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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET #A-003689-22

Jeffrey S. Feld, Esq., The Four Felds, Inc. d/b/a L. Epstien Hardware Co. and Reasonable Lock & Safe Co., Inc., Plaintiffs-Appellants

v.

The City of Newark, Weequahic Preservation, LLC, Newark Mayor Ras J. Baraka, the City of Newark City Council, Newark City Clerk Kenneth Louis, Newark Corporation Counsel Kenyatta K. Stewart, Esq., Newark Business Administrator Eric S. Pennington, Esq., Newark Director of Economic and Housing Development John Palmieri, Newark Director of Finance Danielle Smith, Newark Division of Tax Abatement and Special Taxes Manager Juanitia M. Jordan, CTC, Newark Tax Assessor Aaron Wilson, Esq., The County of Essex, Essex County Executive Joseph N. DiVincenzo, Jr., The Essex County Board of Chosen Freeholders, Attorney General of New Jersey Gurbit S. Grewal, The New Jersey Housing Mortgage Finance Agency, The New Jersey Division Of Local Government Services, and The New Jersey Office of Local Planning Services, Defendants-Respondents

On Appeal from the
Superior Court of New Jersey
Law Division: Essex County

Docket No. ESX-L-2617-19

Civil Action

Sat Below: Honorable Annette Scoca, J.S.C.

PLAINTIFF'S/APPELLANT'S BRIEF

On the Brief: Jeffrey S. Feld, Esq.

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PREIMINARY STATMENT

This Appeal involves access to the courthouse and whether ordinary residents can hold public entities and officials accountable for not executing and upholding our State Constitution and our post April 17, 1992 long term tax exemption laws, rules and regulations.

For more than twelve years, our State judicial and executive branches have avoided adjudicating on non-preclusive lack of standing subject matter jurisdiction dismissal grounds whether our State Legislature intended to repeal and to replace the non-urban renewal entity NJHMFA long term tax exemption statutory scheme effective April 17, 1992. In addition, our State judicial and executive branches have avoided adjudicating whether Essex County failed to monitor and to collect all long term tax exemption revenues due the County under post April 17, 1992 long term tax exemption laws, rules and regulations.

This Appeal represents our State judicial and executive branches latest efforts not to touch these radioactive statutory interpretation third rail issues. This Appeal arises, in part, from four post-remand pre-answer pre-discovery lack of standing dismissals with prejudice orders of plaintiff's entire 69 pages 434 paragraphs Eight Counts hybrid prerogative writ/declaratory judgment/civil rights act violations complaint.

This Appeal also arises from a trial court shirking its judicial umpire responsibilities and failing to analyze separately and distinctly each prerogative writ, declaratory judgment and civil rights act violations count and cause of action including distinct declaratory, injunctive, equitable and monetary remedies sought thereunder.

In addition, this Appeal involves whether certain non-State related executive and legislative branch defendants breached their sworn oaths of office to execute and to enforce our State Constitution and certain post April 17, 1992 long term tax exemption laws, rules and regulations. This Appeal also involves whether these non-State related executive and legislative branch defendants could retain the same defense attorney to represent them simultaneously. The trial court avoided this preliminary disqualifying conflict of interest/appearance of impropriety issue on mootness grounds.

Plaintiff also alleged that defendants deprived him of substantive rights, privileges and immunities secured by our State Constitution and certain post April 17, 1992 long term tax exemption laws, rules and regulations.

In addition, this Appeal involves the boundaries of legitimate legal advocacy. This Appeal involves whether defendants-fiduciaries of a public trust-transgressed these boundaries. This Appeal ultimately involves preserving trust and

confidence in our judicial system and disavowing the impression that the judiciary denies equal justice under the law and places its thumbs upon the scales of justice in favor of public fiduciaries.

Since the commencement of this hybrid prerogative writ/declaratory judgment/civil rights act violations case on April 8, 2019, our State Legislature repealed the statutory rights of third-party taxpayers to contest in the Tax Court the validity of a long term tax exemption granted in their taxing district. Our State Legislature, however, acknowledged a taxpayer's State Constitutional prerogative writ "as of right" to challenge in the Superior Court the validity of any long term tax exemption granted in their taxing district subject to a shortened twenty days limitations of action and repose.

Indeed, this Appeal also requires this appellate tribunal to reconcile a public wrongdoing exception ignored by the trial court and a series of conflicting post April 27, 2023 persuasive procedural standing opinions. Ultimately, this Appeal requires this tribunal to consider whether certain fiduciaries of a public trust failed to turn square corners and shirked their sworn oaths of office to uphold our State Constitution and certain post April 17, 1992 long term tax exemption laws, rules and regulations.

BASIS FOR APPELLATE JURISDICTION

This Rule 2:2-3 "As of Right" Appeal arises from six final Superior Court trial court orders:

(i) Four April 27, 2023 post-remand pre-answer pre-discovery lack of standing jurisdictional dismissals with prejudice orders in favor of defendants (Pa80, Pa82, Pa84, Pa86);

(ii) An April 27, 2023 denial of plaintiff's disqualifying conflict of interest cross-motion on the grounds of mootness (Pa88); and

(iii) A July 10, 2023 denial of plaintiff's motion for reconsideration, alteration, amendment and clarification of the five April 27, 2023 Final Orders (Pa89).

RELEVANT STATE CONSTITUTION PROVISIONS

Individual Fundamental Rights, Privileges and Liberties

Article I, paragraph 1 of our State Constitution acknowledges that "All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness."

Article I, paragraph 2a of our State Constitution provides that "All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have the right at all times to alter or reform same, whenever the public good may require it."

Article I, paragraph 5 of our State Constitution states that "No person shall be denied the enjoyment of any civil or military right. . . ."

Article I, paragraph 6 of our State Constitution guarantees that "Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press."

Article I, paragraph 18 of our State Constitution recognizes that "The people have the right freely to assemble together, to consult for the common good, to make known their opinions to their representatives, **and to petition for redress of grievances.**" (emphasis supplied).

Article I, paragraph 21 of our State Constitution states that "This enumeration of rights and privileges shall not be construed to impair or deny others retained by the people."

Prerogative Writ Jurisdiction

Article VI, Section V, Paragraph 4 of our State Constitution provides:

> Prerogative writs are superseded and, in lieu thereof, review, hearing and relief shall be afforded in the Superior Court, on terms and in the manner provided by the rules of the Supreme Court, **as of right**, except in criminal cases where such review shall be discretionary. (emphasis supplied).

Long Term Tax Exemption Authority

Article VIII, Section I, paragraph 1(a) of our State Constitution requires all property be assessed for taxation under general laws and **by uniform rules**. (emphasis supplied).

Article VIII, Section III, paragraph 1 of our State Constitution authorizes but limits and constrains "blighted area" redevelopment long term tax exemptions.

> The clearance, replanning, development or redevelopment of blighted areas shall be a public purpose and public use, for which private property may be taken or acquired. Municipal, public or private corporations may be authorized by law to undertake such clearance, replanning, development or redevelopment; and **improvements made for these purposes and uses, or for any of them may be exempted from taxation, in whole or in part, for a limited period of time during which the profits and dividends payable by any private corporation enjoying such tax exemption shall be limited by law. The conditions of use, ownership, management and control of such improvements shall be regulated by law.** (emphasis supplied).

STANDARDS OF REVIEW

Different standards of appellate review apply in this appeal. This appellate tribunal's review of legal issues, including the four April 27, 2023 lack of standing

jurisdictional dismissal orders and the cross-motion mootness denial order, is de novo. This appellate tribunal owes no deference to the lower trial court's "interpretation of the law and the legal consequences that flow from established facts . . ." Manalapan Realty v. Township Committee, 140 N.J. 366, 378 (1995).

On the other hand, the abuse-of-discretion standard governs the trial court's July 10, 2023 Rule 4:49-2 and Rule 4:50-1 Order denying reconsideration, vacation or clarification of its prior April 27, 2023 final orders. Triffin v. Johnston, 359 N.J. Super. 543, 550 (App. Div. 2003). Unless the trial court "pursued[d] a manifestly unjust course," an appellate tribunal will not interfere. Gillman v. Bally Mfg. Corp., 286 N.J. Super. 523,528 (App. Div.), certif. den. 144 N.J. 174 (1996). Although the concept is difficult to define, "[a]n 'abuse of discretion is demonstrated if the discretionary act was not premised upon consideration of all relevant factors, was based upon consideration of irrelevant or inappropriate factors, or amounts to a clear error in judgment." In re Est. of Ehrlich, 427 N.J. Super. 64, 76 (App. Div. 2012) (quoting United Hearts, LLC v. Zahabian, 407 N.J. Super. 379, 390 (App. Div. 2009)).

STATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

This Appeal involves, in part, the validity of a City of Newark 30 Year Weequahic Preservation LLC Non-Urban Renewal Entity NJHMFA Long Term Tax Exemption Ordinance (Pa149) and a phantom Financial Agreement adopted March 9, 2019. Consequently, this Appeal involves how we subsidize the acquisition, preservation and rehabilitation of existing 100% non-housing authority private ownership low income affordable housing projects within the parameters of the Uniform Taxation and Blighted Area Clauses of our State Constitution and all post April 17, 1992 long term tax exemption laws, rules and regulations.

The Parties

Plaintiff Jeffrey S. Feld is the sole remaining original plaintiff. The Four Felds, Inc. d/b/a L. Epstein Hardware Co. and Reasonable Lock & safe Co. Inc. ceased to operate and were dissolved during the pendency of this action.

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[1] To facilitate his presentation and narrative of this odd COVID 19 orphan case, plaintiff has combined and merged his statement of facts and procedural history sections. However, since the commencement of this action on April 8, 2019, numerous parties have ceased to exist or to hold the public offices set forth in plaintiff's hybrid complaint.

In addition, for purposes of this Brief, 1T refers to the April 27, 2023 Motion Hearing Transcript.

Plaintiff is an aggrieved Essex County taxpaying resident. Plaintiff does not reside or own real property in the City of Newark. Plaintiff is also an attorney authorized to practice law in the State of New Jersey. As such, plaintiff was and remains an officer of the court and a "public citizen" with an overriding professional obligation to defend our constitutional form of pluralistic representative democracy. Plaintiff advocates enhanced local transparency, accountability and adherence to the rule of law.

Plaintiff (whose former family owned businesses were actively involved in supplying affordable housing projects located in financially distressed urban areas) discovered and questioned whether certain post April 17, 1992 low income affordable housing project long term tax exemption financial agreements complied with State law and whether he, his family owned businesses and other local unsophisticated taxpayers were being fleeced by developers with the "willful blindness" assent of State, County and Local Governments.

For more than twelve years, plaintiff has sought a judicial determination as to whether our State Legislature repealed and replaced the non-urban renewal entity NJHMFA Section 37 long term tax exemption effective April 17, 1992 and whether Essex County failed to disclose and to collect all long term tax exemption revenues due it under post April 17, 1992 State long

term tax exemption laws, rules and regulations. Our State judicial and executive branches avoided adjudicating these heavy lifting substantive constitutional issues.

The City of Newark and its related executive and legislative branch defendants were all involved in the "willful blindness" drafting and adoption of the 30 Year Weequahic Preservation LLC nonurban renewal entity NJHMFA long term tax exemption and the municipality's failure to turn over statutory long term tax exemption revenues to the County.

The County of Essex and its related executive and legislative branch defendants were all involved in monitoring and collecting all long term tax exemption revenues due to the County pursuant to certain post April 17, 1992 long term tax exemption laws, rules and regulations.

The State of New Jersey related executive branch defendants had oversight over all financially distressed urban municipalities and publicly subsidized affordable housing units located therein.

Defendant Weequahic Preservation LLC is a procedural due process indispensable necessary party in this hybrid prerogative writ/declaratory judgment/civil rights act violations action. Weequahic Preservation LLC is the private owner operator of the affordable housing project subsidized by the disputed 30 Year City of Newark non-urban renewal entity NJHMFA long term tax

exemption. Plaintiff alleged that Weequahic Preservation LLC was not an urban renewal entity under post April 17, 1992 State long term tax exemption laws, rules and regulations.

The Voluminous Eight Counts Hybrid Prerogative Writ/Declaratory Judgment/Civil Rights Act Violation Complaint

On April 8, 2019, plaintiff filed a sixty-nine pages 434 paragraphs Eight Counts hybrid prerogative writ/declaratory judgment/civil rights violations "criminal indictment roadmap"[2] complaint. (Pa1). Plaintiff sought injunctive, declaratory, equitable and monetary relief.

Plaintiff alleged that the City of Newark Weequahic Preservation LLV 30 Year non-urban renewal entity NJHMFA long term tax exemption did not comply with post April 17, 1992 State long term tax exemption laws, rules and regulations. Plaintiff also alleged that Essex County had failed to monitor and to collect all long term tax exemption monies due the County under post April 17, 1992 State long term tax exemption laws, rules and regulations.

[I]In 2010 and during the initial Feld II and Feld III mandatory Rule 4:69-4 case management conference, Judge John C. Kennedy prophetically described plaintiff's drafted complaints as "criminal indictment roadmaps." On the eve of a November 2010 plenary hearing, certain Walter G. Alexander related defendants blinked. The original Walter G. Alexander Phases 1 & II non-urban renewal entity NJHMFA long term tax exemptions were reapproved and restated as urban renewal entity LTTEL long term tax exemptions.

In addition, plaintiff alleged that defendants deprived him of certain substantive rights, privileges and immunities secured by our State Constitution and certain post April 17, 1992 long term tax exemption laws, rules and regulations.

Plaintiff described his Eight Counts as follows:

I. Voiding Walk-On Late Starter Weequahic Preservation LLC 30 Year NJHMFA Long Term Tax Exemption Ordinance 6PSF-E Adopted March 6, 2019

II. Declaratory Judgments/Prerogative Writs on Certain Repetitive Long Term Tax Exemption Issues of Public Importance

III. Impairment of our Robust Marketplace of Competing Ideas and Violations of Our State Public Policies in Favor of Open Transparent Accountable Local Representative Democratic Government

IV. Impairment of our Federally Regulated Municipal Capital Markets

V. Failure to Supervise

VI. State Created Danger

VII. New Jersey Civil Rights Act Violations

VIII Section 1983 Violations

Improper Removal and Delayed Remand Back

On May 10, 2019, the State related defendants (DAG Beau Wilson) wrongfully removed this action to the federal court without the consent of all served defendants. (Pa109). Plaintiff promptly filed a motion to remand. On July 23, 2019, a federal magistrate agreed with plaintiff's analysis. On February 11,

2020, the federal district court finally entered an order remanding the case back to the state trial court. (Pa113).

The COVID 19 Orphan Case

It took several weeks for this remanded case to be reopened and reactivated. (Pa110). On February 26, 2020, the State related defendants (DAG Beau Wilson and Nels J. Lauritzen) filed a Rule 4:6-2 (e) post-remand pre-answer pre-discovery motion to dismiss on the pleadings. (Pa116). On March 13, 2020 and in order to facilitate judicial economy and efficiency, the remanded state court (Essex County Presiding Civil Judge Thomas M. Moore) entered a global motion to dismiss case management briefing and oral argument scheduling consent order. (Pa71).

Besides filing opposition pleadings and exhibits (Pa172 to Pa213), plaintiff also filed a disqualifying conflict of interest/designation of trial counsel cross-motion. (Pa324 to Pa479). Plaintiff questioned whether the non-State related executive and legislative branch defendants could retain the same lawyer to simultaneously represent the local executive and legislative branches in this hybrid prerogative writ/declaratory judgment/civil rights act violations action.

Judge Scoca Assumes Ownership

But COVID 19 intervened. COVID 19 shut down our judicial system. This matter was transferred to and from numerous judges. Inadvertent dismissal orders were entered without oral argument.

In or about June 2022, Judge Annette Scoca took ownership of this orphan matter and scheduled a supplemental ZOOM case management conference. On July 28, 2022, the State and City related defendants brazenly failed to appear at the virtual case management conference. Due to the staleness of the original CY 2020 post-remand pre-answer and pre-discovery Rule 4:6-2(e) dismissal on the pleadings submissions, the trial court entered a supplemental case management order granting the parties leave to update and to supplement their original submissions. (Pa77, Pa78,Pa216 to Pa302).

The April 27, 2023 Virtual Motion Hearing

Due to the trial court's calendar, oral argument was postponed and rescheduled several times. On April 27, 2023, the trial court finally held a virtual Zoom oral argument. (1T). The trial court found plaintiff lacked constitutional, statutory and common law standing and dismissed his entire 69 pages 434 paragraphs Eight Counts complaint with prejudice. The trial court, however, explicitly noted that it was not ruling on the substantive statutory interpretation merits. The trial court also denied plaintiff's disqualifying conflict of interest cross-motion on mootness grounds. On April 27, 2023, the trial court signed four distinct lack of standing dismissal with prejudice orders and one mootness denial order.

Plaintiff's Motion for Reconsideration, Alteration and Amendment

On May 10, 2023, plaintiff filed a Rule 4:49-2 and Rule 4:50-1 motion for reconsideration, alteration, amendment and clarification. (Pa480 to Pa641). Plaintiff requested oral argument. By email sent June 21, 2023, Deputy Attorney General Eric Reid advised the trial court that his State employment would end on Friday July 7, 2023. (Pa642).

On July 10, 2023, the trial court (without any prior notice and without the benefit of requested oral argument) entered an Order with detailed explanatory reasons denying plaintiff's motion for reconsideration. (Pa89).

Plaintiff's Notice of Appeal

On August 3, 2023, plaintiff filed his notice of appeal. (Pa96). Despite intervening case law, the appellate division denied plaintiff's request for pre-merit briefing appellate mediation.

LEGAL ARGUMENT

I. The Trial Court Erred by Implying That a Rule 4:6-2(a) Procedural Lack of Standing Subject Matter Jurisdiction Dismissal Constituted a Substantive Preclusive Dismissal with Prejudice on the Ultimate Merits.(Pa80,Pa82,Pa84, Pa86,Pa89,1T)

On April 27, 2023 and in a rush to remove this festering COVID 19 orphan "radioactive" heavy lifting statutory interpretation matter from its docket, the trial court

erroneously dismissed plaintiff's entire 69 pages 434 paragraphs Eight Counts hybrid prerogative writ/declaratory judgment complaint with prejudice. On April 27, 2023, the trial court dismissed the entire Eight Counts Complaint pursuant to Rule 4:6-2(a) lack of jurisdiction over the subject matter. The trial court did not dismiss the entire 69 pages 434 paragraphs Eight Counts Complaint pursuant to Rule 4:6-2 (e) failure to state a claim upon which relief can be granted.

There, however, is a substantive issue preclusion distinction between the two rule provisions. A Rule 4:6-2(a) lack of jurisdiction dismissal is not a ruling upon the substantive merits. A Rule 4:6-2(a)lack of jurisdiction dismissal merely reflects the trial court's preliminary procedural determination not to exercise jurisdiction and not to adjudicate the substantive legal dispute between the parties. Lack of subject matter jurisdiction is a non-waivable defense and may be raised at any time, even on appeal.

On the other hand, a Rule 4:6-2(e) failure to state a claim dismissal with prejudice is a ruling upon the substantive merits with severe adverse issue preclusion consequences. See, Rotini v. Russell, A-2155-21 (App. Div. Oct. 13, 2023)(Pa674)(vacating the trial court order dismissing for lack of standing plaintiff's fourth amended complaint without prejudice and remanding for further proceedings); Sandoval v. Midland, HUD-L-

2290-22 (Law Div. June 9, 2023)(Pa644) (acknowledging that federal lack of standing dismissal was without prejudice and permitting state action to proceed).

Here, plaintiff did not slumber upon his rights. Plaintiff filed a motion seeking to correct this inadvertent "with prejudice" error and omission. (Pa480). But the trial court declined to entertain oral argument and to clarify and to correct its four lack of standing jurisdictional dismissal with prejudice orders.

II. The Trial Court Erred in Dismissing All Eight Counts of This Hybrid Prerogative Writ/Declaratory Judgment/Civil Rights Act Violation Action for Lack of Constitutional, Statutory and Common Law Standing. (Pa80,Pa82,Pa84,Pa86,Pa89,1T).

Plaintiff's 69 pages 434 paragraphs Eight Counts Complaint asserted prerogative writ, declaratory judgment and civil rights act violation claims and causes of actions-each based upon the same underlying facts. Plaintiff sought injunctive, declaratory, equitable and monetary relief. "[A} plaintiff must demonstrate standing for each claim he seeks to press." DaimlerChrysler Corp. v. Cumo, 547 U.S. 332, 352 (2006). Conversely, the trial court must set forth the facts and its conclusions of law supporting its lack of standing jurisdictional post-remand pre-answer pre-discovery dismissals of each count and cause of action with prejudice. Rule 1:7-4.

Here, the trial court lumped all plaintiff's claims, causes of actions and remedies together and dismissed plaintiff's entire complaint with prejudice. Here, the trial court committed patent reversible error. The trial court failed to analyze each count and cause of action separately and to accept all of plaintiff's allegations as true. See, Jennifer Clemens v. Execupharm Inc., 48 F.4th 146(3d Cir. Sept. 2, 2022).

Since the commencement of this action on April 8, 2019, the legal landscape shifted. Today, courts are not dismissing New Jersey Civil Rights Act ("NJCRA") violations allegations out of hand. The NJCRA authorizes suits against individuals "acting under color of law" who deprive a person of "any substantive rights, privileges or immunities secured by the Constitution or laws of this State." N.J.S.A. 10:6-2(c). To establish a claim under the NJCRA, a plaintiff must show that defendant, typically a public official, "acted under color of state law" and violated his "substantive rights guaranteed by the New Jersey Constitution and laws." Gormeley v. Wood-El, 218 N.J. 72, 97 (2014). Also see, Winberry Realty v. Rutherford, 247 N.J. 165 (2021); Kumar v. Piscataway Twp. Council, 473 N.J. Super. 463 (App. Div. 2022).

Moreover, on October 13, 2013, Judges Vernoia and Walcott-Henderson vacated a trial court's post-remand post-answer lack of standing dismissal without prejudice of an eighty-four

paragraphs fourth amended complaint and remanded for further proceedings. Azuowch Rotimi v. Brock Russell, A-2155-21 (App. Div. Oct. 13, 2023) (Pa674).

Rotimi involved a remanded fourth amended complaint filed by a pro se attorney against the City of Millville, its administrator, supervisors and commissioners. Rotini asserted putative causes of actions under the New Jersey Law Against Discrimination and "New Jersey Laws Against Retaliation." Unlike here, Rotini did not assert a cause of action under the New Jersey Civil Rights Act ("NJCRA"). The NJCRA "provid[es] the citizens of New Jersey with a State remedy for deprivation of or interference with the civil rights of an individual," Harris v. City of Newark , 250 N.J. 294, 305 (2022) (quoting Perez v. Zagami, LLC, 218 N.J. 202, 212 (2014)), including "the substantive rights guaranteed by New Jersey's Constitution and laws, " Gormely v. Wood-El, 218 N.J. 72, 97 (2014), under color of law." (slip op. at p. 3n.2).

Although Rotini found that the plaintiff lacked standing to assert claims on behalf of others, the appellate panel closely scrutinized the fourth amended complaint and found that plaintiff had alleged sufficient injury and harm to himself to survive the dismissal.

> That is not to say plaintiff's reference to the alleged unlawful conduct of defendants allegedly directed toward or affecting others should be stricken

> from the complaint are of no import in determining whether the complaint otherwise suggests a fundament of a cause of action for purposes of analyzing whether the complaint should be dismissed under Rule 4:6-2. See Printing Mart, 116 N.J. at 746. Fairly read, plaintiff's complaint includes references to the alleged unlawful conduct of defendants directed to others not only to support putative claims for which plaintiff lacks standing, but also to provide context for the fundament of a claim the motion court recognized exists in plaintiff's favor and for which he clearly has standing.

(slip op. at p. 12).

In addition, the Rotimi appellate panel instructed plaintiff "to identify the legal cause of action asserted, including specific citations to any alleged statutory provision he contends was violated, such that defendants and the court shall have no difficulty determining on the face of the pleading the claims asserted." (slip op at p.15).

Here, unlike Rotimi, plaintiff's dismissed hybrid Eight Counts Complaint (Pa1) set forth and alleged various specific constitutional and statutory provision violations. (Complaint, para. 284 to 358, Pa 37 to Pa50). Plaintiff alleged that the Weequahic Preservation LLC long term tax exemption did not comply with post April 17, 1992 long term tax exemption laws, rules and regulations. Plaintiff alleged that MEPT Journal Square Urban Renewal, LLC v. The City of Jersey City, 455 N.J. Super. 608 (App. Div. 2018) cert denied 263 N.J. 356 (2019) resolved and governed this statutory interpretation dispute.

In his complaint, plaintiff set forth the history of the Long Term Tax Exemption Law ("LTTEL"), the repeal of the Limited-Dividend Nonprofit Housing Corporations or Association Law, the significance of the new "urban renewal entity" concept and its inclusion of State Constitution Blighted Area Clause income and profit limitations within the urban renewal entity's formation documentation. (Complaint, para. 284 to 358, Pa 37 to Pa50)

Plaintiff cited N.J.A.C. 5:13-1.1 requiring all post April 17, 1992 housing sponsors to comply with the Long Term Tax Exemption Law, P.L. 1991, c. 431.

Plaintiff also alleged that in 2003 our State Legislature required each municipality which entered into a long term tax exemption financial agreement to remit five percent of the annual service charge to the county upon receipt of that charge in accordance with N.J.S.A. 40A:20-12. Plaintiff alleged that effective January 19, 2016, municipalities were now required to remit to the County five percent of the portion of the payment in lieu of taxes actually collected from an urban renewal entity during a tax quarter rather than five percent of the amount due and payable.

In addition, plaintiff alleged that effective January 19, 2016, a municipal clerk must transmit the long term tax

exemption and financial agreement to the chief financial officer of the county and to the counsel for informational purposes.

Rotimi is not an aberration. On October 25, 2023, Judges Marczyk and Chase reversed the Rule 4:6-2(e) dismissal of a civil rights act violation count. Jeanine Anthony v. County of Morris, A-3641-21 (App. Div. Oct. 25, 2023)(Pa690).

At this post-remand pre-answer pre-discovery juncture of the case, the trial court prematurely shut down any civil rights act violation analysis. On April 27, 2023, the trial court shut down any heavy lifting statutory interpretation textual, context and historical analysis as to whether our State Legislature intended to exclude and to carve out 100% non-urban renewal entity affordable housing projects from the new urban renewal entity limitations of revenues and profits formation requirement, minimum land tax credits, five percent of revenues payment to the county and new long term tax exemption reporting and oversight requirements. See, N.J.S.A. 40A:20-2, -3(g), -4, -5, -9, -11, -12, -13. Also see, Steven Breitman v. Atlantis Yacht Club, __N.J. Super.__ (App. Div. Oct. 27, 2023)(Judge Sabatino, together with Judges Marczyk and Chase, explaining (without the assistance of our absent Attorney General) what the phrase limited "profits" and "dividends" means); Jersey City Two LLC v. Jersey City, 012480-20 (Tax May 5, 2023) (Pa598).

III. An Essex County Taxpaying Resident Has Constitutional, Statutory and Common Law Third Party Taxpayer Standing to Contest the Validity of a Post April 17, 1992 Nonurban Renewal Entity NJHMFA Section 37 Long Term Tax Exemption Granted by the City of Newark under Post April 17, 1992 State Long Term Tax Exemption Laws, Rules and Regulations.(Pa80,Pa82,Pa84,Pa86,Pa89,1T).

This case involves judicial review and what tribunal has jurisdiction to review governmental action. Judicial review is a bedrock principle of our constitutional form of representative government. While this case was pending, our State Legislature removed the historical jurisdiction of the Tax Court to consider a third-party taxpayer's challenge of the validity of a tax exemption granted in their county taxing district. See, P.L. 2021, Chapter 17, Section 6 barring third party taxpayer appeals in the Tax Court. But see, City of Hackensack v. Hackensack Med. Ctr., 228 N.J. Super. 310, 313 (App. Div. 1988) (that "someone else may have received improper tax treatment does not entitle the taxpayer to an exemption. . . . Rather, it may give rise to ground for any taxpayer in the taxing district to challenge such exemption").

However, our State Legislature did not divest the Superior Court of its jurisdiction to review a third-party taxpayer's challenge of the validity of a long term tax exemption tax exemption under State law. That "as of right" existed and remained under the Prerogative Writ Clause of our State Constitution. That "as of right" also existed under the Long

Term Tax Exemption Law ("LTTEL"). In 2002, our State Legislature amended LTTEL and imposed a twenty days' limitations of actions and repose upon all challenges of a LTTEL long term tax exemption. P.L. 2002, Chapter 15, Section 10. In 2003, our State Legislature cured a drafting error and omission. In 2003, our State Legislature divested the Tax Court of original jurisdiction and required all challenges of a LTTEL PILOT to be by prerogative writ actions filed in the Superior Court within 20 days from publication of the notice of final adoption. P.L. 2003, Chapter 125, Section 13.

In New Jersey Citizen Action v. State of New Jersey, MER-L-001968-2021 (Law Div. Sept. 28, 2022)(Pa529), the State conceded this point: aggrieved taxpayers in a taxpaying district retained access to the courts to challenge the validity of a long term tax exemption under State law.

Moreover, on August 9, 2021 while this action was in abeyance, defendant City of Newark modified its published long term tax exemption notice of adoption. On August 9, 2021, defendant City of Newark alerted all Essex County taxpayers of their limited right to challenge a City of Newark long term tax exemption. On August 9, 2021, defendant City of Newark published in the Star Ledger a 2/3 page notice of adoption of a May Newark Urban Renewal LLC LTTEL long term tax exemption ordinance for a mixed-use nine phase development project of the downtown Newark

Bear Stadium consisting of approximately 3,800 market rate residential units, 400 affordable housing residential rental units and at least 100,000 square feet of mixed hospitality/destination retail space.

The August 9, 2021 public notice of adoption mirrored P.L. 2002, Chapter 15, Section 10. The August 9, 2021 May Newark Urban Renewal LLC Notice of Adoption stated:

> The ordinance has been finally adopted by the governing body of the City of Newark, in the County of Essex, State of New Jersey on June 26, 2022, approved by the Mayor on July 29, 2022 and the 20-day period of limitation within which a suit, action or proceeding questioning the validity of such ordinance can be commenced, as provided in the Local Bond Law, the Redevelopment Area Bond Financing Law and the Long Term Tax Exemption Law, has begun to run from the date of the first publication of this statement.
>
> If no action or proceeding questioning the validity of the ordinance and the actions authorized thereby shall be commenced or instituted within 20 days hereof, the county and the school district and all other municipalities within the county **and all residents and taxpayers and owners of property therein** shall be forever barred and foreclosed from instituting or commencing any action or proceeding in any court questioning the validity or enforceability of the ordinance or the validity or enforceability of acts authorized under the ordinance, and the ordinance and acts authorized by the ordinance shall be conclusively deemed to be valid and enforceable in accordance with their terms and tenor. (emphasis supplied).

Thus, the question boils down to the historical constitutional purpose of the "as of right" Prerogative Writ Clause. Its purpose was to preserve the fundamental rights of

citizens to challenge arbitrary, capricious and unreasonable governmental action. Its purpose was to preserve citizens' fundamental State Constitution Article I, paragraph 18 right to petition for redress of a grievance. Its purpose was to preserve citizens' common law right to compel public fiduciaries of a public trust to comply with the law.

Indeed, no one wants to be a human hand vac cleaning up the messes of others. But this is the core function of the judicial branch. No one is above the law. If a governmental entity or public official disobeyed the law, they must be held accountable. Here, the trial court abandoned its core constitutional check and balance function without a trial on the merits.

On April 27, 2023, the trial court also glossed over plaintiff's standing under the Uniform Declaratory Judgment Act. N.J.S.A. 2A:16-53. In addition, on April 27, 2023, the trial court blurred a well- established public interest taxpayer standing exception. In Loigman v. Township Committee of Middletown, 297 N.J. Super 287 (App. Div. 1997), Presiding Appellate Division Judge Petrella (together with future New Jersey Supreme Court Justice Wallace and former State Attorney General Kimmelman) explained:

> **Generally, taxpayer intervention is appropriate where there are claims of fraud or corruption,** see Driscoll v. Burlington Bridge Co, 8 N.J. 433, 474-476, cert

> denied 344 U.S. 838, . . . (1952) **or other instances of illegalities and ultra vires acts.** National Waste Recycling, Inc. v. Middlesex Cty. Imp. Auth, 291 N.J. Super. 283, 289 (App. Div.) cert granted, 146 N.J. 565 (1996); Matlack v. Burlington Cty Freeholder Bd., 191 N.J. Super. 254 (Law Div 1993), aff'd 194 N.J. Super. 359 (App Div. 1984); Koons v. Bd of Com'rs of Atlantic Cty., 134 N.J.L. 329) (Sup Ct 1946) aff'd 135 N.J.L. 204 (E &A 1947). (emphasis supplied).

Loigman is clearly distinguishable from this case. Loigman involved a non-party taxpayer who sought to enforce a public sector labor agreement as opposed to challenging the ultra vires illegality of that public sector labor agreement. Here, plaintiff challenged the underlying validity of the non-urban renewal entity long term tax exemption under post April 17, 1992 long term tax exemption laws, rules and regulations. Here, plaintiff sought to compel the County to monitor and to collect all long term tax exemption revenues due the County under State law. Also see, Dobco Inc. v. Bergen County Improvement Authority,250 N.J. 396 (2022)(per curiam) (finding an individual principal officer had individual taxpayer standing to seek injunctive and declaratory relief challenging the validity of a public bid award).

All residents are entitled to equal protection and uniform consistency under the law. Municipalities are creatures of State law. Financially distressed municipalities lack the statutory discretion and authority to disobey the law and to favor certain developers over others. Long term tax exemptions are

discretionary legislative actions. See, Millenium Towers v. Municipal Council, 343 N.J. Super. 367 (Law Div. 2001).

Today, all post April 17, 1992 long term tax exemptions must be governed by the same State preemptive "exclusive" enabling statute: the Long Term tax Exemption Law ("LTTEL"). See, MEPT Journal Square Urban Renewal LLC v. City of Jersey City, 455 N.J. Super. 608 (App. Div. 2018) cert. denied 263 N.J. 356 (2019); The State Comptroller's Report on Tax Abatements (Aug. 10, 2010); The Redevelopment Handbook (Jan. 2012); State Office of Local Planning Services Urban Renewal Entity Oversight (Nov. 2018); The Municipal Tax Abatement Handbook (Nov. 2020).

Today, long term tax exemptions are not just confined to urban "areas in need of redevelopment." Today, this festering non-urban renewal entity NJHMFA Section 37 long term tax exemption validity issue is arising in suburban Mount Laurel fair share housing declaratory judgment actions. Today, long term tax exemptions are a valuable tool to satisfying non-urban constitutional Mount Laurel fair share housing obligations. Accordingly, residents are entitled to judicial guidance.

IV. An Essex County Taxpayer Resident Has Constitutional, Statutory and Common Law Standing to Compel the City of Newark and the County of Essex to Account and to Collect All Statutory Long Term Tax Exemption Revenues Due the County of Essex under Post April 17, 1992 State Laws, Rules and Regulations.(Pa80,Pa82,Pa84,Pa86,Pa89,1T).

On April 27, 2023, the trial court and defendants extinguished an aggrieved party's constitutional "as of right" to judicially challenge municipal action. The Prerogative Writs Clause (Article VI, Section 6, paragraph 4) applies "as of right" to all levels of government: State, County or Municipal. A Rule 4:69 action in lieu of prerogative writ serves as an adequate constitutional means for aggrieved third party taxpayers to seek judicial review of and relief from alleged ultra vires actions. See, Alexander's v. Paramus Bor., 125 N.J. 100 (1991) (holding that the scope of statutory jurisdiction accorded to the Council on Affordable Housing did not extinguish an aggrieved party's constitutional right to judicially challenge municipal action).

But to bring an action in lieu of prerogative writs, an aggrieved plaintiff must show that the appeal could have been brought under one of the common law prerogative writs: e.g. mandamus, quo warranto, prohibition, and certiorari. Vas v. Roberts, 418 N.J. Super. 509 (App. Div. 2011); Loigman v. Tp. Com. of Middletown, 297 N.J. Super. 287 (App. Div. 1997); Ward v. Keenan, 3 N.J. 298, 303 (1949).

According to Black's Law Dictionary (Fifth Edition), "mandamus" is the name of a writ (formerly a high prerogative writ) which issues from a court of superior jurisdiction, and is directed to a private or municipal corporation, or any of its

officers, or to an executive, administrative or judicial officer, or to an inferior court, commanding the performance of a particular act therein specified, and belonging to his or their public, official, or ministerial duty, or directing the restoration of the complainant to rights or privileges of which he has been illegally deprived.

In old English practice, a "quo warranto" writ was a writ in the nature of a writ of right for the king, against him who claimed or usurped any office, franchise, or liberty, to inquire by what authority he supported his claim, in order to determine the right. It was intended to prevent exercise of ultra vires powers that were not conferred by law.

The writ of prohibition was the counterpart to the writ of mandamus.

A writ of certiorari is a writ of common law origin issued by a superior to an inferior court requiring the latter to produce a certified record of a particular case tried therein.

Here, plaintiff met his burden of proof. Here, plaintiff alleged, in part, that defendants' actions were ultra vires and that they lacked the authority to grant a non-urban renewal entity long term tax exemption. Accordingly, plaintiff had a constitutional "as of right" for judicial review of the contested City of Newark non-urban renewal entity long term tax exemption ordinance and the County's failure to monitor and to

collect all long term tax exemption revenues due the County under post April 17, 1992 State long term tax exemption laws, rules and regulations.

Where there is a wrong, there will be a remedy. Here, defendant City of Newark has admitted in its annual audits the County's entitlement to five percent of its long term tax exemption revenues. It is outrageous and unconscionable that the judiciary condones patent public wrongdoing and bars an aggrieved County taxpayer's efforts to compel public fiduciaries to comply with the law.

V. Newark I Lacked Collateral Estoppel Preclusive Effect On All Newark II Claims and Causes of Actions. (Pa80,Pa82,Pa84,Pa86,Pa89,1T).

The equitable collateral estoppel doctrine does not bar this entire hybrid prerogative writ/declaratory judgment action. First, like qualified immunity, collateral estoppel is an affirmative defense. Defendants have not yet filed answers in this matter. Defendants failed to attach the contested long term tax exemption financial agreement to their dismissal pleadings.

As the party asserting the collateral estoppel bar, defendants must show: (1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the

determination of the issue was essential to the prior judgment; and (5) the party against whom this doctrine is asserted was a party to or in privity with a party to the earlier proceeding. Olivieri v. Y.M.F. Carpet, Inc., 186 N.J. 511, 526 (2006).

However, "even where these requirements are met, the doctrine, which has its roots in equity, will not be applied when it is unfair to do so." Id. at 521. Indeed, "Fundamental to the theory of collateral estoppel is the notion that the earlier decision is reliable, an underlying confidence the result was substantially correct. The premise is that properly retried, the outcome would be the same." Kortenhaus v. Eli Lily & Co., 228 N.J. Super. 162, 166 (App. Div. 1988) (citing Restatement (Second) of Judgments 29 comment f (1982)).

With respect to plaintiff's lack of standing, as argued earlier, case law has changed. It is uncertain whether Newark I would be decided the same way today. Jeffrey S. Feld v. City of Newark, A-1272-16T4 (App. Div. May 30, 2019) cert denied 2020 NJ WL 808315 (NJ Feb. 6, 2020)("Newark I")(Pa130). First, the first paragraph of Newark I is factually false. Newark I involved a nonurban renewal entity NJHMFA long term tax exemption. Newark I did not involve an urban renewal entity LTTEL long term tax exemption. Newark I omitted the Loigman public wrong doing ultra vires exception to standing. Newark I failed to cite MEPT Journal Square Urban Renewal LLC v. City of Jersey City, 455

N.J. Super. 608 (App. Div. 2018), The State Comptroller's Tax Abatement Report (Aug. 10, 2010), The Redevelopment Handbook (Jan. 2012) and The Municipal Tax Abatement Handbook (Nov. 2020).

Newark I failed to discuss the November 2018 shift in State executive branch urban renewal entity formation oversight. Newark I failed to cite N.J.A.C. 5:13-1.1. Newark I was issued in CY 2019 prior to the CY 2020 unsealing of federal indictments and guilty pleas arising from plaintiff's discoveries in the City of Orange Township. Newark I was decided before the beginning of the PILOTs to Schools Movement.

With respect to the festering non-urban renewal entity NJHMFA Section 37 long term tax exemption validity issue, plaintiff has never fully and fairly litigated this statutory interpretation issue. NJHMFA I is an odd matter. In re Approval of Financing Commitment for the Project Known as Norman Towers, HMFA 0451 Docket No. A-4583-19 (App. Div. May 31, 2022) ("NJHMFA I") (Pa267). NJHMFA I involved deferential administrative judicial review. NJHMFA I involved a direct appeal of an administrative final decision regarding State executive branch public funding via the issuance of non-recourse tax exempt revenue bonds and 9% competitive low income tax credits.

NJHMFA I kicked the can down the road. NJHMFA I did not involve deferential judicial review of the underlying

discretionary municipal legislative act. NJHMFA I did not involve judicial review of the County's failure to monitor and to collect long term tax exemption revenues due the County. NJHMFA I did not involve judicial review of a municipality's refusal to respond to all pertinent second reading public hearing questions and comments prior to consideration and official action on an ordinance not subject to referendum challenge. (Ironically, the NJHMFA cured its earlier patent error and omission by reconsidering its original approval and affording plaintiff an opportunity to be heard before the NJHMFA Board ratified its prior public funding action on July 1, 2020.)

NJHMFA I did not address the adverse consequences arising from the filing of a prerogative writ action within a 20 days statutory estoppel period. NJHMFA I did not address MEPT Journal Square Urban Renewal LLC v. City of Jersey City, 455 N.J. Super (App. Div. 2018). NJHMFA I did not address a Town Of West New York urban renewal entity long term tax exemption that agreed with plaintiff's legal analysis. (Pa507). NJHMFA I did not address the NJHMFA's refusal to fund a Feld XVIII contested City of Orange City non-urban renewal entity NJHMFA long term tax exemption project. (Pa370, Pa375).

NJHMFA I involved a City of East Orange (and not a City of Newark) non-urban renewal entity NJHMFA Section 37 long term tax exemption. Neither the municipality nor the Weequahic

Preservation LLC related Norman Towers redeveloper participated in the NJHMFA I appeal. No discovery occurred in this direct appeal. The State executive branch controlled the administrative appeal record and transcripts. Only after the issuance of its final administrative opinion did plaintiffs discover what was told the NJHMFA Board in closed executive session. The NJHMFA Board relied upon the enactment of P.L. 2019, c. 297 approved January 13, 2020 to justify its action. Here, an after-the-fact legislative enactment cannot save an improper discretionary municipal legislative act.

Finally, there are boundaries of legitimate legal advocacy. The State related defendants transgressed these boundaries. The State related defendants ignored and contradicted their own rules and regulations. The State related defendants ignored and contradicted the State Comptroller's August 2010 Tax Exemption Report, the State DCA's January 2012 Redevelopment Handbook, the November 2018 shift in urban renewal entity formation oversight, various Best Practices Inventory Questions and the LFB's November 2020 Municipal Tax Abatement Handbook.

The State related defendants and their counsel impugned the integrity of the judicial process. "Fraud upon the court" is not a frivolous, vexatious and unreasonable allegation in this prerogative writ action. The State related defendants delayed consideration of this matter by improperly removing this action

to the federal system. (Pa110, Pa112). The State related defendants failed to appear at a noticed virtual case management conference. (Pa77). The State related defendants engaged in ex parte communications with the tribunal and obtained a void dismissal order without any notice to plaintiff. (Pa319). See, Triffin v. Automatic Data Process, Inc., 411 N.J. Super. 292, 298 (App. Div. 2010) (must demonstrate [ ], clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability [to] impartially . . . adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense.)

The State related defendants are and were required to enforce and to execute the law on behalf of all stakeholders. The State related defendants cannot disobey the law, especially our State Constitution.

VI. A Licensed Attorney Has a Continuous and Ongoing Professional Duty to Report Public Wrongdoing Up the Reporting Ladder.(Pa80,Pa82,Pa84,Pa86,Pa88,Pa89,1T).

Plaintiff is an officer of the court confronted with conflicting rulings as to his sworn professional and ethical duty as a public citizen to enforce and to uphold the law, to report public wrongdoing up the reporting ladder and to preserve

trust and confidence in our constitutional form of representative democracy.

In Century Indemnity Co. v. Congoleum Corp. (In re Congoleum Corp.) 426 F.3d 675, 686-87 (3d Cir. 2005), the Third Circuit found that non-creditor attorneys had an ethical duty to report public wrongdoing to the bankruptcy court sufficient to grant the non-creditor attorneys standing in the bankruptcy proceeding. Our aspirational Rules of Professional Conduct counsel attorneys to report public wrongdoing and to act as private attorney generals. See, Jacobs v. Mark Lindsay and Son Plumbing & Heating, Inc., 458 N.J. Super. 194, 211 (App. Div. 2019) (Judge Fuentes, together with Judges Accurso and Moynihan noting the importance and need of "private attorney generals" to "advance the public interest through private enforcement of statutory rights that the government alone cannot enforce."). Also see, ABA Model Rule of Professional Conduct Preamble No. 6 ("As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and quality of service rendered by the legal profession. . . . In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.").

Unfortunately, the trial court's rulings cloud the issue. With increasing allegations of public mis and malfeasance, instructive clarity is required.

VII. The Trial Court Erred by Not Ruling on Mootness Grounds on Plaintiff's Preliminary Disqualifying Conflict of Interest Cross—Motion.(Pa88,Pa89,1T).

On April 27, 2023, the trial court avoided ruling on plaintiff's preliminary conflict of interest representation cross-motion on the grounds of mootness. See, Greenfield v. NJ Dept. of Corr., 382 N.J. Super. 254, 257-258 (App. Div. 2006) (issue is moot when court's decision can have no practical effect on existing controversy). But on April 27, 2023, the trial court failed to consider whether plaintiff's cross-motion raised questions of public importance or likelihood of recurrence or both. Joye v. Hunterdon Cent. High Sch., 176 N.J. 568, 583 (2003).

The State related defendants acknowledged the significance of plaintiff's disqualifying conflict of interest allegations. Although they signed joint pleadings, two distinct DAGs represented the different and sometimes conflicting interests of the NJHMFA and the DLGS. On the other hand, the same attorneys represented the interests of the executive and legislative branches of municipal and county governments in this hybrid prerogative writ/declaratory judgment/civil rights act

violations action. This dual representation highlighted the inherent conflict of interest when plaintiff alleges that the local legislative branches failed to exercise their sworn legislative oversight check and balance duties and to ensure that the local executive branches complied with the law: ie. adequately reporting all outstanding long term tax exemption receipts and statutory disbursements to the county. Under the Rules of Professional Responsibility, a public entity lacks the authority to waive this conflict of interest. Separate counsel was required for each branch of local government. R.P.C. 1.8 (k) & (l). Also see, The Four Felds, Inc. v. The City of Orange Township, A-5875-13T3 (App. Div. May 23, 2018) cert denied __N.J. __(2008) ("Feld X") (Pa347)(holding the same law firm could not simultaneously represent a municipality and the redeveloper in the same affordable housing transaction).

Upon reversal and remand, plaintiff's preliminary disqualifying conflict of interest cross-motion must be restored to the active trial court docket.

VIII. Defendants-Fiduciaries of a Public Trust-Failed to Turn Square Corners and Transcended the Boundaries of Legitimate Legal Advocacy.(Pa80,Pa82,Pa84,Pa86,Pa88,Pa89,1T)

A trial is the search for the Truth. "[O]ur jurisprudence has long ago set boundaries for advocacy, and unequivocally defined conduct that, by its potential to cause injustice will

not be tolerated." Geler v. Akawie, 358 N.J. Super. 437, 463 (App. Div. 2003).

Other than the private redeveloper, all other defendants were fiduciaries of a public trust subject to a heightened duty of care. These public defendants were required to turn square corners. The Judiciary can no longer condone such behavior by officers of the court with a sworn duty to enforce and to uphold State law. See, In re IMO Town of Harrison and Fraternal Order of Police Lodge No. 116, 440 N.J. Super. 268, 299 (App. Div. 2015) ("[W]hether a state agency is abiding by a valid state law 'is a fundamental concern of the Attorney General both in his capacity to the agency and in his capacity and responsibility as protector of the public."). Also see, Sanford Jaffe, "Op-Ed: We must call out lawyers who don't honor their oath" The Star Ledger (May 6, 2023)(Pa528). ("Beyond representing clients, lawyers take an oath that holds them responsible for being "officers of the court," which means they have an obligation to tell the truth and obey court rules, to promote justice and uphold the law.")

In addition, Rule 1:4-8(a) imposes a continuous obligation of due diligence and candor upon an attorney. By signing a pleading, an attorney certifies to the court that he or she has read the pleading, written motion or other paper and that:

> (1) the paper is not being presented for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims, defenses and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) the factual allegations have evidentiary support or, . . .
>
> (4) the denials of factual allegations are warranted on the evidence or, as to specifically identified denials, they are reasonably based on a lack of information and belief or they will be withdrawn or corrected if a reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support.

Here, however, the public entity defendant transcended the boundaries of legitimate legal advocacy. Besides violating Rule 1:4-8, the State related defendants improperly removed this action to the federal courts. (Pa109,Pa112). The State and Newark related defendants failed to appear at a noticed supplemental virtual case management conference. (Pa77). The State related defendants engaged in ex parte communication with the trial court and obtained the entry of an ultra vires void dismissal with prejudice order without notice to plaintiff.

(Pa303,Pa306,Pa319). This ex parte behavior required plaintiff to file an unnecessary and burdensome motion to vacate. This ex parte behavior also caused the new trial court judge to conduct her own factual inquiry (in violation of the judicial rules of conduct) and to confirm on her own a nonexistent public dismissal hearing.

All public defendants failed to advise the trial court of intervening contrary case law, rules and regulations. All public defendants failed to advise the trial court of an intervening November 2020 long term tax exemption toolkit adopting plaintiff's statutory analysis. All public defendants failed to advise the trial court how this non-urban renewal entity NJHMFA long term tax exemption had now become an aberration and not the norm. (Pa511,Pa513,Pa515).

Finally, in the context of post-remand pre-answer pre-discovery motions to dismiss on the pleadings, all defendants attacked plaintiff's character, integrity and professional competence. This professional misbehavior, in itself, supports reversal and remand. On October 12, 2023, Presiding Appellate Judge Accurso together with Judge Natali, admonished defendant's counsel in an extraordinary signed persuasive opinion. Lenny Rodriguez v. Edgar Cano, A-1561-21 (App. Div. Oct. 12, 2023) (Pa654)(slip op. at p. 20).

> [O]ur courts view an attack by counsel on a witness's character or morals, when they are not in issue, [as] a particularly reprehensible type of impropriety," Paxton v. Misuik, 54 N.J. Super. 15, 22 (App. Div. 1959), because of the potential for such comments to cause injustice by instilling "in the minds of the jury impression not founded upon the evidence." Geler, 358 N.J. Super. at 467 (quoting Botta v. Bruner, 26 N.J. 82, 98 (1958).

IX The Trial Court Abused Its Discretion By Denying Plaintiff A Level Litigation Playing Field.(Pa80,Pa82,Pa84,Pa86,Pa88,Pa89,1T).

Judicial review is a fundamental constitutional guardrail against governmental abuses of power. The Judiciary is a co-equal branch of government with the ultimate judicial review check and balance authority to invalidate and to constrain arbitrary, capricious and unlawful legislative and executive action or inaction.

On April 27, 2023 and July 10, 2023, the trial court abrogated its core guardrail function. The trial court placed its thumb upon the scales of justice in favor of defendants. The trial court denied plaintiff equal justice under the law. Without explanation, the trial court denied plaintiff's request for oral argument. The trial court refused to amend the false and misleading on the merits with prejudice preclusive connotation of its four lack of standing dismissal orders. The trial court's decisions were based upon plainly incorrect reasoning and reliance upon a faulty and erroneous on its face

Newark I lack of standing opinion. The trial court failed to consider the post commencement ramifications of our State Legislature divesting the tax court of any historical jurisdiction over third party taxpayers' challenges of other tax exemptions but preserving a third party taxpayers constitutional "as of right" prerogative writ rights. The trial court failed to examine each claim and cause of action separately. The trial court failed to consider certain evidence and to reconsider new information. See, Town of Phillipsburg v. Block, 380 N.J. Super. 159, 175 (App. Div. 2005).

Ultimately, this Appeal involves the integrity of our judicial process and preserving trust and confidence in the judicial process. Our judicial process and court rules are predicated upon due process and resolution of disputes based on their merits. These core principles governed plaintiff's denied Motion for Reconsideration, Vacation, Alteration, and Amendment. Midland Funding LLC v. Albern, 433 N.J. Super. 494, 499 (App Div. 2013) ("Our procedural rules were designed to be 'a means to the end of obtaining just and expeditious determinations between the parties on the ultimate merits.'" (quoting Ragusa v. Lau, 119 N.J. 276, 284 (1990)); See Rule 1:1-2, Rule 1:4-8, Rule 1:7-4, Rule 1:13-1, Rule 4:49-2, Rule 4:50-1 (c), (d), and (f).

The trial court failed to exercise its inherent equitable powers. In addition, the trial court violated our Judiciary's Mission Statement.

The Judiciary's Mission Statement provides:

> We are an independent branch of government constitutionally entrusted with the fair and just resolution of disputes in order to preserve the rule of law and to protect the rights and liberties guaranteed by the Constitution and laws of the United States and this State.

The trial court misapplied clear and unambiguous court rules. Rule 1:1-2 mandates that the Court Rules:

> be construed to secure a just determination, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. Unless otherwise stated, any rule may be relaxed or dispensed with by the court in which the action is pending if adherence to it would result in an injustice.

Implicit in a judge's fact-finding responsibilities is the judge's obligation to decide all critical issues. A judge cannot decline to do so because the issue is novel and thus, in the judge's view, should be first addressed by an appellate court. See State v. Roper, 362 N.J. Super. 248, 252 (App. Div. 2003).

In addition, Rule 1:7-4(b) provides:

> On motion made not more than 20 days after service of the final order or judgment upon all parties by the party obtaining it, the court may grant a rehearing or may, on the papers submitted, amend or add to its findings and may amend the final order or judgment accordingly, but the failure of a party to make such

> motion or to object to findings shall not preclude the party's right thereafter to question the sufficiency of the evidence to support the findings. The motion to amend the findings, which may be made with a motion for a new trial, shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions that counsel believes the court has overlooked or on which it has erred.
>
> Rule 1:13-1 permits:
>
> [c]lerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight and omission may at any time be corrected by the court on its own initiative or on the motion of any party, and on such notice and terms as the court directs, notwithstanding the pendency of an appeal.

Rule 4:49-2 governs reconsideration of "final" and not interlocutory orders. The Rule 4:49-2 standard is essentially whether the rationale was palpably incorrect or irrational, and whether the judge failed to consider or appreciate the significance of probative, competent evidence. In Lawson v. Dewar, 468 N.J. Super. 128 (App. Div. 2021), Presiding Appellate Judge Fisher, together with Judges Gilson and Moynihan, explained:

> But some reconsideration motions-those that argue in good faith a prior mistake, a change in circumstances, or the court's misappreciation of what was previously argued-present the court with an opportunity to either reinforce and better explain why the prior order was appropriate or correct a prior erroneous order. Judges should view well-reasoned motions based upon Rule 4:42-2 as an invitation to apply Cromwell's rule: "I beseech you . . . think it possible you may be mistaken." The fair and efficient administration of justice is better served when reconsideration motions

> are viewed in that spirit and not as nuisance to be swatted away.

Finally, Rule 4:50-1 also granted the trial court the discretion:

> [o]n motion, with briefs, and upon such terms as are just, the court may relieve a party or the party's representative form a final judgment or order for the following reasons: .. . (b) newly discovered evidence which would probably have been discovered in time to move for a new trial under 4:49; (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; . . . or (f) any other reason justifying relief from the operation of the judgment or order.

In a motion to alter or amend the final judgment, a party must show "(1) an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to correct clear error of law or prevent manifest injustice." Lazaridis v. Wehmer, 591 F. 3d 666, 669 (3d Cir 2010)(per curiam). In order for the relief to be granted on the grounds of newly discovered evidence, the new evidence must (1) be material to the issue and not merely cumulative or impeaching, (2) have been discovered since the trial and must be such as by the exercise of due diligence could not have been discoverable prior to the expiration of the time for moving for a new trial; (3) be of such nature as to have been likely to have changed the result if a new trial had been granted. Quick Chek Food Stores v. Springfield Tp., 83 N.J. 438 (1980).

Here, the trial court abused its clear and unambiguous discretion to reconsider, amend, alter and vacate its four April 27, 2023 post-remand pre-answer pre-discovery Rule 4:6-2 (a) lack of standing dismissal with prejudice orders and April 27, 2023 disqualifying conflict of interest cross-motion denial on mootness grounds order.

Public entities are creatures of State law. Public entities must comply with the Law. In sum, this hybrid prerogative writ/declaratory judgment/civil rights act violation action highlights the Olmstead v. United States, 277 U.S. 438, 465 (1928) dissenting warnings of Justice Louis Brandies made ninety-five years ago.

> Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commanded to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. **Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself, it invites anarchy.** (emphasis supplied).

CONCLUSION

For all the foregoing reasons, plaintiff Jeffrey S. Feld, Esq. respectfully requests this appellate tribunal to reverse the six final post-remand pre-answer pre-discovery orders, to remand this hybrid prerogative writ/declaratory judgment/civil

rights act violations action back to another trial court judge and to grant such other relief that this appellate tribunal deems just and equitable.

Dated: November 2, 2023

/s/Jeffrey S. Feld
Jeffrey S. Feld, Esq.
(018711983)

JEFFREY S. FELD, ESQ., THE FOUR FELDS, INC. d/b/a L. EPSTEIN HARDWARE CO., and REASONABLE LOCK & SAFE CO., INC.,

Plaintiffs-Appellants,

v.

THE CITY OF NEWARK, WEEQUAHIC PRESERVATION, LLC, NEWARK MAYOR RAS J. BARAKA, CITY OF NEWARK COUNCIL, NEWARK CITY CLERK KENNETH LOUIS, NEWARK CORPORATION COUNSEL KENYATTA K. STEWART, ESQ., NEWARK BUSINESS ADMINISTRATOR ERIC S. PENNINGTON, ESQ., NEWARK DIRECTOR OF ECONOMIC AND HOUSING DEVELOPMENT JOHN PALMIERI, NEWARK DIRECTOR OF FINANCE DANIELLE SMITH, NEWARK DIVISION OF TAX ABATEMENT AND SPECIAL TAXES MANAGER JUANITA M. JORDAN, CTC, NEWARK TAX ASSESSOR AARON WILSON, ESQ., THE COUNTY OF ESSEX, ESSEX COUNTY EXECUTIVE JOSEPH DiVINCENZO, JR., THE ESSEX COUNTY BOARD OF CHOSEN FREEHOLDERS, ATTORNEY GENERAL OF NEW JERSEY GURBIR GREWAL, THE NEW JERSEY HOUSING MORTGAGE FINANCE AGENCY, THE NEW JERSEY DIVISION OF LOCAL GOVERNMENT SERVICES, AND THE NEW JERSEY OFFICE OF LOCAL PLANNING SERVICES,

Defendants-Respondents.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-003689-22

- Civil Action -

ON APPEAL FROM:
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, ESSEX COUNTY

Docket No. ESX-L-2617-19

Sat Below:
Hon. Annette Scoca, J.S.C.

BRIEF OF RESPONDENT, WEEQUAHIC PRESERVATION, LLC

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PRELIMINARY STATEMENT

The issue on appeal is a relatively simple one: do any of the Plaintiffs-Appellants have standing to pursue their underlying claims? Standing is a threshold issue, and a proper determination of standing ensures that only litigants with a substantial interest in a matter can seek judicial review to determine the merits of a case. Plaintiffs-Appellants are unable to demonstrate that they are real parties in interest to the substantive claims raised in the Complaint.

This appeal arises from the dismissal with prejudice of Plaintiffs-Appellants' Complaint due to Plaintiffs-Appellants' lack of standing in the underlying matter. Pa80, Pa82, Pa84, Pa86. Plaintiffs-Appellants' Complaint sought, among other things, to nullify and invalidate Newark City Ordinance 6PSF-e, adopted on March 6, 2019 (the "Ordinance"), which granted a thirty (30) year tax abatement to Defendant-Respondent, Weequahic Preservation, LLC ("Weequahic") pursuant to the New Jersey Housing and Mortgage Finance Agency Law of 1983, as amended and supplemented, N.J.S.A. 55:14K-1 et seq. (the "HMFA Law") in connection with a project to rehabilitate two hundred sixty-eight (268) units of affordable housing located at 507-519 Elizabeth Avenue in the City of Newark (the "Project"). Pa1. All defendants filed motions to dismiss for failure to state a claim

pursuant to R. 4:6-2(e) asserting that none of the Plaintiffs had standing to bring their claims. Pa116, Pa120, Pa144, Pa153.

Plaintiffs-Appellants asserted that as taxpayers in the same county in which the Project is located, they had standing as *county* taxpayers to challenge the tax abatement that was granted by the City of Newark to Weequahic. Pa172. The Court correctly found that Plaintiffs-Appellants lack standing because Plaintiffs-Appellants failed to demonstrate that they had a sufficient stake in the subject matter of the underlying case or a substantial likelihood of some harm. Pa80, Pa82, Pa84, Pa86. For the reasons outlined more fully below, we respectfully request that the Appellate Division affirm the orders of the trial court below, which dismissed the Complaint with prejudice.

PROCEDURAL HISTORY

This is an appeal from several Orders issued by the Superior Court of New Jersey: (1) Orders dated April 27, 2023 granting the Motions to Dismiss filed by each of the Defendants-Respondents; (2) Order dated April 27, 2023 denying the Plaintiffs-Appellants Motion to Designate Trial Counsel; and (3) Order dated July 10, 2023 denying Plaintiffs-Appellants Motion for Reconsideration of the April 27, 2023 Orders. Pa80, Pa82, Pa84, Pa86.

On April 8, 2019, Plaintiffs-Appellants, Jeffrey S. Feld, Esq., The Four Felds, Inc. d/b/a Epstein Hardware Co. and Reasonable Lock & Safe Co., Inc. (the "Plaintiffs-Appellants"), filed a Complaint in Lieu of Prerogative Writ seeking to nullify and invalidate Newark City Ordinance 6PSF-e, adopted on March 6, 2019, which granted a thirty (30) year tax abatement to Defendant-Respondent, Weequahic Preservation, LLC ("Weequahic") pursuant to the New Jersey Housing and Mortgage Finance Agency Law of 1983, as amended and supplemented, N.J.S.A. 55:14K-1 et seq. (the "HMFA Law") in connection with a project to rehabilitate two hundred sixty-eight (268) units of affordable housing located at 507-519 Elizabeth Avenue in the City of Newark (the "Project"). Pa1.

On May 10, 2019, Defendants-Respondents, Attorney General of New Jersey, Gurbir S. Grewal, the New Jersey Housing and Mortgage Finance Agency, the New Jersey Division of Local Government

Services, and the New Jersey Office of Local Planning Services (collectively, the "State Defendants"), filed a Notice of Removal, removing the case to the United States District Court for the District of New Jersey. Pa109. On February 11, 2020, the Hon. Esther Salas, U.S.D.J., issued a Letter Order remanding the case back to the Superior Court of New Jersey, Essex County. Pa112.

On March 13, 2020, the Hon. Thomas M. Moore, P.Civ.J., issued a Consent Case Management Order requiring all defendants to file responsive pleadings or motions to the Complaint by March 20, 2020. The State Defendants filed their Motion to Dismiss on February 26, 2020. Pa116. Defendants, the City of Newark, Newark Mayor Ras J. Baraka, the City of Newark City Council, Newark City Clerk Kenneth Louis, Newark Corporation Counsel Kenyatta K. Stewart, Esq., Newark Business Administrator Eric S. Pennington, Esq., Newark Director of Finance Danielle Smith, Newark Division of Tax Abatement and Special Taxes Manager Juanita M. Jordan, CTC, and Newark Tax Assessor Aaron Wilson, Esq. (collectively, the "City Defendants"), filed their Motion to Dismiss on March 16, 2020. Pa120. Defendants, the County of Essex, Essex County Executive Joseph N. DiVincenzo, Jr., and the Essex County Board of Chosen Freeholders (collectively, the "County Defendants") filed their Motion to Dismiss on March 17,

2020. Pa144. On the same date, Weequahic filed its Motion to Dismiss in Lieu of an Answer. Pa153.

On April 17, 2020, Plaintiffs-Appellants filed their opposition to the Motions to Dismiss, and on April 29, 2020, Plaintiffs-Appellants filed a Motion to Designate Trial Counsel, seeking to disqualify counsels for the City Defendants, the County Defendants, and the State Defendants from representing certain named defendants. Pa172, Pa324.

On June 12, 2020, August 27, 2020, and September 11, 2020 Plaintiffs-Appellants submitted correspondences to the Court requesting that the Motions to Dismiss and the Motion to Designate Trial Counsel be adjourned pending a decision on an appeal on another matter filed by the Plaintiffs-Appellants - In re Approval of a Financing Commitment for the Project Known as Norman Towers, HMFA #03451, Docket No. A-4583-19 (May 31, 2022) (the "Norman Towers Appeal") – because the Norman Towers Appeal "involves the same substantive repetitive issue of public interest involving whether the NJHMFA long term tax exemption was repealed and replaced effective April 17, 1992." WP1a, WP4a, WP6a.

On September 30, 2020, in response to the Court's request that the parties take a position with respect to the Plaintiffs-Appellants' adjournment request, all Defendants-Respondents submitted correspondence to the Court requesting that the

adjournment request be denied. WP8a, WP10a, WP12a, WP14a. On October 27, 2020, Plaintiffs-Appellants submitted a reply requesting that the pending motions be stayed. WP15a.

The trial court seemingly granted the stay on the pending motions because no activity occurred on the case thereafter. Then, by way of letter dated May 31, 2022, Plaintiffs requested a case management conference to discuss a supplemental briefing schedule in light of the Appellate Division's decision in the Norman Towers Appeal, which was decided on the same date. WP32a. On August 4, 2022, the Court issued a Supplemental Case Management Order permitting the parties to file supplemental materials. Pa77. Oral argument on the pending motions was conducted on April 27, 2023. On the same date, the Court issued orders granting the Motions to Dismiss and denying the Motion to Designate Trial Counsel. Pa80, Pa82, Pa84, Pa86, Pa88. On May 10, 2023, Plaintiffs-Appellants filed a Motion for Reconsideration, which was denied by way of Order dated July 10, 2023. Pa480, Pa89.

STATEMENT OF FACTS

On or about April 8, 2019, Plaintiffs filed an eight count Complaint in Lieu of Prerogative Writ stemming from the City's adoption of an Ordinance granting Weequahic a thirty (30) year tax abatement for its Project pursuant to the HMFA Law. Pa1. The principal allegation raised in the Plaintiff's Complaint with

respect to the abatement granted to Weequahic by the City appears to be that the tax abatement was wrongfully granted under the HMFA Law, which Plaintiffs assert has been superseded by the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. (the "LTTEL"). Pa1.

This case was stayed pending a decision on the Norman Towers Appeal. The Norman Towers case was an appeal filed by Plaintiff-Appellant, Jeffrey Feld, from the July 20, 2020 final decision of the New Jersey Housing and Mortgage Finance Agency ("NJHMFA") affirming its mortgage financing commitment for $76,975,000 in permanent funding for the project known as "Norman Towers" in East Orange. WP32a. One of Mr. Feld's primary arguments in Norman Towers is also the primary argument made here – namely, that the LTTEL repealed the HMFA Law. WP32a. As it pertains to this matter, this argument is the basis for which Plaintiffs-Appellants sought, among other things, to nullify and invalidate the Ordinance, which granted a thirty (30) year tax abatement to Weequahic pursuant to the HMFA Law – not the LTTEL – for the Project. Pa1.

Only Count One of the Complaint makes direct allegations against Weequahic. Pa1. Specifically, Plaintiffs-Appellants allege that Weequahic "misrepresented and concealed material information from Newark and other stakeholders for material gain." Pa1. As a result, in their request for relief,

Plaintiffs-Appellants sought to void and nullify the Ordinance and also sought a declaration that Weequahic "obtained tax incentives based upon false representations and pretenses." Pa1. For the reasons set forth in more detail below, Plaintiffs-Appellants failed to state a claim upon which relief could be granted, and the Courts' orders dismissing the Complaint with prejudice must be affirmed.

STANDARD OF REVIEW

"A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm., 140 N.J. 366, 378 (1995). Accordingly, review of the trial court's orders that dismissed claims for lack of standing are reviewed de novo. See Goldman v. Critter Control of New Jersey, 454 N.J. Super. 418 (App. Div. 2018).

LEGAL ARGUMENT

I. THE TRIAL COURT CORRECTLY DISMISSED THE COMPLAINT WITH PREJUDICE (Pa80, Pa82, Pa84, Pa86).

The Plaintiffs-Appellants seek to have the trial court's decisions on the Motions to Dismiss reversed, arguing that the trial court made several errors in finding that the Plaintiffs-Appellants lacked standing and in dismissing the Complaint with prejudice. Db9. For the reasons outlined below, the Plaintiffs-Appellants arguments for reversal of the trial court are erroneous.

a. Plaintiffs-Appellants Lack Standing to Bring Their Claims.

Generally, a litigant has standing under the common law to challenge a governmental action when he has "a sufficient stake in the outcome of the litigation, a real adverseness with respect to the subject matter, and a substantial likelihood that the party will suffer harm in the event of an unfavorable decision." Feld v. City of Orange, 2014 WL 8277956 (App. Div. March 26, 2015) (internal citation omitted). "[I]n cases of great public interest, any 'slight additional private interest' will be sufficient to afford standing." Id. Our courts have granted "a broad right *in taxpayers and citizens of a municipality* to seek review of local legislative action without proof of unique financial detriment to them." Kozesnik v. Twp. of Montgomery, 24 N.J. 154, 177 (1957) (emphasis added).

However, the right to challenge government actions as a taxpayer has its limits. See Loigman v. Twp. Comm. of Middletown, 297 N.J. Super. 287, 297-99 (App. Div. 1999) (a local taxpayer had no standing to enforce a collective negotiation agreement between a public employer and a public employee union); see also Borough of Seaside Park v. Comm'r of the N.J. Dep't of Educ., 432 N.J. Super. 167, 210-11 (App. Div.) (plaintiff had no standing to assert the constitutional rights of others), certif. denied, 216 N.J. 367 (2013). Courts "will not render advisory opinions or function in the abstract nor will [they] entertain proceedings by plaintiffs who are 'mere intermeddlers' or are merely interlopers or strangers to the dispute." Crescent Pk. Tenants Ass'n v. Realty Equities Corp., 58 N.J. 98, 107 (1971) (citations omitted). Rather, there must be a substantial likelihood the party will suffer some harm by an unfavorable decision. N.J. State Chamber of Commerce v. N.J. Election Law Enforcement Comm'n, 82 N.J. 57, 67 (1980).

In Feld v. City of Orange, the plaintiff argued that he had common law standing as a county taxpayer because some of his property taxes are paid to the county and will be affected by the tax exemptions granted in the City of Orange, but the Court found this argument to be a tenuous one. The Court noted:

> Feld has not cited any binding authority holding that the standing broadly afforded to a resident or taxpayer in the same

> municipality extends to all taxpayers within the county. Such a rule of standing would subject government bodies and agencies to litigation by outsiders challenging local actions, potentially from all corners of the State. The common law does not treat those whose financial interests are remote as having the same standing to sue as local residents and taxpayers.

Feld v. City of Orange, 2014 WL 8277956 at *8.

The standing issue raised in Feld v. City of Orange, supra, is the same exact issue here. Here, none of the Plaintiffs-Appellants are or allege to be taxpayers in the City of Newark and instead assert *county* taxpayer standing. In addition, the plaintiff in Feld v. City of Orange is one of the plaintiffs in this matter. Notably, the Plaintiffs-Appellants have experienced a dismissal of their claims in previous actions based on a lack of standing for the same reasoning that was found here - that Plaintiffs-Appellants did not articulate a sufficient stake in the matter to challenge the municipal action. In addition to Feld v. City of Orange, 2014 WL 8277956 (App. Div. March 26, 2015), see also Feld v. City of Orange, 2018 WL 3747632 (App. Div. August 8, 2018).

As for Plaintiff's constitutional claims, standing to make a constitutional claim requires a two-part analysis: (1) "whether (plaintiff) alleges that the challenged action has caused him injury in fact, economic or otherwise," and (2) "whether the interest sought to be protected by the complainant is arguably

within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." Association of Data Processing Service Organizations v. Camp, 397 U.S. 150, 152, 153, (1970). As part of the "injury in fact" requirement, plaintiff must demonstrate a personal harm that would be eliminated if plaintiff's claim were accepted. See Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973); Warth v. Seldin, 422 U.S. 490 (1975). To have standing, a plaintiff must have suffered, or may presently suffer, a direct impairment of his own constitutional rights.

b. Lack of Standing May Be Raised as a Failure to State a Cause of Action Under R. 4:6-2(e) (Pa89).

Plaintiffs-Appellants argue that the trial court erroneously dismissed the Complaint with prejudice pursuant to R. 4:6-2(e) without making a ruling on the substantive merits of the claims. However, "[l]ack of standing may be raised as a failure to state a cause of action under R. 4:6-2(e)." Allstate New Jersey Ins. Co. v. Cherry Hill Pain and Rehab Institute, 389 N.J. Super. 130, 136 (App. Div. 2006) (internal citations omitted). Thus, the Plaintiffs-Appellants' argument that the Court erred in dismissing its Complaint pursuant to R. 4:6-2(e) is without merit, and the Court's decision must be affirmed.

c. Plaintiffs-Appellants' Claims Regarding the Applicability of the Long Term Tax Exemption Law are Without Basis in Fact or Law (Pa80, Pa82, Pa84, Pa86).

The principal allegation raised in the Plaintiffs' Complaint with respect to the tax abatement granted to Weequahic by the City appears to be that the tax abatement was wrongfully granted under the HMFA Law, which Plaintiffs assert has been superseded by the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 *et seq.* (the "LTTEL"). In Plaintiffs' Complaint, the requests for relief for Count One include, among other things, declaratory judgment that the LTTEL requirements should have been applied to Weequahic's tax abatement application, despite the fact that Weequahic sought tax abatement under the HMFA law; specifically, Plaintiffs seek judgment:

> H. Declaring that the Long Term Tax Exemption Law superseded, governed and controlled this post April 17, 1992 long term tax exemption transaction [related to the Project];
> I. Declaring that all post April 17, 1992 municipal long term tax exemptions had to be granted to a duly formed urban renewal entity;
>
> […]
>
> K. Declaring that Newark is entitled to no less than 10% of the Project's revenues;
> L. Declaring that the County of Essex is entitled to 5% of the long term tax exemption payments from any new post 2003 PILOT authorized by Newark[.]

Compl., Count One. These demands are based on requirements contained within the LTTEL. Under the LTTEL, a developer must form an "urban renewal entity." See N.J.S.A. 40A:20-3, -5. In addition, the LTTEL provides that the urban renewal entity shall

make payment to the municipality of an annual service charge, which is equal to a percentage of the annual gross revenue, which shall not be more than 15% in the case of a low and moderate income housing project, nor less than 10% in the case of all other projects. N.J.S.A. 40A:20-12(b)(1). Further, pursuant to N.J.S.A. 40A:20-12(b), "[e]ach municipality which enters into a financial agreement…shall remit 5 percent of the annual service charge collected by the municipality to the county…" Thus, Plaintiffs' demands for relief are all rooted in the erroneous assertion that the tax abatement granted by the City to Weequahic should have complied with the requirements of the LTTEL.

However, Weequahic applied to the City for a tax abatement under the HMFA Law, ***not*** the LTTEL. Therefore, the assertion that Weequahic had to comply with the requirements of the LTTEL is without any merit. The HMFA Law has no such requirement that a developer form an urban renewal entity. In addition, there is no requirement under the HMFA Law that the county receive a portion of the payment. Accordingly, the revenue sharing provisions of the LTTEL are inapplicable to the Project and tax exemption at hand.

Further, with respect to the Plaintiffs' claim that the LTTEL "superseded" the HMFA Law, the LTTEL was enacted and became effective on April 17, 1992 and repealed a number of statutes, namely:

P.L.1961, c.40 (C.40:55C-40 et al.)

P.L.1983, c.139 (C.40:55C-41.1)

P.L.1986, c.86 (C.40:55C-41.2 et al.)

P.L.1967, c.114 (C.40:55C-44.1 et al.)

P.L.1978, c.93 (C.40:55C-46.1 et al.)

P.L.1981, c.5506 (C.40:55C-52.1)

P.L.1985, c.138 (C.40:55C-58.2)

P.L.1965, c.95 (C.40:55C-77 et al.)

P.L.1944, c.169 (C.40:14D-1 et al.)

P.L.1950, c.107 (C.40:14D-6.1)

P.L.1946, c.52 (C.55:14E-1 et al.)

P.L.1950, c.111 (C.55:14E-7.1)

P.L.1949, c.185 (C.55:14E-20 et al.)

P.L.1965, c.92 (C.55:14I-1 et al.)

P.L.1949, c.184 (C.55:16-1 et al.)

P.L.1950, c.21 (C.55:16-5.1)

P.L.1950, c.112 (C.55:16-8.1)

P.L.1967, c.112 (C.55:16-9.1 et al.)

P.L.1962, c.249 (C.55:16-18.1)

P.L.1950, c.69 (C.55:16-22)

P.L.1992, c.79, § 56. Notably, the HMFA Law is not listed as having been repealed by the enactment of the LTTEL. The HMFA Law thus remains valid law, and any of Plaintiffs' claims seeking invalidation of the Ordinance or the grant of tax abatement by

the City to Weequahic because Weequahic or the City allegedly failed to comply with the LTTEL is without any merit and must be dismissed with prejudice.

Further, The Appellate Division in Norman Towers unequivocally determined that the LTTEL did not repeal the HMFA Law, either expressly or impliedly. In re Approval of a Financing Commitment for the Project Known as Norman Towers, HMFA #03451, Docket No. A-4583-19 at pg. 6-10 (May 31, 2022). The Appellate Division found that the legislative history of the LTTEL specifically lists which laws were repealed as a result of its passage and that "the LTTEL does not expressly repeal N.J.S.A. 55:14K-37(b) [of the HMFA Law]." Further, the Appellate Division noted that the LTTEL and the HMFA Law had different legislative goals and that "[t]he declared objectives of the two statutes differ in size and scope, and their financing mechanisms do not overlap in any meaningful sense." Id. at 10. Thus, even substantively, Plaintiffs-Appellants' Complaint fails to state a claim upon relief can be granted, and the orders dismissing the Complaints must be affirmed.

d. Plaintiffs-Appellants' Allegation Against Weequahic Does Not Meet the Heightened Pleading Requirements of R. 4:5-8 (Pa80, Pa82, Pa84, Pa86).

Finally, the allegation that Weequahic "misrepresented and concealed material information from Newark and other stakeholders for material gain" is not factually supported in the Complaint.

Under New Jersey Court Rule, R. 4:5-8, allegations of fraud and misrepresentation must be made with particularity. Mere conclusory statements are insufficient to satisfy the particularity requirement of R. 4:5-8. Rego Indus., Inc. v. Am. Mod. Metals Corp., 91 N.J. Super. 447, 456 (App. Div. 1966). If "the allegations do not set forth with specificity,[]or … constitute as pleaded, satisfaction of the elements of legal or equitable fraud[,]" a court may dismiss the complaint. State, Dep't of Treasury, Div. of Inv. ex rel. McCormac v. Qwest Commc'ns Intern., Inc., 387 N.J. Super. 469, 484-85 (App. Div. 2006); see also Lippmann v. Hydro-Space Tech., Inc., 77 N.J. Super. 497, 505 (App. Div. 1962) (finding that a complaint which "consisted of no more than only general and entirely conclusory charges of fraud" fails to plead such material facts as necessary to state a claim upon which relief could be granted).

Here, Plaintiffs-Appellants allege that Weequahic "misrepresented and concealed material information from Newark and other stakeholders for material gain" but does not provide the particulars as to what Weequahic misrepresented to whom, and when and where the misrepresentations were made. Thus, a claim against Weequahic involving an allegation of misrepresentation of fraud fails the pleading requirements of R 4:5-8 and must be dismissed.

II. CONCLUSION.

For all the reasons set forth herein, the Court's decisions on the Motions to Dismiss and the Motion to Designate Trial Counsel must be affirmed.

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By: /s/ Grace Chun
Grace Chun, Esq.

DATED: December 4, 2023

Superior Court of New Jersey

Appellate Division

Docket No. A-003689-22

JEFFREY S. FELD, ESQ., THE FOUR FELDS, INC. d/b/a L. Epstien Hardware Co. and REASONABLE LOCK & SAFE CO., INC., *Plaintiffs-Appellants,* *(For Continuation of Caption See Next Page)*	CIVIL ACTION ON APPEAL FROM THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, ESSEX COUNTY Docket No. ESX-L-2617-19 Sat Below: HON. ANNETTE SCOCA, J.S.C.

BRIEF FOR DEFENDANTS-RESPONDENTS THE CITY OF NEWARK, NEWARK MAYOR RAS J. BARAKA, THE CITY OF NEWARK CITY COUNSEL, NEWARK CITY CLERK KENNETH LOUIS, NEWARK CORPORATION COUNSEL KENYATTA K. STEWART, ESQ., NEWARK BUSINESS ADMINISTRATOR ERIC S. PENNINGTON, ESQ., NEWARK DIRECTOR OF ECONOMIC AND HOUSING DEVELOPMENT JOHN PALMIERI, NEWARK DIRECTOR OF FINANCE DANIELLE SMITH, NEWARK DIVISION OF TAX ABATEMENT AND SPECIAL TAXES MANAGER JUANITA M. JORDAN, CTC AND NEWARK TAX ASSESSOR AARON WILSON, ESQ.

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vs.

