

BOARD OF EDUCATION OF THE  
CITY OF NEWARK,

Plaintiff-Appellant,

v.

HOUSING AUTHORITY OF THE  
CITY OF NEWARK, 33 MAPLE  
URBAN RENEWAL LLC, THE  
FRIENDS OF TEAM CHARTER  
SCHOOLS, INC., EQUITABLE  
FACILITIES FUND, INC.,  
EQUITABLE SCHOOL REVOLVING  
FUND, INC., and U.S. BANK  
NATIONAL ASSOCIATION,

Defendants-Respondents

**Superior Court of New Jersey  
Appellate Division  
Docket No. A-001029-24**

**Civil Action**

On Appeal From:  
Superior Court of New Jersey,  
Chancery Division, Essex County

Docket No. ESX-C-62-20

SAT BELOW:  
Hon. James R. Paganelli, J.S.C. and  
Hon. Lisa M. Adubato, J.S.C.

---

**PLAINTIFF-APPELLANT BOARD OF EDUCATION  
OF THE CITY OF NEWARK'S AMENDED BRIEF IN SUPPORT  
OF APPEAL**

---

**SATTIRAJU & THARNEY LLP**  
50 Millstone Road  
Building 300, Suite 202  
East Windsor, New Jersey 08520  
(609) 469-2110  
Attorneys for Plaintiff-Appellant,  
Board of Education of the  
City of Newark

**NEWARK BOARD OF EDUCATION**  
Office of the General Counsel  
765 Broad Street  
Newark, New Jersey 07102  
(973) 733-7139  
Co-Counsel for Plaintiff-Appellant,  
Board of Education of the  
City of Newark

**TABLE OF CONTENTS**

	<b>Page</b>
TABLE OF JUDGMENTS, ORDERS, AND RULINGS BEING APPEALED .....	ix
PRELIMINARY STATEMENT.....	1
PROCEDURAL HISTORY .....	3
STATEMENT OF FACTS .....	5
The Board of Education, the Housing Authority, and the Agreement .....	5
The Sale of Maple Avenue School.....	11
NHA’s Breach and 33 Maple’s Switch .....	13
FOT’s Notice of the Board’s Right of Reversion .....	15
(1) The Corrective Deed and the Resolutions.....	16
(2) FOT’s Attorneys’ Knowledge of the SDDA.....	17
(3) FOT’s Agents’ Knowledge of the SDDA and the Board’s Interest.....	18
LEGAL ARGUMENT .....	20
STANDARD OF REVIEW .....	20
I. THE DECISION GRANTING SUMMARY JUDGMENT TO FOT ON ITS COUNTERCLAIM SHOULD BE REVERSED (8T19-8T36; Pa003316-Pa003317).....	21
A. As a matter of fact, the Corrective Deed contained no clear and definitive promise that the Board had not encumbered the property .....	24

B.	As a matter of fact, NBOE had no expectation that FOT would rely on any promise that it had not encumbered the property.....	25
C.	Any purported reliance by FOT was not reasonable .....	26
D.	Any “definite and substantial detriment” suffered by FOT were not due to any reasonable reliance on any promise by the Board.....	30
II.	THE DECISION TO GRANT SUMMARY JUDGMENT TO THE FOT DEFENDANTS ON THE BOARD’S RIGHT OF REVERSION SHOULD BE REVERSED (4T91-5 to 4T97-4; 6T3-6T30; Pa002854-Pa002857).....	30
A.	FOT’s notice of the SDDA and its requirements presented an issue of material fact in dispute .....	33
B.	The SDDA’s limitation on the use of Sites to “housing, redevelopment, or economic development opportunities” was not ambiguous.....	35
C.	Even if the provision was ambiguous, it should have been construed in a manner consistent with the parties’ intent, which presented a material issue of fact in dispute .....	38
D.	The judge’s ruling regarding <u>N.J.S.A.</u> 18A:20-9 was erroneous.....	40
E.	For all the same reasons and more, the claim of reversionary interest based on the requirement to develop the Site within three years raised disputed issues of material facts .....	41
III.	THE BOARD’S MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST NHA SHOULD HAVE BEEN GRANTED AND NHA’S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN DENIED (8T3-8T19; Pa003318 – Pa003319) .....	44

A. Partial summary judgment should have been granted to the Board (Pa002593-Pa002594) .....	45
B. NHA’s motion for summary judgment should have been denied (Pa003318 – Pa003319).....	47
CONCLUSION.....	50

**TABLE OF CITATIONS**

	<b><u>Pages</u></b>
<b>I. <u>Cases</u></b>	
<u>Atl. N. Airlines v. Schwimmer</u> , 12 N.J. 293 (1953) .....	39
<u>B &amp; F Properties, L.L.C. v. Two Bits Properties, L.L.C.</u> , 2007 WL 1008937 (App. Div. April 16, 2007) .....	27
<u>Branch v. Cream-O-Land Dairy</u> , 244 N.J. 567 (2021) .....	20
<u>Broad &amp; Branford Place Corp. v. J.J. Hockenjos Co.</u> , 132 N.J.L. 229 (Sup. Ct. 1944) .....	39
<u>Broadway Maintenance Corp. v. Rutgers, State Univ.</u> , 90 N.J. 253 (1982) .....	26
<u>Brown v. Brown</u> , 470 N.J. Super. 457 (App. Div. 2022) .....	29
<u>Bruno v. Hanna</u> , 63 N.J. Super. 282 (App. Div. 1960) .....	38
<u>Bubis v. Kassin</u> , 184 N.J. 612 (2005) .....	36
<u>Camp Clearwater, Inc. v. Plock</u> , 52 N.J. Super. 583 (Ch. Div. 1958), <u>aff'd</u> , 59 N.J. Super. 1 (App. Div. 1959), <u>certif. denied</u> , 32 N.J. 348 (1960) .....	34
<u>Colegrove v. Behrle</u> , 63 N.J. Super. 356 (App. Div. 1960) .....	27, 31
<u>Cooper River Plaza E., LLC v. Briad Grp.</u> , 359 N.J. Super. 518 (App. Div. 2003) .....	32, 35, 41, 42
<u>Cotton v. Cresse</u> , 80 N.J. Eq. 540 (E. & A. 1912) .....	30

<u>Davidson Bros. v. D. Katz &amp; Sons, Inc.,</u> 121 N.J. 196 (1990) .....	27
<u>Delvecchio v. Tp. Of Bridgewater,</u> 224 N.J. 559 (2016) .....	48
<u>E &amp; H Steel Corp. v. PSEG Fossil, LLC,</u> 445 N.J. Super. 12 (App. Div. 2018).....	48
<u>Education Law Ctr. ex rel. Abbott v. Burke Plaintiff Schoolchildren,</u> 438 N.J. Super. 108 (App. Div. 2014) .....	37
<u>Fidelity-Philadelphia Transportation Company v. Harloff,</u> 133 N.J. Eq. 44 (Ch. Div. 1943).....	42
<u>Friedman v. Martinez,</u> 242 N.J. 449 (2020) .....	20
<u>Friedman v. Tappan Dev. Corp.,</u> 22 N.J. 523 (1956) .....	24
<u>Friendship Manor, Inc. v. Greiman,</u> 244 N.J. Super. 104 (App. Div. 1990) .....	34
<u>Gabel v. Mannelto,</u> 177 N.J. Super. 460 (App. Div. 1981) .....	38
<u>Garden of Memories, Inc. v. Forest Lawn Memorial Park Ass’n.,</u> 109 N.J. Super. 523 (App. Div.), <u>certif. denied</u> , 56 N.J. 476 (1970) .....	34
<u>Globe Motor Co. v. Igdaley,</u> 225 N.J. 469 (2016) .....	20, 31
<u>Goldfarb v. Solimine,</u> 245 N.J. 326 (2021) .....	24
<u>Hagaman v. Bd. of Ed. Woodbridge Twp.,</u> 117 N.J. Super. 446 (App. Div. 1971) .....	43

<u>Homann v. Torchinsky,</u> 296 N.J. Super. 326 (App. Div.), <u>certif. denied</u> , 149 N.J. 141 (1997) .....	36
<u>In re Grant of Charter School Application of Englewood on the Palisades Charter School,</u> 164 N.J. 316 (2000) .....	37
<u>In re Renewal TEAM Acad. Charter School,</u> 247 N.J. 46 (2021) .....	6, 37
<u>Javna v. D.J. Fredricks, Inc.,</u> 41 N.J. Super. 453 (1956).....	30
<u>Katz v. N.T. Callaway Real Estate Broker, LLC,</u> 2016 WL 6677897 (App. Div. Nov. 16, 2016).....	27
<u>Kennedy v. Island Development Co.,</u> 9 N.J. Misc. 921 (Cir. Ct. 1931).....	34
<u>Kernahan v. Home Warranty Adm’r of Fla., Inc.,</u> 236 N.J. 301 (2019) .....	43
<u>Kieffer v. Best Buy,</u> 205 N.J. 213 (2011) .....	21
<u>Lake Community Property Owners Ass’n v. Zeugin,</u> 2015 WL 8374463 (N.J. Super. App. Div. December 10, 2015) .....	34
<u>Malaker Corp. Stockholders Protection Comm. v. First Jersey Nat’l Bank,</u> 163 N.J. Super. 463 (App. Div. 1978), <u>certif. denied</u> , 79 N.J. 488 (1979) .....	23
<u>Malone v. City of Brigantine,</u> 2021 WL 3999386 (N.J. Super. App. Div. July 16, 2021) .....	34
<u>Manalapan Realty, L.P. v. Twp. Comm of Manalapan,</u> 140 N.J. 366 (1995) .....	20

<u>Marioni v. 94 Broadway, Inc.,</u> 374 N.J. Super. 588 (App. Div. 2005), <u>certif. denied</u> , 183 N.J. 591 (2015) .....	30
<u>Murphy v. Trapani,</u> 255 N.J. Super. 65 (App. Div. 1992) .....	39
<u>Myrlak v. Port Auth. of New York &amp; New Jersey,</u> 302 N.J. Super. 1 (App. Div. 1997), <u>aff'd in part, rev'd in part on</u> <u>other grounds</u> , 157 N.J. 84 (1999) .....	48
<u>Parker v. Poole,</u> 440 N.J. Super. 7 (App. Div.), <u>certif. denied</u> , 223 N.J. 163 (2015) .....	48
<u>Pearson v. DMH 2 Ltd. Liab. Co.,</u> 449 N.J. Super. 30 (Ch. Div. 2016) .....	33, 34
<u>Pop's Cones [Inc. v. Resorts Intern. Hotel, Inc.],</u> 307 N.J. Super. 461 (App. Div. 1998) .....	22, 23, 27
<u>Riverton Country Club v. Thomas,</u> 141 N.J. Eq. 435 (Ch.), <u>decree aff'd o.b.</u> , 1 N.J. 508 (1948) .....	33, 42
<u>Scult v. Bergen Valley Builders, Inc.,</u> 76 N.J. Super. 124 (Ch. Div. 1962), <u>certif. denied</u> , 126 N.J. 321 (1991) .....	34
<u>Shadow Lake Village Condo. Ass'n Inc. v. Zampella,</u> 238 N.J. Super. 132 (App. Div. 1990) .....	39
<u>Spedick v. Murphy,</u> 266 N.J. Super. 573 (App. Div.), <u>certif. denied</u> , 134 N.J. 567 (1993) .....	48
<u>Stigliano by Stigliano v. Connaught Laboratories, Inc.,</u> 140 N.J. 305 (1995) .....	48
<u>Toll Bros., Inc. v. Bd. of Chosen Freeholders of Burlington,</u> 194 N.J. 223 (2008) .....	24

**II. Statutes**

N.J.S.A. 2A:15-7.....29

N.J.S.A. 18A:7A-15 and -34.....6

N.J.S.A. 18A:20-9..... 6, 25, 32, 40

N.J.S.A. 18A:36A-1 .....37

N.J.S.A. 18A:36A-2 .....37

N.J.S.A. 18A:36A-3 .....37

N.J.S.A. 40A:12-1 .....6

N.J.S.A. 40A:12A-1 .....36

N.J.S.A. 40A:12A-5 .....37

N.J.S.A. 40A:12A-7(a).....36

N.J.S.A. 46:4-6 .....16

N.J.S.A. 46:26A-12(b).....33

**III. Rules**

N.J.R.E. 701 .....47

R. 4:46-2(c) .....20

**IV. Other Authorities**

6 Powell on Real Property §82.02(1)(d)(iv) (Michael Wolf ed. 2019) .....34

Fineberg, New Jersey Title Practice (5<sup>th</sup> Ed. 2021), §7.02B .....33

**Table of Judgments, Orders and Rulings**

Order Denying Plaintiff Board of Education of the City of Newark’s  
Motion for Partial Summary Judgment  
Dated June 9, 2023.....Pa002593-Pa002594

Order Dismissing Certain Claims and Setting Forth Briefing Schedule for  
Summary Judgment Motions,  
Dated June 18, 2024 .....Pa003316-Pa003317

Order Granting FOT’s Motion for Summary Judgment and Denying  
NBOE’s Cross-Motion for Summary Judgment,  
Dated October 29, 2024 .....Pa002854-Pa002857

Order Granting NHA’s Renewed Motion for Summary Judgment,  
Dated October 29, 2024 ..... Pa003318 – Pa003319

## PRELIMINARY STATEMENT

The Newark Public Schools were controlled by the State of New Jersey for more than two decades, from 1995 until the transition to local control began in 2018. During that time, upon recommendation of the State District Superintendent, the Newark Board of Education (“Board”) authorized the sale of 12 school buildings to the Newark Housing Authority (“NHA”) for “nominal consideration” (one dollar each), as part of a “partnership” by which NHA would use its expertise to market the properties. Each site was to be developed in a manner that would increase tax ratables for the City and enhance job opportunities for Newark residents. If any of the sites were not developed for those purposes within three years, those sites were to be returned to the Board.

The “partnership” didn’t entirely work out that way. One of the schools, Maple Avenue School, was sold by NHA to an entity called BN Property LLC, which said it would develop the site for residential use, but it never did so. In 2020 it sold Maple Avenue School to The Friends of Team Charter Schools, Inc. (“FOT”), which leased it to a charter school now operating at the site.

When the Board learned of the sale to FOT, it filed suit in the Chancery Division, seeking specific performance of its agreement with NHA and an order enforcing the right of reversion provided therein, as the property was not being developed for any use permitted under that agreement and had not been

developed at all within three years. It also sought damages for NHA's failure to obtain "net economic value" for the site as required by the agreement, as NHA had sold it for \$1.2 million and the developer had sold it to FOT for \$10 million.

After multiple unsuccessful motions to dismiss and protracted discovery, the court (Hon. James R. Paganelli, J.S.C.) denied all parties' motions for summary judgment. Upon Judge Paganelli's appointment to the Appellate Division, the case was assigned to Hon. Lisa M. Adubato, J.S.C. After initially denying a motion for reconsideration filed by FOT and scheduling the matter for a "plenary hearing," Judge Adubato surprised the parties by changing her mind. On the day scheduled for the hearing, without prior notice to counsel, any opportunity for further briefing of the issue she then found to be determinative, she ruled in favor of FOT and its lenders. As a matter of law, she ruled, regardless of the parties' intent and regardless of any notice FOT may have had of the use restriction or the three-year requirement, the FOT defendants could not be bound to them. Further, she granted summary judgment to NHA, despite clear evidence of its breach or, at the very least, questions of fact as to that issue. And she granted summary judgment to FOT on a counterclaim based on promissory estoppel, despite substantial evidence showing that it could not satisfy the elements of such a claim, or at least questions of fact as to that claim.

Given these erroneous rulings, the Board has appealed and seeks reversal.

## PROCEDURAL HISTORY

This action was commenced by the filing of an Amended Complaint in the Superior Court, Chancery Division, Essex County, on April 27, 2020. Pa000001-Pa000104. The Complaint alleges breach of a certain Site Disposition and Development Agreement (“SDDA” or “Agreement”) between the Board and the Newark NHA and other claims, and seeks equitable relief in the form of specific performance, an order requiring NHA to exercise its right of reversion of title to property known as Maple Avenue School, which had been conveyed to NHA pursuant to the SDDA, and permitting the Board to exercise its right of reversion of title to that site.<sup>1</sup> Id. In addition to NHA, the named defendants are 33 Maple Urban Renewal, LLC (“33 Maple”), successor to the entity to which NHA sold the property; FOT, to which 33 Maple sold the property; and FOT’s lenders/mortgagees, Equitable Facilities Fund, Inc., Equitable School Revolving Fund, Inc. and U.S. Bank National Association. Id.

On December 15, 2020, the court (Hon. James R. Paganelli, J.S.C.) denied motions to dismiss filed by all defendants. Discovery ensued.

---

<sup>1</sup> A complaint had been filed in a “companion” matter involving another site also conveyed to HNA pursuant to the SDDA, the State Street School. On August 31, 2020, after motions to dismiss and to consolidate the two matters were withdrawn, the Board filed a Second Amended Complaint, Pa000141–Pa000201, and the State Street School matter proceeded separately under Docket No. ESX-C-67-20.

On April 19, 2023, a stipulation of dismissal with prejudice was filed, dismissing all claims against 33 Maple. Pa002358.

On May 3, 2023, the Board filed a Third Amended Complaint, conforming its claims to facts adduced in discovery. Pa002361-Pa002382.

On June 9, 2023, the Court (Hon. James R. Paganelli, J.S.C.) denied a motion for partial summary judgment filed by the Board against NHA and denied motions for summary judgment filed by NHA and the FOT Defendants, finding issues of fact to be determined at trial. Pa002523-Pa002557; Pa002558-Pa002592; Pa002593-002627.

After Judge Paganelli's appointment to the Appellate Division, the case was assigned to Hon. Lisa M. Adubato, J.S.C. In an oral opinion on February 12, 2024, Judge Adubato denied a motion by the FOT Defendants for reconsideration of the denial of their motion for summary judgment. 3T57-22 to 3T59-25.<sup>2</sup>

On April 10, 2024, the date set for a "plenary hearing," Judge Adubato heard no testimony, and ruled as a matter of law that the SDDA does not prohibit use of Maple Avenue School as a school. 4T91-5 to 4T97-4.

---

<sup>2</sup> Transcripts of pertinent proceedings are designated as follows: March 7, 2023, 1T; August 1, 2023, 2T; February 12, 2024, 3T; April 10, 2024, 4T; May 7, 2024, 5T; May 9, 2024, 6T; July 19, 2024, 7T; and October 29, 2024, 8T.

On May 7, 2024, Judge Adubato heard oral argument on the Board's right of reversion of title to the Maple Avenue School. 5T4-5T241. In an oral opinion on May 9, 2024, she issued findings on that issue. 6T3-6T30. On June 18, 2024, she granted the FOT Defendants' motion for summary judgment, vacated the denial of the FOT Defendants' motion for summary judgment, granted summary judgment to the FOT Defendants on certain counts of the complaint, granted summary judgment to the NHA on certain counts, dismissed the FOT Defendants' cross-claims against NHA and 33 Maple, and dismissed the FOT Defendants' counterclaims except for that based on promissory estoppel. Pa002854-Pa002857.

On July 19, 2024, Judge Adubato heard argument on cross-motions for summary judgment on FOT's counterclaim and the Board's and NHA's cross-motions for summary judgment. 7T4-7T86. On October 29, 2024, she entered an opinion and order granting FOT summary judgment on the counterclaim and an opinion and order granting NHA summary judgment. 8T3-8T36; Pa003316-Pa003317; Pa003318-Pa003319.

## **STATEMENT OF FACTS**

### **The Board of Education, the Housing Authority, and the Agreement**

Maple Avenue School, located at 33 Maple Avenue, was an elementary school, part of the Newark public school district, until 2016. In February of that

year, upon the recommendation of the State District Superintendent, the Board adopted a resolution authorizing the conveyance of Maple Avenue School and 11 other properties to NHA.<sup>3</sup> Pa000133-Pa000134. The conveyance was pursuant to a “partnership” by which NHA would “assume direct responsibility to facilitate redevelopment of unused assets.” Pa000133.

In the same month, the NHA Board of Commissioners adopted a similar resolution, authorizing a program (“the Program”) by which designated school facilities owned by the Board would be conveyed to NHA. Pa000136-Pa000137. That resolution, H1625021, stated that the conveyance was “for purposes of alleviating unproductive sites from the [Newark Public Schools (“NPS”)] balance sheet in order to create expense savings and generate revenue opportunities for NPS, while also increasing tax ratables for the City and enhancing job and employment opportunities for City residents.” Pa000136. More specifically, the Board would convey 12 facilities to NHA “in accordance with N.J.S.A. 18A:20-9” and NHA, “in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12-1 *et seq.* and other

---

<sup>3</sup> At that time, the Newark Public Schools were constituted as the State-operated School District of the City of Newark and overseen by a State District Superintendent pursuant to N.J.S.A. 18A:7A-15 *et seq.* and -34 *et seq.* See In re Renewal TEAM Acad. Charter Sch., 247 N.J. 46, 54-55 (2021); Pa000760. In accordance with that statutory scheme, authority over district operations, including school facilities matters, had been returned to the Board of Education in 2008. Pa002280.

applicable law,” would “consider development, housing, and other potential strategies for each Facility internally and with the development community ... all as necessary or convenient and useful for the betterment of NPS, NHA, the City, and the residents thereof.” Pa000136-Pa000137.

Board members and the NHA Board of Commissioners were assured that the 12 buildings so conveyed would not be sold to, or ultimately used as, charter schools. The State District Superintendent told the Board the proposed arrangement was “a way to transfer these buildings and sell them in the open market for housing developments for example and to a university.” Pa000777. More pointedly, he stated: “... to clear up one misconception that I assume is not far from the back of people’s mind, these are not sales to charter schools....” Id. Similarly, the NHA Executive Director explained to his Commissioners:

We engaged Newark City Hall and the superintendent, myself and the Mayor had met regarding this and really discussed the issues and some concern around that these things don’t end up as some charter school or something like that, that they either end up as residential development or commercial development or whatever and once that was somewhat satisfied, we developed a program to have those twelve schools transitioned to the Housing Authority for ultimate disposition. Pa000845.

Indeed, the record shows that the Board would not have authorized the Program if, upon conveyance to NHA, the buildings would thereafter still be used as schools, including charter schools. One member testified in her deposition, “[W]e knew if it became a housing authority property to be

developed into a charter school, that was not something [the Board] would have pursued,” and “... if they were at any point to be used to develop a charter school, the Board of Education would pursue getting the properties back.” Pa000789-Pa000790. Another testified that the Board had been assured “the properties were not going to be handed over to the charter schools or anything.” Pa000782. Another stated: “[A]t no point in time did I ever think, as a member of the Board of Education that these ... schools would be sold to any other organizations or entities that we considered to be in direct competition with the public education space in the city of Newark, New Jersey.” Pa001002. The minutes of the Board meeting of February 23, 2016 state that “NHA will assess each site and either use them for housing or convey it to a third-party for redevelopment,” and “NPS will retain the right to reclaim properties if NHA does not reuse them after a certain period of time.” Pa000300.

Soon thereafter, an agreement between the Board and NHA was drafted. The law firm of McManimon, Scotland and Bauman, LLC took the lead in drafting. Pa000862. The agreement, entitled “Site Disposition and Development Agreement” (“Agreement” or “SDDA”) and dated April 19, 2016, denominates the 12 properties as “Sites.” Pa000017-Pa000043. Its Section 5.1, “Purpose of Conveyances,” states:

The Sites are being transferred and conveyed to NHA for purposes of effectuating the Site Development Program. It is anticipated that

the Site Development Program will enable NPS to realize expense savings and generate revenue for capital improvements while also increasing tax rates for the City and enhancing job and employment opportunities for City residents (“Purposes”). As such, under the Program NHA shall accept conveyance of various Sites in accordance with the terms of this Agreement, and shall utilize its experience, expertise and resources available to it in order to pursue development and housing opportunities for each Site conveyed to it.

