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OUR FILE NO. 15255-0019

1700 BERGENLINE LLC A/K/A BERGENLINE NEW JERSEY, LP,

Plaintiff,

vs.

THE CITY OF UNION CITY, MAYOR OF THE CITY OF UNION CITY, CITY OF UNION CITY RENT LEVELING BOARD, KENNEDY NG, individually and in his official capacity, JUAN MILAN, individually and in his official capacity, ANTHONY SQUIRE, individually and in his official capacity, SANDRA VASQUEZ, individually and in his official capacity, HECTOR ROSARIO, individually and in his official capacity, NANCY JAFARGIAN, individually and in his official capacity, YAMIRUS HOLGUIN, individually and in his official capacity, BOLIVAR CARDENAS, individually and in his official capacity, and LUIS A. SOLANO,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
DOCKET NO.: HUD-L-001890-21

Civil Action

ORDER DENYING R. 4:6-2(e) MOTION TO DISMISS

THIS MATTER having been opened to the Court by Defendants The City of Union City, Mayor of The City of Union City, City of Union City Rent Leveling Board, Kennedy Ng, Juan Milan,

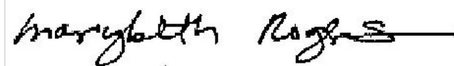
Anthony Squire, Sandra Vasquez, Hector Rosario, Nancy Jafargian, Yamirus Holguin, Bolivar Cardenas ("City Defendants") through its counsel, Mollie Hartman Lustig, Esq. of the law firm, Chasan Lamparello Mallon & Cappuzzo, PC, on notice to Plaintiff, 1700 Bergenline LLC a/k/a Bergenline New Jersey, LP, through their counsel of record, Adrienne LePore, Esq., of the law firm of Feinstein Raiss Kelin Booker & Goldstein, LLC, for an Order dismissing Counts Two, Three, Five, Six and Seven of Plaintiff's Complaint pursuant to R. 4:6-2(e), with prejudice, and the Court having reviewed the moving papers and any opposition thereto, and having heard the arguments of counsel and for good cause having been shown;

IT IS on this 1st day of December, 2021;

ORDERED that this motion is DENIED in its entirety; and

IT IS FURTHER ORDERED, that service of this Order shall be deemed effectuated upon all parties upon its upload to e-Courts. Pursuant to Rule 1:5-1(a), movant shall serve a copy of this Order on all parties not served electronically within seven (7) days of the date of this Order.

Denied for the same reasons set forth in the Court's decision to L 1410-21 attached below. Oral argument was waived by counsel.



Hon. Marybeth Rogers, J.S.C.

__________ Unopposed

____X____ Opposed

This is a Rule 4:6-2(e) motion to dismiss the Second, Third, Fifth, Sixth, and Seventh Counts of the First Amended Complaint against the Municipal Defendants named in the Complaint, along with the City of Union City Rent Leveling Board – specifically, Mayor Brian P. Stack ("Mayor Stack"), Kennedy Ng, ("Ng"), individually and in his official capacity, Juan Milan, Anthony Squire, Sandra Vasquez, Hector Rosario, Nancy Jafargian, Yamirus Holguin, Bolivar Cardenas, Norma Guevara, and Rossana Colon (collectively "Board Members"), each in their individual and official capacities.

In short, the crux of the Amended Complaint alleges that the City's Rent Control Office improperly calculated the rent for Defendant Lourdes Popoca's ("Popoca") unit, and that the Board upheld the incorrect calculation. Plaintiff further alleges that the Board's process used to determine the "legal rent" and the City's rent leveling Ordinance deprive its constitutional rights.

This Court has three of these (3) identical motions with different plaintiffs, but with the same defendants, alleging the same legal arguments. The motions are filed under L 1410-21, L 1675-21, and L 1890-21. The Court's reasoning here will address all three motions.

LEGAL STANDARD

On a Rule 4:6-2(e) motion, the plaintiff must receive every reasonable inference, and "the complaint must be searched in depth and with liberality to determine if a cause of action can be gleaned even from an obscure statement, particularly if further discovery is taken." Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989). In evaluating motions to dismiss, courts consider "allegations in the complaint, exhibits attached to the complaint, matters of public record, and documents that form the basis of a claim." Banco Popular N. Am. v. Gandi, 184 N.J. 161, 183 (2005) (citing Lum v. Bank of Am., 361 F.3d 217, 222 (3d Cir. 2004)). It is the existence of the fundament of a cause of action in those documents that is pivotal; the ability of the plaintiff to prove its allegations is

not at issue. Printing Mart, 116 N.J. at 746. In ruling, courts must "assume the facts as asserted by plaintiff are true and give her the benefit of all inferences that may be drawn in her favor." Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988).

ANALYSIS

A. DISCUSSION OF QUALIFIED IMMUNITY.

Defendants argue that qualified immunity applies to the Board and its members and therefore the Court should dismiss the Complaint. The doctrine of qualified immunity generally protects government officials from civil liability for discretionary acts that do not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Baskin v. Martinez, 243 N.J. 112, 118 (2020). In determining whether qualified immunity applies in a particular case, a court ordinarily must address two issues: (1) whether the evidence, viewed in the light most favorable to the plaintiff, establishes that the official violated the plaintiff's constitutional or statutory rights, and (2) whether the right allegedly violated was "clearly established" at the time of the officer's actions. Id. A right is "clearly established" if it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted. Id. In other words, "[q]ualified immunity is applicable unless the official's conduct violated a clearly established constitutional right." Anderson v. Creighton, 483 U.S. 635, 640 (1987).

Count Two of the Plaintiff's First Amended Complaint alleges 42 U.S.C. § 1983 violation that the Defendants deprived Plaintiff's constitutional rights. Plaintiff named eleven (11) individual defendants who acted in their official capacity in determining the legal rent. Plaintiff alleges that these individual defendants unilaterally adjourned the hearings on multiple occasions and upheld the Board's rent determination that was "inconsistent, arbitrary, capricious, and unreasonable." While the Court agrees with the Defendants that Baskin v. Martinez, 243 N.J. 112 (2020) does not stand for the

proposition that the question of qualified immunity cannot be determined at the motion to dismiss stage, the Court simply does not have enough information at this time to determine whether qualified immunity undoubtedly applies in this case. At this stage, the ability of the plaintiff to prove its allegations is not at issue. Printing Mart, 116 N.J. at 746. Therefore, the Court will not dismiss the Complaint under qualified immunity at this time.

B. IMMUNITY UNDER THE TORT CLAIMS ACT, N.J.S.A. 59:2-1, ET. SEQ. DOES NOT APPLY TO PLAINTIFF'S CLAIMS.

Defendants argue that the City, the Mayor, and the Board and its members are entitled to immunity under the Tort Claims Act. N.J.S.A. 59:2-3 provides,

> a. A public entity is not liable for an injury resulting from the exercise of judgment or discretion vested in the entity;
>
> b. A public entity is not liable for legislative or judicial action or inaction, or administrative action or inaction of a legislative or judicial nature.

Plaintiff rightfully rebutted that the TCA does not bar Plaintiff's claim based on Section 1983, a claim rooted in federal law. The Court finds that this question was well addressed in Fuchilla v. Layman, 109 N.J. 319 (1988) and rejects the Defendants' argument.

C. **DISCUSSION OF QUASI-JUDICIAL IMMUNITY.**

Immunity of judicial or quasi-judicial officers attaches only to the "judicial acts" performed within the individual's subject matter jurisdiction. K.D. v. Bozarth, 313 N.J. Super. 561, 568 (App. Div. 1998). The United States Supreme Court "has never undertaken to articulate a precise and general definition of the class of acts entitled to immunity." Forrester v. White, 484 U.S. 219, 227 (1988). Nonetheless, it continues to adhere to the view that "'[w]hether the act done by [a judge] was judicial or

not is to be determined by its character, and not by the character of the agent.'" Id. at 228. To determine its character, the reviewing court should scrutinize the nature of the act and the expectations of the parties, "whether it is a function normally performed by a judge … [and] whether [the parties] dealt with the judge in his judicial capacity." Stump v. Sparkman, 435 U.S. 349, 362 (1978).

The U.S. Supreme Court in Forrester explained the reasoning behind such immunity:

> "If judges were personally liable for erroneous decisions, the resulting avalanche of suits, most of them frivolous but vexatious, would provide powerful incentives for judges to avoid rendering decisions likely to provoke such suits. The resulting timidity would be hard to detect or control, and it would manifestly detract from independent and impartial adjudication. Nor are suits against judges the only available means through which litigants can protect themselves from the consequences of judicial error. Most judicial mistakes or wrongs are open to correction through ordinary mechanisms of review, which are largely free of the harmful side-effects inevitably associated with exposing judges to personal liability." Forrester, 484 U.S. at 227.

Defendants argue that the process employed by the Board in rendering its decisions, as it relates to housekeeping issues (e.g. timing and scheduling of hearings) or to the factual and legal issues before it, is undoubtedly judicial in nature and therefore this immunity should attach. Plaintiff filed a prerogative writ on April 8, 2021 and then amended its pleading on June 23, 2021 to name the individual board members. The Court is well aware that the City is expending resources to defend this action. However, Plaintiff's claim alleges that these individual defendants blatantly violated its constitutional rights. The Court's only concern here is whether a cause of action is suggested in the Complaint. Printing Mart-Morristown, 116 N.J. at 746. The Court is not aware of any published decisions that applied quasi-judicial immunity to administrative agencies.

