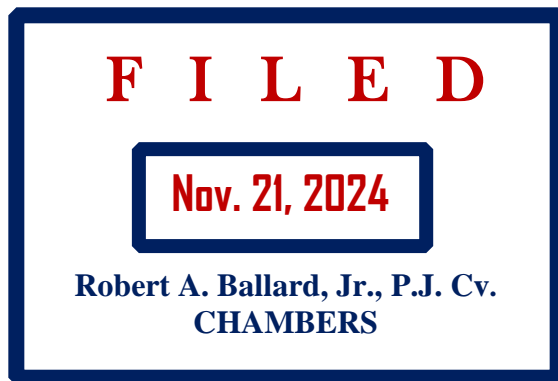


See attached Statement of Reasons.



File No. 30761-0001-JCG

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LATTER HOUSE OF GLORY, INC., a New Jersey not-for-profit corporation,

Plaintiff,

v.

ALEXANDRIA TOWNSHIP, a Municipality of the State of New Jersey, LAURA WHITAKER, CTA, the Alexandria Township Tax Assessor, KRIS BOXWELL, CTC, the Alexandria Township Tax Collector, and PRO CAP 8, LLC, a limited liability company,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
HUNTERDON COUNTY
DOCKET NO. HNT-L-000273-23

CIVIL ACTION

**ORDER GRANTING SUMMARY
JUDGMENT TO DEFENDANTS,
ALEXANDRIA TOWNSHIP, LAURA
WHITAKER, CTA, the Alexandria
Township Tax Assessor, and KRIS
BOXWELL, CTC, the Alexandria
Township Tax Collector, DISMISSING
PLAINTIFF'S AMENDED VERIFIED
WITH PREJUDICE**

THIS MATTER having been opened to the Court by Defendants, Alexandria Township, Laura Whitaker, CTA, the Alexandria Township Tax Assessor, and Kris Boxwell, CTC, the Alexandria Township Tax Collector, through their attorneys Parker McCay P.A. (John C. Gillespie, Esquire appearing), upon the filing of a Notice of Motion for Summary Judgment and Plaintiff, Latter House of Glory, Inc., having appeared through its attorneys Day Pitney LLP (Christopher John Stracco, Esquire appearing) and Chasan Lamparello Mallon & Cappuzzo, PC (Kenneth A. Porro, Esquire appearing); and Defendant, Pro Cap 8,

LLC, having appeared through its attorney Gary C. Zeitz, LLC (Robert London-Zeitz, Esquire appearing), and the Court having reviewed all submissions, heard oral argument, and for good cause shown;

IT IS, on this 21st day of November, **2024**, **ORDERED** that the Motion for Summary Judgment filed on behalf of Defendants, Alexandria Township, Laura Whitaker, CTA, the Alexandria Township Tax Assessor, and Kris Boxwell, CTC, the Alexandria Township Tax Collector, be and the same is hereby **GRANTED**. Plaintiff's Amended Verified Complaint is therefore dismissed ~~with Prejudice~~ and without costs as to these Defendants.

IT IS FURTHER ORDERED that a true and correct copy of this Order shall be served electronically on counsel for all interested parties within seven days of the date hereof.

/s/ Robert A. Ballard, Jr., P.J. Cv.

THE HONORABLE ROBERT A. BALLARD, JR., J.S.C.

JUDGE'S CHECKLIST

 X Opposed

 Unopposed

Statement of Reasons Under R. 1:6-2(f)

Re: LATTER HOUSE OF GLORY v. ALEXANDRIA TOWNSHIP

Docket No.: HNT-L-273-23

Motion Type: Motion for Summary Judgment

OPPOSED

Date: November 21, 2024

I. PARTIES AND RELIEF SOUGHT

Defendants Alexandria Township, Laura Whitaker, CTA, the Alexandria Township Tax Assessor, and Kris Boxwell, CTC, the Alexandria Township Tax Collector (collectively “Township Defendants”) filed a Motion for Summary Judgment seeking dismissal of Plaintiff’s Amended Verified Complaint. Defendant Pro Cap 8, LLC (“Defendant Pro Cap”) submitted correspondence in support of the Township Defendant’s Motion. Plaintiff Latter House of Glory, Inc. filed opposition to the Township Defendant’s Motion.

II. BACKGROUND

Plaintiff owns property at 455 Mechlin Corner Road, Pittstown, New Jersey. Pittstown is located within Alexandria Township. On July 24, 2023, Plaintiff filed an Amended Verified Complaint alleging it received a religious tax exemption from the Township for the property in 2014 but was denied same each year from 2018 through 2023. Plaintiff appealed each denial to the Hunterdon County Tax Board and subsequently appealed five of the denials to the Tax Court of New Jersey. Plaintiff’s Complaint alleges that the Township’s refusal to grant it tax-exempt status has caused Plaintiff damage. Moreover, Plaintiff’s Complaint alleges that the Township demanded financial information from Plaintiff relating to Plaintiff’s tax-exempt status which

violates its constitutional rights. Moreover, Plaintiff alleges that because it was denied tax-exempt status, the property has suffered the imposition of a tax lien arising from Plaintiff's failure to pay taxes in 2021, the lien has gone to tax sale and has been purchased by a third-party lienholder.

III. SUMMARY OF THE TOWNSHIP DEFENDANTS' POSITION

The Township Defendants filed a brief in support of their Motion for Summary Judgment. First, the Township Defendants argue that Plaintiff's Complaint must be dismissed as the Court lacks subject matter jurisdiction over this action. Brief in Support of Motion for Summary Judgment at 4. Citing Article VI, Section 1, paragraph 1 of the New Jersey Constitution and N.J.S.A. 2B:13-1(a), the Township Defendants explain that the Tax Court of New Jersey was established as a Court of limited jurisdiction and is a Court of record. Id. Moreover, the Township Defendants cite N.J.S.A. 2B:13-2(b) to explain that the Tax Court of New Jersey may hear appeals challenging final decisions of a County Board of Taxation and actions cognizable in the Superior Court which raise issues as to which expertise in taxation matters is desirable and which have been transferred to the Tax Court. Id.

The Township Defendants submit that the crux of Plaintiff's Complaint is twofold: First, the Assessor's denial of the requested religious tax exemption from local property assessment; and second, the allegedly unreasonable and purportedly unconstitutional demands for personal financial information of the Pastor and her family. Id. at 6. However, the Township Defendants argue that the validity of the County Board of Taxation's decision to deny Plaintiff's religious property tax exemption is a determination which falls under the jurisdiction of the Tax Court as it is a judgment or order of the Board and a determination involving issues as to which expertise in matters involving taxation is desirable. Id. The Township Defendants submit that similar expertise is required to determine the validity of the Township Attorney's discovery demands for financial

information during the Tax Court matters and appeals. Id. Furthermore, the Township Defendants explain that the Tax Court determined that the demands were proper. Id. at 7-8. Accordingly, the Township Defendants argue that the determinations Plaintiff is requesting this Court to make are exclusively under the jurisdiction of the Tax Court. Id. at 9.

Next, the Township Defendants explain that Count One of Plaintiff's Complaint alleges that "[t]he revocation and continued denial of the Property's tax-exempt status and the attachment of a tax lien on the property have impeded, encumbered, and jeopardized Latter House's rights and title to the Property"; and the tax lien if foreclosed "would deprive Latter House of any equity on the property [which] constitutes an unconstitutional taking by the Township." Id. The Township Defendants argue that Count One must be dismissed because Plaintiff's appeal of its 2021 tax assessment was dismissed, with prejudice, by the Tax Court, a decision which Plaintiff failed to appeal, which forecloses Plaintiff from now collaterally attacking the subsequent tax sale. Id. at 10.

Furthermore, the Township Defendants submit that the issues raised in Counts Three and Four of Plaintiff's Complaint alleging claims under § 1983 and the New Jersey Civil Rights Act, arise from the tax exemption and Tax Court discovery issues and likewise must be dismissed. Id. at 10-11. Count Six of Plaintiff's Complaint alleges that the Township "failed to turn square corners" in all of the previously alleged tax assessment and Tax Court dealings. Id. at 11. The Township Defendants submit that Count Six must also be dismissed because failing to turn square corners is not a cause of action in and of itself. Id. Count Seven alleges First Amendment retaliation under both the federal and state constitutions which the Township Defendants submit is under the jurisdiction of the Tax Court and therefore, must be dismissed. Id. The Township Defendants likewise argue that Count Eight must be dismissed as it states a claim for unlawful

discrimination under the New Jersey Law Against Discrimination arising out of demands for the personal information of the Pastor and her spouse. Id. The Township Defendants explain that the Pastor and her spouse are not parties to this action and submit that Count Eight be dismissed. Id.

Additionally, the Township Defendants argue that the present matter is similar to Arsenis v. Borough of Bernardsville, 476 N.J. Super. 195 (App. Div. 2023), where the Court affirmed the trial court's dismissal on a R. 4:6-2 Motion to Dismiss for lack of jurisdiction. Id. at 11-12.

Next, the Township Defendants argue that the claims have been previously raised, litigated and decided in other legal proceedings involving the same parties which bars the Plaintiff's claims under the doctrines of collateral estoppel, res judicata, and the Entire Controversy Doctrine. Id. at 12. First, under the doctrine of res judicata, the Township Defendants explain the doctrine requires that: (1) the judgment in the prior action must be valid, final, and on the merits; (2) the parties in the later action must be identical to or in privity with those in the prior action; and (3) the claim in the later action must grow out of the same transaction or occurrence as the claim in the earlier one. Def's Br. at 13 citing McNeil v. Legislative Apportionment Comm'n, 177 N.J. 364, 395 (2003) (quoting Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 412 (1991)); see e.g., Rippon v. Smigel, 449 N.J. Super. 344, 367 (App. Div. 2017)). The Township Defendants explain that the 2018 through 2021 Tax Court appeals have been dismissed with prejudice and are final judgments. Id. While the 2022 and 2023 Orders regarding discovery are not final, they have been rejected for interlocutory review by the Appellate division and the same discovery claims were adjudicated in the 2018 and 2019 Tax Court appeals. Id. Therefore, the Township Defendants argue that they are entitled to preclusive effect. Id. Moreover, the Township Defendants submit that the parties (Township and Latter House) are the same, and the municipal employees (Defendants Whitaker and Boxwell) are in privity with the Township. Id. at 14. Finally, the

Township Defendants explain that to determine the identity of the claim to satisfy the third element, courts must consider:

- (1) whether the acts complained of and the demand for relief are the same (that is, whether the wrong for which redress is sought is the same in both actions);
- (2) whether the theory of recovery is the same;
- (3) whether the witnesses and documents necessary at trial are the same (that is, whether the same evidence necessary to maintain the second action would have been sufficient to support the first); and
- (4) whether the material facts alleged are the same

Def's Br. at 14 citing First Union Nat'l Bank v. Penn Salem Marina, Inc., 190 N.J. 342, 353 (2007).

The Township Defendants argue that Plaintiff cannot seek damages arising from the 2018 through 2021 exemption denials and the discovery methods employed because those cases were dismissed with prejudice. Def's Br. at 14. Therefore, the Township Defendants assert that this also includes any claims arising from the 2022 tax sale. Id.

As to the doctrine of collateral estoppel, the Township Defendants explain that the doctrine requires that:

- (1) the issue to be precluded is identical to the issue decided in the prior proceeding;
- (2) the issue was actually litigated in the prior proceeding;
- (3) the court in the prior proceeding issued a final judgment on the merits;
- (4) the determination of the issue was essential to the prior judgment; and
- (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.

Def's Br. at 15 citing First Union, 190 N.J. at 352 (quoting Hennessey v. Winslow Twp., 183 N.J. 593, 599 (2005)).

The Township Defendants state that for the same reasons set forth in their res judicata argument, the doctrine of collateral estoppel bars Plaintiff's claims in this action. Def's Br. at 15-16.

Next the Township Defendant's cite Bank Leumi USA v. Kloss, 234 N.J. 218, 227 (2020) in explaining that the Entire Controversy Doctrine "embodies the principle that the adjudication of a legal controversy should occur in one litigation in only one court; accordingly, all parties involved in a litigation should at the very least present in that proceeding all of their claims and defenses that are related to the underlying controversy." Def's Br. at 16. Moreover, the Township Defendants cite Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 412 (1991) for the proposition that not only are the parties barred from subsequent claims, but they are also barred from litigating "all relevant matters that could have been so determined." Def's Br. at 16-17. Because all of the issues raised by Plaintiff have already been brought and litigated in the Tax Court, the Township Defendants submit that the Entire Controversy Doctrine bars them from being brought here. Id. at 17.

Next, the Township Defendants argue that Summary Judgment should be granted in their favor as comments made in the course of litigation are protected by the litigation privilege. Id. More specifically, the Township Defendants assert that they are protected under the litigation privilege from liability for claims arising from courtroom procedures since the requests for financial information referenced in Counts Three, Four, Six, Seven, and Eight were made by an attorney in the course of Tax Court litigation. Id. Citing Loigman v. Twp. Comm., 185 N.J. 566, 580 (2006), the Defendants explain that the litigation privilege shields "any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other authorized participants; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action." Def's Br. at 18. Moreover, the Township Defendants assert that the Loigman factors are met as the requests for financial information were (1) made entirely within a Tax Court proceeding; (2) by the attorney representing the Township in that Tax Court proceeding; (3) for purposes of

determining whether Latter House qualified for tax exemption; (4) and are financial documents connected and related to those Tax Court proceedings. Id. Additionally, Defendants state that Whitaker and Boxwell are not parties to the litigation in which the financial information was requested and should not be considered in these Counts. Id. at 19.

Next, Defendants argue that where a Plaintiff alleges a cause of action under 42 U.S.C. § 1983 for a violation of a state statute, no relief is available. Id. 42 U.S.C. § 1983 provides, in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

Def's Br. at 19.

The Township Defendants explain that Count Three of Plaintiff's Complaint alleges that:

"The actions of representatives of the Township, acting under color of law in their official capacities as agents of the Township, in arbitrarily, capriciously and unreasonably denying the tax-exempt status of the property are discriminatory, oppressive, unlawful and contrary to 42 U.S.C. § 1983 et seq. a/k/a the Civil Rights Act of 1964."

Def's Br. at 19-20.

Accordingly, the Township Defendants submit there are no federal rights implicated or violated through Defendants' application of New Jersey's tax laws. Id. at 20. Defendants explain that Plaintiff's rights relating to the sale of the tax certificate to a third party derive solely from New Jersey statute, N.J.S.A. 54:5-1, which Plaintiff argues is unconstitutional in Count Two. Id. Moreover, Defendants explain that the remaining Counts of Plaintiff's Complaint all arise from the property tax-exemption and Tax Court discovery claims. Id. Defendants submit that there are

no federal constitutional rights present in the exemption process and explain that the process is completely governed by N.J.S.A. 54:4-3.6. Id. Therefore, the Township Defendants contend that § 1983 is not triggered. Id. at 21.

Next, the Township Defendants argue that Plaintiff's claims against Boxwell, the Township Tax Collector, and Whitaker, the Township Tax Assessor, must be dismissed because they are protected by qualified immunity. Id. at 22. The Township Defendants submit that Boxwell acted entirely in accordance with his duties as the tax collector under N.J.S.A. 54:5-19 by enforcing the lien on plaintiff's property. Id. Similarly, the Township Defendants argue that Whitaker acted entirely in accordance with her duties as the assessor in determining, pursuant to N.J.S.A. 54:3-21, whether the property qualified for tax exempt status. Id. at 23.

Defendants explain that whether a public official is entitled to qualified immunity on summary judgment depends on "(1) whether the evidence, viewed in the light most favorable to the plaintiff, establishes that the official violated the plaintiff's constitutional or statutory rights, and (2) whether the right allegedly violated was 'clearly established' at the time of the officer's actions." Def's Br. at 23 citing Baskin v. Martinez, 243 N.J. 112, 128 (2020). The Township Defendants contend that no statutory or constitutional violation has been established by virtue of either Boxwell's or Whitaker's actions. Def's Br. at 23. Even if a violation was established, a reasonable official in Boxwell's and Whitaker's position would have no way of knowing that such actions violate Plaintiff's rights. Id. at 24. Therefore, the Township Defendants argue both Boxwell and Whitaker are entitled to qualified immunity. Id. at 25.

Next, the Township Defendants argue that where a Plaintiff alleges a taking without just compensation/inverse condemnation arising solely from the sale of a tax sale certificate, the Complaint must be dismissed. Id. The Township Defendants explain that Plaintiff owed

Alexandria Township taxes for the years 2018 through 2021. Id. The Township tax collector sold the tax lien to PC8 Firstrust Bank. Id. The tax lien was then assigned to Pro Cap 8, LLC which paid Alexandria Township \$62,054.70 for the lien, in addition to a premium of \$116,100. Id. Count One of Plaintiff's Complaint alleges an unconstitutional taxing without just compensation/inverse condemnation. Id. The Township Defendants argue that Count One must be dismissed as no taking has occurred because Defendant Pro Cap 8 simply holds a lien secured by the property for delinquent real estate taxes. Id. at 26.

The United States Supreme Court decided Tyler v. Hennepin County, and held that a property owner, Geraldine Tyler, stated a claim under the Takings Clause as a result of the government's retention of \$25,000.00 in alleged "surplus equity" following the sale of a tax-foreclosed property because the County retained such proceeds without providing Ms. Tyler with just compensation. Def's Br. at 26 citing 598 U.S. 631 (2023). However, the Township Defendants assert that Defendant Pro Cap 8 has not instituted a foreclosure proceeding with regard to the tax lien nor have they prosecuted same to entry of a final judgment. Id. Moreover, Defendants argue a tax lien is not unconstitutional nor is it a taking of property. Id. Regarding the inverse condemnation claim, the Township Defendants argue that this is misplaced against the Township, since the Township no longer owns the lien and is not in a position to foreclose on it. Id. at 28.

Finally, the Township Defendants argue that Plaintiff's claims against them must be dismissed pursuant to N.J.S.A. 59:7-2, the New Jersey Tort Claims Act. Id. The Township Defendants explain that monetary damages are not available from public entities or government officials for claims relating to a tax assessment. Id. Defendants explain that Plaintiff's claim for damages is tied to the subject property's assessment and the taxes assessed in 2018 through 2023. Id. at 29. Accordingly, Defendants argue they are immune from liability for any damages incurred

by Plaintiff's as a result of the tax assessment and denial of tax-exempt status. Id. Defendants seek dismissal of Plaintiff's Complaint for failure to state a claim pursuant to N.J.S.A. 59:7-2. Id.

IV. SUMMARY OF PLAINTIFF'S POSITION

Plaintiff filed a brief in opposition to the Township Defendants' Motion for Summary Judgment. First, Plaintiff argues that Summary Judgment is improper because discovery is still ongoing. Plaintiff's Brief in Opposition at 6. Moreover, Plaintiff asserts that material facts in this matter have not been fully established. Id.

Next, Plaintiff argues that this Court has subject matter jurisdiction over this action. Id. at 7. Plaintiff asserts that the Tax Court does not have exclusive subject matter jurisdiction over this action, but instead, is a court of limited jurisdiction. Id. Plaintiff submits that no provision in the enabling statute provides the Tax court with jurisdiction to review the Plaintiff's claims for unconstitutional taking/inverse condemnation (Count One); claims under the Federal and New Jersey Civil Rights Acts (Counts Three and Four); First Amendment Retaliation (Count Seven); and unlawful discrimination under the NJ LAD (Count Eight). Id. at 7-8. Plaintiff explains that these are not tax matters and urges the Court to adhere to the Court's holding in McMahon v. City of Newark, 195 N.J. 526 (2008). Pl's Br. at 8. Plaintiff explains that in McMahon, the Court held that the Law Division had jurisdiction over Plaintiff's action challenging the "City's unilateral determination that, by transferring the project from the Entity to the Trust, the financial agreement . . . had been breached, thereby . . . wrongfully triggering the forfeiture of the contractually agreed upon tax abatement" because it was a contract and estoppel case. Id. Here, Plaintiff similarly argues that its claims are not uniquely cognizable within the tax appeal process and should not be limited to review by the Tax Court. Id.

Next, Plaintiff argues that Arsenis v. Borough of Bernardsville, 476 N.J. Super. 195 (App. Div. 2023) which Defendants rely on is distinguishable from the case at bar because in this action, the Plaintiff is not challenging the quantum or methodology with respect to the denial of the tax exemption on the property. Id. at 9-10. Moreover, Plaintiff submits that its injury involves the constitutionality of a statute and discrimination suffered by Plaintiff instead of being based on an improper valuation or tax assessment as in Arsenis. Id. at 10.

Further, Plaintiff argues that its claims are not barred by collateral estoppel, res judicata or the Entire Controversy doctrine. Id. Regarding res judicata, Plaintiff argues that its claims are not barred because they do not arise out of the same transaction or occurrence as the claims in the tax court actions. Id. Plaintiff explains that the claims raised here were never raised in any of the Tax Court actions and Plaintiff's requested relief differs from that requested in the Tax Court. Id. at 11. Moreover, Plaintiff states the evidence needed to prevail in this action is substantially different than that in the Tax Court actions. Id. at 12.

Similarly, Plaintiff argues that collateral estoppel does not bar its claims because the issues raised in this action were not litigated in the Tax Court actions. Id. Regarding the Entire Controversy doctrine, Plaintiff submits that its claims in the present action could not be heard in the Tax Court actions, so therefore, the doctrine does not apply. Id. at 13. Plaintiff states that contrary to Defendants' assertion, it did not and could not have brought any discrimination or retaliation claims in the Tax Court actions. Id.

Next, Plaintiff argues that the litigation privilege does not apply to bar its claims. Id. at 14. Plaintiff asserts that the litigation privilege only applies to testimony or statements made throughout the course of a litigation. Id. Here, Plaintiff states it is not seeking to hold Defendants liable for statements they uttered during the Tax Court actions, but instead are seeking redress for

Defendants' request for financial information belonging to Plaintiff's pastor and her family. Id. at 15. Therefore, Plaintiff submits the litigation privilege should not apply to bar Counts Three, Four, Six, Seven, and Eight. Id.

Furthermore, Plaintiff argues that its § 1983 claims should not be dismissed. Id. Plaintiff contends that the § 1983 claim relates to the First Amendment and the New Jersey Constitution and that contrary to Defendants' suggestion, the property tax exemption for religious entities is enshrined in the New Jersey Constitution. Id. at 16. Plaintiff argues that by denying its tax exemption applications, the Township has arbitrarily acted to impose its own criteria on the acceptable minimum level of activity required to qualify for a tax exemption. Id. at 17. It is Plaintiff's position that federal rights are implicated in this matter because a suspect class is involved. Id. Plaintiff submits that a fundamental right, namely the free exercise of religion under the First Amendment, and a suspect classification, religion, are involved. Id.

Additionally, Plaintiff argues that Defendants Boxwell and Whitaker are not protected by qualified immunity because they violated Plaintiff's constitutional and statutory rights. Id. at 18. Citing Winberry Realty P'ship v. Borough of Rutherford, 247 N.J. 165, 178, 187 (2021), Plaintiff explains that an officer is not entitled to qualified immunity where they did not act in an objectively reasonable manner and where a reasonable official would understand that what they were doing violates the Plaintiff's rights. Pl's Br. at 18. Whether a public official is entitled to qualified immunity depends on "(1) whether the evidence, viewed in the light most favorable to the plaintiff, establishes that the official violated the plaintiff's constitutional or statutory rights, and (2) whether the right allegedly violated was 'clearly established' at the time of the officer's actions." Pl's Br. at 18 citing Winberry, 247 N.J. at 187. Plaintiff maintains that it satisfies both prongs. Id. The right allegedly violated is Plaintiff's right to use her property for religious purposes. Id. Plaintiff

submits this right was clearly established because Defendant Whitaker continually denied Plaintiff's application for a tax exemption despite ample evidence that the property was used for charitable and religious purposes in furtherance of Plaintiff's stated exempt religious purpose. Id.

Next, Plaintiff argues that its claims for taking without just compensation/inverse condemnation should not be dismissed because they are ripe for judicial review. Id. at 19. Plaintiff explains that a claim is ripe for review if the plaintiff "has suffered an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." Id. citing Garden State Islamic Ctr. v. City of Vineland, 358 F. Supp. 3d 377, 382 (D.N.J. 2018) (quoting Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992)). Plaintiff explains the concrete and present injury is that the attachment of a lien on the property encumbers Plaintiff's enjoyment of the property. Id. at 20. Plaintiff asserts that withholding review would cause substantial hardship as the status of its ownership over the property would remain dubious. Id.

Plaintiff contends that Defendant Pro Cap 8 need not initiate foreclosure against the property in order for Plaintiff's claims to be ripe. Id. Plaintiff cites numerous United States Bankruptcy Court decisions across various federal districts in support of the proposition that the attachment of a lien on a subject property is sufficient in itself for ripeness purposes, as the attachment provides a real, concrete and oftentimes substantial injury on property owners. Id. Plaintiff also disputes Defendants' contention that Plaintiff is entitled to receive surplus equity in the event of foreclosure. Id. at 21. Therefore, Plaintiff maintains that Defendant Pro Cap's ownership of a tax lien on the Property demonstrates a taking without just compensation, because Plaintiff would be deprived of any surplus equity if Defendant Pro Cap forecloses. Id. Finally, Plaintiff states that the Township was appropriately named in the takings/inverse condemnation

claim because Defendant Pro Cap's purchase of the tax lien does not change the fact that the Township engaged in an unconstitutional taking. Id. at 22.

