SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1309-15T1
A-4651-15T1

NATIONAL LOAN ACQUISITIONS,

Plaintiff,

v.

BRIDGETON MUNICIPAL PORT AUTHORITY,

Defendant-Respondent,

and

HENRY.GROVE DIVERSIFIED INVESTMENTS, LLP,

Plaintiff-Appellant,

v.

THE CITY OF BRIDGETON,

Defendant-Respondent,

and

RENEWABLE JERSEY, LLC,

Intervenor-Respondent.

HENRY.GROVE DIVERSIFIED
INVESTMENTS, LLP,

Appellant,

v.

STATE OF NEW JERSEY
DEPARTMENT OF COMMUNITY
AFFAIRS,

Respondent.

Argued March 23, 2017 – Decided July 27, 2017

Before Judges Lihotz, O'Connor and Whipple.

On appeal from Superior Court of New Jersey, Law Division, Cumberland County, Docket Nos. L-0781-06 and L-0100-12 and an agency decision of the State of New Jersey Department of Community Affairs Local Finance Board.

Keith A. Bonchi argued the cause for appellant (Goldenberg, Mackler, Sayegh, Mintz, Pfeffer, Bonchi & Gill, attorneys; Mr. Bonchi, of counsel and on the brief; Elliott J. Almanza, on the brief).

Rebecca J. Bertram argued the cause for respondent City of Bridgeton (Bertram Law Office, L.L.C., attorneys; Ms. Bertram, on the brief).

Melanie R. Walter, Deputy Attorney General, argued the cause for respondent State of New Jersey Department of Community Affairs (Christopher S. Porrino, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Ms. Walter, on the brief).

Jack Plackter argued the cause for intervenor-respondent (Fox Rothschild LLP, attorneys; Mr. Plackter, of counsel and on the brief; Bridget A. Skyes, on the brief).

Long Marmero & Associates, LLP, attorneys for respondent Bridgeton Municipal Port Authority, join in the brief of respondent City of Bridgeton.

PER CURIAM

In these back-to-back appeals, consolidated for purposes of this opinion, plaintiff Henry.Grove Diversified Investments, LLP, appeals from an October 16, 2015 order denying its motion to enforce litigant's rights, as well as from a June 23, 2016 resolution issued by the Local Finance Board (Board) of the Department of Community Affairs. We dismiss the appeal from the October 16, 2015 order, concluding its order is interlocutory. Further, we remand to the Board for consideration of the application of N.J.S.A. 40A:5A-19 to this matter.

I

A

We first address plaintiff's appeal of the October 16, 2015 order denying its motion to enforce litigant's rights. Many of the facts pertinent to plaintiff's appeal of this order apply to its appeal of the Board's resolution, although we provide additional facts below when addressing the actions taken by the Board.

In 1983, defendant City of Bridgeton (municipality) created defendant Bridgeton Municipal Port Authority (authority) for the purpose of building a port facility along the Cohansey River. As part of its effort to achieve this goal, in 1985 the authority purchased a parcel of land known as the Sorantino Warehouse Building (warehouse property). Eventually, the authority abandoned its plan to create a port facility, choosing instead to develop the property along the river.

With the approval of the Board, in 1988, the authority obtained a loan for $800,000, secured by a note and mortgage on its property. However, the authority eventually defaulted and the mortgagee at the time, First National Bank of Chicago, obtained a judgment in foreclosure; the balance due on the loan at that time was approximately $631,900. The authority appealed, and we held N.J.S.A. 40:68A-60 precludes the remedy of foreclosure against a port authority. See First Nat'l Bank of Chicago v. Bridgeton Mun. Port Auth., 338 N.J. Super. 324, 327 (App. Div.), certif. denied, 168 N.J. 295 (2001).

In 2006, a subsequent assignee of the note and mortgage, National Loan Acquisitions, filed a complaint in lieu of prerogative writs seeking mandamus, specifically, an order requiring the authority to pay all money due under the loan documents. In 2010, National Loan Acquisitions and the

authority entered into a consent judgment (judgment) for $394,198.56, plus post-judgment interest, set at ten percent, and counsel fees.

In 2011, the municipality entered into a redevelopment agreement (agreement) with intervenor Renewable Jersey, LLC (Renewable), designating Renewable as a redeveloper of the authority's property. Under the terms of the agreement, Renewable is to purchase various properties belonging to the authority, including the warehouse property, and redevelop them. Later that year, plaintiff acquired National Loan Acquisition's interest in the judgment for $250,000. Plaintiff has pursued satisfaction of the judgment since.

In 2012, plaintiff filed a complaint in lieu of prerogative writs, seeking mandamus in the form of compelling the authority to pay the judgment or, in the alternative, compelling the transfer of the warehouse property from the authority to plaintiff. The complaint also alleged the municipality was the real party in interest, as the authority had been a non-functioning, debt-ridden entity for a number of years.

Among other things, plaintiff sought a writ of mandamus compelling the municipality to dissolve the authority, liquidate its assets, and use the proceeds toward the judgment. In the alternative, plaintiff sought to have the municipality declared

the "lawful successor" and real party-in-interest to the authority, and either ordered to pay the authority's debt to plaintiff or transfer the warehouse property to it. Renewable successfully intervened in this matter.

On November 26, 2012, the court entered an order stating, among other things, a writ of mandamus shall issue compelling the authority to satisfy the judgment. On August 7, 2013, the court entered an order striking from the complaint the aforementioned relief plaintiff sought against the municipality. The court found it did not have jurisdiction to determine if plaintiff were entitled to such relief, that such requests had to be heard and decided by the Board.

On September 4, 2015, the court denied without prejudice plaintiff's motion to enforce litigant's rights in the form of transferring the subject property to plaintiff, in exchange for a credit toward the balance owed on the judgment, or ordering the property to be auctioned off. Plaintiff argued Renewable was taking too long to find the appropriate funding to consummate the purchase of the subject property from the authority. The court ordered a plenary hearing to ascertain what efforts Renewable had made to close on the property.

At the hearing, the principal of Renewable testified about the efforts the company had made to secure funding to close on

the property, noting it had invested between $400,000 and $500,000 into making the redevelopment project a reality. He recounted the delays caused by litigation in another matter affected Renewable's and the authority's ability to close. He testified Renewable was still committed to proceeding under the agreement, expecting it would be ready to close in approximately four months. The principal promised if Renewable were not ready, it would willingly "step-aside."

Based upon the principal's testimony, on October 16, 2015, the court entered an order denying plaintiff's motion, noting in its oral decision:

> [T]he existence of all of these legal issues is a real impediment to finalizing the sale of the property. . . .
>
> The point is very well taken that these judgments and circumstances of buying discounted judgments are often fraught with unseen and unforeseeable irregularities, difficulties, issues. . . . I don't think anyone questions the reality that the nature and extent of financing a project of this nature is complex and time-consuming and subject to fits and starts. . . .
>
> So for now we maintain the status quo.

Significantly, the court added:

> And if there are any other prayers for relief in terms of enforcing litigant's rights or moving forward on the writ of mandamus, I wouldn't foreclose those. I would ask that we not revisit any time soon

> the issue of transferring the property to the plaintiff, simply because we've been down that road, and I just can't see my way clear to doing it.
>
> If something significant changes . . . the parties, of course, are free to make appropriate application before the court. . . . [But] I don't simply want to revisit the same issue for the sake of revisiting the same issue.
>
> [(Emphasis added).]

B

On appeal, plaintiff challenges the court's October 16, 2015 order denying its motion to either convey the property to it or order an auction. We need not address plaintiff's arguments, as the October 16, 2015 order is interlocutory. "[A]ppeals may be taken to the Appellate Division as of right . . . from final judgments of the Superior Court trial divisions," R. 2:2-3(a)(1), or the Appellate Division "may grant leave to appeal, in the interest of justice, from an interlocutory order of a court." R. 2:2-4.

"To be a final judgment, an order generally must 'dispose of all claims against all parties.'" Janicky v. Point Bay Fuel, Inc., 396 N.J. Super. 545, 549-50 (App. Div. 2007) (quoting S.N. Golden Estates, Inc. v. Cont'l Cas. Co., 317 N.J. Super. 82, 87 (App. Div. 1998)). "[A]n order that 'does not finally determine a cause of action but only decides some intervening matter

pertaining to the cause[,] and which requires further steps . . . to enable the court to adjudicate the cause on the merits[,]' is interlocutory." Moon v. Warren Haven Nursing Home, 182 N.J. 507, 512 (2005) (quoting Black's Law Dictionary 815 (6th ed. 1990)).

Plaintiff argues the appeal is final because the court has disposed of all claims as to all parties. It asserts the only remaining issue is the court's failure to enforce its order compelling the authority to satisfy the judgment. Plaintiff contends the court's denial of its motion to enforce litigant's rights in the form of ordering the transfer of the property to it or ordering an auction was final, because the court stated it would not grant another motion to enforce plaintiff's rights. We disagree.

In denying plaintiff's motion, the court clearly stated that, although it was denying plaintiff the specific relief it sought, the court was not otherwise denying or foreclosing the consideration of other remedies to effectuate the authority's obligation to honor the judgment. The court explicitly stated that if plaintiff sought other relief or relief related to "moving forward on the writ of mandamus," it would consider such application.

The court did discourage the filing of another motion seeking the transfer of the property to plaintiff or the scheduling of an auction, but the court did so merely because it was unable to determine how such relief could be granted. The court also stated that if there were a change in circumstances making such relief viable, then a party could pursue that remedy. Otherwise, asking for the same relief when there has not been a change in circumstances would be an exercise in futility, as "we've been down that road, and I just can't see my way clear to doing it."

We are satisfied the order is interlocutory. The fact the court denied the specific relief plaintiff sought did not make the order final. The court did not foreclose considering all remedies to satisfy the judgment, just the two plaintiff sought in its motion. As not all claims as to all parties have been disposed of by the court, the subject order is interlocutory.

Plaintiff's remaining arguments on this issue lack sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E). As the appeal of the October 16, 2015 order is interlocutory, it is dismissed.

Plaintiff also contends the court erred when it failed to grant motions it had previously filed to enforce litigant's rights. However, the October 16, 2015 order is the only one

plaintiff lists in its notice of appeal. "It is clear that it is only the orders designated in the notice of appeal that are subject to the appeal process and review." W.H. Indus., Inc. v. Fundicao Balancins, Ltda, 397 N.J. Super. 455, 458 (App. Div. 2008) (citing Sikes v. Twp. of Rockaway, 269 N.J. Super. 463, 465-66 (App. Div.), aff'd o.b., 138 N.J. 41 (1994)). Therefore, we do not address this particular contention.

II

A

We turn to plaintiff's appeal of the Board's June 23, 2016 resolution and provide the following additional facts.

After the court determined it did not have jurisdiction to order the dissolution of the authority, in April 2014, plaintiff submitted an application to the Board requesting it do so and compel the municipality to pay the authority's debts.

In August 2014, the Board passed a resolution authorizing the sale of the warehouse property from the authority to Renewable for $310,000, and the following June, the Board authorized the sale of the authority's remaining properties for $225,000. Meanwhile, the Board deferred taking action on plaintiff's application, while it sought additional information about the authority's financial condition, including requesting

the municipality to provide a dissolution plan. The Board eventually held a hearing on the authority's financial status.

Based upon the testimony and the documents submitted at the hearing, the Board determined no purpose would be served by the authority's continued existence, which had stopped functioning years before. The total value of the authority's assets was approximately $720,500 and its debts were $1,196,000. The Board noted plaintiff was seeking the full value of its debt against the authority, which by that time exceeded $900,000. In its dissolution plan, the municipality noted it was unwilling to assume any of the authority's debt.

The Board found dissolution of the authority would be in the public's interest and would "achieve a more efficient means for providing and financing local public facilities." However, the Board further noted it was unable to find a solution to the authority's financial problems. In addition, because there was no plan in place to adequately provide for the authority's creditors, the Board determined N.J.S.A. 40A:5A-21, the provision governing the dissolution of authorities by the Local Finance Board, precluded it from dissolving the authority. This statute provides in pertinent part:

> The Local Finance Board may order the dissolution of a local authority if, after holding a hearing consistent with section 18

> of this act, it determines that, due to financial difficulties or mismanagement, the dissolution of an authority will be in the public interest and will serve the health, welfare, or convenience of the inhabitants of the [municipality] . . ., and the dissolution will achieve a more efficient means for providing and financing local public facilities, except that an order dissolving an authority shall assure adequate provision in accordance with a bond resolution or otherwise for all creditors or obligees of the authority.
>
> [N.J.S.A. 40A:5A-21.]

The Board did not take further action after it determined it could not dissolve the authority under this statute, other than in its resolution to "encourage[] plaintiff, the authority and the municipality to actively pursue a solution of debt issue to facilitate the dissolution of this moribund entity." A resolution memorializing its findings was issued June 23, 2016.

B

On appeal, plaintiff argues the Board erred by failing to (1) compel the municipality to submit a new dissolution plan making adequate provision for the authority's creditors, and (2) compel the municipality to assume the authority's debts. Plaintiff argues N.J.S.A. 40A:5A-21 empowers the Board to order the municipality to do the former, and N.J.S.A. 40:68A-38 authorizes it to order the municipality to do the latter.

Because the Board did not order or even decide whether it

could order the municipality to assume the authority's debts, we decline to decide this issue in the first instance. See Duddy v. Gov't Emps. Ins. Co., 421 N.J. Super. 214, 221 (App. Div. 2011). Thus, we address only the question whether the Board was obligated to compel the municipality to submit a new dissolution plan or to take additional steps once the Board concluded the municipality's initial plan did not provide adequate provision for the authority's creditors. Plaintiff's principal argument is by not taking further action, the Board abandoned the responsibilities entrusted to it under the Local Authorities Fiscal Control Law (Act), N.J.S.A. 40A:5A-1 to -27.

"An appellate court should undertake a 'careful and principled consideration of the agency record and findings.'" In re Zisa, 385 N.J. Super. 188, 194-95 (App. Div. 2006) (quoting Riverside Gen. Hosp. v. N.J. Hosp. Rate Setting Comm'n, 98 N.J. 458, 468 (1985)). However, an agency decision should not be disturbed on appeal unless it is arbitrary, capricious or unreasonable. In re Proposed Quest Acad. Charter Sch. of Montclair Founders Grp., 216 N.J. 370, 385 (2013). An agency's findings should be affirmed if they "'could reasonably have been reached on sufficient credible evidence present in the record,' considering 'the proofs as a whole,' . . . with due regard also to the agency's expertise." Close v. Kordulak Bros., 44 N.J.

589, 599 (1965) (quoting State v. Johnson, 42 N.J. 146, 162 (1964)). However, a reviewing court is not bound by the agency's interpretation of a strictly legal issue. In re Zisa, supra, 385 N.J. Super. at 195.

The Act created a state agency, the Local Finance Board, "which has been delegated substantial power with respect to the establishment, management, operation, and dissolution of local authorities. This Board has the power to dissolve local authorities if it is in the public interest to do so due to their financial difficulties or mismanagement. N.J.S.A. 40A:5A-21." Stone v. Old Bridge, 111 N.J. 110, 120 n.3 (1988).

The Act's legislative purpose was to "promote the financial integrity and stability of local authorities . . . by providing for State review of project financing of local authorities and for State . . . supervision over [their] financial operations." N.J.S.A. 40A:5A-2. "It was intended that the act . . . would strengthen the existing system of State oversight of local financial operations and debt by providing for State supervision of independent local authority and special tax district financial operations and debt." Howell Twp. v. Manasquan River Reg'l Sewerage Auth., 215 N.J. Super. 173, 179 (App. Div. 1987).

There are two procedures for dissolving a local authority. One procedure permits a municipality to dissolve an authority,

see N.J.S.A. 40A:5A-20, which is not implicated here. The other is found in N.J.S.A. 40A:5A-18 and 40A:5A-21. N.J.S.A. 40A:5A-18 provides if the Director of the Division of Local Government Services has reason to believe an authority is experiencing financial troubles, he or she may convene a hearing before the Board.

N.J.S.A. 40A:5A-21 vests in the Board the power, if it chooses, to dissolve the local authority if, after a hearing, it determines, because of financial difficulties or mismanagement, the dissolution of an authority "will be in the public interest and will serve the health, welfare, or convenience of the inhabitants of the local unit or units, and the dissolution will achieve a more efficient means for providing and financing local public facilities." Of relevance here, the statute provides an order dissolving an authority must provide adequate provision for the authority's creditors or obligees.

In our view, N.J.S.A. 40A:5A-21 does not authorize the Board to order the municipality to provide a dissolution plan. This statute merely states the Board may order the dissolution of a local authority if certain conditions are met. However, N.J.S.A. 40A:5A-19 obligates the Board, if the conditions set forth in the statute exist, to implement a plan which will assure the payment of debt service on obligations of the

authority, or provide relief from undue financial burden.

N.J.S.A. 40A:5A-19 states in pertinent part:

> If the Local Finance Board determines that financial difficulties exist which (1) jeopardize the payment of operating expenses and debt service on obligations of the authority or either of the aforesaid; or place an undue financial burden on the inhabitants of the [municipality] or the users of the system or facilities of an authority; and (2) that these difficulties are likely to recur and, if they continue, will impair the credit of the authority and [the municipality] or either of the aforesaid to the detriment of the inhabitants thereof; and (3) no financial plan designed to prevent a recurrence of these conditions and which is deemed to be practicable and feasible by the director has been undertaken by the authority or the local unit or units, the Local Finance Board shall order the implementation of a financial plan which will assure the payment of debt service on obligations of the authority, or provide relief from undue financial burden.
>
> [(Emphasis added).]

If the conditions in this statute exist, the Board is statutorily mandated to order the implementation of a financial plan to assure the payment of the authority's debts or provide relief from undue financial burden. The Board cannot evade the responsibility imposed by this statute, even if in good faith the Board considers the problem unsolvable. The Board is

charged with certain duties under the Act that it must implement and which it cannot avoid.

Accordingly, we are constrained to remand this matter back to the Board, so that it shall consider if the conditions in N.J.S.A. 40A:5A-19 exist and, if so, take the steps that it must under this statute.

We have considered the parties' remaining arguments on this issue and conclude they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Dismissed in part and remanded in part. We do not retain jurisdiction.