Pa000028. NHA’s contractual duties, listed in Section 2.1, included managing the Program and “the exploration of development and housing opportunities for each Site.” Pa000022.

Section 5.2, “Conveyance of Sites to NHA,” states in pertinent part:

(1) NPS agrees that it will convey the Initial Sites to the NHA within thirty (30) business days of the Effective Date hereof. NPS shall convey the Sites to the NHA for nominal consideration. Any Sites conveyed to the NHA shall be subject to a right of reversion exercisable by NPS, if and to the extent, the NHA has not developed a Site Project or demonstrable plans for such Site within three (3) years from the date of execution of this Agreement. Exercise by NPS of this right of reversion with respect to any particular Site shall not affect any of NHA’s rights with respect to development of any other Sites conveyed to the NHA. This right of reversion shall not be included in any deed, or otherwise recordable document, from NPS to NHA for any Site; and if requested by NHA or any third party developer, NPS shall execute and deliver a document to discharge the right of reversion.

Pa000028.

Section 5.4, “Site Projects,” states in pertinent part:

(1) NHA shall work diligently to investigate and identify feasible housing, redevelopment and economic development opportunities at each Site (each, a “Site Project”). NHA shall solicit proposals for Site Projects and shall interview and negotiate with third parties

in an effort to develop realizable Site Projects consistent with the Purposes of the Program. In so doing, NHA shall work with NHA professionals, as necessary, to perform site investigations, consider financing options, examine Applicable Laws and State programs, and liaise with state and local government entities, as necessary. NHA shall engage professionals to draft development and other agreements (each, a “Developer Agreement”) necessary in order to realize each Site Project. A Developer Agreement for a Site Project shall set forth details of adequate Site Project finance, financial closing, construction, lease up, and other milestones and requirements in order to ensure that such Site Project can be competed in accordance with commercially reasonable standards and timelines (collectively, “Performance Milestones”).

(2) NHA shall be authorized, subject to the requirements set forth in Section 5.4(4) below, to dispose of a Site to a third party developer for purposes of effectuating a Site Project. In connection therewith, each Developer Agreement that provides for or contemplates disposition of a Site to a third party developer shall provide for reversionary rights to NHA in the event such Performance Milestones are not met.

(3) In connection with the negotiation of a Developer Agreement for a Site Project, NHA shall make good faith efforts to generate a net economic value to NPS for each Site, which shall be payable to NPS upon disposition and/or leasing of the Site. NHA and NPS shall work collectively and collaboratively to determine such net economic value....

(4) Prior to the execution of a Developer Agreement or the disposition of a Site to a third party developer, NHA shall submit a report regarding such Site Project to the City Council for review and approval. The report shall include an executive summary of the Site Project, a draft of the Developer Agreement, and supporting documentation as shall be required in order to more fully apprise said parties of the proposed Site Project. NHA and NPS shall work collectively and collaboratively in order to ensure the City Council’s approval of each such Site Project prior to final disposition of any Site.

Pa000030.

**The Sale of Maple Avenue School**

On June 30, 2016, the parties entered into a Conditional Conveyance Agreement stating that NHA would take title to the 12 Sites pursuant to the SDDA, Pa000909-Pa000913, and the Board transferred title to Maple Avenue School to NHA for consideration of one dollar. Pa000045-Pa000048.

Upon acquiring title, NHA engaged a real estate appraiser, who conducted an appraisal and issued a report stating that the fee simple value of Maple Avenue School as of August 31, 2016 was \$3,960,000. Pa000347-Pa000401. It entered into a listing agreement, granting a realtor the exclusive right to procure the sale of the 12 Sites “subject to the requirements and limitations of that certain Site Disposition and Development Agreement by and between the Owner and [the Board] dated as of April 19, 2016.” Pa000935-Pa000940. Additionally, it issued a Request for Qualifications and Proposals (“RFQ/P”), seeking proposals demonstrating, among other things, “creativity in adaptive reuse consistent with the City’s master plan” and stating that all conveyances would be “pursuant to agreed upon performance milestones to place the properties back into productive commercial use.” Pa000310-Pa000335. It said the properties in question “may be subject to certain encumbrances attached prior to conveyance to NHA, including [...] potential commitments to restrict

certain building use....” Pa000313-Pa000314. In a section called “conflicts,” the RFQ/P required all parties submitting proposals to state whether they had any interests in charter schools. Pa000322-Pa000323.

A press release issued by NHA described the Program’s purpose:

While economizing on operating costs and maximizing proceeds from the sales are of utmost importance to NPS, the assessment process will also place heavy emphasis on those proposals which will serve the needs of the surrounding communities, respect the history of the buildings and expand access to housing and commercial space in order to enrich the neighborhoods for years to come....

Pa000854.

The Hanini Group responded to the RFQ/P with a letter of intent to purchase Maple Avenue School. Pa000959-Pa000960. Its proposal was selected, and on November 15, 2017, NHA entered into a contract for the sale of Maple Avenue School to BN Property, LLC (an affiliate of the Hanini Group and predecessor to 33 Maple), with a purchase price of \$1,200,000. Pa000187-Pa000199.

An email soon thereafter informed Hanini that conveyance of the property was “subject to approval by the Newark’s Municipal Council which is being pursued by NHA.” Pa000966. That approval was never received. At NHA’s request, the State District Superintendent sent a letter dated September 20, 2017 to NHA, which said it constituted a waiver of Section 5.4(4) of the Agreement

(but not a waiver of any other provisions of Section 5.4), and City Council approval would not be required for the sale of any of the Sites to third parties. Pa000972; Pa000258. The sale, therefore, proceeded without City Council approval.

The purchase price was \$1,200,000. Pa000187-Pa000199.

### **NHA's Breach and 33 Maple's Switch**

Even aside from the sale of the property for \$2.7 million less than its appraised value – far from the “net economic value” it was supposed to have generated for the Board from each sale – NHA failed carry out its obligations under the Agreement. Ten of the 12 Sites were sold to third parties,<sup>4</sup> but none with Developer Agreements, none with any provision for Performance Milestones, and none with any reference to NHA's right of reversion, all as required by Section 5.4 of the Agreement. Pa000981; Pa000030. Further, notwithstanding the clear terms of the Agreement as well as the Conditional Conveyance Agreement, the listing agreement, and the RFQ/P, NHA failed to “work diligently” to obtain “housing, redevelopment and economic development opportunities at each Site,” and specifically at Maple Avenue School. See SDDA Section 5.4(1), Pa000030. Far from it: NHA's agents told

---

<sup>4</sup> Two of the 12 Sites were not developed by NHA or sold to third parties, and were returned to the Board in 2020.

at least one developer, Thafer Hanini (principal of purchaser BN Property LLC), that there were no restrictions on development of the Sites and “they could blow up the buildings for all they cared.” Pa001013-Pa001014.

In particular, NHA failed to meet the requirement to develop Maple Avenue School, or make “demonstrable” progress toward development of a Site Project at that Site, within the three-year term specified in Section 5.2, and failed to retain a right of reversion in the event that such development did not occur. Three years from the date of execution was April 19, 2019. No Site Project – a project providing housing, redevelopment or economic development opportunities – had been developed at Maple Avenue School by that date. To this day, no Site Project has been developed at Maple Avenue School.

The proposal submitted by BN Property LLC in response to the RFP/Q stated that, if selected to purchase Maple Avenue School, it would develop the Site for use as “short-term apartments.” Pa003353-Pa003398. Such use, as a form of “housing,” would have qualified the development as a “Site Project” as required by Section 5.4 of the Agreement. But neither BN Property LLC nor its successor 33 Maple proceeded to develop the property as “short-term apartments” as represented in the proposal or for any use that would have provided “housing, redevelopment, or economic development opportunities” and thus qualified as a Site Project. No request for zoning or planning board approval of any such use

was ever submitted; no redevelopment proposal was ever submitted; no plan of any kind was ever submitted to NHA or any other agency for approval of a Site Project at Maple Avenue School.

Instead, almost three years after acquiring the Site – and more than three years after the SDDA’s effective date – 33 Maple sold Maple Avenue School to FOT.<sup>5</sup> Pa00546-Pa00568. FOT’s sole purpose for its acquisition of the Site was to open and operate it as a charter school. Id. An appraisal of the Site obtained by FOT determined that, as of December 13, 2019, the property value was \$4,800,000 – \$3.6 million more than what NHA had sold it for. Pa001917. The price paid by FOT at closing, on March 19, 2020, was \$10,000,000 – \$8.8 million more than what NHA had sold it for. FOT paid with a loan secured by the property in the amount of \$21,500,000. Pa000546-Pa000568.

**FOT’s Notice of the Board’s Right of Reversion**

FOT denies having notice of the SDDA or the right of reversion which, per the Agreement, would accrue to the Board in the event that the Maple

---

<sup>5</sup> FOT exists to “support the mission and operations of TEAM Academy Charter School” by identifying, developing, securing financing for, and leasing school facilities to TEAM. Pa003246-Pa003249. Per New Jersey’s Charter School Program Act, a charter school is a public school operated under a charter granted by the Commissioner of Education, operated independently of the local board of education and managed by a board of trustees. FOT obtained financing for the purchase from Respondents Equitable Facilities Fund, Inc., Equitable School Revolving Fund, LLC and U.S. Bank National Association or some combination thereof. Id.

Avenue School was not developed for housing, redevelopment and economic development opportunities (*i.e.*, as a Site Project) within three years of execution. Its denial is based entirely on the covenant as to grantor's acts in the Corrective Deed from the Board to NHA, discussed below, and the Board's affidavit of title, notwithstanding three things to the contrary: (1) the NHA and Board resolutions attached to that deed and the deed from NHA to FOT; (2) its attorneys' actual knowledge of the SDDA, having drafted it themselves, and its agents' constructive knowledge; and (3) its agents' knowledge of the SDDA, both prior to the filing of the complaint in this matter and thereafter.

**(1) The Corrective Deed and the Resolutions**

The Corrective Deed, dated November 16, 2017, was provided by the Board at NHA's request. NHA's stated need for it was to include a covenant against grantor's acts. Pa003405. The pertinent provision of the document states:

The Grantor promises that the Grantor has done no act to encumber the property. The promise is called a "covenant as to grantor's acts (N.J.S.A. 46:4-6). The promise means that the Grantor has not allowed anyone else to obtain any legal rights which affect the property (such as by making a mortgage or allowing a judgment to be entered against the Grantor).

This conveyance is made subject to all easements, covenants, restrictions, and agreement of record; if any, zoning and ordinances, land use regulations and requirements of the City of Newark, and all facts that an accurate survey and physical inspection of the property may disclose.

Pa000114-Pa000121.

When provided at closing to the purchaser BN Property LLC, and as recorded, the Corrective Deed had attached a copy of the Board Resolution of February 23, 2016, authorizing the Program and the SDDA. Pa000120-Pa000121. Similarly, the deed from NHA to BN Property LLC, dated December 28, 2017, had attached a copy of NHA Resolution H-16250201, by which NHA had authorized the Program and the SDDA on February 25, 2016. Pa000052-Pa000060.

**(2) FOT's Attorneys' Knowledge of the SDDA**

Even if, somehow, the resolutions attached to the deeds were not enough to provide notice of the Board's reversionary interest, FOT's attorneys' direct involvement in the matter should have been. FOT's counsel in the purchase of the Maple Avenue School – McManimon, Scotland, and Bauman – was the same law firm that had drafted the SDDA and represented NHA in connection with the Agreement, conveyance of the 12 Sites from the Board, and sale of Maple Avenue School to BN Property LLC. Pa001860; Pa001866; Pa000054. Without dispute, as a result of her firm's involvement, the attorney who represented FOT in connection with its purchase from 33 Maple was aware of the SDDA and the Program at the time of that transaction, having had at least one conversation about the Program with her colleagues who had been directly involved with it

on behalf of NHA. Pa000065; Pa001757-Pa001758. She specifically knew Maple Avenue School was part of the Program. Pa001759. She testified in deposition that she had reviewed the NHA resolution attached to the Corrective Deed prior to the closing of FOT's purchase of the property. Pa001760-Pa001761.

**(3) FOT's Agents' Knowledge of the SDDA and the Board's Interest**

In addition to its attorneys, at least one other agent of FOT, the Director of Real Estate for KIPP NJ (affiliate and management organization of TEAM Charter School) had reviewed the RFQ/P in 2016 and had visited Maple Avenue School as a result of his review. Pa001791; Pa001792.

Even aside from this notice prior to the filing of the Complaint, FOT's agents certainly had notice of the Board's claim of a reversionary interest as a result of the filing of a *lis pendens* on the Site, on April 22, 2020. Pa002028-Pa002032; Pa003399-Pa003403. They certainly had notice of the Board's interest in the Site upon receipt of the Amended Complaint, which was filed April 27, 2020. Pa000001-Pa000104. And the proceedings thereafter brought home the point.

FOT's lender and title insurer took notice of the *lis pendens* and considered it a "significant issue" at least as of January 9, 2021, according to documents in the record. Pa003222. The title insurer refused to insure the

release of loan funds to FOT from the date of its filing, and consequently the loan funds which had been committed but not yet released to FOT were not advanced. Pa003246-Pa003249. Despite those concerns, FOT “invested an additional over \$11.5 million” more than the purchase price for Maple Avenue School “to make it a state-of-the-art elementary school.” Id. It did so at its own risk.

More specifically, per the Loan Agreement dated March 19, 2020, FOT’s lender disbursed \$10,910,036.21 to FOT at closing, and the remaining portion of the \$21.5 million – \$10,589,963.79 – was to be advanced to a construction account upon FOT’s request no later than April 21, 2021. Pa003158. FOT could have prevented that advance by informing Equitable that it did not wish to proceed, *but it did not do so*. The Loan Agreement states:

If the Borrower fails to request the second Advance by April 1, 2021 or otherwise chooses to forego the second Advance, the Borrower shall pay Lender the Breakage Fee within thirty (30) days following receipt by Lender of a Breakage Notice.

Id. The Breakage Fee would have been one hundred thousand dollars, at most.

Id. The second Advance would not have occurred, and additional interest charges would not have been incurred. *Yet FOT chose not to forgo the second Advance.* The additional \$10,589,963.79 was advanced into the account on September 15, 2020 – six months after commencement of this suit – and from then on, FOT paid interest on that amount, \$27,789.65 per month, totaling

\$765,389.00 by January 22, 2023. Pa003246-Pa003249. FOT also borrowed another \$6,500,000.80 “to complete construction of the Maple Avenue project,” incurring additional interest charges at the rate of \$17,531.25 per month. Id.

## **LEGAL ARGUMENT**

### **STANDARD OF REVIEW**

This court’s review of a grant of summary judgment is *de novo*, applying the same standard as the trial court. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). That standard requires the appellate court to “determine whether ‘the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, 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.’” Id. quoting R. 4:46-2(c). To decide whether a genuine issue of material fact exists, the court must draw “all legitimate inferences from the facts in favor of the non-moving party.” Friedman v. Martinez, 242 N.J. 449, 472 (2020) quoting Globe Motor Co. v. Igdalev, 225 N.J. 469 (2016). “[The] trial court’s interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.” Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

In a matter of contract interpretation, the appellate court should pay no special deference to the trial court's interpretation and should “look at the contract with fresh eyes.” Kieffer v. Best Buy, 205 N.J. 213, 223 (2011).

**POINT I**

**THE DECISION GRANTING SUMMARY JUDGMENT TO FOT ON ITS COUNTERCLAIM SHOULD BE REVERSED (8T19-8T36; Pa003316-Pa003317)**

The clearest error committed by the court below was the grant of summary judgment to FOT on its Third Counterclaim. That claim, based on promissory estoppel, was upheld as a matter of law, and a substantial monetary judgment was entered against the Board, notwithstanding material facts that were at least appropriate for consideration by the trier of fact, and indeed, upon such consideration, should have been found to require dismissal of the claim.

Judge Paganelli provided a 33-page statement of reasons for his decision of June 9, 2023, denying all parties’ motions for summary judgment. Pa002523-Pa002557; Pa002558-Pa002592; Pa002593-Pa002627. The portion pertaining to FOT’s motion regarding the promissory estoppel counterclaim explains his determination that summary judgment should be denied because of questions of fact regarding the reasonableness of FOT’s alleged reliance on any promise. Pa002555. The decision states:

Without deciding if FOT establishes the other elements, this court focuses on the third element, which requires that “the promise must

in fact reasonably rely on the promise.” Pop’s Cones [Inc. v. Resorts Intern. Hotel, Inc.], 307 N.J. Super. 461, 468 [(App. Div. 1998)]. This court has determined that summary judgment must be denied FOT, on other aspects of its motion, because there is a material issue of fact regarding notice. If the trier of fact determines FOT had notice and makes other determinations therefrom – FOT’s reliance on the deed(s) or Affidavit(s) of Title may not have been reasonable. Therefore, giving every inference, this court denies summary judgment.

Sixteen months later, based on the same record, Judge Adubato ruled to the contrary. In so doing, she acknowledged but misconstrued Judge Paganelli’s determination as to the question of fact regarding “notice,” and as a result erred in granting summary judgment on this claim. Her oral decision of October 29, 2024 states:

As previously mentioned, Judge Paganelli denied FOT's prior motion for summary judgment on its promissory estoppel claim based on issues of fact about notice relevant to NBOE's reversion claim. By order entered June 18th, 2024 this court memorialized its decision on those issues in FOT's favor. It is important to note then that it has been decided, as a matter of law, that NBOE does not have reversionary rights against downstream purchasers of Maple Avenue.

7T20-16 to 7T20-24. In other words, as she had ruled as a matter of law against the Board’s right of reversion in part due to FOT’s lack of notice of the Board’s rights (as discussed further below), she also found that that lack of notice supported FOT’s claim of promissory estoppel. But that “notice” (or lack thereof) based on the terms of the SDDA, which she had found to be ambiguous, and the Corrective Deed, which she had found to be clear, was not the same

“notice” that Judge Paganelli had referenced in his decision. The “notice” relevant to promissory estoppel was not only FOT’s notice of the Board’s rights prior to its purchase of the Site, but also thereafter, through all the proceedings below. FOT’s decision to incur additional debt in 2021, despite indisputable “notice” of the Board’s claim of interest in the property – provided, at the very least, by the filing and pursuit of this lawsuit – cannot be found to have been made in reasonable reliance on any promise that may have been in the chain of title. Judge Aduato’s focus on the “notice” that she found FOT could be charged with at the time of purchase, rather than the further “notice” that should have led it to avoid the additional interest charges, was erroneous. Moreover, awarding a substantial judgment against the Board despite evidence that FOT could have avoided those charges was contrary to “the essential justification for the promissory estoppel doctrine,” to “avoid the substantial hardship or injustice which would result if [the alleged] promise were not enforced.” Pop’s Cones, 307 N.J. Super. at 469, citing Malaker Corp. Stockholders Protection Comm. v. First Jersey Nat’l Bank, 163 N.J. Super. 463, 484 (App. Div. 1978), certif. denied, 79 N.J. 488 (1979).

The judge’s findings as to the other elements of promissory estoppel were erroneous as well. To establish such a claim, a party must prove the following four elements: “(1) a clear and definite promise; (2) made with the expectation

that the promisee will rely on it; (3) the promisee must reasonably rely on the promise; and (4) definite and substantial detriment. Toll Bros., Inc. v. Bd. of Chosen Freeholders of Burlington, 194 N.J. 223, 253 (2008). See also Goldfarb v. Solimine, 245 N.J. 326 (2021) (“the operative reliance is on a promise”), quoting Friedman v. Tappan Dev. Corp., 22 N.J. 523, 536 (1956).

**A. As a matter of fact, the Corrective Deed contained no clear and definite promise that the Board had not encumbered the property.**

FOT’s argument and the judge’s decision on the counterclaim were based entirely on documents in the chain of title, primarily the Corrective Deed, and more specifically the statement therein that the Grantor (*i.e.*, the Board) “has done no act to encumber the property.” Both FOT and the judge chose to disregard the statement immediately after thereafter, that this “promise” “means the Grantor *has not allowed anyone else* to obtain any legal rights which affect the property (such as by making a mortgage or allowing a judgment to be entered against the Grantor).” (emphasis added). They also disregarded the language stating that the conveyance was “subject to all...covenants, restrictions and agreement of record....”<sup>6</sup> The trial court failed to determine genuine issues of

---

<sup>6</sup> Even NHA’s counsel, Karl Kemm, Esq., wrote in an email dated October 6, 2017 that the covenant against grantor’s acts was “a little more limited than people are assuming” and “the second paragraph limits the promise in the first paragraph.” Pa003404-Pa003408.

material fact based on carveouts in the second paragraph referencing “restrictions and agreements”, which would include the permitted use limitations, timeframe limit, and reversionary rights set forth in the SDDA. As matter of fact, FOT also should have known about such “restrictions and agreements” referenced in the second paragraph because the deed from the Board to NHA attached the Board resolution authorizing the Program and the deed from NHA to BN Property LLC attached the NHA resolution authorizing the Program. The NHA resolution also stated that the transfer of properties would be done in accordance with N.J.S.A. 18A:20-9 and that an agreement would enter be entered into between NHA and NPS related to the Program. Given these additional statements, any “promise” made by the Board should not have been ruled so “clear and definite.” Further, given the evidence of the circumstances leading to the Agreement and the Program – let alone later events – the Board should not have been found as a matter of law to have made any “clear and definite promise” not to claim a reversionary interest in Maple Avenue School.

**B. As a matter of fact, NBOE had no expectation that FOT would rely on any promise that it had not encumbered the property.**

For all the same reasons, the Board cannot reasonably be said to have “expected” FOT, or any downstream purchaser, to have relied on any promise that it would not claim a reversionary interest in Maple Avenue School. It would

have made no sense for the Agreement to have included its provisions for reversion of the Sites only to have them eviscerated by a deed transferring property pursuant to the Agreement. Again, at the very least, the “expectation” of the Grantor – *i.e.*, the intent of the Board – should have been addressed as a question of fact in light of all the evidence in the record rather than as a matter of law, solely on the basis of language in the Corrective Deed.

Additionally, while FOT’s and Judge Aduvato’s focus was on a purchaser’s right to rely on a promise in a deed, this required element of promissory estoppel requires the focus instead to be on the grantor and its “expectation.” As to this point, the question is whether the Board expected – *i.e.* intended – to have FOT or any downstream purchaser to rely on a promise that it would not assert a reversionary interest in the property. Whether a party intends to provide a right or benefit to another, one with whom it has no direct relationship, is necessarily a question of fact. Broadway Maintenance Corp. v. Rutgers, State Univ., 90 N.J. 253, 259 (1982). Both the pertinent provisions of operative documents and the surrounding circumstances should be examined to ascertain that intent. Id. at 260. Any question regarding the Board’s intent should not have been determined as a matter of law.

**C. Any purported reliance by FOT was not reasonable.**

The “fact-sensitive nature of a ‘reasonableness’ analysis make resolution of [a] dispute through summary judgment inappropriate.” Davidson Bros. v. D. Katz & Sons, Inc., 121 N.J. 196, 215 (1990). See also Pop’s Cones, 307 N.J. Super at 472 (“whether plaintiff's reliance upon defendant's assurances was reasonable is ... a question for the jury”). Accordingly, Judge Paganelli correctly denied summary judgment on the counterclaim because of the questions of fact as to the reasonableness of any reliance by FOT. Judge Adubato should have done the same.

Questions of fact existed with respect to both whether FOT actually relied on any promise by the Board and, if so, whether such reliance was reasonable. As to whether it actually relied, eyebrows should have been raised by the fact that FOT’s counsel on its purchase of the property was the same law firm that had represented the NHA on the SDDA, the conveyance from the Board to the NHA, and NHA’s sale of the property to BN Property, as discussed above. The attorney’s undisputed knowledge of facts relating to the SDDA and those transactions must be imputed to her client. See Colegrove v. Behrle, 63 N.J. Super. 356, 364 (App. Div. 1960); B & F Properties, L.L.C. v. Two Bits Properties, L.L.C., 2007 WL 1008937 at \*3 (App. Div. April 16, 2007); Katz v. N.T. Callaway Real Estate Broker, LLC, 2016 WL 6677897 at \*4-\*5 (App. Div. Nov. 14, 2016). Her knowledge also should have raised significant questions as

to whether FOT in fact relied on any statement in the Corrective Deed, or whether it chose to proceed with its purchase with full knowledge of the Board's interest after receiving legal advice and a full explanation of the SDDA and its ramifications. Judge Adubato should have denied summary judgment in order to address these questions of fact.

The attorney's knowledge is also relevant to whether FOT's reliance (if any) on the Corrective Deed was reasonable. Whether she failed to advise FOT of the SDDA and the Board's potential claim thereunder, or she did not fail to do so but FOT chose to proceed in the face of that advice, would have been relevant questions as to the reasonableness of FOT's conduct. Judge Adubato should have acknowledged those questions, and she should have denied summary judgment in order to address them as the trier of fact.

Then, even aside from the reasonableness of any reliance at the time of purchase, the reasonableness of any reliance thereafter, after it learned of the Board's claim by the filing of this action, the *lis pendens*, and all that ensued, was certainly questionable. Why FOT's agents chose not to forgo the second advance as permitted by the Loan Agreement, why they failed to inform the lender that FOT chose to cancel that second disbursement, and why they instead proceeded to incur six million dollars in additional debt even while in litigation on the very issue of the Board's interest in the property is unfathomable. Why

they didn't even attempt to mitigate the expense by filing a motion to discharge the *lis pendens*, as permitted by N.J.S.A. 2A:15-7, also should have been of interest. At the very least, the FOT's actions after the filing of this action should have raised questions of fact as to the reasonableness of any reliance on its part, precluding summary judgment.

Finally, as to this point, FOT's assertion that, in light of its reliance on the Corrective Deed, the filing of the *lis pendens* caused it harm turns the concept of *lis pendens* on its head. By its nature, the filing of a *lis pendens* serves no purpose but to provide notice of a claim of interest in property. It cautions a party *not* to take action with respect to the property on which it is placed. Indeed, that is how its title insurer interpreted it, and it therefore refused to insure any further loan on the property, as discussed above. Anyone who takes an interest in property in the face of a *lis pendens* does so at their own peril, and such action should belie any claim of reasonable reliance on anything prior to its filing. Thus, when FOT took on additional debt, it incurred additional interest charges *despite* the *lis pendens*, not because of it. Its decision to do so was at its own risk. The decision to blame the Board, even in the face of such an unreasonably risky decision, was erroneous.<sup>7</sup>

---

<sup>7</sup> Further, there is no entitlement to monetary damages related to the filing of a *lis pendens*. In Brown v. Brown, 470 N.J. Super. 457 (App. Div. 2022). To the extent that this is FOT's claim, it too should be rejected.

**D. Any “definite and substantial detriment” suffered by FOT were not due to any reasonable reliance on any promise by the Board.**

In light of the foregoing, the \$768,487.05 additional interest costs that FOT allegedly incurred were not caused by any reasonable reliance on any promise by the Board. The entry of summary judgment against the Board, requiring its payment of costs incurred by FOT at its own risk, was erroneous and should be reversed.

**POINT II**

**THE DECISION TO GRANT SUMMARY JUDGMENT TO THE FOT DEFENDANTS ON THE BOARD’S RIGHT OF REVERSION SHOULD BE REVERSED (4T91-5 to 4T97-4; 6T3-6T30; Pa002854-Pa002857)**

This court has recognized “the power of a court of equity to undo a completed conveyance to a party who does not qualify as a bona fide purchaser.” Marioni v. 94 Broadway, Inc., 374 N.J. Super. 588, 611 (App. Div.), certif. denied, 183 N.J. 591 (2015). It also has recognized that “in equity a restrictive covenant made by a grantor with his grantee as to the use of land binds the grantee’s successors in title who take with notice.” Javna v. D.J. Fredricks, Inc., 41 N.J. Super. 453, 359 (App. Div. 1956). These decisions reflect the beneficial policy of “preventing a party having knowledge of the just rights of another, from defeating such rights[.]” Cotton v. Cresse, 80 N.J. Eq. 540, 542 (E. & A. 1912). On the basis of that policy and these decisions, the Board has sought to

enforce its right of reversion in the Maple Avenue School property against the FOT defendants. Judge Adubato's refusal to exercise her authority to enforce the Board's rights based on the facts presented, her ruling that she lacked authority to do so, and consequently her grant of summary judgment to the FOT defendants on the Board's reversionary rights should be reversed.

Judge Paganelli cited three reasons for his denial of summary judgment to the FOT defendants on the Board's right of reversion: the Board's "assertion regarding FOT's counsel's role with the NHA, including drafting the SDDA and representing it in the buy of the Maple Avenue property" (citing Colegrove v. Behrle, 63 N.J. Super. at 364), "the mention in the NHA Resolution of a statute that provides a right of reversion to the Board," and the RFP/Q. Those three factors, along with the requirement to draw all reasonable inferences in favor of the Board (citing Globe Motor Co. v. Igdaley, 225 N.J. 469, 480 (2016)), led him to conclude that summary judgment on that count of the complaint and the FOT defendants' defense of being "a bona fide purchaser mortgagee" must be denied. Pa002546.

Judge Adubato denied a motion for reconsideration of that ruling, 1T57-22 to 1T59-25, but then, on the day she had set for a "plenary hearing," she announced that she had changed her mind. She granted not only reconsideration

but also summary judgment, dismissing the Board's claim of a right of reversion. Pa002854-Pa002857; 4T3-4T30.

The judge's about-face on this issue (without any opportunity given to the Board for additional briefing to address the issue she belatedly perceived) was entirely based on her stated new-found appreciation of the decision in Cooper River Plaza E., LLC v. Briad Grp., 359 N.J. Super. 518 (App. Div. 2003), in which this court held that a certain restriction on use of a certain property was too obscure and vague to require reversion to its original grantor. Such reliance, and her finding that she was bound by the holding of Cooper River, was misplaced for two reasons. First, it failed to take into account the countervailing and equally binding rule that a subsequent purchaser's notice of a restriction on use will preclude it from relying on a recorded document against a claim of violation of the restriction. Second, in contrast with the restriction at issue in Cooper River, the restriction here – the SDDA's provision that all of the Sites were to be used for “housing, redevelopment, and economic development opportunities” – was not so obscure and vague. Both of these factors should have resulted in denial of summary judgment. She also apparently misunderstood the import of the statute mentioned in Judge Paganelli's opinion, N.J.S.A. 18A:20-9, which was yet another error.

**A. FOT’s notice of the SDDA and its requirements presented an issue of material fact in dispute.**

While recording a document is one way to convey constructive notice of its contents to others, it is not the only way a party can come by notice of a document or claim regarding land. See Fineberg, New Jersey Title Practice (5<sup>th</sup> Ed. 2021), §7.02B (noting that “the land records are not necessarily one’s exclusive source of title information”). The Recording Act recognizes that “[a] claim under a recorded document affecting the title to real property shall not be subject to the effect of a document that ... was not recorded *unless the claimant was on notice of the later recorded or unrecorded document.*” N.J.S.A. 46:26A-12(b) (emphasis added).

Accordingly, a court of equity may restrain a subsequent purchaser from violating a restriction on the use of the land when that purchaser had actual, constructive, or inquiry notice of such restriction, whether or not a document containing that restriction is recorded and whether or not the restriction is one which, in law, “runs with the land.” See Riverton Country Club v. Thomas, 141 N.J. Eq. 435, 446–47, (Ch.), decree aff’d o.b., 1 N.J. 508 (1948). A subsequent purchaser will be charged with record notice (i.e., constructive notice) of a restriction “if such a restriction is present in their chain of title; this is so even if that grantee’s deed itself contains no mention of such a restriction.” Pearson v. DMH 2 Ltd. Liab. Co., 449 N.J. Super. 30, 50 (Ch. Div. 2016). A party may

“be charged with inquiry notice where there are facts or circumstances indicating some outside claim that would prompt a reasonable purchaser to investigate further.” Pearson, 449 N.J. Super. at 50. See also Malone vs. City of Brigantine, 2021 WL 3999386 (N.J. Super. App. Div. July 16, 2021), Pa003346-Pa003352 (finding both inquiry and constructive notice); Lake Community Property Owners Ass’n v. Zeugin, 2015 WL 8374463 (N.J. Super. App. Div. December 10, 2015), Pa003336-Pa003345 (remanding for consideration of inquiry notice).<sup>8</sup>

The question of whether the FOT defendants were on at least inquiry notice, if not constructive or actual notice, of the Program and the terms of the SDDA should have precluded summary judgment in their favor. Specifically, the resolutions attached the deeds; the terms of the RFP/Q, of which FOT’s agents admitted had notice; and the fact FOT’s counsel on the Maple Avenue School purchase was the same law firm as NHA’s counsel on its Maple Avenue School transactions and the SDDA and knew the terms of that Agreement, all

---

<sup>8</sup> See also Friendship Manor, Inc. v. Greiman, 244 N.J. Super. 104, 108 (App. Div. 1990); Garden of Memories, Inc. v. Forest Lawn Memorial Park Ass’n, 109 N.J. Super. 523, 534-535 (App. Div.), certif. denied, 56 N.J. 476 (1970); Scult v. Bergen Valley Builders, Inc., 76 N.J. Super. 124, 135 (Ch. Div. 1962), certif. denied, 126 N.J. 321 (1991); Camp Clearwater, Inc. v. Plock, 52 N.J. Super. 583, 598-599 (Ch. Div. 1958), aff’d, 59 N.J. Super. 1 (App. Div. 1959), certif. denied, 32 N.J. 348 (1960); Kennedy v. Island Development Co., 9 N.J. Misc. 921, 924 (Cir. Ct. 1931). See generally 6 Powell on Real Property §82.02(1)(d)(iv) (Michael Wolf ed. 2019) (defining actual, constructive, and inquiry notice).

should have given rise to questions of fact as to FOT's notice and required the restriction and the Board's right of reversion to be upheld. The judge's failure to recognize and address these issues, and her determination that the FOT defendants were not bound by the SDDA without addressing whether they had notice of its restrictions as a question of fact, was reversible error.

Most significantly, in all her rulings on the issue, the judge's decision is confined to inquiry rather than constructive or actual notice. They include no consideration or even mention of FOT's counsel's actual notice of the SDDA and its terms, and the impact of such actual notice on FOT's purported reliance. Constructive or imputed notice would have made a difference to the analysis, and it should have been taken into account. This too was reversible error.

**B. The SDDA's limitation on the use of Sites to "housing, redevelopment, or economic development opportunities" was not ambiguous.**

Even if, as Judge Adubato found, Cooper River was binding, it was distinguishable. Unlike the restriction there, the SDDA's limitation of permissible uses was not ambiguous. Therefore, the Cooper River holding, that a downstream purchaser will not be bound to an ambiguous use restriction, 359 N.J. Super. at 529, is inapplicable. The SDDA clearly stated that the Sites were to be developed as "Site Projects," explicitly defined as "housing,

redevelopment, and economic development opportunities.” Just as clearly, a charter school was none of those.

Words contained in a restriction on the use of property must be given their ordinary meaning and should be enforced as written. Homann v. Torchinsky, 296 N.J. Super. 326, 336 (App. Div.), certif. denied, 149 N.J. 141 (1997) (internal citations omitted). A restriction on the use of property “should not be read in such a way that defeats the plain and obvious meaning of the restriction.” Bubis v. Kassin, 184 N.J. 612, 624 (2005) (internal citation omitted). Nowhere did the SDDA authorize use of the Sites as charter schools, and none of the three permitted uses for the properties – housing, redevelopment and economic development – can reasonably be construed to include charter schools.

First, unquestionably, charter schools are not housing. FOT’s charter school tenant does not provide any form of residence for its students, staff, or anyone else.

Next, charter schools are not redevelopment. Under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., which governed NHA’s sale of the 12 sites, see Pa000018, redevelopment must be undertaken in accordance with a redevelopment plan adopted by the municipal governing body, N.J.S.A. 40A:12A-7(a); and prior to creation of a redevelopment plan, the municipality must delineate the area of the project as in need of redevelopment.

N.J.S.A. 40A:12A-5. None of that happened here. Nor does any requirement of the Redevelopment Law pertain to charter schools. Thus, defining the charter school use here as “redevelopment” would have no factual or legal basis.

Finally, charter schools cannot reasonably be considered economic development. They are not businesses or commercial enterprises. Rather, as discussed above, under the Charter School Program Act, N.J.S.A. 18A:36A-1 et seq., they are public entities. See N.J.S.A. 18A:36A-3 (“A charter school shall be a public school operated under a charter granted by the commissioner”). In authorizing their establishment, the Legislature declared that charter schools are “part of this State’s program of public education [that] can assist in promoting comprehensive educational reform by providing a mechanism for the implementation of a variety of educational approaches which may not be available in the traditional public school classroom.” N.J.S.A. 18A:36A-2. See In re Renewal TEAM Academy Charter School, 247 N.J. 46, 66 (2021); In re Grant of Charter School Application of Englewood on the Palisades Charter School, 164 N.J. 316, 322 (2000). Charter schools are funded by tax revenues that otherwise would fund district schools. See Education Law Ctr. ex rel. Abbott v. Burke Plaintiff Schoolchildren, 438 N.J. Super. 108, 112 (App. Div. 2014). The idea that they might be a form of economic development rather than educational reform would have been a surprise to the drafters of their

authorizing legislation, and would be equally confounding to the New Jersey Department of Education, which is responsible for administering the State’s charter school program, and to charter school operators themselves.

**C. Even if the provision was ambiguous, it should have been construed in a manner consistent with the parties’ intent, which presented a material issue of fact in dispute.**

Further, given the questions of fact as to notice, Judge Adubato erred in failing to look beyond the phrase itself – “housing, redevelopment, and economic development” – to determine its intended meaning and whether it should be construed against use of the property as a charter school.

One aid in construction of the phrase would have been the maxim *expressio unius est exclusio alterius*: to express one is to exclude the others. “An affirmative expression ordinarily implies a negation of any other alternative.” Gabel v. Manetto, 177 N.J. Super. 460, 464 (App. Div. 1981). Applying this rule, the SDDA’s list of three permissible uses for the Sites should have been construed to exclude any and all others; and since “charter schools” was not one of the listed uses, they should have been found to be excluded.

Moreover, a rule of strict construction “should not be used to defeat the obvious purpose of the restriction.” Id., citing Bruno v. Hanna, 63 N.J. Super. 282, 287 (App. Div. 1960). “The precise form of a covenant is of little consequence if the intent is reasonably clear, and its apparent purpose should

not be defeated by a technical construction of the language used.” Id., citing Broad & Branford Place Corp. v. J.J. Hockenjos Co., 132 N.J.L. 229, 236 (Sup. Ct. 1944). The court should “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.” Atl. N. Airlines v. Schwimmer, 12 N.J. 293, 301–02 (1953). The judge failed to abide by any of these principles.

Review of the SDDA as a whole shows that the parties intended the properties to be developed for purposes which would effectively increase the tax ratables in the City of Newark. The stated “purpose” of the conveyances, per section 5.1 of the Agreement, included “increasing tax ratables for the City of Newark....” Pa000028. It would not have made sense to require the properties to be developed in a manner that would increase tax ratables only to have them developed as charter schools funded by taxes paid by residents of the City of Newark. The judge failed to consider that fact.

Additionally, a reviewing court must examine not only the language of a property restriction, but also “the circumstances surrounding its creation.” Murphy v. Trapani, 255 N.J. Super. 65, 72 (App. Div. 1992), citing Shadow Lake Village Condo. Ass'n Inc. v. Zampella, 238 N.J. Super. 132, 139 (App. Div. 1990). In Murphy v. Trapani, the court considered whether a deck

extending over the water would be considered an “obstruction” under a restrictive covenant. The president of the property owners’ association had testified that the purpose of the restriction was to prevent adverse structures along the waterfront as well as navigational hazards. The court considered both the definition of “obstruction” and the evidence in the record, and it concluded that a deck would be considered an “obstruction.” 255 N.J. Super. at 68-72. Similarly, here, contemporaneous statements by officials of the Board and NHA show that the properties were not intended to be developed as charter schools. If that intent was disputed, that dispute should have been addressed as a question of fact. The judge’s failure to do so was reversible error.

**D. The judge’s ruling regarding N.J.S.A. 18A:20-9 was erroneous.**

In addition to the finding that the restriction on use was ambiguous, Judge Aduvato’s decision to grant summary judgment was based in part on her view that N.J.S.A. 18A:20-9 was inapplicable. This was not only contrary to the evidence of the parties’ intent, including reference to the provision in the NHA resolution, Pa000056, which should have raised a question of fact; it also reflected a fundamental misunderstanding of the arrangement set forth in the SDDA.

Judge Aduvato’s oral decision of May 9, 2025, includes this:

Plaintiff’s reliance on N.J.S.A. 18A:20-9 to support its right of reverter is specifically rejected. That statute is inapplicable here for

a number of reasons beginning with the fact that it requires a conveyance for “nominal consideration for public purposes articulated therein.” None of which are present here. The consideration that was paid would be well beyond what would be considered nominal.

4T27:16-24. But this was wrong, as a matter of fact. The consideration paid to the Board upon conveyance of each of the Sites was in fact explicitly “nominal” – one dollar – per Section 5.2 of the Agreement, the resulting Conditional Conveyance Agreement, and the deeds from the Board to NHA. Pa000047. The judge’s error on this point of fact indicates the extent of her failure to comprehend the nature of the transaction, including the right of reversion retained by the Board. This alone was reversible error.

**E. For all the same reasons and more, the claim of reversionary interest based on the requirement to develop the Site within three years raised disputed issues of material fact.**

Judge Adubato acknowledged the additional, separate basis for the Board’s claim of the right of reversion, the requirement for completion of a Site Project, or “demonstrable plans” for same, within three years, 6T8:10-18. But she found that the “legal principles and reasoning” that she had employed regarding “the use argument” were also applicable to “the temporal argument.” 6T9:5-8. Therefore, she again relied on the Cooper River line of cases and found it unnecessary to consider the issue of notice. 6T17:16-21:12.

For the reasons discussed above, reliance on Cooper River was erroneous here as well. Again, as to the three-year provision, she failed to consider FOT's attorneys' and agents' actual or constructive notice, and she should have done so.

Further, her analysis was flawed with respect to "the temporal argument" for three additional reasons. For one thing, the requirement to develop the Site within three years was not a restriction on use of land like that in Cooper River. Requirements for recording of use restrictions are therefore less applicable, and principles relating to other reversionary interests are more relevant, see Fidelity-Philadelphia Transportation Company v. Harloff, 133 N.J. Eq. 44 (Ch. Div. 1943). The specific facts relating to a party's notice or lack thereof, as in Riverton Country Club, are even more significant.

For another, the requirement to develop the Site within three years was even clearer than the exclusion of charter schools from the list of permissible uses. Thus, to the extent that Cooper River's holding pertains to an *ambiguous* restriction on use, it is even more inapplicable to the three-year provision, which had no ambiguity. Three years is three years. Three years from the date of execution of the Agreement, April 19, 2016, was April 19, 2019. If NHA had not "developed a Site Project or demonstrable plans for such Site within three

(3) years from the date of execution of [the] Agreement,” the Board’s explicit right of reversion was triggered.

The reference to “demonstrable” plans also should not have raised an ambiguity concern. Any term should be given its plain and ordinary meaning. See Kernahan v. Home Warranty Adm'r of Fla., Inc., 236 N.J. 301, 321 (2019). “Demonstrable” simply requires verifiable evidence of something. In the real estate development context, “demonstrable plans” would require architectural drawings or plans, or applications for development approval from state or municipal agencies with jurisdiction. That was clear, or it should have been.

Also, as to the supposed ambiguity, the judge’s reliance on Hagaman v. Bd. of Ed. Woodbridge Twp., 117 N.J. Super. 446 (App. Div. 1971), was misplaced. The court there examined a deed and found “no words” creating a right of re-entry or possibility of a reversion. Id. at 454. Here, in contrast, the SDDA has multiple references to the right of reversion, specifically in 5.2 regarding the three-year requirement, which should have required the court to address FOT’s notice of this provision as a question of fact.

Third, the judge’s determination that the three-year requirement was ambiguous was based on two completely irrelevant provisions. Because of the uncertainty as to whether Sites had been sold pursuant to Section 5.4 or 5.5 (finding support in Judge Paganelli’s determination of that supposed ambiguity),

Judge Adubato found that the existence of any obligation under the three-year provision was also uncertain. She stated:

[A] reviewer of the SDDA or any other document relied on by the Board, would be unable to determine which section controlled the transfer of the property. A crucial determination to someone inquiring as to the restrictions on title transfer, because it is only Section 5.4 that includes the temporal limitation in 5.2 that NBOE relies on to justify its request. Section 5.5 has no such limitation, does not mention reverter. Thus, to a party on inquiry notice, it would be unclear whether a reversionary right was even at play.

6T23:4-15. But the statements that “it is only Section 5.4 that includes the temporal limitation” and “Section 5.5 has no such limitation” were incorrect. The three-year requirement was in Section 5.2, not 5.4; and it did not say it applied only to Sites sold under Section 5.4. The finding that the three-year requirement and its attendant reversionary right were inapplicable under Section 5.5, and, therefore, that whether it was triggered at all was unclear, was erroneous.

For all these reasons, summary judgment in favor of FOT and rejection of the Board’s rights of reversion should be reversed.

**POINT III**

**THE BOARD’S MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST NHA SHOULD HAVE BEEN GRANTED AND NHA’S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN DENIED (8T3-8T19; Pa003318 – Pa003319)**

**A. Partial summary judgment should have been granted to the Board. (Pa002593-Pa002594)**

Judge Paganelli's decision to deny partial summary judgment to the Board on its claim of breach of contract by NHA gave too much credence to the NHA's position. While all inferences must be drawn in favor of the non-moving party, where there is not even a scintilla of evidence in support of a party's position, it should be denied. That should have happened here.

Specifically, nothing in the record supports NHA's contention that Maple Avenue School, or any of the Sites, were "unwanted site" under Section 5.5 of the Agreement. On the contrary, everything in the record points to sale under Section 5.4. As discussed above, NHA requested a waiver of the requirement in Section 5.4(4) for City Council approval of all Site Projects, MJT Cert. Ex. 25. In response, the State District Superintendent sent a letter to NHA stating, "We authorize you to proceed to close and complete transactions with all qualified bidders for unused school facilities pursuant to our partnership agreement and deem this successful completion and waiver of 5.4(4) of the *partnership agreement*." Pa000258. This alone should have been found to demonstrate conclusively that the Sites, including Maple Avenue School, were transferred pursuant to Section 5.4 rather than 5.5.

All the evidence in the record regarding the RFP/Q process also indicates that sales of the Sites, including Maple Avenue School, were made pursuant to

Section 5.4. The Hanini Group responded to the RFP/Q with a proposed Site Project for the property, and the sale to BN Property LLC was pursuant to the bidding process for Site Projects, which was applicable only under Section 5.4, not 5.5. Pa003353-Pa003398.

On the other hand, NHA never secured the agreement of NBOE to dispose of the properties as “unwanted,” as Section 5.5 would have required. Pa001908. It never determined it could not generate a feasible Site Project for Maple Avenue School, as Section 5.5 also would have required. Its corporate representative could not identify any date when NHA did so, and admitted he had never seen any record of such a determination. Pa001899; Pa001900-Pa001902.

In short, NHA’s contention that Section 5.5 applied, rather than 5.4, is pure after-the fact fabrication.

Just as clear is that NHA failed to meet its obligations under Section 5.4. It failed to enter into a Developer Agreement with the purchaser of any Site (Section 5.4(2)), failed to ensure that such Site Project was competed in accordance with Performance Milestones (Section 5.4(2)). Those facts are undisputed and should have required partial summary judgment as to NHA’s breach of contract. Additionally, as discussed below, it failed to “make good

faith efforts to generate a net economic value to NPS for each Site” (Section 5.3).

**B. NHA’s motion for summary judgment should have been denied. (Pa003318 – Pa003319)**

Notwithstanding the undisputed evidence of NHA’s breach, its motion for summary judgment against the Board was granted. This anomalous result occurred because, the court found, specific performance was precluded by its rejection of the Board’s reversionary interest and, it further found, the Board could prove “its share of the actual net economic value which should have been obtained from the sale of the Maple Avenue School.” See Third Amended Complaint, ¶91.

To prove its economic damages’ claim, NBOE intended to rely on the testimony of appraisers who inspected the property and issued appraisals in 2016 and 2019. The court refused to allow the Board to provide non-expert testimony of those appraisers under N.J.R.E. 701 to establish that the market value of Maple Avenue School was well above the price obtained for the property by NHA. It erroneously precluded the testimony of those witnesses.

In accordance with N.J.R.E. 701, courts have allowed lay witnesses with specialized knowledge to testify as to their opinions without being qualified as expert witnesses. For example, it is well settled that a party’s treating physician may testify about his or her examination and diagnosis without being qualified

as an expert. See Stigliano by Stigliano v. Connaught Laboratories, Inc., 140 N.J. 305, 312-313 (1995); Delvecchio v. Tp. Of Bridgewater, 224 N.J. 559, 576-578 (2016); Parker v. Poole, 440 N.J. Super. 7, 17-18 (App. Div.), certif. denied, 223 N.J. 163 (2015). In Spedick v. Murphy, 266 N.J. Super. 573, 592 (App. Div.), certif. denied, 134 N.J. 567 (1993), the court ruled that where testimony was “clearly relevant and material,” and to bar it would “serve to hinder the search for the truth,” such testimony was admissible. The same should apply here.

Similarly, in products liability cases, knowledgeable employees have been permitted to testify as lay witnesses on matters within their specialized knowledge. See, e.g., E & H Steel Corp. v. PSEG Fossil, LLC, 455 N.J. Super. 12, 26 (App. Div. 2018); Myrlak v. Port Auth. of New York & New Jersey, 302 N.J. Super. 1, 9–10 (App. Div. 1997), aff'd in part, rev'd in part on other grounds, 157 N.J. 84 (1999).

Similarly, here, the court should have allowed lay testimony by the appraisers who issued reports on the Maple Avenue School property. This included the appraiser retained by NHA, who appraised the property and issued a report dated October 10, 2016, “[t]he building was in overall average condition as of the date of inspection and appears adequately maintained” and valued the site at \$3,960,000. Pa000348; Pa000370. It also included those engaged by

FOT, who described the condition of the building as “good,” *id.* at Pa001946, noted that “cost estimates for the work done at the subject [property] by [33 Maple] were reported at \$3,000,000.00” (Pa001947), and appraised the property at \$4,800,000 as of December 1, 2019. Pa000996-Pa000997; Pa001917. Like a treating physician or knowledgeable employee, the appraisers who conducted the October 2016 and December 2019 appraisals at the behest of NHA and FOT were not hired in the context of litigation. Their opinions were also based on their specialized knowledge in determining fair market value of real estate. Moreover, their independent observations and appraisals, like a treating physician’s diagnosis, are highly relevant. Accordingly, their testimony should have been ruled admissible.

The trial court also erred in finding it undisputed that the developer spent \$3,000,000 on remediation and therefore no further evidence was needed on the issue of damages. 8T19-2 to 8T19-7. The 2019 appraisal had noted that \$3,000,000 had been spent on removing interior walls and finishes and on asbestos abatement, *id.* at Pa001947, but it did not specify the cost of asbestos abatement. There was no basis for the court’s conclusion that the \$3,000,000 in “remediation” costs should be subtracted from the \$3,960,000 appraised value of the property reported in 2016. 8T19-7 to 8T19-12. If anything, it should have been subtracted from the \$10,000,000 that FOT paid to show the wide

disparity between the 2016 and 2020 purchase prices. At the very least, these matters raised issues of material fact as to NHA's breach of its obligation to obtain "net economic value" and the Board's resultant damages. The court erred in precluding the testimony of the appraisers and consequently finding that the NBOE could not prove its claim for economic damages against NHA.

In sum, the decisions denying the Board partial summary judgment against NHA and granting summary judgment to NHA should be reversed.

### **CONCLUSION**

For all the foregoing reasons, FOT's motion for summary judgment against the Board should have been denied, NHA's motion for summary judgment against the Board should have been denied, and the Board's motion for partial summary judgment against NHA should have been granted. These decisions should be reversed.

Respectfully submitted,  
**SATTIRAJU & THARNEY, LLP**  
*Attorneys for Plaintiff-Appellant,*  
*Board of Education of the City of Newark*

By: s/ Matthew J. Tharney  
Matthew J. Tharney

**NEWARK BOARD OF EDUCATION**  
*Co-Counsel for Plaintiff-Appellant,*  
*Board of Education of the City of Newark*

By: s/ Brenda C. Liss  
Brenda C. Liss

---

---

# Superior Court of New Jersey

## Appellate Division

---

Docket No. A-001029-24

BOARD OF EDUCATION OF THE	:	CIVIL ACTION
CITY OF NEWARK,	:	
	:	
<i>Plaintiff-Appellant,</i>	:	ON APPEAL FROM THE
	:	FINAL ORDER OF THE
vs.	:	SUPERIOR COURT
	:	OF NEW JERSEY,
HOUSING AUTHORITY OF THE	:	CHANCERY DIVISION,
CITY OF NEWARK, 33 MAPLE	:	ESSEX COUNTY
URBAN RENEWAL LLC, THE	:	
FRIENDS OF TEAM CHARTER	:	
SCHOOLS, INC., EQUITABLE	:	DOCKET NO. ESX-C-62-20
FACILITIES FUND, INC.,	:	
EQUITABLE SCHOOL	:	
REVOLVING FUND, INC., and	:	Sat Below:
U.S. BANK NATIONAL	:	
ASSOCIATION,	:	HON. JAMES R. PAGANELLI, J.S.C.
	:	AND
<i>Defendants-Respondents.</i>	:	HON. LISA M. ADUBATO, J.S.C.

---

---

**BRIEF ON BEHALF OF DEFENDANTS-RESPONDENTS  
THE FRIENDS OF TEAM CHARTER SCHOOLS, INC.,  
EQUITABLE FACILITIES FUND, INC., EQUITABLE SCHOOL  
REVOLVING FUND, LLC AND U.S. BANK NATIONAL ASSOCIATION**

---

---

ZARWIN BAUM DEVITO KAPLAN  
SCHAER TODDY P.C.  
30 Montgomery Street, Suite 960  
Jersey City, New Jersey 07302  
(201) 432-7840  
cjasnoff@zarwin.com

*On the Brief:*

CHELSEA P. JASNOFF, ESQ.  
Attorney ID# 113672014  
THOMAS O. JOHNSTON, ESQ.  
Attorney ID# 040061998

JOHNSTON LAW FIRM, LLC  
151 Forest Street, Suite A  
Montclair, New Jersey 07042  
(973) 447-4610  
tjohnston@johnstonlawfirmllc.com

*Attorneys for Defendants-Respondents The Friends of Team Charter Schools,  
Inc., Equitable Facilities Fund, Inc., Equitable School Revolving Fund, LLC  
and U.S. Bank National Association*

Date Submitted: May 13, 2025

---

---



## TABLE OF CONTENTS

	<b>Page</b>
TABLE OF AUTHORITIES .....	iii
I. PRELIMINARY STATEMENT .....	1
II. STATEMENT OF FACTS .....	3
A. The Facilities Program and the SDDA .....	3
B. The Corrective Deed with a Covenant Against Grantor’s Acts .....	5
C. The Sales of Sites for Charter School Use .....	7
D. The Subsequent Sale and Multi-Million Dollar Improvement of Maple Avenue .....	9
E. NBOE Records a Lis Pendens Against Maple Avenue and Files a Lawsuit Seeking to Dispossess FOT and Reclaim Maple Avenue, Including the Millions of Dollars in Improvements Made by FOT .....	12
III. RELEVANT PROCEDURAL HISTORY .....	16
A. The Summary Judgment Motions .....	16
B. The Motion for Reconsideration .....	19
C. The April 10, 2024 Hearing and Subsequent Ruling .....	21
D. The Trial Court’s May 9, 2024 Ruling and the June 18, 2024 Order Granting Reconsideration and Granting Summary Judgment in Favor of the FOT Defendants .....	24
E. The Court’s October 29, 2024 Ruling Granting Summary Judgment in Favor of FOT on Its Counterclaim Against NBOE .....	27
IV. LEGAL ARGUMENT .....	28

POINT I

THE TRIAL COURT CORRECTLY GRANTED SUMMARY JUDGMENT IN FAVOR OF THE FOT DEFENDANTS AND AGAINST NBOE ON NBOE’S REVERSION CLAIMS (In Response to Point II of Appellant’s Brief) .....30

A. The Trial Court Correctly Held that the SDDA Does Not Contain A Clear, Unambiguous Prohibition on the Use of the Sites as Charter Schools (In Response to Point II.B and Point II.C of Appellant’s Brief) .....30

B. The Trial Court Correctly Held that Section 5.2(1) Does Not Create A Reversion Right Enforceable Against Downstream Purchasers (In Response to Point II.E of Appellant’s Brief) .....36

C. The Trial Court Correctly Held that, because the SDDA Did Not Contain Any Enforceable Restrictions Against the FOT Defendants as a Matter of Law, the Issue of the FOT Defendants’ “Notice” of the SDDA Was Immaterial (In Response to Point II.A of Appellant’s Brief) .....39

D. The Trial Court Correctly Held that N.J.S.A. 18A:20-9 Was Inapplicable (In Response to Point II.D of Appellants’ Brief) .....47

POINT II

THE TRIAL COURT CORRECTLY GRANTED SUMMARY JUDGMENT IN FAVOR OF FOT AND AGAINST NBOE ON FOT’S PROMISSORY ESTOPPEL COUNTERCLAIM BECAUSE NBOE MADE A PROMISE IN THE CORRECTIVE DEED IT LATER REPUDIATED, TO THE DETRIMENT OF FOT (In Response To Point I of Appellant’s Brief).....48

V. CONCLUSION .....61

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases:</b>	
<u>Assisted Living Associates of Moorestown v. Moorestown Tp.,</u> 31 F. Supp. 2d 389 (D.N.J. 1998) .....	46
<u>Berkoski v. Honda Motor Co., Ltd.,</u> 480 N.J. Super. 379 (App. Div. 2025).....	28
<u>Caparelli v. Rolling Greens,</u> 39 N.J. 585 (1964) .....	46
<u>Caullett v. Stanley Stilwell &amp; Sons, Inc.,</u> 67 N.J. Super. 111 (App. Div. 1961) .....	22, 24, 31, 35
<u>Cooper River Plaza E., LLC v. Briad Grp.,</u> 359 N.J. Super. 518 (App. Div. 2003).....	<i>passim</i>
<u>Cox v. RKA Corp.,</u> 164 N.J. 487 (App. Div. 1998).....	50
<u>D’Agostino v. Maldonado,</u> 216 N.J. 168 (2013) .....	59
<u>Eileen T. Quigley, Inc. v. Miller Family Farms, Inc.,</u> 266 N.J. Super. 283 (App. Div. 1993).....	54
<u>F.M.C. Stores Co. v. Borough of Morris Plains,</u> 100 N.J. 418 (1985) .....	60
<u>Fantis Foods v. N. River Ins. Co.,</u> 332 N.J. Super. 250, 753 A.2d 176 (App.Div.2000) .....	29
<u>Ferreira v. City of Asbury Park,</u> 237 N.J. Super. 142 (App. Div. 1989).....	31, 35
<u>Friendship Manor, Inc. v. Greiman,</u> 244 N.J. Super. 104 (App. Div. 1990).....	50
<u>Hammett v. Rosensohn,</u> 46 N.J. Super. 527 (App. Div. 1957) .....	31, 35, 39
<u>Knorr v. Smeal,</u> 178 N.J. 169 (2003) .....	59

Malaker Corp. Stockholders Protection Comm. v. First Jersey Nat’l Bank,  
 163 N.J. Super. 463 (App. Div. 1978)..... 49

Mintz v. Township of Millstone,  
 374 N.J. Super. 396 (App. Div. 2004).....22, 24

N.J. Dep’t of Env’t Prot. v. Alloway Twp.,  
 438 N.J. Super. 501, 105 A.3d 1145 (App. Div. 2015) ..... 29

New Jersey Realtors v. Twp. of Berkeley,  
 479 N.J. Super. 379 (App. Div. 2024)..... 29

Noren v. Heartland Payment Sys., Inc.,  
 449 N.J. Super. 193 (App. Div. 2017)..... 16

Palamarg Realty Co. v. Rehac,  
 80 N.J. 446 (1979) .....38, 46, 50

Pop’s Cones, Inc. v. Resorts Intern. Hotel, Inc.,  
 307 N.J. Super. 461 (App. Div. 1998)..... 49

Samolyk v. Berthe,  
 251 N.J. 73, 276 A.3d 108 (2022)..... 28

Security Pacific Finance Corporation v. Taylor,  
 193 N.J. Super. 434 (Ch. Div. 1984)..... 39

Triffin v. American Intern.,  
 372 N.J. Super. 517 (App. Div. 2004)..... 55

United States Bank Nat’l Ass’n v. Wishnia,  
 2018 N.J. Super. Unpub. LEXIS 2040 (App. Div. Sep. 7, 2018)..... 54

W.V. Pangborne & Co. v. New Jersey Dept. of Transp.,  
 116 N.J. 543 (1989) ..... 60

**Statutes & Other Authorities:**

Donald B. Jones, The New Jersey Recording Act -- A Study of its Policy,  
 12 Rutgers L. Rev. 328 (1957)..... 54

N.J.S.A. 18A:20-9 .....47, 48

N.J.S.A. 40A:12A-1 ..... 33

N.J.S.A. 46:4-6 .....5, 6, 45, 51

N.J.S.A. 46:46-6 .....	51
R. 2:6-1(a)(1) .....	16
R. 4:46-2(c) .....	29

## I. PRELIMINARY STATEMENT

Plaintiff-Appellant, Newark Board of Education (“**NBOE**”), has spent more than five years attempting to reclaim a building it gladly disposed of in 2017 pursuant to a partnership with Newark Housing Authority (“**NHA**”), which partnership was designed to alleviate a significant budget crisis facing the Newark School District (the “**District**”) by ridding itself of properties that were in significant disrepair and of little to no use to the District.

The property at issue in this appeal – 33-47 Maple Avenue in Newark, New Jersey (“**Maple Avenue**”) – was initially transferred by NBOE to NHA in 2017 and ultimately sold to Defendant-Respondent, The Friends of Team Charter Schools, Inc. (“**FOT**”) in 2019. After FOT invested millions of dollars transforming Maple Avenue into a state-of-the-art charter school, NBOE initiated this litigation claiming that the Site Disposition and Development Agreement between NBOE and NHA, dated April 19, 2016 (the “**SDDA**”), pursuant to which NBOE transferred Maple Avenue and other properties to NHA, gave NBOE a reversion right against FOT, a downstream purchaser who was not a party to the SDDA. Specifically, NBOE claimed that the SDDA prohibited charter school use and gave NBOE a reversion right in the event the property was used as a charter school.

Throughout the proceedings below, NBOE has repeatedly attempted to improperly manufacture a factual issue regarding FOT's notice of the SDDA despite that the SDDA was never recorded in the Maple Avenue chain of title. But NBOE's attempt to reclaim Maple Avenue suffers from an even more fundamental flaw that renders any issue relating to notice irrelevant – that is, the rights and restrictions NBOE claims entitle it to take the property back from FOT simply do not exist in the SDDA or anywhere else.

When, after years of protracted motion practice and other proceedings, this issue rightfully became the focus of the case, instead of any purported factual issues NBOE had attempted to create as to notice, the trial court concluded that the SDDA did not include any language relating to charter schools, much less did it prohibit the use of charter schools with clear, manifest and unambiguous language as is required for restrictions on the use of land. The trial court also concluded that the SDDA did not create any reversion right enforceable against downstream purchasers like FOT. The court, therefore, correctly dismissed NBOE's reversion claims, because those claims were based solely on the unrecorded SDDA which never conferred such rights in the first place. The trial court also held NBOE liable to FOT for promissory estoppel based on its clear promises in a recorded deed that it did not encumber the

property, on which FOT relied to its detriment to the tune of hundreds of thousands of dollars.

In this appeal, NBOE is attempting the same strategy it employed for years in the trial court – that is, NBOE attempts to shift this Court’s focus to the issue of notice in hopes of distracting the Court from the threshold legal issue of whether the SDDA contains an enforceable reversionary right in the first instance. For the reasons discussed below, NBOE’s attempt to put the cart before the horse fails for the same reasons it did in the trial court.

## II. STATEMENT OF FACTS

### A. The Facilities Program and the SDDA.

In 2016, the District had a “significant budget crisis.” (Pa000133). To generate revenue and eliminate \$2 to \$4 million in annual maintenance costs for buildings that were “not serving . . . students,” that were “deemed unnecessary to the furtherance of the district’s mission,” and that were in many cases in “significant disrepair,” NBOE agreed to partner with NHA to sell 12 unused buildings, including Maple Avenue. (*Id.*) The terms of this so-called “Facilities Program” are documented in the SDDA, by and between NBOE and NHA. (*See* Pa000136-Pa000137; Pa000017-Pa000043; Pa002946-Pa002947; Pa002929; Pa002931). The SDDA defined each of the 12 properties to be conveyed thereunder as a “**Site**,” and collectively the “**Sites**.” (Pa000018).

Article V of the SDDA contains provisions relating to conveyance of the Sites. The SDDA contemplated the sale of the Sites either as “Site Projects” under section 5.4 and as “Unwanted Sites” under section 5.5. (Pa000028, Article V). Section 5.4(1) defines a “Site Project” to include “feasible housing, redevelopment and economic development opportunities.” (Pa000028, §5.4(1)). Section 5.5 provides that NHA has the sole right to determine if the Sites “will not be able to generate a feasible Site Project,” in which case the Site is an “Unwanted Site” under the SDDA and NBOE and NHA would be required to “work collaboratively and collectively to dispose of the Unwanted Site(s) at minimal cost to [NBOE] and no cost of NHA.” (Pa000031, §5.5).

The SDDA provides for two rights of reversion, both of which relate to Sites that are sold as “Site Projects” under section 5.4. (Pa000028-Pa000030). There are no reversion rights associated with Sites sold as “Unwanted Sites” under section 5.5. (Pa000031). Section 5.2(1) of the SDDA provides the following potential right of reversion to NBOE in the context of a Site sold as a Site Project:

Any Sites conveyed to the NHA shall be subject to a right of reversion exercisable by [NBOE], if and to the extent the NHA has not developed a Site Project or demonstrable plans for such Site within three (3) years from the date of execution of this Agreement. This right of reversion shall not be included in any deed, or otherwise recordable document, from [NBOE] to NHA for any Site, and if requested by NHA or any

third party developer, [NBOE] shall execute and deliver a document to discharge this right of reversion.

(Pa000028, §5.2(1)).

The SDDA's remaining reversion right belongs to NHA and is found in Section 5.4(2), which provides:

NHA shall be authorized, subject to the requirements set forth in Section 5.4(4) below, to dispose of a Site to a third party developer for purposes of effectuating a Site Project. In connection therewith, each Developer Agreement that provides for or contemplates disposition of a Site to a third party developer shall provide for reversionary rights to NHA in the event such Performance Milestones are not met.

(Pa000030, §5.4(2)). Thus, one of the reversion rights – section 5.2(1) – belongs to NBOE, while the other – section 5.4(2) – belongs to NHA.

FOT, of course, is not, and was never, a party to the SDDA that was entered into between NBOE and NHA years prior to FOT's acquisition of Maple Avenue.

**B. The Corrective Deed with a Covenant Against Grantor's Acts.**

NBOE originally sought to transfer Maple Avenue to NHA by deed dated June 30, 2016, which contained no representations or warranties regarding title encumbrances. (See Pa000045-Pa000050; Pa002907). As NHA engaged with potential buyers to sell the Sites, it became apparent that some (if not all) of the buyers required bargain and sale deeds with a Covenant Against Grantor's Acts, which is a covenant pursuant to N.J.S.A. 46:4–6 that the grantor has done no act

to encumber the property. (See Pa003410-Pa003414; Pa002919-Pa002920). NHA was unwilling to provide bargain and sale deeds to its buyers unless NHA obtained similar deeds from NBOE. (See Pa002920). Accordingly, to facilitate NHA's sales of the Sites with bargain and sale deeds, NBOE provided bargain and sale deeds with covenants against grantor's acts to NHA. (See id.) The bargain and sale deed dated November 16, 2017 that NBOE provided to NHA for Maple Avenue with covenants against grantor's acts is referred to herein as the "**Corrective Deed.**"<sup>1</sup> (Pa000114-Pa000119). NBOE covenanted in the Corrective Deed:

Promise by Grantor. **The Grantor promises that the Grantor has done no act to encumber the property.** The promise is called a "covenant as to grantor's act" (N.J.S.A. 46:4-6). The promise means that the **Grantor has not allowed anyone else to obtain any legal rights which affect the property** (such as by making a mortgage or allowing a judgment to be entered against the Grantor).<sup>2</sup>

(Pa000117) (emphasis added). NBOE also provided NHA with Affidavits of Title which state, "Board of Education has not allowed any interests (legal

---

<sup>1</sup> Similar covenants as to grantor's acts are included in the deed from NHA to 33 Maple (defined below) and in the deed from 33 Maple to FOT. (Pa000052-Pa000060; Pa000062-000070).

<sup>2</sup> "Grantor" is the "STATE-OPERATED SCHOOL DISTRICT OF THE CITY OF NEWARK a/k/a Board of Education of Newark a/k/a City of Newark Board of Education a/k/a Newark Board of Education a/k/a Newark Public Schools." (Pa000117).

rights) to be created which affects its ownership or use of this Property.” (Pa000230-Pa000231; Pa000234-Pa000235; see also Pa002906-Pa002907; Pa002950).

### **C. The Sales of Sites for Charter School Use.**

After the Sites were transferred to NHA, bids for the Sites were solicited via a process that included a formal Request for Qualifications and Proposals (the “**RFQ/P**”). (Pa000310-Pa000335). Prior to selling the Sites, NHA provided information about the proposed buyers, proposed uses and proposed sales prices of the Sites to the District. (Da64-Da68; Da69-Da76; Da77-Da81; Da84-Da87; Pa002916-Pa002917, Pa002918; Pa002908; Pa001619; Pa001341-Pa001342, Pa001356-Pa001357). Notably, the proposed use of some of the Sites was identified as “school” or “Charter School,” and The Friends of Marion P. Thomas Charter School (“**FMPTCS**”) was identified as the proposed purchaser of several Sites. (Da64-Da68; Da69-Da76; Da77-Da81; Da84-Da87). Christopher Cerf, the Superintendent of the State-Operated School District of the City of Newark at the time, testified that after the District was told about the proposed offers, it “brought the offers to the Board who approved it.”<sup>3</sup> (Pa002948).

---

<sup>3</sup> At all relevant times prior to 2018, the Newark Public Schools were under the control of the State-Operated School District of the City of Newark.

NBOE did not object to the sale of any of the Sites for charter school use – on the contrary, it helped facilitate those sales. For example, to facilitate the sales of Sites located at Clinton Avenue and Burnett Street to FMPTCS, NBOE Associate Deputy General Counsel D’Jamoos helped obtain bargain and sale deeds to facilitate those transfers. (Pa002957-Pa002958; Pa002960-Pa002963; Pa003416-Pa003421; Pa003423-Pa003435; Pa002920-Pa002921; Pa002937-Pa002940). In addition, School Business Administrator Wilson sent a letter to the NJ Historical Preservation Office which stated, “The District authorizes and supports [FMPTCS’s] acquisition of Burnet Street School . . .” (Pa003437; Pa002909). Clinton Avenue and Burnet Street were both sold to FMPTCS. (Pa002967-Pa002968; Pa002977). Notably and significantly, NBOE has not objected to the operation of charter schools at those sites or sought reversion of those sites.<sup>4</sup> (See Pa002968-Pa002969; Pa002976).

---

(Pa002951). Cerf was the superintendent of the State-Operated School District of the City of Newark from “July 2015 through early 2018.” (Pa002945).

<sup>4</sup> While NBOE has claimed that Clinton Avenue is not of strategic interest to NBOE, it admitted Burnet Street is of strategic use but has not sought reversion of Burnet Street. (See Pa002745).

**D. The Subsequent Sale and Multi-Million Dollar Improvement of Maple Avenue.**

Through the RFQ/P process, NHA sold Maple Avenue to the highest bidder, 33 Maple, for \$1.2 million on December 28, 2017.<sup>5</sup> (See Pa000052-Pa000060; Pa001495; Da77-Da81; Pa002978; Pa003110; Pa003047). NBOE received at least \$1.1 million from the Maple Avenue sale.<sup>6</sup> (See Da82-Da83; Pa002910).

According to the Newark Public Schools Amended Long Range Facilities Plan submitted to the Commissioner of Education on February 21, 2014, the condition of Maple Avenue was “Very Poor” and the cost to improve Maple Avenue to a “21<sup>st</sup> Century Standard” was \$14,176,391 and the cost to improve Maple Avenue to a “District Minimum Standard” was \$9,894,440. (Da198; Pa002905-Pa002906). Morris Warner, NHA’s Chief Development Officer, described the condition of Maple Avenue as “Deplorable.” (Pa001468, Pa001486). Accordingly, after acquisition, 33 Maple invested millions in the

---

<sup>5</sup> Maple Avenue was sold to 33 Maple, LLC, a single asset entity formed by Samer and Thafer Hanini. 33 Maple, LLC subsequently changed its name to 33 Maple Urban Renewal, LLC. 33 Maple, LLC and 33 Maple Urban Renewal, LLC are both referred to hereinafter as “**33 Maple.**” (See Pa000052-Pa000060; Pa003082, Pa003085; Pa003088).

<sup>6</sup> While the exact amount NBOE received is immaterial to this appeal, there is evidence NBOE may have received up to \$1,161,000 from the sale of Maple Avenue. (See Pa001495-Pa001496; Da282-Da284).

Maple Avenue property, including environmental remediation, interior demolition, installation of a new roof, installation of new windows, gutting the building and leveling the floors. (See Pa003080; Pa000546-Pa000568; Pa003091-Pa003094; Pa003138-Pa003139; Da91-Da-98).

33 Maple then sold Maple Avenue to FOT for \$10 million on March 19, 2020. (See Pa000062-Pa000070; Pa002989; Pa000546-Pa000568; Pa003138-Pa003139). Two months before FOT purchased Maple Avenue, during a January 7, 2020 in-person meeting with FOT's Gabriella DiFilippo and Joanna Belcher, current NBOE Superintendent Roger Leon was told Maple Avenue was being purchased for use as a charter school. (See Pa002991-Pa002993; Pa3048). At the time of that meeting, the KIPP Seek Academy campus was operating at the George Washington Carver School under a lease with the NBOE. (See Pa003053). Superintendent Leon was told during the meeting about the intent to move the KIPP Seek Academy students from the George Washington Carver School to Maple Avenue. (See Pa003054-Pa003055, Pa003059-Pa003060; Pa003070, Pa003073). Superintendent Leon never mentioned that the Property could not be developed as a charter school, or that the NBOE claimed to have reversion rights in the Property, even though Leon admitted that at the time of the meeting, NBOE was "already planning to get into this litigation." (See Pa003070-Pa003072; Pa003059, Pa003061; Pa003048).

NBOE did nothing prior to closing of the Property to alert FOT of NBOE's purported interest in the Property. (See Pa003072-Pa003073, Pa003076; Pa003084; Pa003095). NBOE took no legal action to stop the sale, and did not record a lis pendens to provide notice of its claimed rights. (See Pa003100; Pa003072-Pa003074; Pa003113).

After its acquisition, FOT invested an additional over \$11.5 million improving Maple Avenue to transform it into a state-of-the-art elementary school, serving kindergarten through fourth grade students. (Da99; Pa002994; Pa003247, ¶ 3; Pa003111-Pa003112; Da250). To purchase and improve Maple Avenue, FOT borrowed \$21.5 million from Equitable Facilities Fund, Inc. (“**EFF**”) secured by a \$21.5 million mortgage encumbering Maple Avenue (the “**Mortgage**”). (Pa003123; Pa000072-Pa000088). The Mortgage was assigned from EFF to Equitable School Revolving Fund, LLC (“**ESRF**”) and then from ESRF to U.S. Bank National Association, as Master Trustee (“**U.S. Bank**”) (Pa003123; Pa000090-Pa000104). FOT, EFF, ESRF and U.S. Bank are collectively referred to herein and in the proceedings below as the “**FOT Defendants.**”

FOT entered a Loan Agreement dated March 19, 2020. Loan proceeds would be advanced only pursuant to a Construction Account Disbursement Agreement (“**Disbursement Agreement**”). (See Pa003147, Pa003157-003158).

The Disbursement Agreement required that all proceeds disbursed be title insured. (See Da494) Disbursements of the loan were conditioned on there being no event of default. (See Pa003157-003158; Da474, subparagraph 1(e)). An event of default was defined to include creating or suffering “any lien, encumbrance easement, use or charge affecting the Project or the Construction Account . . .” (Pa003166).

FOT now leases the improved Maple Avenue property to TEAM Academy Charter School, Inc. (“TEAM”), which has operated the KIPP Seek Academy charter school at Maple Avenue since the start of the 2021-2022 school year. (See Pa002983, Pa002986, Pa002990; Pa003056-Pa003059; Pa003247, ¶ 4). About 540 students are enrolled at the KIPP Seek Academy. (See Da457, ¶ 8)

**E. NBOE Records a Lis Pendens Against Maple Avenue and Files a Lawsuit Seeking to Dispossess FOT and Reclaim Maple Avenue, Including the Millions of Dollars in Improvements Made by FOT.**

More than three months after the NBOE was advised of FOT’s intent to acquire Maple Avenue and move the KIPP Seek Academy there, and over a month after FOT’s acquisition of Maple Avenue, NBOE recorded a lis pendens on April 22, 2020. (See Pa000062-Pa000070; Da674-Da679). NBOE commenced an action shortly thereafter alleging that NHA failed to fulfill various conditions and obligations under the SDDA, giving rise to reversion rights. (See Pa000001-Pa000097). In August 2020, NBOE amended its

complaint to join the FOT Defendants and exercise a purported right of reversion to dispossess the FOT Defendants of Maple Avenue. NBOE filed a Third Amended Complaint on May 3, 2023, which is the subject of this appeal. (See Pa002361-Pa002382).

Despite having represented in the Maple Avenue chain of title through recordation of the Corrective Deed that Maple Avenue was unencumbered, the NBOE alleged in this action that Maple Avenue is encumbered by reversion rights and a charter school use restriction. Specifically, NBOE alleged that Maple Avenue is not a “Site Project” because its use as a charter school “does not satisfy any of the three permitted Purposes of a Site Project.” (Pa002376, ¶ 83). According to NBOE the development and use of Maple Avenue as a charter school entitled NBOE to exercise a right of reversion against FOT and reclaim title to Maple Avenue. (*Id.* at ¶¶ 86-87). NBOE also alleged that NHA “should be compelled to exercise its right of reversion immediately” because FOT allegedly failed to meet “any Performance Milestones.” (*Id.* at ¶ 79).

In addition to its reversion claims in Counts I and II of the Complaint, NBOE also asserted a “Tortious Interference” claim against FOT, alleging that FOT interfered with the SDDA between NBOE and NHA by developing and using Maple Avenue as a charter school, which NBOE claimed was a prohibited use under the SDDA. (*Id.* at Count V).

The allegations made by NBOE prompted FOT's title insurer to refuse to insure the release of additional funds under the \$21.5 million loan, and thus no advances were made from April 22, 2020 until June 12, 2024, when the court entered an Order Authorizing and Directing Discharge of Lis Pendens. (Da457, ¶ 9). At the time the release of funds stopped, only \$10,910,036.21 of the \$21.5 million had been released to FOT. (See id. at ¶ 10). That sum paid acquisition and closing costs. (See id.) Although \$10,589,963.79 of the mortgage proceeds were not advanced, FOT had to pay interest on the entire \$21.5 million principal balance, pursuant to the operative transaction agreements. FOT has paid \$1,249,086 in interest on the \$10,589,963.79 that was held between April 22, 2020 and June 12, 2024 because of this lawsuit. (See id. at ¶ 11).

In addition, because over \$10 million of the proceeds for the Maple Avenue project were withheld from FOT, it had to borrow \$6,500,000.00 in additional funds to complete construction of the Project. (See Da458 ¶ 12). FOT borrowed funds from Kingston Educational Holdings 1, Inc. (“**Kingston**”) and KIPP Foundation, Inc. (“**KIPP Foundation**”) (See id.) Kingston is a non-profit corporation with its principal place of business in Newark, New Jersey. (See id. at ¶ 13). It is a separate entity from FOT, with a mission, control, organization and governance distinct from FOT's. (See id.) Kingston lent \$2.5 Million to

FOT per an Amended and Restated Subordinated Loan Agreement, dated August 1, 2022. (See id.) Interest charges from that loan totaled \$336,657,53. (See id.)

KIPP Foundation is a California corporation with a principal place of business in San Francisco, California. (See id. at ¶ 14). It is a separate entity from FOT, with a mission, control, organization and governance distinct from FOT's. (See id.) KIPP Foundation lent FOT a total of \$4,500,000, per an Investment Contract, dated June 24, 2021 and Loan Agreement, dated June 24, 2021. The interest charges for such financing totaled \$431,829.52. (See id.)

Thus, as a direct result of this lawsuit, in order to access funds to complete the Project, FOT incurred \$768,487.05 (\$336,657,53 plus \$431,829.52) in additional interest charges arising out of FOT's need to find alternative financing after NBOE's filing this lawsuit. FOT also incurred certain hard costs for the alternative financing, such as legal costs and other costs associated with closing on that financing. (See id. at ¶¶ 15-16).

### III. RELEVANT PROCEDURAL HISTORY<sup>7</sup>

#### A. The Summary Judgment Motions.

The FOT Defendants moved for summary judgment on NBOE's claims in January 2023. (Pa000743).<sup>8</sup> The FOT Defendants advanced a number of arguments for why NBOE's reversion claims failed as a matter of law. The FOT Defendants argued that, to enhance purchaser interest in Maple Avenue, NBOE covenanted in the Maple Avenue chain of title via the Corrective Deed that it "has done no act to encumber the [Maple Avenue] property" and "has not allowed anyone else to obtain any legal rights which affect the [Maple Avenue]

---

<sup>7</sup> The Procedural History is discussed after the Statement of Facts because an understanding of the facts is necessary to understand the procedural history of this case.

<sup>8</sup> Not included anywhere in the 21-volume appendix filed by NBOE is the Certification with exhibits filed in support of the FOT Defendants' motion for summary judgment or the Certification with exhibits filed in support of the FOT Defendants' motion for reconsideration, despite that NBOE is appealing from the lower court's Order granting the FOT Defendants' motion for reconsideration of their motion for summary judgment and entering summary judgment in favor of the FOT Defendants. NBOE's appeal can and should be dismissed on this basis alone. See R. 2:6-1(a)(1) ("If the appeal is from a disposition of a motion for summary judgment, the appendix shall also include a statement of all items submitted to the court on the summary judgment motion and all such items shall be included in the appendix, except that briefs in support of and opposition to the motion shall be included only as permitted by subparagraph (2) of this rule."); Noren v. Heartland Payment Sys., Inc., 449 N.J. Super. 193 (App. Div. 2017) (dismissing appeal of the disposition of a summary judgment motion because appellant failed to include in its appendix all items submitted to the trial court on summary judgment in violation of R. 2:6-1(a)(1)).

property,” precluding NBOE’s reversion claim as a matter of law. (Da338-Da340). The FOT Defendants also argued that restrictions on land must be clear and manifest and the SDDA did not by clear and manifest language prohibit or in any way restrict using the Sites as charter schools, nor did it give NBOE a reversion right against subsequent purchasers of the Sites. (Da345-Da352, Da362-Da365). Additionally, the FOT Defendants argued that, even if the SDDA contained such rights and restrictions, the FOT Defendants could not be bound by them because they did not have actual, constructive or inquiry notice of the SDDA’s terms. (Da377-Da384).

By Order dated June 9, 2023, the Honorable James Paganelli denied the FOT Defendants’ motion for summary judgment and issued an accompanying Statement of Reasons. (Pa002523-Pa002524).<sup>9</sup> In his opinion, Judge Paganelli analyzed NBOE’s reversion claim and tortious interference claim separately. (See Pa002543-Pa002548). With respect to NBOE’s reversion claims, Judge Paganelli did not consider the threshold, dispositive legal issue of whether the SDDA barred charter school use or contained reversion rights against downstream purchasers. (See Pa002543-Pa002546). Judge Paganelli instead denied summary judgment on NBOE’s reversion claims on the basis of a

---

<sup>9</sup> Multiple summary judgment motions were filed with the FOT Defendants’ motion. Judge Paganelli issued an omnibus Statement of Reasons covering all of the summary judgment motions. (See Pa002525-Pa002557).

purported dispute of fact as to whether the FOT Defendants had notice of NBOE's claimed rights (Pa00246) – a question that is immaterial if the SDDA does not contain the claimed restrictions and reversion rights NBOE was claiming the FOT Defendants had notice of. In other words, the question of whether the FOT Defendants had notice of NBOE's claimed rights and restrictions becomes relevant if – and only if – (i) the SDDA provides for such rights and restrictions in the first instance, in a clear and unequivocal manner sufficient to satisfy the requirements of the law on land use restrictions; and (ii) the Corrective Deed does not bar NBOE's reversion claims. Had Judge Paganelli determined that the SDDA does not contain the rights and restrictions NBOE is claiming in clear and manifest language and/or that the Corrective Deed bars NBOE's reversion claims, it should have dismissed NBOE's reversion claims as a matter of law on summary judgment without even reaching the issue of the FOT Defendants' notice.

With respect to NBOE's tortious interference claim, Judge Paganelli denied summary judgment on the basis of a purported factual dispute as to whether Maple Avenue was sold pursuant to section 5.4 of the SDDA, the section which NBOE claimed contains the use restrictions forming the basis for the tortious interference claim, or section 5.5 of the SDDA, which even NBOE concedes does not contain any use restrictions. (See Pa002546-Pa002548).

Although Judge Paganelli expressly held that the court did not need to interpret the language of section 5.4 in light of this purported dispute of fact, Judge Paganelli nevertheless commented “[p]arenthetically,” without any analysis, that section 5.4 was “ambiguous.” (Pa002548).

**B. The Motion for Reconsideration.**

On or about November 29, 2023, the FOT Defendants filed a motion under Rule 4:42-2 for reconsideration of the portion of the trial court’s June 9, 2023 Order denying the FOT Defendants’ motion for summary judgment on the basis that, among other things, the court failed to properly analyze the dispositive issue of whether the SDDA barred charter school use or contained reversionary rights against downstream purchasers like FOT. (Pa002640-Pa002641). In that regard, the FOT Defendants argued that courts will not enforce restrictions on land that are not clear and manifest and the SDDA does not contain clear and manifest language that prohibits or in any way restricts operation of a charter school at Maple Avenue or any of the Sites subject to the SDDA, or that grants the NBOE reversion rights against downstream purchasers. (See Da21-Da48). In support, the FOT Defendants argued that the plain language of the SDDA, the unrebutted testimony by the drafters of the SDDA and those present when the SDDA was drafted, and unrebutted expert testimony all confirm that the parties did not intend to prohibit using the Sites as charter schools or to grant the NBOE

reversion rights against downstream purchasers. (See id.) As to Judge Paganelli’s concerns that section 5.4(1) was “ambiguous,” the FOT Defendants argued such a finding compels summary judgment in favor of the FOT Defendants because the case law is well-settled that ambiguous land use restrictions are not enforceable. (See Da46-Da48). Prior to the reconsideration motion, the case had been transferred to the Honorable Lisa M. Adubato, P.J.Ch., after Judge Paganelli was appointed to serve as a judge for the Appellate Division.

The FOT Defendants’ motion for reconsideration was fully briefed – including a lengthy opposition brief by NBOE, accompanied by a certification with various exhibits. (See Pa002644-Pa002724). The court heard in-person oral argument on the motion on February 12, 2024. During argument, Judge Adubato observed that the “biggest issue in the case” was “whether charter schools are permitted or not under the . . . SDDA.” (3T16-11 to 3T16-14). Counsel for NBOE acknowledged that the February 12 argument before Judge Adubato was “not the first time” the parties argued the issue of whether charter school use was permitted under the SDDA and noted that this was among the issues previously argued before Judge Paganelli for “eight hours.” (3T22-24 to 3T23-3). Nevertheless, a main focus of the February 12, 2024 argument was whether the SDDA prohibited charter school use.

Counsel for the FOT Defendants argued, among other things, that the case law requires that restrictions on the use of land be “crystal clear” to be enforceable, and that “if you got to dig into a bunch of embedded facts to figure out what words [in a purported use restriction] mean, that means that they’re not clear” and “not unambiguous,” and therefore such a purported restriction would be “unenforceable.” (3T46-16 to 3T46-21). Counsel for NBOE argued that charter school use does not fit within the categories of “housing,” “redevelopment,” or “economic development opportunities,” and thus, by the doctrine of “negative implication,” is not a permitted use under Section 5.4 of the SDDA. (3T52-4 to 3T53-9). In response, counsel for the FOT Defendants explained:

If the NBOE and this Court has to resort to the contract principle of negative implication to conclude that the SDDA included a charter school restriction, that proves my case. That means, by definition, that that language is not clear, unambiguous, manifest and all the other adjectives that 100 New Jersey Appellate Court cases have described as required in order to be enforceable a use restriction on land.

(3T 57-13 to 3T 57-21).

### **C. The April 10, 2024 Hearing and Subsequent Ruling.**

Following the February 12, 2024 oral argument, Judge Aduato scheduled a plenary hearing for March 21 and 22 on the sole issue of whether the SDDA prohibits use of the Sites as charter schools (hereinafter the “**Plenary Hearing**”). The Plenary Hearing was later adjourned to April 10 and 11, 2024.

On April 10, 2024, with counsel for all parties present in the courtroom, Judge Adubato went on the record and indicated that Her Honor was potentially reconsidering her decision to hold a plenary hearing because the charter school use prohibition NBOE was claiming was not an ordinary contractual provision but a restriction on the use of land, and Her Honor believed that the relevant case law regarding restrictions on the use of land – primarily Cooper River Plaza E., LLC v. Briad Grp., 359 N.J. Super. 518, 527-28 (App. Div. 2003), Mintz v. Township of Millstone, 374 N.J. Super. 396 (App. Div. 2004) and Caullett v. Stanley Stilwell & Sons, Inc., 67 N.J. Super. 111 (App. Div. 1961) – does not permit consideration of extrinsic evidence to resolve an ambiguity but instead holds that if a restriction on the use of land is ambiguous, it is simply unenforceable. (4T10-8 to 4T12-3). Judge Adubato correctly recognized that Judge Paganelli ruled, in connection with the prior summary judgment motions, that section 5.4(1), which NBOE claimed contained the charter school prohibition, was ambiguous. (4T11-19 to 4T12-3).

Judge Adubato therefore asked counsel to argue as to whether the court should consider extrinsic evidence to resolve the ambiguity (and thus proceed with the plenary hearing) or whether the court should hold that the ambiguity of the provision relied upon by NBOE renders that provision unenforceable as a matter of law such that a plenary hearing is not necessary or appropriate. (4T11-

19 to 4T12-3). Judge Adubato reminded all parties that she had previously “asked specifically everyone . . . whether the issue of prohibition on charter schools was dispositive of – of the matter. And everyone agreed that it was.” (4T13-22 to 4T13-25).

Counsel for all parties then engaged in a lengthy, several hours-long argument on the record. During that argument, counsel for NBOE attempted to shift the focus onto whether the FOT Defendants had notice of the SDDA but eventually conceded that any finding of ambiguity regarding potential restrictions or rights of reversion is “a fatal problem” to NBOE’s reversion claims. (4T32-18 to 4T32-25).

At the conclusion of argument, Judge Adubato indicated that she agreed with Judge Paganelli that the SDDA was ambiguous as to whether charter schools were a prohibited use; indeed, in her thorough oral opinion, Judge Adubato explained that she had scheduled the Plenary Hearing to resolve that ambiguity before coming to the conclusion that the relevant case law does not permit extrinsic evidence to resolve an ambiguous land use restriction but instead dictates that an ambiguous land use restriction is simply unenforceable. (4T92-5 to 4T92-25). Specifically, the court explained:

In the context of a deed restriction meant to bind subsequent purchasers that are strangers to the initial transaction, the intent of the restriction must manifest itself in the language of the document itself. If ambiguity

remains, it cannot be resolved by resorting to extrinsic evidence. *And then the issue of notice thus becomes irrelevant.*

(4T95-14 to 4T95-20) (emphasis added).

Judge Adubato therefore held that under the applicable case law, including Cooper River, Mintz and Caullett, the court could not, and therefore would not, hold an evidentiary hearing on whether the SDDA prohibits using the Sites as charter schools and was instead required as a matter of law to find the claimed restriction unenforceable because of its ambiguity. (4T95-14 to 4T96-1, 4T96-13 to 4T 97-4).

**D. The Trial Court's May 9, 2024 Ruling and the June 18, 2024 Order Granting Reconsideration and Granting Summary Judgment in Favor of the FOT Defendants.**

At the conclusion of the April 10 hearing, the court directed the parties to confer regarding what claims remained following Her Honor's ruling that there is no enforceable charter school ban and to advise the court of the outcome at a conference scheduled for April 30. (4T100-13 to 4T101-19). During that conference and in correspondence prior thereto, the parties advised the court that they could not agree on what claims remained because, among other things, NBOE was insisting that it still had a right of reversion against the FOT Defendants notwithstanding the court's April 10 ruling that charter school use was not prohibited. (6T7-13 to 6T8-9). Judge Adubato therefore directed that the parties file briefs on or before May 6, 2024 addressing what claims they

believed remained, if any, after Her Honor’s April 10 ruling and whether resolution of those claims required a trial. (6T8-5 to 6T8-9).

