a member of the Old Bridge Council and ask them did you
18 go out to lunch with the chairman of the planning board,
19 did you discuss how you were going to keep development
20 from the south part of Old Bridge, did you decide who
21 the new appointments to the sewer and water authority
22 development would be, and what your conversations would
23 be* I could get into all this, and I would submit that
24 that kind of testimony would be relevant, were it true,
25 in making a decision on what's happening to my client*

1 And I could never have that-1 could never **evек**
 2 ask those questions without a conspiracy count, that
 3 would permit that kind of inquiry and that kind of
 4 discovery; because it's only relevant to a conspiracy
 5 count.

6 Mil. NORMANI I'll be very brief. I think this
 7 distinction is vital. There's a line of cases in New
 8 Jersey which states that you can inquire into legis-
 9 lators and legislative process. And I think that holds
 10 true. I don't think it holds true where there's a
 11 denial of an application. That's distinction in this
 12 case. There's been no application, and X think what
 13 the plaintiffs are trying to do is boot strap it up.
 14 They're asking for motivation, what motives of all
 15 officials are* They n^wr made an application-

16 THE COURTS Not in context of denying an applicap-
 17 tion. They want to know what the motives of the
 18 officials were in onfecting the law.

19 MR. NORMAN: For adopting legislation. I would
 20 submit a line of cases, Hew Jersey Supreme Court cases,
 21 which indicate that you can inquire into evidence
 22 motivation concerning the adoption of legislation, and
 23 that's a vital distinction.

24 THE COURT; X don't have that exact problem, before
 25 me presently.

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1 MR. GRANATA: If I can address some of the artttt*
2 ments of Mr. Hill. It's alleged that there's a con-
3 spiracy or joint action-*-*

4
5 THE COURT: No, I think he's alleging conspiracy. t
6 He wants to stick with that.

7 MR* GRANATAS Alleging conspiracy by four govern-
8 mental bodies within one town to thwart or Unit
9 development* The only development that has not gone
10 ahead in Old Bridge Township is Olympia and York, and
11 we sustain and submit the reason we have not gone into
12 it, is because there's been no application filed with
13 sewerage authority.

14 MR. HILL: Your Honor, that's a factual-

15 THE COURT; Please, don't interrupt*

16 MR* GRANATA: That the legislation enacted within
17 Old Bridge was the result of this joint action or
18 conspiracy to thwart or limit that plaintiff* Every
19 other developer in Old Bridge Township, including
20 Oakwood at Madison, is developing* Oakwood at Madison
21 is in the process of developing* There has been no
22 limitation under the Supreme Court mandate in 1977 to
23 thwart development*

24 The next argument Mr* Hill purports is that the
25 soning and building actors in Old Bridge have acted
jointly to in some way create legislation that would

1 in some way affect development.

2 The State Legislature has created every one of
3 the bodies that are before the Court. This is not a
4 municipal utility authority that is in separate depart-
5 ment of Old Bridge, or the municipality sewerage
6 authority that's a separate department of Old Bridge,
7 as the planning board or zoning board is separate
8 department. We're talking about completely autonomous
9 agencies created by separate statute. The legislation
10 is what Mr. Hill is attacking, and rightfully he should
11 join the State Legislature that enacted the legislation
12 that created the Old Bridge Township Sewerage Authority
13 that mandates that all areas within the franchise
14 granted to that sewerage authority must be sewerred.

15 THE COURT: I don't think Mr. Hill is faulting so
16 much the legislature for creating it* I think what he
17 really wants to fault is what you did thereafter in
18 implementing your existences of creation*

19 Miu GRANATA: Implementation was to create rules
20 and regulations concerning schedule of fees, and that's
21 the only issue that Mr. Hill-

22 TBS COURT: That are fair and reasonable.

23 MR. GRANATA: Fair and reasonable. Has nothing to
24 do with development; has only to do with payment for
25 sewerage. If he wants to pay the fees, that everyone

1 else has paid, then he gets all the sewerage that he
 2 wants. If he wants to pay all the fees to the water
 3 authority, for all the water that he wants, then he
 4 gets to develop.

