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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-0184-21

VALLEY NATIONAL BANK,

Plaintiff-Respondent,

v.

FORESIGHT CONSTRUCTION,  
LLC,

Defendant-Appellant,

and

VALLEY RENAISSANCE  
URBAN RENEWAL ENTITY,  
LLC, and COMMUNITY ASSET  
PRESERVATION CORPORATION,

Defendants-Respondents,

and

COMMUNITY HOUSING  
CAPITAL, NEW JERSEY  
HOUSING AND MORTGAGE  
FINANCE AGENCY, VALSAL  
ENTERPRISES, LLC,

Defendants-Respondents.

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Submitted May 17, 2022 – Decided May 31, 2022

Before Judges Fisher and DeAlmeida.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-0882-20.

Skolnick Legal Group, PC, attorneys for appellant (Martin P. Skolnick and Scott H. Bernstein, on the brief).

Lowenstein Sandler LLP, attorneys for respondents Valley Renaissance Urban Renewal Entity, LLC, and Community Asset Preservation Corporation (Karim G. Kaspar, Craig Dashiell and Stephanie Ashley, on the brief).

#### PER CURIAM

In January 2015, defendant Valley Renaissance Urban Renewal Entity, LLC, engaged defendant Foresight Construction, LLC, to renovate an abandoned factory in Orange. The agreement required Foresight to obtain an irrevocable standby \$519,000 letter of credit, which was acquired from Valley National Bank. As the project proceeded, Community Asset Preservation Corporation made several payments to Foresight outside the scope of the renovation contract when Foresight threatened to stop work; as part of this arrangement, on December 12, 2017, Foresight and Community Asset entered

into a "side" agreement, which memorialized Foresight's obligation to repay Community Asset \$400,000, as well as the parties' stipulation that:

The Letter of Credit is not due and will not be returned to Foresight . . . until this cash payment [of \$400,000] is made. [Community Asset] must be directly paid \$400,000 either through the funds currently held by Valley National . . . or a cash payment in advance of the Letter of Credit release.

The delays in the project also generated Foresight's August 2018 lawsuit against Valley Renaissance and others (the construction litigation) that was quickly followed by an order compelling arbitration of Foresight's claims against Valley Renaissance ("the arbitration"). It was during the pendency of the construction litigation and arbitration that Valley National commenced this interpleader action.

In June 2020, at the commencement of this interpleader action, the judge entered an order directing that \$119,000 of the \$519,000 held by Valley National be paid to Foresight, concluding there was "no possibility a viable claim could be asserted" against that part of the fund. But the judge also then determined that it was conceivable the pending construction litigation and arbitration could impact the remaining \$400,000. The judge therefore ordered that the \$400,000 be paid into court pending disposition of the construction litigation and

arbitration rather than to Community Asset, which was still owed \$400,000 under its December 12, 2017 agreement with Foresight.

By October 2020, the arbitrator resolved all disputed issues between Foresight and Valley Renaissance, determining Foresight was entitled to \$7,852.41 and Valley Renaissance was entitled to the balance of an escrow fund unrelated to the interpleaded fund. Four months later, Foresight's application to vacate the arbitration award was denied and Valley Renaissance's application to confirm the award was granted. Foresight has appealed that determination; that appeal is still pending in this court.

On August 5, 2021, the judge observed that the arbitration between Foresight and Valley Renaissance was completed and did not call for an invasion of the \$400,000 that was paid into court. The judge also found that Foresight's unresolved tort claims in the construction litigation "cannot and do not give right to any viable set-off as such claims are not liquidated contract claims that could conceivably operate as a set-off." For that reason, the judge ordered the release of the \$400,000 to Community Asset.

Foresight appeals, arguing the judge erred in:

I. . . . DETERMINING THAT [COMMUNITY ASSET  
AND VALLEY RENAISSANCE] HAD STANDING  
TO PROSECUTE THE RELEASE MOTION.

II. . . . GRANTING THE RELEASE MOTION WHICH VIOLATED NUMEROUS PROVISIONS OF THE OPERATIVE INTERPLEADER ORDER.

III. . . . GRANTING THE RELEASE MOTION PRIOR TO A FULL ADJUDICATION OF THE ESSEX COUNTY LITIGATION AND A RULING ON THE PENDING APPEAL.

IV. . . . GRANTING THE RELEASE MOTION BASED ON INACCURATE FACTUAL AND LEGAL DETERMINATIONS THAT WERE NOT BEFORE THE COURT AND DISPOSITIVELY DECIDED ISSUES IN FAVOR OF [COMMUNITY ASSET].

We find insufficient merit in these arguments to warrant further discussion in a written opinion, R. 2:11-3(e)(1)(E), and we affirm substantially for the reasons set forth by Judge Keith E. Lynott in his thorough and well-reasoned written decision.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION