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parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2109-15T3

RSI BANK, a New Jersey Banking
Corporation,

Plaintiff,

v.

THE PROVIDENCE MUTUAL FIRE
INSURANCE COMPANY,

Defendant/Third-Party
Plaintiff-Respondent,

v.

DR. GEORGE LIKAKIS,

Third-Party Defendant/
Appellant.

Argued January 24, 2017 – Decided February 23, 2017

Before Judges Fisher, Leone and Vernoia.

On appeal from the Superior Court of New
Jersey, Law Division, Union County, Docket No.
L-0011-14.

Allen N. Papp argued the cause for appellant
(Adams, Cassese & Papp, LLC, attorneys; Mr.
Papp, on the brief).

Danielle N. Singer argued the cause for respondent (Methfessel & Werbel, attorneys; Marc L. Dembling, of counsel; Mr. Dembling and Ms. Singer, on the brief).

PER CURIAM

After a suspicious fire destroyed a two-story residential property – owned by George Likakis, insured by The Providence Mutual Fire Insurance Company, and subject to a mortgage held by RSI Bank – Likakis was indicted for arson and insurance fraud. Likakis was accepted into the pre-trial intervention (PTI) program conditioned on his agreement to indemnify Providence Mutual on any and all fire-related claims brought against it by RSI Bank. At the conclusion of a bench trial in this civil suit, the trial judge relied on the PTI indemnification agreement in entering judgment in favor of Providence Mutual and against Likakis for \$232,568.71. Likakis appeals, arguing, among other things, that the trial judge misinterpreted the indemnification agreement or otherwise lacked jurisdiction to enforce it. We disagree and affirm.

The record reveals that Likakis practiced dentistry in a building he owned on New Brunswick Avenue in Perth Amboy. In 2009, Likakis's limited liability company purchased a neighboring two-story residential property,¹ which was burdened by a mortgage held by RSI Bank and covered by a hazard/casualty insurance policy

¹ Likakis did not reside there.

issued by Providence Mutual. The policy listed RSI Bank as first mortgagee and declared, in the event of any covered cause of loss, that Providence Mutual would pay "for direct physical loss of or damage" to the property.

On August 28, 2011, Hurricane Irene caused flooding in the property's basement and damage to its roof. Less than five months later, a suspicious fire occurred at the property, resulting in its condemnation and demolition. Both Likakis and RSI Bank filed insurance claims with Providence Mutual based on their alleged losses.

An investigation attributed the fire to arson, and witnesses saw Likakis at the scene the day before the fire "wearing latex gloves and carrying a large plastic bag which appeared very heavy with an oval shape." Likakis claimed he was home when the fire erupted, but, in March 2013, he was indicted and charged with one count of second-degree aggravated arson, N.J.S.A. 2C:17-1(a), and two counts of third-degree insurance fraud, N.J.S.A. 2C:21-4.6(a)(1).

In December 2013, Likakis and RSI Bank filed in the Law Division separate suits against Providence Mutual.

In April 2014, the prosecutor recommended Likakis's enrollment in PTI. Providence Mutual did not object but asked the prosecutor to impose three conditions: (1) Likakis's payment of

\$11,321.89 in restitution to Providence Mutual (the cost of boarding up the property); (2) Likakis's agreement to "protect/compensate Providence Mutual [] from any and all claims that may be brought against" it by RSI Bank as a result of the fire; and (3) Likakis's obtaining a dismissal with prejudice of his lawsuit against Providence Mutual.

On May 14, 2014, a judge of the criminal part entered a PTI order of postponement for a period of twelve months. Likakis consented to the standard and special conditions imposed upon him, and was ordered to pay \$11,321.89 in restitution to Providence Mutual at the rate of \$1,000 per month. Using the language proposed by Providence Mutual with language, underlined below, handwritten by the prosecutor, the judge also ordered Likakis to:

[p]rotect/compensate indemnify + hold harmless Providence Mutual from any and all claims that may be brought against Providence Mutual [] by RSI Bank. Likakis v. Providence Mutual lawsuit will be dismissed w/ prejudice. 12 mos period of PTI.

Likakis paid \$11,321.89 to Providence Mutual within twelve months. And Likakis timely dismissed his suit against Providence Mutual. But RSI Bank's action against Providence Mutual, and Providence Mutual's third-party indemnification claim against Likakis, which was asserted after entry of the PTI order, were still pending in the trial court. The PTI judge entered an order dismissing the

indictment on May 20, 2015.

Meanwhile, RSI Bank and Providence Mutual reached a settlement agreement; Providence Mutual paid RSI Bank \$353,536.90 for its loss and RSI Bank partially assigned its mortgage to Providence Mutual. A motion judge later granted partial summary judgment on the third-party complaint, concluding Providence Mutual was an intended third-party beneficiary of Likakis's PTI agreement. Summary judgment regarding the amount owed by Likakis to Providence Mutual, and as to whether the PTI agreement's indemnification provision survived Likakis's twelve-month period of supervision, was denied.

Another judge conducted a one-day bench trial on those issues. The trial judge found that the PTI agreement was clear on its face and required Likakis "to indemnify and hold harmless Providence Mutual against any and all claims brought against it by RSI Bank." The judge also determined that "any other meaning intended by the parties" that may have been suggested by statements made during the PTI proceedings could not serve "to modify the express terms of the agreement." And the judge rejected Likakis's crabbed interpretation of the indemnification agreement; in this regard, Likakis argued that the word "indemnify" could only be read to encompass the \$11,321.89 restitution payment. The judge also found "nothing in the PTI Agreement" that would extinguish the promise

to indemnify Providence Mutual after the passage of twelve months.

In appealing, Likakis argues: (1) the partial summary judgment and final judgment are void "because the civil court had no jurisdiction over the PTI agreement issued by a criminal court"; (2) "allowing a private corporation to interfere in a criminal matter by re-opening a criminal defendant's alternative sentencing agreement abrogates the principles of the PTI program by nullifying the agreement reached between" Likakis and the State; (3) the motion judge erred by finding Providence Mutual to be a third-party beneficiary of the PTI agreement; and (4) the trial judge erred by interpreting the PTI agreement without examining "the circumstances under which the contract was written." We find insufficient merit in Likakis's arguments to warrant further discussion in a written opinion, R. 2:11-3(e)(1)(E), and affirm. We add only the following brief comments on each of his four arguments.

I

In questioning the trial court's exercise of jurisdiction over the dispute, Likakis mistakenly confuses jurisdiction with venue.

Jurisdiction relates to a court's authority over the parties and their dispute, not whether one superior court judge should

have deferred to another in the disposition of the dispute. That is, jurisdiction constitutes "the power to hear and determine cases." Petersen v. Falzarano, 6 N.J. 447, 454 (1951). It is a power "granted to the court by the Constitution or by valid legislation." Peper v. Princeton Univ. Bd. of Trs., 77 N.J. 55, 66 (1978) (emphasis added); see also N.J. Const. art. VI, § 3, ¶ 2 (providing the "Superior Court shall have original jurisdiction throughout the State in all causes"). The superior court's power to adjudicate a dispute does not belong to a single judge or a single part or division of the superior court. The fact that the indemnification agreement arose from a criminal proceeding does not limit, in this context, a civil court's authority to enforce the private rights emanating from the criminal proceeding.

II

Likakis contends that Providence Mutual's third-party complaint should have been dismissed because it constituted an attempt to "re-open" the PTI agreement, sought to nullify the order's twelve-month limitation, and "abrogat[ed] the principles of the PTI program." This argument is also without merit.

As noted earlier, the May 2014 PTI order was given a life of twelve months but only in the sense that Likakis's compliance with its terms over a twelve-month period would be assessed and, if

satisfactorily performed, would allow for a dismissal of the criminal proceeding. There is nothing about what occurred in the criminal part, however, that would suggest that all obligations then imposed would end after twelve months. To the contrary, Likakis promised, as a condition for entry into PTI, to indemnify and hold Providence Mutual harmless from RSI Bank's claims without a definite time limit. Even if we were to adopt Likakis's argument that all conditions had to be met within twelve months, we would observe that Likakis actually made the promise to indemnify within twelve months. The PTI agreement did not require that Likakis make good on that promise within twelve months.