5 What he is saying in a backward way is that because
 6 we charge you the same as everybody else, we can't
 7 develop because we're building too big and, therefore,
 8 because the zoning-planning board said-

9 THE COURT? Isn't he also saying from his side of
 10 the coin that I can't help the fact what other have
 11 paid to you and maybe you didn't suffer as severe a
 12 consequence, but we submit what you're charging has no
 13 reasonable relationship to the charges to the services
 14 rendered?

15 MR. GRANATA That doesn't indicate there was
 16 conspiracy or joint action to limit development*

17 THE COURTS That may not be any indication of that,
 18 but my question is they tried to indicate before is
 19 more thresholdy not whether he's proven it. Does he
 20 have a right to allege it?

21 HE* GRAHATAS He has a right to allege there was
 22 joint action, if there was an indication of joint actioⁿ.
 23 Other than-

24 THE COURT: Does he have to have an indication
 25 first in order to allege it?

1 MR. GRAHATA: Yes, Your Honor.

2 THE COURT: isn't it your remedy that he's not able
3 to after discovery to move for summary judgment to get
4 rid of it?

5 MR. GRAN ATA: He has the right under the conspiracy
6 to examine every single member of the bodies* We're
7 talking of no less to visit to 75 individuals currently,
8 going back to the enactment of the legislation/ the
9 sewerage authority's legislation goes back to 1976.
10 Its enactment goes back to 1954, and he's asking for
11 examination of every one of those members for the last
12 twenty years in order to come up to the rate schedule
13 that's been the same since then*

14 THE COURT: Again, X don't know that depending
15 upon how I order today I'm going to allow him to do all
16 that he says he wants to do by way of discovery. I
17 think that's a separate problem. As to when the bounds
18 of making reasonable inquiry to come up with relevant
19 information passes that point and then becomes dually
20 oppressive and burdensome, but X don't have that
21 specifically•

22 X think I'm at the more threshold question, is
23 what is a proper allegation to make.

24 MR* GRAHATA: Threshold allegation is that these
25 agency—these defendants conspired to conspire

1 Oakwood at Madison decision* Oakwood at Madison
2 involved planning board and town council* The result
3 of that decision by the Supreme Court was once you
4 work out the allocation of buildings, then you go to
5 the water authority and the sewerage authority, as you
6 normally would.

7 The sewerage authority, as I indicated before, was
8 not part of Oakwood at Madison* The decision never
9 affected the sewerage authority* Oakwood at Madison,
10 whose decision said you get X number of houses that are
11 low to middle income, you get X number of apartments,
12 you get X number of single-family residences, in order
13 to make fair distribution of the specific corporate
14 relief, so that the development can go ahead*

15 And then that development had to go before the
16 municipal utility authority for their water, under
17 their rules and regulations, and to the sewerage
18 authority* Those rules existed at the time* It*s not
19 changed since then*

20 It's only the zoning that Oakwood at Madison
21 attacked* Not the rules and regulations or rate
22 schedules of either one of those agencies* The
23 specific corporate relief that the plaintiff is seeking,
24 is as they state a reasoning, a grant of permits, sewer-
25 age and water for their development* Ho one is denying

1 them that right. They are alleging that if they make
2 an application, that it will be too expensive for them
3 under the sewerage authority rules, because those rates
4 are too exorbitant*

5 They're alleging if they make an application to
6 the zoning board that somehow or other the zoning is
7 exclusionary and they can't develop as they choose.
8 They allege somehow or other, if they make application
9 to water authority, they won't have enough water. But
10 none of that has occurred* They have not been denied
11 anything, and the prerogative writ is to review the
12 denial, or to make them do something*