The FOT Defendants, NBOE, NHA and 33 Maple each filed the requested briefs on May 6 and Judge Adubato heard another lengthy argument on May 7, 2024 regarding whether any claims remained following the April 10 ruling and if so, how those claims should be resolved (*i.e.*, through a trial or summary judgment). (See 5T). Despite having previously acknowledged on the record that the issue of whether the SDDA prohibited charter school use was dispositive to the case, (6T7-13 to 6T7-17), NBOE continued pursuing reversion of Maple Avenue. Specifically, NBOE claimed, among other things, that section 5.2(1) of the SDDA gave it a right of reversion in Maple Avenue that was triggered by NHA’s alleged failure to have “developed” a Site Project or “demonstrable plans” for a Site within three (3) years of the execution of the SDDA. (6T7-18 to 6T8-4). The FOT Defendants maintained, among other things, that even if a subsequent purchaser had notice of the SDDA – which is not recorded and is not in the chain of title of any of the Sites, including Maple Avenue – that subsequent purchaser would still have no basis to conclude that anyone had reversionary rights over the property, as there is no language in the SDDA providing for reversionary rights against subsequent purchasers, and the Corrective Deed, which *is* in the chain of title, expressly represents that there

are no such encumbrances on the property. (5T13-18 to 5T15-6, 5T37-12 to 5T40-24).

On May 9, 2024, Judge Adubato issued an oral decision in which she held that the NBOE did not have any reversionary rights against subsequent purchasers and therefore dismissed NBOE's reversion claims. In reaching that conclusion, Judge Adubato explained that, for purposes of her ruling, she was accepting as true NBOE's contention that the FOT Defendants were on notice of the existence of the SDDA. (6T12-15 to 6T13-6). Judge Adubato explained that the operative question, assuming notice, was "what information the subsequent grantees would find, when examining the SDDA, and whether that examination would provide sufficient notice of the reversionary rights." (6T13-7 to 6T13-12). Judge Adubato further explained that the principles set forth in Cooper River and related cases applied and required that any claimed reversionary rights had to be clear and unambiguous to be enforceable. (6T17-11 to 6T21-5). Judge Adubato ultimately held that "[t]here is simply not any basis for this court to conclude that a party on inquiry notice of the . . . SDDA, upon review of that document, would be in a position to reasonably conclude that the title they received by way of a bargain and sale deed against grantor's act from the NHA not the NBOE would ever be subject to a right of reversion

back to NBOE, and certainly not into perpetuity as argued by the plaintiff.” (6T21-13 to 6T26-25).

Following the May 9 ruling, the court entered an Order on June 18, 2024 granting the FOT Defendants’ motion for reconsideration, vacating the portion of Judge Paganelli’s June 9, 2023 Order denying the FOT Defendants’ motion for summary judgment and granting summary judgment in favor of the FOT Defendants on Count I (reversion claim against all defendants) and Count V (tortious interference) of the NBOE’s Third Amended Complaint and dismissing Count II (reversion claim against NHA) as moot. (Pa002854-Pa002856). The June 18 Order also set a schedule for the FOT Defendants and NBOE to file motions for summary judgment on the FOT Defendants’ counterclaim against NBOE for promissory estoppel. (Id.)

**E. The Court’s October 29, 2024 Ruling Granting Summary Judgment in Favor of FOT on Its Counterclaim Against NBOE.**

On June 21, 2024, FOT filed a motion for summary judgment on its counterclaim for promissory estoppel against NBOE. (Pa002858-Pa003288). NBOE filed a cross-motion for summary judgment as to that claim on July 10, 2024. (Pa003295-Pa003315). Following briefing, and oral argument on July 19, 2024 (see 7T), the court issued an oral decision on the record on October 29, 2024 in which it held, among other things, that “NBOE made a promise that it had not, and would not, encumber 33 Maple Ave. That promise was one on

which FOT was entitled to rely, and that that reliance was entirely reasonable. FOT incurred damages as a result of that reliance. For that the law allows recompense. NBOE’s motion for summary judgment on the promissory estoppel claim is denied. FOT’s motion for summary judgment on [its] counter claim a promissory estoppel is granted, and it is awarded \$768,487 in damages.” (8T36-4 to 8T36-13). In accordance with this opinion, the court entered an Order on October 29, 2024 granting FOT summary judgment on its promissory estoppel counterclaim and awarding it \$768,487.05. (Da680-Da681).<sup>10</sup> The court also entered an Order denying NBOE’s cross-motion for summary judgment on that claim. (Pa003316-Pa003317).

#### IV. LEGAL ARGUMENT

This Court reviews a grant of summary judgment *de novo*, ““applying the same standard used by the trial court.”” Berkoski v. Honda Motor Co., Ltd., 480 N.J. Super. 379, 387 (App. Div. 2025), cert. denied, 260 N.J. 310 (2025) (quoting Samolyk v. Berthe, 251 N.J. 73, 78, 276 A.3d 108 (2022)).<sup>11</sup> Under

---

<sup>10</sup> Although NBOE is appealing from this Order, it inexplicably omits this Order from its appendix.

<sup>11</sup> While NBOE generally criticizes Judge Aduato’s decision to grant reconsideration, none of the points raised in the Legal Argument section of NBOE’s appeal brief relate to that decision but instead relate only to Her Honor’s decisions to grant or deny summary judgment. (See Pb21-Pb50). Indeed, in the “Standard of Review” section of its appeal brief, NBOE recites only this Court’s standard of review of a lower court’s order granting or denying

that standard, when, as here, “no genuine issue of material fact is at issue and the moving party is entitled to a judgment as a matter of law, summary judgment must be granted.” New Jersey Realtors v. Twp. of Berkeley, 479 N.J. Super. 379, 391 (App. Div. 2024) (citing R. 4:46-2(c)). Where there is no material fact in dispute, this Court “must then decide whether the trial court correctly interpreted the law,” by employing a *de novo* review of such issues of law. Id. (internal quotations marks and citation omitted).

---

summary judgment and does not set forth the standard of review for lower court’s decision on reconsideration. (See Pb20-Pb21). “An issue that is not briefed is deemed waived upon appeal.” See N.J. Dep’t of Env’t Prot. v. Alloway Twp., 438 N.J. Super. 501, 505 n.2, 105 A.3d 1145 (App. Div. 2015) (citing Fantis Foods v. N. River Ins. Co., 332 N.J. Super. 250, 266-67, 753 A.2d 176 (App.Div.2000)). As such, NBOE has waived any appeal of Judge Adubato’s decision to grant reconsideration and therefore the FOT Defendants need not address the reasons why this Court should affirm that decision.

**POINT I**

**THE TRIAL COURT CORRECTLY GRANTED SUMMARY  
JUDGMENT IN FAVOR OF THE FOT DEFENDANTS AND AGAINST  
NBOE ON NBOE’S REVERSION CLAIMS  
(In Response to Point II of Appellant’s Brief)<sup>12</sup>**

**A. The Trial Court Correctly Held that the SDDA Does Not Contain  
A Clear, Unambiguous Prohibition on the Use of the Sites as  
Charter Schools (In Response to Point II.B and Point II.C of  
Appellant’s Brief)**

The words “charter school” do not appear *anywhere* in the SDDA – much less any words expressly prohibiting charter schools. Nevertheless, throughout the proceedings below and in this appeal, NBOE has incredibly argued that the SDDA not only prohibits charter school use but does so *unambiguously*. NBOE rests its argument exclusively on section 5.4(1)’s definition of “Site Projects,” which is defined to include “housing, redevelopment and economic development opportunities.” According to NBOE, because charter schools do not fall within the categories of housing, redevelopment or economic development opportunities, the SDDA did not “authorize the use” of the Sites as charter schools. (App. Br. 36). As discussed below, quite the opposite is true – that is,

---

<sup>12</sup> In its appeal brief, NBOE addresses FOT’s promissory estoppel counterclaim as Point I and addresses NBOE’s reversion claims against the FOT Defendants as Point II. FOT’s promissory estoppel counterclaim, however, stems from NBOE’s claims for reversion of Maple Avenue. As such, it makes logical sense to address NBOE’s reversion claims before addressing FOT’s promissory estoppel counterclaim.

the terms “redevelopment” and “economic development opportunities” can and should be interpreted to *include* charter schools, or at a minimum, are ambiguous and thus cannot as a matter of law be interpreted to restrict charter school use.

As Judge Adubato correctly observed in her April 10 and May 9 rulings, courts will not enforce restrictions on the use of land “*unless the right to restrict is made manifest and clear.*” Bruno, 63 N.J. Super. at 285 (emphasis added). Further, any purported restrictions on use are “always to be strictly construed,” and “*all doubts and ambiguities must be resolved in favor of the owner’s unrestricted use of the land.*” Id. at 285, 287. See also Caullett, 67 N.J. Super. at 114-15 (“if the covenants or restrictions are vague or ambiguous, they should not be construed to impair the alienability of the subject property”); Hammett v. Rosensohn, 46 N.J. Super. 527, 535 (App. Div. 1957) (holding that “equity” will not “aid one man to restrict another in the use of his land unless the right to restrict is made manifest and clear in the restrictive covenant”); Ferreira v. City of Asbury Park, 237 N.J. Super. 142, 158 (App. Div. 1989) (neither law nor equity will aid one person to restrict another’s use of land “unless the right to restrict is made manifest and clear in the restrictive covenant”).

In refusing to enforce a land restriction in *Cooper River*, the Court stated:

. . . in the context of a deed restriction meant to bind subsequent purchasers that are strangers to the initial

transaction, the intent of the restriction must manifest itself in the language of the document itself . . . An *intention disguised by an ambiguity cannot bind a subsequent purchaser who, as the result of an absence of clarity in the instrument of conveyance, lacks notice of restrictions that the initial parties have attempted to place on the property being conveyed.*

359 N.J. Super. at 527 (emphasis added and internal footnote omitted.) Cooper River reinforces the proposition that an ambiguous term cannot create an enforceable restriction of use of land and explains the reasoning behind that longstanding rule.

The words NBOE relies on to support its claimed charter school restriction – “redevelopment” and “economic development opportunities” – are a far cry from an unambiguous, manifest and clear restriction on the use of the Sites as charter schools. On the contrary, such words could easily be interpreted by a subsequent purchaser to *include* charter schools. The common dictionary definition of “redevelop” is “to develop again.” Redevelop, Merriam-Webster.com Dictionary (2025). By rehabilitating an unproductive site into a state-of-the art educational facility, with an investment of over \$21.5 million, FOT certainly “redeveloped” the Maple Avenue building. NBOE’s sole argument for why charter schools do not fall within the definition of “redevelopment” as used in section 5.4(1) is because the Site was not “redeveloped” in accordance with the processes set forth in the Local

Redevelopment and Housing Law (“LRHL”), N.J.S.A. 40A:12A-1, et seq., (“**LRHL**”) (*i.e.*, delineation of the area as in need of development and adoption of a redevelopment plan by the municipal governing body) (App. Br. 36-37). In other words, NBOE is arguing that for a Site to qualify as “redevelopment” under the SDDA, it had to be developed pursuant to a formally adopted plan under the LRHL. There is nothing in the SDDA to suggest to a subsequent purchaser that the Sites were required to undergo the formal redevelopment process under the LRHL to be considered “redevelopment.” Indeed, the first letter of the word “redevelopment” in section 5.4(1) is not capitalized as it would have been if it were meant to refer to a formal statutory definition.

Furthermore, FOT’s rehabilitation of Maple Avenue into a state-of-the-art charter school could certainly be considered to create “economic development opportunities” by providing jobs to residents and top-notch education to children in the area. NBOE’s argument that a charter school cannot be “economic development” because they are not “businesses or commercial development” ignores that the SDDA specifically uses the term “*economic* development opportunities” and not “*commercial*” or “*business*” development. NBOE is attempting to graft its own desired terms into the SDDA while at the same time demanding that the Court enforce the SDDA as written.

At a minimum, section 5.4(1) is, as both Judge Adubato and Judge Paganelli found, ambiguous. As Judge Adubato explained, “if the Newark Board of Education did not wish for any of these properties, even just this property at issue here [Maple Avenue] to be utilized as a charter school, if they did not wish for it to be used as a charter school, it should have clearly and unambiguously expressed that somewhere” in the SDDA. (4T96-13 to 4T96-23). The words “redevelopment” and “economic redevelopment opportunities” do not amount to a clear, manifest and unambiguous prohibition on using the Sites as charter schools, and there is nothing about those words to even *suggest* that they were used to exclude charter schools.<sup>13</sup> In the context of provisions alleging restricting use of land, courts are not permitted to consider extrinsic evidence to resolve an ambiguous provision but are instead instructed, by this Court’s prior decisions, to hold that the provision at issue does not restrict use

---

<sup>13</sup> NBOE also attempts to rely on the stated “purpose” of the conveyances under the SDDA, as set forth in section 5.1 of the SDDA, as an indication that the SDDA was intended to prohibit charter school use. Specifically, NBOE claims that the reference to “increasing tax ratables for the City of Newark” evidences an intent to prohibit charter schools because they are “funded by taxes paid by residents of the City of Newark.” (Pb39). NBOE also claims that Judge Adubato “failed to consider that fact.” (*Id.*). This is demonstrably false. Counsel engaged in lengthy argument about this exact point during the April 10, 2024 hearing and Judge Adubato ultimately concluded that the SDDA’s stated *desire* to, among other things, “increase tax ratables” cannot be read as a clear, unambiguous ban on charter schools. (4T36-12 to 4T41-3; 4T42-19 to 4T43-16; 4T83-24 to 4T84-18). Judge Adubato was correct in that regard.

of the property. See Cooper River, 359 N.J. Super. at 527, 529; Caullett, 67 N.J. Super. at 114-15; Bruno, 63 N.J. Super. at 285; Hammett, 46 N.J. Super. at 535; Ferreira, 237 N.J. Super. at 158. Accordingly, NBOE’s representation to this Court that any ambiguity in section 5.4(1) created a “question of fact” that required Judge Aduato to “look beyond” the language of section 5.4(1) and at extrinsic evidence regarding intent is egregiously false and contrary to decades of case law issued by this Court. (Pb38). Judge Aduato therefore did not “err” by declining to look beyond the SDDA to find a charter school use restriction, as NBOE claims – instead, the direct opposite is true: Judge Aduato *would have* erred if she considered such extrinsic evidence because doing so would have violated the mandates of this Court’s decision in Cooper River and related cases.<sup>14</sup>

---

<sup>14</sup> NBOE’s repeated attempts to characterize Judge Aduato’s decision to consider the impact of Cooper River and related cases as a sudden “about face,” and NBOE’s suggestion that it should have had the opportunity for “additional briefing” are disingenuous and misleading. (Pb32). The FOT Defendants cited and relied on Cooper River, Caullett, Bruno, Ferreira, Hammett in their initial motion to dismiss, filed in October 2020, and correctly argued that those cases require purported restrictions on the use of land to be clear, manifest and unambiguous to be enforceable. (Da653-Da656). Indeed, the FOT Defendants quoted in that motion the very passage from Cooper River wherein this Court held that it was not proper to resolve an ambiguous restriction through extrinsic evidence. (Da654).

The FOT Defendants again relied on these same cases and principles in their motion for summary judgment filed in January 2023 and their motion for reconsideration in November 2023. (See Da339, Da345, Da347-Da350, Da365;

**B. The Trial Court Correctly Held that Section 5.2(1) Does Not Create A Reversion Right Enforceable Against Downstream Purchasers (In Response to Point II.E of Appellant’s Brief).**

As discussed above, following Judge Adubato’s April 10 ruling that the SDDA does not unambiguously prohibit charter school use, NBOE shifted its focus and claimed, among other things, that section 5.2(1) of the SDDA gave it a right of reversion in Maple Avenue that was triggered by NHA’s alleged failure to have “developed” a Site Project or “demonstrable plans” for a Site within three (3) years of the execution of the SDDA. As Judge Adubato correctly found, section 5.2(1) did not create a reversionary right enforceable against downstream purchasers for various reasons.

First, section 5.2(1) expressly states that the reversion right contained therein was not intended to apply to successor owners. Section 5.2(1) of the SDDA provides, in relevant part:

Any Sites conveyed to the NHA shall be subject to a right of reversion exercisable by [NBOE], if and to the extent the NHA has not developed a Site Project or demonstrable plans

---

Da25-Da32, Da47). In fact, in both motions, the FOT Defendants contended that the court need not reach the issue of notice because the SDDA did not with clear and manifest language prohibit charter school use or give NBOE reversion rights against subsequent purchasers. (See Da377; Da11-Da12). NBOE had the opportunity to – and did – file opposition to each of these motions and argue before the court. NBOE then had even further opportunity to – and did – brief and argue on the record the discrete issue of the impact of Cooper River and related cases on NBOE’s claimed charter school ban before, during and even *after* the April 10 hearing. (6T6-15 to 6T8-9).

for such Site within three (3) years from the date of execution of this Agreement. **This right of reversion shall not be included in any deed, or otherwise recordable document, from [NBOE] to NHA for any Site, and if requested by NHA or any third party developer, [NBOE] shall execute and deliver a document to discharge this right of reversion.**

(Pa000028, §5.2(1)) (emphasis added.) The language stating that “[t]his right of reversion shall not be included in any deed, or otherwise recordable document,” conclusively establishes that any reversion right under section 5.2(1) was *personal as to the parties to the SDDA and were not intended to apply to successor owners*. Thus, Judge Adubato correctly observed that a party on inquiry notice of the SDDA, upon review of that document and specifically this language in section 5.2(1), would have no reason to believe that there was a reversionary right against downstream owners. (6T21-25 to 6T 22-21; 6T23-16 to 6T 24-6; 6T26-6 to 6T26-13). *Tellingly, NBOE does not address this language whatsoever in arguing on appeal that Judge Adubato erred in refusing to find that section 5.2(1) created a reversionary right enforceable against subsequent purchasers.* (See Pb41-Pb44).

Second, as Judge Adubato correctly recognized in her May 9 ruling, the principles applied in Cooper River and related cases apply equally to this separate reversionary right claimed by NBOE – that is, the language must be clear, manifest and unambiguous to create an enforceable right of reversion.

(6T17-16 to 6T18-21). The “triggers” for the reversionary right in section 5.2(1) are too ambiguous to create a right of reversion enforceable against subsequent purchasers. Specifically, the reversion rights under section 5.2(1) are tethered to the failure of NHA to have developed a Site Project or “demonstrable plans” for a Site within three (3) years of the execution of the SDDA. The SDDA does not define “demonstrable plans” and that term is too ambiguous to create an enforceable right of reversion binding against subsequent purchasers, because a subsequent purchaser (like FOT), *even if* they had notice of the unrecorded SDDA, would have no way of knowing whether or not a Site had complied with this vague condition years earlier, and would therefore have no way of ascertaining whether a right of reversion applied. Furthermore, a subsequent purchaser looking at the SDDA would have no way of knowing whether a Site was sold as a “Site Project” (which may have potential reversion rights) or as an “Unwanted Site” (which does not have any associated reversion rights) and would therefore be unable to ascertain whether their site was subject to any alleged reversionary rights. Judge Aduvato correctly held that imposing an obligation on subsequent purchasers to investigate such matters would “eviscerate the policy of the Recording Act, which is to provide ‘a reasonable limit on the obligation of a purchaser to search the record.’” (6T24-14 to 6T24-25) (quoting Palamarg Realty Co. v. Rehac, 80 N.J. 446, 456 (1979) and citing

Security Pacific Finance Corporation v. Taylor, 193 N.J. Super. 434, 442 (Ch. Div. 1984)). As this Court held in Hammett, “[a] purchaser is not required to go back through his chain of title and inquire of each owner as to whether or not the premises are restricted.” 46 N.J. Super. at 535.

Accordingly, the SDDA does not contain any language legally sufficient to create a reversionary right against subsequent purchasers.

**C. The Trial Court Correctly Held that, because the SDDA Did Not Contain Any Enforceable Restrictions Against the FOT Defendants as a Matter of Law, the Issue of the FOT Defendants’ “Notice” of the SDDA Was Immaterial (In Response to Point II.A of Appellant’s Brief).**

As it has done throughout the proceedings below, NBOE attempts to make the issue of “notice” seem like the dispositive issue in this appeal. NBOE apparently hopes that if it can create an apparent issue of fact regarding the FOT Defendants’ notice of the existence of the SDDA and its terms, it can defeat summary judgment and prevail in this appeal. The fundamental problem with NBOE’s position is and always has been that the very restrictions and reversionary rights of which NBOE claims the FOT Defendants had notice do not, in fact, exist in the first instance, and therefore the issue of notice is irrelevant.

While NBOE has persistently attempted to put the cart before the horse on this issue, Judge Adubato correctly observed that whether the SDDA

contained a charter school use prohibition and gave NBOE a reversionary right against downstream purchasers was a dispositive, threshold legal question that, if answered in the negative, would foreclose NBOE's claims and render the issue of notice immaterial. Indeed, Judge Adubato explained that, for purposes of her ruling dismissing NBOE's reversion claims, she was accepting as true NBOE's contention that the FOT Defendants were on notice of the existence of the SDDA and its terms – and nevertheless held that NBOE's claims failed as a matter of law. (6T12-15 to 6T13-6). To put it simply, if there is no unambiguous provision in the SDDA prohibiting the Sites from being used as charter schools, nor any unambiguous provision for a reversionary right to subsequent purchasers, there is nothing for the FOT Defendants to have had notice of, and NBOE's claims fail as a matter of law. NBOE presumably knows this, which explains why it has consistently attempted to shift the focus of this case to the factual issue of notice and away from interpretation of the SDDA. But even if NBOE could establish a factual issue as to the FOT Defendants' notice of the SDDA and its terms (which, as discussed below, it cannot), such notice is immaterial to the outcome of this case because, for the reasons discussed above in Points I.A and I.B, the SDDA does not contain a charter school use restriction or any reversionary rights against subsequent purchasers – let alone an

unambiguous one – meaning there is no valid restriction of which the FOT Defendants could have had notice in the first instance.

Although NBOE’s claims fail as a matter of law without the need to even consider the issue of notice, the FOT Defendants will briefly address NBOE’s assertions regarding notice. In short, there are no record facts demonstrating that the FOT had actual, constructive or inquiry notice of the terms of the SDDA. The only facts on which NBOE relies in this appeal are (1) the deed conveying Maple Avenue from NHA to 33 Maple<sup>15</sup> attached NBOE and NHA’s respective resolutions authorizing the Facilities Program; (2) the law firm representing FOT in its purchase of Maple Avenue was the same law firm – McManimon, Scotland & Baumann, LLC (“**MSB**”) – that participated in drafting the SDDA on behalf of NHA; and (3) a so-called “agent” of FOT reviewed the RFQ/P and visited Maple Avenue. None of these facts support a finding of actual, constructive or inquiry notice of alleged use restrictions or reversionary rights in the Maple Avenue chain of title.

As to the resolutions, the NHA resolution does not state that there is an existing agreement between the NBOE and the NHA regarding the “Facilities,”

---

<sup>15</sup> NBOE incorrectly describes the deed at Pa000052-Pa000060 as conveying Maple Avenue from NHA to “BN Property, LLC.” (Pb17). However, the deed contained at Pa000052-Pa000060 is conveying Maple Avenue from NHA to 33 Maple. (Pa000052-Pa000060).

let alone that such agreement affects title thereto. The vague reference in the NHA Resolution to the “desire” of the NBOE and the NHA to enter into a *future* agreement or memorandum of understanding is not notice of an agreement encumbering Maple Avenue. Indeed, the NHA resolution is dated February 25, 2016 and thus predates the execution of the SDDA. The NHA Resolution is nothing more than an authorizing document confirming the NHA’s participation in the Facilities Program and that the NHA was authorized to sell the Sites having properly obtained title to the Sites. (Pa002915, Pa002923). The NBOE resolution is dated February 23, 2016, and thus also predates the execution of the SDDA. Furthermore, the NBOE resolution merely authorizes NBOE’s transfer of the 12 Sites to NHA and makes absolutely no reference whatsoever to any current or future agreement relating, or to any actual or potential restrictions or encumbrances, relating to the Sites. (Pa0000120- Pa0000121). As such, neither resolution states that there is an existing agreement between the NBOE and the NHA regarding the “Facilities,” let alone that such agreement affects title thereto.

