

APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

Order Denying Certification, Supreme Court of New Jersey (Filed June 3, 2024; Signed May 29 2024).....	1a
Opinion, Superior Court of New Jersey, Appellate Division (June 28, 2023).....	3a
Order Dismissing Complaint with Prejudice, Superior Court of New Jersey, Somerset County (September 24, 2021).....	24a
Statement of Reasons of the Superior Court of New Jersey, Somerset County (September 24, 2021).....	26a

OTHER DOCUMENTS

Arsenis Complaint Filed in Superior Court of New Jersey, Bergen County (May 14, 2021)	61a
Arsenis Petition for Certification to Review Filed in the Supreme Court of New Jersey (August 29, 2023)	81a

**ORDER DENYING CERTIFICATION,
SUPREME COURT OF NEW JERSEY
(FILED JUNE 3, 2024; SIGNED MAY 29 2024)**

FILED,
Clerk of the Supreme Court
03 Jun 2024, 088460

SUPREME COURT OF NEW JERSEY

C. ARSENIS, S. ARSENIS, AND G. ARSENIS,

Plaintiffs-Petitioners,

v.

BOROUGH OF BERNARDSVILLE,
EDWARD KERWIN, TAX ASSESSOR,

*Defendants-
Respondents,*

and

TOM CZERNIECKI, BOROUGH
ADMINISTRATOR, AND ANTHONY SURIANO,
BOROUGH CLERK,

Defendants.

C-520 September Term 2023
088460

A petition for certification of the judgment in A-000603-21 having been submitted to this Court, and the Court having considered the same;

ORDER

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 29th day of May, 2024.

/s/ Heather Baker
CLERK OF THE SUPREME COURT

**OPINION, SUPERIOR COURT OF
NEW JERSEY, APPELLATE DIVISION
(JUNE 28, 2023)**

**APPROVED FOR PUBLICATION
JUNE 28, 2023
APPELLATE DIVISION**

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION**

**C. ARSENIS, S. ARSENIS, and G. ARSENIS,
*Plaintiffs-Appellants,***

v.

**BOROUGH OF BERNARDSVILLE,
EDWARD KERWIN, Tax Assessor,
TOM CZERNIECKI, Borough Administrator, and
ANTHONY SURIANO, Borough Clerk,**

Defendants-Respondents.

Docket No. A-0603-21

**Submitted September 21, 2022 –
Decided June 28, 2023**

**On appeal from the Superior Court of New Jersey,
Law Division, Somerset County,
Docket No. L-1061-21**

**Before: HAAS, DEALMEIDA,
and MITTERHOFF, Judges.**

The opinion of the court was delivered by
DeALMEIDA, J.A.D.

We consider whether the Superior Court has jurisdiction to adjudicate claims for monetary damages, filed years after the statutory deadline for filing a tax appeal, based on allegations that municipal officials committed fraud and other torts by assessing real property in a manner inconsistent with law and at an amount above its true market value. We conclude that the Superior Court lacks jurisdiction to hear such claims because they are substantively equivalent to a tax appeal properly venued in the Tax Court or a county board of taxation, and the statutory deadlines for challenging local property tax assessments may not be circumvented by a late-filed complaint seeking damages for alleged torts arising from the tax assessment process. In light of these conclusions, we affirm the trial court order dismissing the complaint in this matter with prejudice for failure to state a claim upon which relief can be granted.

I.

In 2012, plaintiffs C. Arsenis, S. Arsenis, and G. Arsenis purchased residential real property in defendant Borough of Bernardsville for \$6,267,500. The parcels are designated in the records of the municipality as Block 16, Lots 5 and 6.01.

Starting in 2013, and in every year thereafter, plaintiffs submitted a forest management plan seeking to qualify a portion of the property for assessment under the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 to -23.23. Pursuant to annual district-wide reassessments and plaintiffs' farmland assessment

App.5a

applications, the property was assessed for local property tax purposes as follows:

Block 16, Lot 6.01

Year	Acres	Land	Improvements	Total
2012	5	\$795,000	\$1,694,500	\$2,489,500
2013	5	\$755,000	\$2,224,400	\$2,979,400
2014	4	\$664,000	\$2,394,300	\$3,058,300
2015	4	\$664,000	\$2,475,800	\$3,139,800
2016	4	\$664,000	\$2,509,900	\$3,173,900
2017	4	\$664,000	\$2,417,800	\$3,081,800
2018	4	\$628,000	\$2,321,600	\$2,949,600
2019	4	\$588,000	\$2,732,000	\$3,320,000
2020	3	\$536,000	\$2,673,800	\$3,209,800

Block 16, Lot 6.01, Qual. Q0017

Year	Acres	Land	Improvements	Total
2012	47.58	\$7,300	\$0	\$7,300
2013	47.58	\$7,300	\$0	\$7,300
2014	48	\$6,300	\$0	\$6,300
2015	48	\$6,300	\$0	\$6,300
2016	48	\$6,200	\$0	\$6,200
2017	49	\$6,400	\$0	\$6,400
2018	49	\$65,000	\$0	\$6,500
2019	49	\$2,700	\$0	\$2,700
2020	49	\$6,000	\$0	\$6,000

Block 16, Lot 5, Qual. Q0017

Year	Acres	Land	Improvements	Total
2012	.5	\$100	\$0	\$100
2013	.5	\$100	\$0	\$100
2014	.5	\$100	\$0	\$100
2015	.5	\$100	\$0	\$100
2016	.5	\$100	\$0	\$100
2017	.5	\$100	\$0	\$100
2018	.5	\$100	\$0	\$100
2019	.5	\$100	\$0	\$100
2020	.5	\$13,000	\$0	\$13,000

Plaintiffs did not file complaints in the Tax Court or petitions in the Somerset County Board of Taxation (Board) challenging the assessments on their property for tax years 2013 through 2019. *See* N.J.S.A. 54:3-21 (establishing deadlines for filing a petition of appeal with a county board of taxation and, for properties assessed in excess of \$1,000,000, a complaint with the Tax Court, challenging the annual assessment on real property for local property tax purposes.).¹

¹ Plaintiffs filed a complaint in the Tax Court challenging the assessments on Block 16, Lot 6.01 for tax year 2020. That matter remains pending. Plaintiffs also filed a petition with the Board challenging the assessments on the property for tax year 2021. On July 29, 2021, the Board issued a judgment affirming the assessor's denial of farmland assessment for portions of the property and granting a reduction in the assessed value of Block 16, Lot 6.01 for tax year 2021. The record does not reveal whether

On March 14, 2021, plaintiffs filed a complaint in the Law Division alleging that the assessments on their property for tax years 2013 through 2019 were inflated by municipal officials in a fraudulent scheme to raise revenue. According to the complaint, Bernardsville, and defendants Edward Kerwin, the borough tax assessor, Tom Czerniecki, the borough administrator, and Anthony Suriano, the borough clerk, created false property record cards for plaintiffs' property that failed to note the house on the property lacked a certificate of occupancy due to ongoing renovations. Defendants used the false record cards, plaintiffs allege, to further their fraudulent scheme.²

Plaintiffs also allege that during the tax years in question, defendants misrepresented the condition of the home; set assessments that were calibrated not to reflect true market value, but to raise specific amounts of taxes; submitted the false property record cards to the bank maintaining the escrow account for plaintiffs' mortgage to fraudulently obtain tax payments on the property; and engaged in illegal "spot assessing." *See Twp. of W. Milford v. Van Decker*, 120 N.J. 354, 365 (1990). Finally, plaintiffs allege defendants erroneously imposed an added assessment on the property after completion of the renovations.

plaintiffs or the municipality appealed that judgment to the Tax Court.

² Property record cards are "commonly used by tax assessors for the purpose of recording a wide variety of information . . . concerning the character of the property, such as its topography, use, extent of acreage, and other factors which may have a bearing on the valuation appearing in the assessments." *De Lia v. Kiernan*, 119 N.J. Super. 581, 584 (App. Div. 1972).

Plaintiffs allege defendants' conduct constituted: (1) tax/mortgage escrow fraud; (2) common law fraud; (3) unjust enrichment; and (4) negligent misrepresentation. They seek as damages the \$251,815 in local property taxes they allege they overpaid as a result of defendants' conduct, as well as interest, [treble] damages, punitive damages, and "investigation fees."

In lieu of filing an answer, defendants moved to dismiss the complaint with prejudice for failure to state a claim upon which relief can be granted pursuant to Rule 4:6-2. They argued that plaintiffs' claims are the substantive equivalent of tax appeals because they challenge the quantum and method of the assessments on their property and seek damages equal to the taxes they allegedly overpaid. According to defendants, the Superior Court lacked jurisdiction to hear such claims and could not transfer them to the Tax Court or county board of taxation because they were filed long after expiration of the statutory deadlines for filing tax appeals for the tax years in question.

In addition, defendants argued that plaintiffs' claims, even if viewed as tort claims, are barred by immunity and notice provisions of the Tort Claims Act (TCA), N.J.S.A. 59:1-1 to 13-10. Finally, defendants argued that all claims against Czerniecki and Suriano should be dismissed because neither have responsibilities with respect to the assessment and collection of local property taxes and Czerniecki started employment with the borough after the actions alleged in the complaint.

Plaintiffs opposed the motion. In addition to urging the court to reject defendants' arguments, for the first time they allege defendants' conduct violated

the Consumer Fraud Act, N.J.S.A. 56:8-1 to -210 (CFA).

The trial court issued a written opinion granting defendants' motion. First, the court concluded that it lacked jurisdiction to adjudicate plaintiffs' claims pursuant to Rule 4:6-2(a). The court found that plaintiffs' tort claims were, in effect, challenges to the assessments on their property and substantively equivalent to tax appeals. Thus, the court concluded, plaintiffs' claims were cognizable before the Tax Court or the Board. However, the court did not transfer the complaint to the Tax Court or the Board pursuant to Rule 4:3-4(a) because plaintiffs' claims were filed after the statutory deadlines for filing tax appeals for each tax year in question.

In addition, the trial court found that, even if plaintiffs' claims are considered to sound in tort, they failed to state a claim on which relief can be granted pursuant to Rule 4:6-2(e) because: (1) plaintiffs failed to allege sufficient facts to meet the heightened standard for fraud set forth in Rule 4:5-8(a); (2) plaintiffs failed to file a timely notice of claim under N.J.S.A. 59:8-3 and -4; (3) defendants are immune from claims for damages arising from "[a]n act or omission in the interpretation or application of any law relating to a tax," under N.J.S.A. 59:7-2(b); (4) the borough is immune from claims for damages arising from the alleged willful misconduct of its employees under N.J.S.A. 59:2-10; and (5) Czerniecki and Suriano had no duties with respect to the assessment and collection of local property taxes or involvement in the assessment of plaintiffs' property for the relevant tax years. In addition, the court found that public entities and

employees are not subject to the CFA. A September 24, 2021 order memorializes the court’s decision.

This appeal follows. Plaintiffs argue: (1) the trial court erred when it considered facts outside the pleadings without converting defendants’ motion to one for summary judgment; (2) they pled their fraud claims with sufficient specificity; (3) their claims go beyond ordinary tax appeals and are, as a result, cognizable in the Superior Court regardless of the expiration of the statutory deadlines for filing tax appeals; and (4) the immunity established in N.J.S.A. 59:7-2(b) does not extend to fraudulent acts of municipal officials.³

II.

Rule 4:6-2 permits a defendant to move to dismiss a complaint because of a “lack of jurisdiction over the subject matter,” R. 4:6-2(a), and a “failure to state a claim upon which relief can be granted” R. 4:6-2(e). When considering such motions, the court’s “inquiry is limited to examining 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). All well-pleaded allegations of the complaint are accepted as true. *Holmin v. TRW*,

³ Plaintiffs’ brief does not address: (1) the CFA; (2) Czerniecki and Suriano’s non-involvement in the assessment and collection of local property taxes; or (3) the trial court’s conclusion that plaintiffs’ claims are barred by their failure to file a timely notice of claim under the TCA. N.J.S.A. 59:8-8. We deem plaintiffs’ appeal of those aspects of the trial court’s decision waived. “[A]n issue not briefed is deemed waived.” Pressler & Verniero, *Current N.J. Court Rules*, cmt. 5 on R. 2:6-2 (2023); *Telebright Corp. v. Dir., N.J. Div. of Tax.*, 424 N.J. Super. 384, 393 (App. Div. 2012) (deeming a contention waived when the party failed to include any arguments supporting the contention in its brief).

Inc., 330 N.J. Super. 30, 32 (App. Div. 2000), *aff'd*, 167 N.J. 205 (2011). The court searches 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.” *Banco Popular N. Am. v. Gandi*, 184 N.J. 161, 165 (2005) (quoting *Printing Mart*, 116 N.J. at 746). “A pleading should be dismissed if it states no basis for relief and discovery would not provide one.” *Rezem Fam. Assocs., LP v. Borough of Millstone*, 423 N.J. Super. 103, 113 (App. Div. 2011).

We apply a de novo standard of review to a trial court order dismissing a complaint under Rule 4:6-2. *See Stop & Shop Supermarkets Co. v. Cnty. of Bergen*, 450 N.J. Super. 286, 290 (App. Div. 2017) (quoting *Teamsters Loc. 97 v. State*, 434 N.J. Super. 393, 413 (App. Div. 2014)). Under the rule, we owe no deference to the motion judge’s conclusions. *Rezem Fam. Assocs.*, 423 N.J. Super. at 114.

“If, on a motion to dismiss based on defense (e), matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided by R. 4:46” and all parties shall be provided notice of the conversion of the motion and a chance to response. R. 4:6-2. Because the trial court was presented with and considered facts outside the complaint, it should have treated defendants’ motion as one for summary judgment. We do not, however, find this error to be fatal. As explained more fully below, the absence of jurisdiction to hear plaintiffs’ claims is evident from the face of the complaint. This alone is sufficient to affirm the trial court’s dismissal of the complaint with prejudice. We do not consider the

other grounds for dismissal found by the trial court, some of which were based on facts outside those pled in the complaint.

The viability of plaintiffs' complaint must be considered in the context of the well-defined annual local property tax assessment process and the "comprehensive statutory appeal and review procedures for real estate tax appeals" in this State. *McMahon v. City of Newark*, 195 N.J. 526, 529 (2008). As the Supreme Court explained,

[t]axation of real property in New Jersey is of constitutional dimension. In addition to requiring that "[p]roperty shall be assessed for taxation under general laws and by uniform rules[,]” N.J. Const. art. VII, § 1, ¶ 1(a), New Jersey's Constitution requires that “[a]ll real property assessed and taxed . . . shall be assessed according to the same standard of value, [and] shall be taxed at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district.” *Ibid.*

A comprehensive statutory scheme seeks to implement that constitutional mandate. Thus, the Legislature has required that all real property taxes in New Jersey be assessed annually at the local or municipal level. *See* N.J.S.A. 40A:9-146 (requiring that municipal governing body or chief executive "shall provide for the appointment of a tax assessor and such deputy tax assessors as it may determine necessary"); N.J.S.A. 54:4-23 (providing that "[a]ll real property shall be assessed to the person owning the same on October 1 in each

year"). In exercising those functions, the assessor – although a municipal employee – remains free of any local control. *Clinton Twp. Citizen's Comm., Inc. v. Mayor and Council of Twp. of Clinton*, 185 N.J. Super. 343, 353 (Law Div. 1982) (explaining that “[i]n performing his assessment duties the municipal tax assessor acts under the supervision and control of his county board of taxation and the Director of the Division of Taxation. N.J.S.A. 54:3-16; N.J.S.A. 54:1-27 and 54:1-35.51.”).

