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Jersey City Property Owners' Association

JERSEY CITY PROPERTY OWNERS' ASSOCIATION,

Plaintiff,

vs.

THE CITY OF JERSEY CITY,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY

DOCKET NO.:

Civil Action

COMPLAINT IN LIEU OF PREROGATIVE WRIT

Plaintiff Jersey City Property Owners' Association, by way of Complaint against the Defendant, City of Jersey City, states as follows:

PARTIES

1. Plaintiff Jersey City Property Owners' Association ("JCPOA" or the "Association") is an unincorporated Association that represents the interests of multifamily property owners who engage in the rental of property in the City of Jersey City. The Association

consists of property owners, who collectively own and or manage thousands of units of multifamily property and who actively participate in the legislative and judicial process with regard to issues involving the ownership and operation of rental property.

2. The Association seeks to vindicate the common rights and grievances of its members, who also own properties within the City of Jersey City and engage in the rental of these properties to members of the public.

3. The Association is a real party in interest and has standing to bring the within action as an association to vindicate the common rights and grievances of its members pursuant to R. 4:26-1(Comment 2.2).

4. Defendant City of Jersey City (the “City”) is a New Jersey municipal corporation located within the County of Hudson, State of New Jersey, duly authorized and existing pursuant to and in accordance with the laws of the State of New Jersey.

FIRST COUNT
ORDINANCE EXCEEDS POWERS DELEGATED TO MUNICIPALITY BY
LEGISLATURE

5. Plaintiff incorporates each of the prior allegations contained in this Complaint as if more specifically set forth at length herein.

6. Municipal corporations can exercise no powers except those which are conferred on them by statute by the state legislature or such as are necessary to exercise their corporate powers, the performance of their corporate duties and the accomplishment of the actions authorized by the legislature.

7. The State of New Jersey has made a certain police power delegations to municipalities “as it may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, safety and

welfare of the municipality and its inhabitants, and as may be necessary to carry into effect the powers and duties conferred and imposed by this subtitle, or by any law.” N.J.S.A. 40:48-2.

8. On June 15, 2023, the City of Jersey City through action of its mayor, adopted Ordinance 23-047 entitled “AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 218 (MULTIPLE DWELLINGS) OF THE CODE OF ORDINANCES OF THE CITY OF JERSEY CITY, NEW JERSEY TO ESTABLISH A RIGHT TO COUNSEL PROGRAM FOR JERSEY CITY RENTERS.”

9. In support of this Ordinance, the City council declared that:

(a) an emergency exists, within Jersey City, where many of its residents are homeless or are at risk of homelessness and/or reside in uninhabitable living conditions due to a shortage of affordable housing and a lack of knowledge and awareness of tenants’ rights; and

(b) this emergency was created, in part, by the filing of frivolous and/or retaliatory eviction actions by landlords renting residential property in Jersey City; and

(c) a landlord will be less likely to file a frivolous lawsuit if they are aware that their tenant will be assisted by legal counsel in preparing and asserting available legal defenses to the tenant’s eviction action; this will mitigate the aforementioned emergency and reduce the serious threats to the public health, safety and general welfare of the citizens of the Jersey City created by said emergency; and

(d) A lack of knowledge and awareness of their legal rights, the fear of being evicted without good cause, and being forced to seek housing in a limited housing market, discourages many Jersey City tenants from fighting eviction actions or complaining about substandard housing conditions; it is this fear that contributes to homelessness as well as to the harmful, uninhabitable conditions in which many Jersey City tenants live; this warrants legislative action by the Governing Body; and

(e) The Municipal Council of the City of Jersey City does hereby declare that these conditions pose a serious threat to the public health, safety and general welfare of the residents of Jersey City, particularly the approximately 70.4% of Jersey City residents who, according to 2020 U.S. Census Bureau data, are renters. N.J.S.A. 40:48-2, allows any municipality to make ordinances, rules, regulations, and by-laws, as the municipality deems necessary and proper for the good government, order and protection of its residents and for the protection of the health, welfare and safety of the municipality and its residents; and

(f) Pursuant to these aforementioned police powers, in order to protect the health, safety and welfare of the residents of Jersey City, it is necessary to provide access to legal services to tenants who are subject to eviction proceedings

10. Thus, relying upon N.J.S.A. 40:48-2, the City has created a new “right to counsel” for any “resident of a rental dwelling unit located in Jersey City” in:

(1) any proceeding in Landlord-Tenant Court seeking to evict or eject a Covered Individual, including counterclaims and, in the discretion of the Division of Tenants Right to Counsel, appeals, and including a summary proceeding to seek possession for the non-payment of rent, or a holdover;

(2) an administrative proceeding of the Jersey City Housing Authority for termination of tenancy or termination of subsidy;

(3) any proceeding deemed by a Designated Organization as the functional equivalent of such a proceeding, including any judicial or administrative proceeding to remedy a violation of the New Jersey Law Against Discrimination with regards to housing, N.J.S.A. 10:5-2.1 et seq., a violation of Jersey City housing code, Code of Ordinances § 254-1 et seq., and to enforce a term of a temporary restraining order that pertains to housing;

(4) an ejectment proceeding filed in the Special Civil Part of the Superior Court of the State of New Jersey or

(5) any proceeding before the Jersey City Rent Leveling Board or any other administrative or judicial proceeding that relates to a violation of Jersey City rent control laws, Code of Ordinances § 260-1 et seq.

11. The creation of this new “right to counsel” is not a power delegated to municipalities by the State of New Jersey (N.J.S.A. 2B:24-7 – public defender) and is not included in any of New Jersey’s expansive rights to appointed counsel for litigants within the State of New Jersey including but not limited to in landlord-tenant disputes.

12. A tenant’s landlord-tenant relationship is not a fundamental right that due process or equal protection require a right to counsel. Rather, it is a contractual right between two private parties.

13. There is no rational basis for the adoption of this Ordinance.

14. The adoption of Ordinance 23-047 exceeds the police powers granted to the City under N.J.S.A. 40:48-2.

WHEREFORE, Plaintiff City of Jersey City Property Owners' Association demands judgment in its favor and against the City of Jersey City as follows:

A. Voiding Ordinance 23-047 entitled "AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 218 (MULTIPLE DWELLINGS) OF THE CODE OF ORDINANCES OF THE CITY OF JERSEY CITY, NEW JERSEY TO ESTABLISH A RIGHT TO COUNSEL PROGRAM FOR JERSEY CITY RENTERS" as an ultra vires, arbitrary, unreasonable, capricious, contrary to law and in derogation of public policy;

B. Awarding Plaintiff City of Jersey City Owners' Association reasonable attorney's fees and costs; and

C. Granting such other and further relief as the Court may deem equitable and just.

SECOND COUNT
PREEMPTION

15. Plaintiff repeats each of the allegations contained in the preceding paragraphs of Plaintiff's Complaint as if more specifically set forth at length herein.

16. The New Jersey legislature has enacted the Just Cause Eviction Act. See N.J.S.A. 2A:18-53, et seq. (the "Act") to regulate the relationship between landlord and tenant and especially those actions in which the landlord seeks to recover possession of its property when the tenant breaches their obligations to the landlord.

17. The Act is a comprehensive and carefully balanced statute to balance the respective interests of tenants and landlords.

18. The Act protects tenants from a wrongful eviction, creates a mechanism for a jury trial, provides landlords with limited rights to seek removal of tenants through judicial process and provides remedies for tenants who are wrongfully evicted.

19. The Legislature did not create or include any “right to counsel” in connection with proceedings governed by the Act.

20. Ordinance 23-047 unduly interferes and conflicts with these carefully crafted state laws and specifically the Act.

21. The interference violates longstanding preemption principles and requires that Ordinance 23-047 be set aside.

WHEREFORE, Plaintiff City of Jersey City Property Owners’ Association demands judgment in its favor and against the City of Jersey City as follows:

A. Voiding Ordinance 23-047 entitled “AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 218 (MULTIPLE DWELLINGS) OF THE CODE OF ORDINANCES OF THE CITY OF JERSEY CITY, NEW JERSEY TO ESTABLISH A RIGHT TO COUNSEL PROGRAM FOR JERSEY CITY RENTERS” as an ultra vires, arbitrary, unreasonable, capricious, contrary to law and in derogation of public policy;

B. Awarding Plaintiff City of Jersey City Owners’ Association reasonable attorney’s fees and costs; and

C. Granting such other and further relief as the Court may deem equitable and just.

THIRD COUNT
EQUAL PROTECTION

22. Plaintiff repeats each of the allegations contained in the preceding paragraphs of Plaintiff’s Complaint as if more specifically set forth at length herein.

23. Ordinance 23-047 creates a “right to counsel” and provides a free private benefit for a class of citizens to the detriment of other classes of citizens.

24. There is no rational basis for this discriminatory regulation.

25. Ordinance 23-047 violates New Jersey and Federal equal protection rights of the Plaintiff.

WHEREFORE, Plaintiff City of Jersey City Property Owners’ Association demands judgment in its favor and against the City of Jersey City as follows:

A. Voiding Ordinance 23-047 entitled “AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 218 (MULTIPLE DWELLINGS) OF THE CODE OF ORDINANCES OF THE CITY OF JERSEY CITY, NEW JERSEY TO ESTABLISH A RIGHT TO COUNSEL PROGRAM FOR JERSEY CITY RENTERS” as an ultra vires, arbitrary, unreasonable, capricious, contrary to law and in derogation of public policy;

B. Awarding Plaintiff City of Jersey City Owners’ Association reasonable attorney’s fees and costs; and

C. Granting such other and further relief as the Court may deem equitable and just.

FOURTH COUNT
VIOLATION OF TAXING AUTHORITY

26. Plaintiff repeats each of the allegations contained in the preceding paragraphs of Plaintiff’s Complaint as if more specifically set forth at length herein.

27. Upon information and belief, Ordinance 23-047 is projected to cost approximately \$4 million dollars.

28. In an effort to fund this new “right to counsel”, on June 15, 2023, the City adopted Ordinance 23-048 entitled “AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 160 (FEES AND CHARGES) OF THE CODE OF ORDINANCE OF THE CITY

OF JERSEY, BY ADDING NEW SECTION 2 ENTITLED “DEVELOPMENT FEES TO FUND AFFORDABLE HOUSING.”

29. Ordinance 23-048 is designed to generate revenues from future development fees to fund a multitude of services, including but not limited to, the new “right to counsel” created in Ordinance 23-047.

30. The taxation created by Ordinance 23-048 is improperly being used to subsidize a private benefit for tenants. The City has deemed that creation of the tenant Right to Counsel is in the general public interest.

31. Plaintiff’s assert that the Ordinance is not in the general public interest but is rather the creation of a private benefit available only to certain tenants and no landlords.

32. If the Ordinance is in fact for the general public interest, then use of the targeted tax against Plaintiff’s members is an improper use of the taxing authority.

33. Ordinance 23-047 provides a benefit for one side of a private contractual relationship and is otherwise not in the general public interest.

34. The taxation and revenue generating provisions of Ordinance 23-048 amount to an impermissible tax upon the Plaintiff, its members, other multifamily property owners and future developers.

35. Ordinance 23-048 exceeds the taxing authority and police powers granted to the City by the State of New Jersey and violates the substantive due process rights of the public at large.

WHEREFORE, Plaintiff City of Jersey City Property Owners’ Association demands judgment in its favor and against the City of Jersey City as follows:

A. Voiding Ordinance 23-048 entitled “AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 160 (FEES AND CHARGES) OF THE CODE OF ORDINANCE OF THE CITY OF JERSEY, BY ADDING NEW SECTION 2 ENTITLED “DEVELOPMENT FEES TO FUND AFFORDABLE HOUSING” as an ultra vires, arbitrary, unreasonable, capricious, contrary to law and in derogation of public policy;

B. Awarding Plaintiff City of Jersey City Owners’ Association reasonable attorney’s fees and costs; and

C. Granting such other and further relief as the Court may deem equitable and just.

FIFTH COUNT
VIOLATION OF THE NEW JERSEY CIVIL RIGHTS ACT

36. Plaintiff repeats each of the allegations contained in the preceding paragraphs of Plaintiff’s Complaint as if more specifically set forth at length herein.

37. By enacting Ordinance 23-047 entitled “AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 218 (MULTIPLE DWELLINGS) OF THE CODE OF ORDINANCES OF THE CITY OF JERSEY CITY, NEW JERSEY TO ESTABLISH A RIGHT TO COUNSEL PROGRAM FOR JERSEY CITY RENTERS”, the City of Jersey City violated the New Jersey Civil Rights Act, Chapter 10 of the New Jersey Statutes, P.L. 2004 c.143.

38. By enacting Ordinance 23-048 entitled “AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 160 (FEES AND CHARGES) OF THE CODE OF ORDINANCE OF THE CITY OF JERSEY, BY ADDING NEW SECTION 2 ENTITLED “DEVELOPMENT FEES TO FUND AFFORDABLE HOUSING” which requires funding of Ordinance 23-047 to be paid by multifamily property owners, the City of Jersey City enacted an impermissible and hidden tax upon multifamily property owners that violates the New Jersey Civil Rights Act, Chapter 10 of the New Jersey Statutes, P.L. 2004 c.143.

39. As a result of said Defendant's violations of the New Jersey Civil Rights Act, Plaintiff, and its members, has been deprived of substantive due process, deprived of property and equal protection rights secured by the Constitution or laws of the United States and the State of New Jersey.

40. As a result of said Defendant's violation of the New Jersey Civil Rights Act, Plaintiff has suffered and continues to suffer damages.

41. Pursuant to the New Jersey Civil Rights Act, in addition to any damages, or other relief awarded by the Court as a result of a violation of the New Jersey Civil Rights Act, the Court may award reasonable attorney's fees and costs.

WHEREFORE, Plaintiff City of Jersey City Property Owners' Association demands judgment in its favor and against the City of Jersey City as follows:

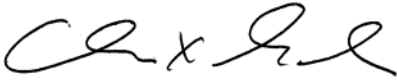
A. Voiding Ordinance 23-047 entitled "AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 218 (MULTIPLE DWELLINGS) OF THE CODE OF ORDINANCES OF THE CITY OF JERSEY CITY, NEW JERSEY TO ESTABLISH A RIGHT TO COUNSEL PROGRAM FOR JERSEY CITY RENTERS" as an ultra vires, arbitrary, unreasonable, capricious, contrary to law and in derogation of public policy;

B. Voiding Ordinance 23-048 entitled "AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 160 (FEES AND CHARGES) OF THE CODE OF ORDINANCE OF THE CITY OF JERSEY, BY ADDING NEW SECTION 2 ENTITLED "DEVELOPMENT FEES TO FUND AFFORDABLE HOUSING" as an ultra vires, arbitrary, unreasonable, capricious, contrary to law and in derogation of public policy;

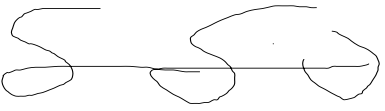
B. Awarding Plaintiff City of Jersey City Owners' Association reasonable attorney's fees and costs; and

C. Granting such other and further relief as the Court may deem equitable and just.

BRACH EICHLER L.L.C.
Attorneys for Plaintiff
Jersey City Property Owners' Association

By: 
Charles X. Gormally, Esq.

Dated: July 26, 2023

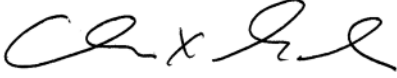
By: 
Sean A. Smith, Esq.

Dated: July 26, 2023

NOTICE OF DESIGNATION OF TRIAL COUNSEL

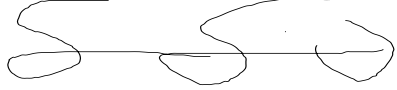
PLEASE TAKE NOTICE that pursuant to Rule 4:25-4, Charles X. Gormally, Esq., of the Law Offices of Brach Eichler L.L.C. is hereby designated as trial counsel for the Plaintiff in the above-captioned matter.

BRACH EICHLER L.L.C.
Attorneys for Plaintiff
Jersey City Property Owners' Association

By: 

Charles X. Gormally, Esq.

Dated: July 26, 2023

By: 

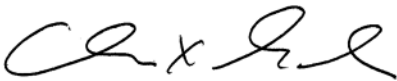
Sean A. Smith, Esq.

Dated: July 26, 2023


CERTIFICATION PURSUANT TO RULE 4:5-1

The undersigned hereby certifies that as best to the undersigned's information, knowledge and belief that the within cause of action is not presently the subject of another action pending in any court or pending arbitration proceeding to date, nor is any such other action contemplated at this time to the best of the undersigned's knowledge. No other party should be joined in the within action.

BRACH EICHLER L.L.C.
Attorneys for Plaintiff
Jersey City Property Owners' Association

By: 
Charles X. Gormally, Esq.

Dated: July 27, 2023

By: 
Sean A. Smith, Esq.

Dated: July 26, 2023