13 The sewerage authority is ready, willing and able
14 to provide sewerage if there's an application in some
15 way to respond to* They're saying the rate schedule
16 is too exorbitant*

17 THE COURT: X think we've been through this today*

18 MR* GRANATA: That's what they're alleging is the
19 conspiracy* That those rules and regulations deprive
20 them the right to develop, and that's why they want to
21 allege conspiracy*

22 THE COURT: Okay, Anything further on this point?

23 MR. GRANATA: other thing, Mt. Laurel decision.
24 Your Honor, is a decision dealing with zoning and
25 planning and not with sewerage and water* And beyond

1 my argument, Your Honor, X cannot grasp how the sewerag[^]
 2 authority, where the-or the water authority can some-
 3 how or other be Involved in conspiracy to exclusionarily/
 4 zone their development, whatever it may be. And X
 5 would submit that the application*-the argument against
 6 the sewerage authority must fall.

7 THE COURT: Co-counsel said in orderly development
 8 of community there has to be cooperation between the
 9 various agencies, which X assume would include your
 10 agency. . . . [r' /']

11 MR, GRANATA: there's no requirement in the State
 12 Legislature and the State enabling legislation for the
 13 sewerage authority. Nor is there any rules and regula-
 14 tions that the authority has the power to adopt that
 15 would in any way affect a joint meeting, would create
 16 a ne[^]d for joint meeting. The sewerage authority has
 17 its own rules and regulations. Planning board and
 18 town council require under their board of health
 19 ordinances and under their planning ordinance, once
 20 you have subdivision, you have to have sewerage and
 21 water, and that's it.

22 Sewerage authority can't make anybody tie into
 23 its lines, can't force or enact-mandate anyone to do
 24 anything except to come to us and ask for franchise.

25 it's like saying McDonald's has a right to come

1 down to Olympia and York and says they want to have
2 McDonald's in your development. It's impossibility.
3 McDonald's can't do it* And sewerage authority can't
4 go to Olympia and York and say you must have sewerage*
5 We can't do that* He don't have the power*

6 It's only because of the town legislation and
7 State Legislators⁹ statutes that require those things,

8 MR. ALFONSOi Just to cap-to sum up what I say,
9 I don't deny obviously that there can be a joint* meet-
10 ing, but what I'm saying is when that joint meeting
11 should shift and become a conspiracy as alleged in ;
12 Count 10, then who the defendants are also has to shift.

13 The defendant can no longer, being the governmental!
14 entity, the defendant would have to be the specific
15 members of the governmental entity# as far as the
16 allegations that are set forth in Paragraph 10 is
17 concerned*

18 Basically-

19 THE COURT: But if the thrust of what the plain-
20 tiff is trying to do is not necessarily to attack any
21 of the individual members, but rather to right the
22 wrong conduct of the body, why does he have to go
23 through trouble of naming individuals? Why can't he
24 allege as public members of the body that they acted
25 improperly, when his aim is to bring about their proper

1 action•

2 MR* ALFONSO: What he said, governmental body
3 itself engaged in conspiracy. Governmental body can't.
4 The members engaged in conspiracy. How, he has other
5 remedies in these other nine counts that allow him to
6 do the sane thing, but he never--what I'm saying# as
7 soon as the action becomes conspiracy, the defendant
8 has to shift,

9 ME. HILLi Your Honor, just to summarise our
10 argument, Mt. Laurel and Madison are novel causes of
11 action and they're, to our knowledge, as there is no
12 reported case law specifically on this issue, however,
13 it's clear that the Supreme Court in Mt. Laurel, and
14 Madison discovered a new constitutional cause of action,
15 namely, the exclusionary zoning suit, we can only look
16 by analogy at this 19-83 cases which are basically
17 Federal causes of action for violation of other con*
18 stltutional rights, like right to voting, or some of
19 then are zoning, due process cases, we think that the
20 intent of the law-