With respect to MSB’s representation of FOT, MSB attorneys Barkari Lee and Karl Kemm represented the NHA in connection with the negotiation and drafting of the SDDA in 2016 and the sale of the Sites by the NHA in 2017 and 2018. (Pa001277; Pa002914-Pa002915). Separate and apart from that

representation of the NHA, MSB attorney Leah Sandbank represented FOT in connection with its 2020 acquisition and financing of Maple Avenue. (Da670-Da672). NBOE has never cited any case or statutory law which provides that knowledge possessed by Lee and/or Kemm in connection with their representation of the NHA is imputed to attorney Sandbank in connection with her representation of FOT, and FOT is not aware of any.<sup>16</sup> Instead, NBOE relies on the fact that Sandbank learned by virtue of a discussion with Lee and/or Kemm that Maple Avenue was part of the Facilities Program and she reviewed the NHA resolution authorizing the Facilities Program (which, as discussed above, made no reference to the SDDA, much less any actual or potential reversion rights). (Pb18). But Sandbank's knowledge of those innocuous facts is a far cry from having notice of the SDDA or that the SDDA allegedly conferred – or may have potentially conferred – reversionary rights against subsequent purchasers or contained restrictions on the use of the Sites. Indeed, Ms. Sandbank testified at her deposition that she did not know of the SDDA until NBOE served its Amended Complaint in this case. (Da669). Ms. Sandbank further testified that she reviewed the Corrective Deed in connection

---

<sup>16</sup> Although NBOE does not appear to be arguing on appeal that Lee and/or Kemm's alleged notice should be imputed to Ms. Sandbank, such an argument would be unsuccessful for the reasons set forth in the FOT Defendants' underlying brief in support of their motion for summary judgment on NBOE's claims. (See Da380-Da384).

with FOT's purchase of Maple Avenue and understood that the Corrective Deed meant that NBOE had done no acts to encumber the property. (Da673). Ms. Sandbank also testified that at no time prior to closing was she led to believe that NBOE had any reversion rights to Maple Avenue or that Maple Avenue was prohibited from being used as a charter school. (See id.)

Finally, the RFQ/P did not convey notice of any reversion rights or a charter school ban. The RFQ/P refers to "potential commitments to restrict certain building uses." There is no reference to reversion rights or a charter school use restriction in the RFQ/P. Moreover, there is no evidence the alleged "agent" who reviewed the RFQ/P is in fact an "agent" of FOT. NBOE relies on testimony from Jose Pacheco, who expressly testified that he *was never employed, or even paid, by FOT.* (Da635-Da636). NBOE troublingly omits this portion of Mr. Pacheco's testimony from its appendix. But even assuming Mr. Pacheco could somehow be considered an "agent" of FOT, the fact that Mr. Pacheco reviewed the RFQ/P in 2016 and visited Maple Avenue does not establish that FOT had actual or inquiry notice of the SDDA or any alleged reversionary rights or charter school ban affecting Maple Avenue. (Pa000310-Pa000335).

Accordingly, even if notice were a proper consideration, there are zero facts in the record to support a finding that the FOT Defendants had actual,

constructive or inquiry notice of any alleged reversionary rights or charter school use restriction, which are based in an agreement outside the Maple Avenue chain of title.

On the other hand, the Maple Avenue chain of title includes the Corrective Deed, which contains a “Covenant Against Grantor’s Acts,” pursuant to which NBOE covenanted that it “has done no act to encumber the property.” The Covenant Against Grantor’s Acts expressly cites to N.J.S.A. 46:4-6, which, in turn, provides that “[a] covenant by the grantor in a deed ‘that he has done no act to encumber the said lands’, shall have the same effect as if he covenanted that he had not done or executed, or knowingly suffered to be done or executed, any act, deed or thing whereby the lands and premises conveyed, or intended so to be or any part thereof, are or will be changed, charged, altered, affected, defeated, or encumbered in title, estate or otherwise.” N.J.S.A. 46:4-6. Thus, even if the FOT Defendants could be charged with inquiry notice, the Covenant Against Grantor’s Acts would assure the FOT Defendants (as it did Ms. Sandbank) upon reviewing the chain of title that NBOE did not retain any reversionary rights in Maple Avenue.

It is worth adding that under the merger doctrine, all contractual terms affecting title, or a subsequent conveyance of title to property, are merged into the express terms of the deed conveying title and are of no further effect.

Caparelli v. Rolling Greens, 39 N.J. 585, 590-91 (1964). If the “alleged collateral agreement is connected with the title, possession, quantity, or emblements of the land which is the subject of the contract,” it is merged into the deed and has no further effect. Id. (Internal citations omitted.) The merger doctrine is consistent with the public policy behind the recording statutes, *i.e.*, that a buyer of real property should be able to discover and evaluate restrictions on real property from the public record. Assisted Living Associates of Moorestown v. Moorestown Tp., 31 F. Supp. 2d 389, 401 (D.N.J. 1998); see also Cooper River, 359 N.J. Super. at 527-28 (a purchaser should be able to discover and evaluate all of the restrictions on the property “from a review of the public record”); Palamarg, 80 N.J. at 453 (“a court should decide a question of title . . . in the way that will best support and maintain the integrity of the recording system”). The FOT Defendants’ title expert, Edward Eastman, Esquire, confirmed in his expert report the importance of the merger doctrine to title industry practice. (Da106-Da107).

Here, because the alleged restrictions and reversionary rights would affect title, if they in fact existed, they would be merged into the NBOE’s deeds to NHA, including the Corrective Deed with the NBOE’s Covenants Against Grantor’s Acts, and would be of no further effect. As such, for this separate, independent reason, this Court should affirm the trial court’s decision to grant

summary judgment in favor of the FOT Defendants on NBOE's reversion claims.

**D. The Trial Court Correctly Held that N.J.S.A. 18A:20-9 Was Inapplicable (In Response to Point II.D of Appellants' Brief).**

NBOE argues on appeal that Judge Adubato erred by finding that N.J.S.A. 18A:20-9 was inapplicable, but fails to explain in its brief the significance of this statute or how, if at all, it would have changed the outcome below. The FOT Defendants will therefore attempt to provide a brief explanation of NBOE's position regarding this statute based on its prior arguments.

In the proceedings below, NBOE attempted to rely on the SDDA's reference to N.J.S.A. 18A:20-9 as an indication that NBOE's reversion right was intended to be exercisable against downstream owners. As an initial matter, this statute only applies to conveyances for nominal consideration, which was indisputably not the case here. Although the initial transfer to NHA may have been for nominal consideration, NBOE ultimately received *at least* \$1.1 million from the sale. (See Da82-Da83; Pa002910).

Moreover, the reversion right in this statute is only triggered when a property ceases to be used for the purposes contemplated *in the statute*, not in the contract conveying the property. See N.J.S.A. 18A:20-9. Accordingly, the reference to this statute does not evidence an intent to give NBOE a right to take back a Site from subsequent purchasers if they do not use the property *in*

*accordance with the SDDA*, as NBOE contends. Here, the statute lists as permissible uses homeless shelters, educational, cultural and music functions, veterans' organizations, child care services. See N.J.S.A. 18A:20-9. Because Maple Avenue's use is in line with the statute, the reversion right stated therein would not be triggered if the statute were applicable. However, the statute does not apply and thus does not impose any use restrictions where, as here, the property was transferred by a board of education to "the municipality or any board, body or commission thereof." N.J.S.A. 18A:20-9.

As such, Judge Adubato was correct to hold that N.J.S.A. 18A:20-9 is inapplicable and does not support NBOE's claimed reversion rights. NBOE is thus incorrect that Judge Adubato's holding in this regard "indicates the extent of her failure to comprehend the nature of the transaction." (Pb41).

## **POINT II**

### **THE TRIAL COURT CORRECTLY GRANTED SUMMARY JUDGMENT IN FAVOR OF FOT AND AGAINST NBOE ON FOT'S PROMISSORY ESTOPPEL COUNTERCLAIM BECAUSE NBOE MADE A PROMISE IN THE CORRECTIVE DEED IT LATER REPUDIATED, TO THE DETRIMENT OF FOT (In Response To Point I of Appellant's Brief)**

The NBOE made a clear and definite promise in the November 16, 2017 Corrective Deed which FOT relied upon when purchasing Maple Avenue. As a result of NBOE's promises and later contradictory conduct, FOT has been substantially harmed. NBOE has not, and cannot, cite to any facts disputing that

FOT relied on the Corrective Deed and that the NBOE signed it and recorded it in the Maple Avenue chain of title.<sup>17</sup> The trial court therefore correctly entered summary judgment in favor of FOT on its third counterclaim.

The doctrine of promissory estoppel is well-established in New Jersey. Malaker Corp. Stockholders Protection Comm. v. First Jersey Nat'l Bank, 163 N.J. Super. 463, 479 (App. Div. 1978). A promissory estoppel claim will be justified if the plaintiff satisfies its burden of demonstrating the existence of, or for purposes of summary judgment, a dispute as to a material fact with regard to, four separate elements which include:

(1) a clear and definite promise by the promisor; (2) the promise must be made with the expectation that the promisee will rely thereon; (3) the promisee must in fact reasonably rely on the promise, and (4) detriment of a definite and substantial nature must be incurred in reliance on the promise.

Pop's Cones, Inc. v. Resorts Intern. Hotel, Inc., 307 N.J. Super. 461, 468-69 (App. Div. 1998).

All four elements are present here. Even before the recording of the Corrective Deed, NBOE did not identify any reversion rights in the Maple Avenue chain of title, as decided by the Court on May 9, 2024. The deed dated

---

<sup>17</sup> NBOE asserts that there were “material facts that were at least appropriate for consideration by the trier of fact,” without specifying those adverse facts. (Pb21.)

June 30, 2016 contained no representations or warranties regarding title encumbrances. (See Pa000045-Pa000050).

The very purpose of recording is to put third party downstream purchasers on notice:

‘An historical study of the [Recording] Act, as well as an analysis of the cases interpreting it, leads to the conclusion that it was designed to compel the recording of instruments affecting title, *for the ultimate purpose of permitting purchasers to rely upon the record title and to purchase and hold title to lands within this state with confidence*. . . . This ability to deprive a prior bona fide purchaser for value of his property shows a genuine favoritism toward a recording purchaser. *It is a clear mandate that the recording purchaser be given every consideration permitted by the law, including all favorable presumptions of law and fact. It is likewise a clear expression that a purchaser be able to rely upon the record title.*’

Cox. v. RKA Corp., 164 N.J. 487, 496-97 (App. Div. 1998) (quoting Palamarg, 80 N.J. at 453 (emphasis added.) Indeed, “the integrity of the recording scheme is paramount.” Id. at 497. “[A]bsent any unusual equity’ the stability of titles and conveyancing requires the judiciary to follow that course ‘that will best support and maintain the integrity of the recording systems.’” Id. (quoting Friendship Manor, Inc. v. Greiman, 244 N.J. Super. 104, 113 (App. Div. 1990)).

On November 16, 2017, NBOE recorded the Corrective Deed in which NBOE promised that it “has done no act to encumber the property” and that it “has not allowed anyone else to obtain any legal rights which affect the property.” (P000117). The Corrective Deed identified this promise as a

“covenant as to grantor’s act” pursuant to N.J.S.A. 46:46-6. That section of the Recording Act describes the covenant against grantor’s acts as follows:

A covenant by the grantor in a deed ‘that he has done no act to encumber the said lands’, shall have the same effect as if he covenanted that he had not done or executed, or knowingly suffered to be done or executed, any act, deed or thing whereby the lands and premises conveyed, or intended so to be or any part thereof, are or will be changed, charged, altered, affected, defeated, or encumbered in title, estate or otherwise.

N.J.S.A. 46:4-6 (emphasis added.) Accordingly, NBOE, by expressly including a Covenant as to Grantor’s Acts in the Corrective Deed and explicitly incorporating N.J.S.A. 46:4-6, promised that NBOE “has done no act to encumber the property.” (P000117). In addition to its acts, NBOE promised it “has not allowed anyone else to obtain legal rights which affect the property . . .” (Id.)

Despite this clear promise by NBOE, on April 24, 2020, it filed a complaint alleging the opposite – that it had “rights of reversion . . .” to the Property. Specifically, NBOE alleges in this action:

The development of a Site for a project that was not approved in accordance with the terms and conditions of the Agreement triggers a reversionary right to the site in favor of NBOE.

(Pa002362, ¶ 2). When NBOE filed a lis pendens on April 14, 2020, it plainly contradicted its representation in the deed documents. (Da674-Da679).

To try to explain away its breaking of a clear promise, NBOE cites the following in the Corrective Deed, which was included in all the deeds to the properties sold to NHA:

This conveyance is made subject to all easements, covenant, restrictions, and agreement of record; if any, zoning in ordinances, land-use regulations and requirements of the city of Newark, and all facts that an accurate survey and physical inspection of the property may disclose.

(Pa000117). This language does not give purchasers notice of encumbrances on the property which in any way diminishes the Covenant as to Grantor's Acts. As to the phrase NBOE highlights, "covenants and agreement[s] of record," the Corrective Deed does not affirmatively state the existence of same (" . . . if any . . ."). Second there were no "covenants and agreement[s] of record" on the title, as already held by the trial court. Even if the SDDA contained a restriction on use of the property enforceable against downstream purchasers, which it did not, *it was not recorded*, nor any statements disclosing actual restrictions on Maple Avenue. The signor on the Corrective Deed, State Superintendent Christopher Cerf, testified that there was no intention to prohibit the sale of the properties for charter school use. (See Pa002950; Pa000118).

Consistent with Mr. Cerf's testimony, an Affidavit of Title signed by NBOE's School Business Administrator, dated June 30, 2016, states "the Board

of Education has not allowed any interests (legal rights) to be created which affects its ownership or use of this Property.” (Pa002954).

As the trial court correctly noted:

NBOE has taken the position throughout this litigation that it retained reversionary right and 33 Maple. However, any such reversionary rights are fully contradicted by those promises made by NBOE in the affidavit of title and the corrective deed, when I put the world on notice that there were no legal obligations that could be enforced against the property.

(8T23-16 to 8T23-21). The trial court noted NBOE’s “double standard” in its arguments. (8T24-6.) The trial court observed that NBOE “seeks a determination that subsequent purchasers, such as FOT, were on inquiry notice of rights that did not appear in the actual recorded documents, including the use of the property as a charter school and the right of reversion, both of which were rejected by this court. Yet it also wants a ruling in its favor that those subsequent purchasers, including FOT, should not be permitted to rely on the promises found in the actual recorded documents.” (8T24-7 to 8T24-16). To indulge NBOE’s argument would “turn decades of jurisprudence on its head.” (Id.)

NBOE cites to purported reversionary rights in the SDDA, But, as the trial court correctly found, the SDDA does not grant NBOE reversionary rights against downstream purchasers. Rather, “FOT relied on NBOE’s specific promise that it had not retained any such rights.” (8T27-1 to 8T27-4).

“NBOE’s interpretation of the alleged interaction between the SDDA and the grantor’s promises it made in the corrective deed is, therefore, devoid of legal support.” (8T27-21 to 8T27-25).

Promissory estoppel claims have been applied against sellers of real property premised on the content of their deed recordings. In Eileen T. Quigley, Inc. v. Miller Family Farms, Inc., the Appellate Division found the property owner “is entitled to the benefits of its deed, as written, and without the burden of any rights of access across the property conveyed.” 266 N.J. Super. 283, 299 (App. Div. 1993). Similarly here, FOT was entitled to the benefit of its deed as written. NBOE made a clear and definite promise that Maple Avenue was *not* encumbered.

The Corrective Deed was recorded in the Maple Avenue chain of title for future purchasers to rely upon. “The underlying purpose of the New Jersey Recording Act (Recording Act) is ‘to compel the recording of instruments affecting title, for the ultimate purpose of permitting purchasers to rely upon the record title and to purchase and hold title . . . with confidence.’” United States Bank Nat’l Ass’n v. Wishnia, 2018 N.J. Super. Unpub. LEXIS 2040 at \*14 (App. Div. Sep. 7, 2018) (quoting Donald B. Jones, *The New Jersey Recording Act -- A Study of its Policy*, 12 Rutgers L. Rev. 328, 329-30 (1957)).

Further, the record reveals that NBOE's promises to future purchasers in the Corrective Deed were made to entice more seller interest in Maple Avenue. As a matter of law and fact, NBOE recorded the Corrective Deed with the intent to entice prospective purchasers to rely on its representations. (See Pa003410-Pa003414; Pa002919-Pa002920). NBOE argues that there is a "question" about whether it did "intend to have FOT or any downstream purchaser to rely on a promise that it would not assert a reversionary interest in the property." (Pb26.) But NBOE does not cite to any facts to support that assertion. The uncontroverted facts, as found by the trial court, demonstrate that such a position "does not comport with the promises made in the deed and the affidavit of title, nor with the recording act, or the previously stated purposes of issuing a bargain-and-sale deed with covenants against grantor's acts, nor does it address the undisputed fact that the corrective deed was specifically required to address the concerns of downstream purchasers." (8T30-15 to 8T30-15). "Summary judgment cannot be defeated by conclusory statements unsupported in the record, nor 'a metaphysical doubt as to the material facts.'" (8T30-21 to 8T31-3)(quoting Triffin v. American Intern., 372 N.J. Super. 517, 522 (App. Div. 2004)).

FOT relied on the Corrective Deed when it purchased, financed and improved Maple Avenue. That is not disputed. Review of and reliance on the

deed were an integral part of the due diligence process. (Pa003131). Still, without citing to the record, NBOE asserts without basis that questions “of fact existed with respect to both whether FOT actually relied on a promise by the Board, and, if so, whether such reliance was reasonable.” (Pb27.) NBOE asserts there are disputed “facts relating to the SDDA” (which the trial court correctly found does not grant reversionary rights against downstream purchasers). But those facts are not disputed in the record. The content of the SDDA is not disputed. During the due diligence period, FOT’s counsel, Leah Sandbank, Esq., analyzed the recorded deed documents. Ms. Sandbank testified at deposition as follows:

Q. And if you look at the second page of that deed, it states that it’s a bargain and sale deed with covenants as to grantor’s acts. Do you see that?

A. Yes. It does. Yep.

Q. And did you understand that this deed was confirming that the grantor who was the state operated School District of Newark had made a representation that it had done no acts to encumber the property?

A. Yes.

Q. And did you understand it was also representing that it had not allowed anyone else to encumber the property?

A. Yes.

Q. And when you were representing Friends of Team prior to the acquisition of the property, so prior to closing, at any point in time were you led to believe that the Board of Education of Newark claimed to have reversion rights in the Maple Avenue property?

A. No.

Q. At any point in time prior to the closing on Friends of Maple Avenue, were you led to believe that the board of education claimed that use

of Maple Avenue as a charter school was prohibited?

A. No.

(Pa003131-Pa003132). NBOE cites no facts in the record to refute FOT's reliance on the Corrective Deed. Ms. Sandbank's colleague's alleged knowledge of the SDDA's contents, which NBOE references in its appeal brief, is immaterial, as the SDDA does not confer reversionary rights against downstream purchasers.

NBOE states that, why FOT "proceeded to incur six million dollars in additional debt even while in litigation on the very issue of the Board's interest in the property is unfathomable." (Pb28.) FOT "could have avoided those charges," according to NBOE. (Pb23.)<sup>18</sup> But FOT's closing on Maple Avenue occurred on March 19, 2020. (Pa000098). NBOE commenced this action on or about April 19, 2020, *after* the closing. FOT needed the facility to house about 540 students. (See Da405-Da413).

After NBOE disavowed its promises in the Corrective Deed and filed this action and a notice of lis pendens, FOT was compelled to mitigate its damages. It assumed alternative financing costs, the absence of which would have caused the charter school to abandon a project. The court below correctly found FOT's

---

<sup>18</sup> NBOE could have tested its reversionary claims before FOT incurred its additional interest damages by seeking a temporary injunction, but it did not do so.

response to NBOE’s repudiation of its earlier deed promises was reasonable. “As a matter of law, for the reasons already set forth, it is clear that under the Recording Act, FOT, as a bona fide purchaser without notice, certainly was entitled to rely on the promises made by NBOE. Thus, as to that factor, the Court finds, as a matter of law, that FOT’s reliance on those promises was reasonable.” (8T31-19 to 8T32-2).

FOT has been damaged because of its reliance on the Corrective Deed. By virtue of this lawsuit and the *lis pendens* filing, pursuant to the loan documents, FOT lenders withheld monies intended for the Maple Avenue improvements. Only \$10,910,036.21 of the \$21.5 million had been released to FOT. FOT was compelled to find alternative financing. The damages sought herein are straight forward \$768,487 interest charges alone, from FOT’s financing from Kingston and KIPP Foundation. (Da405-Da413; Pa003314; Pa003222-Pa003223).

NBOE argues that FOT “didn’t even attempt to mitigate the expense [of additional debt] by filing a motion to discharge the *lis pendens* . . .” (Pb29.) “[A]fter notice of this action, FOT filed a motion to dismiss the claims supporting the *lis pendens*, which the Court denied, discovery commenced. FOT filed a motion for summary judgment, which the Court denied. And then on November 29<sup>th</sup>, 2023, FOT filed a motion for reconsideration, which was

granted on May 9<sup>th</sup>, 2024.” (8T35-1 to 8T35-6).

The trial court noted that NBOE’s attempts to now to raise questions about FOT’s reasonableness of incurring such interest charges is a subject NBOE “failed to explore during the discovery stage of this matter.” (8T32-14 to 8T32-21). There is “nothing in the record cited by NBOE to indicate that the costs were not, in fact, incurred by FOT, or were not related to the actions taken by NBOE. There is nothing in the record for this court to find a disputed fact as to whether the financing agreement entered into by FOT and its lenders was unreasonable or overly-restrictive, or violative of any applicable regulations or loss. Nor has there been any proof provided by NBOE establishing that the interest rate was unreasonable, such that the amount incurred by FOT is in equitably inflated.” (8T33-4 to 8T33-14.)

Equitable estoppel applies when a party’s “conduct, either express or implied, . . . reasonably misleads another to his prejudice so that a repudiation of such conduct would be unjust in the eyes of the law.” D’Agostino v. Maldonado, 216 N.J. 168, 200 (2013) (internal quotation marks and citation omitted). Equitable estoppel is based on the principles of fairness and justice. Knorr v. Smeal, 178 N.J. 169, 180 (2003).

NBOE misled FOT and acted in a grossly unjust manner. It sold Maple Avenue in 2016 to address a budget crisis when the building was in a “significant

disrepair.” (Pa000133). Then, having difficulty enticing buyers, NBOE filed the Corrective Deed making clear and explicit representations about not having encumbered Maple Avenue. Only *after* FOT acquired Maple Avenue and commenced its improvement of the property (something NBOE failed to do), did NBOE record a lis pendens and file this lawsuit to attempt to take back the property, taking a position that flatly contradicted its explicit representations in the Corrective Deed.

In dealings with other parties, NBOE, as a public body, has well settled obligations to “‘turn square corners.’” W.V. Pangborne & Co. v. New Jersey Dept. of Transp., 116 N.J. 543, 561 (1989) (quoting F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 426 (1985)). “[I]n the exercise of statutory responsibilities, government must ‘turn square corners’ rather than exploit litigational or bargaining advantages that might otherwise be available to private citizens. ‘[The government’s] primary obligation is to comport itself with compunction and integrity, and in doing so government may have to forego the freedom of action that private citizens may employ in dealing with one another.’” Id. (quoting F.M.C. Stores, 100 N.J. at 426-27).

NBOE’s conduct here was a waste of enormous public resources and good will. It must experience meaningful consequences. FOT should be made whole. The trial court correctly granted FOT summary judgment on its Third

Counterclaim. Since there is no genuine issue as to FOT's damages, the trial court correctly granted FOT summary judgment for damages equal to \$768,487.05.

## V. CONCLUSION

For the foregoing reasons, the FOT Defendants respectfully request that the Court deny NBOE's appeal and affirm the trial court's (1) June 18, 2024 Order vacating the portion of the June 9, 2023 Order denying the FOT Defendants' motion for summary judgment and granting summary judgment in favor of the FOT Defendants and against NBOE on Counts I and V of NBOE's Third Amended Complaint and dismissing Count II of NBOE's Third Amended Complaint as moot; and (2) October 29, 2024 Order granting summary judgment in favor of FOT on its promissory estoppel counterclaim against NBOE.

**ZARWIN, BAUM, DeVITO, KAPLAN  
SCHAER & TODDY, P.C.**

By: /s/ Chelsea P. Jasnoff  
Chelsea P. Jasnoff, Esq.

By: /s/ Thomas O. Johnston  
Thomas O. Johnston, Esq.

*Attorneys for the FOT Defendants*

Dated: May 13, 2025



# Newark Board of Education

Brenda C. Liss, General Counsel

Where Passion Meets Progress

## SATTIRAJU & THARNEY, LLP

50 Millstone Road  
Building 300, Suite 202  
East Windsor, NJ 08520

P: 609.469.2110

F: 609.228.5649

[www.s-tlawfirm.com](http://www.s-tlawfirm.com)

RAVI SATTIRAJU\*  
MATTHEW J. THARNEY\*+

CAROLE LYNN NOWICKI\*  
BRENDAN P. MCCARTHY\*^

\*Admitted to Practice in New Jersey and New York

^Admitted to Practice in Montana

+Certified by the Supreme Court of New Jersey as a Certified Civil Trial Attorney

New York Office  
One Penn Plaza, Suite 5315  
New York, NY 11563

DIRECT EMAIL  
[mtharney@s-tlawfirm.com](mailto:mtharney@s-tlawfirm.com)

DIRECT DIAL  
609.469.2111

May 27, 2025

### VIA ECOURTS APPELLATE

Clerk of the Appellate Division  
Superior Court of New Jersey  
Richard J. Hughes Justice Complex  
25 Market Street  
Trenton, New Jersey 08625

**RE: Board of Education of the City of Newark, Plaintiff/Appellant,  
v. Housing Authority of the City of Newark et al., Defendants/  
Respondents  
Docket No. A-001029-24  
On Appeal From: Superior Court of New Jersey, Chancery  
Division, Essex County, Docket NO. ESX-C-62-20  
SAT BELOW: Hon. James R. Paganelli, J.S.C.,  
Hon. Lisa M. Adubato, J.S.C.**

Dear Clerk:

SATTIRAJU & THARNEY, LLP

TABLE OF CONTENTS

	<b>Page</b>
PRELIMINARY STATEMENT.....	1
STATEMENT OF FACTS AND PROCEDURAL HISTORY .....	2
LEGAL ARGUMENT.....	6
I.    THE DECISION TO GRANT SUMMARY JUDGMENT TO FOT ON ITS COUNTERCLAIM SHOULD BE REVERSED. (6T19-6T36; Pa003316-Pa003317).....	6
II.   THE DECISION TO GRANT SUMMARY JUDGMENT TO THE FOT DEFENDANTS ON THE BOARD’S RIGHT OF REVERSION SHOULD BE REVERSED. (2T91-5 to 2T97-4; 4T3-4T30; Pa002854-Pa002857).....	8
A. The trial court should have reconciled the holdings of <u>Riverton           Country Club</u> and <u>Cooper River</u> .....	8
B. <u>Cooper River</u> is distinguishable because the terms of the Agreement are unambiguous.....	11
III.  NHA’S FAILURE TO FILE A BRIEF SHOULD RESULT IN REVERSAL OF THE TRIAL COURT DECISIONS IN ITS FAVOR .....	14
CONCLUSION.....	14

SATTIRAJU & THARNEY, LLP

TABLE OF CITATIONS

Pages

Cases

Bubis v. Kassin,  
184 N.J. 612 (2005).....13

Colegrove v. Behrle,  
63 N.J. Super. 356 (App. Div. 1960) ..... 9

Cooper River Plaza E. LLC v. Briad Group,  
359 N.J. Super. 518 (App. Div. 2003) ..... 8, 10, 11, 13

Fidelity -Philadelphia Transportation Company v. Harloff,  
133 N.J. Eq. 44 (Ch. Div. 1943)..... 11

Friedman v. Tappan Dev. Corp.,  
22 N.J. 523 (1956)..... 7

Garden of Memories, Inc. v. Forest Lawn Memorial Park Ass’n,  
109 N.J. Super. 523 (App. Div.), certif. denied, 56 N.J. 476 (1970)..... 9

Malaker Corp. Stockholders Protection Comm. v. First Jersey Nat’l Bank,  
163 N.J. Super. 463 (App. Div. 1978), certif. denied, 79 N.J. 488 (1979) ..... 6

Murphy v. Trapani,  
255 N.J. Super. 65 (App. Div. 1992) ..... 11

Pop’s Cones, Inc. v. Resorts Intern. Hotel, Inc.,  
307 N.J. Super. 461 (App. Div. 1998) .....6, 7, 8

Riverton Country Club v. Thomas,  
141 N.J. Eq. 435 (Ch.), aff’d o.b., 1 N.J. 508 (1948).....8, 9, 10

Toll Bros. Inc. v. Bd. of Chosen Freeholders of Burlington,  
194 N.J. 223 (2008)..... 7

Rules

Rule 2:6-4(b) .....14

SATTIRAJU & THARNEY, LLP

**Miscellaneous**

Restatement (Second) of Contracts § 90 cmt. b (1979) ..... 7

SATTIRAJU & THARNEY, LLP

Clerk of the Appellate Division  
May 27, 2025  
Page 1

Please accept this reply letter-brief on behalf of Appellant Board of Education of the City of Newark (“Board” or “NBOE”).

**PRELIMINARY STATEMENT**

This reply will focus the Court’s attention on evidence in the record showing material facts in dispute which should have compelled denial of the motions for summary judgment filed by The Friends of Team Academy, Inc. (“FOT”) and its lenders (collectively “FOT Defendants”) on the Board’s claim and their counterclaim. That evidence shows that FOT had notice of the Board’s reversionary rights in the Maple Avenue School prior to its purchase of the property, which should have resulted in denial of summary judgment on the Board’s claims; and that it certainly had notice of the Board’s claim of such rights upon the filing of this action and the notice of *lis pendens*, which should have result in denial of summary judgment on the counterclaim.

As to the Board’s claim of reversionary right, FOT fails to address or even mention, let alone distinguish, binding precedent cited in the Board’s brief. As to its counterclaim, FOT fails to mention one essential undisputed fact which is fatal to its position. These two failings, one a point of law and the other a point of fact, warrant reversal and remand.

SATTIRAJU & THARNEY, LLP

Clerk of the Appellate Division  
May 27, 2025  
Page 2

Additionally, the Court will note that Respondent Newark Housing Authority (“NHA”) has failed to file a brief. Consequently, the Court should consider this appeal unopposed by NHA and remand the matter for the entry of an order granting the relief sought by the Board.

**STATEMENT OF FACTS AND PROCEDURAL HISTORY**<sup>1</sup>

While the record presented to this Court is extensive, a few salient facts highlight the trial court’s reversible error.

As to the Board’s claim of its right to reversion, the following facts should have resulted in denial of summary judgment: (1) FOT’s attorneys on its purchase of Maple Avenue School were the same law firm that had drafted the operative Agreement between the Board and the NHA (“Agreement”) and the NHA’s Request for Proposals/Qualifications (“RFP/Q”), and had represented the NHA on its purchase and its sale of all the Sites, including Maple Avenue School; (2) in addition to its attorneys, at least one agent of FOT, the Director of Real Estate for its affiliate KIPP NJ, knew of the Agreement and the Board’s interest in the property; and (3) copies of the NHA and NBOE resolutions

---

<sup>1</sup> The facts set forth in the Statement of Facts and Procedural History in the Board’s initial brief are incorporated by reference herein. Because the two are intertwined, the Statement of Facts and Procedural History are here combined.

SATTIRAJU & THARNEY, LLP

Clerk of the Appellate Division  
May 27, 2025  
Page 3

authorizing the Site Program were attached to recorded deeds in FOT's chain of title. Each of these facts, and certainly all of them together, should have been sufficient to deprive FOT of *bona fide* purchaser status and, at the very least, require the trier of fact to decide the validity of the Board's reversionary interest.

As for the counterclaim, one essential fact should preclude any finding of reasonable reliance by FOT on any purported promise by the Board: Well after the filing of this action and the notice of *lis pendens*, FOT *chose* to incur the obligation to pay the significant sum in additional interest for which now it seeks to hold the Board responsible, with undisputed notice of the Board's claim to the property. The trial court erroneously conflated *notice of the Board's rights prior to FOT's purchase of the property*, which it found to be determinative of its defense against the Board's claims, and its quite separate *notice of the Board's claim prior to incurring additional debt, well after the filing of this action and the notice of lis pendens*. Regardless of its notice or lack thereof at the time of purchase, FOT's knowledge of the Board's claim at least from the time of filing of this action, and FOT's decision nevertheless to incur additional debt on the property at issue, should not have been overlooked. That indisputable notice *well after the filing of this action* should have caused the court to find, at the

SATTIRAJU & THARNEY, LLP

Clerk of the Appellate Division  
May 27, 2025  
Page 4

very least, a question of fact as to the reasonableness of FOT's purported reliance on the Board's supposed promise in the Corrective Deed.

In fact, evidence in the record shows no reliance on FOT's part, let alone reasonable reliance. It shows, on the contrary, that FOT took a calculated risk to incur additional debt in 2021 and 2022, notwithstanding its title insurer's refusal to insure an additional loan disbursement in light of the pending litigation (clearly the more rational decision). Da458.<sup>2</sup> In addition to the evidence cited in the Board's initial brief, *see* Pb18-19; Pa0322; Pa3246-3249, documents in FOT's appendix support this conclusion. A 2021 memorandum to the FOT Board of Trustees recommending that it proceed with the project, Da409-412, did not even mention the Corrective Deed. Among the several considerations listed there in favor of proceeding was this telling strategic advice: "[W]e don't

---

<sup>2</sup> The Certification of FOT's Board Secretary in support of its motion for summary judgment, Da457-459, describes the two additional loans obtained by FOT. It takes pains to note gratuitously that the two lenders, Kingston Educational Holdings and KIPP Foundation, are "separate entit[ies] from FOT." However, both of those entities share staff with FOT and TEAM Academy Charter School, including the Board Secretary who signed the certification. All certainly seem to have a shared "mission," notwithstanding the assertion to the contrary. Given the evidence in the record indicating that the decision to incur additional debt was a calculated business risk as discussed below, the relationship of the parties on both sides of that debt would have raised additional questions for the trier of fact.

SATTIRAJU & THARNEY, LLP

Clerk of the Appellate Division  
May 27, 2025  
Page 5

want to inadvertently and publicly signal to anyone that there's more validity to the NBOE position than there is." Da411. In other words, FOT was posturing, not acting in reliance.

The other items on the list in the memorandum similarly show that this was a calculated business decision. The memorandum states:

1. FOT is already at-risk for approximately \$5,000,000 (including \$3,200,000 paid and additional \$1,800,000 completed to 1/31/2021 but unpaid).
2. There is no certainty that exposure is higher with a completed building than a partially completed building. It is NOT even clear that FOT is financially worse off in a "loss" scenario by having completed the project vs. if FOT stops now.
3. TEAM has 560 families who are counting on starting school at Maple Avenue in July.<sup>3</sup>

...

---

<sup>3</sup> The students supposedly "counting on starting school at Maple Avenue" would not have been displaced or deprived of instruction if Maple Avenue School had been unavailable. Before relocating to Maple Avenue School, the TEAM Academy unit known as KIPP Seek Academy had occupied a school building owned by the Board and leased to TEAM Academy Charter School. It could have remained in that building, but TEAM chose instead not to renew that lease and to proceed with its move to Maple Avenue School during the pendency of this action (without the required approval of the New Jersey Department of Education to do so). Again, that was a calculated risk. It also could have moved to another school building leased by the Board to TEAM Academy Charter School, and still could do so if the Board's right to reversion of Maple Avenue School is upheld.

Clerk of the Appellate Division  
May 27, 2025  
Page 6

5. TEAM does NOT want to incur interim costs to house students for the 2021-22 school year because Maple Avenue space is not available.
6. Between our own cash on hand and available alternative sources/methods of financing the project we are able to finish the project if that's what we want to do.

Id. While reasonable minds may differ as to whether that risk was worth taking, it was undeniably a calculated risk, not an act of reliance on a promise in a predecessor's deed as FOT claims and the court erroneously found.

### **LEGAL ARGUMENT**

#### **I. THE DECISION TO GRANT SUMMARY JUDGMENT TO FOT ON ITS COUNTERCLAIM SHOULD BE REVERSED. (6T19-6T36; Pa003316-Pa003317)**

“The essential justification for the promissory estoppel doctrine is to avoid the substantial hardship or injustice which would result if such a promise were not enforced.” Pop's Cones, Inc. v. Resorts Intern. Hotel, Inc., 307 N.J. Super. 461, 469 (App. Div. 1998), citing Malaker Corp. Stockholders Protection Comm. v. First Jersey Nat'l Bank, 163 N.J. Super. 463 (App. Div. 1978), certif. denied, 79 N.J. 488 (1979). In light of the undisputed facts set forth above, granting judgment to FOT on the basis of the promissory estoppel doctrine was not only erroneous but unconscionable. It certainly was not needed in order to avoid substantial hardship or injustice.

SATTIRAJU & THARNEY, LLP

Clerk of the Appellate Division  
May 27, 2025  
Page 7

The required elements of promissory estoppel are well established and undisputed: a clear and definite promise, made with the expectation that the promisee will rely on it, and on which the promisee does reasonably rely to its definite and substantial detriment. Toll Bros. Inc. v. Bd. of Chosen Freeholders of Burlington, 194 N.J. 223, 253 (2008); Friedman v. Tappan Dev. Corp., 22 N.J. 523, 536 (1956). FOT presents no persuasive argument that each of these elements were established below as a matter of law. Moreover, application of the doctrine is appropriate only where “necessary to avoid injustice.” Pop’s Cones, Inc., 307 N.J. Super. at 473. That requirement depends on several factors:

Satisfaction of the latter requirement [that enforcement must be necessary to avoid injustice] may depend on the reasonableness of the promisee's reliance, on its definite and substantial character in relation to the remedy sought, on the formality with which the promise is made, on the extent to which evidentiary, cautionary, deterrent and channeling functions of form are met by the commercial setting or otherwise, and on the extent to which such other policies as the enforcement of bargains and the prevention of unjust enrichment are relevant. . . .

Id., citing Restatement (Second) of Contracts § 90 cmt. b (1979). All of those factors should have been considered before entering summary judgment in FOT’s favor.

SATTIRAJU & THARNEY, LLP

Clerk of the Appellate Division  
May 27, 2025  
Page 8

Most pointedly, the reasonableness of FOT's reliance should have been considered as a question of fact. *See Pop's Cones, Inc.*, 307 N.J. Super. at 472 (“Whether a party's reliance upon another's assurances was reasonable is a question for the jury.”) The evidence discussed above – including the timing of FOT's decision to incur additional debt, the factors it considered in reaching that decision, and the business relationship between FOT and its lenders should have raised substantial questions of fact, precluding summary judgment on the counterclaim.

**II. THE DECISION TO GRANT SUMMARY JUDGMENT TO THE FOT DEFENDANTS ON THE BOARD'S RIGHT OF REVERSION SHOULD BE REVERSED.  
(2T91-5 to 2T97-4; 4T3-4T30; Pa002854-Pa002857)**

**A. The trial court should have reconciled the holdings of Riverton Country Club and Cooper River.**

Just as the trial court chose to disregard the rule that a purchaser with notice of a restriction will be bound by it, *see* Pb33-35, so do the FOT Defendants in this Court. Their brief does not even mention that rule or the binding precedents on which it is based. This Court should find that it is bound by those precedents rather than Cooper River and that they should have precluded the grant of summary judgment to the FOT Defendants.

SATTIRAJU & THARNEY, LLP

Clerk of the Appellate Division  
May 27, 2025  
Page 9

In 1948 the New Jersey Supreme Court affirmed a decision of the former Chancery Court which is directly applicable here. That decision, Riverton Country Club v. Thomas, 141 N.J. Eq. 435 (Ch.), aff'd o.b. 1 N.J. 508 (1948), stated:

Where ... the owner of land has lawfully restricted the use to which the land may be put, and the land is subsequently conveyed, or sold, or passes to one who has actual or constructive notice of such restriction, the grantee takes the land bound by the limitation, and may be restrained in equity from violating it, at the suit of the original covenantee or of any other person who has a sufficient equitable interest, although perhaps without any legal interest, in such performance. "It makes no difference whatever, with respect to this equitable liability, and this right to enforce the covenant in equity, whether the covenant is or is not one which in law 'runs with the land.'" Pom. (5th ed.), § 1295. Cotton v. Cresse (Court of Errors and Appeals), 80 N.J. Eq. 540; 85 A. 600; 49 L. R. A. (N. S.) 357.

141 N.J. Eq. at 446-47. Accordingly, as this Court has ruled, regardless of recorded documents in the chain of title, a purchaser will be bound by constructive notice of a restriction when it had such 'clues' that could have been "so easily followed that to have failed to do so charges that company with its own neglect." Garden of Memories, Inc. v. Forest Lawn Memorial Park Ass'n, 109 N.J. Super. 523, 535 (App. Div.), certif. denied, 56 N.J. 476 (1970). Moreover, "knowledge on the part of the attorney for a purchaser of land, or a judgment creditor, of a defect in title is imputed to the client." Colegrove v.

SATTIRAJU & THARNEY, LLP

Clerk of the Appellate Division  
May 27, 2025  
Page 10

Behrle, 63 N.J. Super. 356, 364 (App. Div. 1960). Thus, whether FOT had any actual, constructive or inquiry notice of the terms of the Agreement was a question of material fact precluding summary judgment.

The FOT Defendants' wish to avoid these precedents may be understandable, but the trial court's failure to address them, based on the determination that it was bound instead by Cooper River Plaza E. LLC v. Briad Group, 359 N.J. Super. 518 (App. Div. 2003) (*see* 4T93-11 to 4T94-7), was reversible error. The Supreme Court decision in Riverton was, and is, higher authority than the Appellate Division decision in Cooper River.

Alternatively, the court below should have addressed both precedents, Riverton and Cooper River, and reconciled them. It could and should have done so by determining that notice on the part of purchaser, as found in Riverton, presents an exception to the rule of Cooper River. It thus should have found that the question of FOT's notice, or lack thereof, was to be addressed by the trier of fact; and that Cooper River would defeat the Board's claim only if FOT were found to have had no actual, constructive, or inquiry notice of the restriction on the use of the property. The evidence in the record, discussed in

SATTIRAJU & THARNEY, LLP

Clerk of the Appellate Division  
May 27, 2025  
Page 11

the Board's initial brief and hereinabove, presented more than enough reason for the court to address whether FOT could be charged with such notice.

For one additional reason, reliance on Cooper River with respect to the requirement to develop Sites within three years – by April 19, 2019 – is misplaced: that provision was not a restriction on use of land like that in Cooper River. It was a “temporal” limitation, as the trial court acknowledged. 6T8-11 to 18. Requirements for recording use restrictions are therefore less applicable, and principles relating to other reversionary interests are more relevant. See Fidelity-Philadelphia Transportation Company v. Harloff, 133 N.J. Eq. 44 (Ch. Div. 1943). Accordingly, at least as to the three-year deadline, the court should have found that Cooper River was not dispositive.

**B. Cooper River is distinguishable because the terms of the Agreement are unambiguous.**

Even if Cooper River was the controlling precedent, it is distinguishable, as the pertinent terms of the Agreement are unambiguous and therefore the perceived unfairness of holding a subsequent purchaser to those terms – the basis of the Cooper River rule – does not exist.

Unlike in Cooper River, nothing in the record here should have caused any uncertainty as to the intent and meaning of the Agreement. The Agreement

SATTIRAJU & THARNEY, LLP

Clerk of the Appellate Division  
May 27, 2025  
Page 12

states that Sites were to be developed as “Site Projects,” and that term is explicitly defined as “housing, redevelopment, and economic development opportunities.” Pa000028, §5.4(1). Further, the stated “purpose” of the conveyances, per §5.1 of the Agreement, included “increasing tax ratables for the City of Newark.” *Id.* These terms are clear. For all the reasons discussed in the Board’s initial brief, the trial court should have so found. The tortured possible interpretations urged by the FOT Defendants in order to show some ambiguity should be rejected.

Just as clearly, the Agreement stated that failure to develop a Site Project or to have “demonstrable plans” for doing so within three years would create a right of reversion. Pa000028, §5.2(1). Three years is three years. “Demonstrable plans” are architectural drawings or applications for development approval from state or municipal agencies. Any ambiguity in these terms is mere fabrication.

So is any uncertainty as to whether the Site was sold per §5.4 or §5.5, as argued by FOT and found by the trial court. 6T22-22 to 6T23-15. There is absolutely no evidence supporting the claim that the Site was sold as “unwanted”

SATTIRAJU & THARNEY, LLP

Clerk of the Appellate Division  
May 27, 2025  
Page 13

per §5.5. In any event, the three-year provision applied in either scenario, as discussed in the Board’s initial brief.

FOT points to language in § 5.2(1) stating that a purchaser could request that the Board execute a document discharging the right of reversion. Far from creating any ambiguity, that provision confirms that the right of reversion would apply even after a third party had purchased the Site. There would have been no need to include such a provision if the right of reversion did not continue to exist after the sale of the property.

In construing a restrictive covenant, the court’s primary objective “is to determine the intent of the parties to the agreement.” Bubis v. Kassin, 184 N.J. 612, 624 (2005). A restriction on the use of property “should not be read in such a way that defeats the plain and obvious meaning of the restriction.” Id. Nor should it be read in such a way that would disregard “the circumstances surrounding its creation.” Murphy v. Trapani, 255 N.J. Super. 65, 72 (App. Div. 1992). FOT’s position and the decision below are contrary to these rules, all equally binding and more applicable than the rule of Cooper River. These rules require that the grant of summary judgment to the FOT Defendants be reversed.

Clerk of the Appellate Division  
May 27, 2025  
Page 14

**III. NHA’S FAILURE TO FILE A BRIEF SHOULD RESULT IN REVERSAL OF THE TRIAL COURT DECISIONS IN ITS FAVOR.**

Pursuant to R. 2:6-4(b), as a result of the NHA’s failure to file a brief, the Court should consider this appeal unopposed by that party. It should deny the NHA permission to participate in oral argument (if such permission is sought), and decline to consider any arguments made below by the NHA in support of its position. An order granting the relief sought by the Board against the NHA – denial of the NHA’s motion for summary judgment and grant of the Board’s cross-motion – should be entered.

The evidence in support of a finding of breach of contract by the NHA is overwhelming in any event, as discussed in the Board’s initial brief, Pb45-47. The Court should consider it undisputed. The evidence of “net economic value” of Maple Avenue School, and therefore the Board’s economic damages – the appraisals performed in 2016 and 2019 – should similarly be considered unopposed, and form the basis of a judgment entered in the Board’s favor.

**CONCLUSION**

For all the foregoing reasons and those stated in the Board’s initial brief, FOT’s motions for summary judgment against the Board on its claim and its

**SATTIRAJU & THARNEY, LLP**

Clerk of the Appellate Division  
May 27, 2025  
Page 15

counterclaim should have been denied, and the matter should be remanded for further proceedings, including the entry of an order of judgment against NHA.

Respectfully submitted,

**NEWARK BOARD OF EDUCATION  
OFFICE OF GENERAL COUNSEL**

**SATTIRAJU & THARNEY, LLP**

By: s/ Brenda C. Liss  
Brenda C. Liss

By: s/ Matthew J. Tharney  
Matthew J. Tharney

cc: All Counsel of Record (via ecourts)