

defendants to appear and show cause why the plaintiff should not be entitled to have preliminary restraints entered compelling the defendants to immediately return plaintiff to her positions of County Treasurer and Chief Financial Officer and to cease interfering with the performance of her duties and the more specific relief set forth below. The Court has reviewed the Verified Complaint, the Affidavit of Margaret Pasqua, and Brief submitted, and good cause has been shown for the entry of this Order.

IT IS, THEREFORE, ORDERED on this 10 day of October, 2013, as follows:

1. That the defendants shall appear before this Court at the Somerset County Court House, 20 North Bridge Street, P.O. Box 3000, Somerville, New Jersey 08876, at ____ a.m. on the _____ day of _____ 2013, and then and there show cause why an Order should not be entered:

a. Determining that the plaintiff is the duly appointed Chief Financial Officer and Treasurer of the County of Hunterdon and holds such office through May 1, 2014.

b. Determining that the defendants and each of them have no legal authority or basis to interfere with the performance of her designated statutory and regulatory duties.

c. Determining that the proposed disciplinary hearing scheduled for October 10, 2013 is without legal authority and that the defendants have no right or authority to terminate the plaintiff or interfere with her position, salary, and benefits.

d. Determining that Louis J. Garbaccio is not the Chief Financial Officer of the County of Hunterdon and has no authority to act in the role.

e. Ordering, enjoining and mandating that the defendants and each of them to return the plaintiff to her office, provide the support services and access to books and records that she

had before she was displaced, and ordering that they do not interfere with her performance of her statutory and regulatory duties.

f. Enjoining the commencement of the Disciplinary Hearing proposed for October 10, 2013 as unlawful and permanently barring it from taking place.

g. Ordering that the defendant Louis J. Garbaccio be removed from the County Financial Offices, that he be barred and enjoined from representing or holding himself out as the County's Chief Financial Officer or acting in that capacity, and that he further be enjoined from interfering with the work or operation of the plaintiff in her positions and that he be barred and enjoined from entering the County's Financial Offices or participating in its affairs except if requested by the plaintiff.

TEMPORARY RESTRAINTS

It is further ordered that pending the return date of the Order to Show Cause that:

a. The plaintiff as the duly appointed Chief Financial Officer and Treasurer of the County of Hunterdon is entitled to exercise the duties of her office.

b. The defendants and each of them are enjoined from interfering with the performance of her designated statutory and regulatory duties and that the defendants have no right or authority to terminate the plaintiff or interfere with her position, salary, and benefits.

c. Ordering, enjoining and mandating that the defendants and each of them to return the plaintiff to her office, provide the support services and access to books and records.

d. Enjoining the commencement of the Disciplinary Hearing proposed for October 10, 2013 pending further Order of this Court.

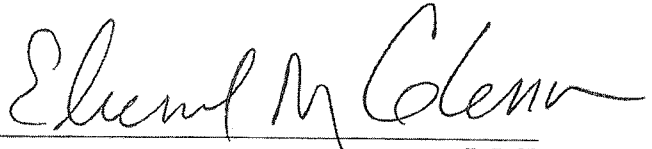
e. Ordering that the defendant Louis J. Garbaccio be removed from the County Financial Offices, that he be barred and enjoined from representing or holding himself out as the

County's Chief Financial Officer or acting in that capacity, and that he further be enjoined from interfering with the work or operation of the plaintiff in her positions and that he be barred and enjoined from entering the County's Financial Offices or participating in its affairs except if requested by the plaintiff.

IT IS FURTHER ORDERED that the plaintiff serve the defendants by certified and regular mail within seven (7) days of the entry of this Order with a copy of the Verified Complaint, supporting Affidavit, Brief in Support of Order to Show Cause, and a copy of this Order; and

IT IS FURTHER ORDERED that the defendants shall by _____ days file with the Court and serve plaintiff's attorney as provided by the Rules of Court an Answer and responsive Brief, or Certifications, if desired. If defendant fails to file and serve an Answer, judgment by default may be rendered against the defendant for the relief demanded in the Verified Complaint. The plaintiff will have until _____ to file a responsive Certification and/or Brief.

DENIED



EDWARD M. COLEMAN, P.J.Ch. P.J.Ch.

Reason attached

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
HONORABLE EDWARD M. COLEMAN
DOCKET NO.: HNT-C-14029-13
RETURN DATE: October 10, 2013

Margaret Pasqua,
Individually and as
Treasurer and Chief
Financial Officer of
Hunterdon County

Plaintiff

v.

County of Hunterdon, *et*
al.

Defendants

Memorandum

Plaintiff's Application for Injunctive Relief

I. Introduction

Plaintiff, Margaret Pasqua alleges to hold the position of Chief Financial Officer and Treasurer for the County of Hunterdon. These positions are statutorily defined under N.J.S.A. 40A:9-28.4 and N.J.S.A. 40A:9-27 respectively. Defendants contest Plaintiff's title as Chief Financial Officer. Defendants assert that on May 3, 2011 the Plaintiff was appointed to the position of County Treasurer for a three year term pursuant to N.J.S.A. 40A:9-27 but was never appointed as Chief Financial Officer.

