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memorandum submitted in opposition to UL TI's application for attorneys fees and costs

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Plaintiffs,	:SUPERIOR COURT OF NEW JERSEY :CHANCERY DIVISION :MIDDLESEX/OCEAN COUNTY
URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al	: :CIVIL NO. C 4122-73 :(Mount Laurel)
vs.	:
Defendants,	:
THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, et al	:

MEMORANDUM SUBMITTED IN OPPOSITION TO URBAN LEAGUE PLAINTIFF'S APPLICATION FOR ATTORNEYS FEES AND COSTS

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Introduction

This Memorandum is respectfully submitted on behalf of the defendant Municipality Borough of South Plainfield in opposition to the Urban League plaintiff's application for attorneys fees and costs in connection with the within-captioned matter. This defendant in reply to the numerous authorities cited by plaintiff Urban League in support of their application for attorneys fees and costs shall rely upon three major issues, being;

1. That if counsel fees and costs are to be awarded at all, then all municipalities in the growth area should pay their pro rata share of Urban League plaintiff's expenses from the Mount Laurel II remand period up to but not including the Appellate Division and Supreme Court's handling of the matter which resulted in the Hills Development Co. vs. Bernards Township case.

2. That this Court as a trial court now lacks any jurisdiction under the Hills Development Co. vs. Bernards Township case to entertain Urban League plaintiff's application for attorneys fees and costs.

3. That the Urban League plaintiffs should be denied relief in any regard under the Doctrine of Laches.

ARGUMENT

I. IF COUNSEL FEES AND COSTS ARE TO BE AWARDED AT ALL, THEN ALL MUNICIPALITIES IN THE STATE OF NEW JERSEY IN THE GROWTH AREA SHOULD PAY THE PRO RATA SHARE OF ALL EXPENSES OF THE URBAN LEAGUE PLAINTIFFS FOR THE MOUNT LAUREL II REMAND PERIOD.

Plaintiffs recite a plethora of authority under Title 42 of the United States Code and various and sundry State Court decisions which hold to the proposition that court costs and counsel fees are allowable at the discretion of the Court for a prevailing party in litigation which involves the enforcement of some constitutionally guaranteed right or privilege.

Indeed, in ruling in favor of the Urban League (as cited by Urban League plaintiffs in their Brief) the Supreme Court may have considered, "The same nucleus of operative facts as that underlying the Urban League Fair Housing Act claims."

What has not been mentioned in the Urban League plaintiff's Brief or in their Certifications is the reality that but for the defendant municipalities such as this defendant, the Borough of South Plainfield who in earnestly, honestly and steadfastly defending their rights to oppose local zoning by judicial fiat, the Fair Housing Act would never have become a reality. As a matter of fact, the defendant municipalities' resistance after Mount Laurel I was the direct cause of the Supreme Court's handling of the zoning matters in Mount Laurel II. It is legend that subsequent to the issuance of the Mount Laurel II decision, the three trial court judges were appointed by the

Supreme Court.

This Court in particular, was charged with the obligation and duty of developing "the consensus methodology" as a way of determining the fair share obligation of all municipalities in the growth regions of the State of New Jersey. In fact, the Supreme Court in Mount Laurel II at page 199, recognized that the general welfare for which the trial courts were required to impose upon municipalities, fair share zoning ordinances, intimated that "the general welfare in the case of housing needs included not only low and moderate income persons residing outside of the municipality but (also those) within the region that contributes to the housing demand within that municipality." (Emphasis added)

Equity would therefore demand that an allocation of any of Urban League plaintiff's expenses, be they expert fees or attorneys fees, be allocated on a pro rata basis for all the municipalities in the growth area and not just those few municipalities which chose to continue to be the motivating force for the finalization of the constitutional process which began with Mount Laurel I and which finally (and hopefully) concluded with the adoption of the Fair Housing Act and the Supreme Court's decision in the Hills Development Co. vs. Bernards Township case.

II. THIS COURT LACKS SPECIFIC JURISDICTION UNDER THE HOLDING OF THE HILLS DEVELOPMENT CO. VS. BERNARDS TOWNSHIP CASE TO HEAR URBAN LEAGUE PLAINTIFF'S APPLICATION FOR COSTS AND LEGAL FEES.

On February 20, 1986, the Supreme Court of New Jersey, in a unanimous decision decided the Hills Development Co. vs. Bernards case. In such case the within-captioned matter, along with all other pending Urban League plaintiff cases involving other defendant municipalities, was transferred to the Council on Affordable Housing in accordance with the provisions of the Fair Housing Act. In such decision, the Supreme Court remanded each of the particular cases back to the trial court for the sole purpose of imposing conditions on transfer seen to be necessary by the trial court to preserve "scarce resources". It is eminently clear that this trial court has and had only that limited jurisdiction and for only such purposes as above recited. This Court under an Order dated May 21, 1986 has already exercised its limited jurisdiction; it has imposed the conditions on transfer and has in fact forwarded the case, involving this defendant municipality to proceed to the Council on Affordable Housing forthwith as it was required to do by the Supreme Court.

On or before September 3, 1986 the defendant municipality, Borough of South Plainfield, filed a Letter of Intent with the Council on Affordable Housing indicating its intention to participate in the proceedings of the Council in developing its fair share housing plan.

Accordingly, this Court does not have the jurisdiction to entertain any of the Urban League plaintiff's applications for

counsel fees or costs as to this defendant, at least.

III. URBAN LEAGUE PLAINTIFFS ARE NOT ENTITLED TO COUNSEL FEES AND COSTS UNDER THE DOCTRINE OF LACHES SINCE THEIR APPLICATION FOR SAME IS BEING MADE AT SUCH A TERMINAL POINT IN THE LITIGATION.

The Doctrine of Laches, an affirmative defense, has long been cited in litigation matters where a party's failure to do something which should have been done or to claim or enforce a right at the proper time has caused a prejudice or disadvantage to the adverse party.

It is clear that a party urging the application of laches must show that the adversary, without explanation or excuse, delayed in asserting a claim, that the delay was unreasonable and that it visited prejudice upon the party asserting the delay. Allstate Insurance Co. vs. Howard Savings Institution, 127 N.J. Super. 479, 317A 2nd 770.

In the instant case, other than a general recital in the initial Complaint, Urban League plaintiffs have failed to bring a timely application for an awarding of counsel fees and costs of this action. The case, particularly in reference to this defendant municipality, has been transferred and is now within the jurisdiction of the Council on Affordable Housing. As a result of this, defendants and in particular, this defendant, is asked to respond to an eleventh-hour application for costs and counsel fees at a time when all of the defendant municipality's activities are now being concentrated on the development of a rough draft and final draft of its Fair Share Plan and Housing Ordinance for submission to the Council on Affordable Housing. It is being

asked to defend against such an application in reference to counsel fees and is being left in total darkness as to which attorneys are to be awarded, by whom they were employed, what their hourly rates will be, what the total assessment for this defendant will be which this Court is being asked to determine. Obviously, this defendant municipality, along with other defendant municipalities, are severely prejudiced because the Urban League plaintiffs are asking this Court to rule in their favor for counsel fees as yet undetermined and in essence to give them a "blank check". How can this defendant municipality and others determine whether or not the counsel fees to be awarded are reasonable or whether or not the Court has employed one of the methods for determining such counsel fees as recited in some of the cases set forth in the Urban League plaintiffs Memoranda, or whether the Court in assessing costs and counsel fees for Urban League plaintiffs will utilize its own method.

CONCLUSION

For all of the above-stated reasons, this defendant respectfully requests that the Urban League plaintiff's application for counsel fees and costs be denied.

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