SUPREME COURT OF NEW JERSEY

LYNETTE JOHNSON, Plaintiff/Cross-Petitioner, v. CITY OF EAST ORANGE; ANNMARIE CORBITT, in her official capacity as Collector of Taxes, and TED R. GREEN, in his official capacity as Mayor of East Orange, Defendants/Petitioners.	DOCKET NO. 090953 Civil Action APP. DIV. NO. A-002486-23T2 On Appeal From: Superior Court of New Jersey Chancery Division, Essex County Docket No. ESX-C-16-23 Sat Below: Hon. Lisa M. Adubato, J.S.C.

PLAINTIFF/CROSS-PETITIONER LYNETTE JOHNSON'S REPLY IN SUPPORT OF CROSS-PETITION

DAVID J. DEERSON*
California Bar No. 322947
CHRISTINA M. MARTIN*
Washington Bar No. 60377
PACIFIC LEGAL FOUNDATION
3100 Clarendon Blvd., Suite 1000
Arlington, VA 22201
(916) 503-9032
DDeerson@pacificlegal.org
CMartin@pacificlegal.org
**Pro Hac Vice*
On the Brief

JONATHAN M. HOUGHTON
New Jersey Bar No. 369652021
PACIFIC LEGAL FOUNDATION
3100 Clarendon Blvd., Suite 1000
Arlington, VA 22201
(916) 503-9041
JHoughton@pacificlegal.org
On the Brief

Attorneys for Plaintiff/Cross-Petitioner

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

I. THE ISSUES IN THIS CROSS-APPEAL ARE NOT WAIVED

Contrary to Cross-Respondents' assertions, Ms. Johnson did present arguments relating to her unjust enrichment claim at the appellate division. The trial court's ruling on Ms. Johnson's unjust enrichment claim, as with all her claims, was exclusively about timing. (X-Pa33; X-Pa42). Naturally, therefore, her arguments to the appellate court focused on the timing of her claims. For instance, her opening appellate brief argued at pages two and seventeen that the unjust enrichment claim was brought within the pertinent six-year statute of limitations, citing *Kopin v. Orange Prods., Inc.*, 297 N.J. Super. 353, 373–74 (App. Div. 1997). Further, in response to the trial court's application of laches, Ms. Johnson argued that an equitable claim like unjust enrichment should follow the statute of limitations applicable to a legal remedy like just compensation where both are available for the same cause of action, citing *Fox v. Milman*, 210 N.J. 401, 421 (2012). Indeed, Ms. Johnson extensively discussed the *Fox* case, using it to establish that "laches did not bar timely claims, including a claim for unjust enrichment." (Pl.-Appellant Br. 18)

To the extent that the cross-petition makes arguments regarding the *substance* of Ms. Johnson's unjust enrichment claim which were not presented in the appellate division, these arguments had no opportunity for presentation below because the trial court's ruling was limited to jurisdictional arguments about timing. An argument is not waived where there is no opportunity to present it in the earlier proceeding. *See*

State v. Robinson., 200 N.J. 1, 20 (2009) ("[A]ppellate courts will decline to consider questions or issues not properly presented [below] when *an opportunity for such a presentation [was]*[1] *available*[.]") (quoting *Nieder v. Royal Indem. Ins. Co.*, 62 N.J. 229, 234 (1973)) (emphasis added). These substantive arguments were extensively briefed in the cross-motions for summary judgment at the trial court, and Ms. Johnson raises them again now to show this Court that the claim has sufficient merit to warrant review.

II. MS. JOHNSON HAS A VIABLE CLAIM FOR UNJUST ENRICHMENT

A. An Expectation of Remuneration Is Not Always Required

The City argues incorrectly that a plaintiff must have expected remuneration to succeed on an unjust enrichment claim. But courts often acknowledge actual expectation is unnecessary, describing the expectation element as only requiring that Plaintiff "would have expected" remuneration had all the facts been known. *Kleinman v. Merck & Co.*, 417 N.J. Super. 166, 186 (Law Div. 2009); *Castro v. NYT Television*, 370 N.J. Super. 282, 299 (App. Div. 2004); *Fasching v. Kallinger*, 211 N.J. Super. 26, 36 (App. Div. 1986). It is reasonable that Ms. Johnson expected, or

[1] Both *Robinson* and *Nieder* use the present tense "is." However, *Nieder* appears to be misquoting *Reynolds Offset Co. v. Summer*, 58 N.J. Super. 542, 548 (App. Div. 1959), which uses the past tense "was."

would have expected, had she been aware of the foreclosure proceedings, that the City would comply with the Constitution.

Moreover, *County of Essex v. First Union National Bank* clearly shows that the expectation element is not always required. 373 N.J. Super. 543, 550 (App. Div. 2004), *aff'd in relevant part*, 186 N.J. 46, 58, 62 (2006). The Appellate Division in *First Union* stated explicitly that there was "[o]bviously" no such expectation in that case, but it ruled for the plaintiff regardless. *First Union*, 373 N.J. Super. at 550. This Court affirmed that ruling, finding that "[s]trong remedies are necessary to combat unlawful conduct involving public officials" even where there is no expectation of remuneration. *First Union*, 186 N.J. at 58.[2]

Here, there should be no question that City officials engaged in unlawful conduct to the extent that they unconstitutionally retained all of the surplus equity in Ms. Johnson's property following foreclosure. *Tyler* and *257-261 20th Ave. Realty, LLC v. Roberto*, 477 N.J. Super. 339 (App. Div. 2023) make that clear. But Ms. Johnson does not rest her unjust enrichment claim on this unlawful conduct alone. Rather, she further alleges that the City failed to take sufficient steps to send notice to her residential address which it had on file *in connection* with the foreclosed

[2] Although the Court spoke primarily of "disgorgement," it used the term interchangeably with "unjust enrichment." *First Union*, 186 N.J. at 56 (speaking of "unjust enrichment/disgorgement.").

property even after its mailings sent to the property itself were all returned undelivered.

B. Reliance on Procedure Is Not an Automatic Shield from Liability

The City argues that it complied with the statutes governing both the sending of notice and the retention of surplus equity. (X-Resp. Br. 14–16). But it points to no authority suggesting that statutory compliance provides an automatic shield from equitable liability.

At least one other state high court has held that similar facts can give rise to a claim for unjust enrichment, notwithstanding compliance with statutory procedures. In *Dean v. Michigan Deptartment of Natural Resources,* 247 N.W.2d 876 (Mich. 1976), the Court allowed an unjust enrichment claim to proceed, rejecting the lower court's determination that the claim was collateral attack on the underlying foreclosure judgment, *id.* at 880, and disregarding the dissent's argument that the state could not be liable for following tax foreclosure statutes. *See id.* at 884 (Coleman, J., dissenting).

In an analogous context, this Court held that a bank could be liable on a theory of unjust enrichment despite following its legal contractual obligations to a tee. *Rudbart v. N. Jersey Dist. Water Supply Comm'n*, 127 N.J. 344, 367–68 (1992). There, the Water Commission issued $75 million in short-term "project notes," many of which were purchased and resold by First Fidelity Bank (Fidelity). *Id.* at 348.

Fidelity also acted as an underwriter and indenture trustee on the notes. *Id.* The notes paid out at approximately 8% interest payable twice yearly, with a maturity date fixed at three years after their issuance. *Id.* at 349. However, the terms of the notes provided that the Commission could redeem them earlier upon thirty days' published notice and with a small premium. *Id.*

The Commission exercised its early redemption option in June 1986, depositing the requisite funds in an escrow account with Fidelity, and Fidelity published the required notice in several widely circulated outlets. *Id.* at 349–50. It also sent mailed notice to those note holders who were also customers of the bank, but not to other note holders. The holders of roughly $10 million worth of notes never saw the published notice, and therefore did not remit the notes to collect the redemption funds. Meanwhile, those funds remained in Fidelity's accounts, potentially earning interest. *Id.* at 366–67. This Court held that the mere fact that the bank satisfied its contractual obligations did not mean it should be allowed to "profit unfairly from a lack of fair dealing[.]" *Id.* at 366. Fidelity "knew or should have known that a large percentage of the noteholders would fail to receive notice of the early redemption, and knew exactly who they were. Nonetheless Fidelity did not take any steps to minimize the consequences of that failure[.]" *Id.* There was "no fair reason" why the bank "should be entitled to all of the income on plaintiffs' unredeemed funds." *Id.* Thus, the Court held, to the extent that Fidelity had profited

on the funds which it retained, it should be disgorged of those profits to "remedy any unjust enrichment." *Id.* at 367. Just as the bank was disgorged despite following contractual procedures in *Rudbart*, the City should be disgorged of any unjustly gained profits regardless of whether it followed statutory procedures.

C. Insufficiency of Notice Supports a Claim for Unjust Enrichment

Rudbart also supports the notion that unfairly insufficient notice—even if technically legally proper—can support a claim for unjust enrichment. The City has contended that the municipal Tax Office cannot be expected to know address information held by the municipal Building Division. (X-Resp. Br. 18). But *Rudbart* rejected similar arguments: the bank averred that a "Chinese wall" separated the bank's investment department, which gave written notice only to the bank's customers, and its trust department, which maintained the list of all noteholders. *Rudbart*, 127 N.J. at 364–65. But this Court held it was unfair for Fidelity to obtain the benefits of its dual-capacity as indenture trustee and investment bank without incurring corresponding obligations. *Id.; see id.* at 377–78 ("The existence of separate divisions for business purposes does not allow [Fidelity] to act in a disparate manner when it knows the names and addresses of registered note holders who are both customers and non-customers.") (Petrella, P.J.A.D., concurring in part).

