SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0115-14T3

THE FOUR FELDS, INC., d/b/a
L. EPSTEIN HARDWARE CO. and
REASONABLE LOCK & SAFE CO. INC.,

Plaintiffs-Appellants,

v.

THE CITY OF ORANGE TOWNSHIP;
ORANGE CONDOMINIUM URBAN
RENEWAL, L.P.; GALENTO PLAZA
URBAN RENEWAL, L.P.; RPM
DEVELOPMENT GROUP; STATION PARTNERS
URBAN RENEWAL, L.P.; ESSEX
RESIDENTIAL URBAN RENEWAL, L.P.;
ESSEX COMMERCIAL URBAN RENEWAL, L.P.;
McMANIMON, SCOTLAND & BAUMANN, LLC,

Defendants-Respondents,

and

DWAYNE D. WARREN, individually and
in his capacity as Mayor of the City
of Orange Township; AVRAM WHITE,
individually and in his capacity as
Assistant City Attorney;
JAMES H. WOLFE, III, individually and
in his capacity as the City's Director
of Planning and Economic Development;
DONNA K. WILLIAMS, individually and in
her capacities as chairperson of the
local governing body, at-large
councilperson and member of the City's
finance committee; TENCY EASON,

individually and in her capacity as a North Ward Councilperson; ELROY A. CORBITT, individually and in his capacity as an at-large councilperson; APRIL GAUNT-BUTLER, individually and in her capacity as an at-large councilperson and member of the City's finance committee,

Defendants.

Argued February 7, 2018 - Decided April 6, 2018

Before Judges Fuentes, Koblitz and Suter.

On appeal from Superior Court of New Jersey, Law Division, Essex County, Docket No. L-3195-14.

Jeffrey S. Feld argued the cause for appellants.

Robert D. Kretzer argued the cause for respondent City of Orange and its officials (Lamb Kretzer, LLC, attorneys; Robert D. Kretzer and Aldo J. Russo, on the brief).

Loryn P. Riggiola argued the cause for respondents Orange Condominium Urban Renewal, L.P.; Galento Plaza Urban Renewal, L.P.; RPM Development Group; Station Partners Urban Renewal, L.P.; Essex Residential Urban Renewal, L.P.; Essex Commercial Urban Renewal, L.P. (Zetlin & De Chiara, LLP, attorneys; Loryn P. Riggiola and Alana T. Sliwinski, on the brief).

Demetrice R. Miles argued the cause for pro se respondents McManimon, Scotland & Baumann, LLC.

PER CURIAM

Plaintiffs appeal the August 19, 2014 order dismissing their complaint that challenged a city council ordinance approving an

amended payment-in-lieu-of-taxes (PILOT) agreement with a redeveloper. As part of the challenge, plaintiffs alleged that officials refused to respond to the questions of citizens at council meetings and otherwise failed to provide information related to the redevelopment approvals, and that the officials' conduct was unconstitutional and violated their fiduciary and statutory duties.

The court dismissed this complaint because it had decided the tax-abatement issues in a previous action and because it could find no law that required officials to respond to all citizens' questions at public meetings. Plaintiffs failed to provide any factual or legal support for their claims in response to defendants' motions for summary judgment.

Jeffrey S. Feld, Esq., on behalf of himself and his parents' businesses, has been in litigation with the City of Orange Township's (City) and various redevelopers for years. In a previous unpublished case we commented on his mode of litigation, which applies equally here. Feld v. City of Orange Twp. (Feld VI and VIII), Nos. A-3911-12 and A-4880-12 (App. Div. Mar. 26, 2015) (slip op. at 1-4).

The City Council approved defendant Galento Plaza Urban Renewal, L.P. (GPUR) as the redeveloper for the transit village

feature of the City's business area redevelopment plan. Defendant Orange Condominium Urban Renewal, L.P. (OCUR) was an affiliate of GPUR. The mixed-use commercial and residential transit-oriented project, known as the Tony Galento Plaza Transit Village Redevelopment, was to include 113 mixed-income residential units, 30 market rate, owner-occupied condominium units, 6000 square feet of retail space, and 200 parking spaces.

OCUR had applied for a long-term tax exemption for the land and its application was approved in April 2013. OCUR amended its application when the number of planned market rate condominium units was reduced from 30 to 24. On April 1, 2014, the City Council approved Ordinance No. 7-2014, which authorized the mayor to execute an amended and restated financial agreement for the tax exemption (PILOT agreement) to reflect the reduction in the number of market rate units.

Plaintiffs The Four Felds, Inc. d/b/a L. Epstein Hardware Co. and Reasonable Lock & Safe Co., Inc. own and operate industrial hardware and locksmith businesses in the City. The companies and the property where they are located are owned by Robert and Judith Feld as individuals.

Plaintiffs filed a 436-paragraph complaint in lieu of prerogative writs seeking declaratory judgment against OCUR, GPUR, Station Partners Urban Renewal, L.P., Essex Residential Urban

Renewal, L.P., Essex Commercial Urban Renewal, L.P. and RPM Development Group (together, the RPM defendants); the City and various City officials; and McManimon Scotland & Baumann, LLC, (MSB) as the City's special outside counsel.

Count one is directed against the City and OCUR. Citing N.J.S.A. 40A:20-12 as the legal basis for this claim, count one seeks to void Ordinance No. 7-2014 as ultra vires, arbitrary, capricious, unreasonable and unlawful.

Count two alleges that the City, its officials, and MSB violated the New Jersey Ethics Act, N.J.S.A. 52:13D-12 to -28, and that they "negligently, recklessly and intentionally breached their statutory and fiduciary duties of care." The complaint does not specify which statutes or fiduciary duties were violated.

Count three alleges that the City, its officials, OCUR, and MSB violated plaintiffs' substantive due process and equal protection rights through threats and intimidation by persons acting under color of law. It does not identify any specific conduct by defendants that allegedly violated these rights, but seeks to enjoin defendants from violating the United States Constitution, the New Jersey Constitution, and various New Jersey laws, including the New Jersey Civil Rights Act, Open Public Meetings Act and the Open Public Records Act.

Count four alleges that the City and its officials "negligently, recklessly and intentionally violated the letter and spirit of the Feld V Injunction." In their factual allegations, plaintiffs identify an April 21, 2010 order "enjoining the City, its local governing body and the City's municipal clerk from denying interested stakeholders immediate access to the Agenda Packet and Bill List for any upcoming city council meeting." Plaintiffs do not explain how defendants violated this order.

Defendants moved to dismiss. Without requesting an adjournment, plaintiffs filed their opposition to defendants' motions. Plaintiffs' only submissions were: a summary "analysis" of the counts and defendants named in the complaint; the June 17, 2014 order dismissing plaintiffs' claims against the individual City defendants; an order dismissing another lawsuit filed by plaintiffs; and two unpublished opinions from unrelated cases.

The court dismissed plaintiffs' assertions that the public officials had to answer questions because it was unable to find any legal support under the Open Public Meetings Act (OPMA), N.J.S.A. 10:4-6 to -21, or the New Jersey Constitution for the proposition "that a mayor, a town council person, a business administrator . . . has a legal duty to answer questions."

In an August 19, 2014 order, the court issued the following findings "in favor of defendants": "the substantive issues

contained in Count one of the plaintiffs' complaint [are] barred by collateral estoppel and res judicata"; "the Open Public Meetings Act and the New Jersey State Constitution do not impose a legal duty upon municipal officials to answer questions posed by the public at a council meeting"; and "the Court is not making any of its rulings based on the plaintiffs' standing." It dismissed counts two, three and four against the City "under Rule 4:6-2(e) for failure to state a claim."

It dismissed counts two and four against all of the RPM defendants because "plaintiffs admit that these counts do not allege any claims against them." For the same reason, it dismissed counts one and three against the RPM defendants, except for OCUR. It dismissed counts one and three against OCUR pursuant to "Rule 4:6-2(e) for failure to state a claim and by application of the doctrines of collateral estoppel and res judicata." The court also dismissed all claims against MSB. On September 4, 2014, plaintiffs filed a notice of appeal. After the notice of appeal was filed, the court denied plaintiffs' motion for reconsideration and defendants' motion for sanctions under the frivolous litigation statute. R. 1:4-8. Because the motion court did not have jurisdiction, Rule 2:9-1, and the orders do not change the issues on appeal, we will not review those orders.

Plaintiffs primarily argue that the motion court should not have dismissed this matter on the pleadings because the complaint raised material issues of fact that should have been resolved on summary judgment. This argument ignores the fact that the dismissal motions were not based solely on the pleadings but, instead, were filed as summary judgment motions to which plaintiffs failed to respond with evidence of disputed material facts.

A motion to dismiss an action under Rule 4:6-2(e) for failure to state a claim upon which relief can be granted must be based solely on the pleadings. Roa v. Roa, 200 N.J. 555, 532 (2010). The judicial inquiry on such a motion is limited to examining whether, affording every reasonable inference in the plaintiffs' favor, the facts as alleged in the complaint state a cause of action. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989). An appellate court applies the same standard when examining the complaint. Major v. Maguire, 224 N.J. 1, 26 (2016).

When a motion to dismiss a complaint under Rule 4:6-2(e) includes matters outside the pleadings that are not excluded by the court, "the motion shall be treated as one for summary judgment and disposed of as provided by [Rule] 4:46." R. 4:6-2. The language of Rule 4:6-2 "expressly provides that if any material outside the pleadings is relied on [for] a 4:6-2(e) motion, it is

automatically converted into a summary judgment motion." Pressler & Verniero, Current N.J. Court Rules, cmt. 4.1.2 on R. 4:6-2 (2018). The submission of certifications serves to convert a Rule 4:6-2(e) dismissal motion into a motion for summary judgment. Nobrega v. Edison Glen Assocs., 167 N.J. 520, 526 (2001).

The Rule also expressly provides that when a motion to dismiss is automatically converted to a summary judgment motion, "all parties shall be given reasonable opportunity to present all materials pertinent to such a motion." R. 4:6-2. Plaintiffs were entitled to an adjournment for additional time to respond to the summary judgment motion, but they declined the offer of an adjournment and never requested one from the court.

Once the motion is converted, the court applies the standard to determine a summary judgment motion. Nat'l Realty Counselors v. Ellen Tracy, Inc., 313 N.J. Super. 519, 522 (App. Div. 1998). The court must grant the judgment sought "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c).

The record supports the motion court's decision to grant judgment to defendants and dismiss plaintiffs' complaint in its

entirety. Count one of plaintiffs' complaint asks the court to void Ordinance No. 7-2014 as arbitrary and capricious. It seeks declarations from the court that: the amended PILOT agreement departed from ordinary and customary PILOT templates and lacked mandatory language; there was no evidentiary support for its cost/benefit analysis; OCUR had failed to comply with construction performance deadlines, and the Planning Board lacked jurisdiction to grant approval for the project because "the City's local redevelopment entity never approved the changes to the amended condominium project."

The sole legal basis for its allegation that these circumstances rendered Ordinance No. 7-2014 arbitrary and capricious is a general reference to N.J.S.A. 40A:20-12. That statute sets forth the procedures for a municipality to enter into a financial agreement for a payment in lieu of taxes and the parameters of those agreements. Nowhere do plaintiffs show how any of defendants' actions violated any provision of that statute. Moreover, plaintiffs' failure to provide the court with a copy of the agreement makes it impossible to evaluate whether that agreement failed to comply with any of the statute's requirements as a matter of law.

Municipal ordinances are afforded a presumption of validity. Grabowsky v. Twp. of Montclair, 221 N.J. 536, 551 (2015). An

ordinance will not be overturned unless the objector can prove that the governing body's action was arbitrary, capricious or unreasonable. Ibid. Plaintiffs failed to meet this burden. They presented no evidence to establish any material issues of fact regarding whether Ordinance No. 7-2014 was arbitrary, capricious or unreasonable. They presented no evidence regarding the financial agreement that Ordinance No. 7-2014 authorized. Under those circumstances, the motion court did not err when it dismissed count one of plaintiffs' complaint.

Count two alleges the City and MSB violated their statutory and fiduciary duties of care. The complaint made numerous allegations of improper actions by City officials, but provided no evidentiary basis to find disputed issues of material fact and no legal basis to support allegations of impropriety.

Count three alleges that all defendants, individually and in conspiracy with each other, deprived plaintiffs of their rights under unspecified sections of the New Jersey and federal constitutions, and acted with threats, intimidation or coercion by a person acting under color of law. It does not specify how that occurred, although various paragraphs of plaintiffs' complaint make vague allegations of threatening conduct by City officials.

Other paragraphs in the complaint allege that "the City" called plaintiffs' counsel a "bully with a law degree," and that an assistant city attorney asserted in a letter to an unidentified party that plaintiffs' counsel "was a racist and a misogynist." Plaintiffs provide no affidavits, meeting minutes, or copies of a letter to support these allegations and no legal basis to establish that any such comments constitute legally impermissible conduct. Plaintiffs do not provide any other supporting evidence to create a material issue of fact regarding these claims against MSB and OCUR.

Count four alleges that the City had violated the "letter and spirit" of what plaintiffs call "the Feld V Injunction." None of plaintiffs' numerous factual allegations support a denial of access to the agenda packet or bill list.

The motion court did not err when it dismissed plaintiffs' complaint because it presented no legally cognizable claims or material issues of fact, and defendants were therefore entitled to judgment as a matter of law. All other issues raised by plaintiffs are without sufficient merit to require discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.