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Attorneys for Plaintiff

JWC FITNESS, LLC,

Plaintiff,

v.

GOVERNOR PHILIP DUNTON
MURPHY, in his official capacity,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
SUSSEX COUNTY
Docket No.: SSX-L- -20

Civil Action

COMPLAINT

Plaintiff, JWC FITNESS, LLC, by and through its undersigned counsel, asserts and alleges the following:

INTRODUCTION

1. Governor Murphy declared a public health emergency and a state of emergency on March 9, 2020 (**EXHIBIT A**: Ex. Ord. 103). Such declaration continues to date.

2. Using the extraordinary powers of the Civilian Defense and Disaster Control Act, *N.J.S.A. App. A: 9-33 et seq.*, the Governor has since March 16, 2020 pervasively and intrusively prescribed the course of conduct of the State’s law-abiding citizens, including directing “non-essential” business owners to close their business; or to operate at reduced capacity, or to operate

only under prescribed conditions, on pain of penalty. (**EXHIBIT B:** Ex. Order 104 at par. 7(d); (**EXHIBIT C:** Ex. Order 107 at par. 6-13; 25).

3. This is an action for declaratory relief pursuant to *N.J.S.A. 2A:16-59 and 28 U.S.C. 2201*, that the Plaintiff herein, who has incurred economic business losses due to its compliance with the emergency orders issued for the public benefit are entitled to compensation pursuant to *N.J.S.A. App. A:9-33 et seq.*, and the State and Federal Constitutions.

PARTIES

4. Plaintiff, JWC Fitness, LLC, is a domestic limited liability company that operates as a single member LLC, doing business as CKO Kickboxing Franklin (“Plaintiff”). It maintains its principal place of business at 60 Munsonhurst Rd., Franklin, N.J. It has been closed since March 16, 2020, due solely to the Defendant’s emergency orders. Although allowed to reopen indoors with restrictions on September 1, 2020 per Ex. Order 181, (**EXHIBIT D:** Ex. Ord. 181), Plaintiff has been unable to do so, as the restrictions prevent the business from generating the revenue sufficient to offset the expense of operating indoors. The business has generated little revenue since it was ordered to close. Allowed to operate outdoors in June, 2020, Plaintiff operated at low capacity and generated little revenue. (**EXHIBIT F:** Ex. Ord. 157).

5. Defendant Philip D. Murphy is Governor of the State of New Jersey. He issued the Orders directing closure of Plaintiff’s business and the conditions under which it is permitted to reopen. He is sued in his official capacity.

FACTS COMMON TO ALL COUNTS

6. A novel virus spread *via* human transmission, COVID-19, was declared to be a pandemic by the World Health Organization on March 11, 2020.

7. On March 9, 2020, Governor Murphy issued Executive Order 103 (“E.O. 103”), in which he declared a state of emergency and a public health emergency. *See EXHIBIT A*. On March 16, 2020, Governor Murphy issued Executive Order 104 (“E.O. 104”), superseded and incorporated into Executive Order 107 (“E.O. 107”) on March 21, 2020. *See EXHIBITS B and C*. E.O. 104 directed that business activity characterized as non-essential commercial activity be closed or their operation modified, effective March 18, 2020. (**EXHIBIT B**: E.O. 104 at par. 7; *see also, EXHIBIT C*: Ex. Ord. 107 at 6-13).

8. There is no time frame given for any executive order affecting the Plaintiff’s ability to return to the regular operation of their business.

9. The Plaintiff is a business whose regular operation has been affected by Ex. Order 104 and 107 from March 15, 2020 to date. It has suffered economic loss as a direct result of its compliance with Ex. Orders 104 and 107 and all other pertinent, subsequently issued Executive Orders issued pursuant to *N.J.S.A. App. A: 9-33 et seq.*

10. The purpose of the Civilian Defense and Disaster Control Act, *N.J.S.A. App. A: 9-33 et seq.* (hereafter, “Act”), is, in pertinent part, to “provide for the health, safety and welfare of the people of the State of New Jersey and to aid in the prevention of damage to the destruction of property during any emergency ... by prescribing a course of conduct for the civilian population of this state and by centralizing control of all civilian activities having to do with such emergency under the Governor” *N.J.S.A. App. A:9-33*.

11. The powers vested in the Governor include the power to “commandeer and utilize any personal services and any privately owned property necessary to avoid or protect against any emergency **subject to the future payment of the reasonable value of such services and**

privately owned property as hereinafter in this act provided.” *N.J.S.A. App. A:9-34* (emphasis added).

12. *N.J.S.A. App. A:9-51* authorizes the Governor to assume control of all emergency management operations; proclaim an emergency, and “employ, take, or use” “the real or personal property” of any citizen, resident, or business entity of this state, “for the purpose of ... promoting the public health, safety or welfare” of the State. *N.J.S.A. App. A:9-51(a)*.

13. When the Governor acts in accordance with *N.J.S.A. App. A:9-51(a)*, “reasonable compensation” shall be awarded “to the party entitled thereto for any property employed, taken or used under the provisions of this subsection...”, via emergency compensation boards established by the Governor. *N.J.S.A. App. A:9-51(c)*.

14. The right to compensation ceases to accrue when the Governor issues a proclamation declaring an end to the emergency and suspending the powers granted to him pursuant to the Act. *N.J.S.A. App. A:9-51(e)*.

15. On April 2, 2020, Governor Murphy issued Ex. Order 113. *See EXHIBIT E*. This Order delegated to the State Director of Emergency Management the authority to reallocate privately-owned medical resources to areas of particular need. (**EXHIBIT E**: Ex. Ord. 113 at par. 1.). Governor Murphy specifically directed the affected property owners be compensated in accordance with the provisions of *N.J.S.A. App. A: 9-51*. (**EXHIBIT E**: Ex. Ord. 113 at par. 2).

16. Unlike Ex. Ord. 113, in which the Defendant recognized his statutory obligation to compensate the private property owners subject to its requirements, the Defendant has never acknowledged that compensation is due to the Plaintiff pursuant to *N.J.S.A. App. A:9-34* and *N.J.S.A. App. A:9-51* for its compliance with Ex. Orders 104 and 107, issued to promote the public welfare. Nor has the Defendant declared an end to the emergency.

17. The Plaintiff has had its property employed, taken, or used within the meaning of *N.J.S.A. App. A:9-51*. It has incurred loss and expense as a result of its compliance with the Defendant's emergency orders.

FIRST COUNT

(Declaratory Judgment — *N.J.S.A. App. A:9-33 et seq.*)

18. Paragraphs 1-17 are fully incorporated by reference herein.

19. Plaintiff seeks a declaration of its right to compensation pursuant to the Act pursuant to *N.J.S.A. App. A:9-34* and *N.J.S.A. App. A:9-51*.

WHEREFORE, Plaintiff demands a declaratory judgment be entered in its favor and against Defendant that Plaintiff's compliance with Ex. Orders 104 and 107 and such pertinent executive orders issued thereafter pursuant to the Defendant's authority under the Act entitle Plaintiff to compensation as set forth in *N.J.S.A. App. A:9-34* and *N.J.S.A. App. A:9-51*, and that Defendant is accordingly obligated to implement the compensation procedures set forth in the Act.

SECOND COUNT

(Declaratory Judgment — NJ State Constitution)

20. Paragraphs 1-19 are fully incorporated by reference herein.

21. "Acquiring, possessing, and protecting property" is a natural and unalienable right. *N.J. Const. [1948], Art.I, sec. 1*.

22. The State Constitution further provides that: "[p]rivate property shall not be taken for public use without just compensation". *N.J. Const. [1948], Art.I, sec. 20*.

23. Plaintiff owns property that since March 15, 2020 has been taken for the public benefit to manage a public health and state emergency in the manner directed by the Defendant.

It has incurred a complete loss of revenue and other injury to its property as a direct result. The State has not compensated it for its loss.

WHEREFORE, Plaintiff is entitled to a judgment in its favor as a matter of law. It demands declaratory relief that its compliance with Ex. Orders 104 and 107 and any such pertinent executive orders as may be issued thereafter are a taking for public use without compensation in violation of the State Constitution, *N.J. Const. [1948], Art. I, sec. 1 & 20*.

THIRD COUNT
(Declaratory Judgment — U.S. Constitution)

24. Paragraphs 1-23 are fully incorporated by reference herein.

25. The Fifth Amendment to the U.S. Constitution, incorporated into the Fourteenth Amendment, forbids the taking of private property for public use “without just compensation”.

26. Plaintiff owns property that since March 15, 2020 has been taken for the public benefit to manage a public health and state emergency in the manner directed by the Defendant. It has incurred a complete revenue loss and other injury to its property as a result. It has not been compensated by the State for its loss.

WHEREFORE, Plaintiff is entitled to a verdict in its favor as a matter of law. It demands declaratory relief that its compliance with Ex. Orders 104 and 107 and any such pertinent executive orders as may be issued thereafter are a taking for public use without compensation in violation of the Fifth and Fourteenth Amendments to the U.S. Constitution.

s/Catherine M. Brown
Catherine M. Brown

s/Robert W. Ferguson
Robert W. Ferguson

Dated: September 23, 2020

Attorneys for Plaintiff

CERTIFICATION PURSUANT TO RULE 4:5-1

I hereby certify to the best of my knowledge, information, and belief that the matter in controversy is not the subject of any other pending or contemplated court actions, arbitration proceedings, or administrative proceedings. I further certify that to the best of my knowledge, information, and belief that I am not aware of any non-parties who should be joined in this action.

I certify that the foregoing statements are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

Dated: September 23, 2020

s/Robert W. Ferguson
Robert W. Ferguson