

MARIO M. KRANJAC, MAYOR OF THE
BOROUGH OF ENGLEWOOD CLIFFS,

Plaintiff,

vs.

GLORIA OH, COUNCIL MEMBER OF THE
BOROUGH OF ENGLEWOOD CLIFFS,
EDWARD AVERSA, COUNCIL MEMBER OF
THE BOROUGH OF ENGLEWOOD CLIFFS,
DEBORAH TSABARI, COUNCIL MEMBER
OF THE BOROUGH OF ENGLEWOOD
CLIFFS, and JIMMY SONG, COUNCIL
MEMBER OF THE BOROUGH OF
ENGLEWOOD CLIFFS,

Defendants,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO. BER-L-

Civil Action

**BRIEF IN SUPPORT OF MAYOR MARIO M. KRANJAC'S MOTION
FOR A PRELIMINARY INJUNCTION**

KRANJAC TRIPODI & PARTNERS LLP

473 Sylvan Avenue

Englewood Cliffs, New Jersey 07632

(646) 216-2400

jvansplinter@ktpllp.com

Attorneys for Mayor Mario M. Kranjac

PRELIMINARY STATEMENT

This is a simple application to enjoin activity, the impropriety of which should be self-evident, to wit: Borough Counsel members should not be permitted to vote on whether or not *they* should be investigated for potential wrongdoing and/or self-interest in a matter of great public concern, here, the litigation and potential resolution of *In re The Borough of Englewood Cliffs*, BER-L-6119-15 (the “*Mt. Laurel* Action”).

The record of the *Mt. Laurel* Action is unfortunately rife with plain evidence that the Mayor, a member of the Governing Body of the Borough (i.e., the “*Mayor* and Council of the Borough of Englewood Cliffs”) has been excluded, in abrogation of all precepts of sound governance and minority-party-rights from all aspects of the *Mt. Laurel* Action including the sub-rosa settlement communications which have apparently taken place. It is further clear from the record that the reason the Mayor has been so excluded is that the attorneys for the Borough have been instructed to exclude him by controlling members of the Borough Counsel – Edward Aversa, Debbie Tsabari, Gloria Oh, and Jimmy Song (the “*Council Person Defendants*”). The record from the *Mt. Laurel* Action also demonstrates a blithe disregard for the rights, wishes, and concerns of the residents of the Borough.

Because of the frankly adversarial (both against the Mayor and against the public itself) posture taken by the Council Person Defendants, and the extreme lengths they have gone to cloak the goings-on in the *Mt. Laurel* Action from the Mayor and others, not only could a settlement not reasonably be agreed to without further information, but there is a significant question that the Council Person Defendants have something to hide and/or gain from this settlement. Accordingly, and quite reasonably, on June 10, 2020, Councilman William Woo (who has also been completely frozen out of information concerning the *Mt. Laurel* Action) made a motion that special counsel

should be appointed merely to investigate the actions of the Council Person Defendants *vis* the Mt. Laurel Action so as to ensure the propriety thereof before finalizing a settlement.

Shockingly (or sadly, perhaps not shockingly), at that meeting Borough Counsel advised the Council Person Defendants to *vote* on that motion (i.e., whether or not they themselves should be investigated). It should go without saying that it is a conflict of interest in violation of the Local Government Ethics Law, N.J.S.A. 40A:9-22.1, *et seq.*, for councilpersons to vote on a subject to which they are so personally interested.

The relief sought by way of the present application is modest and should not be controversial – merely that the Council Person Defendants should be preliminarily enjoined from voting on the subject matter of Councilman Woo’s Motion, and from voting on any action with respect to the *Mt. Laurel* Action. This result does not require any finding by the Court that the Council Person Defendants actually are interested or engaged in any wrongdoing at all in the *Mt. Laurel* Action – that would be for the independent investigation to determine. Rather, the Mayor only asks that this Court uphold the very fundamental concept that a council member may not vote on a matter in which they are very personally interested.

FACTUAL SUMMARY

Plaintiff respectfully refers the Court to the Verified Complaint in Lieu of Prerogative Writs submitted contemporaneously with this application. All defined terms therein share their meaning herein.

LEGAL ARGUMENT

MAYOR KRANJAC IS ENTITLED TO A PRELIMINARY INJUNCTION

Mayor Kranjac is entitled to a preliminary injunction preliminarily enjoining the Council Person Defendants from voting on the subject matter of the Woo Motion or on any aspect of the *Mt. Laurel* Action including the proposed settlement thereof.