...

Once a tax assessor completes the assessments for the municipality, the assessment roll is submitted to the county board of taxation, N.J.S.A. 54:4-35, and, based in part on the assessments provided by all assessors in the county, the county board sets the tax rate for the municipality. N.J.S.A. 54:4-48 and - 49.

[*Id.* at 541-42.]

There are three additional types of assessments - added assessments, omitted assessments, and omitted added assessments. An added assessment, which plaintiffs allege defendants placed on the property, is intended to capture any increase in value that occurs as a consequence of the completion of the erection, addition to or improvement of any building or structure after the October 1 valuation date for a particular tax year. *Am. Hydro Power Partners, LP v. City of Clifton*, 239 N.J. Super. 130, 138 (App. Div. 1989).

Added assessments may be imposed via two statutes. The first, N.J.S.A. 54:4-63.2, provides for the making of an added assessment when a structure has been erected, added to or improved after the October 1 valuation date and before the January 1 start of the tax year. In such a case, the assessor makes an added assessment for the entire subsequent tax year, and also an added assessment for a pro-rated portion of the tax year of completion from the first day of the month following completion through December 31. The second, N.J.S.A. 54:4-63.3, allows for an added assessment where a structure has been erected, added to or improved after the October 1 valuation date for a particular tax year and between the following January 1 and October 1 of the tax year. It is not clear from the complaint which of the two statutes would apply here. That distinction, however, is immaterial to our analysis.

The Legislature created well-defined avenues for review of assessments on real property. A property owner may appeal an annual assessment alleged to exceed the true market value of the property to either the pertinent county board of taxation or to the Tax Court. County boards of taxation are authorized to undertake “the equalization, revision, review, and enforcement” of local property taxes. N.J.S.A. 54:3-1; *see also* N.J.S.A. 54:3-11. The Tax Court was “established as a court of limited jurisdiction pursuant to Article VI, Section 1, paragraph 1 of the New Jersey Constitution[,]” N.J.S.A. 2B:13-1(a), and is “a court of record[,]” N.J.S.A. 2B:13-1(a). Its jurisdiction is defined, in relevant part, as:

- a. The Tax Court shall have jurisdiction to review actions or regulations with respect to a tax matter of the following:
 - (1) Any State agency or official;
 - (2) A county board of taxation;
 - (3) A county or municipal official.
- b. The Tax Court shall have jurisdiction over actions cognizable in the Superior Court which raise issues as to which expertise in matters involving taxation is desirable, and which have been transferred to the Tax Court pursuant to the Rules of the Supreme Court.

[N.J.S.A. 2B:13-2.]

According to N.J.S.A. 54:3-21,

a taxpayer feeling aggrieved by the assessed valuation . . . of the taxpayer's property . . . ay on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later, appeal to the county board of taxation by filing with it a petition of appeal; provided, however, that any such taxpayer . . . may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later, file a complaint directly with the Tax Court, if the assessed valuation of the property subject to the appeal exceeds \$1,000,000. In a taxing district where a municipal-wide revaluation or municipal-wide reassessment has been implemented, a taxpayer . . . may appeal before

or on May 1 to the county board of taxation by filing with it a petition of appeal or, if the assessed valuation of the property subject to the appeal exceeds \$1,000,000, by filing a complaint directly with the State Tax Court.

Where the property owner initiates a challenge to an assessment in the county board of taxation, review of the judgment of the county board may be sought in the Tax Court. *See* N.J.S.A. 54:3-26b (“Any party who is dissatisfied with the judgment of the county board of taxation may seek review of that judgment in the tax court in accordance with the provisions of the State Tax Uniform Procedure Law”) and N.J.S.A. 54:51A-9(a) (“Time for taking real property tax cases to tax court. . . . A] complaint seeking review of adjudication or judgment of the county board of taxation shall be filed within 45 days of the service of the judgment.”).

“Appeals from added assessments may be made to the county board of taxation on or before December 1 of the year of levy, or 30 days from the date the collector of the taxing district completes the bulk mailing of tax bills for added assessments, whichever is later” N.J.S.A. 54:4-63.11. “[H]owever, . . . appeals from added assessments may be made directly to the Tax Court on or before December 1 of the year of levy, or 30 days from the date the collector of the taxing district completes the bulk mailing of tax bills for added assessments, whichever is later, if the aggregate assessed valuation of the property exceeds \$750,000.00” *Ibid.* “Appeals to the Tax Court from the judgment of the county board of taxation shall be made within 45 days from the date fixed for final decisions by the county board of taxation on appeals from added assessments.” *Ibid.*

The Tax Court and county boards of taxation are authorized to consider constitutional claims, such as the imposition of a spot assessment, as alleged by plaintiffs.

New Jersey law provides several opportunities for taxpayers to raise constitutional objections to an . . . assessment. A taxpayer may challenge the . . . assessment by appealing to the [c]ounty [b]oard of [t]axation The [c]ounty [b]oard must hear the appeal and render judgment If the taxpayer is still dissatisfied, he or she may appeal the [b]oard's decision to the Tax Court In the Tax Court, the taxpayer is entitled to a *de novo* hearing before a tax court judge with expertise in the field of real property valuation.

....

A taxpayer may appeal from the Tax Court to the Appellate Division. N.J.S.A. 2B:3-4. If the taxpayer succeeds at any level, the taxing district must refund the excess taxes plus . . . interest within sixty days of the final judgment. N.J.S.A. 54:3-27.2.

[*General Motors Corp. v. City of Linden*, 143 N.J. 336, 349-350 (1996).]

“The right to appeal a real property assessment is statutory, and the appellant is required to comply with all applicable statutory requirements.” *Macleod v. City of Hoboken*, 330 N.J. Super. 502, 505 (App. Div. 2000) (quoting *F.M.C. Stores Co. v. Borough of Morris Plains*, 195 N.J. Super. 373, 381 (App. Div. 1984), *aff’d*, 100 N.J. 418 (1985)). The statutory scheme for

appealing an assessment on real property is “one with which continuing strict and unerring compliance must be observed” *McMahon*, 195 N.J. at 543. Compliance with the filing requirement is a necessary predicate to establish jurisdiction in this court for review of an assessment. “Failure to file a timely appeal is a fatal jurisdictional defect.” *F.M.C. Stores Co. v. Borough of Morris Plains*, 100 N.J. 418, 425 (1985). This is true even in the absence of harm to the defendant municipality. *Lawrenceville Garden Apartments v. Twp. of Lawrence*, 14 N.J. Tax 285, 288 (App. Div. 1994).

The policy of applying strict time limitations to tax matters is based upon the very nature of our administrative tax structure. Municipal budgets must be finalized not later than the 90th day after the beginning of the budget year. N.J.S.A. 54:4-42. Real estate assessments, which constitute the bulk of a municipality’s income are established as of October 1 of the pretax year. N.J.S.A. 54:4-23. Throughout our tax legislation, it is clear that our legislature has attempted to set out a well organized time-table for the purpose of enabling a municipality to ascertain the amount of taxable ratables within the jurisdiction in order that it might adopt a responsible and fairly accurate budget.

[*F.M.C. Stores*, 100 N.J. at 425 (quoting *Twp. of Galloway v. Petkevis*, 2 N.J. Tax 85, 92 (Tax 1980)).]

We start our analysis with a determination of whether plaintiffs’ claims, although couched as torts, are, in effect challenges to the assessments on their property. It is well-established that a complaint

challenging “the quantum or methodology applied in respect of” a municipal tax assessor’s assessment on real property “fall[s] squarely within the band of cases subject to the established tax appeal process.” *McMahon*, 195 N.J. at 543-44. The allegations set forth in plaintiffs’ complaint, even when given every inference favorable to plaintiffs, are plainly based on the quantum of the assessments the tax assessor placed on their property for the relevant tax years and the methodology he used to calculate those assessments. Plaintiffs allege that the assessor valued the property without considering its condition due to ongoing renovations or the absence of a certificate of occupancy, and placed an erroneous added assessment on the property when the renovations were completed. In addition, they allege the assessor falsified the property record card for the property and used that erroneous information to calculate the assessments at issue. These allegations are precisely the type of arguments routinely raised in the Tax Court and county boards of taxation in tax appeals challenging assessments on real property. *See e.g., Brunetti v. Twp. of Cherry Hill*, 21 N.J. Tax 80, 82 (App. Div. 2002) (affirming Tax Court judgment upholding revision of assessment after tax assessor discovered error in property record card); *Aliotta v. Twp. of Belleville*, 27 N.J. Tax 419, 463-64 (Tax 2013) (valuing a residence based on its condition); *Consol. Rail Corp. v. Director, Div. of Tax.*, 18 N.J. Tax 291 (Tax 1999), *aff’d*, 19 N.J. Tax 378 (App. Div. 2001) (upholding assessment of partially completed improvements). Plaintiffs cannot transmogrify their routine tax appeals into tort claims to seek monetary damages against the tax assessor or, as explained more fully below, to avoid the strict statutory time limits applicable to tax appeals.

In addition, plaintiffs allege that the assessor engaged in spot assessing, a constitutionally defective “practice of reassessing only properties that were the subject of a recent sale while leaving undisturbed the appraised valuations of properties in the same class that have not been sold” *Van Decker*, 120 N.J. at 357. Such a claim is plainly within the parameters of a tax appeal, as is illustrated in *Van Decker*. There, the taxpayers’ challenge to a spot assessment began as a timely tax appeal in the Passaic County Board of Taxation, was appealed to the Tax Court, and, from there, through the remainder of the judicial system to the Supreme Court. *Id.* at 359-60. Raising a constitutional spot assessment claim does not convert a tax appeal to a claim for relief cognizable in the Superior Court without regard to the statutory limitations on filing tax appeals. As we explained in *Macleod*, where the taxpayer alleged that an added assessment was a spot assessment,

[p]laintiff urges that because the assessment was an impermissible “spot assessment,” the additional assessment was not a valid “added assessment,” and the statutory provision for property tax appeals do not apply to him. We have previously concluded that a party challenging the validity of an added assessment must comply with the statutory appeals provisions.

[330 N.J. Super. at 507 (citing *Royal Bradley Assoc. v. Borough of Bradley Beach*, 252 N.J. Super. 401, 403-04 (App. Div. 1991)).]

The fact that plaintiffs seek damages measured by the amount of local property taxes they alleged to have overpaid bolsters our conclusion that their

alleged tort claims are thinly veiled tax appeals. A reduction in the assessment on real property, which thereafter requires the municipality to refund overpaid local property taxes to the property owner, N.J.S.A. 54:3-27.2, is the remedy generally sought in a tax appeal. We do not suggest that a demand for damages must be measured by alleged overpaid taxes in order for a tort claim to be the substantive equivalent of a tax appeal. A complaint that measures damages in this fashion, however, is strongly indicative of a tax appeal properly venued in the Tax Court or county board of taxation.

Our interpretation of plaintiffs' claims is supported by the well-established premise that monetary damage may not be awarded against municipalities and municipal officials for claims arising from local property tax assessments. The controlling statute is clear:

Neither a public entity nor a public employee is liable for an injury caused by:

- a. Instituting any judicial or administrative proceeding or action for or incidental to the assessment or collection of a tax.
- b. An act or omission in the interpretation or application of any law relating to a tax.

[N.J.S.A. 59:7-2.]

As used in this statute a "tax" includes a tax, assessment, fee or charge." N.J.S.A. 59:7-1.

We have previously recognized that the only remedy for alleged error in the assessment of real property by government officials is a timely tax appeal. *General Motors Corp. v. City of Linden*, 279

N.J. Super. 449, 469 (App. Div. 1995), *rev'd on other grounds*, 143 N.J. 336 (1996). As we succinctly held,

[t]herefore, plaintiff could not maintain a tort action against either the tax assessor or Linden for negligence in the assessment of its property. Instead, plaintiff's only remedy to correct an error in its assessment would be an appeal to the Union County Board of Taxation or the Tax Court.

[*Ibid.* (citing N.J.S.A. 54:3-21).]

There is no dispute that plaintiffs' complaint was filed long after expiration of the statutory deadlines to file tax appeals challenging the annual assessments and added assessment on their property for the tax years in question. The complaint was filed in 2021, years after the tax appeal deadlines for tax years 2013 through 2018. Had plaintiffs' complaint been timely filed it would have been appropriate for the Superior Court to transfer the complaint to the Tax Court for adjudication as a tax appeal. R. 4:3-4(a) ("Transfer from Superior Court to Tax Court. The court in which an action is pending may order it transferred to the Tax Court provided that the principal issue or issues raised therein are cognizable in that court."). Such a transfer, however, would have been futile here, given that the late filing of the complaint deprived the Tax Court of jurisdiction to adjudicate plaintiffs' claims. *See Kohlbrenner Recycling Enters. v. Burlington Cnty. Bd. of Freeholders*, 228 N.J. Super. 624, 629 (Law Div. 1987) ("Ordinarily, it would be permissible and proper to transfer this matter . . . in order to solve the jurisdictional problem. R. 1:13-4. Since the complaint has not been timely filed, however, it can no longer be maintained."). We have previously upheld the

dismissal of a complaint challenging a local property tax assessment filed in Superior Court after expiration of the time for filing a tax appeal. *See Macleod*, 330 N.J. Super. at 504-06 (ordering dismissal of action in lieu of prerogative writ challenging an added assessment because complaint was filed after the statutory deadline for filing a petition challenging the assessment in the county board of taxation). Dismissal of plaintiffs' complaint with prejudice was, therefore, warranted.

In light of our conclusions regarding the absence of jurisdiction to adjudicate plaintiffs' thinly veiled tax appeals, we need not address the remaining grounds on which the trial court dismissed the complaint.

Affirmed.

**ORDER DISMISSING COMPLAINT WITH
PREJUDICE, SUPERIOR COURT OF
NEW JERSEY, SOMERSET COUNTY
(SEPTEMBER 24, 2021)**

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION SOMERSET COUNTY**

C. ARSENIS, S. ARSENIS, and G. ARSENIS,

Plaintiff's/Escrow,

v.

**BOROUGH OF BERNARDSVILLE,
Edward Kerwin, TAX ASSESSOR, Tom Czerniecki,
BOROUGH ADMINISTRATOR, Anthony Suriano,
BOROUGH CLERK, John Does 1-10 and ABC
Corporation 1-10 (collectively),**

Defendants.

Docket No. SOM-L-1061-21

CIVIL ACTION

Before: Thomas C. MILLER, A.J.S.C.

**ORDER DISMISSING PLAINTIFFS'
COMPLAINT PURSUANT TO R. 4:6-2(A) AND (E),
WITH PREJUDICE**

THIS MATTER having been opened to the Court
by Defendants, Borough of Bernardsville, Edward
Kerwin, Tax Assessor, Tom Czerniecki, Borough

Administrator, and Anthony Suriano, Borough Clerk, upon the filing of a Motion to Dismiss Plaintiffs' Complaint with Prejudice, through their attorneys Parker McCay P.A. (John C. Gillespie, Esquire appearing), and notice of said Motion having been properly served upon the Plaintiffs, and the Court having reviewed the submissions of the parties, and for good cause shown;

IT IS, on this 24th day of September, 2021, ORDERED that the Plaintiffs' Complaint be and the same is hereby dismissed with prejudice. A copy of this Order shall be served on other parties within seven (7) days from receipt of this Order.

/s/ Thomas C. Miller

The Honorable Thomas C. Miller, A.J.S.C.

Judge's Checklist

X Opposed

 Unopposed

See Attached Statement of Reasons

**STATEMENT OF REASONS OF THE
SUPERIOR COURT OF NEW JERSEY,
SOMERSET COUNTY
(SEPTEMBER 24, 2021)**

*C. Arsenis., S. Arsenis.,
G. Arsenis v. Borough of Bernardsville, et al.
SOM-L-1061-21*
Defendant's Motion to Dismiss With Prejudice
OPPOSED
Returnable September 24, 2021

I. Parties and Relief Sought

Defendants, Borough of Bernardsville, Edward Kerwin, Tax Assessor, Tom Czerniecki, Borough Administrator, and Anthony Suriano, Borough Clerk, by and through their counsel, John C. Gillespie, Esq. of Parker McCay P.A., move to dismiss Plaintiff's complaint with prejudice. Plaintiffs, Chryssoula Arsenis, Spyridon Arsenis and George Arsenis, self-represented litigants, oppose Defendants' motion.

II. Summary of Defendants' Argument

In this motion, Defendants assert that on May 14, 2021, Chryssoula Arsenis, Spyridon Arsenis and George Arsenis (hereinafter collectively "Plaintiffs") filed a complaint against the Borough of Bernardsville (hereinafter the "Borough"); Edward Kerwin, the Borough Tax Assessor (hereinafter the "Borough Tax Assessor"); Tom Czerniecki, the Borough Administrator (hereinafter the "Borough Administrator") and Anthony Suriano, the Borough Clerk (hereinafter the "Borough Clerk") (hereinafter collectively the "Defendants"). Plaintiffs' complaint alleges that from 2013 through

2018 the Defendants engaged in a scheme to defraud Plaintiffs through the over-assessment of their property commonly known as 380 Claremont Road, Bernardsville, New Jersey and identified on the Borough's tax maps as Block 16, Lots 6.01 and 5 (hereinafter the "Subject Property").

Plaintiffs' complaint identifies four separate causes of action against the Defendants, which include (1) Count One – Tax/Mortgage Escrow Fraud; (2) Count Two – Common Law Fraud; (3) Count Three – Unjust Enrichment; and (4) Count Four – Negligent Misrepresentation.¹ Notwithstanding the various purported causes of action listed within the complaint, Defendants state that Plaintiffs are simply seeking to file an untimely challenge to the Subject Property's tax assessment. Defendants assert that the Court should not allow Plaintiffs' attempt to disguise this tax appeal as one arising in tort and should dismiss the complaint pursuant to R. 4:6-2(a) and (e).

First, Defendants argue that the Court lacks subject matter jurisdiction to consider this matter. As noted, Plaintiffs' complaint is merely an untimely challenge to the Subject Property's tax assessments. Such claims are cognizable in the Tax Court, not in the Law Division, according to the Defendants. Moreover, Defendants contend that transferring this matter to the Tax Court pursuant to R. 4:3-4 would be

¹ Defendants point out that Plaintiffs' complaint fails to comply with R. 1:4-2, which requires "[a]llegations of claim or defense in a civil action shall be made in numbered paragraphs, each limited as far as practicable to a single set of circumstances." Plaintiffs' complaint consists of approximately 46 numbered paragraphs, most of which fail to conform to the Rule's single set of circumstances requirement.

futile since the timely filing of a tax appeal is jurisdictional. As a result, Plaintiffs' complaint should be dismissed with prejudice for lack of jurisdiction pursuant to R. 4:6-2(a). Second, Defendants submit that Plaintiffs' complaint fails to state a cognizable claim for common law fraud and negligent misrepresentation. Third, the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq. provides Defendants a substantive immunity from liability, and also procedurally bars Plaintiffs' claim for failure to provide notice. The failure to provide notice is established in the attached Certification of Anthony Suriano, Borough of Bernardsville. Accordingly, Plaintiffs' complaint should be dismissed for failure to state a claim upon which relief can be granted pursuant to R. 4:6-2(e). Lastly, Defendants indicate that Plaintiffs' naming of the Borough Administrator and Clerk as defendants is simply improper. The alleged conduct by Defendants, identified in Plaintiffs' complaint, ceased as of March 13, 2018, according to the Defendants. Defendants submit that the Borough Administrator was not employed by the Borough until February 8, 2021; and the Borough Clerk was not hired until February 12, 2018, has no role in the assessment process.

Accordingly, Defendants respectfully request the Court dismiss this matter with prejudice.

III. Summary of Plaintiffs' Opposition²

Plaintiffs, Chryssoula Arsenis, Spyridon Arsenis and George Arsenis self represented litigants residing at 380 Claremont Road, Bernardsville NJ also been

² This summary has been copied virtually verbatim from Plaintiffs' Brief for completeness of the record.

identified on the taxing Districts tax maps as Block: 16, Lots: 6.01 and 5 Post Lane.

Plaintiffs hereby submit their Opposition to Defendants' Motion To Dismiss the Complaint with Prejudice. It should be noted the Civil Action Complaint not only meets but exceeds the standards governing the form of a Complaint contemplated by Rule 1:4-2. [sic] Likewise, Plaintiffs assert that this court has subject matter jurisdiction in this matter and the Complaint. Sufficiently, alleges consumer harm and damages.

Defendants' Motion for Summary of Judgment is baseless and must be denied. The entirety of the motion is founded upon the faulty premise that "Plaintiffs" are simply seeking to file an untimely challenge to the Subject Property's tax assessment. Plaintiffs contend that the Court should not allow attempt Plaintiffs' to disguise this tax appeal as one arising in tort and should dismiss the Complaint pursuant to Rule 4:6-2(a) and (e).

Plaintiffs submit that Defendants seemingly seek a finding to camouflage a tort that gives rise to injury and harm to Plaintiffs and measures up to a civil wrong for which courts degree accountability. Both common sense and legal precedent dictate that the Defendants' actions are intentional torts, according to Plaintiffs. Therefore, Plaintiffs indicate that intentional torts are wrongs that the Defendants know or should have known that the outcomes of their outcomes actions should had injured and harm the Plaintiffs. Nevertheless the tort was done intentionally, knowingly that will cause injury and harm and the act to defraud the Plaintiffs for a "Shell of a building without a certificate of occupancy is an unlawful, and an

unconstitutional act because it violates constitutional and uniformity provisions.” [sic]

Plaintiffs aver that this case focuses on Defendants’ unlawful act under New Jersey’s Consumer Fraud Act (“CFA”) which “prohibits any act, use of employment by any person of any unconscionable commercial practice, false promise (or) misrepresentation . . . in connection with sale or advertisement of any Services N.J.S.A 56:8-2: N.J.S.A 56: 8-1(C)(defining “merchandise” to include “Service.” [sic] Plaintiffs claim that Defendants Motion To Dismiss ignores the precise, sufficiently pleaded allegations in the Complaint, and not only fail to articulate a legally sufficient basis for the assertion that the Complaint fails to state a claim for which relief can be granted, but also basically and fundamentally misconstrues the nature of the litigation.

Plaintiffs assert that Defendants attempts to misdirect the inquiry away from the concrete allegations in the Complaint concerning their own words and actions and towards abstract and hypothetical questions improperly injecting certifications that are incompatible with a Motion To Dismiss and rely for the incorrect proposition that this Court is not competent to hear this case because of an untimely tax appeal and this court lacks jurisdiction pursuant to Rule 4:6-2(a).

Plaintiffs state that Subject Matter Jurisdiction is the “power of the court to hear and determine cases of this class to which the proceeding in question belong”. *State v. Osborne*, 32 NJ 117, 122 (1960). [sic] Notwithstanding “Subject Matter Jurisdiction cannot be waived as a defense and a court must determine if it lacks subject matter Jurisdiction”.

Defendants purport that Plaintiffs' complaint must be dismissed with prejudice because it is beyond the competence of this court. [sic]

Plaintiffs indicate that the Defendants' motion addresses the issue of justiciability, however, the Complaint has not been decided as of yet on the merits after the successful conclusion of full discoveries and the Complaint has not even been answered. Second, Defendants appear to assert that dismissal is warranted because the Plaintiffs' Complaint implicates Defendants which are provided with a substantive immunity from liability pursuant to New Jersey Act. N.J.S.A. 59:1-1. [sic] However, immunity is waived "a public entity is liable for injury caused by an act of omission(s) of a public employee the same manner and the same extent as a private individual." [sic] Likewise, a discretionary function involves policy judgment, according to Plaintiffs. As per Rule N.J.S.A 59:2-3 "Adopting or failing to enforce any law. N.J.S.A 59:2-4. "Failure to make an inspection or negligent inspection of any property". N.J.S.A 59:2-6. "Crime, actual fraud, actual malice or willful misconduct"-. N.J.S.A 59:2-10.

"Discretion, indecision making or prioritizing need where faced with budgetary issues and also procedurally bars Plaintiffs' claim failure to provide notice Noted that this Complaint is a straightforward litigation alleging fraud N.J.S.A 59:2-10. Plaintiffs contend that Defendants torture arguments should be rejected in their entirety.

IV. Defendants' Statement of Facts³

A. The Parties⁴

1. The Borough of Bernardsville is a municipal corporation of the State of New Jersey organized pursuant to N.J.S.A. 40A:60-1 et seq.

2. The position and duties of the Borough Administrator for the Borough of Bernardsville are codified in § 2-8 of the Borough Code. *See* Certification of Anthony Suriano ¶ 8.

3. The Borough Code provides the Mayor with the authority to appoint a Borough Administrator, subject to the advice and consent of the Borough Counsel. *Id.*

4. On January 11, 2021, the Borough Council for the Borough of Bernardsville adopted Resolution No. 21-27 consenting to the appointment of Thomas J. Czerniecki, OO, AICP as Borough Administrator effective February 8, 2021. *Id.* at ¶ 9.

5. On January 12, 2018, the Borough Council for the Borough of Bernardsville adopted Resolution No. 18-48 appointing Anthony Suriano as Borough Clerk

³ Defendants' Statement of Facts are included virtually verbatim for completeness of the record.

⁴ Defendants submit that this court may take judicial notice of facts that are generally known and indisputable. *See* N.J.R.E. 201(b) and (c). Further, Defendants respectfully urge the supplemental materials attached be accepted by the court as "specific facts and propositions of generalized knowledge which are capable of immediate determination by report to sources whose accuracy cannot reasonably be questioned." N.J.R.E. 201(b)(3).

for a three-year term commencing February 12, 2018. *Id.* at ¶ 4.

6. The Borough Clerk is responsible for acting as secretary of the municipal corporation and custodian of the municipal seal and of all minutes, books, deeds, bonds, contracts, and archival records of the municipal corporation. In addition, the Borough Clerk acts as secretary to the governing body, prepares meeting agendas, attends all meetings of the governing body, keeps a journal of the proceedings of every meeting, retains the original copies of all ordinances and resolutions, and records the minutes of every meeting. *Id.* at ¶ 5 and 7; *see also*, N.J.S.A. 40A:9-133(a)(1)-(7).

7. The Plaintiffs failed to file any notice of tort claim regarding the claims alleged in the instant matter with the Borough or the Borough Clerk. *Id.* at ¶ 6.

B. The Subject Property & Annual Tax Assessments

8. On December 28, 2012, Plaintiffs purchased the Subject Property for \$6,267,500. *See* Certification of Edward Kerwin ¶ 5.

9. In September 2013, and all years subsequent, Plaintiffs submitted a Forest Management Plan seeking to qualify the Subject Property as farmland pursuant to the Farmland Assessment Act of 1964 (the “Act”). *Id.* at ¶ 6.

10. The Subject Property was annually reassessed as part of the Borough’s approved district-wide reassessment plan as follows:

Block 16, Lot 6.01				
Year	Acres	Land	Improve- ment	Total
2012	5	\$795,000	\$1,694,500	\$2,489,500
2013	5	\$755,000	\$2,224,400	\$2,979,400
2014	4	\$664,000	\$2,394,300	\$3,058,300
2015	4	\$664,000	\$2,475,800	\$3,139,800
2016	4	\$664,000	\$2,509,900	\$3,173,900
2017	4	\$664,000	\$2,417,800	\$3,081,800
2018	4	\$628,000	\$2,321,600	\$3,949,600
2019	4	\$588,000	\$2,732,000	\$3,320,600
2020	3	\$536,000	\$2,673,800	\$3,209,800

The remainder of the Subject Property was assessed as farmland, pursuant to the Farmland Assessment Act of 1964, as follows:

Block 16, Lot 6.01, Qual. Q0017				
Year	Acres	Land	Improve- ment	Total
2012	47.58	\$7,300	\$0	\$7,300
2013	47.58	\$7,300	\$0	\$7,300
2014	48	\$6,300	\$0	\$6,300
2015	48	\$6,300	\$0	\$6,300
2016	48	\$6,200	\$0	\$6,200
2017	49	\$6,400	\$0	\$6,400
2018	49	\$6,500	\$0	\$6,500

2019	49	\$2,700	\$0	\$2,700
2020	49	\$6,000	\$0	\$6,000

Block 16, Lot 5, Qual. Q0017				
Year	Acres	Land	Improvement	Total
2012	.5	\$100	\$0	\$100
2013	.5	\$100	\$0	\$100
2014	.5	\$100	\$0	\$100
2015	.5	\$100	\$0	\$100
2016	.5	\$100	\$0	\$100
2017	.5	\$100	\$0	\$100
2018	.5	\$100	\$0	\$100
2019	.5	\$100	\$0	\$100
2020	.5	\$13,000	\$0	\$13,000

Id. at ¶ 7.

11. There are currently tax appeals pending in the Tax Court of the New Jersey for the Subject Property for tax years 2020 and 2021, Plaintiffs failed to file appeals for any prior years, according to the Defendants. *Id.* at ¶ 6.

V. Plaintiffs' Version of the Procedural History⁵

On May 14, 2021, Plaintiffs filed their Complaint alleging four counts of violations/tax/Mortgage Escrow Fraud which constitutes a Consumer Fraud based on Regulation X. Real Estate Settlement Consumer Procedure Act 1974 12 USE from deceptive 2601 et seq 12 CFR 1024.34 Treatment of Escrow Account Balance and fraudulent acts set the rules in fraudulent business practices such as "Actual Malice, Actual Fraud or willful misconduct". The Complaint alleges that Defendants falsely claimed that their property record card. Refer to the Complaint the "scheme to defraud" Paragraph 17, 18, 19, 20, 21 22, 23, 24, 25 including the table of taxes.

Defendants change venue from Bergen County to Somerset County pursuant to Rule 4:3-2(2) on August 6, 2021. Defendants have not filed their answer to the Complaint as of yet but instead on August 11, 2021 a Notice of Motion To Dismiss Plaintiffs' Complaint with Prejudice disguised as a Summary of Judgment as per Rule 4:46-2.

However, Plaintiffs claim that the court converted the Motion as a Summary of Judgment returnable on September 10, 2021. It should be noted that the Defendants have not answer the Complaint and Pleading as of yet, have not conducted deposition or exchanged written discovery requests and filling. Affidavit pursuant Rule 4:46-2(c). Plaintiff indicates

⁵ Plaintiffs' Procedural History has been copied verbatim for completeness of the record.

that those items are considered the prerequisites of filing a Summary of Judgment.

VI. Court's Decision

A. Standard of Review

N.J. Ct. R. 4:6-2 governs motions to dismiss in New Jersey courts. Specifically, the Rule provides:

Every defense, legal or equitable, in law or fact, to a claim for relief in any complaint, counterclaim, cross-claim, or third-party complaint shall be asserted in the answer thereto, except that the following defenses, unless otherwise provided by R. 4:6-3, may at the option of the pleader be made by motion, with briefs: (a) lack of jurisdiction over the subject matter, (b) lack of jurisdiction over the person, (c) insufficiency of process, (d) insufficiency of service of process, (e) failure to state a claim upon which relief can be granted, (f) failure to join a party without whom the action cannot proceed, as provided by R. 4:28-1. If a motion is made raising any of these defenses, it shall be made before pleading if a further pleading is to be made. No defense or objection is waived by being joined with one or more other defenses in an answer or motion. Special appearances are superseded. If, on a motion to dismiss based on the defense numbered (e), matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided by R. 4:46, and all

parties shall be given reasonable opportunity to present all material pertinent to such a motion.

When considering a motion to dismiss, all well-pleaded allegations of the complaint are accepted as true and the matter is to be resolved based on the pleadings themselves. *Holmin v. TRW, Inc.*, 330 N.J. Super. 30 (App. Div. 2000), *aff'd*, 167 N.J. 205 (2001). Having accepted the facts in the pleading as true, and giving them all reasonable inferences, the Court must dismiss a pleading where it lacks any cognizable basis in law. *See Printing Mart-Morristown v. Sharp Elecs., Inc.*, 116 N.J. 739 (1989); *see generally Hunter v. Supreme Court*, 951 F. Supp. 1161, 1180 (D.N.J. 1996).

While legitimate inferences are to be drawn in favor of the plaintiff, however, a court need not credit a complaint's bald assertions or legal conclusions when deciding a motion to dismiss. *Novack v. Cities Services Oil Co.*, 149 N.J. Super. 542 (Law Div. 1977), *aff'd*, 159 N.J. Super. 400 (App. Div.), certif. denied, 78 N.J. 396 (1978); *see also Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997).

B. Does This Court Lack Jurisdiction Over the Subject Matter of This Action?

Defendants submit that the Tax Court of New Jersey was established as a court of limited jurisdiction pursuant to Article VI, Section 1, paragraph 1 of the New Jersey Constitution, N.J.S.A. 2B:13-1(a), and is a court of record, N.J.S.A. 2B:13-1(b). R. 8:2 implements the court's statutory jurisdiction, and provides that the Tax Court may entertain appeals challenging

final decisions including any act, action, proceeding, ruling, decision, order or judgment . . . of a County Board of Taxation, the Director of the Division of Taxation, any other state agency or official . . . or any county or municipal official with respect to a tax matter[.]

[*Ibid.*]

The challenge and/or the review of tax assessments is part of a comprehensive statutory framework that provides an aggrieved taxpayer the right to appeal a tax assessor's actions through the county tax board and the court system, starting with the Tax Court. *Macleod v. City of Hoboken*, 330 N.J. Super. 504, 506 (App. Div. 2000); *See also General Motors Corp. v. City of Linden*, 143 N.J. 336, 344 (1995) (The appropriate remedy for erroneous or improper assessments is through the mechanisms provided for tax appeals before the Tax Court.). A complaint that addresses "the quantum or methodology applied in respect of" the assessments issued by the tax assessor is "squarely within the band of cases subject" to the jurisdiction of the Tax Court. *McMahon v. City of Newark*, 195 N.J. 526. 543-544 (2008).

Here, Defendants assert that a review of the complaint makes it clear that the "crux" of Plaintiffs' complaint is a challenge to the quantum and methodology of the Defendants' tax assessments of the Subject Property. *See* Plaintiffs' Complaint ¶ 1-5. Plaintiffs' complaint alleges that the Defendants engaged in spot assessing⁶ and fraud in assessing the

⁶ Defendants indicate that a prohibited spot assessment is the reassessment of a recently sold property based solely on its sale

Subject Property. *See* Plaintiffs' Complaint ¶ 2. According to Plaintiffs, the Defendants' actions resulted in damages in excess of \$251,815.00. *See* Plaintiffs' Complaint ¶ 1. The "claimed damages" are simply the difference between the amount of taxes due and owing on the Subject Property and the amount Plaintiffs believe should have been due and owing based on a reduced assessment. In other words, the damages sought are equal to the savings Plaintiffs would have obtained had they filed a successful tax appeal. Defendants contend that a review of each cause of action contained within Plaintiffs' complaint further supports the Defendants' position that the instant matter is simply a disguised tax appeal.

In the First Count (titled "Tax/Mortgage Escrow Fraud"), Plaintiffs allege that the "information concealed and not disclosed by the Defendants was material to their tax claims, affected their right to payment(s) and if disclosed would have caused Plaintiff's/Escrow to deny payment for their ineligibility of the 'high end' residential taxes for the subject property." *See* Plaintiffs' Complaint ¶ 22. In the Second Count (titled "Common Law Fraud"), Plaintiffs allege that "[a]s part of the scheme to defraud, the Defendants intentionally submitted false Property Record Cards in order to procure payments for ineligible tax reimbursement(s)." *See* Plaintiffs' Complaint ¶ 22. In the Third Count (titled "Unjust Enrichment"), Plaintiffs allege that "Defendants engaged in a scheme or practice pursuant to which they improperly and fraudulently billed for taxes or otherwise ineligible for

price when other properties which did not sell are not reassessed, and violates the uniformity provisions of our State Constitution, N.J. Const., art. VIII, 1, 1.

reimbursement.” *See* Plaintiffs’ Complaint ¶ 32. In the Fourth Count (titled Negligent Misrepresentation), Plaintiffs allege that “[t]he Defendants knew or should have known, or were deliberately ignorant that the Property Record Cards submitted misrepresented/defrauded the actual taxes. From 2013 to March 13, 2018 . . . that this would have caused Plaintiffs/Escrow to disburse tax payments to the Defendants that they were not entitled to receive.” *See* Plaintiffs’ Complaint ¶ 38.

As such, Plaintiffs’ complaint requires this court to examine the merits of the quantum and methodology of the Defendants’ tax assessments in order to evaluate their claims. As a result, Defendants contend that the Plaintiff’s challenges are cognizable only in the Tax Court. *See* N.J.S.A. 54:51A-2 and N.J.S.A. 54:3-21 (Tax Court can determine challenges to “the assessed valuation of the taxpayer’s property” or against discrimination by the assessed valuation of other property in the county, provided the assessed valuation exceeds \$1 million).

Generally, Defendants aver that in certain instances it would be permissible and proper to transfer this matter to the Tax Court. *See* R. 4:3-4(a) (“The [Superior] court in which an action is pending may order it transferred to the Tax Court provided that the principal issue or issues raised therein are cognizable in that court.”) However, Defendants submit that “[t]he right to appeal a real property assessment is statutory,” and the failure to comply with the filing requirement of N.J.S.A. 54:3-21 divests the Tax Court of jurisdiction even in the absence of harm to the Borough. *Lawrenceville Garden Apartments v. Township of Lawrence*, 14 N.J. Tax 285 (App. Div. 1994).

However, in this circumstance, Plaintiffs' failure to adhere to the strict deadlines prescribed by N.J.S.A. 54:3-21 is a fatal jurisdictional defect. As a result, the transfer of this matter to the Tax Court would be futile. *See Kohlbrenner Recycling Enterprises, Inc. v. Burlington Cty. Bd. Of Chosen Freeholders*, 228 N.J. Super. 624, 628 (Law. Div. 1987) ("Ordinarily, it would be permissible and proper to transfer this matter to the Appellate Division in order to solve the jurisdictional problem. R. 1:13-4. Since the complaint has not been timely filed, however, it can no longer be maintained. Dismissal, not transfer is the proper response.") Accordingly, Defendants' request for Plaintiffs' complaint to be dismissed with prejudice pursuant to R. 4:6-2(a).

Plaintiffs argue that the court has subject jurisdiction despite Defendants' claim to the contrary R. N.J const. art VI, 3,12. The question of jurisdiction and the merits of an action will be considered interwind "a statute provides the basis for both the subject matter jurisdiction and the Plaintiffs substantive claim for relief."

Plaintiffs' right to appeal a real property assessment is statutory, based on N.J.S.A. 54:3-21, which states in pertinent part:

A taxpayer feeling aggrieved by the assessed valuation of his property, or feeling that he is discriminated against by the assessed valuation of other property in the county, or a taxing district which may feel discriminated against by the assessed valuation of property in the taxing district, or by the assessed valuation of property in another taxing district in the county, may on or before April

1 appeal to the county board of taxation by filing with it a petition of appeal.

[N.J.S.A. 54:3-21.]

Further, appeals for added assessments⁷ are governed by N.J.S.A. 54:4-63.11, which allows for appeals to “be made to the county board of taxation on or before December 1 of the year of levy” The statutory scheme “requires that a taxpayer challenging an added assessment appeal first to the County Board pursuant to N.J.S.A. 54:4-63.11, then to the Tax Court, and, if necessary, to the Appellate Division.” *GMC v. City of Linden*, 143 N.J. 336, 351 (1995) (citations omitted).

As Defendants point out, two of the cases cited by Plaintiffs regarding “spot assessment” jurisprudence reached the Appellate Division from the Tax Court. *Township of West Milford v. Van Decker*, 235 N.J. Super. 1 (App. Div. 1989) was an appeal from a Tax Court decision involving spot assessments (Plaintiffs’ Opposition, p. 9 or 14); *Murnick v. Asbury Park*, 95 N.J. 452 (1984) originated in the Tax Court as an allegation of discriminatory assessment. (Plaintiffs’ Opposition, p. 10 or 14).

The Court notes that “[e]xceptions have been made for challenges to an assessor’s overall procedures, as contrasted with the assessment of a particular parcel of real property.” *Macleod v. City of Hoboken*, 330 N.J. Super. 502, 509 (App. Div. 2000) (citing *Paterson Redevelopment Agency v. Schulman*, 78 N.J. 378, 387, cert denied, 444 U.S. 900 (1979)). However, constitutional implications, of themselves, do not

⁷ It appears that a significant part of the Plaintiffs’ “claim” includes “added assessments.”

justify waiving or ignoring the administrative remedy requirement. *Id.* In *Roadway Express, Inc. v. Kingsley*, 37 N.J. 136 (1962), a trucking company's challenge to corporate franchise taxes was in part constitutional and the Court required exhaustion of administrative remedies, noting that, when a taxpayer asserts the unconstitutionality of a statute as applied, administrative officials are best suited to analyze the nature of the tax and relevant facts. Where parties disputed whether an added assessment was an unconstitutional spot assessment, the county board was best equipped to find and evaluate the relevant facts. *Macleod*, at 509. Here, Plaintiffs' Complaint includes allegations of unconstitutional spot assessments. This Complaint should be filed first to the County Board, then to the Tax Court.

Furthermore, N.J.S.A. 54:4-23a reads:

no building or other structure newly constructed on any parcel of real property and intended for occupancy and use for residential purposes as a single family dwelling shall be added to the assessment list as real property subject to taxation, until a certificate of occupancy or temporary certificate of occupancy has been issued . . . provided, however, that such building or structure shall be omitted from taxation for a period not to exceed 24 months. At the termination of the 24 month period or following the granting of a certificate of occupancy or temporary certificate of occupancy and the occupation and use of the building for residential purposes, the building or structure shall be assessed and taxed as of the first day

of the month following the date of such use for the proportionate part of said year then remaining.

(Emphasis added)

Because the Plaintiffs did not have a Certificate of Occupancy from January 2013 to March 2018, this exceeded the 24-month time period established in N.J.S.A. 54:4-23a. Thus, the Defendants had a “colorable” basis to implement an added assessment even though a Certificate of Occupancy had not been issued. Furthermore, as stated above, the proper procedure would be for Plaintiffs to appeal the contested added assessments by filing an appeal with the County Board of Taxation on or before December 1 of the year of levy, as per N.J.S.A. 54:4-63.11.

The Court finds that it does not have subject matter jurisdiction over this dispute. The Plaintiffs’ claim for reduction in assessments – their alleged damages – was cognizable on or before the County Board of Taxation or the Tax Court.

For the foregoing reasons, the Court hereby GRANTS Defendants’ Motion to Dismiss for lack of subject matter jurisdiction.

C. Does Plaintiffs’ Complaint State a Cognizable Claim for Common Law Fraud and Negligent Misrepresentation Upon Which Relief Can Be Granted?

Defendants assert that even if the Court denies the request to dismiss for lack of jurisdiction, Plaintiffs’ complaint is legally deficient for other reasons as well.

To state a claim for common law fraud, Plaintiffs must show: (1) a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by the defendant of its falsity; (3) intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages. *Gennari v. Weichert Co. Realtors*, 148 N.J. 582, 610 (1997). The New Jersey Supreme Court has described fraud as one gaining an undue advantage through the means of an act or omission that is either “unconscientious or a violation of good faith.” *Jewish Ctr. Of Sussex County v. Whale*, 86 N.J. 619, 624 (1981).

A complaint sounding in fraud, “must, on its face, satisfy the requirements of Rule 4:5-8.” *Albright v. Burns*, 206 N.J. Super. 312, 315 (App. Div. 1999). Further, R. 4:5-8(a) requires that any complaint alleging fraud present “particulars of the wrong, with dates and times if necessary . . . insofar as practicable.” *Hoffman v. Hampshire Labs, Inc.*, 405 N.J. Super. 105, 112 (App. Div. 2009).

Here, Defendants indicate that Plaintiffs have failed to allege sufficient facts, or to allege them with the requisite specificity, to meet R. 4:5-8(a)’s heightened pleading standard. For example, nowhere in the complaint is it alleged that the Defendants made a material misrepresentation to the Plaintiffs. Instead, Plaintiffs assert that the material misrepresentation was made through the yearly distribution of the Subject Property’s tax bill to Plaintiff’s mortgagee. Plaintiffs do not provide any particularities such as who, when, where and what was said. As a result, Plaintiffs are unable to maintain an action for fraud based upon an alleged material misrepresentation

made to a third party. Moreover, Plaintiffs set forth no allegation concerning the identities of the individuals employed by the Borough who made the alleged misrepresentation, nor do they identify to whom the misrepresentations were made. Defendants assert that Plaintiffs' complaint is devoid of any allegations, other than conclusory statements, to show Defendants had knowledge of the falsity of the representations made. As such, on the face of the complaint, Plaintiffs have not satisfied the first, second and fourth elements of their fraud claim, according to the Defendants.

