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Appellate Division Upholds Municipal Ordinances Imposing Regulatory and Inspection Fees on Landlords

On August 29, the New Jersey Appellate Division affirmed the decisions of several trial courts, ruling that a municipality may enact inspection and other "regulatory" fees on owners of rental properties.

At issue in *Christopher C. Cona v. Township of Washington* was whether certain fees imposed by municipalities were prohibited as solely revenue-generating fees. The Appellate Division consolidated three trial court decisions that all revolved around the same issue. In each case, the plaintiffs were landlords in a municipality that imposed registration and inspection fees, along with other inspection and regulatory requirements, prior to issuance of a license required to rent the units on the property.

Specifically, one of the defendant municipalities implemented an ordinance requiring landlords to "secure a license that attested that the rental unit had been properly registered." In order to properly register, the ordinance required an inspection for compliance with municipal housing codes and an annual registration fee. Another defendant municipality implemented an ordinance requiring an annual registration and payment of a fee, along with an inspection to ensure there were "no safety violations," prior to issuance of a license.

The plaintiffs relied on the previous Appellate Division decision in *Timber Glen Phase III, LLC v. Township of Hamilton*, 441 N.J. Super. 514 (App. Div. 2015), which held that a municipality's power to regulate does not include the power to require a license and payment of a fee. In that case, the only requirement to obtain the license was payment of a licensing fee. However, the court in *Timber Glen* noted that the opinion was confined to "the authority to license and did not address a municipality's regulatory or inspection authority." Each of the trial courts ruled against the plaintiffs and dismissed the complaints, differentiating the ordinances at issue from those that were voided in *Timber Glen*.

On appeal, the Appellate Division affirmed the trial courts' decisions, holding that the fees charged under the relevant ordinances were reasonably related to the municipalities' exercise of their obligation to promote the safety and welfare of their residents.

The Appellate Division differentiated between a fee charged by a municipality to offset costs of regulation and a fee charged simply to generate revenue, stating that a municipality may charge fees to defray the costs of regulation, but may not charge a fee solely for revenue generation purposes. In the instant case, the ordinances required landlords to comply with various regulations and pass an inspection, in addition to payment of a fee, in order to receive a license. In *Timber Glen*, the underlying ordinance required only payment of a fee to receive the license. This distinction in the ordinances led the court to conclude that the subject ordinances had regulatory qualities to them, and that the fees were to defray the costs of regulation. The ordinances were not solely impermissible taxes on landlords.

The Appellate Division decision provides some clarity as to what fees a municipality may impose on landlords, depending on whether the fee funds the costs of inspections and regulatory compliance or whether it generates money for the municipality only as a tax. It remains to be seen whether the plaintiffs will appeal to the New Jersey Supreme Court.

Should you have any questions concerning this decision or real estate matters in general, please contact the authors of this alert or any of the Day Pitney real estate team.

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