SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3393-21

DIN NARAIN, HETRAM SINGH JOHN SANTOS, and MAUREEN CHANDRA, individually and on behalf of those similarly situated,

Plaintiffs-Appellants,

v.

GEORGE HARMS CONSTRUCTION CO., INC.,

Defendant-Respondent,

and

USIC LOCATING SERVICES, LLC,

Defendant.

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Argued February 8, 2023 – Decided May 22, 2023

Before Judges Currier, Mayer and Enright.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-1702-20.

Timothy J. Foley argued the cause for appellants (Snyder Sarno D'Aniello Maceri & da Costa, LLC, attorneys; Paul M. da Costa and Thomas Paciorkowski, of counsel and on the briefs).

William H. Mergner, Jr., argued the cause for respondent (Leary Bride Mergner & Bongiovanni, PA, attorneys; William H. Mergner, Jr., and Peter M. Bouton, of counsel and on the brief).

PER CURIAM

On leave granted, plaintiffs Din Narain, Hetram Singh, and John Santos appeal from a May 13, 2022 order denying certification of their class action without prejudice.[1] We affirm.

I.

In May 2020, plaintiffs filed a class action complaint against George Harms Constructions Company (GHCC) and Suez North America (Suez), Jersey City's water and waste treatment company. Plaintiffs alleged that on April 28, 2020, during the peak of COVID-19 and while a stay-at-home order from

[1] Plaintiff Maureen Chandra was previously dismissed from the case.

Governor Philip D. Murphy was in effect,[2] GHCC engaged in a pile-driving activity that ruptured a thirty-six-inch water main supplying Jersey City and Hoboken residents with water. Various news agencies, including Fox News, CBS, NBC, ABC and PIX 11, reported on the rupture within hours of the incident. Plaintiffs alleged GHCC was negligent in the performance of its work, resulting in the rupture, and Suez was negligent in marking the buried water main. The complaint was subsequently amended to add USIC Locating Services (USIC) as the party responsible for marking the water main; thus, plaintiffs dismissed Suez from the action.

In their amended complaint, plaintiffs alleged that due to GHCC's negligence, "Jersey City and Hoboken water customers and residents were without water to wash [their] hands during the COVID-19 pandemic, unable to flush their toilets, . . . take showers, . . . drink tap water [and] . . . were forced to buy and use bottled water." Plaintiffs further asserted Jersey City and

[2] During the initial phase of COVID-19, "Governor Murphy issued a series of Executive Orders, including stay-at-home orders and directives." N.J. Republican State Comm. v. Murphy, 243 N.J. 574, 584 (2020).

Hoboken residents endured an interruption in water service for three days and had to expend "cost and time to boil water under Suez's boil water order."[3]

Plaintiffs asserted claims for "economic and non-economic damages" for themselves and the putative class. They originally defined the class as "all Suez water utility customers and residents in Jersey City and Hoboken between April 28, 2020 and April 30, 2020, inclusive." However, "to simplify class certification and remove any distractions concerning Hoboken's water infrastructure, [they later] sought certification of a limited class that consisted of only Jersey City residents because the rupture/blowout and pile driving all took place in Jersey City."[4]

In December 2020, plaintiffs moved to certify the class action certification. Two months later, the trial court denied class certification without prejudice, finding the record was inadequate to support class certification. Plaintiffs moved for leave to appeal. On April 29, 2021, we denied leave,

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[3] In September 2020, plaintiffs and GHCC voluntarily dismissed USIC from the case after GHCC acknowledged it knew the location of the water main before it commenced its pile-driving activity on April 28. Thus, GHCC is the sole defendant.

[4] Citing a 2020 United States Census, plaintiffs estimated Jersey City had a population of approximately 292,000 people at the time of the incident.

concluding "discovery on the class certification question remain[ed] incomplete."

Litigation continued between the parties and in December 2021, GHCC's counsel deposed Suez's project manager, John Hroncich, regarding the April 28 incident. Hroncich recalled that on that day, as the "situation . . . was unfolding[,] . . . the only information [Suez] had was that there was a break on the aqueduct line and that allegedly a contractor pushed a pile into the aqueduct itself." According to Hroncich, "the [thirty-six] inch pipe that failed was the original aqueduct . . . [that] used to feed the city," and it "dated back to sometime around the time of the Civil War." He also stated this aqueduct was one of three aqueducts "feeding Jersey City."

