SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1096-21

ACTLIEN HOLDING INC.,
by its Custodian US BANK,

Plaintiff-Appellant,

v.

MARIANNE MC AULIFFE,
MR./MRS. MC AULIFFE,
spouse of MARIANNE
MC AULIFFE, FREYA
SIEGAL, her heirs, devisees
and personal representatives
and their or any of their
successors in right, title and
interest,

Defendants,

and

OAK TREE EQUITIES, LLC,

Defendant/Intervenor-
Respondent.

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Argued March 6, 2022 – Decided March 16, 2023

Before Judges Gooden Brown and Fisher.

On appeal from the Superior Court of New Jersey, Chancery Division, Monmouth County, Docket No. F-000047-21.

Amber J. Monroe argued the cause for appellant (Gary C. Zeitz, LLC, attorneys; Gary C. Zeitz, Robin I. London-Zeitz, Amber J. Monroe and Linda S. Fossi, on the briefs).

Steven W. Griegel argued the cause for respondent (Roselli Griegel Lozier & Lazzaro, PC, attorneys; Steven W. Griegel, on the brief).

PER CURIAM

Since the middle of the last century and until recently, a party obtaining an interest in real property could not intervene in a pending tax sale foreclosure action unless it bought the interest for more than "nominal consideration." N.J.S.A. 54:5-89.1. The Legislature changed this, effective September 24, 2021, to preclude the right to redeem or intervene in that circumstance if the interest was acquired for "less than fair market value." L. 2021, c. 231, § 1. In this appeal, plaintiff Actlien Holding, Inc. argues that the chancery judge erred in refusing to reconsider an order that permitted Oak Tree Equities, LLC to redeem and intervene that was entered prior to the effective date of the new law. We conclude that the new law does not apply to interests acquired prior to the law's effective date and, therefore, affirm.

We briefly recount the relevant facts. On October 18, 2018, Actlien purchased a tax sale certificate from the Ocean Township Tax Collector on property owned by defendant Marianne McAuliffe. Actlien filed this action to foreclose on January 5, 2021.

On February 8, 2021, McAuliffe contracted to sell the property to Oak Tree for $152,500. Nine days later, the chancery judge entered an order requiring Actlien to show cause why Oak Tree should not be permitted to intervene and redeem. The moving and opposing papers revealed a dispute about the value of the property: Actlien's assertions suggested the property possessed a value of $390,000 while Oak Tree provided evidence placing its value at $260,000. But, accepting either position, there was no doubt that $152,500 constituted more than nominal consideration.[1] The judge, in thoroughly fulfilling his "oversight" role, Green Knight Cap. LLC v. Calderon, 252 N.J. 265, 275 (2012); Simon v. Cronecker, 189 N.J. 304, 336 (2007), heard from McAuliffe during the July 9, 2021 proceedings, concluded that she knowingly and voluntarily contracted with Oak Tree, and granted Oak Tree's application.

The judge's order was entered on July 9, 2021. Two months later, the Legislature amended N.J.S.A. 54:5-89.1. A week after the statute was amended,

[1] McAuliffe netted $135,000, as required by the July 9, 2021 order.

Oak Tree submitted a deed to the property to the County Clerk for recordation, and two weeks after that, Oak Tree provided the funds to the municipality to redeem the tax sale certificate. There is no dispute that the Oak Tree/McAuliffe transaction closed prior to the new statute's effective date. There is also no clear explanation for why Oak Tree did not forward the funds to redeem until after the effective date.

Immediately after the attempted redemption, Actlien sought reconsideration of the July 9, 2021 order. The chancery judge denied the motion on November 19, 2021, and dismissed Actlien's complaint on December 9, 2021.

In appealing, Actlien argues that the chancery judge erred in finding the amended statute applied only to transactions or intervention/redemption orders after its effective date and in finding that the reconsideration motion was time barred. Because we conclude that the new version of N.J.S.A. 54:5-89.1 applied only to interests acquired in property after September 24, 2021, the new statute had no bearing or impact on Oak Tree's right to intervene or redeem, or on the validity of the July 9, 2021 order. For that reason, we need not consider whether Actlien's reconsideration motion, filed three months after the July 9, 2021 order, was timely; we assume it was.

This appeal, instead, turns on the effective date of the new version of N.J.S.A. 54:5-89.1, and what impact that effective date has in this context. To start any analysis about the impact of amending legislation on circumstances that have occurred or have yet to occur, a court must first resort to what the Legislature said. Here, the Legislature expressed its desire to "protect[] . . . homeowner[s] in foreclosure from [] excessively low intervening offer[s]," Statement to L. 2021, c. 231, and declared that the amendment "shall take effect immediately," L. 2021, c. 231, § 2. So, the legislative desire to protect homeowners was not fulfilled until the new statute was signed into law on September 24, 2021.

The question for us that arises from these circumstances is whether the Legislature intended to undo all those transactions that occurred, or orders entered, prior to September 24, 2021. We hold it didn't.

The evidence relevant to our consideration of the new law's impact is not disputed. The record leaves no doubt that the homeowner entered into a contract with Oak Tree, that Oak Tree sought intervention, and that the judge permitted intervention and redemption, all prior to the new law's effective date. On the other hand, the record reveals that redemption was not attempted until after the new law's effective date.

Somewhat similarly, the Supreme Court enacted a new law that prohibited the use of step-down provisions in motor vehicle liability policies issued to corporate or business entities; the Legislature directed that this new law – designed to overrule a two-year-old Supreme Court decision – was to "take effect immediately," like here. See James v. N.J. Mfrs. Ins. Co., 216 N.J. 552, 562 (2014) (quoting L. 2007, c. 163, § 2). The issue presented in James – similar to the question presented here – was whether the new law "was intended to apply to an accident that preceded its effective date, but which occurred during the life of a policy that was in force at the time of the statute's enactment." Ibid. So too here, the question is whether the new version of N.J.S.A. 54:5-89.1 was intended to apply to a transaction that occurred prior to its effective date even though the transaction was not fully consummated until after.

The James Court provided the principles that must guide our ruling on that question. We may give the new law a retroactive effect, as Actlien argues, when:

> (1) . . . the Legislature expresses its intent that the law apply retroactively, either expressly or implicitly; (2) . . . an amendment is curative; or (3) . . . the expectations of the parties so warrant.
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> [James, 216 N.J. at 563 (citing Cruz v. Cent. Jersey Landscaping, Inc., 195 N.J. 33, 46 (2008); In re D.C., 146 N.J. 31, 50-51 (1996); Twiss v. State, 124 N.J. 461, 467 (1991); Gibbons v. Gibbons, 86 N.J. 515, 522-23 (1981)).]

We find that none of these circumstances requires the retroactive application of the new law to undo the McAuliffe-Oak Tree transaction or the July 9, 2021 order.

First, there is nothing about the language utilized by the Legislature in acting to increase the consideration a party in Oak Tree's position must provide to acquire a property interest that would suggest the Legislature's intent to apply that change retroactively. While the new version certainly and clearly expresses a change in the law that had applied when the judge permitted intervention and redemption – that those seeking to intervene and redeem must now demonstrate that they have purchased their interests for "fair market value" rather than for more than "nominal consideration" – the Legislature stated that this change was to be effective "immediately," which connotes the moment the law was enacted but no sooner. So, any transaction forming the basis for a motion to intervene that occurred before the new statute's effective date and any approval of the right to intervene and redeem that occurred before the effective date were, by clear implication, not expressly impacted by the new law.

James's second principle recognizes that laws may be given retroactive effect when they are "curative." 216 N.J. at 563. That, however, is too broad a concept in this context, where we must drill down further and ask for whose

benefit has the prior version of the statute been cured. To answer that question we must further understand the evolution of the statutory principles contained in the Tax Sale Law, N.J.S.A. 54:5-1 to -137, and the ongoing battle between tax sale certificate holders, and those intervening after foreclosure has been sought. See Green Knight, 252 N.J. at 270-71. In light of how the Court viewed the evolution of the law in this area in Green Knight, it may be said that the new version of N.J.S.A. 54:5-89.1 is "curative." But the cure was not intended for Actlien's benefit. It is the homeowner who benefits from the new law.

To explain, for many years the law exalted the tax sale certificate holder's position over the positions of both the homeowner and the party acquiring an interest during the foreclosure proceedings. See Green Knight, 252 N.J. at 270 (recognizing that, in decisions like Bron v. Weintraub, 42 N.J. 87, 95 (1964), the Court viewed the Tax Sale Law as being "intended to 'support tax titles'" and that "those who intervene in the process 'should not be tolerated'"). Even after the statute was amended to allow parties like Oak Tree to intervene when their interest was acquired for more than "a nominal consideration," the Court still "expressed disdain for those who 'insinuate[] [themselves] into the scene for the sole purpose of furthering [their] own pecuniary interests.'" Wattles v. Plotts, 120 N.J. 444, 453 (1990). It was not until Simon v. Cronecker, 189 N.J. at 311,

that the Court recognized the benefit parties like Oak Tree provide – in their "commercial competition" with tax sale certificate holders like Actlien – for homeowners like McAuliffe. The most recent amendment to N.J.S.A. 54:5-89.1 alters the mise-en-scène in which these three players find themselves by improving the homeowner's position through the requirement that last-minute investors must pay "fair market value" for the interest acquired to obtain intervention and the right to redeem. In short, the new law may be "curative," but not for tax sale certificate holders; their position wasn't changed.

The third principle recognized in James as a basis for giving a new law retroactive effect is not triggered here. There is nothing in the record and there is nothing about this particular legislation, that could possibly have led the parties to believe that a law not yet enacted could be the cause for undoing their transaction or the rights established by the chancery judge's order.

Because we conclude that the new version of N.J.S.A. 54:5-89.1 cannot serve to undo the McAuliffe-Oak Tree transaction or the July 9, 2021 order, we also conclude that it had no application when Oak Tree submitted its deed for recordation or when it forwarded the funds to redeem Actlien's tax certificate, even though those events occurred after the new law's effective date. The positions of all three interested parties – Actlien, McAuliffe and Oak Tree –

were altered, and their altered rights became vested, prior to the new law's effective date; what remained to be done after the new law's effective date was merely ministerial.

We find insufficient merit in any other specific issue or contention posed by Actlien to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION