

Attorney's Fees

1-17-89

UL v. Cranbury

- official letter to Justices re' questions from oral argument
- w/CL & Amendment to Answers
- w/letter seeking clarification
- w/order

Pgs. 12

A#000088A



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

January 17, 1989

VIA LAWYERS SERVICE

Honorable Justices of the Supreme Court of New Jersey
c/o Clerk, Supreme Court of New Jersey
Hughes Justice Complex
CN 970
Trenton, New Jersey 08625

RE: Urban League, et al. v. Cranbury
Docket No. 28,276

Dear Honorable Justices:

This letter is respectfully submitted in response to certain specific factual inquiries from the Court during oral argument of the above matter on January 3, 1989.

First, Justice Stein asked about the availability of transcripts of the proceedings below. I have been advised by Everett Wells, Principal Vault Clerk of the Appellate Division Clerk's Office, that the 39 volumes of transcripts of the 1976 trial are available on microfilm at the Law Library on West 8th Street in Trenton, Box Number 2349, Reel Number SR-7-7. I supplied this information to Mr. Paley, attorney for the defendant municipalities, by telephone on January 12.

Second, Justice Pollock asked for an estimate of the amount of fees sought. The trial court and the Appellate Division recognized that our deferral of such calculation, until after the resolution of the legal issues, was appropriate because of the voluminousness of the record. As the Court is aware, such an estimate would require compilation of 14 years of time records from several different law offices. Most of the lawyers who handled this case prior to 1983 are no longer with the public interest firms with which they were then affiliated. Some would have to be located and asked to take time from their current obligations to find records and make the necessary calculations. Since this clinic became involved in the case in 1983, more than forty law students have worked on the matter and their time records would also have to be reviewed. In short, it would require a very substantial expenditure of time to produce the estimate requested by Justice Pollock. If the Court considers it relevant to decision, however, we would be glad to undertake this

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task at this time.

Finally, Justices Clifford and O'Hern expressed concern about defendants' awareness of plaintiffs' fee claim after the 1983 remand. Since I did not become involved in the case until 1986, it was difficult for me to respond from personal knowledge and the issue had not previously been addressed by counsel in their briefs or by the courts below. We have now reviewed the case files for 1983, 1984 and 1985, however, and have found several relevant documents. First, shortly after the first case management conference in July 1983, Piscataway Township filed an Amendment to Answer and Separate Defenses to the original complaint on August 18, 1983, prepared by the same firm now representing all the fee defendants and served then on all defendants. Among its six brief paragraphs was an assertion that the Urban League was not entitled to attorneys' fees and costs. (Copy enclosed.)

Also at that conference, Judge Serpentelli ruled, over plaintiffs' objection, that the fees of the court-appointed expert, Carla Lerman, were initially to be paid equally by the parties. On several occasions thereafter, including August 24, 1983, March 27, 1984, and March 1, 1985, plaintiffs renewed their objection to being required to pay a pro-rata share of Ms. Lerman's fee, on the basis that they were the prevailing party. (A copy of the August 24, 1983 submission is enclosed.) The trial court repeatedly ruled, however, that the ultimate liability for costs would not be dealt with until the conclusion of the remedial proceedings. See, e.g., Order of June 26, 1984 re Piscataway Township, Para. 5. (Copy enclosed.)

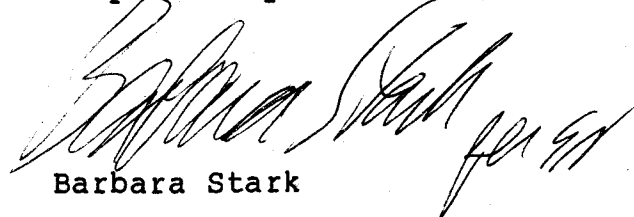
On several occasions in 1985, Judge Serpentelli also deferred (but did not deny) plaintiffs' specific request for immediate payment of fees in connection with motions to compel compliance with prior orders of the court. Specific fee claims were made for the cost of these motions, despite the underlying claim for all fees, because plaintiffs believed they were entitled to immediate recompense for the burden of bringing proceedings that could have been avoided by good-faith compliance on the part of these more recalcitrant municipalities, and because immediate payment would deter such conduct in the future.

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Further evidence of the pervasive notice of municipal exposure to fee claims is that at least five separate builder complaints filed in 1983 and 1984 and consolidated with the Urban League case included express demands for attorneys' fees.

