

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

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-2710-20**

FARRIS ALBASIR,

Plaintiff-Appellant,

v.

CITY OF HOBOKEN, LINDA
LANDOLFI, and GEORGE
DESTEFANO,

Defendants-Respondents.

Submitted March 30, 2022 – Decided February 27, 2023

Before Judges Accurso and Marczyk.

On appeal from the Superior Court of New Jersey,
Law Division, Hudson County, Docket No.
DC-012428-20.

Farris Albasir, appellant pro se.

Hoagland, Longo, Moran, Dunst & Doukas, LLP,
attorneys for respondents (Jack M. Middough, of
counsel and on the brief).

The opinion of the court was delivered by

ACCURSO, J.A.D.

Farris Albasir appeals on his own behalf from an order dismissing his complaint against defendants City of Hoboken, Linda Landolfi, and George DeStefano in connection with his attempt to redeem five bearer bonds issued by the City in 1962. We reverse the order and remand to the trial court for further proceedings consistent with our opinion.

The City of Hoboken issued the bonds, "High School Bond, Series A," in 1962. Having a face value of \$1,000, the bonds paid interest of 3.85% each June 1 and December 1, with principal due June 1, 1997, "principal and interest payable at the Office of the City Treasurer Hoboken, New Jersey." Albasir came into possession of Nos. 531, 542, 543, 544, and 545 of the Series A bonds in 2018 through an anonymous gift to the Islamic Center of the Almahdydeen Foundation, of which Albasir is president. In addition to the Hoboken bonds, the anonymous donor also gifted the Center several other bearer bonds, including those issued by the City of Newark, the Parsippany-Troy Hills Board of Education, the Jersey City Sewerage Authority and the Long Beach Sewerage Authority.

Albasir contacted Hoboken's finance office, specifically defendants Landolfi and DeStefano, to redeem the Series A bonds and attached coupons.

They advised Albasir in a series of emails that the City's paper records of the bonds had been destroyed in Superstorm Sandy, that the bonds likely escheated to the State in 2000, and that it "[l]ooks like all [high school Series A] bonds were cashed already" according to "the city audit reports" through 2002.

When Albasir persisted in asking the City to investigate how the bonds he held could have been redeemed without presentation, Landolfi and DeStefano contacted the police to report him of suspected wrongdoing in connection with his possession of the bonds.

Albasir also sought information from U.S. Bank Corporate Trust Services and New Jersey's Unclaimed Property Administration, both of which directed him back to the City. An investigator for Unclaimed Property advised Albasir she contacted JP Morgan, Wells Fargo, BNY Mellon and U.S. Bank, all of which indicated "no funds pertaining to the [Series A] bearer bonds and coupons . . . were escheated to the State of New Jersey Unclaimed Property." The investigator added that BNY Mellon noted the Office of the City Treasurer was listed as the redemption agent and suggested he follow up with the City for more information.

When his efforts with the City yielded no further information, Albasir filed a Special Civil Part complaint seeking \$14,500 in damages for the City's

failure to pay all principal and interest due on his presentation of the bonds.

The City failed to timely answer, resulting in its default pursuant to Rule 6:6-

2. Albasir subsequently moved for entry of default judgment in accordance with Rule 6:6-3.

After the time permitted for response, the City filed a cross-motion to vacate the default, supported by the certification of its counsel. Counsel attributed the City's delay in responding to the complaint to the pandemic without any further explanation and referred the court to a "proposed" motion to dismiss, attached as an exhibit to the certification, for the City's "several meritorious defenses" to plaintiff's complaint. The exhibit consisted of a notice of motion to dismiss the complaint, dated the same day as the City's motion to vacate the default, and a brief arguing the complaint should be dismissed for plaintiff's lack of standing, his failure to set forth a contract between the parties the City breached, resulting in damages, and that plaintiff had failed to exhaust his administrative remedies.

Albasir opposed the City's motions, arguing, among other things, that he could not exhaust his administrative remedies without the City advising whether it redeemed Series A bond Nos. 531, 542, 543, 544, and 545 without requiring presentation of the original bonds in his possession or escheated the

sums owing on the bonds to the State in accordance with N.J.S.A. 46:30B-46. Albasir argued the City was obligated to either provide him "an escheatment letter" to allow him to "redeem" the bonds with interest from the Unclaimed Property Administration or "open a big investigation" to discover who fraudulently received payment on his bonds without presenting the original bonds and coupons for redemption.

Albasir attached to his certification in opposition to the motion the responses and payments he received on redeeming other bearer bonds acquired from the anonymous donor at the same time as the Series A bonds. Relying on those documents, Albasir argued the City should do as the Parsippany Board of Education and the Jersey City Sewerage Authority did in paying him the face value of the bearer bonds with interest, or as the City of Newark did in providing him its "escheatment letter" as to four \$5,000 bearer bonds maturing in 1989, thereby allowing him to collect the \$33,136.62 due on the bonds from the Unclaimed Property Administrator.

The court heard all three motions on the same date. Albasir argued for the entry of default judgment, and, in the alternative, that he was entitled to discover whether the City paid someone the sums owing on his Series A bonds or escheated the funds to the State Unclaimed Property Administration when

they went unclaimed at maturity as required by law. The City, in addition to pressing its arguments as to Albasir's lack of standing and failure to exhaust administrative remedies, raised an argument it had not briefed, that Albasir's claim was barred by the six-year statute of limitations in Article 3 of the Uniform Commercial Code governing negotiable instruments, specifically N.J.S.A. 12A:3-118.

When the court queried counsel for the City about what proof the City had of the sums paid out on the Series A bonds, counsel responded by saying "So that's an interesting issue." Counsel went on to explain he was told the City's records relating to these bonds were destroyed in Superstorm Sandy and his understanding was that the City was "not able to say whether it was paid out on somebody attempting to redeem the bearer bond, or whether it was paid to New Jersey Unclaimed Property." Counsel nevertheless maintained it was unnecessary "to get into the nitty gritty of each of these emails [relied on by Albasir], who reported the [escheat] letter to . . . the paying agent, the City, the State" because the claim was barred by the statute of limitations and "Albasir would be better served exhausting his administrative remedies."

The judge denied plaintiff's motion for default judgment and granted the City's motions to vacate default and dismiss the complaint. In her written

statement of reasons, the judge relied on the issue the City failed to brief, that Albasir's claim was barred by the statute of limitations.

The judge reasoned that "N.J.S.A. 40:14A-15 states that bonds are negotiable instruments subject to the Uniform Commercial Code," and "N.J.S.A. 12A:3-118 codifies the UCC's statute of limitations applicable to negotiable instruments." Relying on the provisions cited to the court by the City's counsel at oral argument, the judge determined Albasir's claim was barred either by the six-year statute of limitations in N.J.S.A. 12A:3-118(a) ("an action to enforce the obligation . . . to pay a note payable at a definite time must be commenced within six years after the due date") or the three-year statute of limitations in N.J.S.A. 12A:3-118(g) ("an action for conversion of an instrument, . . . or to enforce an obligation, duty, or right arising under this chapter and not governed by this section must be commenced within three years after the cause of action accrues"), both of which had long since passed.

The judge rejected Albasir's argument that the discovery rule applied, noting its general inapplicability in contract actions. See Cnty. of Hudson v. State, Dep't of Corr., 208 N.J. 1, 15 (2011) ("The discovery rule is an equitable doctrine, most often utilized in personal injury litigation."). She also relied on another trial court's dismissal of a suit Albasir filed "on this very same issue in

Ocean County" on bearer bonds issued by the Long Beach Sewerage Authority that matured in 1988. Although noting there was "no reasoning attached to that order" dismissing Albasir's suit, the judge noted "the moving motion papers indicate that it was a motion to bar the claim under the statute of limitations."

Finally, although determining this case should likewise be dismissed on the statute of limitations, the judge found Albasir was not without a remedy. Accepting counsel's representations and the City's unsworn emails in the record, the judge concluded the City's records of these bonds were destroyed in Superstorm Sandy, leaving "[t]he only record at this point . . . the audit report showing that the bonds were redeemed, with no information of the payee." Apparently concluding on that basis no further useful information could be gleaned from the City, the judge found Albasir could "still file a formal claim before the New Jersey Unclaimed Property Administration to see if the bonds were deposited there." Because the judge found the statute of limitations dispositive of the issue before the court, she did not address the City's other arguments.

We review a decision to dismiss under Rule 4:6-2 de novo, without "deference to the trial court's legal conclusions." Dimitrakopoulos v. Borrus,

Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 108 (2019). A claim on a bearer bond is not an issue arising frequently in our Special Civil Part. Indeed, disputes over bearer bonds are likely rare anywhere at this point, the federal government having essentially ended their use forty years ago when it ended the federal income tax exemption for the interest earned on publicly offered state and local bonds unless they were issued in registered form rather than as bearer bonds. See South Carolina v. Baker, 485 U.S. 505, 507-09 (1988) (explaining the effect of § 310 of the Tax Equity and Fiscal Responsibility Act of 1982, 26 U.S.C. § 103(j)(1), "on publicly offered long-term bonds issued by state and local governments").

It's likely for that reason, and the City's failure to brief the issue, that confusion arose over the applicable statute of limitations on Albasir's claim on the Series A bonds. We do not propose to resolve the issue here. We are, however, confident the statute on which the trial court relied, N.J.S.A. 12A:3-118, does not apply.¹ Thus, we reverse the order dismissing Albasir's complaint and remand for its reinstatement and discovery.

¹ We also agree the court was correct that the discovery rule does not apply to this action. See Cnty. of Morris v. Fauver, 153 N.J. 80, 110 (1998) (explaining "[t]he rationale for employing the discovery rule in tort- or fraud-type actions . . . does not carry over to most contract actions").

First, although the copies of the bonds in the appendix are too blurry to allow any definitive pronouncements, it is highly unlikely Albasir's Series A bonds were issued under the statute on which the court relied, N.J.S.A. 40:14A-15, to conclude the bonds were negotiable instruments subject to the Uniform Commercial Code. While we have no doubt these bonds are governed by New Jersey's version of the Uniform Commercial Code, N.J.S.A. 40:14A-15 is part of the Sewerage Authorities Law, 40:14A-1 to -45. Albasir's bonds were not issued by a sewerage authority but by the City of Hoboken to raise funds to build one or more high schools.

More to the point, while commentators have suggested a bearer bond "might fit" the Uniform Commercial Code's definition of a negotiable instrument, as it represents "the unconditional obligation of the issuer to pay principal and interest at stated maturity dates," the Code makes clear that Article 3 provisions governing negotiable instruments do not apply to securities, such as Albasir's bearer bonds, which are governed by the Article 8 rules on investment securities. See 28 Egon Guttman, Modern Securities Transfers § 1.7 (4th ed. 2022); see also Rudbart v. N. Jersey Dist. Water Supply Comm'n, 127 N.J. 344, 357 (1992) ("Securities are governed by Article 8 of the Uniform Commercial Code.").

N.J.S.A. 12A:3-102 makes the point expressly: "This chapter applies to negotiable instruments. It does not apply . . . to securities governed by chapter 8." N.J.S.A. 12A:8-102(15), as relevant to this matter, defines a security as

an obligation of an issuer . . .

(a) which is represented by a security certificate in bearer or registered form . . .

(b) which is one of a class or series . . . and

(c) which:

(A) is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) is a medium for investment and by its terms expressly provides that it is a security governed by this chapter.

A bearer bond, according to the definitions in chapter 8, is "a security that is represented by a certificate" that "is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement."

N.J.S.A. 12A:8-102(2) and (4).

N.J.S.A. 12A:8-103(d) makes explicit "[a] writing that is a security certificate is governed by this chapter and not by chapter 3, even though it also meets the requirements of that chapter." These statutes make plain N.J.S.A.

12A:3-118 does not govern the Hoboken Series A bearer bonds, and thus the trial court erred in finding Albasir's claim barred on that basis.

The court also erred in surmising Albasir's claim in Ocean County on the bearer bonds issued by the Long Beach Sewerage Authority, which matured in 1988, was dismissed based on the statute of limitations. Although the disposition of Albasir's other bearer bonds of the same vintage is, of course, irrelevant to this action, we understand his reason for providing them to the court and counsel for the City. The concept of "relevancy" is often not clear to parties representing themselves in our courts. Albasir was obviously attempting to argue the New Jersey issuers of the other bearer bonds donated to the Center honored their bonds, notwithstanding they were presented decades after their maturity dates, or directed him to the Unclaimed Property Administration to permit him to collect the proceeds of the bonds escheated to the State when the funds went unclaimed, as was the case with the Newark school bonds.

A closer look at the documents from the Ocean County case makes clear Albasir's claim was dismissed on a Rule 4:6-2 motion because he sued the wrong party, not because the court concluded the claim on the bonds was time barred (although the Township raised that issue as well). Albasir sued the

Township of Long Beach to recover on bearer bonds issued by the Long Beach Sewerage Authority, notwithstanding the bonds expressly stated "[t]his bond and the coupons appertaining thereto are payable solely from and secured by a lien upon and pledge of the net revenues derived from the operation of the Sewer System of the Long Beach Sewerage Authority" and that it was "expressly agreed by the holder of this Bond that such holder shall never have the right to require or compel the exercise of the taxing power of . . . [the] Township [of Long Beach] for the payment of the principal and interest on this Bond." The decision in the Ocean County case thus provides no support for the trial court's decision here.

The trial court did not reach the City's other arguments in support of its motion, Albasir's alleged lack of standing, his failure to assert a claim for breach of contract and his failure to exhaust administrative remedies. The first two arguments are without sufficient merit to warrant extended discussion in a written opinion. See R. 2:11-3(e)(1)(E). A bond is a contract between the issuer and the bond's owner, Rudbart, 127 N.J. at 352, which in the case of a bearer bond is the person in possession of the bond, Baker, 485 U.S. at 508. Albasir is thus the owner of the bonds who has sued the City for breach of contract for failure to pay the principal and interest due on the bonds on

presentment. Accordingly, we reject the City's claim that Albasir lacks standing to sue on the bonds or has failed to state a claim for breach of contract.

The City's exhaustion argument is likewise unavailing, but we address it to provide guidance on remand. New Jersey's version of the Uniform Unclaimed Property Act, N.J.S.A. 46:30B-1 to -109, is a "custody" escheat statute, meaning "holders of unclaimed property turn the property over to the State for safekeeping though the original property owner retains the right to recover the proceeds of the property" in perpetuity. Treasurer of N.J. v. U.S. Dep't of Treasury, 684 F.3d 382, 389 (3d Cir. 2012). A government obligation, like Albasir's Series A bonds, is "presumed abandoned" if it remains "unclaimed for more than one year after it became payable." N.J.S.A. 46:30B-41.2.

On delivery of the unclaimed obligation to the Unclaimed Property Administrator, the State "assumes custody and responsibility for the safekeeping of the property," and the issuer of the obligation, such as the City here, is unconditionally relieved of further liability. N.J.S.A. 46:30B-61; Clymer v. Summit Bancorp., 171 N.J. 57, 63 (2002). If a claim is subsequently made against the issuer for unclaimed property it escheated to the

State, the Unclaimed Property Act requires the Unclaimed Property Administrator to defend the issuer against the claim and indemnify it "against any liability on the claim to the extent of the property paid or delivered to the administrator on behalf of the apparent owner." N.J.S.A. 46:30B-65.

Thus, the design of the Act is not to force a claimant to exhaust his administrative remedies with Unclaimed Property before suing the issuer on the obligation. Instead, the statute contemplates a direct claim against the issuer by the creditor on the obligation, with the issuer making demand to Unclaimed Property for defense and indemnification. See State by Parsons v. U.S. Steel Corp., 22 N.J. 341, 352 (1956) (noting with regard to the prior Act, "[t]here is no express provision in the Custodial Escheat Act which deprives the unknown owner of his right of action. The indication is clearly to the contrary."). The City has provided us no authority for the proposition it can force Albasir to exhaust his remedies before the Unclaimed Property Administrator in the absence of proof the City escheated the sums due on the bonds to the Administrator. Cf. Pagano v. United Jersey Bank, 143 N.J. 220, 229-30 (1996) (holding bank's failure to produce proof of payment of balance of passbook savings account to State Treasurer or owner of the account precluded relief under the Unclaimed Property Act or prior statute).

Because the trial court erred in dismissing the complaint based on the statute of limitations in N.J.S.A. 12A:3-118, and none of the City's other arguments — Albasir's alleged lack of standing, his failure to assert a claim for breach of contract and exhaust administrative remedies — supports dismissal on the pleadings, we reverse the order dismissing his complaint and remand for discovery.

In that regard, we note the City has not produced any competent evidence to support the trial court's finding that the City's records of the Series A bonds were destroyed in Sandy, leaving "[t]he only record at this point . . . the audit report showing that the bonds were redeemed, with no information of the payee." Leaving aside the City never addressed the existence of computerized records of these bonds, the City's motion was supported only by the certification of its counsel, who made clear at argument he had no personal knowledge of these bonds and was relying only on what he'd been told by employees of the City. See Pressler & Verniero, Current N.J. Court Rules, cmt. on R. 1:6-6 (2023) ("Affidavits by attorneys of facts not based on their personal knowledge but related to them by and within the primary knowledge of their clients constitute objectionable hearsay.").

If the City redeemed Nos. 531, 542, 543, 544, and 545 of the Series A bonds without the original certificates Albasir purports to possess, it was entitled to receive an affidavit of loss and an indemnity bond to protect itself in the event the original certificates were subsequently presented for redemption. See N.J.S.A. 12A:8-405. If the bonds remained unclaimed for a year after they were payable in accordance with their terms, the City would have been required to file an annual report with the Unclaimed Property Administration, N.J.S.A. 46:30B-46 to -49, and to remit the funds to the State, N.J.S.A. 46:30B-57.² See BBB Value Servs. v. Treasurer, State of N.J., 451 N.J. Super. 483, 490 (App. Div. 2017). "Implicit in this duty is the obligation to maintain the records necessary to prepare an accurate report." State v. Chubb Corp., 239 N.J. Super. 257, 259 (Ch. Div. 1989); see also

² N.J.S.A. 46:30B-89 provides:

An action or proceeding may not be commenced by the administrator to enforce chapter 30B of Title 46 of the Revised Statutes in regard to the reporting, delivery, or payment of property more than ten years after the holder specifically identified the property in a report filed with the administrator or gave express notice to the administrator of a dispute regarding the property. In the absence of such a report or other express notice, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

Parsons, 22 N.J. at 355 (noting only the "corporate debtor . . . has the information necessary" to permit the State to sue for custody of unclaimed wages; "[w]ithout this knowledge the excursion is a junket, a hit-or-miss proposition, an annoyance to both suitor and defendant"). Whether any such records exist or whether the City has other grounds on which to resist payment are issues to be resolved through discovery on remand.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION