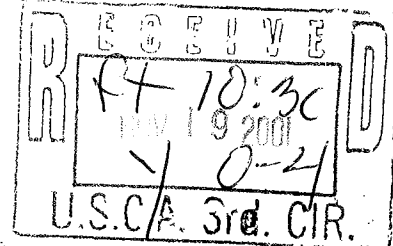


IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT



TENAFLY ERUV ASSOCIATION,
INC., CHAIM BOOK, YOSIFA BOOK,
STEFANIE DARDIK GOTLIEB, and
STEPHEN BRENNER,

Plaintiffs-Appellants,

v .

THE BOROUGH OF TENAFLY, ANN
MOSCOVITZ, individually and in her
official capacity as Mayor of the
Borough of Tenaflly, CHARLES
LIPSON, MARTHA B. KERGE,
RICHARD WILSON, ARTHUR PECK,
JOHN T. SULLIVAN, each
individually and in their official
capacities as Council Members of the
Borough of Tenaflly,

Defendants-Appellees.

Docket No. 01-3301 (cmh)

District Court No.: 00-6051 (WGB)

APPELLANTS TENAFLY ERUV ASSOCIATION, INC. and STEFANIE
DARDIK GOTLIEB'S RESPONSE TO APPELLEES' MOTION TO STRIKE
THE BRIEFS OF APPELLANTS AND STAY THE BRIEFING SCHEDULE OR,
ALTERNATIVELY, TO GRANT AN EXTENSION OF TIME TO FILE AN
OVERSIZE BRIEF, AND CROSS-MOTION FOR LEAVE FOR APPELLANTS
TO FILE TWO SEPARATE BRIEFS

Appellants Tenaflly Eruv Association, Inc. ("TEAI") and Stefanie
Dardik Gotlieb submit this response to Appellees' Motion to Strike the two
separate briefs filed by Appellants and stay the briefing schedule, or alternatively,
to grant appellees additional time to file an oversize response. Appellants TEAI

Received and Filed

11-19-01 cmh

Marcia M. Waldron,
Clerk

and Ms. Gotlieb also cross-move for leave for Appellants to file two separate briefs nunc pro tunc, and, at the appropriate time, two separate reply briefs.

There is no question that Local Rule 3.2 requires one brief and appendix on behalf of all appellants when a Joint Notice of Appeal has been filed.¹ As explained below, the fact that new counsel did not file a second notice of appeal should be excused and the two briefs submitted should not be struck.

The District Court's decision was issued on August 10, 2001. That decision dissolved a Temporary Restraining Order that had been in place since December 2000. At that time, all plaintiffs were represented by the undersigned law firms serving as co-counsel. Following the District Court's decision, the parties agreed that the injunction would temporarily remain in place and counsel for the parties entered into discussions regarding a further continuance of the TRO or, alternatively, a stay of enforcement of the District Court's decision. Unable to resolve the issue, plaintiffs applied to the District Court for a stay or, alternatively, an injunction pending appeal, and a hearing was held on August 20, 2001. The District Court denied plaintiffs' request for a stay or injunction pending appeal (A1039), but granted plaintiffs' alternative request for a limited stay to permit plaintiffs to apply to this Court for a stay or injunction pending appeal. Id. In

¹ Appellants note that the applicable Federal Rules of Civil Procedure do not speak in mandatory terms, but rather that multiple parties have the option of filing a joint brief. See Fed. R. App. P. 3(b).

support of this alternative request, plaintiffs represented to the District Court that they would move expeditiously in seeking such relief and that the Notice of Appeal would be filed immediately. A1040. The Notice of Appeal was filed that day. Addendum C to Brief on Appeal; A7.

After the Notice of Appeal was filed by undersigned counsel, certain plaintiffs decided to retain the law firm Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C. to prosecute the appeal on their behalf. Accordingly, the two groups of appellants filed separate motions in this Court seeking a stay of the District Court's decision.² Appellees responded to the motions without any reference to the fact that two separate motions were filed. Appearance of Counsel forms were then filed by the respective law firms identifying the individual appellants each represents.

But for the necessity to file a Notice of Appeal immediately after the District Court denied the request for a stay pending appeal, separate Notices of Appeal would have been filed. Had such separate notices been filed, there would be no issue regarding the propriety of filing two briefs. Obviously, therefore, there was no intent to circumvent the size limitations by filing the two briefs, as

² Indeed, the substitution of counsel was so sudden and hurried that both of the motions for a stay were made on behalf one of the plaintiffs, Dr. Steven Brenner. Dr. Brenner ultimately chose to have the Mintz, Levin firm represent him going forward.

Appellees imply in their moving papers. Accordingly, Appellants TEAI and Ms. Gotlieb respectfully request that Appellees' motion to strike appellants' two briefs be denied, and their cross-motion for leave to file two separate briefs nunc pro tunc be granted. Indeed, we respectfully submit that, because of the importance and complexity of the issues raised on this appeal, it will be helpful to the Court to have the issues fully briefed. In addition, Appellants TEAI and Ms. Gotlieb request leave for the Appellants to file two separate reply briefs.

Appellants TEAI and Ms. Gotlieb do not oppose Appellees' request for an enlargement of time and for leave to file a brief in excess of the limits imposed by the Federal Rules of Appellate Procedure. Because the total length of Appellants' two briefs is 21,806 words, if the Court grants Appellants' cross-motion for leave to file two separate briefs nunc pro tunc, we respectfully suggest that Appellees be granted leave to file a responding brief no greater than 22,000 words in length and that they be permitted an additional thirty (30) days in which to file such a response.

CONCLUSION

For the foregoing reasons, this Court should deny Appellee's Motion to Strike Appellants' briefs, grant Appellants' cross-motion for leave to file two separate briefs nunc pro tunc and two separate reply briefs, and grant Appellees' request for a thirty (30) day extension of time to file an oversized brief not exceeding 22,000 words.

Dated: November 16, 2001
New York, New York

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Response for the case Tenaflly Eruv Association, Inc., et al. v. Borough of Tenaflly, et al. was served this 16th day of November, 2001 upon the following by Federal Express:

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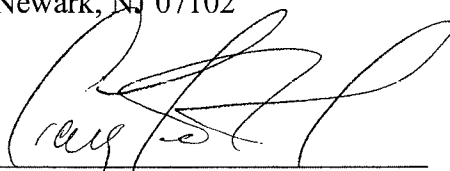
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Dated: November 16, 2001
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