Additionally, Hroncich testified "leaks occur all the time and it's an old pipe so the chances are that the leak occurred because of metal failure or a leak on a joint. These things happen quite regularly in a . . . system as old as Jersey City's." Hroncich also stated it was his belief that prior to the April 28 incident, the thirty-six-inch pipe was "included in [Jersey City's] capital plan for either replacement or some kind of rehabilitation."

When asked to describe what occurred during the April 28 incident, Hroncich stated, "the break occurred around 3[:00] p.m." and

> was so large that some of the valves that would have isolated the break easily w[ere] under . . . about six [feet] of water. So . . . we had to keep moving . . . further back, and as a result, . . . the valves that we shut off also closed off some customers in Jersey City. So once the pressure was largely restored in the city, there were pockets of low pressure and no pressure in some areas of Jersey City in and around that area.

He added, "calls . . . were coming in" that customers were "out of water" or had "low pressure."

Hroncich characterized the water main break as having caused a "blowout." He explained, "essentially water just left the mains and pressure went to zero, not necessarily the whole city, but . . . a significant part of the city, at least portions of the city." Further, Hroncich stated, "[w]hen you have a blowout similar to what happened, then the State recommends a boil water advisory across the city." Thus, Suez issued a boil water advisory to "address[] the contamination that may have entered the mains in the blowout . . . [and] if there [were] reverse flows in some of the buildings that could enter into the distribution system." Hroncich admitted there was "no specific criteria as to how much of the system ha[d] to go down in order to issue a boil water advisory."

Next, Hroncich conceded Suez did not "have at its disposal anything that would allow it to[,] either at that point in time or forensically[,] identify exactly

where the pressure went down to zero." He also testified "most of the pressure was restored around 1[:00] a.m. on [April] 29th" and the boil water advisory was lifted at approximately 4:00 p.m. on April 30, 2020.

When asked if Suez had "any information . . . that would allow [GHCC] to determine exactly who, if anyone in Jersey City . . . either didn't have water or had low water pressure," Hroncich stated, "[n]o, I don't know that." GHCC's counsel probed further and questioned whether there was "any reliable method available for Suez or anyone . . . to . . . forensically. . . go back and reconstruct and determine which customers experienced an impact by way of either loss of water or water pressure." Hroncich responded, "[n]o." He also stated he was unable to "quantify in terms of percentage[,] how many residents of Jersey City depend[ed] on that [thirty-six-] inch water line that ruptured as of April of 2020." Further, he acknowledged it was "possible" "there would have been people who live[d] in Jersey City [who] felt no impact whatsoever in terms of their water supply" on the date of the incident.

Next, Hroncich stated that due to the rupture,

> there was a discolored water condition in the city right after the break because what was happening [was] the flow demand went way up and . . . plant flow increased and there were scouring effects in the aqueduct that then fed into the city so you had discolored water condition[s] going into Jersey City.

GHCC's counsel asked Hroncich, "[h]ow long did that water discoloration last?" Hroncich replied, "I don't know." He also stated it was "fair" to state there was "no reliable way for [him] to identify in real time or forensically which residents . . . experienced any of that discoloration."

Hroncich also admitted that "early in this lawsuit, there were allegations made by . . . plaintiffs . . . that [were] based on news articles . . . indicat[ing] that the [thirty-six-inch] line was actually struck," and that similar communications were "put out by" Suez, but such assertions "were based on early information that later turned out to be inaccurate." In fact, Hroncich testified that by the night of April 29, Suez knew "there was no direct contact with the pipe" and it suspected the rupture was "caused by vibration from pilings [ten] feet or more away."

Approximately three months after Hroncich was deposed, plaintiffs again moved for class certification and asked that they be appointed as class representatives. Additionally, they requested that their attorney be designated as "Class Counsel." Hroncich's deposition transcript was included as an exhibit to plaintiffs' motion.

After hearing argument, the judge issued an oral opinion on May 13, 2022, denying plaintiffs' application. He initially summarized the parties' positions

and noted GHCC lodged four primary objections to class certification. He explained, "[f]irst, [GHCC] argue[s] it is overbroad to establish a class for all residents of Jersey City for three full days" of disrupted service because the "testimony of Suez water representatives and other discovery reveal[ed] that the water service was interrupted [in] only [certain] areas of Jersey City for eight to nine hours."

In that vein, the judge referred to a map provided by plaintiffs, purporting to show the numerous areas of Jersey City impacted by the April 28 incident. He stated GHCC believed this map was "over-inclusive because it includes complaints of low . . . water pressure . . . , as opposed to outages," although "Suez itself . . . made clear that it ha[d] no way of determining which parts of the city had low pressure, no pressure at all or for how long, . . . nor which parts of the city and which residents had their water service interrupted and for how long." The judge also pointed to Hroncich's deposition testimony that "water was restored almost to all the areas impacted within eight to nine hours and by 1[:00] a.m. on April 29th."

The judge continued:

> [s]econd, [GHCC] argue[s] it makes no sense to include all Jersey City residents in the class because [plaintiffs'] . . . complaint map . . . mixes its outages, low pressure, . . . , and even simple inquiries about the

status of the water advisory[,] which itself lasted less than [forty-eight] hours. Therefore, it's wrong, [GHCC] argue[s], to include all of Jersey City residents in the class.

Third, the proposed class representatives are atypical because they certified in discovery responses that the residents suffered a water outage extending into a third day[,] lasting at least [thirty-eight] plus hours, even though almost all of Jersey City had its water fully restored within approximately eight to nine hours. Thus, they are unable to be appointed class representatives because their damages are not like the other class members.

Fourth, [GHCC] argue[s] that the plaintiff[s are] unable to meet the actual damages requirement . . . because many residents of Jersey City were not impacted at all by the brief water outage and certainly, some not impacted by the boil water advisory either as a result of not being in the vicinity during the outage or merely having an alternate source of water, such as bottle[d water].

The defendant[] contend[s it was] performing work in an area pursuant to a $200 million multi-year contract with the New Jersey Department of Transportation [(DOT)] . . . and [GHCC] had the directive to drive the piles at the precise location they were driven by the DOT . . . and extensive engineering plans that DOT had proposed . . . . As a result, [plaintiffs] produced no evidence that defendant was negligent or even caused the rupture of the pipe.

. . . .

Additionally, [GHCC argues] the Jersey City water system is not a modern system and much of it dates to

> the 1800s. . . . Therefore, [GHCC] allege[s] that they should not bear the responsibility of the incident.

The judge also acknowledged additional claims advanced by GHCC, such as its position that the "alleged three-day interruption was not caused by a single event and a single party, but rather a series of events involving multiple valves and . . . non-parties which led to the water being interrupted for a period of approximately eight to nine hours," and its assertion that plaintiffs failed to establish "any facts that warrant any non-economic relief."

Finally, the judge considered GHCC's objection in its moving papers to plaintiffs' request that he "take judicial notice of a number of news reports" about the April 28 incident. He explained GHCC opposed this relief, "[g]iven . . . the source[s]. . . plaintiff[s] relied[d] on," and the fact "these reports . . . [could] be reasonably disputed and . . . were issued within [an] hour of the incident."

In denying plaintiffs' request for class certification, the judge explained,

> the court must accept as true all of the allegations in the complaint and consider the remaining pleadings and discovery, including interrogatory answers, relevant documents and depositions and any other pertinent evidence in the light favorable to the plaintiff[s]. . . .
>
> [A] court deciding class certification must undertake a rigorous analysis to determine if the rule's requirements have been satisfied. The party seeking class

> certification must first establish four prerequisites under the rule, that is numerosity, commonality, typicality and adequacy of representation. Class certification is proper when [: (1)] the class is so numerous, the joinder of all members [is] impractical; (2) there are questions of law or fact common to [the] class; (3) the claims or defenses of the represented parties are typical of the claims or defenses for the [class; and (4) the representative] parties . . . will fairly and adequately protect the interest of the class.
>
> Additionally, [under] Rule 4:32-1(b), an action may be maintained as a class action if the prerequisites of the rule are satisfied and in addition, one of the three other conditions are met.
>
> The movant here relies on the third condition [under Rule 4:32-1(b)], which requires the court to find that the questions of law or fact common to the members of the class [pre]dominate[] over any questions affecting only individual members and that the class action is superior to other available methods.

Next, the judge addressed each of the prerequisites under Rule 4:32-1(a), stating:

> [f]irst, the court cannot find that the numerosity requirement is satisfied. The plaintiff[s] allege[] the class should consist of all Jersey City residents however, there is no way for the court to determine which of those residents actually lost water at all, much less from April [2]8th to the 30th. The movant attempts to make that showing by introducing [an e]xhibit . . . contain[ing] complaints about not just water but other issues, poor pressure, et cetera. Therefore, the court cannot determine the class as numerous because the

class that . . . plaintiff[s are] trying to include is overbroad and over-inclusive.

The court is also not satisfied the commonality requirement is fulfilled. It is . . . not clear whether a class in this case can be defined by common legal or factual issues. Defendant explained that the water system is 150 years old, that there are multiple reasons why the rupture may have happened. In other words, it is not simply a question of whether [GHCC] was negligent, striking the pipe and causing the outage, rather the causation is varied . . . because NJDOT, Suez Water, and the Jersey City Municipal Utilities are all involved in the maintenance and planning of the water system. I find . . . the commonality factor is unsatisfied.

As for the . . . typicality factor, the court finds . . . the class representatives have unique and atypical damages that meaningfully differentiates them from the other class members. They had a longer water outage than most . . . people in Jersey City. Water pressure was restored to Jersey City, . . . by 1 a.m. on April 29th, approximately eight to nine hours [later], and these folks said . . . their water was restored at a different time. And therefore, the movant fails to satisfy the typicality factor. So, for the same reasons, the court also cannot find that the movant satisfied the adequacy factor.

Given this analysis, the court does not need to make a determination on the superiority and predominance issues. Indeed, [because] the court cannot find that the commonality requirement is satisfied, then the predominance requirement will not be satisfied because the predominance requirement is more demanding than the commonality requirement. . . .

> Therefore, with all due respect to . . . plaintiffs' counsel, . . . , the motion is denied and the court does not take judicial notice of the reports and tweets that the movant . . . included.

Following entry of the May 13 order, plaintiffs moved for leave to appeal; we granted their application in July 2022.

II.

On appeal, plaintiffs contend the trial court abused its discretion by not: (1) "taking judicial notice of Governor Murphy's stay-at-home order and the various television news video recordings of the rupture/blowout incident"; (2) "applying the correct standards on a motion for class certification"; (3) "finding the class numerous enough to satisfy Rule 4:32-1(a)(1)"; (4) "finding a single question of fact or law common to the class"; and (5) "finding plaintiffs' claims typical of the class's claims and requiring plaintiffs and all class members to have the same degree of damages as a prerequisite for adequacy."

Additionally, plaintiffs argue they satisfied "the superiority and predominance requirements for class certification" and the case should be remanded for certification. Lastly, for the first time on appeal, they contend this case should be reassigned to another judge on remand because the judge currently assigned to the matter "is committed to his prior opinions, made

credibility determinations regarding the plaintiffs, and refused to case manage this . . . case." We are not persuaded.

An order denying class certification is interlocutory, and therefore, an aggrieved party seeking appellate review "must move for leave to appeal pursuant to Rule 2:5-6(a)." Daniels v. Hollister Co., 440 N.J. Super. 359, 361-62 n.1 (App. Div. 2015). Upon leave granted, appellate courts review the denial of class certification under an abuse of discretion standard. Dugan v. TGI Fridays, Inc., 231 N.J. 24, 50 (2017); Lee v. Carter-Reed Co., LLC, 203 N.J. 496, 506 (2010). Additionally, we review de novo a trial court's legal determinations relevant to class certification. Int'l Union of Operating Eng'rs Loc. No. 68 Welfare Fund v. Merck & Co., Inc., 192 N.J. 372, 386 (2007).

When reviewing an order denying class certification, we first evaluate whether the trial judge followed the class action standard set forth in Rule 4:32-1. Dugan, 231 N.J. at 50; Lee, 203 N.J. at 506. In doing so, we do not "act as a factfinder with respect to plaintiffs' substantive claims." Dugan, 231 N.J. at 55 n.8.

"Rule 4:32-1 prescribes the standard for the determination of a motion to certify a class." Dugan, 231 N.J. at 47. Subsection (a) provides:

> (a) General Prerequisites to a Class Action. One or more members of a class may sue or be sued as

> representative parties on behalf of all only if: (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.
>
> [R. 4:32-1(a).]

These four initial requirements are commonly referred to as: numerosity, commonality, typicality, and adequacy of representation. Dugan, 231 N.J. at 47. If the plaintiff satisfies each Rule 4:32-1(a) requirement, the trial court must next consider Rule 4:32-1(b), which mandates that the proposed class action meet one of three additional criteria. As the judge here noted, Rule 4:32-1(b)(3) requires the court to find "that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy."

A trial "court must not make a preliminary decision on the merits when determining whether a class should be certified." Muise v. GPU, Inc., 371 N.J. Super. 13, 46 (App. Div. 2004). Instead, as the judge here recognized, it must accept all allegations made in the complaint as true and view the pleadings in the light most favorable to the plaintiff. Dugan, 231 N.J. at 49; Lee, 203 N.J. at

505.

New Jersey's class action rule "helps to equalize adversaries, a purpose that is even more compelling when the proposed class consists of people with small claims." Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 104 (2007). Accordingly, it "should be liberally construed." Id. at 103 (quoting Delgozzo v. Kenny, 266 N.J. Super. 169, 179 (App. Div. 1993)); see also Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 4:32-1 (2023) ("[Rule 4:32-1] is required to be liberally construed and the class action permitted to be maintained unless there is a clear showing that it is inappropriate or improper.").

Still, in assessing a request for class action certification, a trial court must "undertake a 'rigorous analysis' to determine if the requirements of the rule have been met, and must understand the claims, defenses, relevant facts and applicable substantive law necessary to make a meaningful determination." Beegal v. Park W. Gallery, 394 N.J. Super. 98, 111 (App. Div. 2007) (quoting Iliadis, 191 N.J. at 106).

In terms of numerosity, not every class member needs to be ascertainable before certification is permitted. Daniels, 440 N.J. Super. at 365. But, importantly, "[c]lass certification presupposes the existence of a properly defined class. Thus, '[e]ven before one reaches the four prerequisites for a class

action, there must be an adequately defined class.'" Iliadis, 191 N.J. at 106 n.2. (quoting Richard L. Marcus & Edward F. Sherman, Complex Litigation: Cases and Materials on Advanced Civil Procedure 231 (4th ed. 2004)) (second alteration in original). Additionally, "the proposed class must be sufficiently identifiable without being overly broad. The proposed class may not be amorphous, vague, or indeterminate and it must be administratively feasible to determine whether a given individual is a member of the class." Ibid. (emphasis added).

Regarding the first of the four prerequisites under Rule 4:32-1(a), i.e., numerosity, the Rule does not mention a specific number of class members that will satisfy the numerosity requirement, and our courts "frequently describe the numerosity requirement without numerical precision." Baskin v. P.C. Richard & Son, LLC, 246 N.J. 157, 174 (2021) (citation omitted). But "[a]s a general rule[,] . . . classes of [twenty] are too small, classes of [twenty to forty] may or may not be big enough, depending on the circumstances of each case, and classes of forty or more are numerous enough." Baskin, 246 N.J. at 174 (citation omitted).

Turning to commonality, the second of the four prerequisites, a proposed class satisfies Rule 4:32-1(a)(2) if there are "questions of law or fact common

to the class." To establish commonality of questions of law or fact, all factual and legal questions need not be identical for proposed class members. Iliadis, 191 N.J. at 108-09.

Next, under Rule 4:32-1(a)(3), a proposed class satisfies the typicality requirement if its claims "have the essential characteristics common to the claims of the class." In re Cadillac V8-6-4 Class Action, 93 N.J. 412, 425 (1983).

Finally, when considering "whether the putative class representative will be able to 'fairly and adequately protect the interests of the class[,]' . . . 'courts consider the adequacy of both the named representative and class counsel.'" Laufer v. U.S. Life Ins. Co. in City of N.Y., 385 N.J. Super. 172, 181 (App. Div. 2006) (quoting 5 James W. Moore et al., Moore's Federal Practice, § 23. 25[3][a] (3d ed. 1997)). The determination whether a putative class representative can fairly and adequately protect the interests of the class is closely related to the requirement of typicality. Id. at 181-82.

Here, the proposed class, as modified by plaintiffs, was defined as "all Suez water utility customers and residents in Jersey City . . . between April 28th and April 30, 2020." Considering plaintiffs' estimate of the number of persons residing in Jersey City in April 2020, their proposed class would have been

sufficiently large to satisfy the numerosity requirement under Rule 4:32-1(a). But this determination alone does not end our inquiry.