The standard for the relief sought by Plaintiff is well-established. Injunctive relief is appropriate where (i) there exists irreparable harm; (ii) the legal rights of the parties are well-settled; (iii) there are no material facts in dispute; and (iv) a balancing of the hardships weighs in favor of the party seeking equitable relief. Crowe v. Di Gioia, 90 N.J. 126, 132-133 (1982).

Here, each of these factors weighs strongly in favor of the relief sought.

A. The Legal Rights of the Mayor are Well Settled and There are No Material Facts in Dispute

Here, the proper starting point is a consideration of the legal rights of the parties – which are well settled, indeed, codified by statute. The Council Person Defendants are statutorily barred from voting on the Woo Motion by the Local Government Ethics Law, N.J.S.A. 40A:9-22.1, *et seq.* (the “LGEL”). The LGEL and common law expressly preclude councilpersons from acting in their official capacity where they have a conflict of interest. *See* N.J.S.A. 40A:9-22.5(d) (“No local government officer or employee shall act in his official capacity where he . . . has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment”); *see also Grabowsky v. Township of Montclair*, 221 N.J. 536, 554 (2015) (“if there is ‘interest’ there is disqualification automatically, entirely without regard to motive, as the purpose of the rule is prophylactic”), *citing McNamara v. Borough of Saddle River*, 64 N.J. Super. 426, 429 (App. Div. 1960); *see also Speroni v. Borough of Point Pleasant Beach*, 2015 WL 4067423 at *3 (App. Div. 2015) (“Common law conflict-of-interest

principles prohibit a public official from participating in matters in which he has a direct or indirect personal or private interest.”)

Here, as set forth in the Verified Complaint, it cannot be disputed that the Council Person Defendants are directly, personally interested in the subject matter of the Woo Motion, which was brought in direct response to their secrecy and freeze out of other members of the governing body from the *Mt. Laurel* Action and particularly its settlement. They never should have voted on the Woo Motion, that vote should be stricken, and they should be enjoined from participating in a re-vote.¹

B. The Mayor Will Suffer Irreparable Harm In The Absence of Injunctive Relief

Furthermore, there is no question that the wrongful vote of the Council Person Defendants would cause the Mayor (and the public) irreparable harm. They Council Person Defendants – comprising, as they do, a majority of the Borough Council, have blocked, and conceivably could always block any investigation into their activities by the minority-party members of the Governing Body. This could lead to a potentially interested or disadvantageous settlement (without any transparency, and indeed rather with express efforts to conceal from the Mayor and public what was going on) in the *Mt. Laurel* Action, and of course the potential for further mischief if their course of conduct here is condoned is essentially boundless. The Council Person Defendants actions would be difficult, if not impossible, to repair if permitted to stand, and obviously could not be cured by any money damages.

¹ It bears noting that, as set forth in the Verified Complaint, Borough Counsel – despite wrongfully opining that the Council Member Defendants could vote at the June 10, 2020 Meeting – further expressly contemplated there being a second vote. That vote was blocked – again by the Council Person Defendants – at the June 18, 2020 Special Meeting. A new vote should go forward at the next meeting, without the participation of the interested Council Person Defendants.

C. A Balancing of the Equities Favors the Mayor

Here, the balancing of the equities for the relief sought favors the Mayor and the citizens of the Borough whom he was elected by and represents. Not only does the Council Person Defendants' vote against a proposed investigation into *them* completely fly in the face of all precepts of conflict-of-interest law, but moreover, it frustrates the Mayor's statutory duty, under N.J.S.A. 40A:60-5 to ensure that all State laws and Borough ordinances are being faithfully executed.

Again, the relief sought here is modest – Plaintiff does not seek any finding that the Council Person Defendants *were* engaging in any impropriety in the *Mt. Laurel* Action. Rather, Plaintiff only seeks a finding of the obvious – that the Council Person Defendants *were* interested in the Woo Motion which sought to *investigate* their actions *vis* the *Mt. Laurel* Action. Obviously the subject of an investigation should not have veto power over whether the investigation takes place. The investigation, in turn, will uncover the facts about the *Mt. Laurel* Action – facts the Council Person Defendants have endeavored mightily to hide – and the appropriate action (if any) to be taken *after* the investigation would be the subject of another action.

CONCLUSION

For the foregoing reasons, Mayor Kranjac respectfully requests that the Court grant this motion in its entirety.

Respectfully,

Dated: June 30, 2020

KRANJAC TRIPODI & PARTNERS LLP
Attorneys for Mayor Mario M. Kranjac

By: /s/ James Van Splinter
James Van Splinter