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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the 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-4655-16T4

CITADEL FEDERAL CREDIT UNION,

Plaintiff-Appellant,

v.

NEW JERSEY MOTOR VEHICLE
COMMISSION and STACY SUTTON,

Defendants-Respondents.

Argued May 7, 2018 – Decided May 21, 2018

Before Judges Sabatino and Firko.

On appeal from Superior Court of New Jersey,
Law Division, Gloucester County, Docket No.
L-1439-16.

Jacob S. Perskie argued the cause for
appellant (Fox Rothschild LLP, attorneys;
Jacob S. Perskie, of counsel and on the
briefs; Caroline R. Robb, on the briefs).

Jennifer R. Jaremback, Deputy Attorney
General, argued the cause for respondent New
Jersey Motor Vehicle Commission (Gurbir S.
Grewal, Attorney General, attorney; Melissa H.
Raksa, Assistant Attorney General, of counsel;
Jennifer R. Jaremback, on the brief).

PER CURIAM

Plaintiff Citadel Federal Credit Union appeals from a March 3, 2017 Law Division order which dismissed its complaint with prejudice for failing to state a cause of action against defendant, New Jersey Motor Vehicle Commission ("MVC"). We affirm.

We have considered the facts in the record submitted by the parties in support of, and in opposition to, the motion to dismiss in the light most favorable to plaintiff. Printing Mart v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989); see also Major v. Maquire, 224 N.J. 1, 26 (2016).

Plaintiff provided defendant Stacy Sutton with an automobile loan in the amount of \$47,000 in 2014 for the purchase of a vehicle. The original title documents reflected the security interest.¹ At oral argument on the appeal, counsel for MVC suggested that Sutton may have presented a fabricated payoff letter to MVC falsely indicating that the loan was paid off. The duplicate title was not provided to plaintiff. Sutton sold the vehicle to a bona fide purchaser without satisfying plaintiff's

¹ For reasons not explained in the record, MVC issued a duplicate title to her for the vehicle without reflecting plaintiff's security interest.

security interest. She then filed for bankruptcy and had plaintiff's loan discharged.²

Plaintiff filed a complaint alleging breach of contract against Sutton and negligence against the MVC.

MVC filed a motion to dismiss with prejudice based on the immunity afforded in N.J.S.A. 59:2-5. In opposition, plaintiff argued that MVC is not protected from liability because its failure to record plaintiff's lien is a ministerial act which is not immune under the Tort Claims Act ("TCA"), N.J.S.A. 59:1-1 to 59:14-4. Plaintiff further emphasized that it has no remedy if MVC is afforded immunity.

Judge David W. Morgan dismissed the complaint with prejudice as to MVC. In an oral opinion, Judge Morgan found that the TCA should not be read narrowly and the mere fact that the word "title" does not appear in the statute is not enough to prevent its application to this case. The judge also found that the statutory immunity should be interpreted to apply to circumstances in which a governmental entity is charged with the responsibility of creating and issuing thousands of documents and there is a potential for error in the way the documents are produced. On

² Plaintiff claims it never was served with the petition for bankruptcy and that it never participated in the bankruptcy proceedings.

appeal, both parties reiterate the arguments made to the trial judge.³

A reviewing court "'appl[ies] a plenary standard of review from a trial court's decision to grant a motion to dismiss.'"⁴ Gonzalez v. State Apportionment Comm'n, 428 N.J. Super. 333, 349 (App. Div. 2012) (quoting Rezem Family Assocs., LP v. Borough of Millstone, 423 N.J. Super. 103, 114 (App. Div. 2011)). In the dismissal context, this court owes "'no deference to the trial court's conclusions.'" Ibid.

A governmental entity's ministerial functions in authorizing permits, licenses, certificates, approval, orders, or similar authorizations are granted immunity, as stated in pertinent part:

A public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where the public entity or public employee is authorized by law to determine whether or not such authorization should be issued, denied, suspended or revoked.

