NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2025-14T3

MORGAN STREET DEVELOPERS URBAN
RENEWAL COMPANY, L.L.C.,

Plaintiff-Respondent,

v.

CITY OF JERSEY CITY,

Defendant-Appellant.

Argued April 12, 2016 – Decided August 30, 2016

Before Judges Reisner, Leone & Whipple.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-3080-14.

Jeremy Farrell, Corporation Counsel, and Michael Dougherty, Assistant Corporation Counsel, argued the cause for appellant (Mr. Farrell, attorney; Mr. Dougherty, on the briefs).

Eugene T. Paolino argued the cause for respondent (Genova Burns LLC, attorneys; Mr. Paolino, of counsel and on the brief; Celia S. Bosco and Michael C. McQueeny, on the brief).

PER CURIAM

Defendant, the City of Jersey City (City), appeals a November 7, 2014 order requiring the City to pay to plaintiff Morgan Street Developers Urban Renewal Company, L.L.C. (Morgan)

$2,119,891 that was paid to the City by Vector Urban Renewal Associates II, L.P. (Vector). We reverse.

I.

The following facts were admitted or undisputed. In 2001, Vector obtained title to a piece of real estate (Property) located in the Exchange Place North Redevelopment Area established by the City under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 to -73. Vector was an approved urban renewal entity under N.J.S.A. 40A:20-5 of the Long Term Tax Exemption Law (LTTEL), N.J.S.A. 40A:20-1 to -22.

Vector planned to construct on the Property a project comprised of a fifty-story residential tower with approximately 417 market-rate residential condominium units; a parking garage with approximately 210 parking spaces; and a ground floor retail unit of approximately 6700 square feet (collectively "the Vector Project"). Vector filed an application with the City for a long term tax exemption for the Vector Project.

On July 14, 2005, Vector entered into a Financial Agreement with the City. In the Financial Agreement, the City made findings based on the Vector Project as described above, including that the Vector Project would generate revenue for the City in the form of an Annual Service Charge of approximately $1,908,041. In return for Vector's promise to build the Vector

Project, and Vector's other covenants, the City approved a tax exemption under LTTEL, lasting at least twenty years, "for all the Improvements to be constructed and maintained in accordance with the terms and conditions of this Agreement." In lieu of any taxes on the improvements to be constructed, Vector agreed to pay an "Annual Service Charge," which for the first six years would be 16% of Vector's annual gross revenue. Vector also agreed to pay an affordable housing contribution (AHC) of $635,550 in three installments of $211,850.

Also on July 14, 2005, Vector and the City entered into a Prepayment Agreement. That Agreement recited that Vector had been authorized by the City to construct the Vector Project, that Vector recognized the Annual Service Charge payable with respect to the Vector Project would not accrue to the City until the Vector Project was completed, and that the City was in immediate need of funds during the current fiscal year. Vector agreed to pay before June 1, 2006, "$1,908,041, representing a Prepayment of one full year's estimated Annual Service Charge." The City agreed to reimburse Vector, without interest, from the Annual Service Charges otherwise due under the Financial Agreement, or, if inadequate, from any conventional taxes assessed on the improvements.

On January 10, 2006, Vector obtained financing for the Vector Project through a $24,000,000 note and a mortgage issued by North Fork Bank, and subsequently held by its successor by merger, Capital One, N.A.[1] Later in 2006, Vector paid to the City the $1,908,041 prepayment and the first $211,850 AHC installment.

Nonetheless, Vector failed to actually develop the Vector Project. The City's Tax Collector certified that Vector never initiated construction, and never paid any Annual Service Charges or conventional taxes for improvements.

Morgan's complaint alleged as follows. Vector defaulted under the mortgage. Capital One brought a foreclosure action against Vector, and obtained a judgment against Vector on April 19, 2010. On or about April 18, 2011, Morgan purchased the mortgage note from Capital One. After a sheriff's sale, a deed of foreclosure transferred ownership of the Property to Morgan on November 22, 2011.

On April 4, 2013, the Jersey City Redevelopment Authority (JCRA) designated Morgan as the redeveloper of the Property. On November 25, 2013, Morgan applied to the City for a five-year tax exemption under the Five-Year Exemption and Abatement Law (FYEAL), N.J.S.A. 40A:21-1 to -21. In its FYEAL application,

[1] We refer to both banks collectively as "Capital One."

Morgan said it anticipated constructing a fifty-story residential rental tower with approximately 447 market-rate units; a parking garage with 144 parking spaces; and approximately 10,611 square feet of retail space (collectively "the Morgan Project").

In its FYEAL application, Morgan sought credit for the $1,908,241 prepayment and $211,850 AHC installment paid by Vector to the City in 2006. The City responded that, "unless [Morgan] can demonstrate that it received an assignment of Vector's financial agreement and prepayment agreement, it is not entitled to receive credit for any payments made by Vector." The City later emailed that Morgan could seek a declaratory judgment ruling that Morgan "owns the assets of the now bankrupt Vector" and "has title to" Vector's payments. The City added that Morgan's AHC payments in the interim would be accepted as paid "under protest," and that if Morgan obtained a favorable judicial ruling, the City would provide credit and a refund.

On April 29, 2014, Morgan and the City entered into a Tax Agreement. The Tax Agreement recited that Morgan had applied to construct the Morgan Project described above. The City agreed that it would grant a five-year tax exemption under FYEAL for the construction of the Morgan Project. The agreement called for Morgan to pay a varying percentage of the real estate taxes

otherwise due over the five years. The Tax Agreement also required Morgan to pay AHC installments totaling $686,417.[2]

Thereafter, Morgan filed a complaint against the City seeking a declaratory judgment that Morgan was entitled to "repayment" of the $1,908,041 prepayment, and credit for the $211,850 AHC installment, paid by Vector. The Law Division granted Morgan's application for an order to show cause, and proceeded summarily.

After hearing argument, the Law Division issued the November 7, 2014 order of judgment ordering the City to credit Morgan for Vector's $1,908,041 prepayment and the $211,850 AHC installment, for a total "Judgment Amount" of $2,119,891. The court ordered the City to credit the Judgment Amount against any real estate taxes, special assessments, or service charges under the Tax Agreement. The City appeals.

II.

Under the Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62, "[a] person interested under a deed, will, written contract or other writing constituting a contract, . . . may have determined any question of construction or validity arising

[2] Because we reverse on other grounds, we need not consider whether the provision in the Tax Agreement that it "constitutes the entire Agreement between" the City and Morgan bars Morgan's suit despite the City's earlier emails.

under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder." N.J.S.A. 2A:16-53. Here, the issue posed is the construction of the pertinent contracts. "When a trial court's decision turns on its construction of a contract, appellate review of that determination is de novo." Manahawkin Convalescent v. O'Neill, 217 N.J. 99, 115 (2014). "Appellate courts give 'no special deference to the trial court's interpretation and look at the contract with fresh eyes.'" Ibid. (citation omitted). "Further, to the extent that the parties' competing claims require that we construe certain statutory provisions as well, the same de novo standard of review applies." Selective Ins. Co. of Am. v. Hudson E. Pain Mgmt. Osteopathic Med., 210 N.J. 597, 605 (2012). We must hew to that standard of review.

III.

As the City points out, Morgan did not pay the $1,908,041 prepayment or the $211,850 AHC installment for which Morgan now wants credit. Vector made those payments to the City, under a Financial Agreement and Prepayment Agreement between Vector and the City. Morgan was not a party to either agreement. Nothing in Morgan's agreements with the City or the JCRA gives Morgan any right to credit for Vector's payments. Indeed, Morgan's

Redevelopment Agreement and Tax Agreement do not even mention Vector, the Financial Agreement, the Prepayment Agreement, or Vector's payments under those agreements.

Moreover, though Morgan owns the same Property as Vector once owned, Morgan is not proposing to construct the same project. The Morgan Project proposes to build rental apartments, while the Vector Project proposed to build condominiums. The Morgan Project involves more residential units, fewer parking spaces, and a larger retail space than the Vector Project. The Vector Project was awarded a twenty-plus-year long-term tax exemption under LTTEL, whereas the Morgan Project got a five-year tax exemption under FYEAL, under different terms and under different agreements with the City.

However, the Law Division accepted several arguments by Morgan why Morgan should get credit for Vector's payments.

A.

The Law Division looked to the Financial Agreement and the Prepayment Agreement, and their use of the term "entity," and ruled that those agreements allowed the rights thereunder to be transferred to successors in interest and thus to Morgan.

1.

The Financial Agreement stated that "[t]he term Entity within this Agreement shall mean Vector" and "shall also include

any subsequent purchasers and successors in interest of the Project, provided they are formed and operate under the Law." The Financial Agreement defined "Project" as the specific Vector Project described above, and as the building "to be constructed and tax exempted under this Agreement." The Financial Agreement defined the "Law" as the "Long Term Tax Exemption Law," the Mayor's executive order "relating to long term tax exemption," the ordinance "which authorized the execution of this Agreement" giving Vector a long-term tax exemption, "and all other relevant Federal, State or City statutes, ordinances, resolutions, rules and regulations."

There are ample reasons why these provisions of the Financial Agreement do not encompass Morgan. First, as discussed further below, there was no evidence that Morgan is a purchaser or successor in interest of Vector or the Vector Project. Rather, Morgan purchased the Property from Capital One at a sheriff's sale, and proposed the different Morgan Project.

Second, Morgan and the Morgan Project are not operating under the "Law" as defined in the Financial Agreement, namely LTTEL and the implementing executive order and ordinance for long-term tax exemptions, which are expressly designated as the "Governing Law" of the Financial Agreement. Any purchaser or successor in interest would necessarily have to be operating

under LTTEL to obtain the long-term tax exemption under LTTEL. Instead, Morgan obtained a tax exemption under FYEAL, under a different ordinance and subject to significantly different terms.

The Law Division stressed that Morgan was legally formed under the Limited Liability Company Act, N.J.S.A. 42:2B-1 to -70. We note that Morgan's amended certificate of formation in 2011 stated that it was being formed in accordance with LTTEL. However, Morgan was not operating under the "Law" as defined in the Financial Agreement, which required the entity to be both formed "and" operating under both LTTEL "and" other laws. "'[T]he word "and" carries with it natural conjunctive import[.]'" Pine Belt Chevrolet v. Jersey Cent. Power & Light Co., 132 N.J. 564, 578 (1993) (citation omitted).

Third, the Financial Agreement established procedures and requirements for becoming "successors in interest of the Project." Under the agreement's "Assignment and/or Assumption" provision, Vector would have to make a "written application" to the City seeking its "consent to a sale of the Project and the transfer of this Agreement." Specified conditions would have to be met by Vector and "the new Entity," including that Vector was "not then in default of this Agreement," that Vector's "obligations under the Agreement [will be] fully assumed by the

new Entity," and that Vector must "pay the City a transfer fee equal to 2% of the then current Annual Service Charge as required by N.J.S.A. 40A:20-10d." Moreover, "[a]ny sale or transfer of the Project, shall be void unless approved in advance by Ordinance of the Municipal Council." Here, none of these prerequisites were satisfied.

The Law Division acknowledged that Vector and Morgan "did not comply" with the Financial Agreement's provisions for assumption of Vector's rights by a successor in interest. However, the court ruled non-compliance should not vitiate Morgan's rights under the Financial Agreement because those provisions were "administrative." In fact, those contractual provisions were expressly authorized or required by LTTEL. LTTEL permits transfer of a project "to another urban renewal entity, as approved by the municipality in which the project is situated, which other urban renewal entity shall assume all contractual obligations of the transferor entity under the financial agreement with the municipality." N.J.S.A. 40A:20-5(e). Only if those conditions are met does "the tax exemption of the improvements thereto and, to the extent authorized pursuant to [N.J.S.A. 40A:20-12], land shall continue and inure to the transferee urban renewal entity." N.J.S.A. 40A:20-10(a); see N.J.S.A. 40A:20-6.

"[W]hen the terms of [the] contract are clear, it is the function of a court to enforce it as written and not to make a better contract for either of the parties." McMahon v. City of Newark, 195 N.J. 526, 545-46 (2008). Similarly, "[w]hen the statutory language is clear on its face," a court's "sole function is to enforce the statute in accordance with its terms." Parsons v. Mullica Twp. Bd. of Educ., __ N.J. __, __ (2016) (slip op. at 13). Thus, the Law Division should have required compliance with these statutory and contractual provisions.[3] Morgan has no rights under the Financial Agreement because it failed to comply with these requirements.[4]

---

[3] Thus, the Tax Court has held that a transfer of ownership of a redevelopment entity is effective under LTTEL "only if the change resulted in a transfer of the Project for which the statutes require municipal consent and approval." Town of Secaucus v. City of Jersey City, 20 N.J. Tax 384, 402 (Tax Ct. 2002). The Law Division cited the Tax Court's ruling that, "where full disclosure was made contemporaneously with the occurrence of the transaction, the failure to obtain approval of the City at the time should not automatically be fatal to the effectiveness of the transfer and invalidate the tax exemption," and the City could consent at a later date. Id. at 403. However, there was no showing of full disclosure to the City before Morgan's acquisition of the Property; acquiring the Property did not result in the transfer of the Project; the City has not consented to such a transfer; and Morgan also failed to meet other prerequisites.

[4] The Law Division cited Jersey City Municipal Code 304-12(D), but that provision addressed transfer of a five-year tax exemption, not Vector's long-term tax exemption. Even if that provision applied here, it provided that "the exemption shall continue and the agreement shall remain in effect" only if "the
(continued)

Most notably, Morgan does not claim that it is assuming Vector's obligations under the Financial Agreement, including the obligation to build the Vector Project as described above. Indeed, at appellate oral argument, Morgan's counsel confirmed that Morgan was not taking on Vector's obligations under the agreement. Moreover, Morgan's FYEAL application and Tax Agreement show that it is proposing to build the Morgan Project, not the different Vector project. We see no reason to allow Morgan to claim the benefits of the Financial Agreement while refusing its obligations. "If a party were allowed to 'repudiate the unfavorable parts of a contract and claim the benefit of the residue,' it would amount to unjust enrichment and would bind the parties 'to a contract which they did not contemplate.'" Cty. of Morris v. Fauver, 153 N.J. 80, 97 (1998) (citation omitted).

The Law Division recognized that Morgan was "not seeking to step in the shoes of Vector." Nonetheless, the court ruled that Morgan was entitled to "relief" to prevent a windfall to the City. However, Morgan seeks credit or reimbursement for Vector's payments under the Financial Agreement without assuming

---

(continued)
new owner will continue to use the property pursuant to the qualifying conditions." Ibid. As set forth above, Morgan did not "meet the conditions for qualifying for the exemption" under LTTEL and the Financial Agreement. Ibid.

Vector's obligations under that agreement, so any "relief" would be a windfall to Morgan.

Thus, Morgan acquired only the Property not the Vector Project, is not operating under LTTEL, is not a party to or assuming the obligations of the Financial Agreement, and is not the successor in interest of the Vector Project. Therefore, Morgan has no right under the Financial Agreement to credit for Vector's payments under that agreement. Morgan cannot use Vector's payments as credit against Morgan's own obligation to make tax and AHC payments in different amounts, for the different Morgan Project, under the different Tax Agreement.

2.