21 THE COURT* Isn't the thrust of that to seek
22 money damages to make one's self whole?

23 MR* HILL: 19-83 is the civil suit for enforcement.
24 The criminal side of it. And the only thing that the
25 Federal Government knows, the only kinds of oases that

1 Federal District Court knows, are these diversity money
2 damage suits* Yes, those are money damage suits and
3 criminal side of them there are conspiracies to violate
4 voting rights, and which are mostly brought or uniformly
5 brought by government*

6 X think that if we look at the action in lieu of
7 prerogative writ, it was—I'm trying to remember what
8 the old classical writs were* They were mandamus,
9 which is the writ requiring someone to do something
10 that was quo warranto (phonetic spelling), the writ
11 asks by which authority government is done, what it's
12 done. X guess quo warranto writ would apply here,
13 because we're seeking that—we're seeking that declarer
14 tions are illegal in part*

15 Writ of mandamus is that part of the writ to ask
16 you to invoke your power to require them to do something.
17 X can't remember the other writs, but the whole package
18 of writs are what we call under the 1947 Constitution
19 are rights against government and conceptually X
20 believe that this new cause of action in this new cause
21 of action in this new responsibility of government is
22 something that technically they can conspire to avoid.
23 And in this case it's a—the conspiracy goes further.
24 It's a conspiracy to avoid a specific Court Order which
25 was--happened to be handed down by the New Jersey

1 Supreme Court and directed against this particular
2 count.

3 And I think that we can allege a conspiracy to
4 fail to comply with a specific Court Order, because
5 the specific Court Order had two kinds of standing.
6 One, it was an order as to what Oakwood at Madison
7 should do, but there was a significant part of it
8 addressed to the public interest requiring that the
9 town do certain things to promote housing in that town,
10 in other areas, and we're a landowner of another area,
11 and we're seeking to do—to allege conceptually con-
12 spiracy to violate that Court Order.

13 Thank you, Your Honor*

14 THE COURTS Okay. On the issue of defendants'
15 motions to dismiss the conspiracy count, I'm only really
16 treating the motion to strike the conspiracy count for
17 failure to state a cause of action.

18 I'm not intending to address to whatever extent
19 the motion may be to grant summary judgment, because
20 if that were the thrust of the motion, I would deny it
21 without prejudice, pending further discovery, which is
22 not taking place*

23 So as to be clear, I am only treating what I per-
24 ceive the motions to be, as addressed themselves to
25 dismiss the conspiracy count, for failure to state a

1 cause of action.

2 On that, X have difficulty in dealing with this
3 nature of prerogative writ action in terms of con-
4 spiracy. It's my understanding, classically, that a
5 conspiracy is a meeting of persons to discuss, and with
6 the aim to bring about an illegal purpose, and that one
7 or more of them take some overt act to bring about that
8 illegal purpose*

9 The thrust of the lawsuit by nature of it being a
10 prerogative writ action, doesn't deal with people*s
11 discussions as the principal or permissible remedy.
12 Kather, the thrust of such a lawsuit is to review the
13 conduct of those persons, or to require that they do
14 something to declare that what they've done be improper
15 or insufficient or unreasonable or arbitrary or uncon-
16 stitutional, or require them to do something which they
17 fail to do to put in line in terms of what a proper
18 municipal body's, or individual's, public official's
19 conduct should be. But the thrust of a prerogative
20 writ action has to do with reviewing conduct, not
21 reviewing conversations.

22 X will strike-well-before X say that, let me say
23 it in this context. X will strike the term *conspiracy*
24 from the tenth count. X do so on two grounds, number
25 one, X somehow get the impression that conspiracy here

1 has become a buzz word that is asserted by the plain-
2 tiffs for whatever advantages it may be, and resisted
3 by the defendants because they don't want to be termed
4 conspirators, to either stigmatise or avoid stigmatiza-
5 tion as being conspirators* And as I've already
6 indicated, I don't think that that's the purpose of a
7 prerogative writ action.

8 I have to deal with reviewing the conduct. I have
9 to strike conspiracy because X still believe that if
10 municipal officials, whether in one body or several
11 bodies, met together and assuming that they had an
12 illegal purpose in mind, and met together to discuss
13 that illegal purpose and how they can bring it about
14 from their acts or failure to act, that the simple
15 meeting together would not give rise to a prerogative
16 writ action.

17 They have to do something in order to have a pre-
18 rogative writ action, so simply the illegal meeting and
19 discussing and one of them taking an action to bring
20 something about, which is never brought about, makes no
21 sense, and that's what conspiracy to me means*

22 I know of no case which discusses a prerogative
23 writ action in terms of conspiracy. True, you may find
24 a stray word here and there that utilised conspiracy in
25 a case, but I don't think that's what they're talking

1 about in terms of prerogative writ actions.

2 Rather, the true conspiracy cases, which everybody
3 seems to be citing to me, all have to do with damage
4 cases in which money damages are sought from individual
5 members, and there I think the distinction that some-
6 body made between whether persons acting ultra vires
7 or not is not what is sought here*

8 I will allow Count Ten to stand, however, striking
9 from it the term "conspiracy," and substituting for it
10 what X perceive to be a proper allegation to be made,
11 namely, an allegation that board or agency members
12 from the various named defendants, jointly acted to
13 bring about an unreasonable or illegal result* That I
14 think we can deal with in that we can consider whether
15 or not they acted in concert with each other by way of
16 an allegation to bring about some sort of an illegal
17 result*

18 The remedies I think sought by the tenth count
19 would remain the same, but what X*m bringing into and
20 what I intend to bring into the lawsuit as a permissibly
21 allegation is that in the first nine counts the various
22 boards did things improper, and in the tenth count that
23 they may have acted jointly in bringing about things
24 improperly*

25 MR. HILLs Does that require a formal amendment

1 of the complaint?

2 THE COURT: I will ask someone to ultimately sub-
3 mit to me an order.

4 MR. HILL: And one and two, as Your Honor may have
5 heard, we promulgated on the defendants different set
6 of interrogatories, probably a thousand pages of inter-
7 rogatories.

8 THE COURT: Not necessary to amend the interroga-
9 tories with that concept or connotation will be carried
10 over into the thrust of the questions themselves*

11 Now, who wants to submit to me an order? None of
12 you feel perhaps you prevailed, but I have to ask some-
13 body*

14 MR. ALFONSO: I brought the original motion. 1*11
15 submit the order, Judge.

16 THE COURT: Thank you, Mr* Alfonso.

17 MR* GRANATA: Your Honor, there are as Mr. Hill
18 indicated a thousand pages of interrogatories•

19 THE COURT: Okay*

20 MR. GRANATA: And the ruling of the Court has
21 changed conspiracy and-

22 THE COURT: Not certainly indications* I'm just
23 striking the term "conspiracy⁰ and instead substituting
24 what X perceive to be a more appropriate word, and
25 really what the plaintiff is or ought to be alleging,

1 namely concerted action*

2 MR. GRANATA: That resulted in legislation*

3 THE COURT} That resulted in an unreasonable or
4 Illegal result.

5 MR, GRANATA: Now, as Mr. Hill and Mr. Norman and
6 myself have indicated, there is a limit to the discover[^]
7 of the thought process going into the legislation.
8 Mr. Hill wanted conspiracy, so that he could examine
9 each individual as to when he met, where you met and
10 what you talked about* Now, with this limitation, I
11 presume that we're talking only about the results.

12 THE COURTS No, I'm not necessarily saying that
13 I'm going to prohibit him from inquiring of the board
14 members when they might have met to discuss things that
15 may have resulted in the some sort of joint action.

