:Superior Court of New Jersey
:Law Division, Special Civil Part
:Middlesex County

CANDE LAND 2020, LLC,
Plaintiff,

vs.

MARIA NUNEZ,
Defendant

:Docket No. MID-LT-5378-20

CANDE LAND 2020, LLC,
Plaintiff,

vs.

RAMON DIAZ,
Defendant

: Docket No. MID-LT-5379-20

CANDE LAND 2020, LLC,
Plaintiff,

vs.

SANDY DIAZ,
Defendant

: Docket No. MID-LT-5380-20

Decided: August 26, 2022

BEFORE:
Hon. J. Randall Corman, J.S.C.

APPEARANCES:

Michael Mirne, Esq
Attorney for the Plaintiff

Joseph Vas, Esq.
Attorney for the Defendants

These matters all come before the Court pursuant to complaints seeking eviction for failure to pay a rent increase under N.J.S.A. 2A:18-61.1(f). While the cases were not

formally consolidated, they were tried simultaneously in conjunction with one another for reasons of judicial economy because they share common issues of law and fact.

PROCEDURAL HISTORY

The complaints were all filed August 19, 2020, and all involve two-bedroom apartments in the same apartment building located at 263-265 New Brunswick Avenue in Perth Amboy. Preceding the filing of these complaints, the defendants were all sent a Notice of Rent increase dated October 22, 2019. These notices purported to terminate the tenants' existing leases effective November 30, 2019, and offering new one year leases commencing December 1, 2019. The proposed leases would increase the rents on all two-bedroom apartments to $1,400 per month.

The effect of the proposed rent increases on these defendants would be as follows: The rent for Maria Nunez, who rented apartment 263-2, would increase by 75% from $799 to $1,400 a month. The rent for Ramon Diaz, who rented apartment 263-3, would increase by 69% from $862 to $1,400 a month. Lastly, the rent for Sandy Diaz, who rented apartment 265-1, would increase by 33% from $1,050 to $1,400 a month. None of the defendants paid the increased rent. Instead, they all continued to pay the amount of rent that they had paid in the past.

The plaintiff initially sought to obtain approval for the increases under the Perth Amboy rent control ordinance, which allows landlords to apply for rent increases exceeding 5% if they can demonstrate a hardship before the Perth Amboy Rent Leveling Board. However, the plaintiff soon learned that the Mayor and City Council had failed to appoint a functioning quorum to the Board, and consequently, there was no entity that could hear the hardship application.

After efforts to persuade the Perth Amboy City Council to approve the proposed rent increase proved unsuccessful, counsel for the Plaintiff filed a verified complaint in lieu of prerogative writ on December 19, 2019, seeking to have the rent control ordinance stricken or to permit the Plaintiff to increase rents as though there was no rent control ordinance. See Cande Land LLC v. City of Perth Amboy and Perth Amboy City Council, MID-L-8501-19. On April 14, 2020, that litigation between the Plaintiff and City was settled by way of a Consent Order signed by Judge Thomas McCloskey. The terms of the Consent Order simply stated that the City rent control ordinance was not stricken, but the Plaintiff was granted an exception to the ordinance "so that the Plaintiff could immediately enforce fair market rent increases, as set forth in the Plaintiff's previously served Notices of Rent Increase, in the manner that would be applicable to municipalities that do not have rent control."

The Consent Order between the Plaintiff and the City of Perth Amboy was approved a month after the enactment of an eviction moratorium pursuant to Executive Order 106, which was issued by Governor Murphy in connection with the State of Emergency declared in response to the COVID-19 pandemic. Thus, while the Plaintiff was free to attempt to evict tenants for failure to pay a rent increase without regard to the Perth Amboy rent control ordinance, a judicial resolution of the question had to wait until the end of the moratorium on December 31, 2021, and the consequent backlog in eviction trials. So, while the Plaintiff filed these complaints in August of 2020, trials were not scheduled until March 9, 2022.

TRIAL TESTIMONY

Testifying for the Plaintiff was Douglas Candela, the principal of Cande Land LLC. Mr. Candela indicated he owns other rental properties, including one located at 304 Sutton Street in Perth Amboy. He testified that he was previously certified as a real estate broker, but not in New Jersey.

Mr. Candela described 263-265 New Brunswick Avenue as a typical urban rental property in fair condition. He testified that he purchased the property in August of 2019 for $525,000 as part of a Section 1031 exchange. This is a transaction that allows capital gains taxes to be deferred under Section 1031 of the Internal Revenue Code when investment property is purchased with the proceeds of a sale of like-kind property. See 26 U.S.C.A. § 1031. Thus, the Plaintiff purchased 263-265 New Brunswick Avenue with the proceeds of the sale of another apartment building, and consequently, there is no debt service on 263-265 New Brunswick Avenue at the present time.

At the time the Plaintiff purchased the property, the total rents collected for all six apartments at 263-265 New Brunswick Avenue was $54,758 a year. This amount included the amounts paid by the three Defendants in the present matters as well as the three other apartments in the building. Two of these other units, apartment 265-2 and apartment 265-3, were also two-bedroom units. The rent for apartment 265-2 was $901 a month and the rent for apartment 263-1 was $688 a month. The remaining unit, apartment 263-1, was a studio apartment with rent of $300 a month.

In connection with the Plaintiff's application to the nonfunctioning Rent Leveling Board in September of 2019 for a hardship-based rent increase, the following chart was included in the application setting forth the then-current and proposed rents for all units

in the building. The names of the Defendants in this matter have been included for greater clarity.

Unit No.	Size	Current Rent (as of 9/21)	Proposed Rent
263-1	Studio	$300	$800
263-2 (M. Nunez)	2-BR	$799	$1,400
263-3 (R. Diaz)	2-BR	$826	$1,400
265-1 (S. Diaz)	2-BR	$1,050	$1,400
265-2	2-BR	$901	$1,400
265-3	2-BR	$688	$1,400

When Mr. Candela submitted this application for a rent increase to the Board in September, he also provided a ledger that indicated the total income for 2018 based on the existing rent for all the apartments was $54,768. The expenses for the same period were $25,313, consisting of $15,933 for property taxes, $3,600 for water charges, and $5,780 for insurance. Thus, the net annual revenue for the property before he purchased it was $29,455. His projected revenue estimates for 2019 assumed the same rents and expenses, but included an additional $17,200 for capital improvements, which included $10,000 for waterproofing, $6,000 for oil tank removal and $1,200 for an electrical upgrade, which resulted in a projected income of $8,113 for 2019.[1]

Ledgers of the Plaintiff admitted into evidence concerning expenses since the unsuccessful application to the Rent Leveling Board indicated that in 2020 the total expenses for the building were $27,122. This consisted of $15,397 for property taxes, $3,608 for water and sewer, $4,981 for insurance, $438 for PSE&G, and $2,698 for a

[1] There appears to be an error or an omission regarding the Plaintiff's expenses for 2019 as submitted to the Rent Leveling Board. Adding $17,200 in capital improvements to the projected $25,313 in expenses equals $42,513. Subtracting that amount from $54,768 in total rents results in net income of $12,255, not the $8,113 in projected income submitted to the Board. For purposes of this decision, the Court assumes that there was another $4,112 in capital improvements that were inadvertently omitted from Plaintiff's submission.

superintendent and HVAC repairs. The yearly expenses for 2021 were $25,497, consisting of $15,490 for property taxes, $3,982 for water and sewer, $3,539 for insurance, $326 for PSE&G, and $2,160 for a superintendent.

Mr. Candela also testified that there were other costs that had increased significantly. He claimed that the costs of a 2 x 4 piece of lumber had doubled since he bought the property and the cost of plumbers, electricians furnace and air conditioning repairs had all tripled. However, he provided no documentation to substantiate any of these claims nor did he offer any proof of what he had paid for such repairs since he assumed ownership.

As to the sufficiency of rents for these apartments, Mr. Candela testified that they were very low. He noted that his application to the Rent Leveling Board included real estate listings in Perth Amboy for properties with two-bedroom apartments at 801 Central Place and 210 High Street with rents at $1,600 a month and $1,800 a month, respectively. In addition, he also presented documentation that in July and August of 2021 he had received approval from the Housing Assistance Program in the NJ Department of Community Affairs to increase the rent to $1,470 a month for apartments 265-2 and 265-3, the other two-bedroom units at his New Brunswick Avenue property, effective September 1, 2021. He also testified that at his rental property located at 304 Sutton Street the rent was $1,600 a month for two-bedroom apartments.

Under cross examination, Mr. Candela conceded that he was unaware of the size or condition of the properties at 801 Central Place and 210 High Street. Thus, counsel for the Defendants argued that Mr. Candela was not in a position to testify as to whether these properties were truly comparable to the premises in the present litigation. At this

point, Plaintiff's counsel indicated that he would rely on the two Section 8 units at New Brunswick Avenue and the Plaintiff's property at 304 Sutton Street as comparables in this matter.

Counsel for the Defendants produced two local landlords to testify on the issue of market rate rents in Perth Amboy. The first was Adolfo Perez, who testified he has been a landlord for thirty years and owns thirty-four properties at various addresses with two-bedroom apartments. Mr. Perez indicated that the average monthly rent in these units was $1200 and that the lowest rent he charged in any unit was $885 per month. He also testified that he limits his rent increases to the 5% allowed by city ordinance until he catches up to the going rate.

Under cross examination, Mr. Perez stated that the average monthly rent for new tenancies in the city is between $1200 and $1400, depending on the size of the apartment. He also indicated that the property where he charges $885 a month is located at 7 State Street. He testified that tenant's rent was $540 a month in 2000 and he has increased it 5% a year to reach its present level.

The second landlord to testify on behalf of the Defendants was Robert Lugo, who testified he was a 67 year resident of Perth Amboy and owned two apartment buildings on Mechanic Street. One was a twelve family building and the other was a six family building. He testified that the average rent for two-bedroom apartments in his buildings was $1000 a month. Under cross examination he indicated that the most recent two-bedroom tenancy was for $1200 a month and that those tenants moved in about a year ago.

The next witness to testify was Defendant Ramon Diaz, who is the tenant in apartment 263-3 and lives there with his parents, his wife, and his four-month-old daughter. He indicated that he is a security officer at a shopping mall and that he is the only member of the household with a job. He stated that he is opposed to the proposed rent increase and that he believed that the landlord was "going too far." Under cross examination he indicated that he has been there for twenty years when it was his parents who were responsible for paying the rent. He also testified that he could not recall the last time the rent was increased.

Defendant Sandy Diaz, the tenant in apartment 265-1, was the next witness to testify. She indicated that she is a single mother who lives with her ten-year-old son and that she has an adult son who moved out two years ago. Ms. Diaz testified that she has been a tenant at the property for eighteen years and is currently employed as a patient care technician at Hackensack Meridian Hospital in Perth Amboy. She also described the proposed rent increase as "ridiculous" and "outrageous" and stated that the apartment is in bad condition. She saw the need for some increase, but thought the landlord was asking for too much, needed to fix the building and knew what he was getting into when he bought it. Under cross examination, she testified she could not remember the last time the rent was increased, nor could she remember what she was paying when she first moved in eighteen years ago.

The third defendant, Maria Nunez, who was following the proceedings by way of a Spanish interpreter, declined to testify. Her attorney indicated she was an older woman and seemed intimidated by the prospect of testifying.

LEGAL ARGUMENTS OF COUNSEL

In his summation, Defendant's counsel argued that the rents sought by the Plaintiff, ranging from a 35% increase to a 75% increase, were unconscionable. Counsel observed that the Plaintiff knew Perth Amboy had a rent control ordinance when he closed on the property, and he also knew what the rents were. Conceding that the failure of the city to appoint a functioning rent control board had prevented the Plaintiff from seeking an increase exceeding 5% based on hardship, Defendant's counsel stated that the Plaintiff had nevertheless failed to prove hardship. The Plaintiff, counsel maintains, had not submitted proof of any substantial improvement made to the property and had offered no proof of any massive tax hike or water rate increase corresponding to the magnitude of the proposed rent increase. Counsel notes that the Plaintiff is unburdened by a mortgage, has reaped the benefits of the Section 1031 exchange, and now seeks an excessive rent increase, not to fund any improvements, but simply to make more money.

Defendant's counsel also described his clients as salt-of-the-earth, working class people who had faithfully paid their rent through the eviction moratorium enacted during the pandemic, but now face eviction because their new landlord seeks to impose an unaffordable increase. Counsel also objected to the fact that the Defendants did not have the opportunity to be heard in the landlord's litigation with the city which enabled the Plaintiff to seek an increase in the Superior Court without regard to the procedures set forth in the city's rent control ordinance. Defendant's counsel asked the Court to allow the 5% increase permitted by the ordinance, but no more.

Plaintiff's counsel replied by claiming that his adversary was making an equitable argument on an issue that must be governed by law. He argues that the issue is not what

the Defendants can afford, but what rent would be fair, citing case law holding that efficient landlords must be allowed a "just and reasonable" return on their investment. See Hutton Park Gardens v. West Orange, 68 N.J. 543, 568 (1975) and Salem Management v. Township of Lopatcong, 387 N.J. Super. 573, 582 (App. Div. 2006).

While the Plaintiff was unable to seek a hardship increase from the city due to the failure of the governing body to appoint a rent leveling board, his counsel argues that he would have gotten a hardship increase because the existing rents were so far below market rate. He noted that two other tenants in identical apartments in the same building pay $1,470 a month. He conceded that the bulk of the rent for these tenants was actually paid by the Federal government through the Section 8 program, but he noted that Section 8 funds can only be used to pay rents that do not exceed market rate. Plaintiff's counsel also noted that his client receives $1,600 a month for a two-bedroom apartment at 304 Sutton Place and that both of the Defendant's witnesses who were landlords testified that the average rent they receive for such units in their properties is $1,200 a month, which is still more than the Defendants are paying.

Plaintiff's counsel cites Fromet Properties v. Buel, 294 N.J. Super. 601 (App. Div. 1996), which list five factors a court must consider in determining whether a rent in crease is unconscionable and argues that the most important factor is market rate rent. The Plaintiff's position is that $1400 constitutes fair market rent, but the fair market amount can be no less than $1200 a month based on the testimony of the Defendant's witness and asked the Court to approve a rent increase to at least $1200 a month..

Since both counsel had requested the Court to approve rent increases that more closely reflected the positions of their respective clients, the Court inquired if either could

cite a case that granted such authority to the Court, or whether the statute required the Court to either approve or disapprove what the landlord had sought. Both counsel indicated that had no case law to cite on the issue and neither offered any such authority in any post-trial submissions.

FACTUAL ANALYSIS

A review of the testimony and documents submitted indicates that the Plaintiff's income for the property has increased since it was purchased because the Section 8 program has begun to subsidize rents at for apartments 265-2 and 265-3 at $1,470 a month for each unit. As this increase became effective September 1, 2021, the Plaintiff received $2,276 in additional income from 265-2 in 2021 and an additional $3,128 for 265-3 in that same year. Thus, in 2021 the total rent collected from the building would be $60,172 and the net income on the property was $34,497 based on the Plaintiff's testimony of $25,497 in expenses for that year. Accordingly, in 2022 the total rent collected can be projected to be $70,980 because the increased rent for the Section 8 units will be in effect for the full year. Rents for 2022 can therefore be summarized as follows:

Unit No.	Size	Current Rent Monthly	Yearly Rent (Prospective)
263-1	Studio	$300	$3,600[2]
263-2 (M. Nunez)	2-BR	$799	$9,588
263-3 (R. Diaz)	2-BR	$826	$9,912
265-1 (S. Diaz)	2-BR	$1,050	$12,600
265-2	2-BR	$901	$17,640
265-3	2-BR	$688	$17,640
Total			$70,980