THE CITY OF NEWARK, WEEQUAHIC PRESERVATION, LLC, NEWARK MAYOR RAS J. BARAKA, THE CITY OF NEWARK CITY COUNCIL, NEWARK CITY CLERK KENNETH LOUIS, NEWARK CORPORATION COUNSEL KENYATTA K. STEWART, ESQ., NEWARK BUSINESS ADMINISTRATOR ERIC S. PENNINGTON, ESQ., NEWARK DIRECTOR OF ECONOMIC AND HOUSING DEVELOPMENT JOHN PALMIERI, NEWARK DIRECTOR OF FINANCE DANIELLE SMITH, NEWARK DIVISION OF TAX ABATEMENT AND SPECIAL TAXES MANAGER JUANITIA M. JORDAN, CTC, NEWARK TAX ASSESSOR AARON WILSON, ESQ., THE COUNTY OF ESSEX, ESSEX COUNTY EXECUTIVE JOSEPH N. DiVINCENZO, JR., THE ESSEX COUNTY BOARD OF CHOSEN FREEHOLDERS, ATTORNEY GENERAL OF NEW JERSEY GURBIT S. GREWAL, THE NEW JERSEY HOUSING MORTGAGE FINANCE AGENCY, THE NEW JERSEY DIVISION OF LOCAL GOVERNMENT SERVICES and THE NEW JERSEY OFFICE OF LOCAL PLANNING SERVICES,

Defendants-Respondents.

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PRELIMINARY STATEMENT

Appellant alleges that, as a non-resident of the City of Newark, but taxpayer of the County of Essex, he should have standing to challenge statutes applied within the City of Newark. This is a failure to allege a proper case or controversy and does not create standing to sue. This is Plaintiffs' third attempt to have this type of complaint heard. Previously this Court rejected Plaintiff's Complaints and dismissed the same due to the fact that the Court determined the Plaintiff does not have the requisite standing to sue.

We represent Defendants the City of Newark, Newark Mayor Ras J. Baraka, the City of Newark City Counsel, Newark City Clerk Kenneth Louis, Newark Corporation Counsel Kenyatta K. Stewart, Esq., Newark Business Administrator Eric S. Pennington, Esq., Newark Director of Economic and Housing Development John Palmieri, Newark Director of Finance Danielle Smith, Newark Division of Tax Abatement and Special Taxes Manager Juanita M. Jordan, CTC, Newark Tax Assessor Aaron Wilson, Esq., (the "City of Newark Defendants"). As the complaint was filed by the Plaintiff in February and March of 2020, the Appellate Division had already determined that Plaintiff does not have "a legally cognizable stake in Newark's "tax abatement program" nor a substantial likelihood he (Plaintiff) will experience some harm if the court returns an unfavorable decision." This was despite Appellant's argument that

his standing is derived from the real estate taxes he pays on property that he owns in Essex County. Feld v. City of Newark, et al., A-1272-16T4, 2019 N.J.Super. Unpub. 2019 WL 2303248 (App. Div. 2019), cert. den. Feld v City of Newark, et al., 2020 N.J. WL 808315 (N.J, Feb. 6, 2020)(Pa143).

In the present case, the Appellant's claims made against the City of Newark Defendants are based on the underlying premise that Newark and the City of Newark Defendants wrongfully approved a 30-year tax abatement under the NJHMFA because the NJHMFA had been repealed by the LTTEL. Because the Appellate Division in Norman Towers (discussed below) determined that the LTTEL did not repeal the NJHFMA, Appellant's claims must fail.

PROCEDURAL HISTORY AND STATEMENT OF FACTS[1]

After approximately 358 seemingly unnecessary paragraphs of recitation rather than allegations, Appellant sets forth in Count One that the City of Newark Defendants negligently breached constitutional, statutory and common law duty and exceeded the LTTEL by failing to comply with its terms. It should be noted the tax exemption in question in this appeal was granted under the NJHMFA. This claim will be discussed further below. Count Two fails to set forth any allegations other than reiterating the allegations of Count One as if set

[1] The factual background and procedural history of this matter are intertwined and thus are presented together.

forth at length therein. Count Three sets forth claims that the City of Newark Defendants violated the terms and spirit of the OPMA but fails to contain any allegations as to the alleged acts or omissions committed by the City of Newark Defendants and is procedurally deficient. The relief sought is voiding the tax exemption granted under the auspices of the NJHMFA. Count Four once again fails to set forth any allegations against any of the Defendants other than by way of incorporation of the allegations set forth previously in the Complaint. Count Five sets forth that Defendant Ras J. Baraka caused the Plaintiffs Constitutional harm but also fails to set forth any allegations of how that alleged violation came about. Count Six contains allegations that the City of Newark Defendants failed to take corrective action in that they failed to use their authority to vitiate the Long-Term Tax Exemption granted to Weequahic Preservation, LLC. The Seventh Count of the Complaint contains allegations that the City of Newark Defendants violated the Long-Term Tax Exemption Law, the Open Public Records Act, the Open Public Meetings Act, and the New Jersey State Constitution as well as the United States Constitution by the depriving the Plaintiffs of their constitutional rights. The Eighth Count of the Complaint sets forth no further allegations, however, requests relief under the United States Constitution, the New Jersey State Constitution, the Faulkner Act and the Long-Term Tax Exemption Law as well as the Open Public Meetings Act and the

Open Public Records Act. The Appellant's prayers for relief all hinge upon Appellant's position that the tax exemption granted under the NJHMFA should not apply to the redeveloper Defendant Weequahic Preservation, LLC because the LTTEL repealed the NJHMFA, and that Essex County tax payers have been damaged as a result thereof. As set forth below, the Appellate Division has previously ruled this is not the case and therefore, Appellant lacks the requisite standing to bring a claim based upon any of the allegations set forth in the Complaint.

A. Procedural History

On April 8, 2019, Plaintiff filed a sixty-nine (69) page, 434 paragraph, eight count hybrid prerogative writ/declaratory judgment/civil rights violations Complaint, in which Plaintiff sought injunctive, declaratory, equitable and monetary relief. (Pa1).

On May 10, 2019, the State related Defendants removed the action to the Federal Court. On July 23, 2019, Plaintiff filed a Motion to Remand and on February 11, 2020, the Federal District Court entered an Order remanding the case back to the State Trial Court. (Pa113).

On February 26, 2020, the State related Defendants filed a Rule 4:6-2(e) Motion to Dismiss. (Pa116). On March 13, 2020, Essex County Presiding Civil Judge Thomas M. Moore entered a global Motion to Dismiss case management

briefing and oral argument scheduling consent order. (Pa71). In or about June of 2022, this matter was transferred to Judge Annette Scoca.

On April 27, 2023, the trial court heard oral argument on the Motion to Dismiss. The trial court found that Plaintiff lacked constitutional, statutory and common law standing and dismissed the entire 69 page, 434 paragraph Complaint with prejudice. On April 27, 2023, the trial court signed four lack of standing dismissal with prejudice Orders and one mootness denial Order.

On May 10, 2023, Plaintiff filed a Rule 4:49-2 and Rule 4:50-1 Motion for Reconsideration, Alteration, Amendment and Clarification. (Pa480 to Pa641). On July 10, 2023, the Trial Court entered an Order denying Plaintiff's Motion for Reconsideration. (Pa89).

On August 3, 2023, Plaintiff filed this Notice of Appeal. (Pa96).

LEGAL ARGUMENT

1. Standard of Review

An appellate court reviews motion to dismiss a complaint for failure to state a claim by the same standard applied by the trial court. Sickles v. Cabot Corp., 379 N.J. Super. 100, 106, 877 A.2d 267, 270 (App. Div. 2005). Thus, considering and accepting as true the facts alleged in the complaint, the appellate court determines whether they set forth a claim upon which relief can be granted. R. 4:6-2(e). *Id.*

In reviewing a motion to dismiss under Rule 4:6-2(e), the inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the pleading. Reider v. Department of Transp., 221 NJ Super 547, 552 (App. Div. 1987). R. 4:5-2 states that a pleading, "shall contain a statement of the facts on which the claim is based." A complaint is entitled to liberal reading in determining its adequacy. Van Dam Egg Co. V. Allendale Farms, Inc., 199 N.J. Super. 452 (App. Div. 1985). Nevertheless, a pleading must allege sufficient facts to give rise to a cause of action; mere conclusions and an intention to rely on discovery are inadequate. Glass v. Suburban Restoration Co., 317 N.J. Super. 574, 582 (App. Div. 1998). A motion to dismiss for failure to state a claim may be addressed to specific counts of the complaint, and the court, on a motion to dismiss the entire complaint, has the discretion to dismiss only some of the counts. See Jenkins v. Region Nine Housing, 306 N.J. Super. 258 (App. Div. 1997), certif. den. 153 N.J. 405 (1998) (dismissing contract and fraud claims but sustaining intentional interference and promissory estoppel theories).

Point I. Appellant Lacks the Requisite Standing to Sue

As we argued in our original moving papers, standing is a threshold determination a trial court must make to determine a plaintiff's legal ability to maintain and prosecute a civil action. In re Adoption of Baby T., 160 N.J. 332, 340 (1999); Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 421

(1991). To establish standing, a litigant must have "a sufficient stake and real adverseness with respect to the subject matter of the litigation [and a] substantial likelihood of some harm . . . in the event of an unfavorable decision." Adoption of Baby T., 160 N.J. at 340 (citation omitted). In cases involving issues of great public importance, even a “slight additional private interest' will be sufficient to afford standing." Salorio v. Glaser, 82 N.J. 482, 491 (1980). Thus, our courts have granted "a broad right in taxpayers and citizens of a municipality to seek review of local legislative action without proof of unique financial detriment to them. Kozesnik v. Twp. of Montgomery, 24 N.J. 154, 177 (1957). However, although judges in this State employ an expansive, liberal view in determining a plaintiff's standing to sue, Jen Elec., Inc. v. Cty. of Essex, 197 N.J. 627, 645 (2009), we will not "entertain proceedings by plaintiffs who are 'mere intermeddlers' or are merely interlopers or strangers to the dispute." Crescent Park Tenants Ass'n v. Realty Equities Corp. of N.Y. , 58 N.J. 98, 107 (1971) (citation omitted).

Appellant, on two separate occasions, has previously brought before this Court complaints of almost identical facts, seeking to overturn the tax exemptions granted to redevelopers in the cities of Newark and Orange, New Jersey granted under the auspices of the NJHMFA. On both occasions, Appellant’s claims were dismissed by the lower Courts for lack of standing. In

both instances the Appellate Division rejected those appeals and upheld the lower Court's determinations that plaintiff lacked standing to sue. Moreover, our State's Supreme Court has denied certiorari following those appeals. A copy of both the Appellate decisions are attached hereto. (Pa80-89). The lower Court and the Appellate Division recognized in both cases, as the panel here should recognize, that Appellant is the quintessential interloper and cannot demonstrate he "has a skin in the game" in order to establish he has standing to sue. In holding, Feld had no standing, Judge Mitterhoff said in the Superior Court:

> "Despite the liberal standard towards finding standing, Feld's lack of residence or property ownership in Newark proves to be fatal to his claims against Defendants. For nearly identical reasons as the Appellate Division dismissed Feld's last attempt at challenging a tax exemption, Feld's present case must be dismissed." See Feld v. City of Orange Twp., 2015 N.J. Super. Unpub. 2014 WL 8277956 (App. Div. Mar. 26, 2015).

The decision of the Appellate Division in Appellant's first challenge, Feld v. City of Orange Twp., supra, was relied upon for guidance by Judge Mitterhoff in the second case. In Feld v City of Orange Twp., supra, the Appellate Division dealt with two underlying actions brought by Feld. The relevant action involved Feld challenging tax exemptions granted by the Township Council of Orange for a redevelopment site. The Appellate Division found that Feld lacked standing because he was neither a resident nor a property or business owner in Orange.

"He lives and pays property taxes in the same county, Essex, but not in the same municipality. He does not have the standing of a resident or property or business owner of Orange to challenge its municipal actions." Id. at *4.

Judge Mitterhoff's decision in the second challenge by Feld, Jeffrey S. Feld v. City of Newark, Alpha Drive, LLC and High Street Heights, LLC Docket No. ESX-L-0953-16 was also upheld upon appeal. There, the Appellate Division held in an unpublished opinion:

> Thus, our courts have granted "a broad right in taxpayers and citizens of a municipality to seek review of local legislative action without proof of unique financial detriment to them." Kozesnik v. Twp. of Montgomery, 24 N.J. 154, 177 (1957). However, although judges in this State employ an expansive, liberal view in determining a plaintiff's standing to sue, Jen Elec., Inc. v. Cty. of Essex, 197 N.J. 627, 645 (2009), we will not "entertain proceedings by plaintiffs who are 'mere intermeddlers' or are merely interlopers or strangers to the dispute." Crescent Park Tenants Ass'n v. Realty Equities Corp. of N.Y. , 58 N.J. 98, 107 (1971) (citation omitted). Here, plaintiff has demonstrated he is the quintessential interloper courts have historically found lack standing to challenge an action taken by a municipality. He does not have a legally cognizable stake in Newark's decision to award this tax abatement nor a substantial likelihood he will experience some harm if the court returns an unfavorable decision. Plaintiff's arguments lack sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).(Pa135).

It should be noted Plaintiff made application to the Supreme Court in that matter, however Certiorari was denied and the decision was affirmed. In addition, both

the Appellate Division decisions deemed the OPMA and OPRA claims brought in both actions (as well as this case) as not being worthy of any written opinion.

Any argument by Feld that he has statutory standing under New Jersey's Long-Term Tax Exemption Law (LTTEL) fails for the same reasons stated by the Appellate Division in Feld v. City of Orange Twp., supra. A plaintiff in a prerogative writ action must have a sufficient stake in the matter to challenge the governmental action. 2015 N.J. Super. Unpub. LEXIS at 11. As Feld admittedly does not own property in Newark, he cannot maintain a claim under LTTEL. Similarly, Feld failed to state a claim under OPMA or OPRA, as Feld failed to state any factual allegations that the City failed to properly notify the public or that the City failed to provide records in a manner that would violate the statute. Concerning NJCRA and Section 1983, Feld failed to state any right of which Defendants have deprived him. Appellant's conclusory allegations in the Complaint are unsupported by facts in the record.

Point II. Appellant Lacks Legal Sufficiency To Bring A Viable Cause of Action

This appeal should be dismissed because Appellant lacks legal sufficiency to bring a viable cause of action. The allegations made by Appellant are not plead with sufficient specificity or support facts made within the four corners of the Complaint. Scheidt v. DRS Techs, Inc., 424 N.J. Super. 188, 183 (App. Div. 2012). If a claim only cites legal conclusions, as Appellant has done here, then

this appeal must fail. Glass v. Suburban Restoration Co., 317 N.J. Super. 574, 582 (App. Div. 1998). Appellant must establish a prima facie case for each and every allegation made against the City of Newark Defendants within the Complaint in order to survive a motion to dismiss. Cleary dismissal by the lower Court was warranted.

In Count One of Plaintiffs' Complaint, Plaintiff attempts to void Weequahic Preservation LLC's 30 year NJHMFA Long Term Tax Exemption Ordinance 6PSF-E adopted by Newark. (Pa1). In Appellant's view, the exemption should have been made under LTTEL because he claims the LTTEL repealed the NJHMFA. (See Pa1, paras. 370-371). Appellant attempts to argue that Newark should disclose "all monies paid to the County pursuant to LTTEL." Id. at 390 R. However, since the exemption complained of was granted under the auspices of the NJHMFA the City of Newark was not required to remit the 5% service charge it collected to the County. Id. at 376. As a result, Appellant suffered no harm and had "no skin in the game" to establish standing as required by the current case law. The compelling difference between the LTTEL and the NJFMA that is important here is that under the NJHFMA no service charge is paid to the county. In *re Approval of a Financing Commitment for the Project Known as Norman Towers,* Docket No. A-4583-19, was decided May 31, 2022, by the Appellate Division ("Norman Towers") Pa267). The Appellate Division

in the Norman Towers case, supra, affirmed the decision of the HMFA upholding its mortgage financing commitment to the Norman Towers project. There, the Appellate Division recognized Plaintiff's appeal was based upon the premise that the Long Term Tax Exemption Law (LTTEL), N.J.S.A. 40A:20-1 to -22, repealed the NJ Housing and Mortgage Finance Agency Law (NJHMFA), N.J.S.A. 55:14K-37(b). The Appellate Court rejected this contention, finding no merit in plaintiff's argument, stating "Our review of the LTTEL reveals no language which repeals any act of the Legislature other than those expressly identified in its legislative history. Based on our reading of the law's clearly written provisions, we find the LTTEL does not expressly repeal N.J.S.A. 55:14K-37(b)." *Id.* at 3.

Since, under the NJHMFA there was no requirement for the City of Newark to remit the 5% payment to the county, Appellant, as a county resident (but not a property owner in the City of Newark), has no stake in the matter rising to the point of establishing standing to sue over its application.

Appellant brings Count Five of the Complaint for failure to supervise against Defendant Ras J. Baraka, Newark's Chief Executive. To sufficiently plead a claim for failure to supervise, a Plaintiff must prove that there was a governmental policy or custom in play that caused injury and the Plaintiff must identify that policy. Cherrits v. Ridgewood, 311 N.J. Super. 517 (App. Div.

1980). The mere fact that an Official has discretion in the exercise of particular functions does not hold them liable simply based on that discretion. Id. Plaintiffs have the burden of demonstrating that the policy or custom caused a Constitutional injury. Id.

Count Six of Plaintiffs' Complaint alleges that Defendants were involved in State Created Danger. To sufficiently allege a claim of State Created Danger, a Plaintiff must present the following evidence as set forth in Bright v. Westmoreland County, 443 F.3d 276 (3d Cir. 2006):

1. the harm ultimately caused was foreseeable and fairly direct;

2. a state actor acted with a degree of culpability that shocks the conscience;

3. a relationship between the state and the plaintiff existed such that "the plaintiff was a foreseeable victim of the defendant's acts," or a "member of a discrete class of persons subjected to the potential harm brought about by the state's actions," as opposed to a member of the public in general; and

4. a state actor affirmatively used his or her authority in a way that created a danger to the citizen or that rendered the citizen more vulnerable to danger than had the state not acted at all.

Id. at 281.

Appellant fails this test. Appellant alleges in the Complaint that the City of Newark Defendants had "actual and constructive notice" of tax credit "errors and omissions." (Pa1, para. 414). However, Appellant failed to sufficiently state a claim as to (i) how he was directly harmed; (ii) that he was a member of a

discreet class that was subjected to the harm brought by the state's actions; or (iii) that the City of Newark Defendants used its authority to create a danger. As to the second factor of the test under Bright, supra, Appellant's legal conclusion stated in paragraph 417 of the Complaint, which states that the City of Newark Defendants refusal to take remedial action "shocks the conscience" is not a proper factual allegation and should not be given any weight. Glass, 317 N.J. Super. 582.

Count Seven of the Complaint alleges that the City of Newark Defendants "conspired and colluded with each other to interfere with plaintiffs' rights. (Pa1, para. 429, 431 and 433). Appellant had the burden of alleging specific facts to show a prima facie case, which at best may be an attempt for a claim of aiding and abetting. A claim for aiding and abetting requires proof of an underlying tort. State, Dep't of Treasury, Div. Of In. ex rel. McCormac v. Quest Commc'ns Intern., Inc., 387 N.J. Super. 469, 481 (App. Div. 2006). Appellant has not stated any facts to allege an underlying tort. Appellant failed to sufficiently plead a claim for aiding and abetting, and thus, this claim should be dismissed. In addition, even if there was an underlying tort, Appellant failed to serve notice of Tort Claims which was fatal to his cause.

In Count Eight of the Complaint, Appellant failed to state any specific allegation directed at the City of Newark Defendants. The Complaint states,

"Plaintiffs incorporate each of the allegations contained in this Complaint as if set forth in length herein." (Pa1). Thus, this claim was properly dismissed.

Appellant has failed to sufficiently plead a cause of action against the City of Newark Defendants. All of the allegations made in the Complaint against them are simply conclusions without legal sufficiency and support. As such, the City of Newark Defendants are entitled to dismissal.

Point III. Plaintiffs' Negligence Based Claims Fail for Lack of Proper Notice

All claims for negligence on the part of the City of Newark Defendants must fail as they are considered "tort claims" under the Tort Claims Act ("The Act"). N.J.S.A. § 59:2-2. Under the Act, plaintiffs must provide notice to the municipality within 90 days of injury. Injury is defined as "death, injury to a person, damage to or loss of property or any other injury that a person may suffer that would be actionable if inflicted by a private person." N.J.S.A. § 59:1-3. The Act goes further to say: "Under this act, service of notice to public entity by certified or registered mail was complete and deemed received within time upon deposit or mailing, with appropriate postage prepaid, within 90 days of accrual of claim." N.J.S.A. § 59:8-11; *quoting* Guzman v. City of Perth Amboy, 214 N.J. Super. 167, 518 A.2d 758 (App. Div. 1986). The claims in Counts One and

Three of the Complaint that the City of Newark Defendants "acted negligently, recklessly and willfully."

Plaintiffs have not served the requisite notice. Therefore, any claim based upon negligence were properly dismissed by the lower Court.

CONCLUSION

While we are mindful unpublished opinions are not binding upon a Court; however, we submit they are permitted to be used as guidance by a Court. N.J.S.A. 1:36-3. Here, Appellant has failed to distinguish the acts complained of regarding the present appeal from those complained of in the two previous challenges to the tax exemptions granted to redevelopers under the NJHMFA by the City of Newark. Appellant continues to burden both the City of Newark Respondents, and this Court, with repetitive filings always seeking another bite of the proverbial apple. Moreover, Appellant has once again failed to establish that he is a taxpayer in the City of Newark and that he can be affected detrimentally by the acts complained of. Clearly Appellant lacks standing to pursue the claims in the Complaint against the City of Newark Respondents and for that reason the judgement entered by the lower court in this matter should be affirmed.

DeCotiis, FitzPatrick Cole & Giblin, LLP
Attorneys for Respondents The City of Newark, Newark Mayor Ras J. Baraka, the City of Newark City Counsel, Newark City Clerk

Kenneth Louis, Newark Corporation Counsel Kenyatta K. Stewart, Esq., Newark Business Administrator Eric S. Pennington, Esq., Newark Director of Economic and Housing Development John Palmieri, Newark Director of Finance Danielle Smith, Newark Division of Tax Abatement and Special Taxes Manager Juanita M. Jordan, CTC. Newark Tax Assessor Aaron Wilson, Esq.

By: /s/ John Profita
John Profita, Esq.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-003689-22

Jeffrey S. Feld, Esq. et al. , The Four Felds, Inc. d/b/a L. Epstein Hardware Co., And Reasonable Lock & Safe Co., Inc.,	:	Civil Action
Plaintiffs-Appellants	:	On Appeal From:
Vs.	:	Superior Court of New Jersey Law Division – Essex County Docket No. ESX-L-2617-19
Weequahic Preservation, LLC, Newark Mayor Ras J. Baraka, City of Newark City Council, Newark City Clerk Kenneth Louis, Newark Corporation Counsel, Kenyatta K. Stewart, Esq., Newark Business Administrator Eric S. Pennington, Esq. Newark Director of Economic and Housing Development John Palmieri, Newark Director of Finance Danielle Smith, Newark Division of Tax Abatement: and Special Taxes Manager Juanita M. Jordan CTC, Newark Tax Accessor, Aaron Wilson, Esq. The County of Essex, Essex County Executive Joseph N. DiVincenzo, Jr., The Essex County Board of Chosen Freeholders, Attorney General Of New Jersey Gurbir S. Grewal, The New Jersey Housing Mortgage Finance Agency, The New Jersey CTC, Newark Tax Accessor, Aaron Wilson, Esq. The County of Essex, Essex County Executive Joseph N. DiVincenzo, Jr. The Essex County Board of Chosen Freeholders, Attorney General Of New Jersey Gurbir S. Grewal, The New Jersey Housing Mortgage Finance Agency, The New Jersey Division of Local Government Services and the New Jersey: Office of Local Planning Services,	:	
Defendants-Respondents		

BRIEF OF DEFENDANTS-RESPONDENTS ESSEX COUNTY EXECUTIVE JOSEPH N. DIVINCENZO, JR., and the ESSEX COUNTY BOARD OF CHOSEN COMMISSIONERS (formerly "Freeholders")

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THOMAS M. BACHMAN, ESQ. (Id #144661978)
On The Brief

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PRELIMINARY STATEMENT

In its ruling from the bench against plaintiff-appellant Jeffrey S. Feld, Esq., ("plaintiff") the Trial Court below observed that Jeffrey Feld is not a resident of Newark, does not pay taxes to the City of Newark and does not own property in Newark. Based on these facts, the Trial Court, by orders dated April 27, 2023, dismissed with prejudice the Complaint against the defendants challenging statutes applied by Newark in granting long term tax abatements due to a lack of standing.

The plaintiff argues on this appeal that he has standing, asserting his status as a taxpayer in Essex County. This argument fails to establish standing to sue and establish a justiciable case or controversy and, as such, was properly rejected by the Court below. The Trial Court also ruled that plaintiff does not have standing under N.J.S.A. 2A:15-18 as he failed to follow the procedures set forth in that statute. In so ruling, the Trial Court explained that plaintiff failed to apply to the court for permission to commence and prosecute such a claim or demand in the name of the County and on its behalf.

By way of history, this is another in a series of appeals by plaintiff from the dismissal of his complaint challenging the award of tax abatements by a municipality. The Complaint in this case was filed in 2019. That same year the Appellate Division decided a case with similar facts wherein the plaintiff had

appealed from two orders dismissing his complaints challenging tax abatements awarded by Newark. In Feld v. City of Newark, et al., A-1272-16T4, (2019) N.J.Super. Unpub., 2019 WL 2303248 (App.Div. 2019), *cert. den.* Feld v. City of Newark, et al., 2020 N.J. WL 808315 (N.J. Feb. 6, 2020)(Pa143), the appellate court rejected the contention that his standing derived from the real estate taxes he pays on property located in Essex County, ruling that he lacked standing to challenge Newark's decision as he neither resided in Newark nor paid real estate taxes there.

The Complaint in the present case was brought against Essex County defendants-respondents The County of Essex, Essex County Executive Joseph N. DiVincenzo, Jr. and the Essex County Board of Chosen Commissioners (formerly "Freeholders," hereinafter collectively referred to as the "County defendants") along with the State, Newark and Weequahic Preservation, LLC. defendants-respondents. It alleges that as non-residents of the City of Newark but taxpayers of the County, plaintiffs have standing to challenge statutes applied by Newark in granting long term tax abatements.

The plaintiff's claims against the County defendants are based on the premise that Newark wrongfully approved a 30-year tax abatement to Weequahic Preservation, LLC. pursuant to the New Jersey Housing and Mortgage Financing Agency Law ("NJHMFA"), N.J.S.A. 55:14K-37(b) as opposed to the Long Term

Tax Exemption Law ("LTTEL"), N.J.S.A. 40A:20-1 to 22, with the plaintiff arguing that the former statute was repealed by the latter such that the County should have collected 5% of quarterly revenue payments under LTTEL. Importantly, under the NJHMFA there is no requirement that a municipality remit a 5% service charge to the County as is the case under LTTEL.

However, the Appellate Division in the case of In re Approval of a Financing Commitment for the Project known as Norman Towers ("Norman Towers"), Docket No. A-4583-19, Unpub., decided May 31, 2022, (Pa267), rejected outright plaintiff's contention that LTTEL repealed the NJHMFA law, finding no merit in plaintiff's argument. While this case is unpublished, it offers guidance in speaking to the central premise of plaintiff's case, with its disposition having been eagerly awaited by plaintiff, and is binding on the parties for purposes of *res judicata*, as will be explained below.

PROCEDURAL HISTORY

Plaintiff appeals from the following Orders issued by the Superior Court, Law Division: (1) four (4) Orders dated April 27, 2023 dismissing the Complaint against all defendants with prejudice, Pa80, Pa82, Pa84 and Pa86*; (2) an Order dated April 27, 2023 denying as moot plaintiff's motion for an order declaring a conflict of interest and directing governmental entity defendants to retain substitute counsel, Pa88; and (3) an Order dated July 10, 2023 denying plaintiff's motion for

reconsideration of the April 27, 2023 Orders dismissing the Complaint, Pa89.

Plaintiffs filed a sixty-nine (69) page, eight count Complaint on April 8, 2019 seeking injunctive, declaratory, equitable and monetary relief. (Pa1)

The State-related defendants removed this matter from the New Jersey Superior Court to the U.S. District Court of New Jersey on May 10, 2019 based on the federal claims asserted in the Complaint. On February 11, 2020, the federal court entered an order remanding the matter back to the Superior Court. (Pa112)

The State-related defendants filed their motion to dismiss the Complaint based on R. 4:6-2(e) on February 26, 2020. (Pa116). Thereafter on March 13, 2020 the Hon. Thomas M. Moore, P.J.Cv., issued a Consent Case Management Order requiring all defendants to file responsive pleadings or motions to dismiss. (Pa71)

*"T-" refers to the April 27, 2023 transcript of the hearing on Defendants' Motion to Dismiss; "Pa-" refers to the Appendix of Plaintiff-Appellant while "WPa-" refers to the Appendix of Defendant-Respondent Weequahic Preservation, LLC.

The Newark defendants filed their motion to dismiss on March 16, 2020, (Pa120) while the County defendants filed their motion to dismiss on March 17, 2020. (Pa144) Defendant Weequahic Preservation, LLC. filed its motion to dismiss in lieu of an Answer on March 17, 2020.

In September of 2020, plaintiffs filed a request to stay the proceedings pending the outcome of the appeal in the Norman Towers case. That appeal, from a July 20, 2020 decision of the NJ Housing and Mortgage Finance Agency (HMFA) affirming its $76.9 million mortgage financing commitment for the Norman Towers Project in East Orange, N.J. captioned In re Approval of a Financing Commitment for the Project Known as Norman Towers, (Norman Towers) Docket No. A-4583-19, (unpublished) was decided May 31, 2022 by the Appellate Division. (Pa267)

While there is no record that this matter had been formally stayed, it appears that as a result of the Covid-19 pandemic which in 2020 greatly impacted New Jersey, along with the nation, action on this matter was nevertheless delayed.

In or about June of 2022, this case was transferred to the Hon. Annette Scoca, J.S.C. On August 4, 2022, the Court issued a Supplemental Case Management Order allowing the parties to file supplemental briefs, (Pa77), thereby giving them the opportunity to brief the significance of the Norman Towers decision on the pending motions to dismiss.

On April 27, 2023 the Trial Court heard oral argument on the motions to dismiss and on that date issued four Orders dismissing with prejudice the Complaint against the State-related defendants, the County defendants, the Newark defendants and defendant Weequahic Preservation, LLC. based on plaintiff's lack

of standing. (Pa80, Pa82, Pa84, Pa86) Also on that date the Court issued an Order denying plaintiffs' motion to designate trial counsel on grounds of mootness. (Pa88) On May 10, 2023, plaintiff filed a motion for reconsideration, alteration, amendment and clarification, (Pa480), which was denied by Order dated July 10, 2023, (Pa89), accompanied by the Court's written Statement of Reasons. (Pa91)

Plaintiff Feld filed his Notice of Appeal on August 3, 2023. (Pa96)

COUNTER-STATEMENT OF FACTS

Plaintiff Jeffrey Feld resides in Orange, New Jersey. (Pa1)(Compl. Par. 37). He pays taxes to Essex County but does not reside in or pay taxes to the City of Newark. (Compl. Pars. 33-37, 406). The action was brought by plaintiffs as allegedly aggrieved taxpayers. (Compl. Pars. 406-408).

The Complaint itself consists of eight counts. Count One seeks to void Weequahic Preservation LLC's 30 year NJHMFA Long Term Tax Exemption Ordinance 6PSF-E adopted by the Newark City Council March 6, 2019 as, in plaintiffs' view, the exemption should have been made under LTTEL. (Compl. Pars. 370-371). The exemption given under the NJHMFA does not provide for 5% of quarterly revenue payments to the County. (Compl. Par. 376). The only relief specifically directed to the County in Count One is that the Court declare that the County "is entitled to 5% of the long term tax payments from any new post 2003 PILOT authorized by Newark," (Compl. Par. 390 L), and that Newark should be

compelled "to disclose all monies paid to the County" pursuant to LTTEL. (Compl. Par. 390 R). Count Two seeks to compel the County defendants to identify all post 2003 long term exemptions granted in the County, account for the revenues received (Compl. Second Par. 390 E & F), and compel them "to create a task force to examine all outstanding and proposed long term tax exemptions within Essex County." (Compl. Second Par. 390 H). Count Three does not reference the County defendants. Count Four appears to allege fraud against the County for "submitting offering materials that misrepresented or concealed material information***." (Compl. Par. 397). Count Five makes a claim against the County Executive for failure to properly supervise. (Compl. Pars. 398-403). Count Six alleges that the County created a danger to Essex County taxpayers. (Compl. Pars. 404-420). Count Seven alleges violations of the New Jersey Civil Rights Act ("NJCRA"). (Compl. Pars. 421-433). Finally, the Eighth Count claims there have been federal Section 1983 violations against plaintiffs. (Compl. Par. 434).

The arguments made by the plaintiffs below and by the remaining plaintiff on this appeal against the County Defendants are premised on the contention that the tax exemption awarded defendant Weequahic Preservation, LLC. by Newark under the NJHMFA was invalid and instead should have been awarded under LTTEL as the latter statute repealed the former. Based upon this erroneous premise, the plaintiff argues that Essex County taxpayers have been economically

harmed by the County's not receiving the 5% fee under NJHMA it would have under LTTEL. Again, however, the Appellate Division has specifically rejected this argument in the unpublished Norman Towers decision.

The County Defendants respectfully submit that the plaintiff lacks the required standing to bring a claim based on any of the allegations made against them in the Complaint such that the Order entered by the Court below dismissing the Complaint with prejudice should be affirmed by this Court.

STANDARD OF REVIEW

A court's decision with respect to standing is a question of law subject to de novo review. Cherokee LCP Land, LLC. v. City of Linden Plan. Bd., 234 N.J. 403, 414-15 (2018) The concept of standing itself refers to a litigant's ability or entitlement to maintain an action in court. N.J. Dep't of Env't Protection v. Exxon Mobil Corp., 453 N.J.Super. 272, 291 (App. Div. 2018) (citations omitted) The issue of whether a party has standing is a threshold justiciability determination and the standing requirement is one that cannot be waived, nor may standing be conferred by consent. In re Adoption of Baby T., 160 N.J. 332, 341 (1999). Rather, it is a threshold inquiry as lack of standing by a plaintiff precludes a court from entertaining any of the substantive issues for determination. *Id.*, at 340.

Similarly stated, while courts are obligated to defer to a judge's factual determination when supported by the evidential record, Brunson v. Affinity Fed.

Credit Union, 199 N.J. 381, 397 (2009), they accord no special deference to a trial judge's interpretation of the law and legal consequences that flow from established facts, Manalapan Realty, L.P. v. Twp. Comm. Of Manalapan, 140 N.J. 366, 378 (1995), which is reviewed *de novo*. Dep't of Envtl. Prot. V. Kafil, 395 N.J.Super. 597, 601 (App. Div. 2007).

LEGAL ARGUMENT

Point 1. Plaintiff Lacks Standing To Bring This Action.

As the Trial Court below aptly observed, since the plaintiff neither resides in Newark nor pays real estate taxes to Newark or owns property in Newark, he lacks standing to bring this suit as he does not have a legally cognizable stake in Newark's decision to award the tax abatement at issue, nor is there a substantial likelihood that he will experience some harm if the Court returns an unfavorable decision. (T40-10 to 13; T41-3 to 6)

Standing is a threshold determination a trial court must make to determine a plaintiff's legal ability to maintain and prosecute a civil action. In re Adoption of Baby T., 160 N.J. 332, 340 (1999). To establish standing plaintiffs must have "a sufficient stake and real adverseness with respect to the subject matter of the litigation (and a) substantial likelihood of some harm … in the event of an unfavorable decision." Adoption of Baby T., *supra* at 340 (citation omitted).

While the Complaint states plaintiffs "questioned the validity of all post 1991 NJHMFA long term tax exemptions" (Compl. Par. 186), this is not sufficient to confer standing, as underscored by the Appellate Division in its determination that plaintiffs do not have "a legally cognizable stake in Newark's" tax abatement program "nor a substantial likelihood he will experience some harm if the court returns an unfavorable decision," despite plaintiff's argument "his standing is derived from the real estate taxes he pays on property he owns in Essex County." Feld v. City of Newark,et al., *supra*.

The Appellate Court in Feld v. City of Newark, et al., while acknowledging New Jersey's expansive view of a plaintiff's standing to sue, explained that New Jersey courts will not "entertain proceedings by plaintiffs who are 'mere intermeddlers' or are merely interlopers or strangers to the dispute," citing Crescent Park Tenants Ass'n v. Realty Equities Corp. of N.Y., 58 N.J. 98, 107 (citation omitted). The Appellate Court in Feld v. City of Newark, et. al., described plaintiff to be "the quintessential interloper courts have historically found lack standing to challenge an action taken by a municipality."

In light of the above decision of the Appellate Court which, while unpublished, is both instructive and binding on the parties for purposes of *res judicata* and collateral estoppel pursuant to R. 1:36-3, it follows that Jeffrey S. Feld, Esq., the remaining plaintiff-appellant in the instant matter is precluded from

relitigating the issue of standing based on these considerations of collateral estoppel and issue preclusion. As explained by our Supreme Court in Liquidation of Integrity Ins. Co., 214 N.J. 51, 67 (2013), collateral estoppel is the branch of *res judicata* which bars the re-litigation of an issue that has already been litigated and resolved in a prior proceeding (citation omitted). Its purpose is both to protect litigants from re-litigating an identical issue with the same party and to promote judicial economy by preventing needless litigation. *Id.*, at 68 (citation omitted).

Nor are plaintiffs accorded standing under N.J.S.A. 2A:15-18, which statute allows a resident taxpayer to apply to the Court for permission to commence and prosecute a claim or demand of the county or municipality in the name of and behalf of the governmental entity where it has not done if, in the opinion of the court, the interests of the governmental entity would be promoted. Our courts have made it clear that a plaintiff cannot sue as a taxpayer on the failure of a county or municipality to sue without having first obtained the judicial consent required by that statute. Demoura v. Newark, 74 N.J.Super. 49, 59 (App. Div. 1962) (holding the prerequisite of judicial consent to the bringing of the action under N.J.S.A. 2A:15-18 was absent, such that the statute was not available to plaintiff); Ippolito v. Mayor of Hoboken, 60 N.J.Super. 477, 487 (App. Div. 1960). Since plaintiffs in the present case failed to obtain the judicial consent required, it follows that the statute is not available to them, as the Trial Court properly ruled. (T40-17 to 25;

T41-1 to 3)

Moreover, there currently exists no claim or demand plaintiffs could press on behalf of the County since there is no claim or demand the County itself could press on its own behalf. While the plaintiffs alleged that Newark can only grant long term tax abatements pursuant to LTTEL, as opposed to the NJHMFA, they readily acknowledged in their complaint that to the best of their knowledge, "no appellate tribunal has ruled explicitly on whether the NJHMFA long term tax exemption survived the enactment of the Long Term Tax Exemption Law ("LTTEL")(N.J.S.A. 40A:20-1 to -22) in 1991 (Compl. Par. 17). They further acknowledged that other courts have likewise declined to either rule on or address this issue (Compl. Pars. 18-20).

Significantly, subsequent to the Complaint being filed the appeal in the matter captioned In re Approval of a Financing Commitment for the Project Known as Norman Towers, (Norman Towers) Docket No. A-4583-19, was decided (Pa267), This decision affirms the decision of the HMFA upholding its mortgage financing commitment to the Norman Towers project. In it the Appellate Division observes that the gist of plaintiff Feld's appeal is that the Long Term Tax Exemption Law (LTTEL), N.J.S.A. 40A:20-1 to -22, repealed the NJ Housing and Mortgage Finance Agency Law (NJHMFA), N.J.S.A. 55:14K-37(b), either expressly or impliedly. The Appellate Court, however, rejected this contention,

finding no merit in plaintiff's argument. It follows that the County is in no position to sue for service charges collected by a municipality under N.J.S.A. 40A:20-12 since the Appellate Division's interpretation of the statutory scheme in Norman Towers would preclude counties from receiving such service charges from NJHMFA projects.

In addition, the issue of the plaintiff/appellant's standing to challenge redevelopment-related action has been addressed in lawsuits he has filed involving other municipalities. In the case of Feld v. The City of Orange Township, et al. v. The City of Orange Township and RPM Development, LLC., ("Feld v. Orange") Docket Nos. A-3911-12T3 and A-4880-12T1, Unpub., decided March 26, 205, 2014 WL 8277956 (WPa20), the Appellate Division addressed two related appeals in a single opinion. While this unpublished decision may not be binding on this Court it is, nevertheless, very instructive.

In Feld v. Orange, *supra,* the Appellate Court observed that plaintiff Feld had filed lengthy briefs arguing that the trial court's ruling were legally erroneous, adding digressive discourses about his purposes and motives in relentlessly pursuing litigation against Orange. Orange eventually moved to dismiss the prerogative writs action for lack of plaintiff Feld's standing to pursue the lawsuit, which was granted by the trial court. *Id.* at 2.

