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

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3557-15T1

NORTH ORATON URBAN RENEWAL,
LP,

Plaintiff,

v.

CITY OF EAST ORANGE,

Defendant-Appellant,

and

BOCA ENVIRONMENTAL,

Defendant-Respondent,

and

THE MARY COCOZIELLO IRREVOCABLE
TRUST,

Defendant/Intervenor.

Argued February 6, 2018 — Decided April 17, 2018

Before Judges Sumners and Moynihan.

On appeal from Superior Court of New Jersey,
Chancery Division, Essex County, Docket Nos.
C-000146-14, C-000147-14 and C-000148-14.

John F. Casey argued the cause for appellant (Chiesa Shahinian & Giantomasi, PC, attorneys; John F. Casey, on the brief).

Jerrold S. Kulback argued the cause for respondent BOCA Environmental, Inc. (Archer & Greiner, attorneys; Jerrold S. Kulback and Benjamin D. Morgan, on the brief).

Susan B. Fagan-Rodriguez argued the cause for respondent Tower Lien, LLC (Robert A. Del Vecchio, attorney; Susan B. Fagan-Rodriguez, of counsel and on the brief).

PER CURIAM

Defendant City of East Orange appeals from that part of the Chancery Division's¹ March 7, 2016 final judgment setting interest rates on tax payments made by defendant Boca Environmental after acquiring a later-voided tax sale certificate.² East Orange argues the judge erroneously assessed interest at the rate set forth in N.J.S.A. 54:4-67(c), and should have applied the post-judgment rate provided in Rule 4:42-11(a). We disagree and affirm for the reasons Judge DeAlmeida expressed in his written memorandum opinion.

¹ Due to the narrow issue considered here, it is unnecessary to recite the full procedural history of this multi-party, multi-faceted litigation; but we note Chief Justice Rabner ordered all remaining matters transferred to the Chancery Division and temporarily assigned Judge Patrick DeAlmeida to handle them to resolution. We do not see that order is part of the record.

² The tax sale certificate was originally purchased by Fidelity Tax, LLC; Boca is its successor in interest.

The tax sale certificate related to a property owned by North Oraton Urban Renewal, LP. East Orange approved the property for development as a forty-two unit low-income residential building, and it was deemed tax-exempt by East Orange under the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 to -22. North Oraton, pursuant to a Financial Agreement with East Orange, agreed to make annual service charge payments in lieu of taxes.

When East Orange discovered that North Oraton failed to make payments and otherwise comply with the Financial Agreement, it unilaterally rescinded the tax abatement and subsequently issued the tax sale certificate later transferred to Boca. Boca made several tax payments after the transfer.

After ruling, in connection with related litigation, that East Orange wrongfully annulled the tax abatement, Judge DeAlmeida reinstated the abatement, declared the tax sale certificate invalid when issued, and vacated it.

In fashioning an appropriate remedy, Judge DeAlmeida ordered East Orange to refund both the purchase price of the certificate, with interest at the post-judgment rate, R. 4:42-11(a), and Boca's subsequent tax payments. After allowing further briefing on the interest rate to be applied to those subsequent payments, the judge concluded Boca was "entitled to receive interest at the

statutory rate applicable to delinquent taxes" as set in N.J.S.A. 54:4-67(c).

The determination of which interest rate to apply is a legal one which we review de novo. Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). We find compelling Judge DeAlmeida's analysis of the tax sale certificate legislation, and his equitable rationale that Boca should receive, in accordance with that legislation, what it expected when it made the subsequent tax payments. We thus affirm his thoughtful, well-reasoned ruling which was influenced by Crusader Servicing Corp. v. City of Wildwood, 345 N.J. Super. 456 (Law Div. 2001), and highlight the following points.

Although the judge awarded interest at the post-judgment rate on the voided tax sale certificate – the "lawful interest" rate found appropriate in Brinkley v. W. World, Inc., 281 N.J. Super. 124, 130-32 (Ch. Div. 1995), aff'd as modified and remanded, 292 N.J. Super. 134 (App. Div. 1996) – he found applying that interest rate to subsequent tax payments would "undermine the purposes of the . . . statutes by discouraging investment in tax sale certificates and subsequent tax payments by lienholders." He insightfully recognized that Boca was not a judgment creditor of East Orange, but a party entitled to a refund of money of which East Orange had long use.

Judge Callinan, in Crusader Servicing, logically determined that because the certificate holder paid subsequent taxes "with the justifiable expectancy of being redeemed at the statutory rate of interest, . . . the property owners should have fully expected to be liable for interest at the [eight/eighteen percent] rate on taxes unpaid for almost three years." 345 N.J. Super. at 464. He also observed that the property owners "enjoyed the use of the tax money through the period of their delinquency"; the City used the tax certificate purchaser's funds during this period; and the tax certificate purchaser was the only party not at fault. Id. at 464-65.

Here, Judge DeAlmeida similarly recognized Boca's "legitimate and reasonable expectation" that it would recover interest under N.J.S.A. 54:4-67 on the tax payments it made after purchasing the certificates. He noted, "Boca's predecessor purchased the tax sale certificate in good faith intending to profit from its investment, as contemplated by the statutory mechanism enacted to facilitate the smooth collection of revenue by municipalities and to discourage tax delinquencies by property owners." We agree with his sound analysis, and his conclusion that Boca was entitled to the higher rate of interest under N.J.S.A. 54:4-67(c) on the subsequent tax payments.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION