

AF - South Plainfield

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Brief in opposition to motion for attorneys' fees and costs by Benedict

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BENEDICT AND ALTMAN  
247 Livingston Avenue  
New Brunswick, NJ 08901  
(201) 745-9000

Attorneys for Defendant Township of South Brunswick

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
MIDDLESEX/OCEAN COUNTY  
DOCKET NO. C-4122-73

URBAN LEAGUE OF GREATER NEW  
BRUNSWICK, et al.,

Plaintiffs,

vs.

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

Defendants.

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Civil Action

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BRIEF IN OPPOSITION TO MOTION FOR  
ATTORNEYS' FEES AND COSTS  
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On the Brief:

Joseph J. Benedict, Esq.

LEGAL ARGUMENT

AWARD OF ATTORNEYS FEES AND COSTS TO PLAINTIFFS  
IS INAPPROPRIATE

Plaintiffs make their claim for attorneys' fees under 42 U.S.C.A. §3612(c), which provides:

(c) The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than \$1,000 punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff: Provided, That the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees. (Emphasis supplied).

It should be noted from the outset that this provision is significantly different from most federal statutory provisions for attorneys' fees in two respects: (1) The award is limited to prevailing plaintiffs as opposed to prevailing parties generally, and (2) the statute places "need" restrictions on the plaintiff. (On both points, Cf. 42 U.S.C.A. §§ 1988, 2000a-3(b), 2000e-5(k) and 19731(e)). By comparison to other federal statutes, therefore, the Fair Housing Act (42 U.S.C.A. 3601, et seq.) severely limits the circumstances under which a plaintiff may recover attorneys' fees. Defendant Township of South Brunswick contends that the higher standard imposed for an award of attorneys' fees under the Act indicates an intention on the part of Congress that such an award only be made in the clearest of contexts, i.e., when a plaintiff in fact prevails on a claim under the Act.

The present litigation is not such a clear case. Plaintiffs' action, although alleging violations of various federal statutes, including the Fair Housing Act, has never in fact

litigated these issues. Nor has a consideration of such issues ever influenced the course or outcome of the litigation. Indeed, only months after Plaintiffs instituted the present action did our Supreme Court announce its holding in So. Burlington County NAACP v. Mt. Laurel Township, 67 N.J. 151 (1975) (Mt. Laurel I). It was this decision, under the New Jersey Constitution, which has determined the course and focus of the litigation. And it was the Legislature's enacting of the New Jersey Fair Housing Act which has determined the ultimate resolution of this case. The only relevance, therefore, of Plaintiffs' federal claim is its appearance in Plaintiffs' complaint. It is difficult to believe that Congress intended to award attorneys' fees to a plaintiff on the basis of a federal claim where that claim has played no part in obtaining the relief sought.

This conclusion is consistent with the analysis of the Court in Singer v. State, 95 N.J. 487 (1984). The Court therein stated that the first requirement for an award of fees under 42 U.S.C.A. §1988 was "a factual nexus between plaintiff's litigation and the relief ultimately achieved". Id. at 495. In the present case there is no such nexus. The relief ultimately achieved in the present case will be the direct result of the application to the Defendants of the New Jersey Fair Housing Act. It is relief which would have been given even if Plaintiffs' had never initiated the present litigation.

Under circumstances where the relief sought becomes an inevitable result of factors external to the litigation, an award of attorneys fees is clearly improper. Such circumstances make

the litigation moot - a determination which this Court has already made in approving the transfer of Defendant South Brunswick's case to the Council on Affordable Housing.

In this respect then the present case is not substantially different from those cases where a plaintiff's federal claim has not been prosecuted or has been determined to be moot. Thus regarding a claim for attorneys' fees under 42 U.S.C.A. §1988 in Mesolella v. Providence, 578 F.Supp. 387 (D.C.R.I. 1984), the attorneys' fees were denied where a separate federal civil rights action was instituted while a state claim on the same facts was pending and where the federal action lay dormant and was ultimately withdrawn upon plaintiff's victory on the state claim. And in Bly v. McLeod, 605 F.2d 134 (4th Cir. 1979), cert. den. 445 U.S. 928 (1980), an award of fees under 42 U.S.C.A. §19731(e) was denied due to the mootness of plaintiff's underlying claim. See also, Ward v. Dearman, 626 F.2d 489 (5th Cir. 1980) and Davis v. Ennis, 520 F.Supp. 262 (N.D.Tex. 1981).

Given that Plaintiffs' federal claim has in no way shaped or contributed to the present litigation or its result, it seems vain to engage in a discussion of whether or not, if the claim had been litigated, Plaintiffs would have prevailed. Plaintiffs have argued extensively that this claim was substantial and meritorious. However, after more than ten years of litigation, during most of which the merits of the claim have never been directly in issue, any such discussion can be at best speculative.

Defendant South Brunswick would also note that the very

legislation which has terminated this litigation makes no provision for an award of attorneys' fees and that traditionally our courts have sanctioned such awards only in exceptional cases.

R.4:42-9.

Even if the Court determines that §3612(c) applies in this case, the statute clearly indicates such an award is not mandatory. The applicable language is "may award" and at least one Court has held that this language places the decision within the discretion of the Court. Marr v. Rife, 503 F.2d 735 (6th Cir. 1974), later app. 545 F.2d 554 (6th Cir. 1976). Therefore, even if the Court determines that such an award is permissible, the award need not be made. Defendant South Brunswick would argue that where, as here, a federal claim has not, for all intents and purposes, been pursued, such an award is improper and does not serve to further the goals of the legislation under which it is claimed.

As to costs, also, the matter is submitted to the court's discretion. However, an award should not be made if it would work injustice or oppression. Looman Realty v. Broad Street National Bank of Trenton, 74 N.J. Super. 71, 85 (App. Div. 1962).<sup>1</sup> In the present case such an award of either attorneys' fees or costs would be oppressive given the existing financial burdens which will be placed upon the Defendant in meeting its fair share requirements and the burden it has already carried in providing

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1. The Court noted, parenthetically, that this standard also applied to counsel fees.

for its own representation.

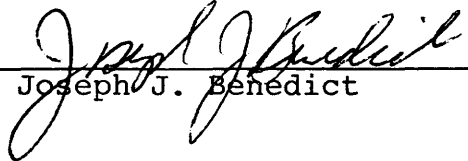
Finally, the exercise of the Court's discretion should be influenced by the fact that the Township, having not been forewarned of this application, as well as having no way to anticipate the amount claimed, has not budgeted any funds for this purpose.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that Plaintiffs' motion for attorneys' fees and costs should be denied.

Respectfully submitted,

BENEDICT AND ALTMAN  
Attorneys for Defendant  
Township of South Brunswick

By   
Joseph J. Benedict