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 & Sugengran Hackensack LLC*

ARCOLO HACKENSACK LLC, SUGENSTEVE HACKENSACK LLC, SUGENCOLE HACKENSACK LLC, and SUGENGRAN HACKENSACK LLC,	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY
Plaintiffs	DOCKET NO.
v.	<u>Civil Action</u>
CITY OF HACKENSACK, PLANNING BOARD OF THE CITY OF HACKENSACK, and JOHN DOES 1-10 and ABC CORPS. 1-10 said names being fictitious,	COMPLAINT IN LIEU OF PREROGATIVE WRITS
Defendants	

Plaintiffs, Arcolo Hackensack LLC, Sugensteve Hackensack LLC, Sugencole Hackensack LLC and Sugengran Hackensack LLC, by way of Complaint in Lieu of Prerogative Writs against defendants, City of Hackensack, Planning Board of the City of Hackensack, and John Does 1-10 and ABC Corps. 1-10 said names being fictitious, say as follows:

THE PARTIES

1. Plaintiffs, Arcolo Hackensack LLC, Sugensteve Hackensack LLC, Sugencole Hackensack LLC and Sugengran Hackensack LLC (the “Plaintiffs”), are limited liability companies of the State of Delaware with offices in New Jersey c/o Andrew S. Kohut, Esq., Wells,

Jaworski & Liebman, LLP, 12 Route 17 North, Paramus, New Jersey 07653, and are the owners of property located at 440-68 Main Street, Hackensack, New Jersey 07601 and more formally known as Block 405, Lot 3 on the tax maps of the City of Hackensack. Plaintiffs acquired their interests in the Property on or about February 28, 2023, from affiliated entities Arcolo Limited Partnership, Sugensteve LLC, Sugencole LLC and Sugengran LLC, respectively.

2. Defendant, City of Hackensack (the “City” or “City Council” or “Defendant”), is a body corporate and politic of the State of New Jersey governed by a mayor and council having offices at 65 Central Avenue, Hackensack, New Jersey 07601.

3. Defendant, Planning Board of the City of Hackensack (the “Planning Board”), is the planning board of the City duly created pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. (the “MLUL”), and located at 65 Central Avenue Hackensack, New Jersey 07601.

4. Defendants, John Does 1-10 and ABC Corps. 1-10 (the “Unknown Defendants”), are fictitious entities and persons whose identities are not presently known and who may be the members, managing members, partners, shareholders, owners, officers, directors, agents, servants, public officials, council persons, employees and/or independent contractors of the Municipal Defendants, or that may be entities or agencies created and/or controlled by the Municipal Defendants, or who may be otherwise associated with the Municipal Defendants, and who are involved in the conduct forming the basis for the causes of action raised herein.

5. The City, Planning Board and the Unknown Defendants are sometimes collectively referred to as the “Defendants”.

FACTS COMMON TO ALL COUNTS

6. Plaintiffs are the owners of property located at 440-68 Main Street, Hackensack, New Jersey 07601 and more formally known as Block 405, Lot 3 on the tax maps of the City of

Hackensack (the “Property”). The Property and the building thereon are commonly known as the Sears Roebuck and Company Building (the “Sears Building”).

7. Upon information and belief, Transform Operating Stores, LLC is a limited liability company under the laws of Delaware and has been the ground lessee (the “Ground Lessee”) of the Property under a valid ground lease dated December 19, 1946, which was assigned to Ground Lessee out of the bankruptcy court from Sears Roebuck and Company (the original ground lessee) in or about 2019 (the “Ground Lease”).

8. The Property is one of the 389 lots designated as part of an area in need of rehabilitation known as “The Main Street Rehabilitation Area”, which was created by the City’s adoption of Resolution No. 208-11 on or about June 11, 2011, as permitted by the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the “LRHL”).

9. In furtherance of the Main Street Rehabilitation Area, the City Council adopted the “City of Hackensack Rehabilitation Plan for the Main Street Area in Need of Rehabilitation” on June 17, 2012 (the “Main Street Plan”).

10. On December 7, 2021, the City adopted the Sears Roebuck Company Redevelopment Plan, which impacts three lots within the Main Street Rehabilitation Area, one of which is the Property (the “Sears Plan”).

11. In response to separate appeals filed by the Plaintiff and Ground Lessee challenging the adoption of the Sears Plan, the City adopted an amendment to the Main Street Plan (the “MS Amended Plan”) by way of Ordinance No. 14-2022 on March 22, 2022, which superseded the Sears Plan.

12. In response, Plaintiffs (through their affiliated predecessors-in-interest) amended their Appeal and appealed the adoption of the MS Amended Plan.

13. On or about January 10, 2023, the City and the Ground Lessee entered into a settlement agreement with regard to Ground Lessee's appeal of the Sears Plan and other litigation between the two parties which, in part, would designate the Ground Lessee as the redeveloper of the Property for a to-be-delineated redevelopment area in coordination with a concept plan originated by the Ground Lessee (the "Ground Lessee Settlement").

14. The Plaintiff had no role or involvement in the Ground Lessee Settlement, only discovering the settlement after reviewing the agenda for City Council's meeting of January 10, 2023.

15. As a result of the legislative process that followed, the City adopted Resolution No. 294-23 on or about August 13, 2023, designating the Property as an area in need of Redevelopment for Non-Condemnation purposes (the "First Designation").

16. Plaintiff appealed the First Designation under case number Docket No. BER-L-365-22.

17. As a result of that appeal, on or about March 5, 2024, the City Council adopted Resolution No. 92-24 authorizing the Planning Board to undertake a preliminary investigation to determine whether the Property qualifies as an area in need of redevelopment with condemnation under the statutory criteria set forth in LRHL (the "Preliminary Investigation"), which resolution expressly repealed the First Designation, and as a result, Plaintiff's prior appeal under Docket No. BER-L-365-22 was rendered moot.

18. The Planning Board held a public hearing on the Preliminary Investigation at its meeting on February 12, 2025.

19. Plaintiff had no role or involvement in the City's decision to initiate the Preliminary Investigation and redesignate the Property to allow condemnation.

20. At the hearing, Francis Reiner LLA, PP, the City's Planner (the "City Planner"), provided a report entitled, "Report for Preliminary Investigation for Determination of an Area in Need of Redevelopment with Condemnation", dated January 2025, and testified as to his findings contained within the report.

21. The City Planner concluded that the Property satisfied the statutory criteria to be designated as an area in need of redevelopment with condemnation. The City Planner concluded that the Property satisfied criteria found at N.J.S.A. 40A-5(b) of the LRHL due to the Property purportedly being vacant in excess of two years, specifically since September 2020.

22. As stated in the City Planner's report, this conclusion was based on an investigation that solely consisted of an on-site inspection, a review of newspaper article(s) and a phone call with the City's Building Department. No other investigation as to the length or reasoning behind the vacancy was conducted by the City Planner.

23. The City Planner did not provide any other specifics of the status of the Property as of September 2020, including but not limited to, whether that date constituted when the existing tenant closed the business, when it was actually "vacated", what were the circumstances of the alleged vacation, or was there still a lease in effect after September 2020. These are but a few of the questions that should have been investigated but were not.

24. The City Planner did not interview the Plaintiffs, their affiliated predecessors-in-interest, or upon information and belief the Ground Lessee as part of his investigation.

25. Upon information and belief, the City Planner did not review the Ground Lease or any of the prior/current tenant leases for the Property as part of his investigation.

26. Upon information and belief, the City Planner did not review any marketing material used to attract potential tenants, investigate whether the Property was actively marketed for leasing or whether the Property was intentionally left vacant.

27. The City Planner's report did indicate that there was a tenant occupying a portion of the building.

28. On February 12, 2025, the City Planning Board unanimously recommended that the City designate the Property as an Area in Need of Redevelopment with Condemnation.

29. A Resolution documenting the Planning Board's findings on the Preliminary Investigation was adopted on February 12, 2025 (the "Recommendation").

30. On February 25, 2025, without any further substantive testimony from the City Planner, the City Council adopted Resolution No. 102-25 designating the Property as an Area in Need of Redevelopment for Condemnation Purposes (the "Second Designation").

31. Thereafter, on or about March 25, 2025, the City Council adopted Ordinance 12-2025, which approved the "Former Sears Site Redevelopment Plan".

32. During the pendency of the Second Designation the Plaintiff entered into a contract to sell their interest in the Property to Russo Acquisitions, LLC ("Russo"), who would be designated the Redeveloper for the Property by the City under a subsidiary known as RHR Hackensack Urban Renewal LLC (the "Sale Contract").

33. Plaintiff advised the City that they would allow the Second Designation and remaining redevelopment process to continue uninterrupted, conditioned upon Plaintiff reserving their rights to appeal the Second Designation if for any reason Russo terminated the Sale Contract.

34. Plaintiff and City entered into a Tolling Agreement on or about March 11, 2025, which, in part, tolled Plaintiff's right to appeal the Second Designation for a period of forty-five days from the date Russo terminated the Sale Contract.

35. The City undertook a series of steps to effectuate the voluntary redevelopment of the Property, including but not limited to, the execution of a Financial Agreement with RHR Hackensack Urban Renewal LLC, authorized on May 20, 2025 and executed on or about June 10, 2025.

36. However, following an election, the voluntary redevelopment process halted suddenly when the City, by Ordinance No. 38-2025 adopted on or about August 11, 2025, unilaterally terminated the binding Financial Agreement.

37. As a result of the City's unilateral termination of the Financial Agreement, Russo terminated the Sale Contract with the Plaintiff on October 14, 2025.

COUNT ONE

The Designation by the Defendants Failed to Comply with the Requirements of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.

38. Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if set forth at length herein.

39. The LRHL and applicable case law require that a determination designating a property as an Area in Need of Redevelopment be supported by substantial evidence.

40. The Defendant's Second Designation is deficient and without a basis in substantial credible evidence because it is solely supported by the Recommendation that was reached based on the City Planner's findings that the Property has been allegedly vacant in excess of two years. No further testimony was taken before the City Council. The City Planner's findings were arrived at as a result of a substandard investigation.

41. No consideration was given or investigation conducted as to why the Property has been allegedly vacant in excess of two years, if true, or whether it in fact was vacant given the existence of the Ground Lease that has been and remains in effect.

42. The Second Designation was not based on substantial evidence and failed to meet the requirements of the LRHL and applicable case law.

WHEREFORE, Plaintiffs demand judgment against the Defendants as follows:

- A. Declaring, determining and ordering that the Recommendation and Second Designation are invalid, illegal, null, void and of no force or effect;
- B. Declaring, determining and ordering that the Recommendation and Second Designation violate Plaintiffs' constitutionally protected property rights;
- C. Enjoining Defendants from applying or enforcing the Recommendation and Second Designation to Plaintiffs' Property;
- D. Awarding Plaintiffs compensatory, consequential, incidental and punitive damages;
- E. Awarding Plaintiffs' attorney fees and costs of suit; and
- F. Awarding such further relief as the Court deems just and proper.

COUNT TWO

The Property Has Not Been Vacant In Excess of Two Years as Required by N.J.S.A. 40A:12-5(b), and as such, the Statutory Criteria Has Not Being Satisfied

43. Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if set forth at length herein.

44. The Ground Lease has been in full force and effect since 1946, and certainly since at least 1995 and 2015 when Plaintiffs' predecessors and affiliated entities purchased the Property.

45. Given that the Ground Lease has existed since at least 1946, and remains in full force and effect today, the Property has not been vacant in excess of two years and does not satisfy the criteria found at N.J.S.A. 40A:12-5(b).

46. The Keyless Shop Locksmith was a tenant at the Property as of the City Planner's presentation before the Planning Board.

47. The City Planner improperly ignored the existing tenant and the Ground Lease, and therefore, the Property has not been vacant in excess of two years and does not satisfy the criteria found at N.J.S.A. 40A:12-5(b).

WHEREFORE, Plaintiffs demand judgment against the Defendants as follows:

- A. Declaring, determining and ordering that the Recommendation and Second Designation are invalid, illegal, null, void and of no force or effect;
- B. Declaring, determining and ordering that the Recommendation and Second Designation violate Plaintiffs' constitutionally protected property rights;
- C. Enjoining Defendants from applying or enforcing the Recommendation and Second Designation to Plaintiffs' Property;
- D. Awarding Plaintiffs compensatory, consequential, incidental and punitive damages;
- E. Awarding Plaintiffs' attorney fees and costs of suit; and
- F. Awarding such further relief as the Court deems just and proper.

COUNT THREE

Defendants' Designation of the Property as an Area in Need of Redevelopment with Condemnation was Arbitrary, Capricious, Unreasonable and in Contravention of Law

48. Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if set forth at length herein.

