SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3742-19

CITY OF UNION CITY, by and through ALEJANDRO VELAZQUEZ, as Public Officer,

Plaintiff-Respondent,

v.

CHRISTOPHER WILLIAMS,

Defendant-Appellant,

and

SUEZ WATER NEW JERSEY, INC., PUBLIC SERVICE ELECTRIC AND GAS COMPANY, and WELLS FARGO BANK, N.A.,

Defendants.

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Submitted March 14, 2023 – Decided June 2, 2023

Before Judges Gilson and Gummer.

On appeal from the Superior Court of New Jersey, Chancery Division, Hudson County, Docket No. C-000013-19.

Christopher S. Williams, appellant pro se.

Chasan Lamparello Mallon & Cappuzzo, PC, attorneys for respondent (Ryan J. Gaffney, of counsel; Mollie Hartman Lustig and Mohamed T. Hegazi, on the brief).

PER CURIAM

Defendant Christopher Williams owns property located at 906 New York Avenue, Union City (the Property). Beginning in 2015, the City of Union (the City) charged defendant with various zoning and construction code violations at the Property, including that one of the three units defendant was renting as an apartment was a non-conforming unit.

In January 2019, after defendant failed to correct many of the violations, the City sued defendant in the chancery court seeking to compel him to abate all violations at the Property. The chancery court found that defendant had failed to abate various violations and, in 2019, it entered a series of orders that, among other things, appointed a receiver for the Property and compelled defendant's compliance with the court's orders. Thereafter, defendant filed several motions essentially seeking (1) reconsideration of the court's prior orders; (2) to join the

tenants of the non-conforming unit as defendants; and (3) to have the court appoint expert witnesses.

Defendant now appeals from three orders entered on February 14, 2020, and February 28, 2020, which denied his motions for reconsideration, to join the tenants, and to appoint experts. Having reviewed the record, we discern no abuse of discretion or errors of law by the chancery court and affirm the challenged orders. We note that most of defendant's arguments concern orders defendant did not appropriately appeal. Moreover, many of his arguments lack merit and attempt to assert protections, including constitutional protections, that do not apply to the underlying zoning and construction code violations and proceedings.

I.

The record establishes that the City has spent years seeking to enforce zoning and construction codes at defendant's Property. Those efforts have included an administrative proceeding, two municipal-court actions, and an action in the chancery court. We summarize those proceedings because the procedural history is relevant background to the narrow issues that can be raised on this appeal.

The Property has three units, which for at least ten years defendant had rented as residential apartments. In the summer of 2015, the City received several complaints from defendant's tenants about poor or illegal conditions at the Property. In response, a City code enforcement officer inspected the Property and found various violations. After checking City records, the enforcement officer also determined that the ground-floor unit was zoned to be a commercial unit and there was no record that defendant had received permission to use the unit as a residential apartment.

In August 2015, the enforcement officer sent defendant a letter notifying him that the ground-floor apartment was non-conforming, the tenants in the unit needed to vacate the apartment, and defendant would be responsible for paying the tenants to relocate. Shortly thereafter, the City issued several Notices of Violations and Orders of Termination (NOVs) and Notices and Orders of Penalties (NOPs) in connection with defendant's failure to obtain building, electrical, plumbing and fire permits and a certificate of occupancy for the non-conforming unit. The City maintained that defendant had violated the State Uniform Construction Code Act (the UCC Act), N.J.S.A. 52:27D-119 to -141, and regulations promulgated under the Uniform Construction Code (UC Code), N.J.A.C. 5:23-1.1 to -12A.6.

The City represents that it initially stayed enforcement of the NOVs and NOPs because defendant told it that he would return the non-conforming unit to a commercial unit. Defendant was, however, unwilling to pay the tenants of the non-conforming unit to relocate. Accordingly, in April 2016, the City paid the tenants over $8,600 in relocation assistance and then notified defendant that he was obligated to reimburse the City.

In response, defendant requested a hearing on his obligation to pay the relocation expenses. In February 2017, a hearing concerning the relocation expenses was held before a City hearing officer. At the hearing, the City enforcement officer and defendant testified. The City and defendant also submitted documents to the hearing officer. In March 2017, the hearing officer issued a decision finding defendant liable to the City for the relocation payment. The hearing officer found that the City had demonstrated that the ground-floor apartment was non-conforming, and defendant had failed to rectify the non-conforming use.

