SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0905-21

GOLDEN CREST 801 21ST STREET, LLC,

Plaintiff-Appellant,

v.

UNION CITY RENT STABILIZATION BOARD a/k/a UNION CITY RENT LEVELING BOARD,

Defendant-Respondent,

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Argued September 13, 2023 – Decided October 13, 2023

Before Judges Currier and Susswein.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-1618-20.

Derek D. Reed argued the cause for appellant (Ehrlich Petriello Gudin Plaza & Reed, PC, attorneys; Matthew A. Sebera, on the briefs).

R. Scott Fahrney argued the cause for respondent (Semeraro & Fahrney, LLC, attorneys; R. Scott Fahrney, of counsel and on the brief).

PER CURIAM

Plaintiff, Golden Crest 801 21st Street, LLC (Golden Crest), appeals from an October 14, 2021 Law Division order dismissing its complaint in lieu of prerogative writs. Plaintiff owns an apartment building in Union City. A current tenant of one of the apartments questioned the maximum allowable rent, known as the "legal rent," that could be charged under the city's rent control ordinance. Defendant Union City Rent Stabilization Board (Board) determined the tenant was paying more than the legal rent after finding that plaintiff failed to produce adequate proof to support its claim that it was entitled to a higher rent. Plaintiff contends that the Board's decision was arbitrary, capricious, and unreasonable. Plaintiff also contends the Board's reliance on a 1995 rent determination letter was barred by a ten-year statute of limitations. After carefully reviewing the record in light of the arguments of the parties and governing legal principles, we affirm.

We briefly summarize the pertinent facts and procedural history from the record. In December 2019, plaintiff purchased an apartment building from Golden Peak II, LLC (Golden Peak). Golden Peak and its predecessors had owned the property since 1998.

Shortly before Golden Peak acquired the property, Union City amended its Rent Leveling Ordinance, adding a new "vacancy decontrol" provision to ensure that existing tenants would continue to be protected by rent control. The Ordinance provided in pertinent part, "[a]s to those units vacant at the time of the adoption of this chapter. . . the rent agreed to by the landlord and tenant shall become the new base rent by which the permitted increases under this chapter shall be permitted." Union City, N.J., Code § 14-2(c) (1996) (amended 2017).

In April 2016, the current tenant of apartment three filed an inquiry with the Rent Control Office as to the legal rent for the apartment. The Board Secretary investigated the matter and found the last rent determination letter for apartment three had been issued in September 1995.

In May 2016, the Board Secretary sent a new rent determination letter to Golden Peak indicating that "according to the rent determination letter dated[] 9/29/95 and the allowable increases…[e]ffective[] 7/1/15 the legal rent is $884.71 per month." (emphasis omitted). The Board Secretary included a chart demonstrating the varying rental calculations that led to this determination. The chart showed the legal rents for the property through 2015 based on the legal rent identified in the 1995 determination letter and increasing each year in accordance with the annual consumer price index increase.

Golden Peak appealed the Secretary's legal rent determination letter to the Board. In March 2018, the Board passed a Resolution denying Golden Peak's appeal and upholding the Secretary's legal rent determination.

Golden Peak filed an action in Superior Court challenging the Board's Resolution. On January 4, 2019, Judge Joseph V. Isabella issued an order and opinion remanding the matter to the Board to make additional findings of fact. Judge Isabella concluded that because there was no determination by the Board as to what the rent was in 1997, the record below was insufficient to determine whether the Board's decision was arbitrary, capricious, or unreasonable.

The Board convened a remand hearing on December 16, 2019. Plaintiff presented testimony from Jana Schmidt, an employee of the company that had served as the property manager since 1998, Urban American. She identified 1996, 1997, 1998, and 1999 rent registration statements filed by the owner that purport to show the rents that were billed and collected for the apartments in the building. Schmidt testified that Urban American had each tenant sign a new lease. Based upon a change in the name of the tenant listed in the registration statement as the occupant of apartment three, she surmised that a new tenancy was created between 1996 and 1997. Schmidt presented additional rent registration statements from 1998 to 2012 indicating that tenant remained in the

apartment during this time frame. She also testified that tenant was party to a written lease agreement and always paid the sums listed on the rent registration statements. However, Schmidt was unable to present a copy of a lease between Golden Peak and that tenant.[1] Nor did plaintiff present receipts or bank statements to corroborate the information in the registration statements.

On February 10, 2020, the Board passed a Resolution upholding the rent determination letter. The Board based its decision "upon the testimony heard and the fact that there was insufficient evidence to establish that a new rental agreement was entered into between the [l]andlord and the [t]enant during the relevant period, from 1996 to 1997."

Plaintiff Golden Crest purchased the property from Golden Peak and filed a second action in lieu of prerogative writs—the matter before us—seeking reversal of the Board's remand determination. Plaintiff alleged that the Board acted in an arbitrary, capricious, and unreasonable manner by: (1) failing to comply with Judge Isabella's directive to make a factual determination as to the legal rent in 1997; (2) failing to give any evidentiary weight to the rent registration statements; (3) failing to apply the statute of limitations set forth in

[1] Schmidt testified the absence of a copy of the lease might be due to numerous floods that had occurred in the company's storage area over the years.

N.J.S.A. 2A:14-1.2; (4) violating principles of fairness by undoing eighteen years of legal rent increases, effected without complaint or remark, based upon a nearly two decades old rent determination letter; and (5) applying an arbitrary and rigid evidentiary standard without sufficient criteria or basis.

Judge Espinales-Maloney issued an order and twelve-page written statement of reasons denying plaintiff all requested relief and dismissing the second prerogative writ action with prejudice. The judge concluded that the Board's February 10, 2020 Resolution was supported by substantial, credible evidence and that plaintiff failed to establish that the Board's decision was arbitrary, capricious, or unreasonable.

Specifically, the judge found that plaintiff "fail[ed] to present any supporting evidence to demonstrate there was a 'rent agreed to by the landlord and tenant' in 1997 as required by the 1996 Rent Control Ordinance." The judge further explained:

> Plaintiff was given ample opportunity to provide witness testimony to support its position, yet [p]laintiff still failed to present evidence that landlord and tenant agreed upon rent. Plaintiff offers no signed (or even unsigned) leases from 1997, bank statements, or testimony showing an agreed-upon rent between the then tenant and [p]laintiff's predecessor(s). Moreover, the [r]ent registration[] statements are not equivalent to an agreement and explicitly state:

> "NOTE: The filing of a rent registration statement does not constitute a finding by the Rent Board Administrator or the Rent Leveling Board that the rent contained in the statement is the legal rent for the apartment."

Simply, there is no proof of an "agreement." Furthermore, it is still [p]laintiff's burden to prove its case. The Board attorney, Mr. Marotta, stated:

> "It's not the Rent Control's office responsibility to provide that information unless they have it or for this Board to provide that information unless they have it. That information could only come from the property owner or the tenant . . . With regards to the registration statement itself, it specifically states that the filing of a rent registration statement does not constitute a finding by the Board Administration or the Board itself that the rent contained in the statement is the legal rent for the apartment. . ."

The [p]laintiff's predecessor made it clear that it does not possess leases, bank statements (because said documents were kept in the basement and there were floods), digital receipts, or any indicia of an agreement between the 1997 tenant and landlord, nor for numerous tenants that followed, despite maintaining rent registration statements which were kept in an office. The Board Secretary, Mercado, investigated the matter and prepared and sent a rent determination letter to [p]laintiff indicating that "it has been found that according to the rent determination letter dated[] 9/29/95 and the allowable increases . . . [e]ffective[] 7/1/15, the legal rent is $884.71 per month.["] . . .

> Mercado repeatedly testified that there was this 1995 letter of determination, and they based the subject May 11, 2016 rent determination letter on it. Moreover, the 1997 rent is identified as $458.76 for the 1997 year. The [p]laintiff tries to ignore these facts and suggests the Board did not do its job despite the entire remand hearing revolving around the 1997 rent. Therefore, Golden Crest failed to meet its burden, and its lawsuit fails as a matter of law.
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> [(internal citations omitted) (emphasis in original).]

Judge Espinales-Maloney also rejected plaintiff's arguments concerning principles of equity and the application of the statute of limitations.

This appeal follows. Plaintiff argues: (1) the trial court erred by adopting the Board's arbitrary and capricious evidentiary standard, which accorded no weight to the evidence introduced by plaintiff, and (2) the trial court erred by holding that the statute of limitations set forth in N.J.S.A. 2A:14-1.2 was inapplicable and thus did not bar the actions of the rent leveling office and the Board.

We affirm substantially for the reasons expressed in Judge Espinales-Maloney's thorough and cogent written opinion. We add the following comments. Parties may use an action in lieu of prerogative writs to seek "review, hearing, and relief in the Superior Court" of all actions of municipal agencies. Rivkin v. Dover Twp. Rent Leveling Bd., 277 N.J. Super. 559, 569 n.4 (App.

Div. 1994). "[W]hen reviewing the decision of a trial court that has reviewed municipal action, we are bound by the same standards as was the trial court." Fallone Props., L.L.C. v. Bethlehem Twp. Plan. Bd., 369 N.J. Super. 552, 662 (App. Div. 2004).

The scope of judicial review is limited. Courts afford the decisions of municipal boards substantial deference; their determinations "enjoy a presumption of validity, and a court may not substitute its judgment for that of the board unless there has been a clear abuse of discretion." Price v. Himeji, LLC, 214 N.J. 263, 284 (2013) (citing Cell S. of N.J., Inc. v. Zoning Bd. of Adjustment, 172 N.J. 75, 82 (2002)). The actions of a municipal board "will not be overturned unless it is found to be arbitrary and capricious and unreasonable, with the burden of proof placed on the plaintiff challenging the action." Dunbar Homes, Inc. v. Zoning Bd. of Adjustment, 233 N.J. 546, 558 (2018) (quoting Grabowsky v. Twp. of Montclair, 221 N.J. 536, 551 (2015)).

This deference, however, does not apply to a board's interpretation of an ordinance. Schulmann Realty v. Hazlet Twp. Rent Control Bd., 290 N.J. Super. 176, 184 (App. Div. 1996). Likewise, a board's decision on a question of law is subject to de novo review. Dunbar Homes, 233 N.J. at 559.

Applying the deferential standard of review to the present matter, we are not persuaded that the Board acted arbitrarily, capriciously, or unreasonably in finding that plaintiff failed to present evidence to corroborate the registration statements it relied upon. Such statements are filed unilaterally by a landlord and are not countersigned by the tenant. Accordingly, they could be self-serving for purposes of future rent control calculations. Registration statements thus stand in stark contrast to a lease signed by the tenant, or a rent determination letter issued by a government agency.

Indeed, plaintiff acknowledges that a rent registration statement is not conclusive evidence of the existence and terms of a lease agreement. The gravamen of plaintiff's argument, rather, is that such statements can be indicative of an agreement. We do not dispute that rent registration statements can be relevant in a rent control dispute. But we do not interpret the Board's ruling to suggest that rent registration statements are categorically irrelevant or otherwise inadmissible at a hearing. Rather, the Board found that in this particular application, the rent registration statements plaintiff presented were insufficient to meet its burden of proof in the absence of any corroborating documentary evidence, such as a lease or proof of payment. The Board and Judge Espinales-Malone both stressed that plaintiff had not presented a copy of

the 1997 lease or 1997 rent receipts/bank statements. In these circumstances, we decline to substitute our judgment for the Board's in assessing the weight of the evidence presented by plaintiff at the remand hearing to prove a new tenancy was created in 1997.

We likewise reject plaintiff's contentions with respect to N.J.S.A. 2A:14-1.2. That statute provides that:

> Except where a limitations provision expressly and specifically applies to actions commenced by the State or where a longer limitations period would otherwise apply, and subject to any statutory provisions or common law rules extending limitations periods, any civil action commenced by the State shall be commenced within ten years next after the cause of action shall have accrued.

Judge Espinales-Maloney concluded that N.J.S.A. 2A:14-1.2 did not apply because the Board did not "commenc[e] an action in the matter sub judice." Because this is a question of law, we employ a de novo standard of review. See Grabowsky, 221 N.J. at 559.

While the Board qualifies as "the State" as that term is used in the statute,[2] we agree with Judge Espinales-Maloney that the Board did not commence a

[2] Pursuant to N.J.S.A. 2A:14-1.2(c): "[T]he term 'State' means the State, its political subdivisions, any office, department, division, bureau, board, commission or agency of the State or one of its political subdivisions, and any

"civil action" within the meaning of N.J.S.A. 2A:14-1.2. The Board did not file a lawsuit seeking to enforce the 1995 rent calculation. Nor did it impose penalties or fines against plaintiff to be enforced by court order. Rather, the Board merely determined the legal rent for the apartment pursuant to a tenant's request. Had plaintiff not initiated a lawsuit challenging the Board's determination, there would be no civil action in this dispute.

Furthermore, the cases plaintiff relies upon in support of its statute of limitations argument, Caldwell Terrace Apartments, Inc. v. Borough of Caldwell Twp., 224 N.J. Super. 588 (App. Div. 1988), and Addis v. Logan Corp., 23 N.J. 142 (1957), are inapposite. In Caldwell Terrace, we reversed the rent leveling board's assessment of fines against a landlord for violating a municipal smoke detector ordinance, holding the one-year statute of limitations for disorderly or petty disorderly persons offenses applies to prosecution for a municipal ordinance violation. 224 N.J. Super. at 596. Relatedly, in Addiss v. Logan Corp., our Supreme Court held that the two-year statute of limitations for forfeiture actions applied to tenants' actions to recover statutory penalties for rental overcharges. 23 N.J. at 148-49.

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public authority or public agency, including, but not limited to, the New Jersey Transit Corporation."

But here, no action was ever brought against plaintiff for fines or penalties, much less one outside a statute of limitations. Rather, this appeal arises from the present tenant's request for a rent determination. No lawsuit was ever brought by the Board, and the exercise of its authority to make a rent determination does not constitute a civil action within the meaning of N.J.S.A. 2A:14-1.2.

To the extent we have not specifically addressed them, any remaining arguments raised by plaintiff lack sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

Affirmed.