SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3614-14T2

CHEROKEE LCP LAND, LLC and
LINDEN 587, LLC,

Plaintiffs-Appellants,

v.

CITY OF LINDEN PLANNING
BOARD, GOODMAN NORTH AMERICAN
PARTNERSHIP HOLDINGS, LLC, and
LINDEN PROPERTY HOLDINGS, LLC,

Defendants-Respondents.

Submitted January 18, 2017 – Decided March 2, 2017

Before Judges Yannotti and Gilson.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Docket No. L-3964-14.

Peter H. Klouser argued the cause for appellant (Heilbrunn Pape, L.L.C., attorneys; Jeffrey Zajac, on the briefs).

Anthony D. Rinaldo, Jr., argued the cause for respondent City of Linden Planning Board.

Dennis M. Toft argued the cause for respondent Goodman North American Partnership Holdings, L.L.C. (Chiesa Shahinian & Giantomasi, P.C., attorneys; James P. Rhatican and Michael G. Gordon, on the brief).

Paul H. Schafhauser argued the cause for respondent Linden Property Holdings, L.L.C. (Herrick Feinstein, L.L.P., and Chiesa Shahinian & Giantomasi, P.C., attorneys; Mr. Schafhauser and Michelle M. Sekowski, on the brief).

PER CURIAM

Plaintiffs Cherokee LCP Land, LLC (Cherokee) and Linden 587, LLC (Linden 587) appeal from a March 4, 2015 order dismissing their complaint in lieu of prerogative writs challenging preliminary and final site plan approval granted by defendant City of Linden Planning Board (Board) to defendant Goodman North America Partnership Holding, LLC (Goodman). We affirm because the trial court correctly found that neither Cherokee nor Linden 587 had standing to challenge the site plan approval.

I.

Goodman seeks to redevelop vacant property into an industrial campus of warehouses, distribution facilities, and office space (the Project). The property to be developed consists of approximately 143 acres located in a heavy industrial zone on the Tremley Point Peninsula adjacent to the Arthur Kill in Linden, New Jersey (the Property). Linden Property Holdings, LLC (LPH) currently owns the Property and Goodman has a contract to purchase the Property.

In May 2014, Goodman submitted an application to the Board seeking preliminary and final site plan approval to redevelop the Property. The proposed Project calls for the construction of an industrial campus of five buildings with over 2.8 million square feet of warehouse and office space.

The Board held a public hearing on June 10, 2014, to consider Goodman's application. At that hearing, an attorney representing Cherokee appeared, claimed Cherokee owned adjacent property (the Neighboring Property), and objected to Goodman's application on several different grounds. After considering Goodman's application and Cherokee's objections, the Board approved the application and memorialized its decision in a resolution issued on July 8, 2014. The Board also issued an amended resolution, correcting certain items, dated September 9, 2014.

The resolution stated that the proposed Project "will be a great benefit to the City of Linden." In that regard, the resolution noted that the Property had been vacant for many years, was in need of redevelopment, and Goodman projected that the Project would generate approximately $6 million a year in taxes for the City of Linden and create approximately 3000 jobs. In the resolution, the Board found that the proposed Project would have no impact on the Neighboring Property, which had been a superfund site for a number of years.

In October 2014, Cherokee and Linden 587 filed a complaint in lieu of prerogative writs challenging the Board's approval of Goodman's site plan application. In response, Goodman and LPH moved to dismiss or, alternatively, for summary judgment, arguing that neither Cherokee nor Linden 587 had standing. Goodman and LPH also argued that they were entitled to summary judgment on the merits because the Board's approval was lawful. The Board joined in that motion.

In support of their motion, defendants submitted certifications and documents establishing the history of the Neighboring Property and Cherokee and Linden 587's interest in the Neighboring Property. As noted by the trial court, the Neighboring Property "has a fairly convoluted history regarding its ownership and control."

Several different companies previously owned the Neighboring Property and for decades it was operated as an industrial site. In 1972, the Neighboring Property was transferred to and owned by Linden Chlorine Products, Inc. (Linden Chlorine). Linden Chlorine, thereafter, changed its name to Linden Chemical and Plastic, Inc. and in 1979 it transferred the Neighboring Property to an affiliate Delaware Corporation known as LCP. In the early 1980s, LCP merged into another Delaware Corporation known as LCP

Chemicals and Plastics, Inc. (LCP Chemicals). In 1988, LCP Chemicals changed its name to the Hanlin Group, Inc. (Hanlin).

In 1991, Hanlin filed Chapter 11 bankruptcy and, thereafter, it liquidated all its assets. As part of the bankruptcy proceeding, the bankruptcy court approved Hanlin's abandonment of the Neighboring Property. As a result, Hanlin ceased to hold an ownership interest in the Neighboring Property. Moreover, Hanlin, which was a Delaware Corporation, ceased all corporate activities and, in February 1998, the State of Delaware placed Hanlin in forfeiture status because it had no registered agent.

The Neighboring Property is currently classified as a superfund site requiring extensive environmental cleanup and remediation. See 42 U.S.C.A. § 9601 to § 9675 (authorizing the Environmental Protection Agency to create a list of polluted sites, known as superfund sites, whose remediation may be funded by the Hazardous Substance Superfund). The record also establishes that the Neighboring Property has been abandoned for a number of years and no commercial activity is currently being conducted on that property.

Cherokee claims it owns the Neighboring Property. It bases that claim on a quitclaim deed (Deed) made on September 19, 2013, between Cherokee and Hanlin. In conveying its interest in the Neighboring Property, Hanlin stated that it was making "no promises

and no representations" as to its ownership or title to the Neighboring Property. Instead, Hanlin stated that it was "simply transfer[ring] whatever interest [Hanlin] may have to CHEROKEE, absolutely 'as is'." The Deed was signed by James F. Mathis "the last acting CEO/Board Chairperson" of Hanlin. Cherokee paid Hanlin "the sum of [o]ne ($1.00) [d]ollar and other consideration[.]"

Linden 587 owns three tax liens on the Neighboring Property. While the prerogative writs action was pending, Hanlin had not paid the delinquent taxes on the Neighboring Property, nor had it foreclosed on that property.

The liens were initially acquired from the City of Linden in May 2013 by an affiliate of Cherokee, Cherokee Equities, LLC (CE). CE paid $8500 for the liens and commenced foreclosure proceedings in October 2013. CE did not name Cherokee or Hanlin as owners of the Neighboring Property in its foreclosure complaint. Instead, CE asserted that title to the Neighboring Property was vested in LCP Chemicals-New Jersey, Inc.

On June 27, 2014, CE assigned the liens to Linden 587 for ten dollars and other "valuable consideration." By the time that assignment was made, the Board had already conducted its June 10, 2014 public hearing concerning Goodman's application. Accordingly, Linden 587 never appeared before the Board nor did it file any objections before the Board.

In making their arguments concerning standing, defendants also argued that Cherokee and Linden 587 were acting like "title raiders" and that they had no real interest in the Neighboring Property. In support of that position, Goodman submitted an email, dated October 17, 2014, from Jay Wolfkind, who was a principal of Cherokee and Linden 587. The email was sent to representatives of Goodman and Mr. Wolfkind sought to sell the Neighboring Property to Goodman for "TWO (2%) PERCENT of the Project."

Based on this record, the trial court considered defendants' motion to dismiss the complaint in lieu of prerogative writs. Assignment Judge Karen Cassidy heard oral argument and on March 4, 2014, she issued an order and written opinion granting defendants' motion and dismissing plaintiffs' complaint with prejudice. In her written opinion, Judge Cassidy reviewed the undisputed facts and found that both Cherokee and Linden 587 lacked standing because they had insufficient interest at stake in the outcome of the Board's approval of Goodman's site plan application.

With regard to Cherokee, Judge Cassidy found that Cherokee had no ownership interest in the Neighboring Property because Hanlin had abandoned its ownership and, therefore, could not convey any interest to Cherokee. As to Linden 587, Judge Cassidy found that Linden 587 had not foreclosed on the Neighboring Property and thus had no ownership or possessory interest in the Neighboring

Property. Judge Cassidy also noted that Goodman had shown that Cherokee and Linden 587 had attempted to obtain a significant payment from Goodman. Thus, she reasoned:

> It is clear on the record before the court that plaintiffs' motive in this matter is not to redeem the certificates, thus gaining present property rights in the Neighboring Property, but rather to extract value from the Project through the sale of the Neighboring Property, an unremediated superfund site, to Goodman. It is clear to this court that plaintiffs have no intent to develop or improve upon the Neighboring Property based on their failure to redeem the tax sale certificates, and only hold such as a mechanism for coercing the sale of the Neighboring Property to Goodman based upon Mr. Wolfkind's communication to defendant Goodman.

Having found that both plaintiffs lacked standing, Judge Cassidy did not reach the merits of the challenges to the Board's site plan approval. Plaintiffs now appeal.

II.

On appeal, Cherokee and Linden 587 argue that they each have sufficient interest in the Neighboring Property so as to confer standing under the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-1 to -99. They also argue that, while the trial court did not reach the merits, they have grounds to challenge the Board's approval of Goodman's site plan application.

The determinative issue on this appeal is standing. We affirm the dismissal of plaintiffs' complaint for substantially the reasons set forth in Judge Cassidy's thorough and well-reasoned written opinion. Thus, like Judge Cassidy, we need not reach the merits of the challenge to the Board's approval.

We use a de novo standard to review the dismissal of a complaint. Donato v. Moldow, 374 N.J. Super. 475, 483 (App. Div. 2005). In reviewing the dismissal, our focus is on the legal sufficiency of the facts alleged on the face of the complaint. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989). "When matters outside the pleadings are presented and not excluded by the court, the trial judge must treat a motion to dismiss for failure to state a claim as if it were a motion for summary judgment." Campus Assocs., L.L.C. v. Zoning Bd. of Adjustment of Twp. of Hillsboro, 413 N.J. Super. 527, 533 (App. Div. 2010) (citing R. 4:6-2).

"A party is entitled to summary judgment if, after according the non-movant all of the 'legitimate inferences' that may be drawn from the evidence, 'there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.'" Ibid. (quoting R. 4:46-2(c)). In our review, we apply the same standard as the trial court. Davis v. Brickman Landscaping, Ltd., 219 N.J. 395,

405 (2014). Moreover, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). Applying these standards, we review the dismissal of plaintiffs' complaint for lack of standing.

Standing is a threshold issue that determines a party's ability to initiate and maintain a claim before the court. Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 417-24 (1991). Rule 4:26-1, allowing the "real party in interest" to prosecute an action, is normally determinative of standing. Campus Assocs., supra, 413 N.J. Super. at 533. To have standing, the plaintiff must have "a sufficient stake and real adverseness with respect to the subject matter of the litigation [and a] substantial likelihood of some harm . . . in the event of an unfavorable decision." Jen Elec., Inc. v. County of Essex, 197 N.J. 627, 645 (2009) (alterations in original) (quoting In re Adoption of Baby T., 160 N.J. 332, 340 (1999)).

New Jersey courts generally take a liberal attitude towards standing. Ibid. Under the MLUL, any "interested party" may appeal the decision of a municipal agency or board to the Superior Court, Law Division. N.J.S.A. 40:55D-17(a). The MLUL broadly defines an interested party to include:

> Any person, whether residing within or without the municipality, whose right to use, acquire, or enjoy property is or may be affected by action taken under [this act], or whose rights to use, acquire, or enjoy property under [this act], or under any law of this State or of the United States have been denied, violated or infringed by an action or a failure to act under [this act].
>
> [N.J.S.A. 40:55D-4.]

Accordingly, a "financial interest in the outcome ordinarily is sufficient to confer standing." Strulowitz v. Provident Life & Cas. Ins. Co., 357 N.J. Super. 454, 459 (App. Div.), certif. denied, 177 N.J. 220 (2003).

In situations where a plaintiff lacks standing, however, the court must dismiss and refrain from considering the claim. Deutsche Bank Nat'l Trust Co. v. Mitchell, 422 N.J. Super. 214, 224 (App. Div. 2011). Consequently, our Supreme Court has instructed that courts "will not render advisory opinions or function in the abstract nor will [courts] entertain . . . plaintiffs who are 'mere intermeddlers,' or are merely interlopers or strangers to the dispute." In re Camden County, 170 N.J. 439, 449 (2002) (second alteration in original) (quoting Crescent Park Tenants Ass'n v. Realty Equities Corp. of N.Y., 58 N.J. 98, 107 (1971)).

A. Cherokee's Alleged Standing

Cherokee argues that it has standing based on three related grounds: (1) its ownership of the Neighboring Property; (2) its financial interest in the Board's decision; and (3) its appearance and objection before the Board. These are the exact same arguments Cherokee presented before Judge Cassidy and Judge Cassidy correctly rejected each of the arguments.

Cherokee's first two grounds for supporting its standing depend on it having an ownership interest in the Neighboring Property. Cherokee claims that its ownership interest was established by the Deed it received from Hanlin. The uncontroverted evidence in the record, however, establishes that Hanlin did not own the Neighboring Property when it purported to convey the property to Cherokee. The Deed was executed in September 2013. By that time, Hanlin had abandoned any interest in the Neighboring Property almost seventeen years before it conveyed its "interest" to Cherokee. Cherokee has not disputed that in November 1998, the bankruptcy court approved Hanlin's abandonment of the Neighboring Property. Moreover, Hanlin had no corporate status to convey any alleged interest because, since February 1998, Hanlin has been in forfeiture status under the laws of the State of Delaware, where Hanlin was incorporated.

We, like Judge Cassidy, also reject Cherokee's claim that its attendance at the Board hearing conferred standing. Standing is neither subject to waiver nor conferrable by consent. In re Baby T., supra, 160 N.J. at 341. A party needs a sufficient stake in a matter to be considered an interested party. Jen Elec., supra, 197 N.J. at 645. Appearing at a planning board hearing and claiming, without challenge, ownership of a neighboring property does not automatically confer standing.

In short, the undisputed facts established that the Deed did not transfer title of the Neighboring Property to Cherokee, Cherokee does not have a financial interest in the Board's approval of Goodman's application, and Cherokee's appearance and objection before the Board did not establish standing to bring an action in the Law Division.

B. Linden 587's Alleged Standing

Linden 587 claims standing based on its ownership of three tax liens and three unredeemed tax sale certificates to the Neighboring Property. Specifically, Linden 587 contends it is an interested party because (1) it is in a foreclosure action and may acquire the Neighboring Property; and (2) its rights to acquire or use the Neighboring Property may be affected by the Board's approval of Goodman's site plan application.

Linden 587 points out that there are no cases directly on point. Thus, the question of whether a holder of a tax lien or tax certificate has standing to challenge an adjacent property owner's land use application is an issue of first impression in New Jersey. Linden 587 goes on to argue that the trial court erred by not recognizing that the right of a tax certificate holder "to use, acquire, or enjoy property . . . may be affected" by land use applications of an adjacent property owner. See N.J.S.A. 40:55D-4.

The possession of a tax sale certificate "does not divest the delinquent owner of his [or her] title to the land." Township of Jefferson v. Block 447 A, Lot 10, 228 N.J. Super. 1, 4 (App. Div. 1988). The sale of tax sale certificates operates as "a conditional conveyance of the property to the purchaser, subject to a person with an interest in the property having the right to redeem the certificate, as prescribed by statute." In re Princeton Office Park, L.P. v. Plymouth Park Tax Servs., L.L.C., 218 N.J. 52, 63 (2014) (quoting Simon v. Cronecker, 189 N.J. 304, 318 (2007)). Consequently, only on the entry of a final judgment of a foreclosure does the purchaser of a sales certificate become the owner of the real property. Id. at 63-64.

Further, "[a] private owner of a [t]ax [s]ale [c]ertificate has no right to possession of the property covered by the

[c]ertificate." Barry L. Kahn Defined Ben. Pension Plan v. Township of Moorestown, 243 N.J. Super. 328, 334 (Ch. Div. 1990). Accordingly, the holder of a tax sale certificate is not always an "interested party" with standing to be heard concerning all matters affecting the property. See Northfield City v. Zell, 12 N.J. Tax 180, 188 (Tax Ct. 1991) ("Since the tax-sale law does not affirmatively grant to the holder of a tax-sale certificate the right to contest the tax assessment of the property upon which the tax-sale certificate is a lien, [the holder of a tax-sale certificate] does not have standing to pursue an appeal contesting the assessment of the subject property for the tax year 1990.")

Here, the undisputed material facts established that Linden 587 did not have a sufficient interest in the Neighboring Property to have standing to object to Goodman's application. Linden 587 acquired the tax lien and certificates after the Board had conducted its public hearing. Thus, Linden 587 neither appeared before the Board nor filed any objection with the Board. Just as importantly, Linden 587 also had not foreclosed on the Neighboring Property, nor had it redeemed the tax certificates when it filed its complaint in lieu of prerogative writs. Thus, Linden 587 did not have an existing property interest in the Neighboring Property.

Given these undisputed facts, we need not decide if the holder of a tax lien or tax sale certificate can ever object to a land

use application. Instead, we base our holding on the material undisputed facts of this case, which establish that Linden 587 did not have a sufficient interest to satisfy the requirements of standing.

C. Plaintiffs' Motive

Plaintiffs take issue with the trial court's consideration of their motive for objecting to Goodman's site plan application. They argue that their motive is irrelevant. Moreover, they contend that even if they had the motive to extract a payment from Goodman, there was nothing improper in such a business motivation.

Judge Cassidy gave appropriate consideration to plaintiffs' undisputed motive. She correctly conducted her analysis on standing based on the undisputed material facts concerning Cherokee's and Linden 587's interest in the Neighboring Property. Ancillary to that analysis, Judge Cassidy considered Cherokee's and Linden 587's motive for objecting. Critically, neither Cherokee nor Linden 587 disputed that they had tried to obtain a buyout or payment from Goodman. There was nothing inappropriate in Judge Cassidy considering the undisputed motives of the parties given this context. Indeed, courts need not, and should not, ignore such facts.

D. The Merits of Plaintiffs' Objections

Given that we have upheld the ruling that both Cherokee and Linden 587 lack standing, we need not and do not reach the merits of their objection to the Board's approval of Goodman's site plan application.

Affirmed.