Turning to the Prepayment Agreement, that agreement defined "entity" solely as Vector. The agreement mentioned successors in only one provision: "For each of the first four (4) years that the Entity or its successors pay Annual Service Charges, the Entity shall be entitled to a reimbursement of the Prepayment" from "the Annual Service Charges otherwise due under the Financial Agreement." Nothing in that clause, or the remainder of the Prepayment Agreement, stated that any entity other than Vector could receive reimbursement or credit.

Morgan argues that the Prepayment Agreement incorporates the Financial Agreement, such as its definition of "Entity."

Even if true, Morgan is not a successor in interest of the Vector Project under the Financial Agreement's definition of "Entity," and has not met the other prerequisites of that agreement.

For all these reasons, Morgan has no right under Vector's Financial Agreement or Prepayment Agreement to credit or reimbursement based on Vector's payments.

B.

The Law Division also ruled that Morgan acquired the right to credit for Vector's payments under the mortgage. However, the mortgage was between Vector as the mortgagor and Capital One as the mortgagee. Morgan was not a party to the mortgage.

Vector mortgaged the "real property," "buildings, improvements," and "all the estate, right, title, interest, property, possession, claim, and demand whatsoever of the Mortgagor, as well in law as in equity, of, in or to the same." However, the mortgage makes no reference to the Finance Agreement, the Prepayment Agreement, or Vector's rights or payments thereunder. Vector mortgaged the Property, not Vector's rights under those agreements.

The Law Division cited the mortgage's provision that in the event of default, "[t]he Mortgagee is given and granted full power and authority to do any act or thing which the Mortgagor

or successors or assigns of the Mortgagor . . . might or could do in connection with the management and operation of the Mortgaged Premises." Morgan argues redevelopment legislation similarly allows a mortgagee to "enter into possession of the project and operate the same" under the financial agreement for the project. N.J.S.A. 55:17-8(a); see N.J.S.A. 55:17-1, -5, -9, -10. Even assuming these contractual or statutory provisions would have allowed Capital One post-default to undertake the Vector Project, or seek reimbursement or credit owed to Vector, there is no evidence that Capital One did so. Instead, it appears Capital One simply foreclosed on the Property and then sold the Property at sheriff's sale.

Morgan's complaint alleged that months before the sheriff's sale, Morgan "purchased the mortgage note from Capital One, becoming the successor-in-interest to Capital One, and obtaining all of its rights pursuant to the Mortgage."[5] Even if true, there is no evidence that Morgan exercised the powers of the mortgagee mentioned above. Instead, Morgan bought the Property at sheriff's sale and was not "willing and able to assume the performance of the terms and provisions of the lease or financial arrangement." N.J.S.A. 55:17-8(f).

[5] The City did not admit the allegation, Morgan submitted no document to prove it, and the sheriff's deed of foreclosure listed Morgan solely as the purchaser.

The Law Division also cited the mortgage's provision that "[a]ll of the terms, covenants, provisions, and conditions herein contained shall be for the benefit of, apply to, and bind the successors and assigns of the Mortgagor and the Mortgagee, and are intended and shall be held to be real covenants running with the land[.]" However, the referenced "terms, covenants, provisions, and conditions" are those of the mortgage, not every unmentioned contract Vector ever entered into regarding the Property or the Project.

Nothing in the Financial Agreement or Prepayment Agreement indicated that Vector or the City "intend[ed] that the[ir] covenant[s] run with the land." See Aronsohn v. Mandara, 98 N.J. 92, 101 n.4 (1984) (quoting H. Tiffany, Real Property § 848, at 264-65 (3d ed. Supp. 1984)). To the contrary, the "Assignment and/or Assumption" provision of the Financial Agreement made clear that the rights and obligations thereunder were "personal" to Vector unless the prerequisites for transfer were satisfied. See Caullett v. Stanley Stilwell & Sons, Inc., 67 N.J. Super. 111, 118 (App. Div. 1961). Therefore, Vector's rights under those agreements do not run with the land.[6]

---

[6] To support its contrary conclusion, the Law Division cited a sentence in LTTEL that "[w]hen housing is to be constructed, acquired or rehabilitated by an urban renewal entity, the land upon which that housing is situated shall be exempt from (continued)

Thus, the mortgage did not grant rights under the Financial Agreement or Prepayment Agreement after the sheriff's sale.

C.

The Law Division also ruled that Morgan acquired all the rights of Vector when title to the Property was transferred to it pursuant to the sheriff's foreclosure sale. However, the "Sheriff's Corrective II Deed of Foreclosure" supplied by Morgan does not mention the Financial Agreement, the Prepayment Agreement, or Vector's rights or payments under those agreements. The deed transferred the Property, not the Project.

The Law Division cited the deed's recitation of the April 19, 2011 judgment in Capital One's foreclosure action against Vector. That judgment described the mortgaged premises as the Property together with "the rights, liberties, privileges, hereditaments and appurtenances thereunto belonging." Another provision of the deed "discharged to the party of the second part," Morgan, the Property "with the appurtenances, privileges, and hereditaments thereunto belonging or in any way appertaining." Those stock provisions were taken from the form

---

(continued)
taxation for a limited period as hereinafter provided." N.J.S.A. 40A:20-12. However, the Financial Agreement granted only a tax exemption on improvements, not the land, on which it required taxes be paid. In any event, Morgan failed to meet the prerequisites of LTTEL and the Financial Agreement for the transfer of any exemption.

sheriff's foreclosure sale deed incorporated in N.J.S.A. 2A:50-64(a)(6). That stock language refers to the rights to the Property, not to Vector's rights under the Financial Agreement and Prepayment Agreement.

A sheriff's deed provides the purchaser at a foreclosure sale with "clear title to the property." Highland Lakes Country Club & Cmty. Ass'n v. Franzino, 186 N.J. 99, 106 n.2 (2006) (citing N.J.S.A. 2A:50-30). It does not provide the purchaser with the contractual rights of the mortgagor or mortgagee under agreements that were not the subject of the foreclosure or sale. Thus, the sheriff's deed did not transfer to Morgan any rights under the Financial Agreement or Prepayment Agreement.

D.

The Law Division was concerned that rejecting Morgan's demand for credit for Vector's payments to the City "would result in a windfall for Jersey City in the amount of $2,118,891." The court stressed that the City "never repaid or otherwise reimbursed Vector." The court rejected the City's argument that Vector defaulted, finding no proof that the City sent Vector notice of default, gave Vector sixty days to cure the default, or issued Vector written notice of termination, as required under the Financial Agreement. The court noted the Financial Agreement and Prepayment Agreement contained no other

provision for forfeiture of Vector's payments. The court concluded that retention of Vector's payments "would result in Jersey City being unjustly enriched."

Moreover, the Law Division expressed "misgivings" that Vector was required to enter into the Prepayment Agreement. The court could not find any statutory or case law allowing this type of agreement, which constituted "an interest-free loan to Jersey City." The court did "not opine on the legitimacy of Jersey City's use of Prepayment Agreements," but found it "seriously questionable."

We need not address whether any rights of Vector were violated by the Prepayment Agreement, by Vector's prepayment of an Annual Service Charge, or the non-repayment to Vector of that prepayment or the first AHC installment after Vector failed to build the Vector Project. Nor need we address whether Vector abandoned its agreements or never made the payments which trigger reimbursement or credit, as the City contends. Those could have been potential issues if there had been litigation between the City and Vector, but there is no indication that Vector or Capital One ever raised any of those issues.

However, those issues could not be raised in this litigation, to which neither Vector nor Capital One was a party. This litigation was brought by Morgan, a stranger to the

agreements between Vector and the City. Because Morgan did not succeed to Vector's rights under the Financial Agreement or Prepayment Agreement, it was irrelevant in this litigation whether Vector's rights were violated. Whether or not the City's retention of Vector's payments constituted a windfall to the City, Morgan has no right to reimbursement or credit for Vector's payments.

Accordingly, we reverse the order of judgment.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

CLERK OF THE APPELLATE DIVISION