

FALAD PROPERTIES, LLC

PLAINTIFF/APPELLANT,

Vs.

BOROUGH OF ATLANTIC HIGHLANDS A
MUNICIPAL CORPORATION OF THE
STATE OF NEW JERSEY; AND ITS
GOVERNING BODY

DEFENDANTS/RESPONDENTS.

SUPERIOR COURT OF NEW
JERSEY
APPELLATE DIVISION
DOCKET NO. A-003437-23 T2

CIVIL ACTION

ON APPEAL FROM

SUPERIOR COURT OF NEW
JERSEY
LAW DIVISION: MONMOUTH
COUNTY
DOCKET NO.: L-003877-23

SAT. BELOW:
HONORABLE MARIA ZAZZALI-
HOGAN

**BRIEF AND APPENDIX
FOR
APPELLANT, FALAD PROPERTIES, LLC**

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- Exhibit E Responding Letter from Borough to Falad (January 21, 2019) **Removed See PA 140 – PA 141**
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- Exhibit A Plaintiff's 2019 Complaint **Removed See** PA 164 – PA 179
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- Exhibit A Tax Abatement between Borough of Atlantic Highlands Associates, LLC (December 19, 2017) **Removed See PA 128 – PA 133**
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- Exhibit H Emails of December 27, 2018 – January 2, 2019 **Removed See PA 260 – PA 262**
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Filed January 23, 2024

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- Exhibit A Plaintiff's 2019 Complaint **Removed See** PA 164 – PA 179
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- Exhibit G Plaintiff's Trial Brief filed November 18, 2019,
without exhibits **Removed See** PA 285 – PA 307

Plaintiff's Opposition to Defendant's Motion to Dismiss Pursuant to

R. 4:6-2(e) filed February 16, 2024

PA 393 – PA 428

Certification of David A. Faloni, Sr., Esq.

PA 408 – PA 409

- Exhibit A Tax Abatement between Borough of Atlantic Highlands
Associates, LLC (December 19, 2017) **Removed See** PA 128 – PA 133
- Exhibit B Resolution 118-2017 Approving Tax Abatement
(September 13, 2017) **Removed See** PA 123 – PA 125

- Exhibit C Minutes of Meeting of October 10, 2018
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- Exhibit D Ordinance 323.6-323.8 and N.J.S.A 40A:21-12
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- Exhibit E Responding Letter from Borough to Falad
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- Exhibit F Amended Opinion of Linda Grasso Jones
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- Exhibit G Order of Judge Linda Grasso Jones of
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- Exhibit I Order of Judge Mara Zarzzali-Hogan
dated June 23, 2023 **PA 418 – PA 420**
- Exhibit J Stipulation of Agreed Upon Facts After
Parties Have Conferred, Agreed and Signed
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- Exhibit K Peak Environmental Report **Removed See PA 146 – PA 163**
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<u>Reider v. State of Transportation</u> , 221 N.J. Super. 547, 552 (App. Div. 1987)	18
<u>Stoeckel v. Township of Knowlton</u> , 387 N.J. Super. 1 (2006)	14
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PRELIMINARY STATEMENT

On December 19, 2017, the Highlands granted a tax abatement to Plaintiff. The Phase-In Tax Abatement Agreement on the property was for the Tax Years beginning 2018 and running through December 31, 2022. On September 7, 2018, the property was sold to Plaintiff and on October 10, 2018, the Highlands without notice to FALAD terminated the abatement claiming the property was sold. The resolution cancelling the abatement was defective as N.J.S.A. 40A:21-12 which requires fifteen (15) day notice from the tax collector and requires a change of use of the property. N.J.S.A. 40A:21-12 and Defendant's own Ordinance 323-8C prohibits termination of its tax abatement if the use does NOT change. Defendant's counsel wrote to Plaintiff on January 21, 2019, changing Defendant's defense on sale advising the abatement was terminated because it was unenforceable as the Borough never had authority to issue the tax abatements.

Judge Linda Grasso Jones' opinion in the prerogative writ case ruled that Defendant's abatement ordinance was not properly authorized. As a result, Plaintiff paid property taxes which would have been abated. FALAD brought suit against the Defendant seeking damages on several counts including a prerogative writ claim. Judge Grasso Jones advised that she only would try the case on the prerogative writ issue and dismissed Plaintiff's other damage claims for: Breach of Contract, Consumer Fraud, Negligence and Rico and Civil Rights without

prejudice. Judge Grasso Jones' Order of August 20, 2019, preserved Plaintiff's right to bring the actions regardless of the prerogative writ decision. Plaintiff's other claims were never tried by any trial court. The case was tried by Judge Grasso Jones on the prerogative writ only with a stipulated set of facts. The reason for the termination of the tax abatement was not the sale of the Subject Property as falsely claimed by Defendants, but the abatement was terminated as it was granted without proper authority. Judge Linda Grasso Jones' opinion in the prerogative writ case ruled that Highland's 1995 abatement ordinance was not properly authorized. The property and other properties were not qualified. As a result, Plaintiff paid property taxes of \$125,097.49 which would have been abated.

FALAD's two issues in this instant action are as follows: A. did the Defendant in October 2018 legally terminate Plaintiff's tax abatement; and B. Did Defendant intentionally and induce Plaintiff to invest in the Highlands on the assurance that a tax abatement would be given.

Contrary to Defendant's claim, none of Plaintiff's claims have ever been litigated. Plaintiff's claims in this action were protected by Judge Grasso Jones' orders of May 31, 2019, and August 20, 2019. Judge Zazzali-Hogan's dismissed Plaintiff's second complaint without prejudice. Docket number Monmouth L-001707-22. Although Plaintiff argued there was sufficient documentation attached

to its complaint and motion to support the claims of the second complaint, Plaintiff was compelled to file its third complaint.

As a result, Plaintiff is now seeking damages in this complaint for the intentional tortious and wrongful conduct of the Defendants knowingly cancelling the Plaintiff's abatement by claiming sale of the property and knowingly and tortiously preparing and executing an unenforceable abatement document.

Defendant was aware the Borough's ordinance was defective and granted without authority as pleaded in Defendant's amended answer to Plaintiff's complaint.

Plaintiff brought this suit seeking damages based upon promissory estoppel and intentional misrepresentations as Defendant had knowledge of its ordinance was defective. Judge Zazzali-Hogan also dismissed this complaint on Defendant's motion to dismiss in lieu of filing an answer for the same reason as the second complaint was dismissed

PROCEDURAL HISTORY

1. The abatement agreement was executed by the Defendant in December 2017 and became effective on January 1, 2018 (PA 128 – PA 133).
2. The abatement was thereafter terminated by Defendant on October 10, 2018 (PA 134 – PA 135).
3. On February 22, 2019, Plaintiff brought suit against the Defendant alleging five (5) separate causes of action for damages including claims to enforce the

abatement based on a prerogative writ, docket number Monmouth L-000719-19 (PA 164 – PA 179). Defendant filed its Answer on March 18, 2019 (PA 180 – PA 192).

4. On May 31, 2019, the five (5) causes of action for damages were severed from the case and requiring Plaintiff to file an amended complaint (PA 010).
5. Plaintiff filed an amended complaint on July 20, 2019 (PA 193 – 204) and Defendant filed its answer on July 3, 2019 (PA 205 – 215).
6. Plaintiff filed a Motion to Reconsider the Court's Order severing the five (5) causes of action on July 30, 2019 (PA 216 – PA 238). Defendant filed its opposition on August 8, 2019 (PA 239 – PA 243).
7. Judge Grasso Jones issued an Order on August 20, 2019, permitting Plaintiff to file suit on the severed damages claims in a separate action if necessary (PA 011).
8. On November 7, 2019, the parties filed a Stipulation of Agreed Upon Facts After Parties Have Conferred, Agreed And Signed with Exhibits (PA 066 – PA 145).
9. The case was tried on November 12, 2021, for the prerogative writ issue only by Judge Grasso Jones on a stipulated set of facts with witnesses (PA 012 – PA 027).

10. Judge Grasso decided the case by Orders of November 12, 2021, and November 15, 2021, indicating the Defendant's tax abatement was unenforceable as the Borough's ordinance from 1995 was issued without proper authority. (PA 012 – PA 027 and PA 028 – PA 041).
11. As a result, Plaintiff filed suit against the Defendant on the five (5) severed claims, docket number Monmouth L-001707-22 (PA 244 – PA 265).
12. Defendants filed a motion before Judge Zazzali-Hogan dated August 24, 2022, seeking dismissal of Plaintiff's second complaint claiming Collateral Estoppel, Res Judica and the Entire Controversy Doctrine (PA 266 – PA 307). Plaintiff filed its objection (PA 308- PA 318). Defendant replied to Plaintiff's opposition on September 19, 2022 (PA 319 – PA 337). As Defendant brought up new defenses, Plaintiff's was allowed to file an additional reply. On October 4, 2022, Plaintiff filed its reply to the new defenses (PA 338 – PA 346).
13. Judge Zazzali-Hogan dismissed Plaintiff's second Complaint without prejudice indicating that "all claims filed by Plaintiff are dependent on their ability to obtain a tax abatement in the 2019 action". See Judge Hogan's opinion dated January 11, 2023 (PA 042 – PA 065).
14. Plaintiff then on December 6, 2023, filed this third complaint alleging claims for damages on Promissory Estoppel based on intentional misrepresentations

as the Defendant knew the Borough's ordinance granting on tax abatements was unenforceable and without authority and also alleging fraud in the inducement bearing docket number Monmouth L-003877-23 (PA 347 – PA 363).