For the same reasons, Defendants maintain that Plaintiffs' claim for negligent misrepresentation also fails. Negligent misrepresentation is "[a]n incorrect statement, negligently made and justifiably relied upon," which "may be the basis for recovery of damages for economic loss or injury sustained as a consequence of that reliance." *H. Rosenblum, Inc. v. Adler*, 93 N.J. 324, 334 (1983). Defendants submit that Plaintiffs have not shown justifiable reliance nor negligence. *Kaufman v. I-Stat Corp.*, 165 N.J. 94, 109 (2000) (citation omitted). ("The element of reliance is the same for fraud and negligent misrepresentation.") Defendants claim that the complaint fails to make adequate allegations that Defendants acted negligently in making a statement, which Plaintiffs justifiably relied upon. Defendants aver that the bare assertions, without more, that the Defendants' conduct constitutes negligent misrepresentation, are insufficient.

Defendants also contend that Plaintiffs generally do not offer opposition to the common law fraud and negligent misrepresentation arguments set forth in the Defendants' Brief. Instead, Defendants indicate that Plaintiffs now urge that their Complaint con-

stitutes a “Consumer Fraud Act” claim. Defendants submit that a search of the pleadings, however, reveals that the Consumer Fraud Act was never plead.

For these reasons, Defendants request that Count One – Tax/Mortgage Escrow Fraud; Count Two – Common Law Fraud; and Count Four – Negligent Misrepresentation of Plaintiffs’ complaint be dismissed pursuant to R. 4:6-2(e).

In Plaintiffs’ Opposition, they assert that the Complaint “properly states Claims against Defendant for Violation of The CFA.” [sic] Plaintiffs’ Opposition lacks clarity. For completeness of the record, Plaintiffs’ argument states:

Notwithstanding the Complaint is clear and has more than sufficient statements of claim as an example the Complaint specifically identifies the actions of Defendants and how these actions are wrongful actually, it describes in more than necessary detail the facts that the Defendants tort arises from a violation of Fraud because they attempted to offer a welcome stranger methodology to a new Homeowner by escalating the valuation of the home while the residence was unoccupied without a Certificate of Occupancy. The increased valuation of the home while the residence was unoccupied without a certificate of Occupancy. The increase valuation of the subject property was done at the purchased it was a shell of Building because it has been gutted without a Certificate of Occupancy it is a violation and is considered unconstitutional under New Jersey Law. It indicated that the Spot Assessing prohibition

is restricted and statutes in New Jersey prohibit this practice of assessment maintenance which is considered an unlawful unconstitutional device creating spot assessing. The residents at 380 Claremont Rd Bernardsville NJ. In 2013, was under construction a “Shell of Building and its valuation upon completion was supported to be carried forward in 2019. On the contrary, knowingly the Defendants and intentionally double the valuation of the residents for 2013, without a district-wide reassessment or zoning changes. The valuation could not be characterized as un “update” because the subject property was a “shell of Building” without a Certification of occupancy.

Plaintiffs’ Opposition p. 6-7.

Plaintiffs submit that “in order a Motion To Be Dismiss, the Complaint needs merely to allege that the Defendants made misrepresentations in connection with the offer or provisions of services to the public that the Plaintiff suffered an ascertainable loss, and that the ascertainable loss resulted from the Defendants’ misrepresentations.” Plaintiff asserts that in order to prevail as per CFA, a Plaintiff need only to demonstrate a causal connection between the unlawful practice and ascertainable loss. [sic] Plaintiff indicates that the Complaint, repeatedly alleges all three elements, it states a claim under the Consumer Fraud and Defendants notion should be denied.

Plaintiffs’ Consumer Fraud Act claim fails under *Ramapo Brae Condo v. Bergen County Hous. Auth.*, 328 N.J. Super. 561 (App. Div. 200), aff’d o.b. 167 N.J. 155 (2001). Public entities are not subject to suit

under the Consumer Fraud Act. In *Ramapo Brae*, the Appellate Division affirmed a dismissal of the plaintiff's CFA claim, noting that the Act permits strict liability in some circumstances and mandates treble damages for a violation. *Id.* At 575. The court reasoned that these features of the CFA are inconsistent with the Legislature's long-standing reluctance to impose either punitive awards or novel causes of action on public entities. *Id.* Additionally, any of Plaintiffs' claims relating to the assessments conducted between 2012 through 2015 are time barred. The Consumer Fraud Act contains a six-year statute of limitations. *See Trinity Church v. Lawson-Bell*, 394 N.J. Super. 159, 170 (App. Div. 2007); *See also*, N.J.S.A. 2A:14-1.

The Court further agrees that Plaintiffs indeed failed to allege sufficient facts as to meet the heightened pleading standard of R. 4:5-8(a). Plaintiff has not provided any specificity as to the particulars about who, when, how and what concerning the alleged fraud. This Court also agrees with the Defendants' argument that Plaintiffs failed to set forth allegations concerning the identities of the individuals employed by the Borough who made the alleged misrepresentation. Plaintiffs' Opposition also lacks any specific allegations, other than conclusory statements, to show Defendants had knowledge of the falsity of the representations made. For the foregoing reasons, Defendants' motion to dismiss shall be GRANTED as relating to Count One, Count Two and County Four of Plaintiffs' complaint. Those Counts will be dismissed without prejudice.⁸

⁸ Although in this opinion the Court has also dismissed Plaintiffs' Complaint with prejudice for reasons set forth herein.

D. Applicability of the New Jersey Tort Claims Act

Defendants aver that the New Jersey Tort Claims Act, N.J.S.A. 59:1-2, et seq. (hereinafter the “TCA”) serves to bar Plaintiffs’ claims and provides immunity to Defendants. Therefore, Plaintiffs’ complaint must be dismissed pursuant to R. 4:6-2(e), according to Defendants.

The TCA governs claims against public entities such as the Defendants. Historically, in response to the Supreme Court’s abrogation of the common law doctrine of state immunity from tort liability in *Willis v. Dept. of Cons. & E. Dev.*, 53 N.J. 534 (1970), our legislature enacted the RCA. Among other things, the TCA re-established the presumptive immunity of public entities unless liability is expressly allowed. *Berg v. State*, 147 N.J. Super. 316 (App. Div. 1977). The Legislature declare:

the public policy of the state that [a] public entity shall only be liable for their negligence within the limitations of this act and in accordance with the fair and uniform principles established herein.

[N.J.S.A. 59:1-2]

Similarly, N.J.S.A. 59:1-2(a) establishes that except as otherwise permitted by this act, a public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or public employee or any other person.

[N.J.S.A. 59:2-1(a)]

Thus, the basic legislative intent underlying the TCA was to re-establish immunity for public entities and public employees except under limited circumstances as specifically numerated in the act. *Birchwood Lake Colony Club v. Boro of Medford Lakes*, 90 N.J. 582 (1982).

1. Must Plaintiffs' Claims be Dismissed for Failure to Comply with N.J.S.A. 59:8-3?

Defendants submit that the TCA requires that a timely Notice of Claim be presented prior to the institution of a new suit. In this regard:

[n]o action shall be brought against a public entity or public employee under this act unless the claim upon which it is based shall have been presented in accordance with the procedure set forth in this chapter.

[N.J.S.A. 59:8-3 (emphasis added).]

The TCA provides for a 90-day window for a plaintiff to file a notice after the tort occurred. N.J.S.A. 59:1-2. The notice must contain certain information about the claimant, the claim, and the tortfeasor(s), including, among other things, the post-office address of the claimant; the circumstances of the occurrence that gave rise to the claim asserted; a general description of the injury, damage or loss incurred; the name or names of the public entity, employee or employees causing the injury, damage or loss, or the amount claimed as of the date of presentation of the claim. N.J.S.A. 59:8-4. Failure to satisfy the notice requirements constitutes an absolute bar to

recovery against the public entity. *Karczewski v. Nowicki*, 1881 N.J. Super. 355 (App. Div. 1982).

Count Three – Unjust Enrichment of Plaintiffs’ complaint alleges that “the Defendants’ actions were negligent and proximately caused damages to Plaintiffs.” *See* Plaintiffs’ Complaint ¶ 36. Similarly, Count Four – Negligent Misrepresentation of Plaintiffs’ complaint alleges that “the actions of Defendants constitute negligence and were the direct and proximate cause of damages” to Plaintiff. *See* Plaintiffs’ Complaint ¶ 41. Plaintiffs allege that this conduct commenced in 2013 and continued until March 13, 2018. *See* Plaintiffs’ Complaint ¶ 38. Yet, Defendants assert that Plaintiffs failed to file any notice with the Defendants. *See* Certification of Anthony Suriano, Borough Clerk for the Borough of Bernardsville, ¶ 6. Defendants submit that to the extent Plaintiffs are alleging negligence by the Defendants, the failure to file a timely notice prevents Plaintiffs from maintaining such claims. Defendants indicate that even were Plaintiffs to file such a notice today, their claims would be barred.

Accordingly, Defendants contend that Count Three – Unjust Enrichment and Court Four – Negligent Misrepresentation of Plaintiffs’ complaint must be dismissed against all Defendants pursuant to R. 4:6-2(e) for failure to comply with N.J.S.A. 59:8-3.

Plaintiffs claim that their Complaint “describes in more than necessary detail the facts that the Defendants tort arises from a violation of fraud because they attempted to offer a welcome stranger methodology to a new homeowner by escalating the valuation of the home while the residence was unoccupied without a Certificate of Occupancy.” [sic]. Plaintiffs also noted

that “the Complaint clearly put Defendants on a fair notice at the charges against them by misrepresenting directly, expressly or by implication material aspects of the performance, efficacy nature, or central characteristics of the ‘Spot Assessing of the Subject property without a certificate of Occupancy by tripling the valuation while Borough employed the assessment methodology known as ‘welcome’, stranger which is unconstitutional under New Jersey Law.” Plaintiffs contend that “[t]he above is not an oversight it is categorized as an intentional tort.”

Plaintiffs’ Opposition does not address the issue as to whether Plaintiffs filed a timely notice with the Defendants under the TCA. In fact, Plaintiffs do not mention Notices of Claim under the TCA at all. It is apparent that Plaintiffs’ claims⁹ are tort-based claims that are subject to TCA notice requirements and, as such, pursuant to the TCA, since it is uncontradicted that Plaintiffs have not filed a Notice of Claim, the Court finds that Plaintiffs’ claims must be dismissed for failure to comply with N.J.S.A. 59:8-3.

2. Must Plaintiffs’ Complaint against Defendants be Dismissed Pursuant to N.J.S.A. 59:7-2?

It is well established in New Jersey that monetary damages are not available from public entities or government officials for claims relating to a tax assessment. *See General Motors Corp., supra*, 143 N.J. at 344. The TCA provides immunity to such entities and officials from damage claims. [N.J.S.A. 59:7-2]:

⁹ That is most of Plaintiffs’ claims

Neither a public entity nor a public employee is liable for an injury caused by:

- a. Instituting any judicial or administrative proceeding or action for or incidental to the assessment or collection of a tax.
- b. An act or omission in the interpretation or application of any law relating to a tax.

A “tax” is defined for the purposes of N.J.S.A. 59:7-2 as “a tax, assessment, fee or charge.” N.J.S.A. 59:7-1.

As noted in the 1972 Task Force Comment that was provided when the TCA was passed:

This chapter confers immunity upon public employees and public entities for their discretionary acts in the administration of the tax laws. Presumably this activity would be considered discretionary under existing law but it is desirable to make the immunity explicit in order to obviate the need for test litigation.

The comments to the Rule explain that this Chapter immunized municipalities and tax assessors for erroneous appraisals and assessments that may turn out to be erroneous.

In *General Motors Corp.*, *supra*, 143 N.J. at 350, the Supreme Court noted that important policy considerations also weigh in favor of precluding damage claims in tax cases. If permitted, a taxpayer could circumvent the filing deadlines for challenging a tax assessment, which would be contrary to law. In that case, the New Jersey Supreme Court agreed with the Appellate Division that the proper remedy for erroneous or improper assessments is through the mechanisms

provided for tax appeals before the County Board of Taxation and the Tax Court. *See also National Private Truck Council, Inc. v. Oklahoma Tax Commission*, 515 U.S. 582 (1995).

Defendants aver that the within matter is a clear attempt by Plaintiffs to recover monetary damages for claims relating to a tax assessment. Defendants maintain that Plaintiffs' purported damages are tied solely to the Subject Property's assessment and the alleged over-payment of taxes in years 2013 to 2018. *See* Plaintiffs' Complaint ¶ 5. Defendants claim that the assessment of the Subject Property is clearly an act as contemplated within N.J.S.A. 59:7-2. Therefore, Defendants contend they are immune from liability for any damages incurred by Plaintiffs as a result of the Subject Property's assessment.

Accordingly, Defendants submit that Plaintiffs' complaint must be dismissed for failure to state a claim pursuant to N.J.S.A. 59:7-2.

Plaintiffs submit that a public entity is liable for injury caused by fraud, malice, or willful misconduct. N.J.S.A. 59:2-10 [sic]. Plaintiffs argue that this is an intentional tort which did not cease in 2018. As a matter of fact, the Plaintiffs indicate that the Complaint fully represents the "crux" of the actual fraud because on March 13, 2018 upon the issuance of the Certificate of Occupancy by the Borough of Bernardsville and added assessed improvements in the account \$6500.00 were valued and taxed under the added Assessment Law. [sic]

In this Court's view, the Plaintiffs' counterargument is not "on point." For the reasons expressed above, this Court finds that under N.J.S.A. 59:7-2,

Defendants are not liable for any injury sought by Plaintiffs in their Complaint. This action was, in the Court's view, designed to prevent the very type of action that the Plaintiffs have sought to bring here. The statutory scheme in New Jersey was designed to provide property owners with a clearly defined process that is held by agencies that are specialized to address those matters. As part of the scheme, public entities and public employees are immune from suits such as the one Plaintiffs have brought here. The Defendants' Motion on that issue is GRANTED.

3. Should Plaintiffs' Fraud Claims against the Borough be Dismissed Pursuant to N.J.S.A. 59:2-10?

The Act exempts a public entity from liability "for the acts or omissions of a public employee constituting a crime, actual fraud, actual malice, or willful misconduct." N.J.S.A. 59:2-10. "Thus, there can be no vicarious liability by a public entity for intentional torts committed by its employees; that is, with respect to such intentional torts, the theory of respondeat superior does not apply." *Hoag v. Brown*, 397 N.J. Super. 34, 54 (App. Div. 2007). Here, Plaintiffs' complaint alleges the Defendants engaged in conduct that constitutes fraud.

Accordingly, Defendants assert that Count One – Tax/Mortgage Escrow Fraud; Count Two – Common Law Fraud; and Count Four – Negligent Misrepresentation of Plaintiffs' complaint must be dismissed against the Borough for failure to state a claim pursuant to N.J.S.A. 59:2-10.

The Court finds that under N.J.S.A. 59:2-10, the Borough is not liable for the acts or omissions of a

public employee constituting a crime, actual fraud, actual malice or willful misconduct. Since a public entity cannot be held vicariously liable for an employee's fraudulent conduct, the Plaintiffs' complaint must be dismissed against the Borough for that reason as well.

E. Do the Claims Against the Borough Administration and Clerk Fail as a Matter of Law?

Defendants submit that Plaintiffs' lengthy complaint never articulates any wrongdoing by the Borough Administrator or Clerk. Defendants maintain that the only time the Borough Administrator and Clerk are named in the complaint are in conclusory statements in relation to the Defendants collectively. Defendants aver that an in-depth review of the complaint makes it apparent that Plaintiffs are challenging the judgment of the Borough Tax Assessor and not any specific actions of the Borough Administrator or Clerk.

The basic obligation of a municipal tax assessor is to assess all real property "according to the same standard of value," N.J. Const. art. VIII, § 1, ¶ 1(1)(a), and "without favor or partiality." N.J.S.A. 54:4-36. This duty requires the tax assessor be free from local interference in determining "the full and fair value of each parcel of real property situate in the taxing district at such price as, in his [or her] judgment, it would sell for at a fair and bona fide sale by private contract." *Casamasino v. City of Jersey City*, 158 N.J. 333, 344 (1999) (quoting N.J.S.A. 54:4-23).

The statutorily prescribed duties of the Borough Clerk, although broad, do not involve the valuation or assessment of real property. Defendants indicate that

Plaintiffs' complaint fails to allege that the Borough Clerk acted outside the scope of his authority, or that he interfered in the tax assessment of the Subject Property. Defendants assert that the failure to allege any wrongdoing by the Borough Clerk renders any claim against him legally deficient, and, therefore must fail as a matter of law.

Similarly, Defendants claim that Plaintiffs' complaint does not contain a single allegation of any specific wrongdoing on the part of the Borough Administrator. Defendants indicate that this failure is likely due to the fact that the Borough Administrator was not employed by the Borough until February 8, 2021, approximately three (3) years after the alleged wrongful conduct ceased. This fact alone warrants dismissal of the Borough Administrator as the "alleged facts apparent on the face of the challenged claim" do not please a cause of action. *Rieder v. State, Dep't of Transp.*, 221 N.J. Super. 547, 552 (App. Div. 1987).

Accordingly, Defendants contend that all claims against the Borough Administrator and Clerk fail as a matter of law and consequently should be dismissed. Defendants also submit that Plaintiffs' Opposition makes no effort to oppose those parts of the Defendants' Motion seeking dismissal of all claims against the Borough Administrator and the Borough Clerk.

Because the Borough Administrator and the Borough Clerk have no duties relating to the valuation or assessment of real property, they cannot be liable for Plaintiffs' alleged injuries. Nor have Plaintiffs included any allegations in the Complaint or in its opposition motion papers that in any way tie them to the Plaintiffs' alleged damages. For the foregoing reasons, this Court finds that Plaintiffs' claims against

the Borough Administrator and the Borough Clerk fail as a matter of law and with prejudice.

CONCLUSION

For the reasons expressed herein, the Defendants' Motion to Dismiss is GRANTED. Plaintiffs' Complaint will be dismissed with prejudice.

**ARSENIS COMPLAINT FILED IN SUPERIOR
COURT OF NEW JERSEY, BERGEN COUNTY
(MAY 14, 2021)**

SUPERIOR COURT OF NEW JERSEY

C. Arsenis

380 Claremont Rd

Bernardsville NJ 07924

(732) 302-0027

Superior Court of New Jersey
Law Division/Bergen County

C. Arsenis., S. Arsenis., Arsenis G.,

Plaintiff's/Escrow,

v.

Borough of Bernardsville, Edward Kerwin, Tax
Assessor, Tom Czerniecki, Borough Administrator,
and Anthony Suriano, Borough Clerk, John Does
1-10 and ABC Corporation 1-10 (Collectively)

Defendants.

Docket No. [blank]

COMPLAINT

Plaintiff's C. Arsenis, S. Arsenis, G. Arsenis/Escrow (collectively "Plaintiffs"), file the following Complaint against Defendants the Borough of Bernardsville, Edward Kerwin, Tax Assessor, Tom Czerniecki, Borough Administrator, Anthony Suriano, Borough Clerk, John Does 1-10 and ABC Corporations 1-10 (collectively "Defendants") and state.

I. Introduction

1. Plaintiff's/Escrow brings this action to recover in excess of \$251,815.00 in damages they have suffered since 2013 as result of the Defendants' scheme to defraud the established escrow with Blue Foundary Bank at 19 Park Avenue, Rutherford, New Jersey of the subject property at 380 Claremont Rd Bernardsville New Jersey 07924 by submitting false and fraudulent Property Records Cards on a yearly basis for a house without a Certificate of Occupancy since March 2013 located in the taxing District of Bernardsville at 380 Claremont Road Bernardsville New Jersey 079211 Block:16 Lot 6.01 District 1803 Bernardsville Boro.

2. At a time when citizens of the State of New Jersey, residents, and business owners struggle with the escalating cost of taxes to have their assessment reviewed annually. The "high End" properties share an unjustifiable portion of the Bernardsville Boro's tax burden. Noted, as a recent example for the tax year 2020 the equalization ratio for Bernardsville Boro is 100%. In other words, a taxpayer such as the Plaintiff's/Escrow who received their 2020 Property Record Card assessment for \$3,209,800 are actually being tax as if the property is worth \$3,209,800. Although, the city's ratio is at or near 100%, the home is

incorrectly value due to over aggressive reassessments. Nevertheless, the property tax rate is expected on a yearly basis to significantly rise to cover loss of revenue for the municipality. After all, properties are not assessed by the municipality on a “market value” via Mr. Kerwin the assessor but simply put are assessed to cover the loss of revenue.

As a result, it is the statutory responsibility of the administrators to fairly apportion the burden of property taxation. Defendants, the Taxing district of Bernardsville Boro and their Assessor Mr. Edward Kerwin, Tom Czerniecki, Borough Administrator, Antony Suriano, Borough Clerk. John Does 1-10 and ABC Corporation 1-10 (collectively) for their own financial gain, engaged in a scheme to defraud Plaintiff's/Escrow by misrepresenting their taxes, Property Record Card. Tax increases and the city's ratio, at a near 100% for the subject property home without a Certificate of Occupancy from 2013 until March 13, 2018 while the home was going through a complete thorough rehabilitation. That's being said, the above referenced subject property was gutted, not occupied and only the four exterior walls were standing, in other words the house was just a “Shell of a Building”. The Taxing district (Borough of Bernardsville) via Mr. Edward Kerwin their assessor misrepresented material facts such as the physical condition of the house a “Shell of a Building” (Exhibit), for an unoccupied home without a Certificate of Occupancy. He failed to disclose material information including “Spot Assessing” which is unconstitutional, illegal as per the Supreme Court Decision because it shifts the tax burden to new owners in the municipality Citing “Township of West Milford vs Gerald and Juanita Van

Decker" taxes, statutory apportion for a gutted house with four exterior walls still standing while the house was going through a thorough rehabilitation (construction process). Just to name a few removing the asbestos from the interior walls and under layers of the subflooring, replacing caved studs, beams in order to support the structure of the house as old as this one, built in 1903 (Exhibit Asbestos, gutted house). Despite the said, the Taxing District of the Boro of Bernardsville through their assessor Mr. Kerwin after Spot Assessing" kept escalating the taxes on a yearly basis the house had already obtained the Certificate of Occupancy and the residents were occupying it. All in all, in violation of the "Spot Assessing". Citing "Township of West Milford vs Gerald and Juanita Van Decker" the laws and regulations which govern the practice of assessing taxpayers in New Jersey and the common law of this state, it is illegal, unconstitutional and deceives the public. As the above Supreme Court Decision affirmed. "The practice of reassessing properties solely because those properties have been sold in the previous year is unconstitutional, because it shift the tax burden to new owners in the municipality."

This type of Fraud further inflates residential taxpayers costs to Plaintiff's/Escrow and undermines the fair, statutory apportion and lawful delivery of tax assessment services to all residential taxpayers in New Jersey.

3. Defendants the municipality of the Borough of Bernardsville, Edward Kerwin, Tax Assessor, Tom Czerniecki, Borough Administrator, Antony Suriano, Borough Clerk. John Does 1-10 and ABC Corporation 1-10 (collectively are engaged in a pattern of Fraud

and abuse against Plaintiff's/Escrows, residential taxpayers, and all residential taxpayers in New Jersey and the public.

4. Defendants routinely submitted yearly escalating/rising tax assessments for a full range of an unoccupied home without a Certificate of Occupancy since the tax year of 2013 until March 13, 2018. Defendants motivation for the scheme is clear. To date Defendants have collected over \$\$251,815.00 in residential taxes submitted to the escrow established by Blue Foundary Bank at 19 Park Avenue Rutherford New Jersey, 07070 who disbursed to the Defendants without investigating the apportion of the subject property's taxation by ignoring the Builder's Risk Insurance provided to the Bank by the Plaintiffs at the inception of the construction in 2013. Doubtless, no due diligence was noted on behalf of Blue Foundary Bank.

The above set forth fully misrepresents the nature of the unqualified yearly tax assessments (Property Record Cards) provided to the Plaintiff's/Escrow for a home without a Certificate of Occupancy. A home such as this going through a complete rehabilitation (being gutted) including asbestos removal since 2013. Noted through the removal of asbestos the state of New Jersey was involved, the New Jersey Department of Environmental Protection (Exhibit Asbestos removal).

Moreover, the municipality's construction department was involved with the issuance of the permits, architectural demolition plans, passing inspections or facilitating them and notifying the Assessor Mr. Kerwin for the above. Generally, speaking the municipality of the Boro of Bernardsville was totally

involved as they were in the center stage of the rehabilitation process of the gutted home. Therefore, the municipality was cognizant of the rehabilitation process, in spite of the aforesaid they kept escalating the taxes through Mr. Kerwin their assessor, Tom Czernieck Borough Administrator and Anthony Suriano, Borough Clerk John Does 1-10 and ABC Corporations 1-10 (collectively “Defendants”) under the terms of the illegal unconstitutional “Spot Assessing” without including the depreciation factor, the depreciation of “a Shell of a Building”.

Granted ignoring New Jersey Property Taxpayer’s Bill of Rights PL 2017, C128, N.J.S.A 54:1-2

5. Even so, a home without a Certificate of Occupancy going through a rehabilitation process such as the subject property, been gutted with the exterior walls only standing (“Shell of a Building”). First is depreciated indeed (emphasis added). The Property Record Cards at the time of purchase indicated taxes in the amount of \$43,317.00 with assessed value in the amount of \$2,489,500, a tax rate of 1.74, and land value of \$664,000.00 for 380 Claremont Road Bernardsville NJ 07924 Block 16. lot 6.01 and Lot 5. (Exhibit Tax Record History Table)

At the time of demolition, construction and rehabilitation of the subject property the depreciation factor of the “Shell of a Building” is calculated as follows:

Tax Year:	2013
Total Assessment:	\$ 2,979,400
Taxable Amount:	\$ 53,301
“Spot Assessing”:	9,984.00
“Depreciation Factor”:	
“Shell of a Building”:	

Tax Year:	2014
Land:	664,000
Total Assessment:	\$ 3,058,300
Taxable Amount:	\$ 55,936
“Spot Assessing”:	
“Depreciation Factor”:	\$38,936
“Shell of a Building”:	\$17,000

Tax Year:	2015
Land:	664,000
Total Assessment:	\$ 3,139,800
Taxable Amount:	\$ 57,678
“Spot Assessing”:	
“Depreciation Factor”:	\$40,678
“Shell of a Building”:	\$17,000

Tax Year:	2016
Land:	664,000
Total Assessment:	\$ 3,173,900
Taxable Amount:	\$ 59,542
“Spot Assessing”:	
“Depreciation Factor”:	\$42,542
“Shell of a Building”:	\$17,000

Tax Year:	2017
Land:	664,000
Total Assessment:	\$ 3,081,800
Taxable Amount:	\$ 59,386
“Spot Assessing”	
“Depreciation Factor”:	\$42,386
“Shell of a Building”:	\$17,000

Tax Year: 2018
Land: 628,000
Total Assessment: \$ 2,949,600
Taxable Amount: \$ 58,727
“Spot Assessing”:
“Depreciation Factor”: \$41,727
“Shell of a Building”: \$17,000

Tax Year: 2019
Land: 588,000
Total Assessment: \$ 3,320,000
Taxable Amount: \$ 53,301
“Spot Assessing”:
“Depreciation Factor”:
“Shell of a Building”: \$67,662-43,317+6500
(improvements)=17,845

Tax Year: 2020
Land: 536,000
Total Assessment: \$ 3,200,000
Taxable Amount: \$ 53,301
“Spot Assessing”:
“Depreciation Factor”:
“Shell of a Building”: \$67,534.19-43,317+6500
(improvements)=17,717

Total Money to Tax Payer in Overpayment = \$251,815.
00 not included interest, tremble damages investigation fees and punitive damages. the Property Record Card shows a total assessment of 2,489,500, deducting the land value in the amount of \$664,000 and the remaining total value of the building is the amount of

1,825,500.00 times the depreciation factor of a “Shell of the Building” = 17% which is calculated in the amount \$310,335.00 for the years under construction such as 2014 plus the land value the total assessment should have been for 2014 \$974,335 with total tax equals \$17,820.05 instead it was taxed in the amount of \$55,936.00. In 2015 it was \$57,678.00, 2016 it was taxed \$59,542, 2017, It was taxed 59,386.00, until March 13, 2018 it was taxed \$58,726.00 and in 2019 he added cost of improvements factor of \$6500.00 with a total of \$67,662.00 and in 2020 the total assessment was \$3,209,000 with taxes in the amount \$67,534.19.

The above set forth fully represents the “Crux” of this Complaint of Fraud. On March 13, 2018 the issuance of the full Certificate of Occupancy was issued by the Borough of Bernardsville. At that juncture, the added assessments such as the cost of improvements in the amount of taxable dollars of \$6,500.00 were valuated and taxed under the Added Assessment law.

As soon as the rehabilitation process was over which in this case the issuance of the full Certificate of Occupancy was received on March 13, 2013 the taxes started escalating from the Depreciation amount \$17,820 to the original amount of \$43,317 adding assessments such as the improvement costs into the ratio value of the home.

Needless to say, at the same time a notification to the plaintiffs was never issued to inform them for the increase of the taxes from the depreciation amount to the original \$43,317 tax plus the added assessments, under the added assessment law.

6. On the contrary, nothing of the above, occurred, the taxes kept escalating on a yearly basis and the

municipality was reaping the benefits of the unqualified, unjustifiable revenue. Tellingly, the municipality of Bernardsville knowingly, and intentionally through their assessor Mr. Edward Kerwin, and Tom Czernieck, Borough Administrator Anthony Suriano Borough Clerk their construction and building department being involved with the issuance of construction permits were individuals working for the tax district including the construction department employees involved with the rehabilitation process of the home.

7. Defendants John Does 1-10 are individual and municipality tax employees, taxing district construction workers who committed, participated in solicited others to engage in, and knowingly assisted conspired with or urged others to committed the fraudulent and wrongful acts set forth herein.

8. Defendants ABC Corporation 1-10 are those corporation which committed participated in solicited others to engage in, and knowingly assisted conspired with or urged others to commit the fraudulent and wrongful acts set forth herein.

III. Venue of Jurisdiction

9. Venue is placed properly before this court because Plaintiff's/Escrow established by Blue Foundary Bank at 19 Park Avenue Rutherford NJ 07070 actually does business in this county and solicit business in this county.

10. Defendants are subject to jurisdiction in New Jersey because they sustain contact with the State of New Jersey. Among other things, Defendants actively assess residential tax payers, and they are involved in the valuation of the subject property including the tax

rate which in reality represents rise in residential /taxes to compensate from the continuous loss of revenue. As a result, they submit Property Record Cards to residents like the above captioned subject property as if their property is worth \$3,209,800 today without taking into consideration the market value of the property and surely, the timely issuance of the Certificate of Occupancy (March 13,2018) and the depreciation factor for a "Shell of a Building" also for the previous years 2014, 2015, 2016, 2017 and 2018.

IV. Background

11. Plaintiff's purchased the subject property on December 31, 2012 Plaintiff's represented that they are and will "remain" through the term of the Occupancy at 380 Claremont Rd, Bernardsville NJ 07924. Block: 16 Lot: 6.01 District 1803 Somerset County Bernardsville Boro, in compliance with all applicable federal and state laws and regulations related to the Residential taxing codes including without limitations, statutes and regulations related to Fraud, abuse (and) False assessor's Market Value: since January 1, 2013 in the amount \$53,301. (such as "Spot Assessing" Citing "Township of West Milford vs Gerald and Juanita Van Decker" the laws and regulations which govern the practice of assessing taxpayers in New Jersey and the common law of this state, it is illegal, unconstitutional and deceives the public. As the above Supreme Court Decision affirmed. "The practice of reassessing properties solely because those properties have been sold in the previous year is unconstitutional, because it shifts the tax burden to new owners in the municipality."

12. Likewise, the taxing district should be in compliance by notifying the residential taxpayers of overpayments to the taxing District Boro of Bernardsville and the Municipality agrees to cooperate with the residential taxpayers to secure refunds of any such overpayments within a reasonable time.

13. Pursuant to N.J.S.A the municipality of Bernardsville agrees to accept and comply with policies of which Defendants know or reasonably have/known policies, regulations, federal, state laws, regulations made available to the Bernardsville Boro, assessor's and other workers, employees involved in the rehabilitation process of the home at 380 Claremont Rd Bernardsville NJ 07924 Block: 16, Lot: 6.01 District 1803(A gutted house with 4 walls standing) "A Shell of a Building" (emphasis added).

14. Pursuant to N.J.S.A the Boro of Bernardsville agrees to "refund promptly to the Plaintiff's /Escrow any tax overpayments"

V. Residential Tax Billing

15. At all times material hereto, Plaintiff's/ Escrow paid taxes to the Boro of Bernardsville through their escrow at Blue Boundary Bank pursuant to and in reliance upon receipt of the (Property Record Cards) (Exhibit History of Taxes for the subject property).

16. Plaintiff's/Escrow, in good faith, rely on the taxing district Boro of Bernardsville and Assessor's Market Value to input the current assessed valuation of the home (in this case without a Certificate of Occupancy from 2013 until March 13, 2018) that most properly and accurately describes the current assessed value for an unoccupied house, thus, without a

Certificate of Occupancy from January 2013 until March 13, 2018. Defendants such as the Boro of Bernardsville in this case are aware of Plaintiff's/Escrow intention to rely upon the information contained in the Property Record Cards on a yearly basis. Plaintiff's/Escrow rely on the accuracy of the information and representation made by the tax district Boro of Bernardsville. (The Property Tax Record Card(s))

VI. The Scheme to Defraud

17. At all times hereto, The Boro of Bernardsville was submitting tax assessment via the Property Record Cards on a yearly basis and received disbursement for taxes from the Plaintiff's/Escrow established escrow account with Blue Boundary Bank located at 19 Park Avenue Rutherford NJ 07070.

18. Beginning in on January 2013 the Defendants entered into a scheme to defraud Plaintiff's/Escrow and submitted Property Record Cards which contained knowingly false and misleading information, misrepresented the assessor's valuation of the home. From 2013 till March 13, 2018 for a house without a Certificate of Occupancy and failed to disclose information which affected Defendants right to payment in violation of the New Jersey Tax Fraud and Common Law.

COUNT ONE TAX/MORTGAGE ESCROW FRAUD

19. Plaintiff's/Escrow repeats and incorporate herein by reference the allegations contained in paragraphs 1 through 19 of this Complaint.

20. By submitting Property Record Cards for payments to Plaintiff's/Escrow, the Defendants expressly represented that they had performed their due diligence; that the information and statements contained in the Property Record Cards were true for a home without a Certificate of Occupancy from 2013 until March 13, 2018. However, the Defendants' scheme to defraud the Plaintiff's/Escrow knowingly and intentionally by,

- (A) keep submitting high taxes for every year for a house without Certificate of Occupancy
- (B) received payments for the said, subject property as part for the scheme to defraud the Plaintiff's/Escrow knowingly submitted tax claims and received payments which were not eligible for payment.
- (C) The Defendants misrepresented the nature and scope of their services provided such as "Tax Property Record Cards" and concealed or fail to disclose that they were not eligible for the escalating payments from January 2013 till March 13, 2018. "Spot Assessing" and "the Depreciation Factor of a Shell of a Building"

21. On the contrary, Defendants' contact constitutes a pattern of fraud and violation of the N.J.S.A____ tax mortgage/escrow fraud so that Plaintiff's/Escrow is entitled to recover treble damages.

In receiving payments from Plaintiff's/Escrow, the Defendants acted in bad faith and with actual malice within the meaning of the N.J.S.A____ tax mortgage/escrow fraud are liable for punitive damages.

22. The information concealed and not disclosed by the Defendants was material to their tax claims, affected their right to payment(s) and if disclosed would have caused Plaintiff's/Escrow to deny payment for their ineligibility of the "high end" residential taxes for the subject property.

23. The Defendant's submission of false and fraudulent tax claims constitutes a pattern of violation within the meaning of the tax fraud by the Boro of Bernardsville, Mr. Kerwin tax assessor, Toni Czerniecki, Borough Administrator, Anthony Suriano, Borough Clerk, employees, construction zoning department and all involved in the fraudulent scheme.

24. In reliance on the false, fraudulent tax Property Record Cards submitted by the Defendants, Plaintiff's/Escrow paid Defendants in excess of in the amount of \$____ in claims ineligible for payment.

25. As a result of the Defendants scheme to defraud and pattern of violations of the tax fraud N.J.S.A____ tax mortgage/escrow fraud has suffered damages including but not limited to all amounts paid for improperly taxed, the cost of investigation, because they defrauded the escrow.

26. Pursuant to the, the Plaintiff's/Escrow is entitled to compensatory damages, including but not limited to their cost, and is entitled to recover treble damages because the defendants engaged in pattern of violations of the N.J.S.A____ tax mortgage/escrow fraud.

WHEREFORE, Plaintiff's/Escrow demands judgment in their favor and against Defendants for all their damages, including costs, cost of investigation

fees, interest and tremble damages under the New Jersey Tax Fraud Prevention Act.

**COUNT TWO
COMMON LAW FRAUD**

27. Plaintiff's/Escrow repeats and incorporate herein by reference the allegations contained in paragraph 1 through 27 of this Complaint

28. As part of the scheme to defraud, the Defendants intentionally submitted false Property Records Cards in order to procure payments for ineligible tax reimbursements(s).

29. In reasonable reliance on the false tax claims.

WHEREFORE, Plaintiff's/Escrows demands judgment in their favor and against defendants for all their damages, including costs, cost of investigation fees, interest and tremble damages under New Jersey Tax Fraud and Mortgage Escrow Fraud.

**COUNT THREE
UNJUST ENRICHMENT**

30. Plaintiff's/escrow repeats and incorporate herein by reference the allegations contained in paragraph I through 29 of this Complaint.

31. As set forth fully above the Defendants engaged in a scheme or practice pursuant to which they improperly and fraudulently billed for taxes or otherwise ineligible for reimbursement.

32. As part of this scheme and/or practice, the Defendants negligently, carelessly, or intentionally submitted Property Record Card(s) which contained

false, inaccurate and incomplete statements which affected their right to payment.

33. The Defendants knew or should have known that the tax claims contained false, inaccurate and incomplete Property Record Cards which affected their right to payment and defrauded the escrow established with the Blue Foundary Bank Since 2013.

34. As a result, of the Defendants improper tax billing Plaintiff's/Escrow paid them in excess of \$_____ to which Defendants are not entitled.

35. Plaintiff's/Escrow reasonably and forceably relied on the Defendants' misrepresentations of issuing the proper Property Record Cards submitted by the Defendants.

36. The Defendants' actions were negligent and proximately caused damages to Plaintiff's/Escrow.

37. As a result of the Defendants fraud and improper billing the escrow at Blue Foundary Bank (19 Park Avenue Rutherford New Jersey 07070), occurred damages and Defendants have been unjustly enriched.

38. The harm suffered by the Plaintiff's/Escrow was actuated by bad faith and actual malice that is an intentional wrongdoing. A such, Plaintiff's/Escrow is entitled to receive punitive damages pursuant to N.J.S.A-2AL 15-5.10

WHEREFORE, Plaintiff's/Escrow demands judgment in their favor and against Defendants for all their damages, including costs, cost of investigation fees, interest and punitive damages.

COUNT FOUR
NEGLIGENT MISREPRESENTATION

38. Plaintiff's/Escrow repeats and incorporates herein by reference the allegations contained in Paragraph 1 through 37 of this Complaint.

39. The Defendants knew or should have known, or were deliberately ignorant that the Property Record Cards submitted misrepresented/defrauded the actual taxes. From 2013 to March, 13, 2018 including 2019, and 2020 that this would have caused Plaintiff's/Escrow to disburse tax payments to the Defendants that they were not entitled to receive.

40. The Defendants had a duty and responsibility to verify the accuracy and completeness of information contained on The Property Record Cards [] submitted to Plaintiff's/Escrow bearing their approval.

41. Plaintiff's/Escrows force-ably and reasonably relied on the Defendants' representations to their detriment in issuing tax payments to the Defendants.

42. The actions of the Defendants constitute negligence and were the direct and proximate cause of damages to Plaintiff's/Escrows.

43. As a result, Plaintiff's/Escrows have been damaged

WHEREFORE, Plaintiff's/Escrow demands judgment in their favor and against defendants for all their damages fees, interest and for punitive damages.

**COUNT FOUR
TAX FRAUD, FRAUD, NEGLIGENT
MISREPRESENTATION, UNJUST
ENRICHMENT VS JOHN DOES 1-10 AND ABC
CORPORATIONS 1-10**

43. Plaintiff's/Escrow repeats and incorporate herein by reference the allegations contained in paragraph 1-through 43 of this Complaint.

44. At all times material hereto Defendants John Does 1-10 were individuals who committed, participated in solicited others to engage in and knowingly assisted conspired with or urged the Defendants named herein to commit the fraudulent acts set forth in this Complaint.

45. As a result of the wrongful acts of John Does 1-10 and ABC Corporations 1-10. Plaintiff's/Escrow has suffered damages including but not limited to all amounts paid for improperly tax billing procedures and the cost of the investigation of the loses.

46. Pursuant to the N.J.S.A Tax Fraud and Mortgage Escrow Fraud Plaintiff's/Escrow is entitled to all compensatory damages, including but not limited, to their costs, fees interest and are entitled to recover treble damages because Defendants engaged in a pattern of violations of the N.J.S.A Tax Fraud and Mortgage Escrow Fraud.

WHEREFORE, Plaintiff's/Escrow demands judgment in their favor and against all Defendants John Does and ABC Corporation 1-10 for all their damages including costs. Fees, a 12% annual interest from 2013 to 2020, for punitive damages and for treble damages under the New Jersey Fraud Act.

Respectfully,

Submitted by

s/C. Arsenis

s/S. Arsenis

s/G. Arsenis

Each as a pro se

cc. John R. Pidgeon
Borough of Bernardsville Attorney

cc. Edward Kerwin Assessor
Tom Czernicki Borough Administrator
Anthony Suriano Borough Clerk.

Dated: 05/14/2021

**ARSENIS PETITION FOR CERTIFICATION
TO REVIEW FILED IN THE
SUPREME COURT OF NEW JERSEY
(AUGUST 29, 2023)**

Michael Confusione (Atty No. 049501995)

Hegge & Confusione, LLC
309 Fellowship Road, Suite 200
Mt. Laurel, NJ 08054

Mailing address:

P.O. Box 366
Mullica Hill, NJ 08062-0366
(800) 790-1550; (888) 963-8864 (facsimile);
mc@heggelaw.com
Attorneys for Petitioners

**SUPREME COURT OF NEW JERSEY
Docket No. 088460**

C. ARSENIS., S. ARSENIS.,
AND G. ARSENIS,

Plaintiffs-Appellants-Petitioners,

v.

BOROUGH OF BERNARDSVILLE, EDWARD
KERWIN, Tax Assessor, TOM CZERNIECKI, Borough
Administrator, and ANTHONY SURIANO, Borough
Clerk,

Defendants-Respondents.

Sat Below: Haas, J.A.D.
DeAlmeida, J.A.D.

Mitterhoff, J.A.D

Honorable Justices:

Petitioners C. Arsenis, S. Arsenis, and G. Arsenis submit this Petition for Certification to review the attached, published decision of the Superior Court of New Jersey, Appellate Division, Docket No. A-0603-21 (June 28, 2023). PA1.

QUESTION PRESENTED

Does the Superior Court have jurisdiction to adjudicate claims for monetary damages based on allegations that municipal officials committed fraud and other conspiratorial torts by assessing real property in an amount well above its market value, or are such claims “substantively equivalent to a tax appeal properly venued in the Tax Court or a county board of taxation” as the Appellate Division ruled in its published decision below?

MATTER PRESENTED

Plaintiffs filed a Complaint in the Law Division alleging that, from 2013 through 2019, defendants the Borough of Bernardsville, its tax assessor, its administrator, and its clerk, engaged in a scheme to defraud plaintiffs through the intentional over-assessment of plaintiffs’ property located at 380 Claremont Road. App. Div. Appx (“A”) 1. Plaintiffs alleged that the defendants created false property record cards for plaintiffs’ property that failed to note that the house on the property lacked a certificate of occupancy due to ongoing renovations, then used the false record cards to further their scheme. Defendants misrepresented the condition of plaintiffs’ home; set assess-

ments that were calibrated not to reflect true market value but to raise specific amounts of taxes; submitted the false property record cards to the bank maintaining the escrow account for plaintiffs' mortgage to fraudulently obtain tax payments on the property; and engaged in "spot assessing" in violation of New Jersey law (*Twp. of W. Milford v. Van Decker*, 120 N.J. 354, 365 (1990)).

Plaintiffs set forth in their Law Division Complaint causes of action for fraud and unjust enrichment (amongst others), and sought damages in the amount of the taxes they were forced to pay as a result of defendants' intentional wrongs, plus interest, treble and punitive damages, and fees. A1, PA5-6.

Plaintiffs alleged that defendants' conspiratorial scheme was to make the "high end" properties in the Borough—which included plaintiffs' and several other properties in the Borough—"share an unjustifiable portion of the Bernardsville Boro's tax burden. Noted, as a recent example for the tax year 2020 the equalization ratio for Bernardsville Boro is 100%. In other words, a taxpayer such as the Plaintiff's/ Escrow who received their 2020 Property Record Card assessment for \$3,209,800 are actually being tax[ed] as if the property is worth \$3,209,800. Although, the city's ratio is at or near 100%, the home is incorrectly value[d] due to over aggressive reassessments. Nevertheless, the property tax rate is expected on a yearly basis to significantly rise to cover loss of revenue for the municipality." A2.