[2] There was no testimony as to whether the Plaintiff succeeded raising the rent for the studio apartment to $800 a month as proposed in the submission to the Rent Leveling Board, which would generate an additional $6,000 in annual income. Mr. Candela testified that this unit was occupied by the building superintendent under the prior owner, which explains the nominal rent. The Plaintiff has since hired a superintendent for $180 a month, which would seem to indicate that the studio unit has been rented at a higher rate. In the absence of testimony, the Court will only assume rent of $300 a month.

Therefore, using the figures supplied by the Plaintiff, the net income for the property was $29,455 in 2018, $8,113 in 2019, $27,621 in 2020, and $34,645 in 2021. Since the increased rent for the Section 8 units will be in effect for all 2022, the anticipated total rent would be $70,980 for 2022. Assuming expenses remain constant, net income for 2022 would be $45,483. If 2022 expenses increase by 10% to $28,407, the net income would be $42,806.

Therefore, based on documents entered into evidence by the Plaintiff, the income and expenses for the building at 263-265 New Brunswick Avenue may be summarized as follows:

	Gross Income (Total Rent)	Expenses	Net Income
2018	$54,768	$25,313	$29,497
2019	$54,768	$25,313 (plus capital impr.)	$8,113
2020	$54,768	$27,122	$27,621
2021	$60,172	$25,497	$34,645
2022 (est.)	$70,980	$25,497 (no increase)	$45,483
		$28,047 (10% increase)	$42,993

LEGAL ANALYSIS

The statute that governs complaints for eviction where a tenant has failed to pay an increase in rent is N.J.S.A. 2A:18-61.1(f), which creates a valid ground for eviction when "[t]he person has failed to pay rent after a valid notice to quit and notice of increase of said rent, provided the increase in rent is not unconscionable and complies with any and all other laws or municipal ordinances governing rent increases." Insofar as counsel for the Defendants has argued that the increases sought by the Plaintiff are unconscionable, counsel for the Plaintiff has correctly noted that the issue of unconscionability is governed by the Appellate Division case of Fromet Properties, *supra*.

Under the holding in Fromet, it is the landlord that has the burden of establishing that the proposed rent increase is "not unconscionable." Id at 610. With regard to the criteria to be used, the Fromet Court held that

> "in determining 'unconscionability,' the trial judge may consider (1) the amount of the proposed rent increase; (2) the landlord's expenses and profitability; (3) how the existing and proposed rents compare to rents charged at similar rental properties in the geographic area; (4) the relative bargaining position of the parties; and (5) based on the judge's general knowledge, whether the rent increase would "shock the conscience of a reasonable person." Id. at 614.

Regarding the first factor, the amount of the proposed increases, there is no dispute that the Plaintiff is seeking a 33% increase on Defendant Sandy Diaz, a 69% increase on Defendant Ramon Diaz, and a 75% increase on Defendant Maria Nunez. These increases are far in excess of the 5% permitted by the city rent control ordinance in the absence of hardship on the part of the landlord.

As to the second factor, the landlord's expenses and profitability, it is clear that the Plaintiff turns a profit on this property without any increase to the rents of the Defendants. This is obviously not a case like Edgemere at Somerset v. Johnson, 143 N.J. Super. 222 (Cty. Dist Ct.. 1976) where the landlord needed an increase to pay the debt service on the property, since the Plaintiff has no debt service on this property. Furthermore, the current profitability on the property is greater than the impression given in the testimony of Mr. Candela. The documents submitted by the Plaintiff specifically claimed a net income for 2018 and 2019 ($29,455 and $8,113, respectively). The decrease in net income for 2019 was due to certain capital improvement undertaken by the Plaintiff upon purchase of the property. While there was no explicit testimony as to net income for 2020 and 2021, the figures supplied by the Plaintiff as to expenses and the increase in Section 8 revenue for other units enable the Court to calculate that the net

income was $27,621 for 2020 and $34,645 for 2021. If expenses remain constant in 2022, the Plaintiff can look forward to net income of $45,483, but even if expenses increase by 10%, net income will be $42,993.

The third factor in the Fromet analysis, "how the existing and proposed rents compare to rents charged at similar rental properties in the geographic area," essentially requires the Court to make a determination of market rate rent for the subject rental units. Plaintiff's counsel argues that his client is entitled to fair market rent of $1400 a month, primarily based on the fact that Section 8 has approved monthly rent of $1470 for two units in the property, while local landlords testifying on behalf of the Defendants have stated that the average rent their tenants pay for a two-bedroom apartment in Perth Amboy is $1200 a month. Given the extensive number of rental properties owned by these witnesses for the Defendants and the large sample they offered for the Court's consideration, the Court must conclude that market rate rent for a two-bedroom apartment in Perth Amboy is closer to $1200 than $1400 a month.

The fourth factor to be considered is the relative bargaining position of the parties. Mr. Candela is obviously an experienced landlord who was previously certified as a real estate broker and is knowledgeable about the use of Section 1031 exchanges in the real estate business. As to the Defendants, Sandy Diaz is a single mother who works as a patient care technician at a local hospital, Ramon Diaz supports a large family working as a security guard, and Maria Nunez apparently is an elderly retired woman with limited English proficiency. It is therefore clear that it is the Plaintiff who commands the superior bargaining position in this matter.

Finally, we come to the fifth factor, whether the proposed rent increase would shock the conscience of a reasonable person. Plaintiff's counsel implicitly argues that if the rent is increased to an amount that reflects fair market value, the increase is "not unconscionable" and must be sustained. However, this reductionist approach is inconsistent with Fromet Properties and with the plain language of the statute. If the landlord just has to establish to that the proposed rent reflects fair market value to prove it is not unconscionable, then the other criteria in Fromet about the landlord's profitability and the respective bargaining position of the parties would be rendered superfluous. Moreover, the language of N.J.S.A. 2A:18-61.1(f) conditions this cause of action for eviction with the proviso that "the *increase* in rent is not unconscionable," thereby requiring a reviewing court to focus on the amount of the increase rather than the final amount of rent to be charged. (Emphasis supplied).

The Court's analysis of unconscionability will begin with the 33% proposed rent increase for Sandy Diaz. Since that is the lowest percentage increase among those proposed in these consolidates matter, it is therefore the most likely to pass judicial muster.

To assess whether a 33% increase "shocks the conscience," we must examine the situation of Defendant Sandy Diaz, who is the individual upon whom the increase would fall. She is a single mother employed in a working-class job at the local hospital. If her household is like most others, her largest single monthly expense is the cost of housing, i.e., rent. Obviously, a major increase on the main item in her household budget will have a significant effect on her finances. A judgment in favor of the Plaintiff will have a devasting impact on Ms. Diaz, since it will obligate her to pay this increase retroactive to

December 1, 2019, the effective date of the rent increase as set forth in the Notice to Quit. Insofar as the total amount of unpaid rent increase claimed by the Plaintiff was $9,800 as of March of 2022, such a judgment is probably tantamount to an eviction because that is the lump sum Ms. Diaz would have to pay to remain in her apartment.

Of course, an assessment of whether a 33% increase "shocks the conscience" must also balance the financial impact on the tenant against the landlord's claims of hardship that he alleges have impaired his right under Hutton Park Gardens, *supra*, to receive a just and reasonable return on his investment as well as the fact neither Ms. Diaz nor the other defendants have had a rent increase in many years.

At the outset of this analysis, it must be noted that the fact that Ms. Diaz and the other defendants have not had their rents increased in many years and now pay below market rate rent does not constitute a basis to dismiss their leases as "sweetheart leases" under Security Pacific National Bank v. Masterson, 283 N.J. Super. 462 (Ch. Div. 1994). There is no reason to believe the leases were entered into to frustrate the intentions of the new owner, as Ms. Diaz and the other defendants all became tenants many years ago. Similarly, there is no indication that the prior owner has some familial relationship with these tenants that led to below market rate rent being charged. Instead, the available evidence suggests that the prior landlord simply valued well-behaved tenants who paid their rent on time and did not want to disturb this relationship by raising the rent. Such a landlord could rationally prefer to keep the reliable income stream provided by these tenants as opposed to new tenants of unknown character who might initially pay more but might fall into default in the future. The benefit of such a conservative financial strategy was demonstrated after the institution of the eviction moratorium by P.L. 2020, c. 1 and

Executive Order 106 during the COVID-19 pandemic which resulted in numerous landlords being unable to collect from delinquent tenants from March 19, 2020 until the expiration of the moratorium on December 31, 2021. The Plaintiff was the beneficiary of the prior owner's preference for reliable tenants, since all three Defendants faithfully paid their original rent through the entire moratorium.

We now proceed to the Plaintiff's claim of hardship, upon which rests his claim that a rent increase to $1400 a month is necessary to provide a just and reasonable return on his investment. In his testimony, Mr. Candela claimed that the cost of maintenance and repairs had tripled, yet he offered no proof to support this claim. Under cross examination, he conceded that property taxes on the property did not increase by 33%. And unlike the situation in Edgemere at Somerset, *supra*, this is not a case where a rent increase is needed to meet operating expenses and debt service. Indeed, the Plaintiff in this matter has no debt service.

In fact, the spreadsheets offered into evidence by the Plaintiff undercut his claims of dramatically increasing expenses. Despite Mr. Candela's claims of skyrocketing costs, the level of expenses has remained remarkably stable for the relevant time period. In 2018, the year before the Plaintiff bought the property, the total expenses were $25,313 for the year. In 2021, the last full year before this case came to trial, the total expenses were $25,497, an increase of less than 1%. And while the Plaintiff spent a considerable sum on capital improvements in 2019 and expenses rose to $27,122 in 2020, the property has continued to turn a profit for each year since its purchase. In fact, the net income for the property increased by 17.5% from 2018 to 2021.

Plaintiff's counsel notes that neither Sandy Diaz nor the other defendants have had a rent increase in many years, and that they pay less than $1200 a month, which is the average rent that Defendants' witnesses have testified is the average rent for a two-bedroom apartment in Perth Amboy. However, Mr. Candela knew the amounts of rents being paid by these tenants before he bought the building, and this should have been an opportunity to negotiate a favorable purchase price that would factor in the existence of below market rents. Because Mr. Candela did not ascertain the amounts of rents being charged until after he signed the contract of sale and was obligated to close on the property, he apparently was unable negotiate a more favorable price. Thus, the Plaintiff essentially seeks to make his new tenants bear the cost of his lack of due diligence.

The Plaintiff's claim of hardship really boils down to the issue of below market rent and his belief that if he could rent to other tenants, he would make more money. But while the unfulfilled desire to make more money is the common lament of millions, it does not qualify as a hardship per se for purposes of the statute.

Having concluded that the Plaintiff has failed to establish the existence of a hardship with respect to his proposed rent increase, the Court must still make a determination of whether a 33% rent increase shocks the judicial conscience. Relevant case law offers no bright line rule in this regard. Such a determination must necessarily be made on a case-by-case basis and the facts of each case must be viewed in the light of the economic climate prevailing at the time.

It so happens that in the present matter an event which occurred shortly after the trial provides the Court with guidance in this regard. On March 31, 2022, the White House announced that the President would authorize the largest release of oil reserves in

history from the Strategic Petroleum Reserve in response to the rapid increase in the price of gasoline, which had risen from a $3.30 a gallon at the beginning of 2022 to $4.20 a gallon in just three months. Press Release, The White House President Biden's Plan to Respond to Putin's Price Hike at the Pump (March 31, 2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/31/fact-sheet-president-bidens-plan-to-respond-to-putins-price-hike-at-the-pump/. If this rapid 27% increase in the price of gasoline has caused sufficient shock to household budgets in the current economy to warrant an unprecedented release of oil from the Strategic Petroleum Reserve, then the Court has adequate basis to declare that a 33% rent increase imposed on Defendant Sandy Diaz in the same economic climate without any valid claim of hardship on the part of the landlord shocks the judicial conscience and renders the proposed increase unconscionable for purposes of N.J.S.A. 2A:18-61.1(f). Based on this analysis, the proposed 69% increase on Defendant Ramon Diaz and the proposed 75% increase on Defendant Maria Nunez must obviously be declared unconscionable as well.

Having determined that the proposed increase in rent to $1400 a month for all three defendants is unconscionable, the Court must now address the request of both parties to approve an alternative amount as an increase. Plaintiff's counsel suggests that the Court should decree at least $1200 a month as the new rent for all three Defendants, based on testimony of the local landlords who testified for the tenants. Counsel for the Defendants requests that the Court allow a 5% increase, which is what is permitted by the city rent control ordinance. However, the Court has no such power to assume the powers of a municipal rent control board and institute some compromise rent increase.

The Consent Order between the Plaintiff and the City of Perth Amboy authorized the Plaintiff to seek rent increases "in the manner that would be applicable to municipalities that do not have rent control." The Order did not delegate the powers of the nonfunctioning Perth Amboy Rent Leveling Board to the Court; instead, it allowed Court to consider the proposed rent increases as though there was no rent control ordinance at all. In the absence of an enforceable rent control ordinance, the Court is governed by Fromet Properties, which held that

> The language of the statute places the burden of establishing one of the possible grounds of eviction upon the landlord. Thus, a court should not dispossess a tenant from a residential unit unless it has been established by the landlord that one of the enumerated criteria exists (in this case that the rent increase was not unconscionable). Fromet, 294 N.J. Super. at 610.

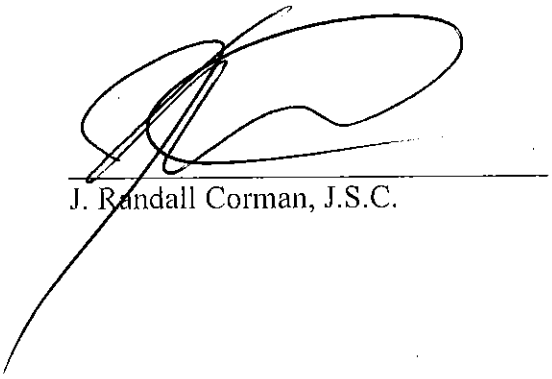
Since the Court has determined that the proposed increases are unconscionable, the Plaintiff has failed to meet his burden of proof. Consequently, as with any other case where the burden of proof is unmet, the complaint must be dismissed.

This is not to say that the Plaintiff may never charge market rate rent and that the Defendants may avoid a rent increase indefinitely. This Court only holds that attempting to raise rents to market rate in one extreme increase is impermissible under N.J.S.A. 2A:18-61.1(f) under the specific factual circumstances of the present matter. For future consideration, it would be instructive to look to the concept of "rate shock" in public utilities law as implemented by the New Jersey Board of Public Utilities. To ameliorate the impact to the public, "phase-ins are generally implemented as a countermeasure to rate shock from a large rate increase." In re the Petition of Suez Water Arlington Hills Inc., BPU Dkt. No. WR16060510 Order (November 13, 2017), 2017 N.J. PUC Lexis 253, In re Petition of Seaview Water Co., BPU Dkt. No. WR98040193, Order (October 1,

1999); In re the Petition of Envtl. Disposal Corp., BPU Dkt. No. WR94070319, Order (July 17, 1996). Applying this concept to residential rent increases would enable a landlord to achieve market rate rent for his property by phasing in a large increase over a period of several years so that the tenant has time to adjust their household finances. Unfortunately, this procedure was not considered by the Plaintiff in the present matter.

CONCLUSION

Therefore, for the reasons stated above, the complaints in each of these matters are dismissed for failure to sustain the burden of proof.



J. Randall Corman, J.S.C.