15. On January 23, 2024, Defendant again moved to dismiss Plaintiff's complaint in lieu of filing answer in this action claiming again Plaintiff is collaterally stopped from re-litigating the Entire Controversy Doctrine prohibiting new claims and the Doctrine of Res Judicata and Waiver, and claiming Defendant was permitted to void its own abatement agreement (PA 366 – PA 392).

16. On February 16, 2024, Plaintiff responded to the motion to dismiss by alleging the only issue decided in the litigation of three (3) complaints was whether the tax abatement agreement of December 2017 was granted without authority and unenforceable under the Borough's abatement ordinance. Also, what damage claims Plaintiff may still assert against the Defendant's. Finally, Plaintiff asserts the Defendant had no authority to void its own abatement agreement. Only a Tax Board, County, State or Court of this jurisdiction can void the agreement as done by Judge Grasso Jones (PA 393 – PA 428).

17. On May 30, 2024, Judge Mara Zazzali-Hogan granted Defendant's Motion to Dismiss and dismissed Plaintiff's Complaint with prejudice. (PA 429).

18. As a result, Plaintiff filed a Notice of Appeal to this Court on July 8, 2024 (PA 430 – PA 433).

PLAINTIFF’S STATEMENT OF RELEVANT FACTS

In December 1995, the Borough council adopted an Ordinance 9:95 codified 323-6 that allowed for the Borough to grant five (5) year tax abatements on new construction. PA 066 - 074 ¶ 3 and PA 083 – PA 088. The Borough thereafter granted nine (9) separate abatements to various contractors. None were rescinded. PA 066 - 074 ¶ 5 and PA 094 – PA 096.

On December 19, 2017, the Borough prepared, adopted and executed a tax abatement agreement on the subject property being 2 Hennessey Blvd. PA 066 - 074 ¶ 5 and PA 128 – PA 133. When the construction was complete as agreed, the property was sold to Plaintiff on September 6, 2018. PA 066 - 074 ¶ 18.

Immediately after the sale on October 10, 2018, the Borough council adopted a resolution terminating the abatement. PA 066 - PA 074 ¶ 21 and PA 134 – PA 135. The Borough did not notify Plaintiff that the abatement was rescinded until December 14, 2018. PA 066 - PA 074 ¶ 21.

The use of the property did not change upon Plaintiff’s acquisition. PA 066 - PA 074 ¶ 22. At the council meeting of October 10, 2018, the Borough manager told the Borough council and Borough residents that Plaintiff’s abatement was

terminated because the property was sold. PA 001 - 009. The Borough manager lied to the council and Borough residents as he knew the abatement could not be terminated on sale unless the property use was changed. PA 001 – PA 009, PA 089 – PA 093 and PA 177 – PA 178. The tax assessor, Borough administrator, and Borough attorneys all acted in bad faith when approving Plaintiff's tax abatement, they knew was illegal and still prepared and executed it. PA 141.

In February 2019, after Plaintiff filed suit to restore the tax abatement, the Borough manager, tax assessor and Borough attorney, abandoned the sale termination claim and used the defense that the tax abatement was illegal and granted without proper authority since the ordinance was not legally adopted by Defendant and unenforceable. PA 180 – PA 192 and PA 205 – PA 215. The Borough's attorney, who ironically was the Borough's trial attorney, knew that Plaintiff's tax abatement was illegal and yet prepared the abatement agreement and had it signed by the Borough's officials. PA 128 – PA 133. The Borough's Administrator who testified at the prerogative writ hearing, considered the abatement unenforceable but executed the tax agreement. Less than a year later, he tried to rescind it on sale. PA 128 – PA 133.

The abatement was never properly terminated by Defendant as the Borough's council had no authority to terminate the sale of the property. PA 001 - 009, PA 089 – PA 093 and PA 177 – PA 178. The abatement was still in existence

until it was found to be void, unenforceable and illegal by Judge Grasso-Jones. PA 012 – PA 027 and PA 028 – PA 041.

Defendants allege in its Motion to Dismiss, Plaintiff's claims in its second complaint for Breach of Contract, Consumer Fraud, Negligence, Rico and Civil Rights (PA 244 – PA 265) are barred by the previous litigation and decided by Plaintiff's first complaint, which was decided by Judge Grasso Jones at trial level. PA 266 – PA 307. Judge Grasso Jones only decided the issue as to whether the tax abatement agreement was valid or illegal. PA 010, PA 011, PA 012 – PA 027 and PA 028 – PA 041. None of Plaintiff's claims for breach of contract have been adjudicated at the trial level. PA 010, PA 011, PA 012 – PA 027 and PA 028 – PA 041. Judge Grasso Jones severed Plaintiff's claims for Breach of Contract, Negligence, Consumer Fraud and Rico and Civil Rights in the initial action as she stated she would rule only on the issue of the prerogative writ. PA 010, PA 011, PA 012 – PA 027 and PA 028 – PA 041.

In order to protect Plaintiff's right to pursue the five (5) claims at a later date, Plaintiff filed a motion for reconsideration with Judge Grasso Jones on July 30, 2019. PA 216 – PA 238. As a result of the motion, Judge Grasso Jones stated that the claims would be preserved after the prerogative writ was decided. PA 011, PA 012 – PA 027 and PA 028 – PA 041. Judge Grasso Jones in her amended opinion of November 15, 2021, PA 028 – PA 041 at page 12 (PA 039) states the

sale of the property cannot be used to rescind a tax abatement unless the purchaser changes the use of the property.

Page 12 (PA 039) of her decision states:

“with respect to the disposal of the property, where it is determined that the new owner of the property will continue to use the property pursuant to the conditions which qualified the property, no tax shall be due, the exemption and the abatement shall continue, and the agreement shall remain in effect”.

PA 28 – PA 041.

The illegal abatement would have provided \$125,097.49 in tax relief for the Plaintiff. PA 142 – PA 143 and PA 144 – 145.

The property before construction was extremely contaminated (railroad terminal) and required extensive remediation. The Defendants promised Plaintiff a tax abatement to assist in the remediation. PA 146 – PA 163. The property contamination is still being monitored by the New Jersey DEP to ensure it is totally remediated. PA 146 – PA 163.

Defendants’ intentional, tortious and wrongful actions to rescind the abatement on the sale of the property was fraudulent and entitles Plaintiff to damages. PA 347 – PA 363.

Defendants intentional, tortious and wrongful actions in preparing, executing and granting the abatement agreement of December 19, 2017, knowing it was illegal and unenforceable entitles Plaintiff to damages. PA 128 – PA 133 and PA

347 – PA 363. Defendants’ attorney at the prerogative writ trial on November 12, 2019, introduced his letter of January 21, 2019, stating he knew the abatement was illegal. PA 140 – PA 141. Plaintiff is also entitled to punitive damages as a result of the Defendants intentional conduct attempting to terminate the abatement on sale and granting Plaintiff an illegal and unenforceable tax abatement. PA 205 – PA 215.

The only claim adjudicated in all three (3) actions is the enforceability of the tax abatement heard by Judge Grasso Jones which she ordered void and unenforceable. PA 012 – PA 027 and PA 028 – PA 041. No other claims were adjudicated in this case, including Plaintiff’s claims for Breach of Contract, Consumer Fraud, Negligence, Rico and Civil Rights. PA 012 – PA 027, PA 028 – PA 041, PA 042 – PA 065 and PA 429. Judge Zazzali-Hogan ruled those claims could not be raised by the Plaintiff in the second complaint. PA 042 – PA 065. Plaintiff is now claiming in this complaint again dismissed by Judge Zazzali-Hogan, sounding in equity for Fraud in the Inducement and Intentional Tortious Conduct, Promissory Estoppel and Intentional Misrepresentation. PA 429. If Plaintiff is not allowed to assert this causes of action, Plaintiff will be left with no cause of actions at the trial level. 1T 21 – 23.

Plaintiff is not attempting to reinstate the illegal tax abatement. PA 244 – PA 265. Plaintiff is seeking damages from Defendants intentional and wrongful

actions relating to the illegal abatement. PA 347 – PA 363. The Borough is still receiving tax abatement credits from the county for Plaintiff's participation in the New Jersey Affordable Housing Program with low-income housing. PA 128 – PA 133.

If Plaintiff's abatement was not legally terminated on sale, Plaintiff is entitled to \$101,500.00 in tax credits from January 2018 until December 2021, when Judge Grasso Jones declared the ordinance unenforceable. PA 028 – PA 041, PA 142 – PA 143 and PA 144 – PA 145.

Judge Zazzali-Hogan granted Defendant's motion in this action to dismiss in lieu of filing answer. 1T 21 – 23. In her decision she ruled Plaintiff is not entitled to damages as the abatement was illegal and not enforceable and Plaintiff's claims were previously adjudicated. 1T 21 – 23.

LEGAL ARGUMENT

POINT I

THE ONLY ISSUE DECIDED IN ANY LITIGATION WAS WHETHER THE TAX ABATEMENT AGREEMENT OF 2017 WAS GIVEN WITHOUT AUTHORITY

**(Raised Below: PA 010, PA 011, PA 012 – PA 027, PA 028 – PA 041,
PA 042 – PA 065 and PA 429)**

The Defendant in their legal argument apparently misread Judge Grasso Jones Order severing Plaintiff's claims for Breach of Contract, Consumer Fraud,

Negligence, Rico and Civil Rights. The orders of May 31, 2019, and August 20, 2019, specifically states Plaintiff has to right to allege the five (5) claims in another action as she will only decide the prerogative writ issue on the abatement ordinance was and was it defective, unenforceable and granted without authority. Judge Grasso Jones found the ordinance granting this abatement and the nine (9) other abatements were passed without proper authority. Defendants raise the issues of Collateral Estoppel and factual issues which were decided in another action. Also, the issues were litigated in prior proceedings and Plaintiff's claims are barred by Res Judicata and Waiver of Claims. None of the defenses are applicable as the only issue Judge Grasso Jones heard and decided was the prerogative writ. Judge Grasso Jones' order of May 31, 2019, August 20, 2019, and her final opinion of November 15, 2021, allowing Plaintiff to assert these damage claims. PA 010, PA 011, PA 012 – PA 027 and PA 028 – PA 41.

