

Att. Fees

12/29/1988

U.L. v. Carter

Letter contesting allowing the Public
Advocate of NJ to appear as amicus.

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December 29, 1988

FEDERAL EXPRESS

The Honorable Chief Justice and the
 Associate Justices of the
 New Jersey Supreme Court
 c/o Keith M. Endo, Deputy Clerk
 Supreme Court of New Jersey
 Hughes Justice Complex
 CN-970
 Trenton, New Jersey 08625

Re: Urban League of Greater New Brunswick v.
 Mayor and Counsel of the Borough of
 Carteret
 Docket No. 28, 276

Dear Chief Justice and Associate Justices:

We represent the defendants-petitioners in the above captioned matter and were served on December 22, 1988 by regular U.S. mail with a notice of motion, affidavit, forty-eight (48) page brief, and fifty-five (55) page appendix by the Public Advocate of New Jersey for leave to appear as amicus curiae. The Advocate's motion appears to be a Christmas wish list. Indeed, it is so untimely and lacking in merit as regard to the issues on appeal sub judge, that we believe the Public Advocate should be reprimanded by the Court for diverting the parties at this late

hour from preparing for oral argument which is scheduled for January 3, 1989.

The issues presented by Petitioners in their petition for certification have been fully briefed. The petition was filed in January, 1988. Until its motion to appear as amicus curiae was received by the Court last week, the Advocate has not been heard from. It can only be presumed that he believed that the "public interest" was adequately represented. There is no explanation as to why he now takes an interest in the appeal several days before oral argument. Moreover, the Advocate's concerns appear to deal with broad policy issues that should be addressed either to the legislature or in some other forum. Injecting the Advocate's views into this proceeding will only distract the Court and the parties from the questions presented and certified.

Apparently, the Advocate is dissatisfied with the effectiveness of the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, to deal with the implementation of the Mt. Laurel doctrine. (Advocate's Brief at p.3.) He is impatient with the statute and the rules which have been promulgated to achieve the obligations established by the Mt. Laurel decisions. (Public

Advocate's Brief at p. 6.) Without addressing the merits of the Advocate's contentions, they clearly have no place in this proceeding. The Advocate should address its concerns either to the legislature or to the Court in an appropriate case which deals with the Fair Housing Act. This case is solely confined to the entitlement to attorney's fees under the Federal Fair Housing Act, 42 U.S.C. Section 3612(c), based upon a violation of a separate state non-fee claim, by analogy to the Civil Rights Attorneys Fees Awards Act, 42 U.S.C. Section 1988, and to the efficacy of the procedure adopted by the Appellate Division on remand.

The Advocate seeks a court rule permitting court awarded counsel fees in all public interest litigation as a means of remedying what it views as a deficiency in the present state statutory scheme. Such a rule, even if adopted, would clearly be prospective in application and therefore of no relevance to the well defined issues before this court. The Advocate asserts that such a rule is necessary in order to encourage litigation by lower income persons or organizations representing their interest. That concern has no bearing whatsoever on the alleged right of the plaintiff in this action to counsel fees. The

Advocate obviously is looking for the first available soap box upon which to present its latest ideas on Mt. Laurel and the Fair Housing Act in general, and counsel fees in public interest litigation in particular.

Apart from the inappropriateness of this appeal as a forum for his views, it is difficult to fathom the Advocate's timing. From his papers, it is clear that he has been critical of the Fair Housing Act for some time. Our petition was filed in January of this year and there is no reason why the Advocate could not have filed its motion shortly thereafter. Given the timing of the Advocate's application on the eve of oral argument, if any counsel fees are to be awarded, it should be those of defendants-petitioners in having to respond to the Advocate's motion.

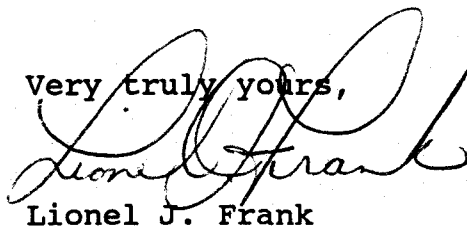
Finally, the Advocate also argues that the proofs presented, coupled with demographic and statistical data, support a claim of racial discrimination under the Federal Fair Housing Act of 1968, 42 U.S.C. Section 3601 et seq. Such claims were dismissed at trial.

The Advocate is misapplying Rule 9. Technically, the Advocate has no standing to rely upon Rule 9 since it is not a

party to the proceeding. Moreover, requests that judicial notice be taken should be made to the trial court and not first raised on appeal. R. 9(3). The Advocate is in effect asking the Court to take judicial notice that census data alone constitutes proof of racial discrimination. Such an ultimate finding of fact cannot be made without the benefit of an evidentiary proceeding where such proofs can be tested. Here, the plaintiffs did not seek to introduce statistical evidence at the trial in 1976 to prove their Federal Fair Housing Act claim. Rather, they attached statistical data to their 1987 motion for counsel fees in an attempt, after the trial on the merits, to prove a violation of federal law which was abandoned by plaintiffs years before. Such data was disregarded by the Appellate Division as immaterial and should be similarly disregarded by this Court.

In conclusion, the "left field", last minute nature of the Advocate's motion not only warrants denial but a reprimand by this Court. However well intentioned the Advocate's proposals might be, they are more appropriate for a political agenda for which the Advocate invites this Court to serve as a legislative surrogate. We respectfully submit that the Court should decline the invitation.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lionel J. Frank".

Lionel J. Frank

LJF/VC

cc: All Counsel On The Attached Service List

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