

Attorney's fees

1-23-89

UL v. Cranbury

- D's response to Justice's questions
from oral argument

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January 23, 1989

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

Re: Urban League of Greater New Brunswick,
 et al. v. Cranbury
 Docket No. 28276

Dear Honorable Justices:

I have reviewed the January 17, 1989, letter of Barbara Stark, Esq., addressing certain specific inquiries posed by this Court during oral argument on January 3rd. Kindly consider this as responding to that letter on behalf of the defendants.

While the 1976 transcripts have been microfilmed, the Clerk's office, with whom I spoke after Ms. Stark had called me, was not certain that the transcripts which were microfilmed represent all trial days and all motions presented before the Court at time of trial. No lawyer, as far as I know, has a complete transcript.

As to the legal fees sought, plaintiff has yet failed to quantify its demand. We know no more about the quantum of

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fees sought following consideration of Ms. Stark's letter than we did in 1986, when plaintiff's motion was filed without a detailed certification or dollar demand. Defendants respectfully contend that plaintiff's application for fees is, effectively, a nullity without such information.

During argument, plaintiff's failure to move for legal fees after the filing of the complaint was discussed. As to this issue, Ms. Stark relies, first, on Piscataway's 1983 Amendment to Answer and Separate Defenses. Judge Serpentelli had permitted the municipalities to amend their pleadings in 1983 to address issues not raised originally and to preserve defenses to the original complaint. That is why Piscataway amended its answer. The fact remains that plaintiff did not raise the issue of legal fees as a claim between 1974 and 1986.

Second, Ms. Stark refers to Judge Serpentelli's order of June 26, 1984 regarding the appointment of Carla Lerman as a court expert. Piscataway was directed to advance the costs charged by Ms. Lerman for preparing a report. The Court was to determine whether Piscataway or the plaintiff, or both, should pay those costs. The 1984 limited order does not address legal fees.

Third, Ms. Stark argues that Judge Serpentelli deferred plaintiffs' request for payment of fees regarding

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motions to compel compliance "on several occasions in 1985", despite Ms. Stark's "not [having] become involved in the case until 1986 ...". (First page of her letter of January 17, 1989). This argument is raised here for the first time. Judge Serpentelli ruled upon the requests for fees without hearing any argument from plaintiff on this point and without raising the issue himself.

No applications for fees were pressed before Judge Serpentelli by anyone but the plaintiff. One Cranbury builder submitted a one page letter to Judge Serpentelli, relying upon plaintiff's arguments to support his claim for legal fees. Judge Serpentelli treated the claim lightly ("Doesn't cost much to write a letter") and rendered no ruling as to it.

None of these reasons nor any others justify the position taken by the plaintiff in this matter, that defendants share culpability for plaintiff's failure to move its application since 1973.

The defendants urge this Court to deny the application for supplemental briefing. All of the relevant issues have been exhaustively analyzed in the briefs and the two hours of oral argument.

KIRSTEN, SIMON, FRIEDMAN, ALLEN, CHERIN & LINKEN

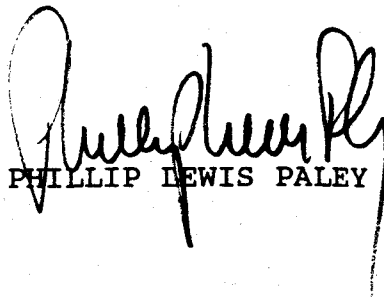
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The Court's consideration of this letter will be
greatly appreciated.

Respectfully submitted,



PHILLIP LEWIS PALEY

PLP:bhp