Plaintiffs charged that "properties are not assessed by the municipality on a 'market value' via Mr. Kerwin the assessor but simply put are assessed to cover the loss of revenue." A2. The Borough's "Assessor Mr.

Edward Kerwin, Tom Czerniecki, Borough Administrator, [and] Anthony Suriano, Borough Clerk" all "engaged in a scheme to defraud Plaintiff's/Escrow by misrepresenting their taxes, Property Record Card." A2-3. "Tax increases and the city's ratio, at a near 100% for the subject property home" despite that the home was "without a Certificate of Occupancy from 2013 until March 13, 2018 while the home was going through a complete thorough rehabilitation." Plaintiffs' property "was gutted, not occupied and only the four exterior walls were standing, in other words the house was just a "Shell of a Building." Defendant Kerwin intentionally withheld material information in order to shift the tax burden to plaintiffs and other high end property owners. "The practice of reassessing properties solely because those properties have been sold in the previous year is unconstitutional, because it shift the tax burden to new owners in the municipality." A3-4. "This type of Fraud further inflates residential taxpayers costs to Plaintiffs" and "undermines the fair, statutory apportion and lawful delivery of tax assessment services to all residential taxpayers in New Jersey," plaintiffs charged. A4.

In furtherance of their knowing and intentional scheme, "defendants routinely submitted yearly escalating/rising tax assessments for a full range of an unoccupied home without a Certificate of Occupancy since the tax year of 2013 until March 13, 2018." A5. Defendants conspired to commit the same fraud and misrepresentation against other similar borough residents in order to unjustly enrich the Borough and, in turn, its acting officials. A5.

Plaintiffs detailed the overcharging by defendants for plaintiffs' "home without a Certificate of Occupancy

going through a rehabilitation process such as the subject property, been gutted with the exterior walls only standing ('Shell of a Building') . . . The Property Record Cards at the time of purchase indicated taxes in the amount of \$43,317.00 with assessed value in the amount of \$2,489,500, a tax rate of 1.74, and land value of \$664,000.00 for 380 Claremont Road Bernardsville NJ 07924 Block 16 Lot 6.01 and Lot 5." Plaintiff noted the Assessment History for their Property:

2019 Farm (Regular)

\$3,320,000
\$3,320,000
2.038
\$67,662

2018 Farm (Regular)

\$2,949,600
\$2,949,600
1.991
\$58,727

2017 Farm (Regular)

\$3,081,800
\$3,081,800
1.927
\$59,386

2016 Farm (Regular)

\$3,173,900
\$3,173,900
1.876
\$59,542

2015 Farm (Regular)

\$3,139,800
\$3,139,800
1.837

\$57,678

2014 Farm (Regular)

\$3,058,300

\$3,058,300

1.829

\$55,936

2013 Farm (Regular)

\$2,979,400

\$2,979,400

1.789

\$53,301

2012 Farm (Regular)

\$2,489,500

\$2,489,500

1.74

\$43,317

“The Property Record Card shows a total assessment of 2,489,500, deducting the land value in the amount of \$664,000 and the remaining total value of the building is the amount of 1,825,500.00 times the depreciation factor of a ‘Shell of the Building’ = 17% which is calculated in the amount \$310,335.00 for the years under construction such as 2014 plus the land value the total assessment should have been for 2014 \$974,335 with total tax equals \$17,820.05 instead it was taxed in the amount of \$55,936.00. In 2015 it was \$57,678.00 [;] 2016 it was taxed \$59,542[;] 2017, it was taxed 59,386.00, until March 13, 2018 it was taxed \$58,726.00 and in 2019 [defendants] added cost of improvements factor of \$6500.00 with a total of \$67,662.00 and in 2020 the total assessment was \$3,209,000 with taxes in the amount \$67,534.19.” A7.

In their motion to dismiss filed in response to plaintiff's Complaint, the Borough and its individual defendants contended that plaintiffs' claims were really property tax appeals over which the Law Division lacked jurisdiction. PA6, A37. "According to defendants, the Superior Court lacked jurisdiction to hear such claims and could not transfer them to the Tax Court or county board of taxation because they were filed long after expiration of the statutory deadlines for filing tax appeals for the tax years in question." PA6.

Plaintiffs replied that their Complaint was not akin to a tax assessment appeal but proper claims against the Borough defendants for their conspiracy to harm plaintiffs by intentional fraud and misrepresentation—claims that are cognizable in the Superior Court, no Tax Court. A63. "[T]he Complaint specifically identifies the actions of Defendants and how these actions are wrongful . . . [detailing] the facts that the Defendants' tort arises from a violation of Fraud because they attempted to offer a welcome stranger methodology to a new Homeowner by escalating the valuation of the home while the residence was unoccupied without a Certificate of Occupancy."

But the Law Division granted defendants' motion, ruling that plaintiffs' tort claims were equivalent to tax appeals over which the Superior Court lacked jurisdiction. PA7. Plaintiffs' Complaint "requires this court to examine the merits of the quantum and methodology of the Defendants' tax assessments in order to evaluate their claims," and "cognizable only in the Tax Court." A85. Though "[e]xceptions have been made for challenges to an assessor's overall procedures, as

contrasted with the assessment of a particular parcel of real property,” A87, plaintiffs’ Complaint centered on defendants’ assessment of a “shell building” without a certificate of occupancy having even been issued, which the trial court said fell within the Tax Court’s exclusive jurisdiction. A87-88.

Plaintiffs appealed, arguing to the Appellate Division (among other things) that their fraud and misrepresentation claims were beyond a tax appeal and were cognizable in the Superior Court – exceeding “a real property assessment” that is merely a statutory appeal to the Tax Court. *McMahon v. City of Newark*, 195 N.J. 526, 543 (2008); *Macleod, supra*, 330 N.J. Super. 505.

But the Appellate Division denied plaintiffs’ appeal. PA1. In its published decision issued below, the panel, citing this Court’s decision in *McMahon, supra*, 195 N.J. 529, said that the claims set forth in plaintiffs’ Complaint fell within a “tax matter” that could be heard only in the Tax Court:

It is well-established that a complaint challenging “the quantum or methodology applied in respect of” a municipal tax assessor’s assessment on real property “fall[s] squarely within the band of cases subject to the established tax appeal process.” *McMahon*, 195 N.J. at 543-44. The allegations set forth in plaintiffs’ complaint, even when given every inference favorable to plaintiffs, are plainly based on the quantum of the assessments the tax assessor placed on their property for the relevant tax years and the methodology he used to calculate those assessments. Plaintiffs allege that the assessor valued the

property without considering its condition due to ongoing renovations or the absence of a certificate of occupancy, and placed an erroneous added assessment on the property when the renovations were completed. In addition, they allege the assessor falsified the property record card for the property and used that erroneous information to calculate the assessments at issue. These allegations are precisely the type of arguments routinely raised in the Tax Court and county boards of taxation in tax appeals challenging assessments on real property. See e.g., *Brunetti v. Twp. of Cherry Hill*, 21 N.J. Tax 80, 82 (App. Div. 2002) (affirming Tax Court judgment upholding revision of assessment after tax assessor discovered error in property record card); *Aliotta v. Twp. of Belleville*, 27 N.J. Tax 419, 463-64 (Tax 2013) (valuing a residence based on its condition); *Consol. Rail Corp. v. Director, Div. of Tax.*, 18 N.J. Tax 291 (Tax 1999), *aff'd*, 19 N.J. Tax 378 (App. Div. 2001) (upholding assessment of partially completed improvements). Plaintiffs cannot transmogrify their routine tax appeals into tort claims to seek monetary damages against the tax assessor or, as explained more fully below, to avoid the strict statutory time limits applicable to tax appeals. [PA17-18]

That plaintiffs “seek damages measured by the amount of local property taxes they alleged to have overpaid bolsters our conclusion that their alleged tort claims are thinly veiled tax appeals,” the panel said.

“A reduction in the assessment on real property, which thereafter requires the municipality to refund overpaid local property taxes to the property owner, N.J.S.A. 54:3-27.2, is the remedy generally sought in a tax appeal. We do not suggest that a demand for damages must be measured by alleged overpaid taxes in order for a tort claim to be the substantive equivalent of a tax appeal. A complaint that measures damages in this fashion, however, is strongly indicative of a tax appeal properly venued in the Tax Court or county board of taxation. Our interpretation of plaintiffs’ claims is supported by the well-established premise that monetary damage may not be awarded against municipalities and municipal officials for claims arising from local property tax assessments.” PA19-20. Because plaintiffs’ Law Division Complaint was filed “after expiration of the statutory deadlines to file tax appeals,” the trial court properly declined to transfer plaintiffs’ claims to the Tax Court and dismissed plaintiffs’ Complaint instead, leaving plaintiffs with no remedy. PA21.

ARGUMENT

The Court Should Grant Certification to Review the Published Decision of the Appellate Division and Clarify Whether the Superior Court Has Jurisdiction to Adjudicate Claims for Monetary Damages Based on Allegations that Municipal Officials Committed Fraud and Other Conspiratorial Torts by Knowingly Assessing Real Property At an Amount Well Above Its Market Value

The Appellate Division ruled that the Superior Court does not have jurisdiction to plaintiffs’ claims

of conspiratorial fraud and misrepresentation against the Borough and its acting agents because such claims are “substantively equivalent to a tax appeal properly venued in the Tax Court or a county board of taxation.” This Court should grant Certification to address this are of law and hold that plaintiffs’ claims of fraud and misrepresentation – intentionally committed by agreement among the various named defendants — go beyond “a real property assessment” or “tax matter” under N.J.S.A. 2B:13-2 and are cognizable in the Superior Court, not only the Tax Court, - particularly where denial of Superior Court jurisdiction deprives the plaintiff of any forum to seek a remedy, as in plaintiffs’ case here (which was dismissed entirely in the courts below).

In *McMahon, supra*, 195 N.J. 543, the Court recognized that the action before it was not strictly a “tax matter” but a contract and estoppel case. *Id.* at 544. The plaintiff’s complaint did not deal with issues “uniquely cognizable within the tax appeal process” but to the more fundamental question of whether the city had breached its financial agreement with the plaintiff. *Id.* at 544-545. The Court held that the matter was therefore cognizable in the Superior Court, or under the rules of the American Arbitration Association; not in the Tax Court. *Id.* at 526.

The Court stressed the limited jurisdiction of the Tax Court again, five years later, in *Prime Accounting Dep’t v. Twp. of Carney’s Point*, 212 N.J. 493 (2013):

The Tax Court is a court of limited jurisdiction. *McMahon v. City of Newark*, 195 N.J. 526, 546, 951 A.2d 185 (2008). In accordance with its constitutional authority to “establish[], alter[] or abolish[] by law” courts of

limited jurisdiction, the Legislature created the Tax Court by statute in 1978. N.J. Const. art. VI, § 1, ¶ 1; N.J.S.A. 2B:13-1; see also N.J.S.A. 2A:3A-1, -3, repealed by L. 1993, c. 74, § 3. Its jurisdiction is constrained by the language of its enabling statutes. *See McMahon, supra*, 195 N.J. at 542, 951 A.2d 185; *Macleod v. City of Hoboken*, 330 N.J.Super. 502, 505-06, 750 A.2d 152 (App.Div.2000). The Tax Court has the authority “to review actions or regulations with respect to a tax matter” concerning state agencies and officials, county boards of taxation and county and municipal officials. N.J.S.A. 2B:13-2(a). In 1993, its jurisdiction was expanded to include “actions cognizable in the Superior Court which raise issues as to which expertise in matters involving taxation is desirable, and which have been transferred to the Tax Court pursuant to the Rules of the Supreme Court.” N.J.S.A. 2B:13-2(b). The Tax Court also has jurisdiction “over any other matters as may be provided by statute.” N.J.S.A. 2B:13-2(c). It may exercise “any powers that may be necessary to effectuate its decisions, judgments and orders,” N.J.S.A. 2B:13-2(d), and “grant legal and equitable relief so that all matters in controversy between the parties may be completely determined,” N.J.S.A. 2B:13-3(a). [Prime Acct. Dep’t, 212 N.J. at 505]

This case presents another opportunity for the Court to clarify the proper demarcation between a tort lawsuit brought by a taxpayer against her town and

its acting officials that is cognizable in the Superior Court, and a “tax matter” over which only the Tax Court “shall have jurisdiction,” N.J.S.A. 2B:13-2. Compare the decision in plaintiffs’ case here, for example, with *Del Priore v. Edison Twp.*, 26 N.J. Tax 502 (N.J. Super. Ct. Law Div. 2012), *aff’d*, A-4447-11T3, 2013 WL 2217325 (N.J. Super. Ct. App. Div. May 22, 2013) (holding Law Division, not Tax Court, had subject matter jurisdiction over appeal of township denial of taxpayer’s request for refund of property taxes, under statute governing exemption from local property taxes on dwelling house of a totally disabled veteran; taxpayer sought to compel township to issue refund, which was relief in the nature of mandamus cognizable only in Law Division); *James Const. Co. v. Dir., Div. of Taxation*, 18 N.J. Tax 224 (1999) (legislature did not expand subject matter jurisdiction of tax court to cover appeals from Department of Labor assessments when legislature enacted statute providing for tax court jurisdiction with respect to tax matter of any state agency or official); *N. Oraton Urban Renewal, L.P. v. City of E. Orange*, C-146-14, 2014 WL 12992898, at *5 (N.J. Super. Ct. Ch. Div. Oct. 20, 2014) (“In light of the holding in *McMahon v. City of Newark*, 195 N.J. 526, 951 A.2d 185 (2008), the Tax Court determined that the parties’ Count I claims and counterclaims are in the nature of contractual allegations properly venued in the Superior Court”).

The panel in its published decision below said, “We have previously recognized that the only remedy for alleged error in the assessment of real property by government officials is a timely tax appeal,” citing *Gen. Motors Corp. v. City of Linden*, 279 N.J. Super. 449, 469 (App. Div. 1995), *rev’d*, 143

N.J. 336 (1996). But that case involved negligence – not conspiratorial, intentional torts like plaintiffs' case here. A claim for negligence in the manner of assessment is far closer to a “tax matter” only cognizable in the Tax Court than claims alleging an agreement among the town's acting officials to implement a scheme to intentionally and knowingly overcharge “high end” properties within the town. The Court should grant Certification to clarify whether such claims of intentional and knowing torts go beyond a “tax matter” over which the Tax Court has sole jurisdiction.

REASONS FOR GRANTING CERTIFICATION

The Court should grant Certification to clarify when a taxpayer's claims of fraud and other conspiratorial and intentional torts against a town and its acting officials are cognizable in the Superior Court, and when they are “tax matters” within the exclusive jurisdiction of the Tax Court per N.J.S.A. 2B:13-2.

CONCLUSION AND CERTIFICATION

The undersigned certifies that this application is made in good faith, presents substantial questions, and is not brought for purposes of delay. In the event that the Petition is granted, petitioners reserve the right to seek leave to file a brief pursuant to R. 2:12-11.

Respectfully submitted,

/s/ Michael Confusione
Hegge & Confusione, LLC
Counsel for Petitioners

Dated: August ____ 2023