Here, the City's Building Division accepted nearly $2,000 from Ms. Johnson for the issuance of a construction permit without informing her that a tax lien was

sold on her property just two weeks earlier. The Building Division had Ms. Johnson's residential mailing address and her phone number on file. Meanwhile, all mailings to the property itself, which the City asked Ms. Johnson not to occupy, were returned undelivered. Yet the City insists it is entitled to the benefit of the surplus equity which it was not owed and took in violation of the Constitution.

The City also insists that its right hand cannot be expected to know what its left hand is doing, and it continues to cite the *Brick I* case in support. (X-Resp. Br. 17–18; *see Twp. of Brick v. Block 48-7, Lots 34, 35, 36*, 202 N.J. Super. 246, 252 (App. Div. 1985) ("*Brick I*"). When confronted with the contrary authority of *Twp. of Brick II*, *see Twp. of Brick v. Block 48-7*, 210 N.J. Super. 481 (App. Div. 1986) ("*Brick II*"), the City asserts that *Brick II* is factually distinguishable. But that is not only question-begging, it is nonsensical. The facts which gave rise to *Brick I* are of course the exact same facts that gave rise to *Brick II*. They simply were not known to the court at the time of *Brick I*, which is precisely why that court remanded the case for further factual development. *Brick I*, 202 N.J. Super. at 254. For that very same reason, Ms. Johnson has maintained from the beginning that summary judgment was inappropriate in *either* direction on the unjust enrichment claim.[3]

[3] The City incorrectly asserts that Ms. Johnson "must concede that further factual development of this issue is unnecessary and unwarranted" given that she "cross-moved for summary judgment as to liability on all her claims." (X-Resp. Br. 18, n.13). Completely on the contrary, Ms. Johnson stated clearly in her cross-motion for summary judgment that she "does not . . . seek judgment as to Count III, as there

(Ja309). Further factual development may well reveal that, as in *Brick II*, the "information was plainly and simultaneously before" relevant municipal officials both that the mailing address it was using was inappropriate and that they had "readily available addresses where [the addressee] could be reached." 210 N.J. Super. at 485.

D. The Relationship Between Ms. Johnson and the City Is One That Traditionally Gives Rise to Unjust Enrichment

The City argues that the parties here lack the sort of relationship that gives rise to a claim for unjust enrichment. But this notion is undermined by the City's own characterization of unjust enrichment as "a form of quasi-contractual liability." (X-Resp. Br. 12). As the U.S. Supreme Court has explained, quoting Blackstone's 2 Commentaries on the Laws of England 453 (1771), "the common law demanded [that if] a tax collector seized a taxpayer's property, he was 'bound by an implied contract in law'" to "'render back the overplus'" following a sale. *Tyler v. Hennepin Cnty.*, 598 U.S. 631, 639–40 (2023); *see* Jessica L. Asbridge, *Tax Forfeitures and the Excessive Fines Muddle*, 118 NW. U. L. Rev. Online 170, 184 (2023) (the development of implied contract theory in the 18th century influenced "courts' review of fines and forfeitures" in addition to private contracts).

---

remain disputed issues of material fact with regards to these aspects of the case." (Ja309). Count III was the claim for unjust enrichment. (Ja10).

The relationship here is nothing like the ones at issue in *Callano* or *Fasching*, which the City cites to support its argument. Both of those cases lacked a direct relationship between the parties. *See Callano v. Oakwood Park Homes Corp.*, 91 N.J. Super. 105, 109 (App. Div. 1966); *Fasching*, 211 N.J. Super. at 36. Here, the City took tens of thousands of dollars' worth of equity to which it was not entitled directly from Ms. Johnson after it foreclosed on her property. This is a strong, direct relationship.

III. GRANTING THE CITY'S PETITION WITHOUT THIS CROSS-PETITION RISKS IMPROPERLY DEPRIVING MS. JOHNSON OF AN OPPORTUNITY TO PROVE HER CASE

As explained above, Ms. Johnson explicitly declined to seek summary judgment on her unjust enrichment claim, believing that further factual development was required to determine whether relevant city officials had knowledge putting them on constructive or actual notice that she could easily be reached at the mailing address or phone number she provided to the City. The trial court improperly granted summary judgment on this issue without any discussion. The appellate division affirmed that part of the trial court's decision, also without any discussion. If this Court were to grant the City's petition and reverse the appellate division's decision with respect to Ms. Johnson's takings claim—two things it should certainly not do—then it must at least allow Ms. Johnson to have her day in court on the claim of unjust enrichment.

CONCLUSION

For the foregoing reasons, Ms. Johnson respectfully requests the Court to grant this conditional cross-petition in the event, and only in the event, that it grants the City's petition.

DATED: September 8, 2025.

Respectfully submitted,

s/ David J. Deerson
DAVID J. DEERSON*
California Bar No. 322947
CHRISTINA M. MARTIN*
Washington Bar No. 60377
PACIFIC LEGAL FOUNDATION
3100 Clarendon Blvd., Suite 1000
Arlington, VA 22201
(916) 503-9032
DDeerson@pacificlegal.org
CMartin@pacificlegal.org
**Pro hac vice*

s/ Jonathan M. Houghton
JONATHAN M. HOUGHTON
New Jersey Bar No. 369652021
PACIFIC LEGAL FOUNDATION
3100 Clarendon Blvd., Suite 1000
Arlington, VA 22201
(916) 503-9041
JHoughton@pacificlegal.org

Counsel for Plaintiff/Cross-Petitioner

Certification that Submission Contains No Confidential Information or Confidential Personal Identifiers

This form shall be completed by any party who files a document in a public court matter in the Supreme Court or in the Appellate Division of the Superior Court.

1. **Confidential information / confidential personal identifiers** (must select one):
   I certify that I have reviewed Rules 1:38-3, 1:38-5, and 1:38-7 and:

   ■ This document does not contain any confidential information or any confidential personal identifiers; **OR**

   ☐ This document; previously contained confidential information or confidential personal identifiers, which have been redacted (meaning removed or made anonymous by using fictitious first names or initials, where applicable). The cover of the redacted version of the document contains the word "REDACTED." I acknowledge that a non-redacted version must be filed simultaneously with the redacted version in matters where the confidential information is necessary to the disposition of the matter: **OR**

   ☐ This document contains confidential information, but redaction is not required because the document is excluded from public access pursuant to court order, Rule, statute, or other authority. If applicable, skip paragraphs 2 and 3.

2. **Return and resubmission:**
   I certify that if any confidential information is discovered in this submission and brought to the court's attention, the court will return the document to me, and I will be responsible to redact or remove the confidential information before resubmission. I understand the court could impose sanctions, including suppression of the brief, dismissal in extraordinary cases, and other measures for a failure to accurately make this certification or for the discovery of confidential information in a document that has been filed.

3. **Briefs posted online:**
   I understand that the presence of confidential information or confidential personal identifiers in a document that has been posted on the Judiciary's public website will be grounds for the removal of such online posting, pending correction by the filing party, on an expedited timeline. The court in its discretion could postpone further proceedings pending the resubmission of the document.

This certification pertains to the following documents included in this filing:

REPLY BRIEF

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

09/08/2025
Date

S/ JONATHAN MORGAN HOUGHTON , Esq.
Signature

JONATHAN MORGAN HOUGHTON , Esq.
PACIFIC LEGAL FOUNDATION
3100 CLARENDON BLVD.
ARLINGTON, VA, 22201
202-888-6881
INCOMINGLIT@PACIFICLEGAL.ORG
JHOUGHTON@PACIFICLEGAL.ORG
PPUCCIO@PACIFICLEGAL.ORG
Attorney Bar ID: 369652021

SUPREME COURT OF NEW JERSEY
APP. DIV. # A-002486-23
SUPREME COURT # 090953

CRIMINAL ACTION

Lynette Johnson,

Plaintiff-Respondent,

v.

City of East Orange,
Annmarie Corbitt, in her official capacity as Collector of
Taxes, and Ted R. Green, in his official capacity as Mayor of
East Orange,

Defendants-Petitioners.

CERTIFICATION OF SERVICE

I hereby certify that the following documents, REPLY BRIEF, CERTIFICATION OF CONFIDENTIAL IDENTIFIERS were submitted and transmitted to the parties listed below in the following format:

ELECTRONICALLY TO:

ATTORNEY NAME: ELLIOTT JOSEPH ALMANZA , Esq.
EALMANZA@GMSLAW.COM
MGONZALEZ@GMSLAW.COM

ATTORNEY NAME: ELLIOTT JOSEPH ALMANZA, Esq.
EALMANZA@GMSLAW.COM
MGONZALEZ@GMSLAW.COM

ATTORNEY NAME: KARILYN M WARD, Esq.
ABODAK@WISNIEWSKILAW.COM

KARILYNWARD@COMCAST.NET
KWARD@WISNIEWSKILAW.COM

ATTORNEY NAME: KEITH ALAN BONCHI , Esq.
KBONCHI@GMSLAW.COM
MGONZALEZ@GMSLAW.COM

ATTORNEY NAME: MATTHEW C FORYS, Esq.
ABODAK@WISNIEWSKILAW.COM
MFORYS@WISNIEWSKILAW.COM

BY MAIL:

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

Attorney for Filing Party
LYNETTE JOHNSON

S/ JONATHAN MORGAN HOUGHTON , Esq.

Dated: 09/08/2025