SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2772-22

H WEEHAWKEN LLC,

Plaintiff-Appellant,

v.

MARK LAKE and
VINCENT KENNEY,

Defendants-Respondents.

Submitted April 9, 2024 – Decided May 23, 2024

Before Judges Puglisi and Bergman.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket No. DC-005169-21.

Ehrlich, Petriello, Gudin, Plaza & Reed, PC, attorneys for appellant (John J. Petriello and Nathan Lam, on the brief).

Respondents have not filed a brief.

PER CURIAM

In this one-sided appeal, plaintiff H Weehawken LLC appeals from the Law Division's February 10, 2023 order dismissing its complaint against defendants Mark Lake and Vincent Kenney. We affirm.

Plaintiff was the owner of an apartment building in Weehawken, where defendants had been tenants since 1998. In May 2021, plaintiff filed a complaint alleging defendants breached their lease agreements by failing to pay rent increases in 2019 and 2020. Defendants' answers alleged the building was subject to the city's rent-leveling ordinance, otherwise known as rent control, and therefore they were only required to pay rent increases approved by the city's rent control board.

At trial before Judge Anthony V. D'Elia, plaintiff's property manager testified defendants had been served with notices of the rent increases and the building was exempt from rent control. Although the building was previously subject to rent control, the Weehawken rent control ordinance (#1-1989) was amended effective December 12, 2018 (#20-2018) to retroactively exempt all newly constructed dwellings, defined as any multiple dwelling constructed pursuant to an initial construction permit issued on or after June 25, 1987. The exemption applied for thirty years following the city's issuance of a certificate of occupancy for the building.

The ordinance required any owner of a newly constructed building to file a written certification indicating that the premises were exempt from rent control and noting the commencement and expiration dates of the claimed exemption. The certification was required to be filed within sixty days of the effective date of the ordinance. The ordinance also required the owner of an exempt dwelling to provide a prospective tenant notice of the exemption period.

The property manager testified to and produced a copy of a letter dated February 13, 2019 from plaintiff's counsel to the Weehawken Rent Leveling Board contending the property was exempt. She also provided a copy of a letter dated November 21, 2021 from Hugh McGuire, the attorney for the Board, which stated the Board's file indicated plaintiff's property was newly constructed and therefore exempt from rent control. The letter further stated plaintiff provided the "requisite record notice" in its letter dated February 13, 2019. The judge admitted McGuire's letter into evidence.

Defendants testified their lease agreements and notices of increase in rent prior to 2019 indicated the building was subject to rent control. They also contended they were not provided the requisite notice of the exemption under the ordinance.

After considering testimony from the property manager and defendants, the judge determined plaintiff had provided defendants proper notice of the rent increases. However, the judge stated there were no facts in the record establishing the building was new construction or that it was exempt from rent control, and he gave the parties the opportunity to submit "a written, legal brief as to why the rent control ordinance does or does[not] apply." The judge was clear that the record was closed and any additional submissions were to include only the exhibits moved into evidence at trial. No other exhibits, certifications, affidavits or exhibits were permitted to be attached or referenced. The court memorialized its decision by order dated December 14, 2021.

After considering the parties' supplemental briefs, Judge D'Elia issued an opinion on January 10, 2023, followed by an order entering a judgment of dismissal. The judge noted defendants' initial lease and subsequent renewals indicated the building was subject to rent control and imposed increases in accordance with the rent control board's approval. Concerning plaintiff's proofs, the judge found:

> As the [c]ourt previously ruled, the [c]ourt would not consider the hearsay opinion testimony of Hugh McGuire . . . as he did not testify at the time of the trial and the [c]ourt specifically ruled that the letter from [him] was not admissible to prove whether the property was new construction and/or exempt from the [r]ent

> [l]eveling [o]rdinance. As the [c]ourt specifically ruled, that document was not to be admitted establishing that the property was a multiple dwelling; or "newly constructed" and exempt from the [o]rdinance.

The judge also found plaintiff failed to comply with the requirement that it file a certification establishing exemption within sixty days of the effective date of the ordinance:

> While the McGuire letter was not admitted establishing whether the property was a multiple dwelling or newly constructed, it was admitted as to when the town received notice from the landlord of the required rent exemption notice. The date of receipt of that notice was February 13, 2019; [sixty-three] days after the effective date of the [o]rdinance. As such, the notice was not filed within the requisite time period and therefore the landlord did not establish that the property was exempt from the [r]ent [c]ontrol [o]rdinance (even assuming one would classify this property as "new construction").

Because plaintiff failed to establish the property was exempt from rent control, the judge dismissed its complaint seeking rental increases exceeding those amounts approved by the rent control board. Plaintiff appeals, arguing the trial court erred in finding plaintiff was not exempt from rent control because it incorrectly ruled McGuire's letter inadmissible hearsay.

We begin our analysis with the standard of review, which dictates "[w]e defer to a trial court's evidentiary ruling absent an abuse of discretion." State v.

Garcia, 245 N.J. 412, 430 (2021). We review "the trial court's evidentiary rulings '. . . under the abuse of discretion standard because, from its genesis, the decision to admit or exclude evidence is one firmly entrusted to the trial court's discretion.'" State v. Prall, 231 N.J. 567, 580 (2018) (quoting Est. of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 383-84 (2010)). Under that deferential standard, appellate courts "review a trial court's evidentiary ruling only for a 'clear error in judgment.'" State v. Medina, 242 N.J. 397, 412 (2020) (quoting State v. Scott, 229 N.J. 469, 479 (2017)). We will not disturb a trial court's evidentiary ruling unless it "is 'so wide of the mark' that it constitutes 'a clear error in judgment.'" Garcia, 245 N.J. at 430 (quoting Medina, 242 N.J. at 412).

Plaintiff first argues the trial court admitted McGuire's letter into evidence at trial in the absence of objection, but then erred by limiting its consideration of the contents to show when plaintiff submitted the exemption letter to the city. We disagree. After the close of trial, the judge accepted the document into evidence, but at that time did not make any determination whether he would consider the entire document for the truth of what was asserted in it. The judge's subsequent opinion explained the limited purpose for which the document was considered. We discern no error in the court's decision to admit the document

but then limit its purpose. Cf. Manata v. Pereira, 436 N.J. Super. 330, 345 (App. Div. 2014) (under N.J.R.E. 803(c)(6), "a police report admissible to prove the fact that certain statements were made to an officer, but, absent another hearsay exception, not the truth of those statements.") (citations omitted).

While plaintiff concedes McGuire's letter is hearsay, it contends the trial court should have ruled it admissible for its truth under the exception at N.J.R.E. 803(c)(8), which allows in evidence a hearsay statement that is either:

> (A) a statement contained in a writing or other record made by a public official of an act done by the official or an act, condition, or event observed by the official if it was within the scope of the official's duty either to perform the act reported or to observe the act, condition, or event reported and to make the written statement; or
>
> (B) statistical findings of a public official based upon a report of or an investigation of acts, conditions, or events, if it was within the scope of the official's duty to make such statistical findings.

Because the letter did not contain statistical findings, we presume plaintiff contends it should have been admitted under section (A). We conclude this section is likewise inapplicable. McGuire's letter did not document "an act done by" him, or an "act, condition or event observed" by him. Therefore, we agree with the judge's determination the information contained in the letter was

inadmissible hearsay and could not be used to prove whether the building was new construction and exempt from rent control.

Although the judge did not accept the letter for the truth of its contents, he considered it for notice of when the town received plaintiff's letter. Because the judge's limited consideration of McGuire's letter wholly comported with the rules of evidence, we find no abuse of discretion in that decision. Additionally, since the remaining record was devoid of any evidence demonstrating when the building was constructed or whether it was subject to rent control, the judge properly dismissed the complaint.

Affirmed.