Further, Plaintiff argues that N.J.S.A. 59:7-2 does not bar its claims because immunity under the statute only applies to discretionary and not ministerial acts, and because discovery is incomplete, it is unclear whether Defendants' actions were primarily ministerial or discretionary in nature. Id. at 23. Plaintiff explains that discovery is needed to determine what Defendants normally do when assessing tax exemptions and levying taxes on properties. Id. Furthermore, Plaintiff explains it is also seeking injunctive and declaratory relief, neither of which fall under the purview of the NJTCA. Id. Plaintiff explains the damages sought relate not only to the improper tax assessment but also to the discriminatory and retaliatory conduct engaged in by Defendants. Id. at 24. Finally, Plaintiffs submit that the NJTCA cannot bar constitutional torts. Id.

V. SUMMARY OF DEFENDANT PRO CAP 8'S POSITION

Defendant Pro Cap 8 submitted correspondence in support of the Township Defendants' Motion for Summary Judgment. Defendant Pro Cap argues that Plaintiff's claims for a taking without just compensation/inverse condemnation and a declaration that the tax sale law is unconstitutional are not ripe for adjudication. Defendant's Correspondence at 2. Moreover, Defendant Pro Cap submits that because Plaintiff has not been deprived of access or use of the property, Plaintiff is barred from asserting an inverse condemnation claim. Id. Further, Defendant Pro Cap asserts that Plaintiff's claim for a declaratory judgment is tantamount to a request for an advisory opinion from the Court as to Plaintiff's future harm. Id. Defendant argues that the Court should not entertain same. Id.

Next, Defendant Pro Cap argues that Plaintiff's Complaint must be dismissed because Plaintiff's only remedy was to pursue a tax appeal, which has already occurred, and resulted in a

dismissal with prejudice. Id. Defendant also submits that the doctrines of res judicata and collateral estoppel bar Plaintiff from disputing its challenge to the tax lien in the instant forum. Id.

VI. DEFENDANTS' REPLY BRIEF

The Township Defendants filed a reply brief to Plaintiff's opposition. First, the Township Defendants argue that Summary Judgment is appropriate because Plaintiff's claims fail as a matter of law. Defendant's Reply at 2. The Township Defendants assert that they are not seeking to circumvent discovery, but rather, no further facts are needed to dismiss Plaintiff's claims as a matter of law. Id. Moreover, Defendants state that Counsel's Certification does not assert facts, as Plaintiff suggests, but instead certifies that the attached exhibits are true and correct copies. Id. at 3.

Next, the Township Defendants submit that the Tax Court has jurisdiction over this action because each of Plaintiff's claims require the Court to analyze Plaintiff's entitlement to the religious property tax exemption. Id. Further, the Township Defendants argue that the validity of the Township's analysis in denying Plaintiff's exemption, and whether such considerations were discriminatory, are issues which require the expertise of the Tax Court, and the application of Tax Court jurisprudence. Id. at 4. Defendants state that Plaintiff repeatedly challenges the methodology of the denial of the tax exemption throughout its brief. Id. Moreover, the Township Defendants submit that if Plaintiff is not challenging the quantum or methodology of the denial of the property tax exemption as Plaintiff argues, then there are no claims to be heard in this matter. Id. at 5. Additionally, the Township Defendants state that this action not only involves a tax dispute but is a tax dispute as none of the claims asserted by Plaintiff can be resolved without analysis of the New Jersey property tax exemption law. Id.

Furthermore, Defendants argue that Plaintiff's reliance on McMahon v. City of Newark, 195 N.J. 526 (2008) is misplaced as the issue in McMahon was not whether the taxpayer was entitled to an exemption, but whether the city breached a Redevelopment Agreement by denying the exemption. Id. Defendants state there is no contract between the Parties in this action and the claims cannot be evaluated without determining whether Plaintiff satisfied the criteria to merit an exemption. Id.

Next, the Township Defendants argue that the doctrines of collateral estoppel, res judicata, and Entire Controversy bar Plaintiff's claims because the underlying issues have been asserted in the prior Tax Court appeals and are currently being litigated before the Tax Court. Id. at 6. Further, the Township Defendants submit that their discovery demands in the Tax Court litigation are "statements" covered by the litigation privilege and were validated by an Order of the Tax Court. Id. at 8. Defendants also note that the Tax Court has already ruled that the requests for financial information were valid. Id. Additionally, Defendants contend that if a motion is a "communication" covered by the litigation privilege, it follows that a discovery request is also a communication. Id.

Next, the Township Defendants argue that Plaintiff's claims under § 1983 cannot be determined without evaluation of Plaintiff's entitlement to the religious property tax exemption. Id. at 9. Defendants assert that Plaintiff admits in its Complaint that the alleged constitutional violation arises from the Township's denial of the religious tax exemption. Id. Defendants explain that the exemption arises solely and exclusively from New Jersey Statute. Id. Therefore, the Township Defendants contend that freedom of religion has not been curtailed, the allegation arises from a denial of a potential tax exemption under purely state law and § 1983 does not apply. Id. at 9-10.

Next, the Township Defendants submit that Plaintiff's arguments against the qualified immunity of Boxwell and Whitaker all require the assumption that Plaintiff was entitled to the religious property tax exemption. Id. at 10. Defendants explain that the crux of Plaintiff's argument on this point is that the Township arbitrarily denied Plaintiff's exemption despite ample evidence that the property was entitled to religious tax exemption while arguing throughout its opposition that its entitlement to the exemption is a separate issue from this matter. Id.

Next, the Township Defendants argue that no cause of action for taking without just compensation/inverse condemnation arises without initiation of a tax certificate foreclosure under New Jersey law. Id. at 11. The Township Defendants maintain that the denial of a tax exemption is not an unconstitutional taking. Id.

Further, the Township Defendants argue that the allegations against Defendants are for acts in the interpretation of tax exemption law covered by N.J.S.A. 59:7-2. Id. at 14. Defendants submit that Plaintiff is seeking to impose liability for the acts of Defendants in interpreting the property tax exemption law. Id. However, the Township Defendants argue that these acts are specifically contemplated by N.J.S.A. 59:2-2, the New Jersey Tort Claims Act, which states that

- 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.

Therefore, Defendants state that such an interpretation is discretionary, not ministerial. Id. The Township Defendants assert that they are immune from liability for damages incurred by Plaintiff as a result of the subject property's assessment and denial of tax-exempt status. Id. at 15.

VII. APPLICABLE RULES

RULE 4:46. SUMMARY JUDGMENT.

R. 4:46 Summary Judgment

In Brill v. Guardian Life Insurance Company of America, the New Jersey Supreme Court held that a court should grant summary judgment when “the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.” 142 N.J. 520, 528–29 (1995) (quoting Rule 4:46-2). The Court explained that “[b]y its plain language, Rule 4:46-2 dictates that a court should deny a summary judgment motion only where the party opposing the motion has come forward with evidence that creates a ‘genuine issue as to any material fact challenged.’” Id. at 529. Therefore, “a non-moving party cannot defeat a motion for summary judgment merely by pointing to any fact in dispute.” Id. at 540.

To determine whether a genuine issue of material fact exists, the motion judge must “consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.” Id. The “judge’s function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” Id. (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). “[W]hen the evidence is so one-sided that one party must prevail as a matter of law, the trial court should not hesitate to grant summary judgment.” Id. (internal citations omitted).

VIII. COURT’S DECISION

A. Subject Matter Jurisdiction

The Township Defendants argue that the validity of the County Board of Taxation’s decision to deny Plaintiff’s religious property tax exemption is a determination which falls under

the jurisdiction of the Tax Court as it is a judgment or order of the Board and a determination involving issues as to which expertise in matters involving taxation is desirable. They also submit that similar expertise is required to determine the validity of the Township Attorney's discovery demands for financial information during the Tax Court matters and appeals. Accordingly, the Township Defendants argue that the determinations Plaintiff is requesting this Court make are exclusively under the jurisdiction of the Tax Court. On the other hand, Plaintiff argues that the Tax Court does not have exclusive subject matter jurisdiction over this action. More specifically, Plaintiff argues that the Tax Court does not have jurisdiction to review Plaintiff's claims for unconstitutional taking/inverse condemnation (Count One); under the Federal and New Jersey Civil Rights Acts (Counts Three and Four); First Amendment Retaliation (Count Seven); and unlawful discrimination under the NJ LAD (Count Eight).

N.J.S.A. 2B:13-2 outlines the jurisdiction of the Tax Court. It states, "[t]he 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." N.J.S.A. 2B:13-2. Furthermore, the Tax Court also has 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" and any other matters provided by statute. N.J.S.A. 2B:13-2(b)-(c). In McMahon v. City of Newark, the Court determined that it had jurisdiction over the action because the case at its core was nothing more than a contract and estoppel case. 195 N.J. 526, 544 (2008).

Here, the Court finds that jurisdiction properly lies with the Tax Court. Plaintiff's claims require an analysis of New Jersey's property tax exemption laws and Plaintiff's entitlement to a religious exemption. This type of analysis is one which involves expertise in matters involving

taxation. Moreover, the validity of the Township's analysis in denying Plaintiff's exemption, and whether such considerations were discriminatory, are also issues which require the expertise of the Tax Court. Plaintiff's claims for unconstitutional taking/inverse condemnation, under the Federal and New Jersey Civil Rights Acts, First Amendment Retaliation, and unlawful discrimination under the NJ LAD likewise require the expertise of the Tax Court as they require the Court to analyze New Jersey's property tax exemption laws. Therefore, the Court finds that the Township Defendants' Motion for Summary Judgment is GRANTED.

B. Res Judicata, Collateral Estoppel and the Entire Controversy Doctrine

First, the Township Defendants argue that Plaintiff's claims are barred by res judicata, and they are entitled to preclusive effect. Plaintiff's, however, argue that its claims are not barred because they do not arise out of the same transaction of occurrence as the claims in the Tax Court actions. Plaintiff states that the requested relief in the instant action differs from that requested in the Tax Court.

The doctrine of res judicata requires a party to bring all possible claims in one proceeding. McNeil v. Legislative Apportionment Comm'n, 177 N.J. 364, 395 (2003). For a claim to be barred by res judicata, three elements must be proven. Id. The elements are:

- (1) the judgment in the prior action must be valid, final, and on the merits;
- (2) the parties in the later action must be identical to or in privity with those in the prior action; and
- (3) the claim in the later action must grow out of the same transaction or occurrence as the claim in the earlier one.

Id. (quoting Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 412 (1991)).

Res judicata applies both to matters actually determined in an earlier action and all relevant matters that could have been determined in the earlier action. McNeil, 177 N.J. at 395. To determine the identity of the claim to satisfy the third element, courts must consider:

- (1) whether the acts complained of and the demand for relief are the same (that is, whether the wrong for which redress is sought is the same in both actions);
- (2) whether the theory of recovery is the same;
- (3) whether the witnesses and documents necessary at trial are the same (that is, whether the same evidence necessary to maintain the second action would have been sufficient to support the first); and
- (4) whether the material facts alleged are the same.

First Union Nat'l Bank v. Penn Salem Marina, Inc., 190 N.J. 342, 353 (2007).

First, this Court agrees with the Township Defendants that the 2018 through 2021 Tax Court appeals which were dismissed with prejudice constitute final judgments. Similarly, the parties, the Township and Latter House, are the same, and the municipal employees, Defendants Whitaker and Boxwell, are in privity with the Township. Finally, the Court finds that the claims arise out of the same transaction or occurrence, here the denial of Plaintiff's tax-exempt status. The underlying issues have been asserted in the prior Tax Court appeals and are currently being litigated before the Tax Court. Therefore, this Court finds that Plaintiff's claims are barred by res judicata.

Next, the Township Defendants argue that for the reasons Plaintiff's claims are barred by res judicata, they are also barred by collateral estoppel. Plaintiff, however, argues that the issues raised in this action were not litigated in the Tax Court actions.

Collateral estoppel "bars relitigation of any issue that was determined in a prior action." Matter of Borough of Englewood Cliffs, 473 N.J. Super. 189, 202 (App. Div. 2022) (citing In re Liquidation of Integrity Ins. Co., 214 N.J. 51, 66 (2013)). For this doctrine to apply, five elements must be present:

- (1) the issue to be precluded is identical to the issue decided in the prior proceeding;
- (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior

proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.

Id. (quoting Winters v. N. Hudson Reg'l Fire & Rescue, 212 N.J. 67, 85 (2012)).

For the reasons mentioned above, this Court finds that collateral estoppel bars Plaintiff's claims. The issue in this action concerns Plaintiff's entitlement to the religious tax exemption under New Jersey law. The Complaints filed in the Tax Court sought a determination by Defendants that Plaintiff is not exempt from taxation under New Jersey law. Therefore, the Court finds that collateral estoppel bars Plaintiff's claims.

Finally, the Township Defendants argue that Plaintiff's claims are similarly barred by the Entire Controversy Doctrine because all of the issues raised by Plaintiff have previously been brought and litigated in the Tax Court. Plaintiff submits that its claims in the present action could not be heard to reviewed in the Tax Court actions, so therefore, the doctrine does not apply. Plaintiff states that contrary to Defendants' assertion, it did not and could not have brought any discrimination or retaliation claims in the Tax Court actions.

The entire controversy doctrine, set forth in R. 4:30A, provides in relevant part that the "[n]on-joinder of claims required to be joined by the entire controversy doctrine shall result in the preclusion of the omitted claims to the extent required by the entire controversy doctrine..." The doctrine "embodies the principle that the adjudication of a legal controversy should occur in one litigation in only one court; accordingly, all parties involved in a litigation should at the very least present in that proceeding all of their claims and defenses that are related to the underlying controversy." Wadeer v. New Jersey Mfrs. Ins. Co., 220 N.J. 591, 605 (2015) (citations omitted). The purposes of the entire controversy doctrine "are threefold: (1) the need for complete and final

disposition through the avoidance of piecemeal decisions; (2) fairness to the parties to the action and those with a material interest in the action; and (3) efficiency and the avoidance of waste and the reduction of delay.” Wadeer, 220 N.J. at 605 (citations omitted). In determining whether a subsequent claim should be barred, “the central consideration is whether the claims against the different parties arise from related facts or the same transaction or series of transactions.” Id. “It is the core set of facts that provides the link between distinct claims against the same parties...and triggers the requirement that they be determined in one proceeding.” Id. There is no requirement that there be a “commonality of legal issues.” Id.

While the Entire Controversy Doctrine encompasses virtually all causes, claims, and defenses relating to a controversy, it is not without standards. Cogdell v. Hospital Center at Orange, 116 N.J. 7, 16 (1989). Generally speaking, if a claim could not have been presented in the first action, it will not be precluded in a later action. Watkins v. Resorts International Hotel and Casino, Inc., 124 N.J. 398, 413 (1991).

For the same reasons that this Court finds Plaintiff’s claims are barred by res judicata and collateral estoppel, the Court also agrees that the Entire Controversy Doctrine bars Plaintiff’s claims. Therefore, the Township Defendants’ Motion for Summary Judgment is GRANTED.

C. Litigation Privilege

The Township Defendants argue that a grant of Summary Judgment in their favor is proper because comments made in the course of litigation are protected by the litigation privilege. Defendants assert that they are protected under the litigation privilege from liability for claims arising from courtroom procedures since the requests for financial information referenced in Counts Three, Four, Six, Seven, and Eight were made by an attorney in the course of Tax Court

litigation. On the other hand, Plaintiff argues the litigation privilege does not apply to this matter because it only applies to testimony or statements made throughout the course of a litigation. Plaintiff states it is not seeking to hold Defendants liable for statements they uttered during the Tax Court actions, but instead are seeking redress for Defendants' request for financial information belonging to Plaintiff's pastor and her family.

The litigation privilege shields "any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other authorized participants; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action." Loigman v. Twp. Comm., 185 N.J. 566, 580 (2006).

The Township Defendants submit that the Loigman factors are met as the requests for financial information were (1) made entirely within a Tax Court proceeding; (2) by the attorney representing the Township in that Tax Court proceeding; (3) for purposes of determining whether Latter House qualified for tax exemption; (4) and are financial documents connected and related to those Tax Court proceedings. This Court agrees with Defendants. The discovery demands in the Tax Court litigation are statements covered by the privilege, they were made during the Tax Court proceedings, by the Township Defendants as parties to that action. Moreover, the Tax Court ruled that the requests for financial information were valid. Accordingly, the Court finds Summary Judgment is GRANTED in favor of the Township Defendants.

D. 42 U.S.C. § 1983

Next, the Township Defendants argue that where a Plaintiff alleges a cause of action under 42 U.S.C. § 1983 for a violation of a state statute, no relief is available. Count Three of Plaintiff's Complaint alleges that:

"The actions of representatives of the Township, acting under color of law in their official capacities as agents of the Township, in arbitrarily, capriciously and

unreasonably denying the tax-exempt status of the property are discriminatory, oppressive, unlawful and contrary to 42 U.S.C. § 1983 et seq. a/k/a the Civil Rights Act of 1964.”

Therefore, Defendants argue no federal rights are implicated or violated through Defendants’ application New Jersey’s tax laws.

Defendants explain that Plaintiff’s rights relating to the sale of the tax certificate to a third party derive solely from New Jersey statute, N.J.S.A. 54:5-1. Moreover, Defendants explain that the remaining Counts of Plaintiff’s Complaint all arise from the property tax-exemption and Tax Court discovery claims. Defendants submit that there are no federal constitutional rights present in the exemption process and explain that the process is completely governed by N.J.S.A. 54:4-3.6.

Plaintiff argues that the § 1983 claim relates to the First Amendment and the New Jersey Constitution. Plaintiff submits that a fundamental right – the free exercise of religion under the First Amendment – and a suspect classification – here, religion – are involved.

§ 1983 provides, in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

42 U.S.C. § 1983.

§ 1983 relates to the alleged violation of one’s rights under the United States Constitution and federal law. In the present action, Plaintiff alleges various causes of action arising from the Township’s denial of Plaintiff’s religious tax-exempt status. This exemption arises solely under New Jersey statute, N.J.S.A. 54:4-3.6, which governs the property that shall be exempt from

taxation. Therefore, the Court finds there is no federal right at issue and Summary Judgment is GRANTED as to Count Three of Plaintiff's Complaint.

E. Qualified Immunity

The Township Defendants also move for Summary Judgment arguing that Plaintiff's claims against Defendants Boxwell and Whitaker must be dismissed because they are protected by qualified immunity. Plaintiff on the other hand argues that neither Defendant is entitled to qualified immunity because they violated Plaintiff's constitutional and statutory rights. In response, Defendants submit that Plaintiff's arguments against the qualified immunity of Boxwell and Whitaker all require the assumption that Plaintiff was entitled to the religious property tax exemption.

Whether a public official is entitled to qualified immunity depends on "(1) whether the evidence, viewed in the light most favorable to the plaintiff, establishes that the official violated the plaintiff's constitutional or statutory rights, and (2) whether the right allegedly violated was 'clearly established' at the time of the officer's actions." Baskin v. Martinez, 243 N.J. 112, 128 (2020). A right is "clearly established" if "it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." Id. at 128 (quoting Saucier v. Katz, 533 U.S. 194, 202 (2001)). An officer is not entitled to qualified immunity where they did not act in an objectively reasonable manner and where a reasonable official would understand that what they were doing violates the plaintiff's rights. Winberry Realty P'ship v. Borough of Rutherford, 247 N.J. 165, 178, 187 (2021).

Plaintiff alleges both prongs are met, stating the right which was violated was Plaintiff's right to use her property for religious purposes and this right was clearly established because

Defendant Whitaker continually denied Plaintiff's application for a tax exemption despite ample evidence that the property was used for charitable and religious purposes.

This Court finds that Plaintiff has not met the "clearly established" prong and cannot survive Defendants' Motion for Summary Judgment. Viewing the facts in the light most favorable to Plaintiff as the non-moving party, nothing suggests that a reasonable official in Defendant Boxwell's or Defendant Whitaker's position would have known that denying Plaintiff's application for a tax exemption violated their rights. Therefore, the Township Defendants' Motion is GRANTED.

F. Taking Without Just Compensation/Inverse Condemnation

The Township Defendants also argue that Count One of Plaintiffs' Complaint must be dismissed where it alleges taking without just compensation/inverse condemnation arising solely from the sale of a tax certificate. Moreover, Defendants argue that no taking has occurred because Defendant Pro Cap 8 simply holds a lien secured by the property for delinquent real estate taxes. Plaintiff submits that its claim for taking without just compensation/inverse condemnation is ripe for judicial review and should not be dismissed. Further, Plaintiff explains the concrete and particularized injury is that the attachment of a lien on the property encumbers Plaintiff's enjoyment of the property. Plaintiff also argues that attachment of a lien on a subject property is sufficient in itself for ripeness purposes, as the attachment provides a real, concrete and oftentimes substantial injury on property owners.

"Both the federal and state constitutions bar the taking of private property for public use without just compensation." Borough of Seaside Park v. Comm'r of N.J. Dep't of Educ., 432 N.J. Super. 167, 218 (App. Div. 2013) (citing U.S. Const. amend. V, XIV; N.J. Const. art. I, ¶ 20). "The protections afforded under both constitutions are coextensive." Littman v. Gimello, 115 N.J.

154, 161, cert. denied, 493 U.S. 934 (1989). The Takings Clause “is designed not to limit the governmental interference with property rights per se, but rather to secure compensation in the event of otherwise proper interference amounting to a taking.” Lingle v. Chevron U.S.A. Inc., 544 U.S. 528, 536–37 (2005) (quoting First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304, 315 (1987)).

“Inverse condemnation is a ‘shorthand description of the manner in which a landowner recovers just compensation for a taking of his property when condemnation proceedings have not been instituted.’” Rieder v. State, 221 N.J. Super. 547, 553 (quoting United States v. Clarke, 445 U.S. 253, 257 (1980)). “Inverse condemnation is a remedy designed to protect a landowner whose property has been taken de facto by insuring that he be paid reasonable compensation therefor.” In re Jersey Cent. Power & Light Co., 166 N.J. Super. 540, 544 (App. Div. 1979). “Thus, an inverse condemnation case is a ‘taking case,’ i.e., the property owner alleges that his property has been taken for public use without just compensation in violation of his constitutional rights.” Pappas v. Bd. of Adjustment of Borough of Leonia, 254 N.J. Super. 52, 56 (App. Div. 1992).

A constitutional taking may occur in one of two ways: 1) via physical taking, in which the government takes title to private property or “authorizes a physical occupation [or appropriation] of property”; or 2) via regulatory taking, through which a government regulation deprives the property owner of all economically viable use of their land.

Klumpp v. Borough of Avalon, 202 N.J. 390, 405 (quoting Yee v. Escondido, 503 U.S. 519, 522 (1992)). “[W]hen the physical intrusion reaches the extreme form of a permanent physical occupation’ . . . a taking will be found, regardless of the degree of interference with the property owner’s use of his land.” Smith v. Jersey Cent. Power & Light Co., 421 N.J. Super. 374, 385 (quoting Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 426 (1982)). “However, if a physical invasion of property falls short of a permanent occupation, a ‘balancing process’ that

includes consideration of the degree of interference with the property owner's use of his land is required to determine whether a taking has occurred." Id. (quoting Loretto, 458 U.S. at 432).

The Court finds that the Township Defendants Motion must be GRANTED as no taking occurred. Here, there was neither a physical taking of the property nor a regulatory taking. The sale of a tax lien does not result in any physical invasion of the tax-delinquent property. Barry L. Kahn Deigned Benefit Pension Plan v. Twp. of Moorestown, 243 N.J. Super. 328, 334 (Ch. Div. 1990). Nor does the successful bidder's purchase of a tax sale certificate "divest the delinquent owner of his title to land." In re Princeton Office Park L.P. v. Plymouth Park Tax Servs., LLC, 218 N.J. 52, 63 (2014). "Instead, the sale operates as a conditional conveyance of the property to the purchaser, subject to a person with an interest in the property having the right to redeem the certificate, as prescribed by statute." Id. Plaintiff's property has not been foreclosed on. The Township sold the tax lien to PC8 Firsttrust Bank and the lien was then assigned to Defendant Pro Cap 8. Likewise, there has not been a regulatory taking as the owner of the subject property has not been deprived of all economically viable use of the land. Accordingly, the Court finds the Township Defendants' Motion for Summary Judgment is GRANTED.

G. New Jersey Tort Claims Act

Finally, the Township Defendants argue that Plaintiff's claims against them must be dismissed pursuant to N.J.S.A. 59:7-2, the New Jersey Tort Claims Act. Defendants argue that monetary damages are not available from public entities or government officials for claims relating to a tax assessment and interpreting New Jersey tax exemption laws. The Township Defendants submit that such an interpretation is discretionary, not ministerial, and therefore they are immune from liability for damages incurred as a result of the property's assessment and denial of tax-exempt status. Plaintiff, however, argues that the New Jersey Tort Claims Act does not bar its

claims because immunity only applies to discretionary, not ministerial acts, and discovery is not complete.

N.J.S.A. 59:7-2 states that public entities and public employees are not 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; and (b) an act of omission in the interpretation or application of any law relating to a tax.” N.J.S.A. 59:7-2.

The Court agrees with the Township Defendants and finds that the denial of Plaintiff’s tax-exempt status falls squarely under N.J.S.A. 59:7-2 and therefore, they are immune from liability under the NJ TCA. Accordingly, the Township Defendants’ Motion for Summary Judgment is GRANTED.

IX. CONCLUSION

FOR THE REASONS SET FORTH IN HEREIN, the Township Defendants’ Motion for Summary Judgment is GRANTED.