SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2186-21

1000 HARBOR BOULEVARD, LLC, by TT UBS FINANCIAL SERVICES, INC.,

Plaintiff-Respondent,

v.

TOWNSHIP OF WEEHAWKEN,

Defendant-Appellant.

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Argued May 30, 2023 – Decided June 20, 2023

Before Judges Whipple, Mawla and Smith.

On appeal from the Tax Court of New Jersey, Docket Nos. 007840-2018, 002115-2019, and 002389-2020.

Kenneth A. Porro argued the cause for appellant (Chasan Lamparello Mallon & Cappuzzo, PC, attorneys; Kenneth A. Porro, of counsel and on the briefs; Edna J. Jordan and Priscilla E. Savage, on the briefs).

Peter L. Davidson argued the cause for respondent (The Davidson Legal Group, LLC, attorneys; Peter L. Davidson, on the brief).

PER CURIAM

Plaintiff UBS Financial Services, Inc. (UBS) has rented property at 1000 Harbor Boulevard (1000 Harbor) in defendant Township of Weehawken (Weehawken) from 1986 to the present. By the terms of its lease, UBS is responsible for the corresponding property taxes for 1000 Harbor owed to Weehawken. Until recently, the property was owned by Hartz Mountain Industries, Inc. (Hartz), who initially leased the property to UBS in the 1980s.

In 2018, UBS and Weehawken became embroiled in a dispute over the 1000 Harbor's proper tax valuation. UBS originally brought suit seeking a reassessment of the property's value, which at that time had been assessed at approximately $210,000,000. After three years of negotiations, on January 21, 2021, the parties settled and reduced UBS's tax assessment to approximately $145,478,000. This discrepancy was retroactive, and as such, Weehawken was obligated to issue a tax refund in the amount of $2,500,000 to UBS, representing the overpaid taxes for the years 2018-2020.[1]

In accordance with this agreement, Weehawken was required to issue the refund by May 21, 2021. In the case of late payment, statutory interest was to

[1] The parties also entered into a separate tax settlement agreement which applied prospectively for 2021 to 2023.

be imposed. N.J.S.A. 54:3-27.2. Weehawken issued a refund check of $2.5 million to UBS on July 9, 2021, forty-five days overdue. This amount did not include statutory interest. The fact the payment was late is not disputed.

Less than a year after the settlement, on November 29, 2021, Hartz sold the property for $219 million. Upon learning of the sale, Weehawken filed suit in the Tax Court against UBS on January 20, 2022, to vacate the settlement judgments on a theory of fraud. R. 4:50-1(c). Weehawken asserted UBS's failure to disclose this imminent sale—with a valuation in line with the amount assessed initially—amounted to a material misrepresentation. The complaint did not explain why UBS, as a tenant, should have information pertaining to Hartz, the former owner, but sought further discovery.

In response, UBS moved under Rule 1:10-3 for pre-judgment interest as well as attorney's fees and costs, based on Weehawken's late payment of the $2.5 million tax refund. UBS previously sent two letters to Weehawken, on May 21 and May 27, 2021, indicating the need to pay statutory interest.

Tax Court Judge Mary S. Brennan, confronted with these facts, ruled in favor of UBS. We review her decision to deny Weehawken equitable remedies under an abuse of discretion standard. Sears Mortg. Corp. v. Rose, 134 N.J. 326, 354 (1993). Additionally, we typically uphold an award of attorney's fees

as provided for by statute, court rule, or contract. Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 386 (2009). Such awards are subject to reversal "only on the rarest of occasions, and then only because of a clear abuse of discretion." Ibid. (quoting Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 444 (2001)).

After reviewing the record, we affirm. Upon hearing Weehawken's motion, the judge declined to vacate the previous settlement, noting she was "at a loss as to how a November 29, 2021 sale would have any relevance to the market value of the subject property as of [the date of the tax assessment in] 2017, 2018, or 2019." She also observed Weehawken failed "to offer any evidence" that UBS had withheld relevant information during settlement negotiations. "By law, [Weehawken] has the right to seek information on investment properties by virtue of N.J.S.A. 54:4-34 . . . and the court can assume that the assessor and revaluation appraiser were given access to that information and applied it accordingly."