49. The Second Designation was a predetermined conclusion in which Plaintiffs had no meaningful opportunity to have substantive input into the process.

50. The Second Designation was done without sufficient evidence.

51. The Property does not qualify as an area in need of redevelopment under the LRHL.

52. The Second Designation was arbitrary, capricious and unreasonable.

53. The Second Designation was contrary to law and undertaken in bad faith.

WHEREFORE, Plaintiffs demand judgment against the Defendants as follows:

- A. Declaring, determining and ordering that the Recommendation and Second Designation are invalid, illegal, null, void and of no force or effect;
- B. Declaring, determining and ordering that the Recommendation and Second Designation violate Plaintiffs' constitutionally protected property rights;
- C. Enjoining Defendants from applying or enforcing the Recommendation and Second Designation to Plaintiffs' Property;
- D. Awarding Plaintiffs compensatory, consequential, incidental and punitive damages;
- E. Awarding Plaintiffs' attorney fees and costs of suit; and
- F. Awarding such further relief as the Court deems just and proper.

COUNT FOUR

Defendants Failed to Comply with the Notice and Procedural Requirements of the LRHL

54. Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if set forth at length herein.

55. On information and belief, Defendants failed to provide written notice to interested parties.

56. On information and belief, Defendants failed to publish notice in accordance with the statutory requirements.

57. On information and belief, any notice provided by Defendants was deficient in form and substance.

58. On information and belief, Defendants failed to provide notice to the property owners, including Plaintiffs, of the Designation within 10 days of the adoption of same. Neither Plaintiffs nor their affiliated predecessors-in-interest have received formal notice of the Designation as of this date.

59. On information and belief, Defendants failed to adhere to other procedural requirements of the LRHL for the Recommendation and Designation.

WHEREFORE, Plaintiffs demand judgment against the Defendants as follows:

- A. Declaring, determining and ordering that the Recommendation and Second Designation are invalid, illegal, null, void and of no force or effect;
- B. Declaring, determining and ordering that the Recommendation and Second Designation violate Plaintiffs' constitutionally protected property rights;
- C. Enjoining Defendants from applying or enforcing the Recommendation and Second Designation to Plaintiffs' Property;
- D. Awarding Plaintiffs compensatory, consequential, incidental and punitive damages;
- E. Awarding Plaintiffs' attorney fees and costs of suit; and
- F. Awarding such further relief as the Court deems just and proper.

COUNT FIVE

The Second Designation Violates Plaintiffs' Rights Under the State Constitution

60. Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if set forth at length herein.

61. Article 8, Section 3, ¶ 1 of the New Jersey Constitution states:

**Blighted areas, clearance, replanning, development or redevelopment;
tax exemption of improvements; use, ownership, management and
control of improvements**

The clearance, replanning, development or redevelopment of blighted areas shall be a public purpose and public use, for which private property may be taken or acquired. Municipal, public or private corporations may be authorized by law to undertake such clearance, replanning, development or redevelopment; and improvements made for these purposes and uses, or for any of them, may be exempted from taxation, in whole or in part, for a limited period of time during which the profits of and dividends payable by any private corporation enjoying such tax exemption shall be limited by law. The conditions of use, ownership, management and control of such improvements shall be regulated by law.

62. Any condemnation for private redevelopment of Plaintiffs' Property pursuant to the Second Designation will violate Article 8, Section 3 of the New Jersey Constitution in that it will not be taken for redevelopment of a blighted area but instead for the redevelopment of economically viable property that is not blighted.

63. The Property is not blighted as required by the New Jersey Constitution to be acquired by eminent domain for private redevelopment.

64. The Second Designation will irreparably harm Plaintiffs and any other interests in the Property because they will be deprived of their Property in violation of their rights under the Constitution of the United States and the State of New Jersey.

65. The Second Designation was contrary to law and undertaken in bad faith.

66. By adopting the Second Designation, which includes redevelopment with condemnation, the City has deprived Plaintiffs of their property rights without due process of law and in violation of the State Constitution and U.S. Constitution.

67. The City's intended and threatened use of the power of eminent domain is unconstitutional.

68. Moreover, to the extent that N.J.S.A. 40A:12-5(b) and the LRHL allow the use of eminent domain simply when a property has been vacant for a period of two years without any determination of blight, said provision is unconstitutional as applied to Plaintiffs.

WHEREFORE, Plaintiffs demand judgment against the Defendants as follows:

- A. Declaring, determining and ordering that the Recommendation and Second Designation are invalid, illegal, null, void and of no force or effect;
- B. Declaring, determining and ordering that the Recommendation and Second Designation violate Plaintiffs' constitutionally protected property rights;
- C. Enjoining Defendants from applying or enforcing the Recommendation and Second Designation to Plaintiffs' Property;
- D. Awarding Plaintiffs compensatory, consequential, incidental and punitive damages;
- E. Awarding Plaintiffs' attorney fees and costs of suit; and
- F. Awarding such further relief as the Court deems just and proper.

COUNT SIX

The Second Designation Violates Plaintiffs' Rights Under the U.S. Constitution

69. Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if set forth at length herein.

70. The constitutional prohibition against the taking of private property was designed to bar the government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.

71. The Defendants have initiated a process to declare the Property as an area in need of redevelopment with condemnation in deprivation of the right to property and the protections of the Fifth Amendment to the United States Constitution.

72. The Defendants have acted in concert to prevent or hinder Plaintiffs from the full enjoyment of their private property.

73. The Defendants have acted in concert to prevent the future development of the Property by Plaintiffs.

74. The Second Designation was a predetermined conclusion in which Plaintiffs had no meaningful opportunity to have substantive input into the process.

75. The Property is not blighted as required by the United States Constitution to be acquired by eminent domain for private redevelopment.

76. By adopting the Second Designation, which includes redevelopment with condemnation, the City has deprived Plaintiffs of their property rights without due process of law and in violation of the U.S. Constitution.

77. The City's intended and threatened use of the power of eminent domain is unconstitutional.

78. Moreover, to the extent that N.J.S.A. 40A:12-5(b) and the LRHL allow the use of eminent domain simply when a property has been vacant for a period of two years, said provision is unconstitutional as applied to Plaintiffs.

79. As a result of the Defendants' actions, Plaintiffs have suffered harm, injury, and damages and are entitled to compensation.

WHEREFORE, Plaintiffs demand judgment against the Defendants as follows:

- A. Declaring, determining and ordering that the Recommendation and Second Designation are invalid, illegal, null, void and of no force or effect;
- B. Declaring, determining and ordering that the Recommendation and Second Designation violate Plaintiffs' constitutionally protected property rights;
- C. Enjoining Defendants from applying or enforcing the Recommendation and Second Designation to Plaintiffs' Property;
- D. Awarding Plaintiffs compensatory, consequential, incidental and punitive damages;
- E. Awarding Plaintiffs' attorney fees and costs of suit; and
- F. Awarding such further relief as the Court deems just and proper.

WELLS, JAWORSKI & LIEBMAN, LLP
Attorneys for Plaintiffs

By: /s/ Jameson P. Van Eck
Jameson P. Van Eck, Esq.

Dated: November 26, 2025

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Jameson P. Van Eck, Esq., is hereby designated as trial counsel from Plaintiffs.

WELLS, JAWORSKI & LIEBMAN, LLP
Attorneys for Plaintiffs

By: /s/ Jameson P. Van Eck
Jameson P. Van Eck, Esq.

Dated: November 26, 2025

CERTIFICATION PURSUANT TO R. 4:5-1

I hereby certify that the matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding, and further, that no other action or arbitration proceeding is contemplated.

WELLS, JAWORSKI & LIEBMAN, LLP
Attorneys for Plaintiffs

By: /s/ Jameson P. Van Eck
Jameson P. Van Eck, Esq.

Dated: November 26, 2025

CERTIFICATION PURSUANT TO R. 1:38-7(b)

I certify that confidential personal identifiers have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

WELLS, JAWORSKI & LIEBMAN, LLP
Attorneys for Plaintiffs

By: /s/ Jameson P. Van Eck
Jameson P. Van Eck, Esq.

Dated: November 26, 2025

CERTIFICATION PURSUANT TO R. 4:69-4

I certify that to the extent required all necessary transcripts of the proceedings relevant to this action have or will be requested (to the extent available).

WELLS, JAWORSKI & LIEBMAN, LLP
Attorneys for Plaintiffs

By: /s/ Jameson P. Van Eck
Jameson P. Van Eck, Esq.

Dated: November 26, 2025