SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3278-20

MONMOUTH COMMERCE CENTER, LLC,

Plaintiff-Appellant,

v.

HOWELL TOWNSHIP, and THE HOWELL TOWNSHIP COUNCIL,

Defendants-Respondents.

Submitted May 2, 2022 – Decided May 12. 2022

Before Judges Fasciale and Sumners.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Docket No. L-4027-20

Sills Cummis & Gross PC, attorneys for appellant (Meryl A. G. Gonchar and Mark E. Duckstein, of counsel and on the briefs; Adam J. Faiella, on the briefs).

Dasti, Murphy, McGuckin, Ulaky, Koutsouris & Connors, attorneys for respondents (Jerry J. Dasti, of

counsel and on the brief; Kelsey A. McGuckin-Anthony, on the brief).

PER CURIAM

In this action in lieu of prerogative writs, plaintiff Monmouth Commerce Center, LLC (MCC) appeals from two orders: a May 7, 2021 order granting defendants Howell Township and Howell Township Council's (collectively Township) motion to dismiss; and a July 12, 2021 order denying reconsideration. Applying Rule 4:6-2(e), we reverse.

I.

We accept the facts as pled by MCC. MCC applied to the Howell Township Planning Board (Board) on October 19, 2018 seeking approval for a large development project as well as accessory and associated uses.[1] The proposed project consisted of eight warehouse buildings and one commercial office building in the Township. The project's buildings totaled 1,242,102 square feet.

Chapter 139 of the Township Code requires a non-refundable application fee of $1,000 for each 10,000 square feet of building area, in addition to $100

[1] The proposed warehouse and office building uses in MCC's application are permitted in the Township's Special Economic Development (SED) Zoning District in which the property is located.

for each additional 1,000 square feet of building area beyond the 10,000 square feet of building area for preliminary site approval. The Board's engineer estimated the application for preliminary site approval was $124,220 in a December 14, 2018 review letter. The Township also required an application fee for final site approval for one-half of the preliminary site approval application fee.

On December 17, 2018, MCC paid $186,330 in non-refundable application fees to the Township. Thereafter, MCC submitted revised site plans as part of its application before the hearings. The revised site plan required an additional fee of $18,633, thus, MCC paid a total of $204,963. MCC also paid the following amounts charged by the Township: (1) $122,999.93 in escrow fees to cover the costs of the Board's professionals' review, including the Board's attorney's fees; (2) $2,400 in fees for special meetings; and (3) $1,000 in fees for the Technical Review Committee meetings. MCC's application was the subject of ten hearings prior to the Board's vote to deny its application.

MCC initially filed a prerogative writs complaint against the Township and the Board on May 21, 2020, challenging the Board's denial of its land use application and asserting claims against the Township for the application fees charged in its application. Following discussions between the parties and the

judge, the Township elected to bifurcate the claims, and the parties executed a stipulation of dismissal without prejudice on September 1, 2020.[2] Counsel for the Township sent a letter to MCC's counsel, acknowledging the stipulation of dismissal includes the understanding that MCC had one year to file a separate action against the Township that would focus on the application fees. Thus, MCC had until August 31, 2021 to file the new claim.

On December 14, 2020, MCC filed a new complaint against the Township alleging that the application fees, imposed pursuant to N.J.S.A. 40:55D-8(b) to cover the "administrative costs" associated with the New Jersey Municipal Land Use Law[3] ("MLUL") were improper and unreasonable, and constituted an illegal exaction. The Township filed a motion to dismiss the complaint on March 18, 2021.

The motion judge rendered an oral decision supporting the May 7, 2021 order dismissing the complaint. The motion judge ruled that MCC's complaint was barred under Rule 4:69-6(a), which requires an action in lieu of prerogative writs must be brought no later than forty-five days from a land use board's publication of notice of its decision. The motion judge nonetheless agreed with

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[2] A related Case Management Order was entered on June 3, 2021.

[3] N.J.S.A. 40:55D-1 to -136.

the Township that "the voluntary rule applies because plaintiff has not alleged fraud, duress, extortion or mistake of fact." As to the exaction argument, the motion judge also stated, "there [are] no proofs in this record establishing the Township's ordinance is not supported by a rational basis." The motion judge later denied reconsideration.

II.

On appeal, MCC argues:

> POINT I
>
> [MCC]'S COMPLAINT WAS TIMELY FILED, AND THE [JUDGE] BELOW ERRED IN CONCLUDING THAT THE CLAIMS ASSERTED HEREIN ARE BARRED AS UNTIMELY PURSUANT TO R[ULE] 4:69-6[.]
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> POINT II
>
> THE [MOTION JUDGE] INCORRECTLY AND PREMATURELY APPLIED THE VOLUNTARY PAYMENT DOCTRINE[.]
>
> A. The Voluntary Payment Doctrine Is An Affirmative Defense, And Therefore [MCC] Was Not Required To Include Allegations In Its Pleading Which Establish, Or Even Allege, That Such Defense Is Inapplicable.
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> B. Even Though [MCC] Was Not Required To Plead An Exception [T]o [T]he Voluntary Payment Doctrine, [MCC] Did, In Fact, Plead Facts In Its Complaint That Allege Duress.

POINT III

THE [MOTION JUDGE] ERRED IN DISMISSING THE COMPLAINT BASED ON THE CONCLUSION THAT THE FEES WERE "LEGAL," NOT EXCESSIVE, AND NOT UNREASONABLE[.]

We use a de novo standard to review the dismissal of a complaint for failure to state a claim. Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman and Stahl, P.C., 237 N.J. 91, 108 (2019). We apply the same standard under Rule 4:6-2(e) that governed the motion judge and look to "the legal sufficiency of the facts alleged on the face of the complaint." Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989). We are limited to reviewing "the pleading themselves." Roa v. Roa, 200 N.J. 555, 562 (2010). "'At this preliminary stage of the litigation the [judge] is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint' and the plaintiff is 'entitled to every reasonable inference of fact.'" Dimitrakopoulos, 237 N.J. at 107 (quoting Printing Mart-Morristown, 116 N.J. at 746). However, "if the complaint states no claim that supports relief, and discovery will not give rise to such a claim, the action should be dismissed." Ibid. Using this standard, we review dismissal of MCC's claims.

A.

We begin by addressing the motion judge's conclusion MCC's complaint was untimely under Rule 4:69-6(a). Rule 4:69-6(a) requires that an action in lieu of prerogative writs must be filed no later than "[forty-five] days after the accrual of the right to the review, hearing or relief claimed." A judge may enlarge the forty-five-day period "where it is manifest that the interest of justice so requires." R. 4:69-6(c).

The complaint was timely. MCC filed its initial complaint challenging both the Board's decision to deny the application and the imposition of the application fees in a complaint in lieu of prerogative writs on May 21, 2020—within forty-five days from the Board's April 8, 2020 published resolution. Following the case management conference discussion on severance, all parties agreed to bifurcate the claims and they entered into a stipulation of dismissal without prejudice. It is undisputed that counsel for the Township wrote in a letter that there was an understanding between the parties that MCC had one year from the stipulation's September 1, 2020 date to bring a new, separate action against the Township to challenge the fees. MCC filed the present complaint on December 14, 2020, well within the agreed August 31, 2021 deadline to file the new claim; therefore, the complaint was timely.

B.

MCC argues that the motion judge erred in dismissing its complaint for failing to plead the applicability of an exception to the affirmative defense of the voluntary payment doctrine. MCC argues that the judge applied the wrong standard because it does not have the burden to anticipate affirmative defenses on a motion to dismiss.

The voluntary payment doctrine refers to the "general common-law rule that where a party, without mistake of fact, fraud, duress, or extortion, voluntarily pays money on a demand that is not [enforceable] against him, he may not recover it." Cont'l Trailways, Inc. v. Dir., Div. of Motor Vehicles, 102 N.J. 526, 548 (1986). "If the demand for the money was legal . . . there is no need to determine whether the money should be returned. In all of the cases holding that the payee need not refund the monies, it was not collected pursuant to valid legal obligation." Squires Gate, Inc. v. Cnty. of Monmouth, 247 N.J. Super. 1, 10 (App. Div. 1991). Cases where money has been refunded after payment were based on a factual finding that the money was paid under duress. Ibid.

The motion judge found

> In the instant matter, [the Township] asserts that the voluntary rule applies because [MCC] has not alleged

> fraud, duress, extortion or mistake of fact. However, [MCC] asserts that the voluntary rule does not apply because the application's fees needed to be paid as part of the application checklist. This record indicates . . . [MCC's] complaint does not allege any claims of fraud, duress, extortion, or mistake of fact. . . . Rather [MCC's] complaint asserts improper application fees and fee ordinance.
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> Further, while [MCC] asserts the payments were not voluntary, there is no evidence in this record indicating such. Finally the demand for money was legal under Township Code, therefore there is no need for this [c]ourt to determine the paid money should be returned.

A plaintiff is not required to anticipate every defense that could be possibly raised by the defendant to survive a motion to dismiss for failure to state a claim. The motion judge is limited to determining "whether a cause of action is 'suggested' by the facts," and he must search "the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Nostrame v. Santiago, 213 N.J. 109, 127 (2013) (quoting Printing Mart-Morristown, 116 N.J. at 746). Plaintiff's complaint demonstrated the existence of allegations that constituted a valid cause of action: that the application fees, pursuant to N.J.S.A. 40:55D-8(b), were excessive, unreasonable, and constituted an illegal exaction.

The motion judge dismissed the motion because the complaint failed to rebut the voluntary payment doctrine. The motion judge was required to search the complaint with liberality to determine whether a cause of action may be gleaned. The complaint alleged that MCC "could not proceed with its Application for preliminary and final site plan approvals or amend its Application without making such payments, and failure to pay would preclude obtaining approvals necessary to develop its proposed project." Under the liberal pleading standard, this allegation constitutes a potential rebuttal of duress to the voluntary payment doctrine. There are sufficient factual allegations in the complaint to preclude granting a motion to dismiss for failure to state a claim.

C.

MCC correctly argues that the motion judge erred in finding that the Township's fees were "reasonable" because that conclusion is premature prior to discovery. MCC therefore contends the judge's conclusions as to the ultimate issue in the case were inappropriate on a motion to dismiss.

N.J.S.A. 40:55D-8(b) authorizes a municipality agency to charge reasonable fees which "shall be used to defray the cost of tuition for those persons required to take the course in land use law and planning in the municipality." Generally, courts "presume the validity and reasonableness of a

municipal ordinance." First Peoples Bank v. Medford, 126 N.J. 413, 418 (1991). The challenger bears a heavy burden in proving the ordinance is arbitrary or unreasonable. Ibid. The presumption may only be overcome "by proofs that preclude the possibility that there could have been any set of facts known to the legislative body or which could reasonably be assumed to have been known which would rationally support a conclusion that the enactment is in the public interest." Hutton Park Gardens v. Town Council of W. Orange, 68 N.J. 543, 565 (1975). A judge "will sustain an ordinance if it is supported by a rational basis." First Peoples Bank, 126 N.J. at 418-19.

The motion judge determined the fees were reasonable and stated

> In the instant matter, [MCC] asserts that the Township fee calculation is unreasonable. Specifically[,] plaintiff indicates that the application fees in the surrounding municipalities of Colts Neck, Wall Township[,] and Brick Township would have been significantly less than those of Howell Township. However, as indicated in this record[,] the Township fees are calculated by square footage . . . . [MCC's] application fee was for 1,242,102 square feet of development. Other surrounding municipalities also use square footage to determine application fees.
>
> There [are] no proofs in this record establishing the Township's ordinance is not supported by a rational basis.

The motion judge's analysis, including his determination that there are "no proofs in this record" supporting MCC's claim, goes beyond the standard for examining a motion to dismiss for failure to state a claim. We are only focused on whether MCC's complaint, when indulgently read, may suggest a cause of action from the facts alleged. Printing Mart-Morristown, 116 N.J. at 746.

Giving MCC the benefit of all reasonable factual inferences that its allegations support, we conclude its complaint provides a sufficient basis to survive a motion to dismiss. MCC's complaint alleges that the Township's application fees have no correlation to their statutory purpose of providing tuition and offsetting administrative costs associated with the application. These allegations could "preclude the possibility that there could have been any set of facts known to the legislative body or which could reasonably be assumed to have been known which would rationally support the conclusion that the enactment is in the public interest." Hutton Park Gardens, 68 N.J. at 565. At this stage, the motion judge prematurely addressed and determined the ultimate issue in the case. Although it may turn out that that the application fee ordinance may be supported by a rational basis, such a ruling is inappropriate on the Rule 4:6-2(e) motion.

Reversed.