On January 11, 2023, Judge Zazzali-Hogan found Plaintiff's claims for Breach of Contract, Consumer Fraud, Negligence, Rico and Civil Rights cannot be asserted because the abatement was declared void and illegal. There was no ruling that Plaintiff cannot assert its claims in this litigation for intentional and tortious acts against Defendants. PA 042 – PA 065. Again, the five (5) claims were never ruled upon in any prior litigation. The trial Judge erred in this decision. PA 010, PA 011, PA 012 – PA 027, PA 028 – PA 41 and PA 042 – PA 065.

POINT II
PLAINTIFF CAN ASSERT CLAIMS FOR DAMAGES
AGAINST THE DEFENDANTS

(Raised Below: PA 429 and 1T 21-23)

Plaintiff's claims against the Defendant in this complaint for Promissory Estoppel, Intentional Misrepresentation, Fraud in the Inducement and Intentionally Tortious Conduct can all be asserted against the Defendants. Claims have been asserted in several instances against other municipalities in similar actions. In the case of Stoeckel v. Township of Knowlton, 387 N.J. Super. 1 (2006) states unequivocally tortious intentional conduct against a township employee can be sustained.

“Genuine issue of material fact as to whether township employees were acting in good faith in performance of their duties precluded summary judgment in favor of township and township employees in property owner's action under Tort Claims Act against township and township employees. N.J.S.A. 59:2-4, 3-3, 3-5.”

The case of Bergen v. Koppenal, 52 N.J. 478 (1968), involves the intentional actions of the police department and whether the conduct of the officer was an intentional tort under the New Jersey Tort Claims Act, Section 27:13 liability to public.

Furthermore, the case of Thomas Maltese v. The Township of North

Brunswick, 353 N.J. Super. 226 (2002), the Township's former director of public safety brought suit against the Township seeking enforcement of the terms of his contract of employment. In that case, the Court granted Summary Judgment in favor of the Plaintiff and on appeal the Appellate Court held that the mayor lacked authority to make promises to the former director regarding compensation and benefits and the town council apparently ratified the mayor's promises. However, the Court found for the Plaintiff employee and against the municipality as the compensation issue was resolved in a different agreement.

In our case, the Defendants knew they granted an illegal tax abatement and their actions terminating the abatement on sale were intentional. They knew they had no authority to do so. Defendant abandoned its claim to have cancelled on sale when filing its amended answer to Plaintiff's complaint as on the defective ordinance. PA 205 – PA 215.

Plaintiff has the right to file a claim against Defendant. The Defendant knew the tax abatement was invalid. Plaintiff has the right to file a claim against the Defendant and proceed with discovery. When the facts are determined, a trial judge will rule on the damages. Plaintiff provided viable claims against Defendant in its complaint. The trial judge did not decide this issue.

POINT III

**DEFENDANT CANNOT CANCEL ITS OWN TAX
ABATEMENT AGREEMENT WITHOUT CAUSE**

(Not Raised Below)

The Defendant is claiming it may cancel the tax abatement agreement any time it wishes to cancel. Defendant claims it terminated the abatement at the meeting of October 10, 2018. Obviously, that is an error. The abatement was wrongfully terminated by the Borough's council at the request of the Borough's manager on the theory the property was sold. The abatement was never properly terminated by the Borough. It was terminated based on the Defendant's defense in the prerogative writ action by Defendant claiming the ordinance of 1995 allowing abatements was unenforceable as it was passed without authority. The Borough attempted to terminate the abatement wrongfully on the sale of the property which entitles Plaintiff to damages. The facts and Defendant's motives are discoverable and should not defeat Plaintiff's rights to pursue its claims for damages.

A review of the tax abatement agreement on the property states the abatement may be cancelled by "a Board or Court of competent jurisdiction." PA 132 ¶ 4 The language refers to County Tax Boards, County Boards, State Boards or Courts of this jurisdiction not Defendants. Otherwise, the written abatement

would have no purpose. The abatement would be clear that the Borough specifically has authority to cancel the tax abatement.

The circumstances under which Defendant's may terminate the abatement are factual. Defendant's reasoning is clear. The abatement conveys Defendant's right to COHA tax credits and provides Defendant with its Mount Laurel low-income housing obligation. Even though Plaintiff's abatement was terminated, the Defendant is still deviously reaping the benefits of both economic items. The facts and Defendant's motives are discoverable and should not impede Plaintiff's rights to pursue its claims.

The Defendant chose not to defend the termination on sale and to litigate the legality of the abatement with Judge Grasso Jones. But the Defendants are still receiving Mount Laurel and COHA benefits.

Finally, Defendant failed to provide any method for Plaintiff to seek approval of the abatement transfer on sale. PA 141. The sale took place on September 7, 2018, and two (2) weeks later the Defendant's placed on the Borough council agenda the termination of the abatement from the sale of the property. This is Defendant's defense but not decided by the trial judge.

POINT IV
DEFENDANT'S MOTION TO DISMISS MUST MEET
CERTAIN STANDARDS

(Raised Below: 1T 21-23)

A motion to dismiss under R. 4:6-2(e) is proper when a complaint fails to state a cognizable cause of action. When considering the motion, the Court must accept the allegations of the complaint as true. Printing Mart Morristown, 116 N.J. Super. 746. The Plaintiff has stated a legal basis for relief, and the factual allegations are sufficient to support a claim for relief. Reider v. State of Transportation, 221 N.J. Super. 547, 552 (App. Div. 1987). Plaintiff's three (3) complaints contained multiple facts to sufficiently support and advise Defendant's of Plaintiff's claims for damages.

The Trial Judge erred by not finding that Plaintiff's three (3) complaints did not contain numerous issues of facts. 1T 21-23.

The 2022 Complaint was dismissed without prejudice and without finality to allow Plaintiff to file this current complaint without different causes of action but based upon the same factual issues. PA 042 – PA 065.

Still undecided by Judge Zazzali-Hogan is the issue of the validity of Defendant's termination of the tax abatement on October 10, 2018, because of the sale of the property. The issue was raised by not decided by the trial judge. 1T 21-23. If the termination was not valid, the abatement remains until terminated by Judge Grasso Jones in November 2021 providing Plaintiff with tax credits of \$101,500.00. 1T 21-23.

POINT V

**BRILL V. GUARDIAN LIFE INSURANCE COMPANY OF
AMERICA REQUIRES PLAINTIFF’S RIGHT TO ASSERT ITS
FACTUAL CLAIMS AGAINST THE DEFENDANTS
(Raised Below: PA 028 – PA 041)**

In Brill v Guardian Life Ins. Co. of America, 142 N.J. 520 (1995), our Supreme Court clarified and distinguished factual disputes which are considered genuine as opposed to those which are of an insubstantial nature. The latter shall not preclude the Court from granting Summary Judgment whereas in the former, Summary Judgment should be denied, Id. In other words, if a party opposing Summary Judgment only raises issues of fact that are of insubstantial nature, then Summary Judgment should be granted. Id. When the dispute is genuine or substantial, Summary Judgment should be denied. A dispute which is genuine or substantial means “having sustained damages; not imaginary, unreal or apparent only; true, solid, real.” Id. at 529.

To that end, the Court in Brill stated a trial judge deciding a Summary Judgment motion should “consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party. Id. at 523. PA 180 – PA 192.

Plaintiff has shown numerous issues of facts to be entitled to damages from Defendant's conduct passing a tax abatement and resolution knowing the ordinance was defective, unenforceable and without proper authority.

The Defendant's employees who drafted and signed the tax abatement agreement given to Plaintiff and participated in granting nine (9) other tax abatements since 1995 were aware that the Borough ordinance was defective and unenforceable. PA 083 – PA 088.

In the prerogative writ action, Judge Grasso Jones found the Borough's ordinance was defective and passed without authority in December 1995. Her decision was based upon the testimony of the same Defendant's employees that requested the abatement be terminated and not supporting its own ordinance. When the development was complete, Defendant deceitfully decided to cancel its abatement agreement by terminating it and saving \$125,097.49 in abatement taxes. This devious method should entitle Plaintiff to damages. PA 205 – PA 215.

Defendant's defense in the original complaint claimed its ordinance was defective and therefore unenforceable. PA 180 – PA 192. However, when Defendant realized they could not deprive Plaintiff of its abatement by attempting to wrongfully terminate it on sale, they sabotaged their own ordinance by having it declared defective and without authority. PA 205 – PA 215 page 4 and 5 (PA 208

and PA 209). Defendant's answer states its own property was not classified as property in need of rehabilitation and therefore the ordinance was illegal.

These admitted facts alone provide Plaintiff with a cause of action and entitle Plaintiff to further discovery. The trial court made an error by granting Defendant's motion to dismiss without a single certification or affidavit in opposition or support to its motion or Plaintiff's factual claims. The trial judge did not raise these issues in the decision. 1T 21-23.

CONCLUSION

This case presents only two (2) issues as was the tax abatement obtained by Plaintiff unenforceable because the abatement ordinance was granted without authority. a) was the Defendant aware that it was unenforceable; and b) was the abatement legally terminated by the Borough's council because of the sale of the property. If not, abatement credits remain until the abatement was terminated by Judge Grasso Jones. Both are issues of fact.

Plaintiff's only claim decided by a trial court is whether the abatement was unenforceable from the ordinance being invalid. There are no other claims asserted by Plaintiff and decided by any trial court. None of Plaintiff's claims for Breach of Contract, Consumer Fraud, Negligence and Civil Rights were heard by any court. Plaintiff's claims in this third action of Intentional Misrepresentation, Promissory

Estoppel and Fraud in the Inducement from Intentional Conduct were also never heard by the court. All claims, including the allegations in this third complaint stipulate numerous facts which support Plaintiff's request for damages. Defendant defended Plaintiff's claim for abatement credits by stating its answer the abatement was void because its own ordinance was defective. The trial court erred in this case and in the previous case. Defendants should be required to file an answer to this complaint to allow Plaintiff to seek damages.

Respectively Submitted
Faloni Law Group, LLC

S/ David A. Faloni, Sr.
David A. Faloni, Sr., Esq.

Dated: September 17, 2024

FALAD PROPERTIES, LLC

PLAINTIFF/APPELLANT,

vs.

BOROUGH OF ATLANTIC
HIGHLANDS A MUNICIPAL
CORPORATION OF THE STATE OF
NEW JERSEY; AND ITS
GOVERNING BODY

DEFENDANTS/RESPONDENTS.

SUPERIOR COURT OF NEW
JERSEY
APPELLATE DIVISION
DOCKET NO.: A-003437-23 T2

CIVIL ACTION

ON APPEAL FROM

SUPERIOR COURT OF NEW
JERSEY
LAW DIVISION: MONMOUTH
COUNTY
DOCKET NO.: MON-L-003877-23

SAT. BELOW: HONORABLE MARA
ZAZZALI-HOGAN

**BRIEF OF RESPONDENTS,
BOROUGH OF ATLANTIC HIGHLANDS A MUNICIPAL CORPORATION
OF THE STATE OF NEW JERSEY; AND ITS GOVERNING BODY**

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PRELIMINARY STATEMENT

This case involves an attempt by the Plaintiff/Appellant to reinstate a tax abatement agreement which was voided by a court of competent jurisdiction and cancelled by the Borough of Atlantic Highlands. The Tax Abatement agreement in dispute, between the Borough and Plaintiff's predecessor, by its terms, automatically terminated upon sale of the property unless the Borough agreed otherwise. Plaintiff's request to reinstate the Agreement was refused by the Borough. Despite the Agreement's provisions, the Plaintiff filed the first of three Complaints, alleging multiple causes of action, all designed to reinstate the Agreement. That Court concluded that the Tax Abatement was illegal and thus properly terminated by the Borough.

Dissatisfied with the result, Plaintiff filed a second complaint, alleging the same facts and claims made in its first complaint, but added new claims for negligence and consumer fraud. Once again, Plaintiff was denied relief because its claims were dependent upon the validity of the Agreement, which had previously been declared void.

Ignoring the Entire Controversy Doctrine's bar against multiple bites of the apple, Plaintiff filed yet another complaint, again relying upon the same facts and claims but now alleging promissory estoppel and fraud in the inducement, two claims that, if viable, should have been brought in Plaintiff's prior complaints.

Pointing to the fragmented litigation, the court below properly held that the Entire Controversy Doctrine barred Plaintiff's claims.

PROCEDURAL HISTORY

1. On September 13, 2017, the Borough's Governing Body approved a Tax Abatement Agreement between Atlantic Highlands Associates, LLC d/b/a Kalian Companies, Plaintiff's predecessor in title, and the Borough by Resolution. (Pa 123-Pa 125).

2. On December 19, 2017, Kalian Companies and the Borough executed a Tax Abatement Agreement to commence on January 1, 2018, for the Tax Year 2018. (Pa 128-Pa 133).

3. Kalian sold the property to the Plaintiff on September 7, 2018. (Pa 347-352, page 348).

4. Thereafter, on October 11, 2018, at a Regularly Scheduled meeting of the Atlantic Highlands Governing Body, the Tax Abatement Agreement was rescinded by Resolution 153-2018. (Pa 134-135).

5. On February 22, 2019, Plaintiff brought suit, sounding in the prerogative writ of mandamus, to enforce the abatement agreement, alleging (1) breach of contract, (2) unjust enrichment, and (3) violations of civil rights. (Pa 164-179).

6. On May 31, 2019, the Superior Court entered a Case Management Order, ruling that it would only consider the prerogative writ action and dismissed the other claims without prejudice. (Pa 010).

7. On November 15, 2021, following a December 12, 2019 trial, the court affirmed the Borough's decision to terminate the tax abatement, finding it was improvidently granted and again denied Plaintiff's request for relief. (Pa 012-027 & Pa 028-041)

8. On June 22, 2022, Plaintiff filed a second complaint against the Borough, alleging (i) breach of contract, (ii) unjust enrichment, (iii) negligence, (iv) violations of civil rights pursuant to 42 U.S.C. § 1983, (v) consumer fraud, and (vi) violation of New Jersey Civil Rights Act. (Pa 244-265).

9. On August 24, 2022, the Borough filed a motion to dismiss, citing collateral estoppel, the entire controversy doctrine, *res judicata*, and waiver. (Pa 266-307).

10. On January 11, 2023, following Oral Argument heard by the court on September 23, 2022, the Court dismissed Plaintiff's complaint. (Pa 042-065).

11. Plaintiff filed its third complaint on December 6, 2023, alleging (i) promissory estoppel based on alleged intentional misrepresentations, and (ii) fraud in the inducement. (Pa 347-363).

12. On January 23, 2024, the Borough filed a motion to dismiss Plaintiff's Complaint. (Pa 366-392).

13. On May 30, 2024, following Oral Argument, the court granted the Borough's motion to dismiss with prejudice. (Pa 429 & 1T).

14. On July 8, 2024, Plaintiff filed the within appeal.

DEFENDANTS/RESPONDENTS STATEMENT OF RELEVANT FACTS

On or about September 7, 2018, Plaintiff Falad Properties, LLC (hereinafter “Plaintiff” or “Falad”) acquired title to a parcel of real property situated in the Borough of Atlantic Highlands (hereinafter “Borough of Atlantic Highlands” or “Defendant”). (Pa 347-362, page 348). The property was subject to a Tax Abatement Agreement with the previous owner, that would automatically cease and require reapproval, at the Board’s discretion, upon sale of the property. (Pa 128-133, page 133). That Agreement was executed on December 19, 2017. Id.

The property was purchased by Falad without any assurances that the Tax Abatement would continue under the new ownership. Notably, Falad did not make any effort to contact the Borough regarding the continuation of the Tax Abatement, prior to purchasing the property. In fact, the Tax Abatement’s provisions run counter to the notion that the Abatement would continue, stating,

[s]hould the owner/developer Atlantic Highlands Associates, LLC d/b/a Kalian Companies convey title to the property during the term of this Agreement, this Agreement will cease unless an approval of the assignment of this Agreement and continuation of the Tax Abatement is applied for and granted to the new owner by the Borough Governing Body. In accord with Code §323-8, the new owner may request the Borough Governing Body to continue and assign the Tax Abatement Agreement in effect for the balance of the term. The Borough Governing Body may continue and assign this Agreement and Tax Abatement upon a demonstration by the new owner; and a determination in the sole discretion of the Borough Governing Body, that compliance with the conditions remain and continuation of the Agreement remains in the best interests of the Borough.

Id.

After the sale the Borough exercised its right to terminate by Resolution 153-2018:

WHEREAS, pursuant to the December 19, 2017 Tax Abatement Agreement at Paragraph 6, Should the owner/developer Atlantic Highlands Associates, LLC d/b/a Kalian Companies convey title to the property during the term of this Agreement, this Agreement will cease unless an approval of the Assignment of this Agreement is applied for and granted to the new owner by the Borough Governing Body.”

(Pa 134-135, page 135)

As the foregoing provision reflects, the Borough’s decision not to approve the assignment was within its sole discretion, and final and binding upon Falad as successor in title to the property.

Moreover, the Agreement includes provisions permitting the Borough to terminate it if a court or board voided it. In that circumstance any benefit would be disgorged.

It reads in pertinent part:

[t]he Borough makes no representation or warranty as to the Tax Abatement Ordinance. Should the Tax Abatement Ordinance, or the validity of this Agreement, be deemed void or legally ineffective by any Board or Court of competent jurisdiction, then and in that event the owner shall be required to pay such tax payments/obligations as determined applicable by said Board or Court.

(Pa 128-133, page 132)

LEGAL ARGUMENT

POINT I

I. THE TRIAL COURTS CORRECTLY RULED THAT PLAINTIFF'S CLAIMS ARE BARRED BY THE ENTIRE CONTROVERSY DOCTRINE

The Entire Controversy Doctrine provides that, “[n]on-joinder of claims required to be joined by the entire controversy doctrine shall result in the preclusion of the omitted claims to the extent required by the entire controversy doctrine...”

Rule 4:30A. Case law interpreting that statute provides,

[t]he fundamental principle behind the inclusion policy of the entire controversy doctrine is that the adjudication of a legal controversy should occur in one litigation in only one court; accordingly, all parties involved in a litigation should at the very least present in that proceeding all of their claims and defenses that are related to the underlying controversy.

DiTrollo v. Antiles, 142 N.J. 253, 267 (1995).

Furthermore, the Courts have held,

[t]he purposes of the doctrine are threefold: (1) the need for complete and final disposition through the avoidance of piecemeal decisions; (2) fairness to parties to the action and those with a material interest in the action; and (3) efficiency and the avoidance of waste and the reduction of delay.

Id. at 267 citing Cogdell v. Hospital Ctr., 116 N.J. 7 (1989)

This case cries out for imposition of the entire controversy doctrine's bar.

Plaintiff had a full and fair opportunity to bring any and all claims related to the Tax Abatement in the 2019 and 2022 actions. Plaintiff filed its first Complaint on

February 22, 2019, seeking to compel the Borough to grant the abatement and making various related claims (Pa 9-35). Once those ancillary claims were dismissed without prejudice, Plaintiff brought its 2022 Complaint, which included its original claims for (1) breach of contract, (2) unjust enrichment, and (3) violations of civil rights, as well as new claims for (4) negligence, and (5) consumer fraud. (Pa 244-265).

The claims in Plaintiff's 2023 Complaint, which is the subject of this appeal, arise from the same common occurrence that was litigated in the 2019 and 2022 actions, namely, the Tax Abatement. (Pa 244-265 & Pa 347-363). Notably, Plaintiff's claim for Promissory Estoppel states that "[t]he Highlands Borough council never properly terminated the tax abatement..." and "[t]he Highlands Borough administrator knew the sale could not legally cancel the abatement." (Pa 347-352, page 350). Similarly, Plaintiff's second count for Fraud states that "...[t]he Highlands on a promise in writing that it would be given a tax abatement." And "[a]fter the construction and investment was made, Highlands intentionally and fraudulently terminated the abatement." (Pa 347-352, page 351). Plaintiff's actions make clear that it was actively manufacturing new causes of action with the intent of subverting the Court's decision to void the Tax Abatement. Perhaps most telling is the fact that, in its 2023 Complaint, Plaintiff "demands judgment for compensatory damages of \$125,097.97 for taxes paid to [the Borough]..." (Pa 347-352, page 350),

the exact amount that Plaintiff would have received under the Tax Abatement. Plaintiff recognized this, stating, “...that a tax abatement would be given which caused [Plaintiff] to pay \$125,097.49 in extra property taxes.” (Pa 347-352, page 349). Again, Plaintiff had the opportunity to bring these and any other claims in its 2019 and 2022 Complaints, but did not.

The Entire Controversy Doctrine provides that “adjudication of a legal controversy should occur in one litigation in only one court; accordingly, all parties involved in a litigation should at the very least present in that proceeding all of their claims and defenses that are related to the underlying controversy” [emphasis added]. DiTrollo v. Antiles, 142 N.J. 253, 267 (S. Ct. 1995). Plaintiff had an opportunity to litigate all of its claims in the 2019 and 2022 actions, including any it may have had against its predecessor in title.

Under the Entire Controversy Doctrine, Plaintiff is barred from initiating any further lawsuits arising out of the same underlying controversy. Yet, Plaintiff’s premise for its causes of action in its 2023 Complaint is directly “related to the underlying controversy” that was used in its 2019 and 2022 Complaints, namely, the validity of the tax abatement. (Pa 347-363). The lower court agreed, stating:

[Plaintiff] was unsuccessful in the first two attempts for various reasons and has now filed a third complaint asserting a new cause of action in hopes of a different result. This is considered fragmented litigation and what the doctrine intends to deter. There’s no reason why those issues

couldn't have been brought in the 2022 complaint and why the causes of action here may not have been specifically addressed [in] prior complaints.

(T11-19)

In its January 11, 2023 Order and Opinion, the lower court stated that “[p]resently, there are no facts to support a claim that [Plaintiff] was deprived of any substantive due process or equal protection rights, privileges or immunities...” and correctly concluded that: “...all claims filed by [Plaintiff] are dependent on their ability to obtain a tax abatement in the 2019 Action.” (Pa 042-065, page 065).

The filing of the 2023 Complaint was Plaintiff's third and hopefully last bite at the apple. Evidently, Plaintiff aims to continue to complain until it obtains the relief it desires in direct defiance of the Entire Controversy Doctrine. For the reasons stated herein, it is respectfully urged that this Court affirm the lower court's decision.

II. PLAINTIFF'S LEGAL ARGUMENTS DO NOT MERIT CONSIDERATION BY THIS COURT

a. Plaintiff's Allegation that the Validity of the Tax Abatement was the Only Issue Ruled Upon by the Lower Court is Misleading – the Court Properly Denied Relief as the Issues were all Tied to the Tax Abatement

Plaintiff's first Legal Argument alleges that, despite three (3) separate complaints, the Judges only ruled upon whether the Tax Abatement was granted without authority. Plaintiff argues that the Court, after ruling in favor of Defendants in its second decision, did not definitively state that Plaintiff could not bring claims for Promissory Estoppel and Fraud in a third complaint. This argument is

unavailing, especially since Plaintiff, recognizing that it was required to include all causes of action in its 2022 Complaint, brought a mixture of new and repeat claims from its 2019 Complaint. (Pa 244-265). Unfortunately for Plaintiff, it relied upon the same facts and its claims all hinged upon the tax abatement's validity. (Pa 244-265, pages 244-245 & Pa 347-363, pages 347-349). The fact that the Court in its January 11, 2022 Order and Opinion remained silent on whether Plaintiff could bring its third complaint does not equate to express permission. (Pa 042-065). After reviewing Plaintiff's 2023 Complaint and Defendants' subsequent Motion to Dismiss, the Court determined that the Entire Controversy Doctrine applied to bar the clearly fragmented litigation. (T11-19). Plaintiff's suggestion that the Court's silence in its January 11, 2023 Order and Opinion, should carry more weight than the Court's actual decision is unavailing. The lower court took the time to review the documents filed by both parties and heard Oral Argument. Ultimately, it determined that the Entire Controversy Doctrine bars Plaintiff's Complaint, stating:

[t]his doctrine is designed to achieve economy in litigation by avoiding the waste, inefficiency, delay, and expense of piecemeal and fragmented litigation. This is now [Plaintiff]'s third complaint over a period of four years. [Plaintiff] was unsuccessful in the first two attempts for various reasons and has now filed a third complaint asserting a new cause of action in hopes of a different result. This is considered fragmented litigation and what the doctrine intends to deter. There's no reason why those issues couldn't have been brought in the 2022 complaint and why the causes of action here may not have been specifically addressed [in] prior complaints.

(T7-19)

Furthermore, Plaintiff's argument that the only issue decided in any litigation was whether the tax abatement agreement of 2017 was given without authority is irrelevant to this appeal. When the Court dismissed the claims in the first action it left open Plaintiff's option to amend the Complaint to add facts that would enable the Court to look beyond the Tax Abatement Agreement. Instead, Plaintiff simply added causes of action, each of which were "dependent on their ability to obtain a tax abatement in the 2019 Action." (Pa 042-065, page 332). If Plaintiff believed it had claims for Promissory Estoppel and Fraud, or anything else for that matter, those claims had to be asserted in its 2022 Complaint.

b. Whether or Not Promissory Estoppel and Fraud Claims can be Made Against a Public Entity has no Bearing Where, as Here, Plaintiff Failed to Timely Assert those Claims

Plaintiff argues that the claims in its 2023 Complaint can be asserted because claims for Promissory Estoppel and Fraud have been asserted against municipalities in similar actions. See Plaintiff's Brief at 14. Plaintiff fails to recognize that the issue is not whether Plaintiff could succeed on those claims against the Borough, which the Borough vehemently denies, but rather whether the Entire Controversy Doctrine bars any causes of action that should have been brought in the 2022 action. As the lower court correctly observed:

[the Entire Controversy Doctrine] is designed to achieve economy in litigation by avoiding the waste, inefficiency, delay, and expense of piecemeal and fragmented litigation. This is now [Plaintiff]'s third

complaint over a period of four years. [Plaintiff] was unsuccessful in the first two attempts for various reasons and has now filed a third complaint asserting a new cause of action in hopes of a different result. This is considered fragmented litigation and what the doctrine intends to deter. There's no reason why those issues couldn't have been brought in the 2022 complaint and why the causes of action here may not have been specifically addressed [in] prior complaints.

(T7-19)

Plaintiff also makes multiple unfounded allegations against the Borough. For example, Plaintiff alleges that “the [Borough] knew they granted an illegal tax abatement and their actions terminating the abatement on sale were intentional.” See Plaintiff's Brief at 15. Also, the [Borough] knew the tax abatement was invalid.” Id. Importantly, in the three proceedings below, no proof was offered in support of these allegations. Plaintiff conveniently ignores the fact that it had no privity with the Borough and thus could not have been misled by anything the Borough may have said to Plaintiff's predecessor. (Pa 3-7). Plaintiff's argument that it is legally entitled to assert claims for Promissory Estoppel and Fraud against the Borough does not alleviate the bar under the Entire Controversy Doctrine.

c. Plaintiff's Claim that the Tax Abatement Cannot be Cancelled Without Cause is Belied by the Agreement Itself

Plaintiff alleges that the Borough wrongfully terminated the Tax Abatement based on the sale of the property. See Plaintiff's Brief at 16. Yet, on its face, the Tax Abatement permits termination upon sale of the Property. (Pa 128-133, page 133). Moreover, the Court's 2019 Order and Opinion affirmed the Borough's decision to

terminate the Agreement. (Pa 012-027, page 027). Any reliance by Plaintiff on the Tax Abatement was misplaced. The Borough did not provide any assurance or representation to Plaintiff that it could recoup the benefits of the Tax Abatement. In fact, the Agreement contemplates termination in the Borough's sole discretion:

[s]hould the owner/developer Atlantic Highlands Associates, LLC d/b/a Kalian Companies convey title to the property during the term of this Agreement, this Agreement will cease unless an approval of the assignment of this Agreement and continuation of the Tax Abatement is applied for and granted to the new owner by the Borough Governing Body. In accord with Code §323-8, the new owner may request the Borough Governing Body to continue and assign the Tax Abatement Agreement in effect for the balance of the term. The Borough Governing Body may continue and assign this Agreement and Tax Abatement upon a demonstration by the new owner; and a determination in the sole discretion of the Borough Governing Body, that compliance with the conditions remain and continuation of the Agreement remains in the best interests of the Borough.

(Pa 128-133, page 133).

By its terms, the Agreement also includes a waiver and release by the property owner

[s]hould the Tax Abatement Ordinance, or the validity of this Agreement, be deemed void or legally ineffective by any Board or Court of competent jurisdiction, then and in that event the owner shall be required to pay such tax payments/obligations as determined applicable by said Board or Court. In such event, Kalian/owner shall have no claim or action for damages or any other relief against the Borough or any of its officials by reason of the Tax Abatement Ordinance or this Agreement, and the owner/developer specifically waives and releases any such claims.

(Pa 128-133, page 132).

In the face of such provisions, Plaintiff can hardly be said to have reasonably relied on the continuation of the Abatement.

d. Despite Plaintiff's Protestations and Citation to the Brill Standard, the Trial Judges' Decisions to Dismiss the Three Complaints were Correct Because Each Complaint Failed to State a Claim Upon Which Relief Could Be Granted

Plaintiff argues that the Trial Judges erred by failing to find that Plaintiff's three complaints contained numerous issues of fact and should not have ruled on the motions to dismiss under N.J.S.A. 4:6-2(e). See Plaintiff's Brief at 18. In response to the first complaint, the Court ruled that the Tax Abatement was void and dismissed the remaining counts without prejudice. (Pa 012-027).

Despite its ability to include any and all claims, Plaintiff's second complaint, only included the claims that were, in the eyes of the Court, "dependent on [Plaintiff's] ability to obtain a tax abatement in the 2019 Action." (Pa 042-065, page 065). Thus, those claims were dismissed because Plaintiff's legal basis for relief was directly tied to obtaining the tax abatement and therefore, without legal efficacy. See Sickles v. Cabot Corp., 379 N.J.Super. 100, 106 (App. Div. 2005) ("...a court must dismiss the plaintiff's complaint if it has failed to articulate a legal basis entitling plaintiff to relief").

In its 2023 Complaint, Plaintiff added Promissory Estoppel and Fraud, two causes of action that were available and should have been brought in Plaintiff's 2022

Complaint. The Borough's motion to dismiss was properly granted based on a legal doctrine. The court properly held that there is "no reason why those issues couldn't have been brought in the 2022 complaint and why the causes of action here may not have been specifically addressed in prior complaints." (T16-19).

Plaintiff's three complaints were properly adjudicated based on the law. Seriatim, the Court ruled (1) the abatement was improvidently granted as the property did not qualify; (2) then the claims of breach of contract, unjust enrichment, negligence, consumer fraud, and civil rights violations were dismissed as wholly derivative of the void agreement; (3) the new claims of estoppel and fraud in the inducement were dismissed based on the legal doctrine of the entire controversy. (Pa 012-041, Pa 042-065, Pa 429).

Plaintiff's claim that material facts remain in dispute and should have been tried under the Brill standard ignores several realities. First, the Agreement was made between Plaintiff's predecessor and the Borough. (Pa 128-133). Hence, Plaintiff had no privity with the Borough and could not have been misled by it. Second, the document itself contains provisions permitting termination by the Borough upon sale of the property or on a determination by a court that it was invalid. (Pa 132-133). The four corners of the document obviate any factual dispute and buttress the courts' decisions made as a matter of law.

III. EVEN WITHOUT THE ENTIRE CONTROVERSY BAR, PLAINTIFF'S CLAIMS ARE BARRED BY THE DOCTRINES OF RES JUDICATA, WAIVER, AND COLLATERAL ESTOPPEL

a. The Doctrine of Res Judicata Bars Plaintiff's Claims Because at the Core of Every Complaint Filed by the Plaintiff, is an Effort to Reinstate the Tax Abatement Under the Thinly Veiled Guise of New Allegations Against the Borough

The purpose of the Doctrine of *res judicata* is to prevent the “relitigation of a controversy between the parties.” Brookshire Equities, LLC v. Montaquiza, 346 N.J. Super. 310, 318 (App. Div. 2002). Case law provides that, “[i]n order for *res judicata* to apply, there must be (1) a final judgment by a court of competent jurisdiction, (2) identity of issues, (3) identity of parties, and (4) identity of the cause of action.” Id. In 2019, Plaintiff filed its initial Complaint against the same parties in the Monmouth County Superior Court. (Pa 164-179). On November 12, 2021, following a proceeding to determine the prerogative writ issue, the Court entered a final judgment declaring the Tax Abatement Agreement void. (Pa 012-041, page 041). It dismissed other claims made in that Complaint without prejudice. (Pa 010). Then, in 2022, Plaintiff brought a second complaint against the same Defendants, alleging (1) breach of contract, (2) unjust enrichment, (3) violations of civil rights, (4) negligence, and (5) consumer fraud. (Pa 244-265). On January 11, 2023, the Court granted the Borough's motion to dismiss, stating that Plaintiff “...cannot subsequently obtain relief based on an invalid tax abatement, especially when the relief sought relates to enforcing said tax abatement.” (Pa 042-065, page 057). Yet,

Plaintiff chose to bring a third complaint in 2023, seeking to relitigate the same controversy. (Pa 347-262).

In its 2023 Complaint, Plaintiff did not include any additional facts other than those relied upon in the 2019 and 2022 Complaints. (Pa 164-179, Pa 244-265, Pa 347-363). Plaintiff attempted to reinstate the tax abatement both directly, by requesting that the court reinstate it; and indirectly, by demanding that the court issue judgment for compensatory damages in the exact amount of the tax abatement. (Pa 164-179, Pa 244-265, Pa 347-363). At the core of each Complaint filed by Plaintiff is the re-litigation of the tax abatement. And, with the filing of this appeal, the Borough has now been forced to relitigate the validity of the tax abatement four times.

b. Pursuant to the Express Provisions of the Tax Abatement, Plaintiff Waived its Right to Pursue any Claims Against the Borough

Plaintiff has waived its right to pursue any claims under the Tax Abatement. (Pa 128-133, page 132). Waiver is the “intentional relinquishment of a known right and must be evidenced by clear, unequivocal, and decisive act from which intention to relinquish the right can be based.” Scibek v. Longette, 339 N.J.Super. 72 (App. Div. 2001).

The Tax Abatement Agreement contains a clear waiver and release:

[s]hould the Tax Abatement Ordinance, or the validity of this Agreement be deemed void or legally ineffective by any Board or Court of competent jurisdiction, then and in that event the owner shall be required to pay such tax payments/obligations as determined applicable by said Board or Court. In such event, Kallan/owner shall have no claim or action for damages or any other relief against the Borough or any of its officials by reason of the Tax Abatement Ordinance or this Agreement, and the owner/developer specifically **waives and releases any such claims.** [emphasis added]

(Pa 128-133, page 132)

Not only was the agreement voided by a Court but in October 2018, the Borough exercised its option to terminate the Agreement. (Pa 8). Thus, as a successor to this Agreement, Falad is bound by the waiver. (Pa 128-133, page 132).

c. Because Plaintiff received a Full and Fair Opportunity to Assert All Claims Against the Borough, Collateral Estoppel Bars Relitigation of the Issues

“Collateral estoppel is designed to protect litigants from relitigating identical issues and to promote judicial economy. Thus, the doctrine is premised upon efficiency and is designed ‘to promote efficient justice by avoiding the relitigation of matters which have been fully and fairly litigated and fully and fairly disposed of.’” See Barker v. Brinegar, 346 N.J.Super. 558, 566 (App. Div. 2002). Moreover:

[t]he party seeking to invoke the doctrine of collateral estoppel in order to preclude relitigation of an issue must demonstrate: (1) the issue [sought] to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding...[and] that “the litigant against whom issue preclusion is invoked [had] a full and fair opportunity to litigate the issue...”; (3) the court in the prior proceeding issued a final judgment on the merits; (4)

the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to an earlier proceeding.

Id. at 567

Plaintiff has now filed three Complaints, each of which advocates for a Tax Abatement based upon a September 13, 2017 agreement to which it was not a party that has been terminated by the Borough and declared invalid by the Monmouth County Superior Court.

The foundation for Plaintiff's 2023 Complaint allegations of Promissory Estoppel and Fraud are identical to the issues that were raised by Plaintiff in its 2019 Complaint and again in its 2022 Complaint. (Pa 164-179, Pa 244-265, Pa 347-363). More specifically, Plaintiff alleges that there was a valid abatement from which it is entitled to benefit. The Court has unequivocally determined that the Tax Abatement is, and always was, void, holding that,

...the fundamental issue, addressed above, does not change – the ordinance adopted by the Borough allowing for tax abatements is not authorized and in fact is contrary to the enabling statute, and the ordinance is thus void. The tax abatement granted to the prior owner of the property is thus void as well, and even if the termination of the tax abatement was procedurally problematic, the tax abatement cannot be enforced by the court.

(Pa 042-065, page 56)

According to Plaintiff's 2023 Complaint,

[t]he Highlands Borough administrator knew the sale could not legally cancel the abatement. As the abatement was not legally terminated and it remains in existence until Judge Grasso Jones' decision in December

2021 that the abatement itself was illegally granted by the Highlands and therefore determined to be unenforceable.

(Pa 347-363, page 350)

Plaintiff's claim for promissory estoppel and concomitant relief sought, i.e., abatement from inception until December 2021 depends upon the tax abatement's validity, but the Court has already determined that the tax abatement was void ab initio. Specifically, the Court held that "the Borough[']s ordinance 'allowing for tax abatements is not authorized and in fact is contrary to the enabling statute,' making the 'tax abatement granted to the prior owner of the property [] void as well.'" (Pa 012-027, page 27).

Plaintiff's 2023 Complaint states "[t]he Highlands Borough Council never properly terminated the tax abatement on October 10, 2018, for sale of the property..." (Pa 347-363, page 350). Furthermore, Plaintiff's Complaint states that "...it should be reimbursed by the Highlands for taxes paid until Judge Grasso Jones' decision of December 2021 and all damages sustained by [Plaintiff] as a result of the erroneous and illegal Borough council decision of October 10, 2018." (Pa 347-363, page 350). These statements are adverse to the decision of the Court, which held in the 2019 action that, "the termination of the tax abatement by the Borough of Atlantic Highlands is AFFIRMED." (Pa 012-013). As the Court's Opinion states:

[a]s the ordinance is invalid, the tax abatement granted to the prior owner of the subject property was not authorized pursuant to N.J.S.A. 40A:21-2, et seq. This court cannot enforce an agreement entered into

by the Borough based upon an invalid ordinance, and plaintiff is thus not entitled to enforcement of the tax abatement granted by the Borough with reference to the subject property to the prior owner.

(Pa 042-065, page 045)

As evidenced by the Court's 2021 Order and Opinion, the validity of the tax abatement was not only essential to Plaintiff's success in the 2019 Action but also to Plaintiff's causes of action in its 2023 Complaint.

In its 2019 action, Plaintiff brought a civil action against the Borough of Atlantic Highlands a Municipal Corporation of the State of New Jersey; Its Governing Board; and Rhonda Le Grice – Mayor of Atlantic Highlands. Except for Rhonda Le Grice, the same parties are listed in the 2023 Complaint. (Pa 164-179, Pa 347-363).

For the reasons discussed, Plaintiff's 2023 Complaint is improper, and the dismissal should be affirmed. Plaintiff is collaterally estopped from relitigating the issue of whether there was a valid Tax Abatement, which was a core issue in the 2019 and 2022 Actions and a lynchpin in Plaintiff's 2023 Complaint.

CONCLUSION

Statutory law is clear. If Plaintiff wanted to bring claims for Promissory Estoppel, Fraud, or anything else that arose out the validity of the Tax Abatement Agreement, those claims must have been asserted in the 2019 and 2022 Complaints. The lower court agreed with this, holding that Plaintiff had its opportunity, and, pursuant to the Entire Controversy Doctrine, failed to timely bring those claims. The doctrines of *res judicata*, waiver, and collateral estoppel are also pertinent because of the essential protections they provide against continuous and frivolous complaints. Plaintiff had its opportunity in court, three times over, and each time, the Borough has shown the court that Plaintiff is not entitled to the Tax Abatement. For all of the foregoing reasons, it is respectfully urged that this Court affirm the lower courts' decisions culminating in the dismissal with prejudice.

Respectfully submitted,
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*Attorney for Defendants/Respondents
Borough of Atlantic Highlands; and
its Governing Body*

By: /s/ Alyssa Puccio (#390682022)
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FALAD PROPERTIES, LLC

PLAINTIFF/APPELLANT,

Vs.

BOROUGH OF ATLANTIC HIGHLANDS A
MUNICIPAL CORPORATION OF THE
STATE OF NEW JERSEY; AND ITS
GOVERNING BODY

DEFENDANTS/RESPONDENTS.

SUPERIOR COURT OF NEW
JERSEY
APPELLATE DIVISION
DOCKET NO. A-003437-23 T2

CIVIL ACTION

ON APPEAL FROM

SUPERIOR COURT OF NEW
JERSEY
LAW DIVISION: MONMOUTH
COUNTY
DOCKET NO.: L-003877-23

SAT. BELOW:
HONORABLE MARIA ZAZZALI-
HOGAN

**REPLY BRIEF AND APPENDIX
FOR
APPELLANT, FALAD PROPERTIES, LLC**

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Order of Judge Mara Zazzali-Hogan dated May 30, 2024	PA 429
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RESPONSE TO PRELIMINARY STATEMENT

Respondent's opposition brief is essentially the same argument set forth in Respondent's trial brief for Summary Judgment. It provides no new information. The tax abatement ordinance which Plaintiff had for one (1) year was declared unenforceable by Judge Linda Grasso Jones in her opinion of November 15, 2021. Judge Linda Grasso Jones severed all of Plaintiff's affirmative claims from the prerogative case in her order of May 31, 2019. The decision that the Defendant's ordinance was illegal and unenforceable leaves the case with two (2) remaining issues. (1) Did the Defendant know the ordinance was unenforceable and deceitfully grant the tax abatement anyway in order to entice Plaintiff and contractors to develop the area and then ask the Court to declare it unlawful? (2) Did the Defendant properly terminate the sixty (60) month tax abatement which Plaintiff had for one (1) year on October 11, 2018, and if not terminated properly and legally; would Plaintiff be entitled to abatement credits until the ordinance was properly terminated by Judge Grasso Jones by order dated November 15, 2021, in the forty-seventh (47th) month?

Respondent's initial sentence in its preliminary statement is "This case involves an attempt by the Plaintiff/Appellant to reinstate a tax abatement agreement which was voided by a court of competent jurisdiction and cancelled by the Borough of Atlantic Highlands". This is **NOT** the issue. Appellant does not

seek or have any intentions to reinstate the tax abatement cancelled by Judge Linda Grasso-Jones.

PROCEDURAL HISTORY

1. Plaintiff had a five (5) year tax abatement which became effective January 1, 2018 (PA 128 – PA 133).
2. Defendant unlawfully terminated the tax abatement on October 10, 2018 (PA 134 – PA 135).
3. Defendant's own ordinance prohibited termination of an abatement on sale of property (PA 006 – PA007 and PA 008).
4. Judge Linda Grasso-Jones preserved Plaintiff's right to file for damages in her orders of May 31, 2019, and August 20, 2019 (PA 010 and PA 011).
5. Judge Zazzali-Hogan preserved Plaintiff's rights to continue to claim damages when she dismissed Plaintiff's 2022 complaint in prior action without prejudice (PA 244 – PA 265).
6. Judge Zazzali-Hogan in this action dismissed Plaintiff's right to claim damages by dismissing this complaint with prejudice (PA 429).
7. As Plaintiff's rights have finally been terminated, Plaintiff is now allowed to file this appeal (PA 429).
8. None of Plaintiff's claims for damages have been adjudicated by any Court (PA 028 – PA 041).

9. Judge Zazzali-Hogan erred in not allowing Plaintiff to pursue its claims for damages (PA 429).
10. Number 7 of Respondent's procedural history is incorrect. There was no "trial" before Judge Grasso-Jones. It was a hearing with witnesses and stipulated set of facts. (PA 010).
11. Judge Grasso-Jones' decision of November 15, 2021, found the Defendant's abatement ordinance was defective and unenforceable as Defendant requested but allowed Plaintiff the right to pursue claims for damages in order of August 20, 2019 (PA 011 and PA 028 - PA 041).
12. The statute and Defendant's ordinance does not vest in the Borough the sole discretion to determine whether any abatement should continue (PA 089 – PA 093 and PA 177 – PA 178).
13. Number 10 of Respondent's procedural history, Respondent alleges Plaintiff's claims for damages in the 2022 complaint (PA 244 – PA 265) were dismissed by Judge Zazzali-Hogan without prejudice as Plaintiff failed to provide sufficient information to support the damage claims and citing doctrine of entire controversy (PA 042 – PA 065), causing Plaintiff to file this current complaint (PA 347 – PA 363).

14. The 2022 complaint sets forth the history of the claims, the supporting documents, the admissions of the Defendant and explanation of damages relating to all of Plaintiff's claims (PA 244 – PA 265).
15. Furthermore, the complaint in this action contains the same information (PA 347 – PA 363).
16. As a result, most of the Court's reasoning in the 2022 action and its decision rests on the doctrine of collateral estoppel (PA 042 – PA 065). It is apparent from the decision that the lower Court was not aware that Plaintiff's claims were severed from the prerogative writ action (PA 010, PA 011 and PA 028 – PA 041).
17. When the lower Court dismissed Plaintiff's 2022 complaint without prejudice (PA 042 – PA 065).
18. The confusion exists as Plaintiff had the tax abatement and received one (1) year of credit for the abatement which was given by Defendant on December 19, 2017 (PA 128 – PA 133).
19. The borough terminated the abatement on sale which was unlawful by statute and ordinance (PA 089 – PA 093 and PA 177 – PA 178).
20. Plaintiff filed suit to reinstate the abatement and Defendant defended the action by alleging its own abatement was illegal and unenforceable even though Plaintiff received credits for one (1) year. (PA 164 – PA 179).

21. In this action, the Court again dismissed Plaintiff's complaint on the ground of the entire controversy doctrine (PA 429). The Court stated Plaintiff did have an attempt to litigate all of its claims in the prerogative writ action. However, Grasso Jones severed all of Plaintiff's affirmative claims ordering that only the prerogative writ issue would be decided but protecting Plaintiff's claims for future action (PA 010, PA 011 and PA 028 – PA 041).

22. As a result, the lower Court's decision dismissing all seven (7) of Plaintiff's protected claims in both the 2022 and 2023 action under the entire controversy doctrine was in error and should be reversed (PA 429).

RESPONSE TO RESPONDENT'S STATEMENT OF RELEVANT FACTS

Contrary to Respondent's contentions, the Borough has no discretion to terminate the abatement on sale without a change of use pursuant to N.J.S.A.

40A:21-12 and its own Ordinance 323-8. PA 177 – PA 178 and PA 089 – PA 093.

Ordinance 323-8 states:

“however, with respect to the disposal of the property the new owner of the property may request the Borough council to continue the exemption and abatement agreement and must demonstrate the continuance of the conditions which qualified the property. If the council determines conditions continue, no tax shall be due and the exemption and abatement shall continue and the agreement shall remain in effect.”

PA 089 – PA 093.

With respect to Defendant's claims that plaintiff did not request continuation of the abatement when Plaintiff received notice in December 2018, that the abatement had been terminated from sale. Plaintiff wrote to Defendant for the method to apply for continuation and Defendant responded stating Defendant had no method for Plaintiff to apply for continuation (PA 072 – PA 073 ¶ 21 – 26).

21. The Borough did not notify or provide notice to Falad Properties prior to the meeting on October 10, 2018 of the proposed adoption of Resolution 153-2018 and the termination of the Tax Abatement status. The Borough did not provide a copy of Resolution 153-2008 until Falad requested and it was supplied on December 27, 2018 by email from the Borough Administrator._

22. The use of the property/structure did not change upon the acquisition by Falad from the use under the ownership of Atlantic Highlands Associates.

23. The Falad representatives were notified by a phone call from the Borough Administrator on December 14, 2018 of the cessation of the Tax Abatement status. Falad responded by Attorney Letters dated December 21, 2018 (Exhibit J) and January 3, 2019 (Exhibit K). The Borough responded by its Attorney letter dated January 21, 2019. (Exhibit L)

24. Falad Properties received a standard Notification on or about November 16, 2018 from the Tax Assessor's Office of the Tax Assessment for the year 2019 for Block 117, Lot 8.02. (Exhibit M)

25. After the closing and the passage of the Resolution terminating the abatement, plaintiff's managing member Suzanne Adams and Adam Hubeny exchanged several e-mails commencing on October 22, 2018 relating to repairing a dumpster at the subject

property. Administrator Hubeny did not state in those e-mails that the abatement had been terminated. The e-mail dated January 2, 2019 from Administrator Hubeny states there were no forms to apply for assignment of the abatement.

26. The Borough did not forward to plaintiff an amended Tax Bill within 15 days of the cessation of the Tax Abatement by Resolution 153-2018 on October 10, 2018. Falad Properties received a Letter/Notification dated August 1, 2019 of the added/omitted assessment owed for November/December 2018, the balance of 2018 after the Tax Abatement was ended. (Exhibit N)

The above facts, and referenced Exhibits attached, are stipulated as accurate by the parties and can be accepted by the Court as stipulated without further proofs.

(PA 072 – PA 073 ¶ 21 – 26).

LEGAL ARGUMENT

POINT I

RESPONSE TO RESPONDENT’S CLAIM THAT THE TRIAL COURTS CORRECTLY RULED THAT PLAINTIFF’S CLAIMS ARE BARRED BY THE ENTIRE CONTROVERSY DOCTRINE

Respondent continues to argue that Appellant’s damage claims were barred by the entire controversy doctrine. Appellant carefully outlined why the entire controversy doctrine cannot be asserted. As, Plaintiff’s damage claims were never adjudicated in the original action before Judge Grasso Jones. The claims were carefully severed by Judge Grasso Jones in her decision/order of November 15, 2021 (PA 028 – PA 041). Her case management order of May 31, 2019 (PA 010) and order of August 20, 2019 (PA 011), wherein Plaintiff was specifically allowed to pursue its claims for monetary damages at the conclusion of the prerogative writ summary proceeding (PA 011). Plaintiff is now seeking these damages in the first and second complaints heard by Judge Zazzali-Hogan (PA 244 – PA 265 and PA 347 – PA 363). The Court first dismissed those damage claims without prejudice (PA 042 – PA 065, resulting in Plaintiff filing this suit seeking damages from additional claims which now have also been dismissed by the Court (PA 429). No claims asserted by Plaintiff against Defendant have been adjudicated by any Court. Hence this appeal (PA 430 -PA 433).

Plaintiff is appealing the Court's order dismissing the seven (7) damage claims in both suits (PA 244 – PA 265 and PA 347 – PA 363) Based on the January 11, 2023 order, where in to quote Defendant's brief at page 11 in the 1st paragraph states:

“[p]recently, there are no facts to support a claim that [Plaintiff] was deprived of any substantive due process or equal protection rights, privileges or immunities....”

The facts to support Plaintiff's claims are numerous and admitted to by the Stipulation of Agreed Upon Facts After Parties have Conferred (PA 066 – PA 074) and a multitude of documents set forth in Plaintiff's 2022 complaint and 2023 complaint (PA 244 – PA 265 and PA 347 – PA 363).

POINT II

RESPONSE TO RESPONDENT'S CLAIM THAT PLAINTIFF'S LEGAL ARGUMENTS DO NOT MERIT CONSIDERATION BY THIS COURT

Defendant's legal arguments do not add anything and continue to cite the Court's Orders of January 11, 2023 (PA 042 – PA 065) and May 30, 2024 (PA 429), which dismiss Plaintiff's claims as in point I based on the entire controversy doctrine. Again, the claims were never heard by any Court. The entire controversy doctrine does not apply.

Most of Judge Zazzali-Hogan's reasoning and her decision to dismiss rests in the doctrine of collateral estoppel. It is apparent from the decision that the lower court was not aware that Plaintiff's claims were severed from the prerogative writ action and never addressed by any court (PA 042 – PA 065 and PA 429).

POINT III

RESPONSE TO RESPONDENT'S CLAIM EVEN WITHOUT THE ENTIRE CONROVERY BAR, PLAINTIFF'S CLAIMS ARE BARRED BY THE DOCTRINES OF RES JUDICATA, WAIVER AND COLLATERAL ESTOPPEL

Respondent's brief claims the doctrine of collateral estoppel bars Plaintiff's claims.

A. Again, these defenses are not available to Defendant's as Plaintiff's claims were carefully severed from the prerogative writ litigation by Judge Grasso Jones order of May 31, 2019 (PA 010) and protected for Plaintiff and Judge Grasso Jones order of August 20, 2019 (PA 011). The seven (7) claims asserted by Plaintiff in the 2022 and 2023 complaints (PA 244 – PA 265 and PA 347 – PA 363) were totally supported in Plaintiff's complaints. Plaintiff has never questioned the decision of Judge Grasso Jones that the Plaintiff's abatement was illegal, unenforceable and void. Appellant is seeking damages because Defendant knew

the abatement was unlawful and deceitfully gave Plaintiff the abatement regardless.

B. In this Defendant's claim Plaintiff waived all claims against the Defendant's abatement agreement of December 19, 2017 (PA 128 – PA 133), if the ordinance was declared illegal and void. A waiver in this case would not apply to Defendant's intentional and deceitful acts to use this Court to declare the abatement void and unenforceable in order to secure a profit and receive Mount Laurel credits.

C. In section Defendant again claims collateral estoppel knowing the seven (7) claims were never litigated. Also, Plaintiff's abatement was illegally terminated on October 11, 2019 (PA 134 – PA 135). Plaintiff is entitled to abatement credits for forty-seven (47) months until December 2021 when the abatement was declared unlawful and unenforceable by Judge Grasso Jones (PA 028 – PA 041).

Plaintiff is also entitled to the full amount of the abatement due to the deceitful action of the Defendant having their own ordinance declared illegal and void. Plaintiff brought the original prerogative writ action to enforce the abatement after it was unlawfully terminated by Defendant from sale on October 11, 2018 (PA 134 – PA 135). It was Defendant who then defended Plaintiff's complaint by alleging its own ordinance was illegal, void and unenforceable (PA 028 – PA 041).

Defendant knew it was illegal and yet they drafted and signed Plaintiff's tax abatement agreement (PA 072 – PA 073).

CONCLUSION

Appellant/Plaintiff purchased property which had a five (5) year tax abatement granted by the Responded/Defendant. During the first year of the abatement, the Responded/Defendant unlawfully terminated the abatement by claiming the property was sold to Appellant/Plaintiff. Responded/Defendant's ordinance and governing statutes prohibit Responded/Defendant from terminating on sale. The Responded/Defendant's abatement also provided no termination unless the use changes. Appellant/Plaintiff filed suit against Responded/Defendant to reinstate the unlawful termination. Responded/Defendant defended the prerogative writ action by alleging their abatement was unlawful and unenforceable. On a stipulated set of facts, the Court found the Responded/Defendant had no authority to issue abatements of any kind and they were unlawful and unenforceable. The Court, however, protected Appellant/Plaintiff's claims for damages and ordered Appellant/Plaintiff to assert its claims against Responded/Defendant in a separate action. Appellant/Plaintiff filed the first suit in 2022 alleging five (5) claims against the Responded/Defendant for damages. The lower Court dismissed the claims without prejudice under the

entire controversy doctrine. Appellant/Plaintiff argued that none of the claims were ever decided by any Court. Appellant/Plaintiff then brought this action, using two (2) additional claims. The lower Court dismissed the suit with prejudice and again ruled the claims were barred by the doctrine of collateral estoppel.

Appellant/Plaintiff appeals the decision of the lower Court as Appellant/Plaintiff has valid claims against Responded/Defendant. Appellant/Plaintiff believes the Court erred by assuming Appellant/Plaintiff's claims were decided in the prerogative writ action. Appellant/Plaintiff has a right to present their claims against the Responded/Defendant. Responded/Defendant intentionally sabotaged its own tax abatement ordinance in order to terminate Appellant/Plaintiff's abatement. For what reason? Responded/Defendant is certainly guilty of unclean hands.

Appellant/Plaintiff's claims are overwhelmingly supported by the evidence beginning with the parties stipulated statement of facts and its admissions, supported by the documents submitted with Appellant/Plaintiff's brief. The Court's dismissal of Appellant/Plaintiff's complaints in lieu of answering should be vacated.

Respectively Submitted
Faloni Law Group, LLC
S/ David A. Faloni, Sr.
David A. Faloni, Sr., Esq.

Dated: December 11, 2024