Meanwhile, in August 2015, the City filed an action in municipal court to compel defendant to pay penalties in connection with the non-conforming unit. Defendant responded by seeking to dismiss the municipal-court complaint, but the municipal court denied that motion. Thereafter, in March 2018, the City

filed another action in municipal court to compel defendant to pay penalties in connection with construction work he had performed at the Property without appropriate permits. Ultimately, those municipal-court actions were stayed pending the disposition of this appeal.

By December 2018, defendant had still not rectified the non-conforming unit at the Property. Indeed, various City officials inspected the Property that month and found a water leak and potential fire hazards in the ground-floor unit.

Consequently, in January 2019, the City filed an order to show cause and verified complaint in the chancery court. The City sought an order requiring defendant to immediately abate all violations at the Property and appointing a receiver for the Property as authorized by the Multifamily Housing Preservation and Receivership Act (the Receivership Act), N.J.S.A. 2A:42-114 to -142.

On January 22, 2019, the chancery court entered an order to show cause with temporary restraints. That order, among other things, required defendant to immediately abate the violations identified by the City, and scheduled a hearing on the City's request for the appointment of a receiver. Defendant responded by filing an answer and contending that the court should dismiss the complaint because he resided at the Property and the Receivership Act did not apply to owner-occupied residential buildings with four or less units.

Defendant's contention that he resided at the Property directly contradicted his testimony in the February 2017 hearing regarding the relocation payment. At that hearing, defendant had testified that he did not reside at the Property.

On March 1, 2019, after hearing argument, the chancery court issued an order directing, among other things, the appointment of a receiver if defendant failed to abate the violations within three months. The City contended that thereafter defendant failed to abate the violations.

Accordingly, in September 2019, the City filed a motion to enforce the March 1, 2019 order. Defendant cross-moved to dismiss the action. Defendant contended that all violations had been remedied. He also argued that the UCC Act and UC Code regulations did not apply to the Property because the ground-floor unit at the Property had been used as a residential apartment before the UCC Act was enacted in 1975. In addition, defendant contended that the New Jersey Department of Community Affairs, rather than the City, had jurisdiction over the Property because it was a three-family-unit building.

On October 11, 2019, the chancery court issued an order, supported by a written decision, denying defendant's motion and granting the City's motion. The court concluded that defendant's jurisdiction argument was without merit

and found that defendant had failed to comply with the court's March 1, 2019 order.

During the next two months, defendant filed several motions challenging the applicability of the UCC Act to the non-conforming unit and seeking relief from the court's March 1, 2019 and October 11, 2019 orders. Defendant also sought a declaration that the non-conforming unit was legal.

On November 22, 2019, the chancery court issued an order, supported by a written decision, denying defendant's motion. The court found that the arguments defendant was making had already been considered by the court on previous motions, and, therefore, the court treated defendant's motion as a motion for reconsideration. Thereafter, the court found that the motion was untimely and lacked substantive merit because defendant had not presented any new arguments or facts that the court had not already considered.

The following month, defendant filed a motion under Rules 4:50-1 and 4:49-2 seeking relief from the chancery court's March 1, 2019, October 11, 2019, and November 22, 2019 orders. Defendant repeated many of the same arguments he had previously made, including his contention that the UCC Act and Receivership Act did not apply to the Property. Defendant also contended

that the court had overlooked certain communications he had had with City officials, which he asserted supported his position.

In January 2020, defendant filed a motion to join the tenants of the non-conforming unit as defendants. Defendant argued that the tenants should be joined because they were responsible for making repairs to the unit, had refused defendant's attempt to make repairs, and had not paid defendant rent since November 2016.

In February 2020, defendant also filed a motion to designate several zoning and construction officials from other towns as court-appointed expert witnesses. He argued that, based on conversations he had had with those officials, they would support his position that the UCC Act did not apply because the non-conforming unit had existed as a residential apartment before the UCC Act was enacted.

On February 14, 2020, the chancery court heard argument on defendant's three motions and issued decisions on the record. The court denied all three motions. The court found that defendant had failed to present any new arguments or evidence that would demonstrate excusable neglect or a meritorious defense under Rule 4:50-1. The court also pointed out that defendant's disagreement with the court's prior orders was not a valid reason for

reconsideration under Rule 4:49-2. Consequently, the court denied defendant's request for relief from the March 1, 2019, October 11, 2019, and November 22, 2019 orders.

Turning to the joinder motion, the court found that defendant had failed to present the grounds supporting joinder. The court explained that the tenants had not prevented defendant from applying for a certificate of occupancy, as required by the March 1, 2019 order, and that it was the responsibility of the receiver to address any issues regarding payment of rent.

Finally, the court found that there was no basis for the appointment of court-appointed experts. The court entered orders memorializing its decisions on February 14, 2020, and February 28, 2020. Defendant now appeals from the three orders entered in February 2020.

II.

Initially, we address a procedural issue. Having reviewed all the orders entered by the chancery court, none of them appear to be final judgments or final orders. The March 1, 2019 order granted the City most of the relief it was seeking, but in appointing a receiver, the order expressly stated that the receiver would make reports to the court. The orders entered on October 11, 2019, and November 22, 2019, are also not final orders. In the October 11, 2019 order,

the court granted the City's motion to enforce the March 1, 2019 order and denied defendant's cross-motion to dismiss the action. The November 22, 2019 order denied defendant's motions to obtain relief from the court's March 1, 2019 and October 11, 2019 orders. Like the November 22, 2019 order, the February 14, 2020 order denying defendant's motion under Rules 4:50-1 and 4:49-2 is not a final order because defendant sought relief from the court's earlier orders. Similarly, the February 14, 2020 order denying defendant's joinder motion and the February 28, 2020 order denying defendant's motion to designate court-appointed expert witnesses are not final orders.

No party raised the issue concerning the finality of the orders on appeal. Instead, the parties have fully briefed the issues. In the interest of justice, we grant leave to appeal nunc pro tunc. See Medcor, Inc. v. Finley, 179 N.J. Super. 142, 144-45 (App. Div. 1981). Accordingly, we will consider the issues raised in defendant's appeal.

III.

Nevertheless, the issues on appeal are limited. Defendant has appealed only from the orders entered on February 14, 2020, and February 28, 2020. He has not, and cannot, challenge the administrative ruling that the ground-floor residential apartment at the property is a non-conforming use. As the chancery

court correctly pointed out, to address that zoning issue defendant would need to file an application with the City's Zoning Board of Adjustment. See 21st Century Amusements, Inc. v. D'Alessandro, 257 N.J. Super. 320, 321 (App. Div. 1992) (explaining that a litigant challenging a decision by a zoning or construction official must "exhaust local administrative remedies before filing an action in the Superior Court"); N.J.S.A. 40:55D-70 (a board of adjustment has the power to, among other things, hear and decide appeals regarding the enforcement of a zoning ordinance). Consequently, the arguments that defendant makes on this appeal relating to the ground-floor apartment, were not before the chancery court and are not before us on this appeal.

One of the February 14, 2020 orders denied defendant's motion for relief from the court's orders entered on March 1, 2019, October 11, 2019, and November 22, 2019. As we have pointed out, none of those earlier orders were final orders. Accordingly, they were subject to reconsideration by the chancery court in its sound discretion "in the interest of justice." See Lawson v. Dewar, 468 N.J. Super. 128, 134 (App. Div. 2021) (explaining that interlocutory orders can be revised "at any time before the entry of [a] final judgment in the sound discretion of the court in the interest of justice" (quoting R. 4:42-2)). An appellate court "will not disturb the trial court's reconsideration decision 'unless

it represents a clear abuse of discretion.'" Kornbleuth v. Westover, 241 N.J. 289, 301 (2020) (quoting Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994)).

In his motion for reconsideration, defendant presented nothing that the chancery court had not already considered in entering the orders in 2019. Accordingly, we discern no abuse of discretion in the chancery court's decision denying reconsideration. Indeed, the interest of justice supported the chancery court's decision to enforce its earlier orders and compel the abatement of the violations at the Property.

IV.

Given the extensive procedures in this matter, we will also consider whether the chancery court correctly appointed a receiver. Defendant argues that the Receivership Act, UCC Act, and the UC Code regulations do not apply to his Property. Those arguments are not legally correct.

The City presented evidence that there were numerous construction and safety violations at the Property. Defendant did not present evidence that the violations did not exist. In addition, the hearing officer had already determined that the ground-floor apartment was a non-conforming use. The chancery court found that all the violations existed and correctly ordered defendant to abate

them. The court then gave defendant ninety days to make those abatements, but defendant failed to comply with that order. Consequently, the receiver was appointed and took control of the Property.

Defendant has presented no facts or legal arguments demonstrating that the chancery court erred in appointing a receiver. Instead, defendant contends that the orders denying his motion for relief violated his civil rights, his constitutional rights, and "equitable principles." In support of those contentions, defendant repeats the arguments he made before the chancery court. He contends that the chancery court improperly appointed a receiver for the Property because the Property is a three-family building and defendant resides there. Defendant also asserts that the non-conforming unit existed as a residential apartment before the enactment of the UCC Act and, therefore, the Act and its regulations are inapplicable. We reject these arguments as having no basis in fact or law.

The Receivership Act authorizes a court to appoint a receiver "to take charge and manage" a multifamily residential building if (1) it is in "violation of any State or municipal code to such an extent as to endanger the health and safety of the tenants . . . and the violation or violations have persisted, unabated, for at least [ninety] days preceding the date of the filing of the complaint," or

(2) there is a "clear and convincing pattern of recurrent code violations" at the building. N.J.S.A. 2A:42-117(a) to (b). The Receivership Act does not, however, apply to any building with less than five residential units so long as "the owner occupies one of the units as his or her principal residence." N.J.S.A. 2A:42-116.

The record amply supports the chancery court's appointment of a receiver for the Property. The City had identified several violations at the Property that endangered the health and safety of the tenants, including a water leak and fire hazards. The court gave defendant ninety days to abate the violations identified by the City, and he failed to do so. Further, the Property is not exempted from the Receivership Act despite containing less than five residential units because defendant did not occupy one of the units as his principal place of residence.

The UCC Act is "a broad, remedial piece of legislation, the basic purpose of which is to establish and provide for uniform building and construction standards and uniform enforcement policies and practices throughout the entire State." In re Cherry Hill Twp., 217 N.J. Super. 140, 141 (App. Div. 1987) (quoting N.J. State Plumbing Inspectors Ass'n v. Sheehan, 163 N.J. Super. 398, 401 (App. Div. 1978)). Thus, the UCC Act "preempts municipalities from providing for construction code enforcement inconsistent with [it] and its

implementing regulations." Id. at 143. Indeed, the UC Code, which took effect in 1977, expressly states it applies "to existing or proposed buildings and structures in the State of New Jersey," N.J.A.C. 5:23-2.1(c), and to "all construction undertaken after" the UC Code's effective date. N.J.A.C. 5:23-2.3.

Defendant's contention that the UCC Act and its implementing regulations do not apply to the Property ignores the plain language of the UC Code. Moreover, defendant concedes the regulations apply to all construction undertaken after 1977. Thus, they apply to the alleged unpermitted construction work defendant had performed on the Property and for which the City filed a municipal-court complaint against him. To the extent defendant contends the ground-floor unit did not need a certificate of occupancy under the regulations because it predates the enactment of the UCC Act, defendant fails to acknowledge that the hearing officer found the ground-floor unit was a non-conforming use and that the regulations provide limited exceptions only for the "continued lawful use and occupancy of any . . . lawfully existing building or structure." N.J.A.C. 5.23-2.23(e) (emphasis added).

Defendant also makes several constitutional and judicial impartiality arguments. He contends that the City has engaged in "prosecutorial misconduct" by pursuing this action despite knowing that the non-conforming unit was

created legally and by interfering with his efforts to make repairs to the Property. Defendant also asserts that his equal protection rights had been violated because the Property has been unfairly singled out for enforcement. Those arguments are not supported by any applicable law or legal principles and are without sufficient merit to warrant discussion in a written opinion. See R. 2:11-3(e)(1)(E) (explaining that an appellate court will affirm orders on appeal without discussion in its written opinion when "some or all of the arguments made are without sufficient merit").

The record amply refutes defendant's contentions that the chancery court engaged in judicial misconduct and exhibited bias against him. In all the proceedings, the chancery court consistently treated defendant with respect and patience even when defendant filed motions repeating the same arguments that it had previously considered but rejected. As the chancery court correctly noted, just because defendant disagreed with the court's rulings does not mean that those rulings were made without due and full consideration of defendant's arguments. Nothing in the record supports defendant's claims of bias.

V.

Defendant's arguments on appeal are focused on the chancery court's order denying his motion for relief from the court's March 1, 2019, October 11, 2019,

and November 22, 2019 orders. Defendant does not make any arguments regarding the chancery court's orders denying his motion to join the ground-floor tenants as defendants or his motion to designate certain zoning and construction officials as court-appointed expert witnesses. Accordingly, we deem those issues to have been waived. See Green Knight Cap., LLC v. Calderon, 469 N.J. Super. 390, 396 (App. Div. 2021) (explaining that issues not briefed on appeal are waived).

VI.

In summary, having considered all of defendant's arguments, we reject them and affirm the challenged orders. Because we have considered defendant's challenges to all orders entered by the chancery court on or before February 28, 2020, defendant will not be permitted to challenge any of those orders in a future appeal. The matter is remanded for further proceedings. We do not retain jurisdiction.

Affirmed and remanded.