Plaintiff asserts that the present term of her "positions" does not expire until May 2014. Nevertheless, Plaintiff contends that she has been "dislodged" from her office and from access to the County's books and records, and financial systems including electronic systems and data bases [sic]. The Defendants are the County of Hunterdon, the members of the Hunterdon County Board of Chosen Freeholders, the County Administrator and an individual by the name of Louis J. Garbaccio.

Plaintiff alleges that on June 26, 2013, Defendants dislodged her from her office. Defendants allegedly barred her from accessing the County records, as well as all financial and computer systems. Plaintiff asserts that same day she was directed to a meeting with the County Administrator and Labor Attorney in which she was told then to vacate her office and work in the Sheriff's Department. Plaintiff contends that she was told the actions being conducted were not disciplinary and would not last longer than two weeks. Plaintiff asserts she was told the reason for moving her was so the Freeholders could "perform a review of the payments to the County's Health Insurance carrier, Chapter 78 Healthy Tier Employee placements, and whether employees were in their proper job title." Plaintiff claims that between June 26 and July 2, Defendants engaged Defendant Louis J. Garbaccio to act as County Chief Financial Officer. Plaintiff states that Garbaccio took over her work place and exercised the authority of her appointment.

On September 24, 2013, the County of Hunterdon served a disciplinary notice on Plaintiff proposing to terminate her from employment as County Treasurer and Chief Financial officer. The notice proposed a Hearing for October 10, 2013. Plaintiff contends that Defendants "have no right or authority to terminate Plaintiff..." Plaintiff filed the instant Order to Show Cause seeking *inter alia*, temporary restraints enjoining Defendants from interfering with the performance of Plaintiff's duties, position, salary and benefits.

II. Standard

The issue before the Court is whether to grant Plaintiff's request for temporary relief. In order to grant such extraordinary relief, Plaintiff must demonstrate that (1) the temporary restraints are necessary to prevent irreparable harm; (2) the legal right underlying the Plaintiff's claim is settled; (3) the material facts are uncontroverted and demonstrate a reasonable probability of ultimate success on the merits; and (4) the relative hardship to the parties in granting or denying relief favors granting the relief. Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982). The Court must find clear and convincing evidence that an injunction is warranted under these standards. Am. Employers' Ins. Co. v. Elf Atochem N. Am., 280 N.J. Super. 601, 611 (App. Div. 1995) (citing Dolan v. DeCapua, 16 N.J. 599, 614 (1954)). This clear and convincing standard must be accompanied by "evidence so clear, direct and weighty and convincing as to

enable [the fact-finder] to come to a clear conviction without hesitancy, of the truth of the precise facts in issue.” Cruzan by Cruzan v. Director, Missouri Dep’t of Health, 497 U.S. 261, 285 n. 11 (1990).

III. Analysis

The issue before the Court is whether to grant Plaintiff’s request for injunctive relief.

1. Injunctive Relief – Crowe Analysis

a. Irreparable Harm to Plaintiff

Harm is generally considered irreparable if it cannot be redressed adequately by monetary damages after the fact. Crowe, supra, 90 N.J. at 133. The irreparable harm must be imminent, concrete, non-speculative, and the harm must occur in the near, not distant future. Subcarrier Communications v. Day, 299 N.J. Super. 634, 639 (App. Div. 1997). Here, Plaintiff has not properly alleged irreparable harm. Plaintiff is asking the Court to restore her position and declare Defendants have no legal right to terminate her until the conclusion of her statutorily defined term in May of 2014. The Court is at a loss to find damages that could not be adequately redressed through the normal course of litigation. Indeed, Plaintiff’s damages for a wrongful discharge would likely include her salary and benefits due and owing through May of 2014 and possibly other consequential fees. Here, Plaintiff has not properly alleged irreparable, imminent harm. Thus, Plaintiff’s request for temporary restraints is DENIED.

b. Legally Settled Right

Although the injunctive relief shall be denied, the Court will complete its Crowe analysis for the sake of completeness. Injunctive relief should only be granted when the issues raised present a legally settled right. Crowe, supra, 90 N.J. at 133. Here, Plaintiff is asserting that she has or will be illegally terminated in violation of her statutory appointments as County Treasurer and Chief Financial Officer of Hunterdon County. Plaintiff’s statutorily created position or positions are governed by New Jersey statutory law. Accordingly, Plaintiff has a legally settled right to certain procedures before removal may take place. Thus, Plaintiff has met the second Crowe factor.

c. Reasonable Probability of Success

Injunctive relief should not be granted where all the material facts are controverted. Crowe, supra, 90 N.J. at 133 (citing Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 305-06 (E. & A. 1878)). Thus, to prevail on an application for temporary restraints, a plaintiff must demonstrate a reasonable probability of success on the merits. Ibid. (citing Ideal Laundry Co v. Gugliemone, 107 N.J. Eq. 108, 115-16 (E & A 1930). However, “mere doubt as to the validity of the claim is not an adequate basis for refusing to maintain the status quo.” Ibid. (citing Naylor v. Harkins, 11 N.J. 435 (1953)). In fact, the point of temporary relief is to maintain the parties in substantially the same condition when the final decree is issued as when the litigation began. Ibid. (citing Peters v. Public Service Corp. of N.J., 132 N.J. Eq. 500 (E. & A. 1942).