If the Court believes the issue of post-remand notice of the fee claim, which was not raised below, is relevant to its decision, we would request an opportunity to submit supplemental briefing.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Barbara Stark", with a stylized flourish extending to the right.

Barbara Stark

encls

cc/Phillip Paley, Esq. (w/encls)
Stephen Eisdorfer, Esq. (w/encls)

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*MEMBER N.J. & N.Y. BARS

August 18, 1983

Hon. Eugene D. Serpentelli,
Judge of the Superior Court
Ocean County Court House
CN-291
Toms River, New Jersey 08753

RE: Urban League of Greater New Brunswick
v. Carteret, et al., Docket No. C-4122-73

Dear Judge Serpentelli:

I enclose herewith copy of Amendment to Answer and
Separate Defenses of the Defendant, Township of Piscataway
in connection with the above-captioned matter.

Very truly yours,

Steven Pasternak

Steven Pasternak

SP:dbw
Encl.

cc: Bruce S. Gelber, Esq.
Joseph J. Benedict, Esq.
Bertram E. Busch, Esq.
Jeffrey E. Fogel, Esq.
William C. Moran, Jr., Esq.
Joseph L. Stonacker, Esq.
Patrick Diegnan, Esq.
Thomas R. Farino, Jr., Esq.

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17 ACADEMY STREET
NEWARK, NEW JERSEY 07102
(201) 623-3600
ATTORNEYS FOR TOWNSHIP OF PISCATAWAY

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY
Docket No.: C-4122-73

URBAN LEAGUE OF GREATER NEW :
BRUNSWICK, a non-profit :
corporation of the State of :
New Jersey, et al., :

Plaintiffs, :

vs. :

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

Defendants. :

Civil Action

AMENDMENT TO ANSWER
AND SEPARATE DEFENSES
of the Defendant
TOWNSHIP OF PISCATAWAY

-
1. This defendant's zoning ordinances, present and former, complied with N.J.S.A. 40:55-32 (now repealed) and all subsequent zoning legislation contained within the Municipal Land Use Law (N.J.S.A. 40A:55 D-1 et seq.), at all times relevant to the complaint.
 2. This defendant acted reasonably and in good faith at all times relevant.
 3. This defendant reserved the right to offer evidence as to the designations of the proper region and regional needs, and as to this defendant's fair share requirement to be imposed upon this defendant.

4. This defendant has met its fair share requirement at all times relevant, under any reasonable formulation thereof.
5. This defendant's housing, zoning, and land use ordinance controls, plans, policies and practices are reasonable and proper and in accordance with all relevant legal standards.
6. The plaintiff is not entitled to attorneys' fees and costs.



NCDH

National Committee Against Discrimination in Housing

1425 H Street, N.W., Washington, D.C. 20005 · (202) 783-8150

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AUG 29 1983

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August 24, 1983

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Honorable Eugene D. Serpentelli, J.S.C.
Ocean County Court House
CN 2191
Toms River, N.J. 08753

Re: Urban League of Greater
New Brunswick, et. al. v.
Cartaret-Middlesex County,
No. C-4122-73

Dear Judge Serpentelli:

This is to seek clarification of a statement contained in your letter to Ms. Carla Lerman of August 5, 1983 to the effect that, if she requires a retainer, she should bill all eight parties equally.

It was Mr. Fogel's and my understanding from our management conference on July 21, 1983 that the cost of the court-appointed expert would be divided among the municipal defendants and that you would determine the most equitable method of apportioning that cost. If our understanding was incorrect, we respectfully request that you reconsider your decision for the following reasons.

First, because there has already been a finding of liability in this case, plaintiffs are the prevailing party, and ultimate responsibility for paying costs, including the cost of any court-appointed experts, should be borne by the defendants. R. 4:42-8(a); N.J.S.A. 22A:2-8. After a full trial on the merits, Judge Furman found that the land use ordinances of the seven remaining defendants were in violation of

Hon. Eugene Serpentelli
August 24, 1983
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Mount Laurel and the State Constitution. The Supreme Court in Mount Laurel II expressly affirmed this part of Judge Furman's decision, noting that "non-compliance with the Mount Laurel obligation... has already been amply demonstrated." 92 N.J. at 350. The Court then remanded for a "determination of region, fair share and allocation and, thereafter, revision of the land use ordinances and adoption of affirmative measures...." Id. at 351.

While the Court left open the possibility that, following Judge Furman's decision, some of the municipalities may have substantially amended their ordinances so as to bring them into compliance with Mount Laurel, the question on remand is not whether these municipalities have violated Mount Laurel -- for that has already been established. Rather, the question is whether sufficient steps have already been taken to remedy the violation or whether additional zoning changes are necessary. In either event, it is clear that each of the municipal defendants ultimately will have had to amend their zoning ordinances as a result of this litigation. Accordingly, plaintiffs are the prevailing party and should not be required to pay the cost of the court-appointed expert.

Second, plaintiffs represent a class of low and moderate income persons. They have no ready source of funds from which to advance a share of the expert's fees. Accordingly, it would be inequitable to require them to bear this additional expense.

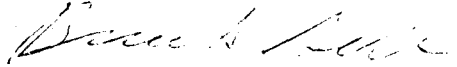
Finally, this suit was brought by the plaintiffs on behalf of the public interest. None of the plaintiffs stand to recover monetary relief. Nor do they seek any relief that will inure exclusively or principally to their benefit. Imposing additional litigation costs on them will only serve to discourage the filing of similar suits in the future. See Huber v. Zoning Board of Adjustment of Howell Tp., 124 N.J. Super. 26, 304 A.2d 578, 580 (Law 1973).

For the above reasons, plaintiffs submit that it would

be inequitable to require the plaintiffs to contribute toward the cost of the court-appointed expert.

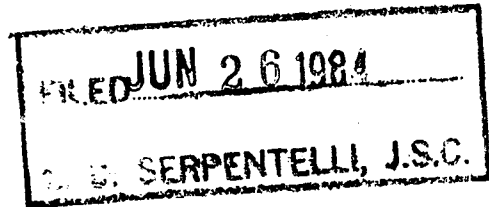
Thank you for your consideration in this matter.

Sincerely,



Bruce S. Gelber
General Counsel

cc: Jeffrey Fogel, Esq.
William C. Moran, Jr. Esq.
Bertram Busch, Esq.
Joseph L. Stonacker, Esq.
Joseph J. Benedict, Esq.
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ATTORNEYS FOR PLAINTIFFS

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-MIDDLESEX
COUNTY

URBAN LEAGUE OF GREATER)
NEW BRUNSWICK, et. al.,)

Plaintiffs,)

vs.)

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

Defendants.)

Docket No. C 4122-73

Civil Action

O R D E R

This matter having been opened to the Court upon oral motion by the defendant Township of Piscataway, the Court having heard from counsel for the Urban League plaintiffs and the Township of Piscataway, and good cause appearing for the entry of this Order,

IT IS HEREBY ORDERED this ^{26th} day of ^{June} ~~May~~, 1984, that

(1) Ms. Carla Lerman of 190 Moore Street, Hackensack, N.J. 07601, be and is hereby appointed as the Court's expert

in the above-captioned matter for the limited purpose of assisting the Court in determining the amount of available acres and specific sites in Piscataway Township which are suitable for development of Mount Laurel housing, and the appropriate densities for development of each such site;


(2) Within 30 days of the date of this Order, Ms. Lerman shall submit to the Court and the parties a report containing a list of vacant sites in Piscataway Township which are clearly suitable for development of Mount Laurel housing, a list of vacant sites in the Township which are clearly unsuitable for development of Mount Laurel housing, and a list of sites whose suitability is subject to dispute; her recommendations regarding the suitability for development of Mount Laurel housing of the last list of sites; and her recommendations regarding the appropriate densities for development of the sites contained in the first and third lists of sites;

(3) Either party, within 10 days of the date of Ms. Lerman's report, may submit written objections to said report, and, if deemed necessary by the Court, the matter shall be set down for further hearing;

(4) A ruling as to fair share and compliance with respect to the Township of Piscataway shall be withheld until after submission of Ms. Lerman's report and any objections thereto, and a hearing on the matter, if one is deemed necessary;

(5) Ms. Lerman shall bill the Township of Piscataway for the cost of her services, which payment shall be without

prejudice to an ultimate determination of liability for costs.

A handwritten signature in cursive script, appearing to read "Eugene D. Serpente". The signature is written in dark ink and is positioned above a horizontal line.

JUDGE EUGENE D. SERPENTELLI, J.S.C.