Defendants cited the factors from Butz v. Economou, 438 U.S. 478, 512 (1978) used to determine whether an official enjoys quasi-judicial immunity. The Court finds that in-depth analysis

into each of the six non-exhaustive factors in Butz is inappropriate in a motion brought under R. 4:6-2(e).

D. THE COURT FINDS THAT ALL OTHER ARGUMENTS MADE BY THE DEFENDANTS ARE PREMATURE AT THIS STAGE.

I. VIOLATION OF 14TH AMENDMENT SUBSTATIVE DUE PROCESS

Defendants argue that Plaintiff's substantive due process rights do not "come close to being fairly characterized as an egregious governmental abuse against liberty or property rights; a violation so serious that it 'shock[s] the conscience or otherwise offend[s]…judicial notions of fairness…"

Whether or not the alleged violations rise to such level is not of Court's concern at this stage. The Court will reiterate that it is the existence of the fundament of a cause of action in the Complaint is pivotal; the ability of the plaintiff to prove its allegations is not at issue. Printing Mart, 116 N.J. at 746.

II. VIOLATION OF 14TH AMENDMENT PROCEDURAL DUE PROCESS

For judicial economy, the Court rejects the Defendants' argument that the Court should inquire as to whether adequate post-deprivation process exists here. Defendants' position is that Plaintiff has no procedural due process claim because Plaintiff has an adequate and timely remedy to address its grievances via prerogative writ. Plaintiff asserts that there is a fatal defect in the Ordinance because there is no safeguard against procedural delay. Plaintiff argues that this gives an "unfettered power…that can be used by Board…to exhaust a landlord into submission." The Court accepts the Plaintiff's opposition and finds that Plaintiff's procedural due process violation may be gleaned from the pleading.

III. TAKINGS ARGUMENTS

Plaintiff alleges in the Fifth and Sixth Counts that the Board "arbitrarily, capriciously, and unreasonably, without any basis, delayed and refused to hear the matter in a timely manner." Defendants cite to Washington Mkt. Enterprises, Inc. v. City of Trenton, 68 N.J. 107 (1975) to argue that where there has not been a taking of private property, any incidental injury to property consequent upon the operations of government, including those of duly constituted regulatory bodies, is *damnum absque injuria* ("loss or damage without injury"). Defendants also rely on Mobile Home Vill., Inc. v. Mayor & Council of Twp. of Jackson, 269 N.J. Super. 1 (App. Div. 1993) to argue that the reduction in rent as a result of the City and Board's action does not constitute a *per se* or physical taking of the Plaintiff's property.

This argument resembles the arguments that are more appropriate in a summary judgment motion. The question of whether the Board's action rises to the level of taking is not ripe at this time.

IV. FACIAL AND AS-APPLIED CONSTITUTIONAL CHALLENGES

Plaintiff alleges that this action is a "facial constitutional challenge to the Union City Rent Control Ordinance" as written and "as-applied." The Plaintiff alleges that on its face, the Ordinance does not comport with procedural due process requirements, because (1) it does not provide a timeframe for appeals to be heard by the Board; and (2) it does not permit landlords the opportunity to respond to the tenant's complaint at the administrative level, and only permits the landlord review by way of appeal to the Board.

"[W]hen a statute is challenged as either facially vague or vague as applied, different levels of 'definitional clarity' are required depending on the type of statute under scrutiny." Commc'ns Workers of Am. v. State of N.J., Dep't of Treasury, 421 N.J. Super. 75, 104 (Law Div. 2011) (quoting State v. Cameron, 100 N.J. 586, 592 (1985). In order to be facially vague, the ordinance would need to be vague to all persons in all conceivable contexts. Id. at 594. As to the as-applied argument, Defendants argue

that Plaintiff fails to overcome the presumption of validity given to rent control ordinances under Hutton Park Gardens v. Town Council of the Town of West Orange, 68 N.J. 543, 564 (1975).

Again, this argument resembles the arguments that are more appropriate in a summary judgment motion.

CONCLUSION

A motion to dismiss for failure to state a claim under R. 4:6-2(e) is granted with great caution. Printing Mart-Morristown, 116 N.J. at 771-772. The test is whether a cause of action is suggested by the facts alleged in the complaint. Russo v. Nagel, 358 N.J. Super. 254, 262 (App. Div. 2003). Although the Defendants' arguments may be compelling, many of them are not ripe for the Court's decision.

For the reasons above, Defendants' motion to dismiss is DENIED in its entirety.