This logical interpretation of the indemnification agreement is not inconsistent with our jurisprudence. For example, a prosecutor may consent to admission into PTI on a defendant-police-officer's resignation of his position. See State v. DeMarco, 107 N.J. 562, 571-72 (1987). It cannot be seriously suggested that a defendant whose admission into PTI is conditioned upon resignation from a public position could seek reemployment to the same position once the PTI term ended and the indictment dismissed. For the same reason, enforcement of Likakis's promise to indemnify Providence Mutual cannot logically be limited to the twelve-month period following imposition of that condition.

III

We also reject Likakis's argument that the motion judge erred in determining, by way of a partial summary judgment, that Providence Mutual was a third-party beneficiary of the PTI indemnification agreement. We also reject his contention that the intent underlying the indemnification provision can only be gleaned from the PTI transcript.

Summary judgment must be granted if the pleadings and affidavits "show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). We utilize the same standard when reviewing a summary judgment. Henry v. N.J. Dep't of Human Servs., 204 N.J. 320, 330 (2010).

Likakis argues that summary judgment "should ordinarily not be granted where an action requires determination of a state of mind or intent" since "the issue . . . does not readily lend itself to summary disposition," citing, among other cases, Gray v. Press Commc'ns, LLC, 342 N.J. Super. 1, 12 (App. Div.), certif. denied, 170 N.J. 390 (2001). But, in a dispute about the meaning of a contract, where "the record before the court . . . was limited to the [contract's] language," our Supreme Court has recognized that ascertaining the parties' intent presents a legal question particularly amenable to disposition by summary judgment. Globe

Motor Co. v. Iqdalev, 225 N.J. 469, 482-83 (2016); see also CSFB 2001-CP-4 Princeton Park Corp. Ctr., LLC v. SB Rental I, LLC, 410 N.J. Super. 114, 119 (App. Div. 2009).

The summary judgment record was limited to the PTI agreement and the written PTI recommendation from the prosecutor. No party provided the motion judge with the PTI transcript. Had Likakis believed the PTI transcript was necessary for the motion judge's ruling, he could have provided it. We will not review a summary judgment in light of materials not presented to the trial court. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529-30 (1995).

Likakis also criticizes the motion judge's determination that Providence Mutual was a third-party beneficiary of the indemnification provision. We reject this. The promise extracted from Likakis as part of his entry into PTI was not a "mere[] . . . unintended incident." Ross v. Lowitz, 222 N.J. 494, 513 (2015). Providence Mutual's interests were duly considered² and it was expressly named as the one and only entity entitled to benefit from Likakis's promise. If Providence Mutual couldn't seek enforcement of that promise, who could? And if the answer to that

² The victim's willingness to forego prosecution, and the needs and interests of the victim, are factors in determining whether to permit PTI. N.J.S.A. 2C:43-12(e)(4), (7).

question is the State, then to what end would the State be motivated to engage itself in such a controversy?

The motion judge correctly rejected Likakis's arguments and properly entered partial summary judgment.

IV

In challenging the judgment entered against him, Likakis argues the trial judge failed to properly consider the significance of what was discussed by the judge and the parties during the PTI hearing. To be sure, the trial judge here gave no weight to those discussions because he found that the PTI agreement "clear on its face" and that Likakis could not contradict his unambiguous promise to indemnify by reliance on this extrinsic information. See Conway v. 287 Corp. Ctr. Assocs., 187 N.J. 259 (2006).

Beyond the clear language itself – Likakis's unmistakable promise to indemnify Providence Mutual from "any and all" claims brought against it by RSI Bank regarding the fire – the trial judge also examined the particular words contained within that express promise:

The term "indemnity" means "restitution or reimbursement," or when "one person engages to secure the other against an anticipated loss or to prevent him from being [indemnified] by the legal consequences of an act or forbearance on the part of one of the parties or of some third person." Black's Law Dictionary 692 (5th ed. 1979). Similarly, the

term "indemnify" is defined as action "[t]o restore the victim of a loss, in whole or in part, by payment, repair or replacement" and "to give security for the reimbursement of a person in case of an anticipated loss falling upon him." Id. As such, the common and accepted legal meaning of "indemnify" is not to refrain from taking action, but rather, connotes an affirmative action to compensate another for his or her loss. Thus, by its express terms, the indemnification clause requires Dr. Likakis to reimburse Providence Mutual for all claims brought against it by RSI Bank. The term "indemnify" cannot be read to mean only that Dr. Likakis was giving up his rights to proceed against Providence Mutual for the \$11,321.89. Such a reading would change the express terms of the PTI agreement.

In reviewing the judge's interpretation de novo, we find no error. Instead, we ascertain from the judge's decision his adherence to the interpretive process described by our Supreme Court:

The objective in construing a contractual indemnity provision is the same as in construing any other part of a contract – it is to determine the intent of the parties. The judicial task is simply interpretative; it is not to rewrite a contract for the parties better than or different from the one they wrote for themselves. Thus, we should give contractual terms "their plain and ordinary meaning" If an indemnity provision is unambiguous, then the words presumably will reflect the parties' expectations.

[Kieffer v. Best Buy, 205 N.J. 213, 223 (citations omitted).]

Likakis disputes the judge's interpretation of these legal

principles and maintains the PTI transcript should have been recognized as explaining the content and reach of the indemnification provision. We disagree. In Conway, the Court recognized the necessity to "allow a thorough examination of extrinsic evidence in the interpretation of contracts" in order "to achieve the ultimate goal of discovering the intent of the parties." 187 N.J. at 270. But, in so holding, the Conway Court continued to adhere to the constraints on the usage of extrinsic evidence previously expressed in an earlier opinion:

The admission of evidence of extrinsic facts is not for the purpose of changing the writing, but to secure light by which to measure its actual significance. Such evidence is adducible only for the purpose of interpreting the writing – not for the purpose of modifying or enlarging or curtailing its terms, but to aid in determining the meaning of what has been said. So far as the evidence tends to show, not the meaning of the writing, but an intention wholly unexpressed in the writing, it is irrelevant. The judicial interpretive function is to consider what was written in the context of the circumstances under which it was written, and accord to the language a rational meaning in keeping with the expressed general purpose.

[Id. at 269 (quoting Atl. N. Airlines, Inc. v. Schwimmer, 12 N.J. 293, 301-02 (1953)).]

Here, to be sure, the PTI transcript includes statements by Likakis's attorney, the prosecutor, and the judge that could be interpreted as assigning different meanings to, or a more limited

reach of, the indemnification provision than conveyed by the provision's plain and unambiguous terms. For instance, Likakis's attorney told the court that the "indemnify, hold harmless" condition "goes to say that my client will not be seeking the insurance proceeds from Providence Mutual. That's what that means." And, during voir dire, the prosecutor said:

So that, for example, when I wrote into this agreement "indemnify, hold harmless, compensate," that means that you're not going to pursue now or ever any claim against Providence Mutual regarding the loss and the payment that you're going to make to Providence Mutual for that \$11,000. Do you understand that?

These and other comments might suggest – we offer no view one way or the other – that Likakis may have misunderstood what he had promised in entering PTI. But the PTI proceedings do not render ambiguous the clear and exact promise Likakis made to indemnify and hold Providence Mutual harmless from any claims asserted by RSI Bank. If Likakis now claims a misunderstanding about his obligations when entering the PTI program, then he should seek relief in the criminal proceeding. Indeed, if Likakis is able to convince the PTI judge that he would not have entered into PTI if he knew he was promising to indemnify Providence Mutual and hold Providence Mutual harmless from any and all of RSI Bank's claims, then he could move, pursuant to Rule 4:50, for relief from the

judgment entered in this matter. But those assertions are of no moment here; the trial judge properly relied upon the unambiguous language of the indemnification agreement in entering judgment against Likakis and correctly concluded that alleged inconsistent statements made during the PTI proceeding could not contradict the clear promise made for the benefit of Providence Mutual.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION