

Attorney's Fees

Feb 24, 1988

U.L. v. Carter

Δ's - Petitioner's reply to Plaintiffs - respondents' opposition to certification and cross-petition for certification ~~in this case~~

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THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS
Campus at Newark

School of Law-Newark • Constitutional Litigation Clinic
S.I. Newhouse Center For Law and Justice
15 Washington Street • Newark • New Jersey 07102-3192 • 201/648-5687

March 1, 1988

Mr. C. Roy Epps, President
Civic League of Greater New Brunswick
47-49 Throop Avenue
New Brunswick, NJ 08901

RE: Urban League v. Carteret (costs appeal)

Dear Roy:

Enclosed please find copy of defendant municipalities' reply in connection with the above matter.

Sincerely,



encls

cc/John, Eric, Alan (w/encls)

KIRSTEN, SIMON, FRIEDMAN, ALLEN, CHERIN & LINKEN

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TELEX NO. 642965

TELECOPIER NO. 623-4640

February 25, 1988

Stephen W. Townsend, Clerk
Supreme Court of New Jersey
Hughes Justice Complex
CN-970
Trenton, New Jersey 08625

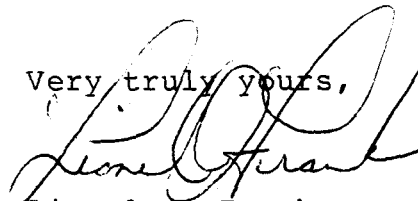
Re: Urban League Of Greater New Brunswick,
et al. v. The Mayor And Council Of The
Borough of Carteret, et al.
Docket No.

Dear Sir:

Enclosed for filing is an original and (9) nine copies of DEFENDANTS-PETITIONS' REPLY to PLAINTIFFS-RESPONDENTS' OPPOSITION TO CERTIFICATION AND CROSS PETITION FOR CERTIFICATION in the above referenced matter, as well as a Certification of Service.

Would you kindly return a stamped "filed" copy of both the Reply and Certification of Service in the enclosed envelope provided.

Very truly yours,



Lionel J. Frank

LJF/evs

Enc.

cc: Attached Service List

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TELEX NO. 642965

TELECOPIER NO. 623-4640

February 23, 1988

The Honorable Chief Justice and
Associate Justices
of the New Jersey Supreme Court
c/o Stephen W. Townsend, Clerk
Hughes Justice Complex
CN-970
Trenton, New Jersey 08625

Re: Urban League of Greater New Brunswick,
et al. v. The Mayor and Council of
the Borough of Carteret, et al.
Supreme Court of New Jersey
Docket No. _____

My dear Mr. Townsend:

Defendants-Petitioners respectfully submit this letter memorandum in reply to the submissions of the Plaintiffs-Respondents.

Oddly enough, Plaintiffs' opposition memorandum supports certification under R. 2:12-4. Although Plaintiffs argue that "a question of general public importance" has not been presented because Mount Laurel litigation is "unique" and because the legal questions raised are "a matter of well-established law", plaintiffs do not dispute the other salient

The Honorable Chief Justice and
Associates Justices of the New Jersey Supreme Court
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arguments presented in Point II of Defendants' Petition, which address the exercise of this Court's supervisory responsibilities regarding fee claims brought under the Federal Fair Housing Act, 42 U.S.C. §3601 et seq. "§3601"), and the Court's responsibility for the award of costs and fees generally.

Moreover, Plaintiffs' arguments that certification should not be granted because of uniqueness, and because few new Mount Laurel cases are likely to be brought under §3601, are inapt. Uniqueness is not a bar to certification. Furthermore, Mount Laurel is of fundamental public importance, effecting every resident of this state.

Plaintiffs' papers clearly highlight the specific legal issue upon which their fee application rests, i.e., the legal standard employed when considering an application for legal fees under 42 U.S.C. §3612(c), after a party prevails on a separate, non-fee cause of action. Defendants argue that federal law requires proof of racial discrimination before fees can be awarded.¹ Plaintiffs argue that the

¹ See Morales v. Haines, 486 F.2d 880, 882 (7th Cir. 1973) [(racial discrimination must be found to award attorneys fees under §3612(c)]; Dillon v. AFBIC Development Corp., 597 F.2d 556, 562 (5th Cir. 1979) [attorneys fees under §3612(c) are appropriate only against defendants found guilty of racial discrimination]; Shannon v. Dept. of Housing & Urban Development, 409 F.Supp. 1189, 1192, affirmed 557 F.2d 854, cert. denied, 439 U.S. 1002 (1978) [attorneys fees may only be awarded under §§3604-06 upon a finding of racial discrimina-

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standard permitting the award of attorneys' fees under the Civil Rights Attorneys Fees Awards Act of 1976, 42 U.S.C. §1988, as set forth in Maher v. Gagne, 448 U.S. 122 (1980), and its predecessors, should be considered by this Court as applicable to §3612(c).² The Appellate Division held below that plaintiffs might be entitled to fees under §3612(c) based on §1988 principles but only after a de novo trial based on the 1976 trial record [pp. 39-30, slip op.].

There is no legal authority for the Appellate Division's conclusion. That conclusion creates rights to attorneys' fees under §3601 beyond any right created by federal statute or case law, through an unwarranted expansion of §1988 which will have ramifications far beyond Mount Laurel litigation, in diverse factual situations never contemplated by Congress

tion].

² The effect of such adoption would be to entitle Plaintiffs to attorneys fees without requiring proof of racial discrimination. This is unprecedented. Violations of §3601 et seq., are not included within the statutory provisions of §1988, and there is no case that holds that a litigant is entitled to attorneys fees under §3612(c), when that litigant has prevailed on a separate non-fee claim pendent to claims under §3601 et seq. Plaintiffs cannot dispute this fact; they even admit that "not all federal statutory violations are addressed by [§3601]" (Opposition brief, page 16). No authority cited by defendants discusses a right to fees under §3612(c); rather such authorities discuss a right to fees under the enumerated statutes found in §1988 -- a "much broader" statute than §3601 et seq. (Opposition brief, page 11).

KIRSTEN, SIMON, FRIEDMAN, ALLEN, CHERIN & LINKEN

The Honorable Chief Justice and
Associates Justices of the New Jersey Supreme Court
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and never considered by this Court.³ The role played by this Court in formulating the Mount Laurel doctrine and supervising its implementation supports its review of an unprecedented decision which, contrary to the directives of this Court, embroils the judiciary in matters clearly the responsibility of the legislative branch. Hills Development Co. v. Bernards Township, 103 N.J. 1 (1986).

For all of these reasons, and for the additional reasons argued in the Petition, certification should be granted.

KIRSTEN, SIMON, FRIEDMAN, ALLEN,
CHERIN & LINKEN
Attorneys for Petitioners-Defendants

By: 

Lionel J. Frank

cc: All counsel on attached service list

³ Plaintiffs point to the fact that §1988 was enacted by Congress to "correct anomalous gaps" in the right to attorneys fees for civil rights litigants, and argue that the Maher v. Gagne, supra, standard should be applied to §3612(c) (Opposition brief, pages 2 and infra). Plaintiffs conveniently overlook, however, that Congress had already provided a basis for attorneys fees for litigants who proved racial discrimination under §3601 et seq., and there was no "anomalous gap" in that statute to be corrected. In fact, violations of §3601 et seq. are not included within the enumerated provisions of §1988. Plaintiffs never amended their pleadings to include a claim for fees under §1988, and failed to present "credible evidence of deliberate or systematic exclusion of minorities" at trial. 142 N.J. Super. 11, 19. Their attempt to "coattail" on Maher v. Gagne, supra, in a desperate grasp for fees is unprecedented, contrary to legislative intent and federal precedent, and unfair.

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ATTORNEYS FOR Defendants

URBAN LEAGUE OF GREATER	:	SUPREME COURT OF NEW JERSEY
NEW BRUNSWICK, ET AL.	:	DOCKET NO.
	:	
PLAINTIFFS-RESPONDENTS	:	
	:	
vs.	:	<u>CERTIFICATION OF SERVICE</u>
	:	
THE MAYOR AND COUNCIL OF	:	
THE BOROUGH OF CARTERET,	:	
ET AL.,	:	
	:	
DEFENDANTS-PETITIONERS.	:	

Lionel J. Frank, of full age, certifies as follows:

1.) I am an attorney at law of the State of New Jersey, associated with the law firm of Kirsten, Simon, Friedman, Allen, Cherin & Linken, attorneys of record for the defendant municipalities in the above captioned matter.

2.) On February 25, 1988, I served two (2) copies of Defendants-Petitioners' Reply To Plaintiffs-Respondents' Opposition To Certification And Crosspetition For Certification on all counsel listed on the attached service list, by first class mail, postage prepaid.

I certify that the foregoing statement made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.



LIONEL J. FRANK

Dated: February 25, 1988

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