The Appellate Division in Feld v. Orange stated that plaintiff Feld "is neither

a resident nor a property or business owner in Orange. He lives and pays property taxes in the same county, Essex, but not in the same municipality. He does not have the standing of a resident or property or business owner or of Orange to challenge its municipal actions," and went on to observe that "Feld has not cited any binding authority holding that the standing broadly afforded to a resident or taxpayer in the same municipality extends to all taxpayers within the county." *Id.* At 4.

The Appellate Court in Feld v. Orange found that the trial court had correctly ruled that Feld did not have common law standing simply because he is a resident and taxpayer in the same county as Orange and further found no error in denying Feld statutory standing under New Jersey's LTTEL. The Appellate Court explained the 2003 amendments to LTTEL did not alter the fact a plaintiff in a prerogative writs action must have a sufficient stake in the matter to challenge the governmental action. *Id.* at 4.

Finally, plaintiff-appellant's assertion that the Trial Court wrongfully dismissed the Complaint for lack of standing pursuant to R. 4:6-2(e) without ruling on the substantive claims is without merit, since a lack of standing may be raised as a failure to state a cause of action under R. 4:6-2(e). Allstate New Jersey Ins. v. Cherry Hill Pain and Rehab. Institute, 389 N.J.Super. 130, 136 (App. Div. 2006) (internal citations omitted).

In light of the fact the plaintiff-appellant lacks standing to bring the present action and the Complaint fails to allege a justiciable case or controversy, the County defendants-respondents respectfully submit that the Trial Court's dismissal with prejudice of the Complaint against them was proper and should be affirmed on this appeal.

POINT 2

PLAINTIFF'S COMPLAINT IS LEGALLY INSUFFICIENT TO BRING A VIABLE CAUSE OF ACTION AGAINST THE COUNTY DEFENDANTS.

This appeal should be dismissed on grounds the Complaint itself is legally insufficient. In this case the allegations made in the Complaint have not been plead with sufficient specificity or with supporting facts within its four corners. See Scheidt v. DRS Techs, Inc., 424 N.J.Super. 188, 193 (App. Div. 2012). Under R. 4:6-2(e), a court is required to accept as true facts that are alleged but not conclusory allegations, as is the case here.

It follows that the plaintiff must establish, through the Complaint, a *prima facie* case for each allegation made against the County defendants in order to survive a motion to dismiss. When a claim simply recites legal conclusions without facts, as is the case here, dismissal is warranted. Glass v. Suburban Restoration Co., 317 N.J.Super. 574, 582 (App. Div. 1998); See Kotok Bldg. v. Charvine Co.,

183 N.J.Super. 101, 106 (Law Div. 1981) (discovery is not and never was intended to take the place of the "position paper" which a properly drawn complaint should be).

In Count One of the Complaint, plaintiff seeks to void Weequahic Preservation LLC's 30 year NJHMFA Long Term Tax Exemption Ordinance 6PSF-E adopted by Newark as, in plaintiff' view, the exemption should have been made under LTTEL. (Compl. Pars. 370-371). Because the exemption was instead given under NJHMFA, Newark did not have remit 5% of the service charge it collects to the County. (Compl. Par. 376). The only relief specifically directed to the County in Count One is that the Court declare the County "is entitled to 5% of the long term tax payments from any new post 2003 PILOT authorized by Newark," (Compl. Par. 390 L), and that Newark should be compelled "to disclose all monies paid to the County" pursuant to LTTEL. (Compl. Par. 390 R).

Count Two seeks to compel the County defendants to identify all post 2003 long term exemptions granted in the County and account for the revenues received (Compl. Second Par. 390 E & F), and compel them "to create a task force to examine all outstanding and proposed long term tax exemptions within Essex County." (Compl. Second Par. 390 H).

It bears reiteration that there is no recognizable claim or demand plaintiff can press on behalf of the County. While the plaintiff argues that Newark can only

grant long term tax abatements pursuant to LTTEL, under which they have to remit a 5% service charge to the County, as opposed to the NJHMFA, under which they do not, the Complaint acknowledges that to the best of their knowledge, "no appellate tribunal has ruled explicitly on whether the NJHMFA long term tax exemption survived the enactment of the Long Term Tax Exemption Law ("LTTEL")(N.J.S.A. 40A:20-1 to -22) (Compl. Par. 17), and further acknowledges that other courts have likewise declined to either rule on or address this issue (Compl. Pars. 18-20).

Again, however, the Appellate Division's did address this issue in Norman Towers, *supra.* While unpublished, Norman Towers is instructive in its interpretation that the NJHMFA long term tax exemption was not repealed by LTTEL. It follows that while the plaintiff can argue that the County has failed to demand, monitor and collect long term tax exemption service charges from NJHMFA projects, this ignores the obvious- that the County is in no position to sue for such service charges collected by a municipality since no legal authority exists upon which it can do so. And even if in the current case the tax abatement had been given under LTTEL, pursuant to N.J.S.A. 40A:20-12 the *municipality* is charged with remitting 5% of the annual service charge it collects to the county, the statute itself failing to provide an enforcement mechanism for counties.

On another note, even assuming, *arguendo,* that the County has failed to

"enforce" N.J.S.A. 40A:20-12, New Jersey law holds that a public entity is not liable for any injury caused by adopting or failing to adopt a law or by failing to enforce any law. N.J.S.A. 59:2-4. Similarly stated, the Tort Claims Act (TCA) grants absolute immunity to both public entities and their employees from liability for injuries caused by failure to enforce the law. S.P. v. Newark Police Dept., 428 N.J.Super. 210, 221 (App.Div. 2012).

This immunity applies to non-action or the failure to act in connection with the enforcement of the law." Bombace v. City of Newark, 125 N.J. 361, 368 (1991) (citing N.J.S.A. 59:2-4 and N.J.S.A. 59:3-5). Likewise, pursuant to N.J.S.A. 59:7-2 neither a public entity nor a public employee is liable for an injury caused by "(b) An act or omission in the interpretation or application of any law relating to a tax."

In any event, since the County cannot sue for service charges collected by Newark pursuant to a tax exemption given pursuant to NJHMFA, it follows that Count One of the Complaint does not give rise to a cognizable cause of action.

The information sought from the County in Count Two can be satisfied by a simple OPRA request while Count Three does not reference the County defendants. Count Four has a single statement: "Plaintiffs hereby incorporate each of the allegations contained in this Complaint as set forth at length herein." (Compl. Par. 397). In Count Four they ask the Court to declare that "Essex County

*** impaired the federally regulated capital markets by submitting offering materials that misrepresented or concealed material information about the validity of certain NJHMFA long term tax exemption transactions***," thereby alleging fraud (Compl. Count Four, Par. A). Missing is a reference to any "offering materials" in any of the enumerated, written allegations contained within the Complaint. It follows that such language fails to amount to a cognizable cause of action and should be dismissed.

Turning to Count Five, in order to sufficiently plead the claim of failure to supervise, a plaintiff must prove that some governmental policy or custom caused their injury. Cherrits v. Ridgewood, 311 N.J.Super. 517 (App. Div. 19980. To impose liability on governmental officers, a plaintiff must "identify the government policy" at issue. Id., at 525. Further, the fact that a particular official—even a policymaking official—has discretion in the exercise of particular functions does not, without more, give rise to governmental liability based on an exercise of that discretion. Id., at 528 (citations omitted). A plaintiff must show that State officials made a deliberate choice to follow a course of action. . . from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in order for liability to attach. Id., at 525 (citations omitted).

Thus the plaintiff here carries the burden of demonstrating the existence of a

particular governmental policy or custom, and further proving that such policy subjected or caused him to be subjected to constitutional injury. Id., at 526. In contrast, the language in Count Five fails to sufficiently identify a particular County policy or custom that would constitute a violation of a person's constitutional rights under Section 1983 and/or the NJCRA and likewise fails to sufficiently allege how such a policy subjected or caused this plaintiff to be subjected to constitutional injury. For these reasons, also, this Count should be dismissed.

Count Six alleges a claim of state-created danger. To properly allege such claim, however, a plaintiff must present sufficient evidence to meet the four-pronged test set forth in Bright v. Westmoreland County, 443 F.3d 276 (3d Cir. 2006):

> (1) the harm ultimately caused was foreseeable and fairly direct;
>
> (2) a state actor acted with a degree of culpability that shocks the conscience;
>
> (3) a relationship between the state and the plaintiff existed such that the plaintiff was a foreseeable victim of the defendant's acts, or a member of a discreet class subjected to the potential harm brought about by the state's actions, as opposed to a member of the public in general; and
>
> (4) a state actor affirmatively used his or her authority in a way that created a danger to the citizen or that rendered the citizen more vulnerable to danger than had the state not acted at all.

Id., at 443 F.3d 281 (citations and footnote omitted)

The Bright test "is a high bar to vault. . . (as the standard) is higher than negligence or even gross negligence." *See* Gormley v. Wood-El, 218 N.J. 72, 112 (2014) (New Jersey's Supreme Court adopting the standard developed by the Third Circuit).

Here the plaintiff fails this test. In conclusory fashion its alleged that the County Defendants had "actual or constructive notice" of tax credit errors and omissions (Compl. Par. 414) while failing to sufficiently make out a claim as to: (1) how plaintiff was directly harmed; (3) that plaintiff is a member of a discreet class subjected to the potential harm brought about by the County's actions; and (4) how the County defendants used their authority in a way that created or rendered plaintiff more vulnerable to danger than had they not acted at all. Finally, as to (2), plaintiff's legal conclusion that the County defendants' "refusal to take remedial action shocks the conscience" (Comp. Par. 417) should be given no weight as it is not a proper factual allegation. Glass, *supra* at 317 N.J. Super. 582.

Count Seven makes conclusory allegations that the County Defendants "conspired and colluded with each other to interfere with plaintiffs' (rights)." (Compl. Pars. 429, 431, 433). Again, however, plaintiff bears the burden of alleging specific facts to show a *prima facie* case for this claim, which can best be related to an attempt to one for aiding and abetting or collusion. A claim for aiding

and abetting first requires proof of an underlying tort. State, Dep't of Treasury, Div. of Inv. ex rel. McCormac v. Quest Commc'ns Intern., Inc. 387 N.J.Super. 469, 481 (App. Div. 2006). Here, however, no facts are provided alleging an underlying tort. Because the plaintiff has only made generalized claims and has failed to properly plead a claim for aiding and abetting, these claims should likewise be dismissed.

Count Eight simply states: "Plaintiffs incorporate each of the allegations contained in this Complaint as if set forth at length herein." (Compl. Par. 434). Plaintiff seeks to enjoin all defendants "from not providing stakeholders reasonable notice and an opportunity to be heard on all non-emergent ordinances not subject to referendum challenge." (Compl. Count Eight, Par. B.). Again, since there are no specific allegations directed against the County defendants within this Count dismissal is warranted.

In sum, based upon the pleadings articulated in the Complaint, it is submitted that Plaintiff has failed to sufficiently plead a cause of action against the Essex County defendants. As the allegations made against them are merely conclusory without legal sufficiency and support, the County defendants respectfully submit they are entitled to a dismissal of this case by the Appellate Division.

CONCLUSION

For all of the above reasons, both individually and collectively, the County defendants respectfully submit that the plaintiff lacks standing to bring the present action and that the Complaint itself fails to allege a justiciable case or controversy. As such, the County defendants further submit that the Trial Court's dismissal with prejudice of the Complaint against them was appropriate and should be affirmed by this Court.

Respectfully submitted,

JEROME M. ST. JOHN,
ESSEX COUNTY COUNSEL

By: /s Thomas M. Bachman
Thomas M. Bachman, Esq.
Ass't County Counsel

Dated: December 27, 2023

State of New Jersey

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January 3, 2024

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Re: Jeffrey S. Feld, Esq., The Four Felds, Inc. D/B/A L. Epstein Hardware Co. and Reasonable Lock & Safe Co. Inc., V. The City of Newark, Weequahic Preservation, LLC, Newark Mayor Ras J. Baraka, City of Newark Council, Newark City Clerk Kenneth Louis, Newark Corporation Counsel Kenyatta K. Stewart, Esq., Newark Business Administrator Eric S. Pennington, Esq., Newark Director of Economic and Housing Development John Palmieri, Newark Director of Finance Danielle Smith, Newark Division of Tax Abatement And Special Taxes Manager Juanita M. Jordan, CTC, Newark Tax Assessor Aaron Wilson, Esq., The County of Essex, Essex County Executive Joseph Divincenzo, Jr., The Essex County Board of Chosen Freeholders, Attorney General of New Jersey Gurbir Grewal, The New Jersey Housing Mortgage Finance Agency, The New Jersey Division of Local Government Services, And The New Jersey Office of Local Planning Services,

Docket Number: A-3689-22T4

Civil Action: On Appeal from ESX-L-28-19

Letter Brief of Respondent New Jersey Department of Community Affairs, the Division of Local Planning Services, the Division of Local Government Services, the New Jersey Housing and Mortgage Finance Agency, and the Attorney General of New Jersey

Dear Mr. Orlando:

Please accept this letter brief and appendix on behalf of the New Jersey Department of Community Affairs, the Division of Local Planning Services, the Division of Local Government Services, the New Jersey Housing and Mortgage Finance Agency, and the Attorney General of New Jersey (collectively the "State Parties").

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PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS[1]

On April 8, 2019, Appellant Jeffrey Feld, a resident of Orange, and the Four Felds, Inc. d/b/a L. Epstein Hardware Co., Reasonable Lock & Safe Co. Inc., Feld's family businesses located in Orange, New Jersey, filed an eight-count complaint in Lieu of Prerogative Writ against the State Parties, the City of Newark, the County of Essex, and the Weequahic Preservation, seeking to nullify and invalidate Newark City Ordinance 6PSF-e. (Aa1-Aa10).[2] The complaint alleged that, as a non-resident of the City of Newark but a taxpayer of the County of Essex, Feld should have standing to challenge statutes applied within the City of Newark. Ibid. Feld's complaint challenged the validity of Newark's administration of certain "post-April 17, 1992" affordable housing tax exemption based on his belief that the exemptions are unfair to himself, his family-owned business, and local taxpayers. (Aa1-4). Relevant to the State Parties, Count Two sought to compel the State Parties to "identify and disclose (within 120 days) all post-January 1, 2011 conduit revenue housing bonds and low-income housing tax credits issued to projects whose long-term tax

[1] Because they are closely related, the procedural history and counterstatement of facts are combined for efficiency and the court's convenience.

[2] Aa refers to the Feld's Appendix. WPa refers to the Co-Respondent Weequahic Preservation's Appendix.

exemptions were not authorized pursuant to the Long-Term Tax Exemption law and whose sponsors were not urban renewal entities." (Aa56). Additionally, Count Two sought an order directing and compelling State Parties "to create a task force to create a new prototype long term tax exemption ordinance and financial agreement" to which the State Parties would "appoint Aaron Wilson and Attorney Feld." (Aa57). Count Four appears to have alleged a misrepresentation of material information in the "municipal capital market[]" offerings. (Aa59-60). Count Five alleged that the Attorney General failed to properly supervise Newark and Essex County Officials in general terms without explicitly stating what the Attorney General was supposed to supervise and how that failure harmed Feld. (Aa60). Count Six alleged that the State created a danger to Essex County taxpayers. (Aa61-63). Count Seven alleged violations of the New Jersey Civil Rights Act ("NJCRA"). (Aa64-66). Finally, Count Eight alleged the State Parties violated Feld's civil rights, constituting a violation of 42 U.S.C. § 1983. (Aa67). Counts One and Three asserted no allegations against or reference to the State Parties. (Aa50-55; Aa58-59).

The State Parties removed this matter to the U.S. District Court of New Jersey on May 10, 2019, and moved to dismiss under Fed. R. Civ. P. 12(b)(6). On February 11, 2020, Judge Salas remanded the matter to the New Jersey Superior Court Law Division, Essex County. (Aa112).

On February 26, 2020, the State Parties filed a motion to dismiss. (Aa116). On April 17, 2020, Feld filed his opposition. (Aa172). The other defendants, the City of Newark, Essex County, and Weequahic Preservation, also filed motions to dismiss the complaint. (Aa80-90).

Subsequently, on June 12, 2020, August 27, 2020, and September 11, 2020, Feld submitted correspondences to the court requesting that the Motions to Dismiss and the Motion to Designate Trial Counsel be adjourned pending a decision on an appeal of another matter filed by Feld, In re Approval of a Financing Commitment for the Project Known as Norman Towers, HMFA #03451, Docket No. A-4583-19 (May 31, 2022). (WPa1-6). After the court requested a position from each defendant concerning the adjournment request, each party submitted opposition on September 30, 2020. (WPa8-14).

While no official action was taken on the adjournment request, the case remained undisturbed until April 27, 2023, when Judge Scoca heard oral argument on the four motions to dismiss and Feld's motion to disqualify. (Aa95). The trial court ruled in favor of all defendants, dismissing the matter in its entirety with prejudice due to Feld's lack of standing. (Aa80-90).

On May 10, 2023, Feld filed a motion for Reconsideration, Alteration, Amendment, and Clarification. (Aa480-504). On July 10, 2023, the court

denied Feld's Motion for Reconsideration, again finding that Feld lacked standing and failed to meet the standard for reconsideration. (Aa89).

On August 3, 2023, Feld appealed. (Pa96).

ARGUMENT

THE TRIAL COURT PROPERLY FOUND THAT FELD LACKS THE REQUISITE STANDING TO SUE, AND ITS FINDINGS SHOULD BE UPHELD.

Review of a legal question is de novo. Grillo v. State, 469 N.J. Super. 267 (App. Div. 2021) (appellate courts review a dismissal for failure to state a claim pursuant to Rule 4:6-2(e) de novo). Accordingly, review of the trial court's orders that dismissed claims for lack of standing are reviewed de novo. Goldman v. Critter Control of New Jersey, 454 N.J. Super. 418 (App. Div. 2018).

In reviewing a motion to dismiss a complaint pursuant to Rule 4:6-2(e), the court must examine the legal sufficiency of the facts alleged on the face of the complaint. Printing Mart v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989); Nostrame v. Santiago, 213 N.J. 109, 126-27 (2013). The court "searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim . . . ." Printing Mart, 116 N.J. at 746 (1989) (internal quotation omitted). "For purposes of analysis plaintiffs are entitled to every reasonable inference of fact." Ibid. Dismissal is appropriate where

the plaintiff's complaint fails to articulate a legal basis for relief and further discovery would not provide one. Camden Cnty. Energy Recovery Assoc., L.P. v. New Jersey Dept. of Envtl. Prot., 320 N.J. Super. 59, 63-65 (App. Div. 1999).

Moreover, in order to be considered adequate, pleadings must contain "a statement of the facts on which the claim is based, showing that the pleader is entitled to relief, and a demand for judgment for the relief to which the pleader claims entitlement." R. 4:5-2. "It has long been established that pleadings reciting mere conclusions without facts . . . do not justify a lawsuit." Glass v. Suburban Restoration Co., 317 N.J. Super. 574, 582 (App. Div. 1998).

In dismissing the complaint with prejudice, the court made a correct, rational, and legally sound decision after considering all relevant facts, case law, and arguments. As such, the trial court's decision should be affirmed.

Here, the court was correct in concluding that, in this matter, Feld does not have standing because he does not reside in, nor does he own property in (and therefore pay taxes to) the City of Newark. (Aa91). Generally, standing "refers to the plaintiff's ability or entitlement to maintain an action before the court." In re Adoption of Baby T., 160 N.J. 332, 340 (1999) (quoting N.J. Citizen Action v. Riviera Motel Corp., 296 N.J. Super. 402, 409 (App. Div. 1997)). Rule 4:26–1, allowing the "real party in interest" to prosecute an action, is ordinarily

determinative of standing. Pressler & Verniero, Current N.J. Court Rules, comment 2.1 on R. 4:26–1 (2023).

To establish standing, a party must have "a sufficient stake and real adverseness with respect to the subject matter of the litigation" as well as a "substantial likelihood of some harm visited upon the plaintiff in the event of an unfavorable decision . . . ." Adoption of Baby T., 160 N.J. at 340 (citations omitted). New Jersey Courts "will not render advisory opinions or function in the abstract" and thereby will not entertain cases brought by those who are "mere intermeddlers," "merely interlopers or strangers to the dispute." Crescent Park Tenants Ass'n v. Realty Equities Corp., 58 N.J. 98, 107 (1971) (citations omitted). Accordingly, to have standing to bring suit, one must have a "sufficient stake in the outcome of the litigation, a real adverseness with respect to the subject matter, and a substantial likelihood that the party will suffer harm in the event of an unfavorable decision." In re Camden County, 170 N.J. 439, 449 (2002) (citation omitted).

Our courts have granted "a broad right in taxpayers and citizens of a municipality to seek review of local legislative action without proof of unique financial detriment to them." Kozesnik v. Twp. of Montgomery, 24 N.J. 154, 177, 131 A.2d 1 (1957). Residents of a county can challenge the actions of their county government and residents of a municipality can challenge the actions of their municipality. Matlack v. Bd. of Chosen Freeholders of Burlington, 191 N.J. Super.

236, 248 (Law Div. 1982). But the right to challenge government actions as a taxpayer has its limits. See Loigman v. Twp. Comm. of Middletown, 297 N.J. Super. 287, 297-99 (App. Div. 1999) (court found that taxpayer lacked standing to interfere in the township labor contract where there was no "great public interest" or "special or additional private interest"). "Taxpayers may not assert the constitutional rights of another." Id. At 295. The plaintiff must establish that they will experience some harm if the court returns an unfavorable decision. N.J. State Chamber of Commerce v. N.J. Election Law Enforcement Comm'n, 82 N.J. 57, 67 (1980).

Feld, in this case, has not established taxpayer standing. He is neither a resident nor a property or business owner in Newark. (Aa9-10). He lives and pays property taxes in the same county, Essex, but not in the same municipality. (Aa8). His family businesses are in Orange. (Aa10). The record thus supports the court's finding that he does not have the standing of a resident or property or business owner of Newark to challenge its municipal actions. (Aa91). Further, Feld has failed to establish a sufficient interest any harm in light of an unfavorable decision. (A92).

Moreover, this court has already ruled that Feld did not have standing in an almost identical case. Feld v. City of Newark, et al., No. A-1272-16 (App. Div. May 30, 2019) (slip op. at 2). (Aa130-134) In its decision, this court notably determined that Feld did not "have a legally cognizable stake in Newark's" tax program "nor a substantial likelihood he will experience some harm . . . ." Id. at 4. Further, this

court expressly warned against courts entertaining proceedings by plaintiffs who are "'mere intermeddlers' or are merely interlopers or strangers to the dispute." Id. at 3-4 (internal citations omitted). As in that prior appeal, Feld is still not a Newark resident; thus, he remains an improper "intermeddler" without standing to challenge an ordinance in a municipality to which he does not reside or work in. Therefore, as the Appellate Division has already concluded, Feld lacked standing to pursue this matter, and the trial court acted appropriately in dismissing the case.

While Feld may disagree with certain taxes administered by the State Parties, the Supreme Court has been clear that "[t]here must be a limit to individual argument in such matters if government is to go on." Bi-Metallic Inv. Co. v. State Bd. of Equalization, 239 U.S. 441, 445 (1915). The trial court's decision should be affirmed as Feld did not have standing to bring this suit challenging an ordinance in a city in which he does not reside or own business or property. Feld failed to establish any interest or harm. The trial court properly found that Feld.

CONCLUSION

For these reasons, the dismissal for lack of standing should be affirmed.

Respectfully submitted,

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ATTORNEY GENERAL OF NEW JERSEY

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET #A-003689-22

Jeffrey S. Feld, Esq., The Four Felds, Inc. d/b/a L. Epstien Hardware Co. and Reasonable Lock & Safe Co., Inc., Plaintiffs-Appellants	On Appeal from the Superior Court of New Jersey Law Division: Essex County
	Docket No. ESX-L-2617-19
v.	Civil Action
The City of Newark, Weequahic Preservation, LLC, Newark Mayor Ras J. Baraka, the City of Newark City Council, Newark City Clerk Kenneth Louis, Newark Corporation Counsel Kenyatta K. Stewart, Esq., Newark Business Administrator Eric S. Pennington, Esq., Newark Director of Economic and Housing Development John Palmieri, Newark Director of Finance Danielle Smith, Newark Division of Tax Abatement and Special Taxes Manager Juanita M. Jordan, CTC, Newark Tax Assessor Aaron Wilson, Esq., The County of Essex, Essex County Executive Joseph N. DiVincenzo, Jr., The Essex County Board of Chosen Freeholders, Attorney General of New Jersey Gurbir S. Grewal, The New Jersey Housing Mortgage Finance Agency, The New Jersey Division Of Local Government Services, and The New Jersey Office of Local Planning Services, Defendants-Respondents	Sat Below: Hon. Annette Scoca, J.S.C.

PLAINTIFF'S/APPELLANT'S REPLY BRIEF

On the Reply Brief: Jeffrey S. Feld, Esq.

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COURT RULES

SECONDARY AUTHORITY

Plaintiff/Appellant Jeffrey S. Feld, Esq. respectfully submits this Brief in Reply to the City of Newark Related Defendants Brief dated December 4, 2023, the Weequahic Preservation LLC Brief dated December 4, 2023, the Essex County Related Defendants Brief dated December 27, 2023 and the State Related Defendants Letter Brief dated January 3, 2024.

PLAINTIFF'S REPLY

I. Public Entities and Taxpayer Subsidies Are Not Immune from Judicial Review and Remedies.

Justice delayed is Justice denied. No one is above the law. Public entities and officials are not infallible. Public entities and officials make mistakes. More than 220 years ago, our United States Supreme Court established our fundamental constitutional doctrine of judicial review. Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803). On January 2, 2024 and after months of weekly civil protests, the Israel Supreme Court upheld this fundamental democratic checks and balance bedrock principle.

Public entities and officials-fiduciaries of a public trust- are not immune from judicial scrutiny and remedies. Government decisions must satisfy the court's standards of legitimate authority, valid process, good faith, pertinent consideration, proportionately, non-arbitrariness and

antidiscrimination. Ultra vires actions are voidable. See, James Meyers v. State Health Benefits Commission, __N.J. __ (Dec. 14, 2023)(per curiam)(slip op. at p.7) ("The law distinguishes between actions otherwise within an entity's authority but marked by procedural irregularity and actions that are beyond the entity's authority"); 257-261 20th Avenue Realty, LLC v. Alessandro Roberto, __N.J. Super. __ (App. Div. Dec. 4, 2023)(slip op. at p.18) ("[J]udicial power is to be exercised to strike down governmental action only at the instance of one who is himself harmed, or immediately threatened with harm, by the challenged conduct . . . .")

Indeed, our State Constitution is premised upon the sovereignty of the people. Article I, paragraph 2a. Our State Constitution recognizes the right of the people to speak, to challenge, to petition and to question arbitrary, capricious, wrongful, ultra vires actions. Article I, paragraphs 5, 6 and 18; Article VI, Section V, paragraph 4.

But here, defendants uniformly claim that their alleged ultra vires actions are not subject to judicial review and remedies. Defendants uniformly claim that plaintiff-an Essex County taxpaying resident-lacks constitutional, statutory and common law standing to challenge the validity of a post April 17, 1992 non-urban renewal entity NJHMFA Section 37 long term tax exemption lacking a N.J.S.A. 40A:20-12(b) 5% statutory

payment to Essex County and the failure of Essex County to monitor and to collect all N.J.S.A. 40A:20-12(b) long term tax exemption revenues due Essex County. Defendants also uniformly claim that they are immune from plaintiff's colorable civil rights act violation allegations.

No one disputes that the trial court dismissed this hybrid prerogative writ/declaratory judgment/civil rights act violations complaint on lack of standing subject matter jurisdiction prior to defendants filing post-remand answers. The trial court avoided the substantive merits of plaintiff's statutory interpretation and civil rights act violation claims. The trial court never issued specific Rule 1:7-4(a) lack of standing findings of fact and conclusions of law relating to each of plaintiff's counts, claims and remedies. The trial court never issued Rule 1:7-4(a) findings of fact and conclusions of law relating to the substantive merits of plaintiff's allegations, claims and causes of actions.

Thus, the only issues before this appellate tribunal are whether plaintiff lacked constitutional, statutory and common law standing to bring this hybrid prerogative writ/declaratory judgment/civil rights act violation action on April 8, 2019 and whether lack of standing subject matter dismissal orders should be afforded with prejudice preclusive effect upon the substantive merits. Cf: James King v. Douglas Brownback, 601

U.S. __ (Oct. 30, 2023) (slip op. at p.1)(Justice Sotomayor commenting "This case squarely presents an issue this Court previously left undecided: Whether under the Federal Tort Claims Act's judgment bar, "an order resolving the merits of an FTCA claim precludes other claims arising out of the same subject matter in the same suit.")

II. On April 8, 2019, Plaintiff Had Constitutional, Statutory and Common Law Standing to Seek Compensatory Damages, Injunctive and Declaratory Relief.

On November 2, 2023, plaintiff filed his forty-nine pages appellate merits brief. Thereafter, the United States Supreme Court and the Third Circuit issued opinions supporting plaintiff's constitutional, statutory and common law standing in this hybrid prerogative writ/declaratory judgment/civil rights violations action.

On November 7, 2023, the Third Circuit reversed, in part, the trial court's lack of federal standing dismissal of an amended complaint seeking damages, injunctive and declaratory relief. Jody Lutter v. JNESCO, __F4th__ (3d Cir. Nov. 6, 2023). The Third Circuit restored plaintiff's rights to pursue monetary damages against a union. The Third Circuit noted: "The standing inquiry remains focused on whether the party invoking jurisdiction held the requisite stake in the outcome when the

suit was filed." (slip op. at p.14). The Third Circuit analyzed separately each claim, count and requested relief.

On December 5, 2023, our United States Supreme Court dismissed on mootness grounds a split of circuit matter involving whether a serial Americans with Disabilities Act violations test case plaintiff had standing to sue in federal court to enforce the accessibility law rather than to remedy her own harms. Acheson Hotels, LLC v. Deborah Laufer, 601 U.S. __ (Dec. 5, 2023). In his concurrence, Justice Thomas would have dismissed for lack of federal case or controversy standing. Justice Thomas stated:

> To have [federal] standing, a plaintiff must assert a violation of his rights. See Lujan v. Defenders of Wildlife, 504 U.S. 555, 563 (1992) ("[T]he party seeking review [must] be himself among the injured" (internal quotations marks omitted)). After all, "[t]he province of the court is, solely, to decide the rights of individuals." Marbury v. Madison, 1 Cranch 137, 170 (1803). It is not to address a plaintiff's claim of "only harm to his and every citizen's interest in proper application of the . . . laws." Lujan, 504 U.S. at 573. (slip op. at p. 6).

In an explanatory footnote #2 on page 6 of his slip opinion concurrence, Justice Thomas elaborated:

> The traditional distinction between public and private rights shapes the contours of the judicial power. . . . Private rights, such as the classic rights to life, liberty, and property, were "so called because they 'appertain[ed] and belong[ed] to particular men . . . merely as individuals,' not 'to them as members of society [or] standing in various relations to each other' --that is, not dependent upon the will of the government." . . . By contrast, public rights

> "belon[g] to the public as a whole." . . . And "quasi-private rights, or statutory entitlements, are those '"privileges"' or '"franchises'" that are bestowed by the government on individuals. . . We need not classify Laufer's legal interests because, regardless of which type of right a plaintiff asserts, he must allege "the violation of *his* private legal right" or *his* own injury based on a violation of a public right." (slip op. at p. 6) (internal citations omitted)(emphasis in original).

Justice Thomas concluded his concurrence: "Standing ensures that courts decide disputes over violations of a person's rights, not a defendant's compliance with the law in the abstract." (slip op. at p. 9).

The instant hybrid prerogative writ/declaratory judgment/civil rights act violation action is very odd. In his sixty-nine pages 434 paragraphs Eight Counts hybrid prerogative writ/declaratory judgment/civil rights act violations complaint, plaintiff specifically and explicitly alleged that defendants violated his personal rights. Plaintiff cited and alleged specific violated constitutional and statutory provisions. Plaintiff's allegations were neither nebulous nor abstract.

Moreover, during the pendency of this action, our State Legislature revoked historical third-party taxpayer tax court jurisdiction over tax exemptions but preserved an aggrieved third-party taxpayer constitutional prerogative writ rights and remedies. See, P.L. 2021, Chapter 17, Section 6; P.L. 2003, Chapter 125, Section 13; P.L. 2002, Chapter 15, Section 10; City

of Hackensack v. Hackensack Med. Ctr., 228 N.J. Super. 310, 313 (App. Div. 1988); New Jersey Citizen Action v. State of New Jersey, MER-L-001968-2021 (Law Div. Sept. 28, 2022) (Pa529).

No defendant addressed this game changing action. No defendant considered whether constitutional and statutory standing provisions trumped judge created common law standing justiciability rules. Also, no defendant addressed the professional obligation of an officer of the court to enforce the law, to report public wrongdoing, to provide pro bono public service and to act as a private attorney general. See, NJ Law Journal Editorial Board "New Year's Resolutions: How we, as lawyers, could make 2024 a better year" (Dec. 29, 2023 at 11:22 am).

III. Plaintiff-an Aggrieved Millburn Taxpaying Resident-Was Deprived of the Benefit of the Millburn Secession Settlement and Amending Long Term Tax Exemption Legislation.

History matters. For more than thirty years, plaintiff has been a Millburn taxpaying resident. In or about 2002, Millburn attempted to secede from Essex County. Millburn complained about subsidizing other financially distressed communities and the impact of urban long term tax exemptions upon its county portion of taxation. See, Jeremy Pearce "Why Millburn Wants Out" The New York Times (Nov. 24, 2002). Partly in response to this secession threat, our State Legislature amended the superseding

Long Term Tax Exemption Law so that the county would now receive 5% of the long term tax exemption revenues. N.J.S.A. 40A:20-12(b). In addition, courts focused upon the underlying land tax credit, our State Constitution uniform taxation clause (Article VIII, Section I, paragraph 1(a)) and the right of the county and the local school district to receive allocated payments based solely upon the underlying land (and not the exempted improvements).

In his hybrid prerogative writ/declaratory judgment/civil rights act violations complaint, plaintiff alleged that he was deprived of the benefits of these secession settlement legislative amending enactments and intervening long term tax exemption land tax credit case law. In his hybrid complaint, plaintiff set forth specific violated constitutional and statutory provisions. See, Colleen Murphy "Failure to Allege Civil Rights Violation Is Fatal to Attorney Fees Claim, Says Appellate Division, New Jersey Law Journal, 229 N.J.L.J. 2904 (Dec. 4, 2023); Azuowch Rotini v. Brock Russell, A-2155-21 (App. Div. Oct. 13, 2023) (Pa674). It is this alleged injury and deprivation of constitutional and statutory rights that affords plaintiff constitutional, statutory and common law standing in this hybrid prerogative writ/declaratory judgment/civil rights act violations action.

IV. Plaintiff Is Entitled to a Level Litigation Playing Field.

This is a David v. Goliath situation. No one is above the law. In their respective opposition briefs, defendants each attempt to raise substantive legal arguments not subject to plaintiff's limited notice of appeal.

City of Newark Related Defendants

II. Appellant Lacks Legal Sufficiency to Bring A Viable Cause of Action
III. Plaintiffs' Negligence Based Claims Fail for Lack of Proper Notice

Weequahic Preservation LLC

IC. Plaintiffs-Appellants' Claims Regarding the Applicability of the Long Term Tax Exemption Law Are Without Basis in Fact or Law
ID. Plaintiffs-Appellant' Allegation Against Weequahic Does Not Meet the Heightened Pleading Requirements of R. 4:5-8

Essex County Related Defendants

II. Plaintiff's Complaint Is Legally Insufficient To Bring A Viable Cause of Action Against the County Defendants

But no defendant filed a cross-appeal claiming that the trial court erred by not dismissing this hybrid prerogative writ/declaratory judgment/civil rights act violations action on alternative grounds. The State Related Defendants never filed an appellate case information statement.

Plaintiff did not brief these alternative grounds in his merits brief. Defendants' opposition briefs are not the proper mechanism for raising these substantive issues before this

appellate tribunal. This panel must focus de novo on the preliminary post-remand pre-answer pre-discovery lack of standing subject matter dismissal with prejudice of this action.

V. As Officers of the Court and Fiduciaries of a Public Trust, Defendants Are Obligated to Advise the Tribunal of Contrary Intervening Case and Statutory Law.

Just over twelve years ago and prior to his reassignment to the appellate division, Judge John C. Kennedy reminded plaintiff and other Feld VI and Feld VIII attorneys that they were and remained officers of the court with an overriding professional and ethical obligation of candor towards the tribunal. This is a continuous ongoing duty.

Here, defendants failed to cite and to discuss Article I, paragraphs 1, 2a, 5, 6, 18 and 21 of our State Constitution. Defendants failed to cite and to discuss Article VI, Section V, paragraph 4 of our State Constitution. Defendants failed to discuss Article VIII, Section I, paragraph 1(a) and Article VIII, Section III, paragraph 1 of our State Constitution.

Defendants failed to cite and to discuss P.L. 2021, Chapter 17, Section 6; P.L. 2003, Chapter 125, Section 13; P.L. 2002, Chapter 15, Section 10; City of Hackensack v. Hackensack Med. Ctr., 228 N.J. Super. 310, 313 (App. Div. 1988); New Jersey Citizen Action v. State of New Jersey, MER-L-001968-2021 (Law

Div. Sept. 28, 2022)(Pa529); Azuowch Rotimi v. Brock Russell, A-2155-21 (App. Div. Oct. 13, 2023) (Pa674).

Defendants failed to discuss the patent falsehood contained in the first paragraph of Jeffrey S. Feld v. City of Newark, A-1272-16T4 (App. Div. May 30, 2019) cert denied 2020 NJ WL 808315 (NJ Feb. 6, 2020) ("Newark I")(Pa130). Defendants also failed to counter the omitted public interest taxpayer ultra vires/public wrongdoing common law standing exception set forth in Loigman v. Township Commitee of Middletown, 297 N.J. Super. 287 (App. Div. 1997); Plaintiff's Appellate Merits Brief at p. 26-27.

Defendants failed to discuss and to compare plaintiff's broad statutory aggrieved "member of the public" standing under the Open Public Meetings Act (N.J.S.A. 10:4-15, -16) and the Open Public Records Act (N.J.S.A. 47:1A-6).

Defendants failed to cite and to discuss MEPT Journal Square Urban Renewal, LLC v. The City of Jersey City, 455 N.J. Super. 608 (App. Div. 2018) cert. denied 263 N.J. 356 (2019).

At pages 8-9 of their opposition brief, the State Related Defendants explicitly and implicitly support plaintiff's standing to challenge the actions and inactions of the Essex County Related Defendants.

> Residents of a county can challenge the actions of their county government . . . . Matlack v. Bd. Of Chosen Freeholders of Burlington, 191 N.J. Super. 236,

> 248 (Law Div. 1982). . . . The plaintiff must establish that they will experience some harm if the court returns an unfavorable decision. N.J. State Chamber of Commerce v. N.J. Election Law Enforcement Comm'n, 82 N.J. 57, 67 (1980).

Defendants also failed to cite any authority supporting the departure from precedent and the extraordinary entry of four distinct lack of standing subject matter dismissals with prejudice.

In sum, the validity of post April 17, 1992 non-urban renewal entity NJHMFA Section 37 long term tax exemptions under State law is a repetitive issue of substantial public importance evading judicial review. The NJHMFA continues to award low income tax credits, tax exempt revenue bond proceeds and other taxpayer subsidies to non-urban renewal entity NJHMFA Section 37 long term tax exemption projects in clear violation of N.J.A.C. 5:13-1.1 and the superseding Long Term Tax Exemption Law ("LTTEL").

The State Related Defendants, the Essex County Related Defendants and the City of Newark Related Defendants continue to permit the approval of discretionary long term tax exemptions by resolutions and not by ordinance in express violation of Judge Fuentes' contrary common law ruling that our State Legislature later codified. See, Millenium Towers v. Municipal Council, 343 N.J. Super. 367 (Law Div. 2001); P.L. 2003, Chapter 125, Section

9; N.J.S.A.40A:20-9. The State Related Defendants and the Essex County Related Defendants continue to permit certain financially distressed municipalities not to pay 5% of certain long term tax exemption revenues to Essex County.

Enough is enough. Plaintiff has returned to his original Feld VI December 10, 2014 lack of standing appellate oral argument before Judges Fuentes, Ashrafi and O'Connor when he caused Judge Ashrafi's face to turn beet red and Judge Asrafi to blurt out "Where was our State AG?" But see, In re IMO Town of Harrison and Fraternal Order of Police Lodge No. 116, 440 N.J. Super. 268 299 (App. Div. 2015) ("{W]hether a state agency is abiding by a valid state law 'is a fundamental concern of the Attorney General both in his capacity to the agency and in his capacity and responsibility as protector of the public.")

Today, no one is above the law. Public officials must honor their oaths of office to enforce and to execute the law faithfully and uniformly. Public officials can no longer shirk their sworn public statutory and fiduciary duties and obligations.

CONCLUSION

For all the foregoing reasons, plaintiff/appellant Jeffrey S. Feld, Esq. respectfully requests this appellate tribunal to

reverse the six final post-remand pre-answer pre-discovery orders, to remand this hybrid prerogative writ/declaratory judgment/civil rights act violations action back to another trial court judge and to grant such other relief that the appellate tribunal deems just and equitable.

Dated: January 8, 2024

/s/Jeffrey S. Feld
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(018711983)