[N.J.S.A. 59:2-5 (emphasis added).]

³ The record reflects that Sutton filed a petition in bankruptcy in the United States District Court of New Jersey in January 2017. Plaintiff withdrew its request to enter default against her in light of the automatic stay provisions set forth in 11 U.S.C.A. § 362.

⁴ See Rule 4:6-2(e).

"[T]he immunity granted in N.J.S.A. 59:2-5 is pervasive and applies to all phases of licensing function, whether the governmental acts be classified as discretionary or ministerial." Malloy v. State, 76 N.J. 515, 520 (1978). Moreover, "the requirement that the public entity be 'authorized by law to determine' whether a license, etc. be issued, denied, suspended or revoked" does not "limit such immunity to the decision-making process." Ibid. This requirement only serves "to identify the public entity to whom the immunity extends" Ibid.

The Comment to N.J.S.A. 59:2-5 instructively states:

This immunity is necessitated by the almost unlimited exposure to which public entities would otherwise be subjected if they were liable for the numerous occasions on which they issue, deny, suspend or revoke permits and licenses. In addition, most actions of this type by a public entity can be challenged through an existing administrative or judicial review process. See Tyrell v. Burke, 110 N.J.L. 225 (E. & A. 1933); Bedrock Foundations, Inc. v. Geo. H. Brewster & Son, Inc., 31 N.J. 124 (1959); Cf. Visidor Corp. v. Cliffside Park, 48 N.J. 214 (1966).

[Comment, N.J.S.A. 59:2-5.]

"Licensing activity is a vital exercise of governmental authority" and "[i]t is inevitable that with such a staggering volume of activity, mistakes, both judgmental and ministerial, will be made." Malloy, 76 N.J. at 521. "The purpose of the

immunity [codified at N.J.S.A. 59:2-5] is to protect the licensing function and permit it to operate free from possible harassment and the threat of tort liability." Ibid.

In Malloy, the plaintiff sued the Real Estate Commission in the Department of Insurance for sending a notice that he had failed the real estate license exam when, in fact, he had passed. Id. at 516. For the reasons stated above, the Court found that even though giving notice was not a discretionary act and was instead a ministerial one, N.J.S.A. 59:2-5 granted immunity. Id. at 520-21.

With respect to the matter at hand, MVC's obligation to notate the security interest on title is set forth in N.J.S.A. 39:10-14, in relevant part, as follows:

The director [of the MVC] shall, on the record or abstract of every motor vehicle registered with him, which is subject to a security interest of which notice is required to be filed with him, make a notation of the existence of such security interest and shall index the same under the name of the owner of record of the vehicle, so long as the security interest remains unterminated of record.

[N.J.S.A. 39:10-14 (emphasis added).]

Issuance of a duplicate certificate is addressed in N.J.S.A. 39:10-12, in pertinent part:

If certificate of ownership, or title papers, are lost, the [MVC] director may, upon proof of certification or otherwise in the

manner required by him and if satisfied of the bona fides of the application, prepare a certificate of ownership, certify it and authorize its use in place of the original, with the same effect as the original.

[N.J.S.A. 39:10-12 (emphasis added).]


It is noteworthy that the word "may" and not "shall" appears in this latter statutory excerpt, thus providing MVC with discretion when issuing a duplicate certificate. See Aponte-Correa v. Allstate Ins. Co., 162 N.J. 318, 325 (2000) ("Under the 'plain meaning' rule of statutory construction, the word 'may' ordinarily is permissive and the word 'shall' generally is mandatory."); see also State v. C.W., 449 N.J. Super. 231, 250 (App. Div. 2017).

Moreover, the express terms of N.J.S.A. 59:2-5 cover the MVC's issuance of an erroneous duplicate title because the terms of the statute must be construed according to their intended meaning. A duplicate title functions as a "similar authorization," in that it allows the individual listed on the document to hold himself or herself out as the owner of the vehicle.

The motion to dismiss with prejudice as to MVC therefore was properly granted.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION