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DAVID HUEHNERGARTH and	:	SUPERIOR COURT OF NEW JERSEY
CHRISTOPHER MAYNES,	:	LAW DIVISION
	:	CAMDEN COUNTY
Plaintiffs,	:	
	:	DOCKET NO. CAM-L-1971-24
v.	:	
	:	<u>CIVIL ACTION</u>
BOARD OF COMMISSIONERS OF THE	:	
BOROUGH OF HADDONFIELD and	:	
WOODMONT PROPERTIES, LLC,	:	
	:	
Defendants.	:	

BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

PRELIMINARY STATEMENT

Plaintiffs David Huehnergarth and Christopher Maynes commenced this action in lieu of prerogative writs to challenge defendant Board of Commissioners of the Borough of Haddonfield's ("Board of Commissioners") designation of defendant Woodmont Properties, LLC ("Woodmont") as redeveloper of the so-called Bancroft property. Among other fatal legal infirmities described in the Complaint, the Board of Commissioners' composition at the time of Woodmont's designation included a statutorily-ineligible member. Specifically, former Commissioner Kevin Roche participated in and voted at the Board of Commissioners' May 13, 2024 meeting notwithstanding the fact that he and his wife had sold their house in Haddonfield and had established a new permanent residence in Washington, D.C. one month earlier. Accordingly, and for the reasons that follow, Woodmont's designation as redeveloper as memorialized by Resolution No. 2024-05-13-021WS was the product of ultra vires action, and the Court should grant summary judgment in plaintiffs' favor, as a matter of law.

PROCEDURAL HISTORY

Plaintiffs initiated this litigation by filing a Complaint on June 26, 2024 which was then followed by the filing of First and Second Amended Complaints on July 8, 2024 and July 19, 2024. Woodmont filed an Answer to the First Amended Complaint on August 6, 2024, an Answer to the Second Amended Complaint on August 12, 2024 and then a Motion to Dismiss on August 13, 2024. The Board of Commissioners thereafter filed an Answer to Count II of the Second Amended Complaint on August 15, 2024 and an Answer to Counts I and III of the Second Amended Complaint on August 19, 2024. The Court subsequently conducted a case management conference on September 17, 2024 wherein plaintiffs agreed to voluntarily dismiss Woodmont from the case since plaintiffs had only included Woodmont as an indispensable party

and had no interest in holding Woodmont in if Woodmont did not want to participate in the defense of its designation as redeveloper. A brief period of discovery ensued and culminated with the deposition of former Commissioner Kevin Roche. This motion follows.

STATEMENT OF FACTS¹

Kevin Roche was elected to the Board of Commissioners in May 2021. In September 2023, Mr. Roche and his wife decided to sell their house located at 212 Washington Avenue in Haddonfield (“the Haddonfield House”) because of the high costs of ownership, including an annual property tax bill in excess of \$30,000.00. They subsequently found a qualified buyer and entered into an agreement of sale in February 2024. Closing thereafter occurred on April 10, 2024.

To effectuate the conveyance of the Haddonfield House, Mr. Roche and his wife gave a deed and executed a Seller’s Residency Certification/Exemption required by the State of New Jersey. The latter document indicated their address to be 2126 Connecticut Avenue, Northwest, #75, Washington, D.C. 20008 (“the Washington, D.C. Apartment”) and included a Declaration which provided, in relevant part: “The undersigned understands that this declaration and its contents may be disclosed or provided to the New Jersey Division of Taxation and that any false statement contained herein may be punished by fine, imprisonment, or both. I furthermore declare that I have examined this declaration and, to the best of my knowledge and belief, it is true, correct and complete.”

Consistent with the representation in the Seller’s Residency Certification/Exemption, Mr. Roche and his wife entered into a lease for the Washington, D.C. Apartment on March 28, 2024.

¹ This Statement of Facts is supported by the accompanying Statement of Material Facts to Which No Genuine Issues Exist Pursuant to R. 4:46-2 as well as the Certification of Jeffrey M. Brennan, Esquire.

The lease provided for a two-year term and obligated them to make monthly rental payments of \$8500.00. In fact, Mr. Roche and his wife had great familiarity Washington, D.C., having lived there approximately 30 years ago. Mr. Roche also began a position as an adjunct professor at Catholic University in December 2023 and their daughter attended George Washington University as a student.

When Mr. Roche and his wife moved from the Haddonfield House to the Washington, D.C. Apartment, they took all of their possessions with them with the exception of some miscellaneous items including Christmas decorations, a kitchen table and some of their children's memorabilia which they left at Mrs. Roche's mother's residence in Cherry Hill. Mr. Roche also reestablished his primary place of employment. He maintains a position with Leo Wealth as an investment advisor for families and private businesses. Several times a year Mr. Roche travels to Leo Wealth's offices in Manhattan and Iselin, New Jersey; otherwise, he works exclusively from home. And, since April 15, 2024, Mr. Roche has maintained his office at the Washington, D.C. Apartment.

At or around the same time that Mr. Roche and his wife entered into a lease for the Washington, D.C. Apartment, Mr. Roche also obtained a sham lease agreement for the property located at 647 Pomona Avenue in Haddonfield owned by Robert Seiger ("the Seiger Residence"). Mr. Seiger and Mr. Roche are friends and have known each other for approximately 10 years. The Seiger Residence is a single-family dwelling. Mr. Seiger and his wife reside there along with their daughter who attends college in California.

Mr. Roche wanted to maintain a residence in Haddonfield in order to finish his term on the Board of Commissioners. Mr. Seiger never signed the lease agreement and Mr. Roche did not know whether Mr. Seiger had registered the lease with the Borough of Haddonfield or

obtained a Certificate of Occupancy to permit the tenancy. Mr. Roche sent Mr. Seiger a single rent check for \$350 which Mr. Seiger never deposited.

By his own admission, **Mr. Roche never stayed a single night at the Seiger Residence after obtaining the lease agreement.** Nor did he maintain any personal belongings there. Nevertheless, Mr. Roche filed a change of address application with the New Jersey Motor Vehicle Commission reflecting that address so that he could continue to collect paychecks from the Borough of Haddonfield.

After moving to Washington, D.C., Mr. Roche participated in four meetings of the Board of Commissioners, including two in April 2024 and two in May 2024. At the May 13, 2024, the Board of Commissioners, including Mr. Roche, voted 2-1 to designate defendant Woodmont Properties, LLC as the conditional redeveloper of the residential portion of the so-called Bancroft Property and adopted Resolution No. 2024-05-13-021WS to memorialize the same. Mr. Roche subsequently tendered his resignation from the Board of Commissioners on May 28, 2024, with an effective date of May 31, 2024.

LEGAL ARGUMENT

I. THE COURT SHOULD GRANT PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT BECAUSE KEVIN ROCHE WAS NOT A RESIDENT OF HADDONFIELD WHEN DEFENDANT BOARD OF COMMISSIONERS OF THE BOROUGH OF HADDONFIELD VOTED TO DESIGNATE DEFENDANT WOODMONT PROPERTIES, LLC AS REDEVELOPER OF THE BANCROFT PROPERTY

The New Jersey Legislature long ago established a residency requirement for candidates seeking local elective office as well as a residency requirement for persons holding local office following their election. In relevant part, N.J.S.A. 40A:9-1.12 states:

No person shall be a candidate for, nor hold, local elective office unless he is a resident of the local unit to which the office pertains.
If any person nominated for, or holding, any local elective

office shall cease to be a resident of the local unit to which the office pertains, the nomination or office, as the case may be, shall be vacant, and shall be filled in the manner prescribed by law.

Id. [Emphasis supplied].

Significantly, N.J.S.A. 40A:9-1.11, the companion statute to N.J.S.A. 40A:9-1.12, specifically defines the term “resident” to mean “a person having, within the territorial limits of the local unit, a place of abode, which has not been adopted for any mere special or temporary purpose, **but is his ordinary and permanent domicile.**” N.J.S.A. 40A:9-1.11. [Emphasis supplied].

Judge Haines had occasion to review the residency requirement for local elective office in Borden v. Lafferty, 233 N.J. Super. 634 (Law Div. 1989). Noting the lack of cases which existed interpreting the meaning of “domicile” as utilized in N.J.S.A. 40A:9-1.11, he observed that the term’s meaning had been considered in other contexts, including cases involving voting eligibility. Id. at 637-639 (citing State v. Benny, 20 N.J. 238 (1955); Worden v. Mercer Cty. Bd. of Elections, 61 N.J. 325 (1972); Petition of Hartnett, 163 N.J. Super. 257 (App. Div. 1978)). Synthesizing these cases, Judge Haines explained:

The important element of domicile is intent....As the Supreme Court said in Benny, “a person can have only one true domicile, which is synonymous with a common understanding of the word ‘home’.” 20 N.J. at 251. Our cases define domicile as the place where a person “has his true, fixed, permanent home, and principal establishment, and to which, whenever he is absent, he has the intention of returning.” Id. at 250.

Borden, 233 N.J. Super. at 640.

Applying these settled principles of law to the instant case, no question exists that Mr. Roche was a resident of Washington, D.C. and not a resident of Haddonfield when he voted with the Board of Commissioners to designate Woodmont as the redeveloper of the Bancroft property

on May 13, 2024. By way of explanation, Mr. Roche and his wife decided to sell the Haddonfield House in September 2023 because of the exorbitant real estate taxes and other high costs of ownership. They entered into an agreement of sale in February 2024 and closing occurred shortly thereafter on April 10, 2024. At or around the same time, Mr. Roche and his wife signed a two-year lease agreement for the Washington, D.C. Apartment. They were very familiar with that city, having lived there approximately 30 years earlier. Additionally, Mr. Roche began a position as an adjunct professor at Catholic University in December 2023. This location also brought them in closer proximity to their daughter who attends George Washington University as a student. In any event, Mr. and Mrs. Roche moved into the Washington, D.C. Apartment on April 15, 2024 with all of their belongings, save for some Christmas decorations and other miscellaneous items which they left at Mrs. Roche's mother's house in Cherry Hill. Mr. Roche set up his office inside the apartment and has worked from there ever since that time.

These facts confirm Mr. Roche's status as a resident of Washington, D.C. on May 13, 2024 – the date of the Board of Commissioners' designation of Woodmont as redeveloper – and are consistent with the Seller's Residency Certification/Exemption which he executed under penalty of perjury in connection with the sale of the Haddonfield House this past April. These same facts also confirm that Mr. Roche lacked eligibility to hold a position on the Board of Commissioners under N.J.S.A. 40A:9-1.12 when he voted.

To be sure, the sham lease which Mr. Roche obtained from his friend does not make him a Haddonfield resident nor does it operate to somehow extend his former Haddonfield residency. As defined by N.J.S.A. 40A:9-1.11, a "resident" is one who maintains a "place of abode" within the local unit not for "any mere special or temporary purpose," but rather as an "ordinary and permanent domicile." By his own admission, Mr. Roche never spent a single night at the Seiger

Residence nor did he store any of his belongings there. His stated purpose in securing a lease for the Seiger Residence was to continue his position with the Board of Commissioners. Certainly, not even the most tortured interpretation of these facts could support an argument that he established the Seiger Residence as his “true, fixed, permanent home”. Borden, 233 N.J. Super. at 640. Accordingly, Mr. Roche lacked eligibility to maintain a position on the Board of Commissioners when he voted on May 13, 2024 and, therefore, the Board of Commissioners’ designation of Woodmont as a redeveloper of the Bancroft property must be set aside and invalidated, as a matter of law.

II. THE COURT SHOULD GRANT PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT BECAUSE NO GENUINE ISSUES OF MATERIAL FACT EXIST

A summary judgment motion requires a court to determine “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 536 (1995). “The party defending against a motion for summary judgment cannot defeat the motion unless it provides specific facts that show the case presents a genuine issue of material fact, such that a jury might return a verdict in its favor.” School Alliance Ins. Fund v. Fama Constr. Co., 353 N.J. Super. 131, 135-136 (Law Div. 2001) (citing Anderson v. Liberty Lobby Inc., 477 U.S. 242, 248 (1986). “Conclusory assertions...are likewise insufficient to defeat a proper motion for summary judgment.” School Alliance Ins. Fund, 353 N.J. Super. at 136.

New Jersey courts have long recognized that the summary judgment procedure is an important tool of jurisprudence designed to determine quickly and inexpensively whether a claim presents any genuine issue of material fact requiring a determination at trial. Maher v. New Jersey Transit, R.O., 125 N.J. 455, 477 (1991); Ledley v. William Penn Life Ins. Co., 138 N.J.

627, 641-42 (1995) (quoting Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 74 (1955)). The standard is to be “applied with discriminating care so as to not defeat a summary judgment if the movant is justly entitled to one.” Henschke v. Borough of Clayton, 251 N.J. Super. 393, 398 (App. Div. 1991).

R. 4:46-5(a) provides that once a motion for summary judgment is filed, an adverse party may not rest on the mere allegations or denial of his pleadings, but his response by affidavits or otherwise must set forth specific facts establishing that there is a genuine issue for trial. “Bare conclusions in the pleadings, without factual support and tendered affidavits, will not defeat a meritorious application for summary judgment.” U.S. Pipe & Foundry v. American Arbitration Ass’n, 67 N.J. Super. 384, 399, 400 (App. Div. 1961).

As applied to the instant case, it is respectfully submitted that no genuine issues of material fact exist. Specifically, Mr. Roche and his wife sold the Haddonfield House in April 2024 and moved into the Washington, D.C. Apartment shortly thereafter. Mr. Roche had been a resident of Washington, D.C. for approximately one month when he voted as a member of the Board of Commissioners to designate Woodmont as the redeveloper of the Bancroft property. Even with these facts considered in the light most favorable to defendants with all favorable inferences, summary judgment is appropriately granted.

CONCLUSION

For all of the foregoing reasons, the Court should grant plaintiffs David Huehnergath’s and Christopher Maynes’ Motion for Summary Judgment.

Respectfully submitted,

BARON & BRENNAN, P.A.

/s/ Jeffrey M. Brennan

JEFFREY M. BRENNAN, ESQUIRE