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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 her official capacity, HECTOR ROSARIO, individually and in his official capacity, NANCY JAFARGIAN, individually and in her official capacity, YAMIRUS HOLGUIN, individually and in her 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-1890-21

CIVIL ACTION

ORDER

THIS MATTER having been opened to the Court by Feinstein Raiss Kelin Booker & Goldstein LLC (Adrienne LePore, Esquire appearing) counsel for Plaintiff, 1700 Bergenline LLC and AK Bergenline New Jersey Limited Partnership improperly pled as a/k/a Bergenline New Jersey, LP, upon notice to Chasan Lamparello Mallon & Cappuzzo, PC (Cindy N. Vogelman, Esquire appearing), counsel for 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 and Bolivar Cardena and upon notice to Office of the Tenants' Advocacy (Christina M Rivera, Esquire appearing) counsel for Defendant, Luis A. Solano and the Court having reviewed the moving papers and opposing papers, if any, and oral argument of counsel, if any, and for good cause shown:

IT IS on this 12th day of September, 2023;

ORDERED that the ~~Court Amend its June 23, 2023 decision to include a decision on all findings of fact and conclusions of law which were raised in Plaintiff's Motion for Summary Judgment~~; and it is further

ORDERED that the dismissal of Plaintiff's Prerogative Writ Complaint with Prejudice be reversed and that the matter be scheduled for a hearing; and it is further

ORDERED that a copy of this Order shall be deemed served by Ecourts.

Kimberly Espinales-Maloney
Hon. Kimberly Espinales-Maloney, J.S.C.

This motion was:

___X_ opposed
_____unopposed

This motion seeks to reconsider the Court's June 23 order and memorandum of decision (the June 23 Order). Since the order did not dispose of all matters as to all parties, the proper standard for this motion is the R. 4:42-2 interest of justice standard.[1] In Lombardi v. Masso, the Supreme Court stated that an interlocutory order should be reconsidered "only for good cause shown." 207 N.J. 517, 536 (quoting Johnson v. Cyklop Strapping Corp., 220 N.J. Super. 250, 263-264 (App. Div. 1987)).

The Court erred when it issued a decision as to both the constitutional and prerogative writs issues. Per the transcript provided by Plaintiff, the Court stated on the record that it would allow oral argument for the prerogative writs claim on a different day. It would be unjust to deny reconsideration of the decision without allowing oral argument. The June 23 Order is vacated to the extent it dismissed the prerogative writs action. The court will schedule argument for the action on a later date.

Plaintiff is correct in that the Court must clarify its decision on the issue of as-applied and facial unconstitutionality. The Court decided that the application of the ordinance violated Plaintiff's rights as applied. However, for the reasons set forth below, the Court now clarifies the June 23 Order in that the ordinance is unconstitutional on its face.

"[A] statute must be upheld 'if it can be shown to operate constitutionally in some, even if not all or most, instances.'" In re Contest of November 8, 2011 General Election of Office of New Jersey General Assembly, 210 N.J. 29, 46 (2012) (quoting Whirlpool Props., Inc. v. Dir., Div. of Taxation, 208 N.J. 141, 156 (2011)). Here, for the reasons set forth in the June 23 Order, the ordinance is unconstitutional on its face. In that decision, the court found that the ordinance

[1] Notably, the court's decision would be the same under the R. 4:49-2 standard for final orders.

violated Plaintiff's right to due process as applied because Plaintiff did not enjoy a pre-deprivation hearing. Here, there is no other way that the ordinance may be applied other than by not giving landlords pre-deprivation notice. Since the court found that a lack of pre-deprivation notice renders the ordinance unconstitutional as applied, it is also unconstitutional on its face.

Plaintiff is also correct in that the court did not address its request for a judgment declaring that the municipal Defendants cannot rely upon any prior rent determination. As a threshold issue, such relief is included in the complaint:

> Plaintiff demands a judgment . . . [d]eclaring that the Ordinance is unconstitutional as it violates Plaintiff's due process rights [and] . . . [c]ompelling the Administrator to notify Landlords when a tenant submits a complaint and allow for Landlord to respond before the Administrator makes a decision [and] . . . [d]irecting Municipal Defendants to pay consequential damages to Plaintiff for its loss of property rights, including loss of rents and decrease in the value of the Property as a result of loss of income.
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> Complaint, Third Count.

The Court did not address this specific issue, and instead granted summary judgment in Defendants' favor on the declaratory judgment claim. The court based that decision on its findings for the prerogative writs claim, which relate to other relief sought in the declaratory judgment claim. See June 23 Order at 60. The Court also stated that "Plaintiff[] fail[ed] to assert a legal basis for a declaratory judgment in [its] motion papers." Upon reconsideration, that statement was incorrect. Plaintiff twice asserted its position:

> Finally, it is undisputed that the methodology used by the Secretary, RRO and Board to determine a current legal "base rent" does not comply with the Ordinance or due process. The undisputed methodology allows for retroactive application of Ordinance amendments (despite clear authority forbidding such retroactive application), relies on calculations that are not final or authorized and for which prior owners were not provided due process, and allows the RRO to ignore his duties under the Ordinance. This methodology is so flawed that a judgment declaring that the manner in which the Secretary, Rent Regulation

> Officer and Board apply the Ordinance is in violation of the Ordinance itself and due process of law and must not be permitted to continue.
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> Plaintiff's Summary Judgment Brief at 1–2.
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> "It is clear that neither a landlord nor a tenant would ever be bound by an incorrectly calculated legal rent calculation/determination or one made by someone without authority to make such calculation/determination. From 1996 through 2019, the RRO had no authority to make LRDs. These had to be made by the Board and these had to have the due process protections, notice and an opportunity to be heard. The Ordinance during this period provided no notice to a landlord of a rent determination; no right to appeal; no procedure to be heard. This lack of process in connection with any actions by the RRO is consistent with the fact that during this period, the RRO was not authorized to make these determinations.
>
> Id. at 29–30.

It is in the interest of justice for the Court to reconsider its decision in the June 23 Order. Plaintiff asked for the above relief and the Court declined to address it. Moreover, it would have been proper to grant the relief. The Court found that Defendants violated Plaintiff's due process rights when they failed to provide a pre-deprivation hearing. It follows that Defendants cannot rely on the unconstitutional rent determinations. Accordingly, the Court amends the June 23 Order to grant summary judgment in Plaintiff's favor to the extent it seeks a judgment declaring that any rent determination calculated without a pre-deprivation hearing is invalid.