16 MR. GRANATA: That would be open public meeting
17 where there was records.

18 THE COURTT Hot necessarily. Doesn't have to be
19 public meeting.

20 MR. HILL: I think this motion was brought by
21 Mr. Granata when he objected to specific forms.

22 MR. GRANATA: That was Mr. Plynn.

23 MR. NORMANS Your Honor, my recollection of one
24 question was members of the planning board back through
25 1972-

1 THE COURT: I'm going to have to discuss--address
2 myself to the specific discovery problems that you have
3 as they come up* But what I'm talking about is that I
4 don't mean to prohibit an inquiry necessarily at least
5 ab initio of inquiring concerning meetings and topics
6 of conversations between members*

7 What X am saying is that I don't think that if
8 that's all there is, that that's sufficient for a cause
9 of action* Ultimately, the cause of action to be cog-
10 nisable before me has to be more than just conversation.
11 It has to result in some sort of improper or illegal
12 conduct, by way of the board or agency*

13 MR* GRANATA: That's going to require a lot of
14 motions*

15 MR* HILL; As Z understand your ruling on the
16 motion of conspiracy, you're substituting for word
17 "conspiracy," meeting together to advance an illegal
18 purpose, which is almost the Black's Law Dictionary
19 definition, I would guess, of conspiracy*

20 THE COURT; No, I'm not substituting simply the
21 concept of a meeting to advance an illegal purpose*
22 I'm saying if you have a cause of action that I can
23 deal with in terms of prerogative writ result, there
24 has to be more than a meeting* There has to be some
25 illegal action, ultimately*

1 How, X don't prohibit you from inquiring how that
2 act may have come about through some meetings in
3 advance of some illegal action, but X don't think that
4 X can grant relief to your client simply because you
5 demonstrated that board members may have got together
6 and may have discussed doing something that may be
7 illegal. Xf that's all that occurred, X don't think
8 you have any result*

9 X have to deal with what they actually did/ not
10 simply with what they planned to do*

11 MR* HILL: Allegation in the complaint is that
12 they conspired and the overt act was the passing of
13 the illegal--allegedly illegal regulation or ordinance,
14 or whatever* What I'm trying to worry about is how do
15 we--how do we get sentences that make sense and remove
16 the word "conspiracy" from the sentences?

17 THE COURT: Well, X don't think that you necessarily
18 have to strike out the word and come up with good
19 grammar* What I'm saying is that if your cause of
20 means--I'm striking the simple concept of conspiracy,
21 namely that they met together, because X don't think
22 that gets us anywhere*

23 X construe your cause of action in the tenth count
24 to mean that what you're alleging is that board members
25 are agencies* I'm sorry, members of boards or agencies

1 ultimately or jointly acted to bring about an unreason-
2 able or illegal result*

3 MR. HILLi That's fine. Yes, that's what we mean*

4 THE COURTi Okay. If you find that that is unwork-
5 able and you want to move to amend the tenth count to
6 set something forth specific that may comport to that
7 idea, I'll consider that at that time*

8 ME, NORMAN: By way of illustration to clear up
9 my mind, the only act I'm aware of planning board has
10 taken, was to adopt a master plan, so that would be
11 basically what questions concerning motivation would
12 go to, adoption of master plan*

13 THE COURT: I'm not sure whether you are talking
14 to me or Mr* Hill*

15 MR* NORMAN: Both* X believe*

16 MR. HILLJ we have an affidavit from Fletcher
17 Davis saying he prepared the ordinance for the munici-
18 pality*

19 THE COURT: Gentlemen, X think we've decided all
20 the motions that are pending today*

21 * * *

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I, JEANBTTB VOIGHT, a Certified Shorthand Reporter of the State of Hew Jersey, certify that the foregoing is a true and accurate transcript of the proceedings as taken by me ethnographically on the date hereinbefore mentioned.

Jeanette Voight
JEANETTE VOIGHT, C. S. R.
Official Court Reporter

Dates *September 5/11*

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