As we have discussed, although our courts do not require that every class member be ascertainable before certification is permitted, a proposed class still must be "properly defined" "without being overly broad"; and the class "may not be amorphous, vague, or indeterminate and it must be administratively feasible to determine whether a given individual is a member of the class." Iliadis, 191 N.J. at 106 n.2. Here, the judge found there was "no way for the court to determine which of the[] residents [in the putative class] actually lost water at all, much less from April 28th to the 30th" and that "the class . . . plaintiff[s were] trying to include [was] overbroad and over-inclusive." Given the admissions made by Hroncich in his deposition testimony and absent a showing it was "administratively feasible" to determine who was a member of the class, we are not convinced the judge erred in finding the putative class was "overbroad" and the numerosity requirement was not satisfied.

Due to this determination, we need not address the remaining prerequisites under Rule 4:32-1. Nonetheless, we are satisfied that even if plaintiffs demonstrated commonality and adequacy under the Rule, we would have no basis to disturb the judge's findings regarding typicality. Indeed, the record

supports his conclusion that "the class representatives ha[d] unique and atypical damages that meaningfully differentiate[d] them from the other [proposed] class members" because the class representatives alleged they "had their water service disrupted for three days between April 28th and April 30th, 2020," "a longer water outage than most [other] people in Jersey City . . . [whose w]ater pressure was restored . . . approximately eight to nine hours" after the rupture.

Next, plaintiffs argue the judge erred in denying their request to take judicial notice of either the stay-at-home order that existed on April 28, 2020, or "the various news video recordings of the rupture/blowout incident." This argument is unavailing.

"The purpose of taking judicial notice is to save time and promote judicial economy by dispensing with the necessity of proving facts that cannot be seriously disputed and are general or universally known." Est. of Kotsovska v. Liebman, 433 N.J. Super. 537, 549 (App. Div. 2013) (citing State v. Silva, 394 N.J. Super. 270, 275 (App. Div. 2007)). "'[F]acts that can be reasonably questioned or disputed may not be judicially noticed.'" Id. at 550 (quoting Silva, 394 N.J. Super. at 275). Also, "if there is a mixed question of law and fact regarding an event of which the court may take notice under N.J.R.E. 20l, the court must be careful not to take notice of the ultimate legal issue involved."

Biunno, Weissbard & Zegas, Current N.J. Rules of Evidence, cmt. 1 on N.J.R.E. 201 (2023).

On appeal, we have the discretion to "take judicial notice of any matter specified in Rule 201, whether or not judicially noticed by the trial court." N.J.R.E. 202(b). The subject matter that may be judicially noticed is set forth in Rule 201(b) as follows:

> (b) Notice of Facts. — The court may judicially notice a fact, including:
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> > (1) such specific facts and propositions of generalized knowledge as are so universally known that they cannot reasonably be the subject of dispute;
> >
> > (2) such facts as are so generally known or are of such common notoriety within the area pertinent to the event that they cannot reasonably be the subject of dispute;
> >
> > (3) specific facts and propositions of generalized knowledge which are capable of immediate determination by resort to sources whose accuracy cannot reasonably be questioned; and
> >
> > (4) records of the court in which the action is pending and of any other court of this state or federal court sitting for this state.

Here, neither party disputed the April 28 water main rupture occurred, that news sources reported on the rupture, or that the incident occurred while

Governor Murphy's stay-at-home order was in place. Thus, it was unnecessary for the judge to take judicial notice of these facts. On the other hand, GHCC contested the accuracy of the reports that emanated from various news outlets immediately following the rupture, and disputed that its pile-driving activity was solely responsible for any damages plaintiffs purportedly suffered.

During Hroncich's deposition, he admitted that in the early stages of the litigation, plaintiffs made allegations "based on news articles that indicate[d] that the [water main line] was actually struck" and similar information was "put out by" Suez "based on early information that later turned out to be inaccurate." Under these circumstances, we decline to conclude the judge erred in denying plaintiffs' request to take judicial notice of disputed and potentially "inaccurate" facts.

In light of our determination affirming the trial court's order, we need not consider plaintiffs' request for reassignment to a new judge on remand.

To the extent we have not addressed plaintiffs' remaining arguments, we are persuaded they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.