Here, Plaintiff seeks to prevent the Defendants from interfering with her duties, position, salary or benefits. In support thereof, Plaintiff claims that because her statutorily defined terms as Chief Financial Officer and Treasurer exist for three years Defendants do not have the legal authority to “terminate or replace or suspend” Plaintiff from her appointed position. In support, Plaintiff states that “[t]here is a significant statutory provision which sets forth the extreme malfeasance that is required before a CFO can be removed from office.” Plaintiff then cites to *N.J.S.A. 40A:9-28.6* which states that any county finance officer certificate may be revoked or suspended following a hearing before the Director of the Division of Local Government Services only for “dishonest practices or willful or intentional failure, neglect or refusal to comply with the Constitution of the State of the State of New Jersey or laws relating to county finances or other good cause.”

Plaintiff’s argument here is misplaced. *N.J.S.A. 40A:9-28.6* does not define the requirements to remove a County Chief Financial Officer from office. Rather, *N.J.S.A. 40A:9-28.6* delineates the showing required to revoke or suspend a county financial officer’s certificate. Indeed, pursuant to *N.J.S.A. 40A:9-28.4*, each County Financial Officer must possess a County Finance Officer Certificate obtained through the completion of a curriculum approved by the Division of Local Government Services. Following the revocation of a CFO’s certificate that person shall be removed from his office or position and shall be ineligible to hold the office or position or apply for recertification for a period of five years. Here, there is no showing that Defendants have

sought to suspend Plaintiff's earned CFO Certificate. Accordingly, *N.J.S.A.* 40A:9-28.6 does not apply.

Plaintiff also cites to *Pillsbury v. Bd. Of Chosen Freeholders of Monmouth Cnty.*, 140 *N.J. Super.* 410, 414 (App. Div. 1976) and *Coyle v. Bd. Of Chosen Freeholders of Warren Cnty.*, 170 *N.J.* 260, 263, 787 *A.2d* 881, 883 (2002) for the principle that “[o]nce an official has been appointed to a statutory term they are not removable by a simple action of the Freeholders.”

In Both *Pillsbury* and *Coyle* the Court held that County Counsel could not be removed except for “good cause.” *N.J.S.A.* 40A:9-25 provides that officers appointed for statutory terms are removable “only for cause” and not for “political reasons.” *N.J.S.A.* 40A:9-25. Officers removable for cause are entitled to first receive written charges filed by the governing body of the county with notice of a designated time and place for a hearing where the employee may be represented by counsel. *Id.* During the hearing, the person charged shall have the power to subpoena witnesses and present documentary evidence. *Id.* Thereafter, the Superior Court has jurisdiction to review the determination and hear the cause *de novo* on the record below with either party supplementing the record with additional testimony. *Id.*

This Court agrees with Plaintiff that the County Treasurer and County Financial Officer positions are positions that are not permitted to be terminated “by a simple action of the Freeholders.” These positions require notice, a hearing, and termination only “for cause” which cannot be “political reasons.” Here, Plaintiff has not yet been officially terminated. Pursuant to *N.J.S.A.* 40A:9-25, the County served Plaintiff with a Notice of Disciplinary Charges on September 24, 2013 which included written charges of the cause of the complaint and provided for a hearing within thirty days of service. Whether or not the allegations included within Plaintiff's notice of termination ring true, it is clear to the Court that the facts remain controverted. It appears to the Court that so far Defendants' have followed procedure as outlined in *N.J.S.A.* 40A:9-25 to seek removal *for cause*. Thus, the Court is not convinced that Plaintiff has shown a reasonable probability of success on the merits.

Injunctive relief should not be granted where all the material facts are controverted. *Crowe, supra*, 90 *N.J.* at 133. Plaintiff states that “[i]t is respectfully

believed that the defendants will not dispute the material facts.” Here, before the hearing has even taken place, the issue as to whether “good cause” may exist is quite obviously in dispute. Accordingly, Plaintiff has not shown by clear and convincing evidence that she has a reasonable probability of success.

d. Balancing of the Equities and the Public Interest

Lastly, temporary relief requires a balancing of the relative hardship to the parties in granting or denying relief. Crowe, supra, 90 N.J. at 134. Here, without more, a hardship analysis is difficult. Plaintiff’s loss of employment, and possible personal liabilities for the inability to perform the duties of her position quite clearly present a significant hardship upon her. On the other hand, if the allegations by the County against Plaintiff are correct than the hardships imposed upon the County while maintaining her position are quite significant in their own right. The Court believes the potential hardship imposed upon the County is greater. Granting an extraordinary request for specific performance and holding that an individual has an unfettered right to maintain a position of employment no matter the allegations against her pending final review by the Court is too great an imposition. The relative hardship upon the County is superior to that of the Plaintiff. Thus, Plaintiff has failed to meet the fourth Crowe factor as well.

II. Conclusion

For the foregoing reasons, Plaintiff’s Application for Injunctive Relief is **DENIED.**