Turning to UBS's counterclaim for statutory interest, the court found N.J.S.A. 54:3-27.2 applied, which provides for 5.5% interest, compounded annually, to prevailing taxpayers in assessment disputes.[2] "Since the court

[2] Here, this amounted to $148,116.44.

entered the [consent] judgment on January 21, 2021, [Weehawken] would be required to refund [UBS] by May 21, 2021." Since the payment was made on July 9, outside of those dates, UBS's claim was proper.

Finally, the judge also awarded attorneys' fees and court costs to UBS because "the interest was not voluntarily paid by Weehawken, and instead, UBS was forced to file a motion to enforce the payment."

On appeal, Weehawken first asserts UBS's cross-motion to compel payment of the pre-judgment interest, while permissible on its own, amounts to an "opportunistic strategy" because it was filed in response to the township's motion to vacate the consent agreement. Weehawken does not contend plaintiff was barred from bringing such a motion in the first instance, only that doing so in a cross-motion was improper.

Weehawken's argument is unpersuasive. Rule 1:6-3(b) provides "[a] cross-motion may be filed and served by the responding party . . . if it relates to the subject matter of the original motion . . . ." There was nothing improper filed by UBS.

Weehawken further argues UBS waived its right to collect the interest because it accepted a check for the $2.5 million refund without raising the issue of the missing interest payment. This is belied by the record.

When a taxpayer is successful in his local property tax appeal, the municipality is obligated to issue a refund plus interest. N.J.S.A. 54:3-27.2. Refunds must be paid "within [sixty] days of the final judgment." Ibid. Moreover, settlements before the Tax Court are considered binding contracts. See Petrie Retail, Inc. v. Town of Secaucus, 363 N.J. Super. 74, 78-79 (App. Div. 2003); see also Nolan v. Lee Ho, 120 N.J. 465, 472 (1990) ("A settlement agreement between parties to a lawsuit is a contract."). We uphold the terms of a settlement agreement between parties "absent a demonstration of 'fraud or other compelling circumstances.'" Pascarella v. Bruck, 190 N.J. Super. 118, 125 (App. Div. 1983) (quoting Honeywell v. Bubb, 130 N.J. Super. 130, 136 (App. Div. 1974)). We discern no such circumstances here.

One claiming implied waiver must show—by clear and unequivocal evidence—the other party has intentionally given up a known legal right. Scibek v. Longette, 339 N.J. Super. 72, 82 (App. Div. 2001). UBS sent two letters informing Weehawken of the accumulation of statutory interest, and of the need to pay this now significant amount. When Weehawken failed to produce that sum, the correct action was to file a motion to recover that amount, which is the precise action taken by UBS. There is no indication UBS "gave up" anything.

Additionally, we note N.J.S.A. 54:3-27.2 contains no time bar to raise a claim for nonpayment. Nor is it at all clear UBS had abandoned the claim. The parties were clearly communicating, and UBS informed Weehawken of the need to pay the interest. Less than a year later, the amount remained unpaid, and UBS sought enforcement of the settlement, after Weehawken sought to vacate the agreement in its entirety.

Finally, Weehawken argues the judge abused her discretion in awarding attorney's fees and costs "because Weehawken had clean hands in filing a meritorious motion and the court had no other statutory basis to sanction relief." We are unpersuaded.

Rule 1:10-3 provides for a mechanism for relief when a litigant's preexisting court-ordered rights have been violated. N. Jersey Media Grp. Inc. v. State, Office of Governor, 451 N.J. Super. 282, 296 (App. Div. 2017). It allows "[t]he court in its discretion [to] make an allowance for counsel fees to be paid by any party to the action to a party accorded relief under this rule." R. 1:10-3. "Relief . . . is not for the purpose of punishment, but [is] a coercive measure to facilitate the enforcement of the court order." Ridley v. Dennison, 298 N.J. Super. 373, 381 (App. Div. 1997). "The particular manner in which compliance may be sought is left to the court's sound discretion." N. Jersey

Media, 451 N.J. Super. at 296 (quoting Bd. of Educ. of Middletown v. Middletown Twp. Educ. Ass'n, 352 N.J. Super. 501, 509 (Ch. Div. 2001)).

The decision to award attorney fees was proper, limited to the issue of the interest payment, and neither "made without a rational explanation, [nor] inexplicably departed from established policies, or rested on an impermissible basis." U.S. Bank Nat. Ass'n v. Guillaume, 209 N.J. 449, 467 (2012) (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)). As Judge Brennan carefully detailed in her May 31, 2022 amplified statement of reasons,

> Rule 4:42-9(a)(7) verifies R[ule] 1:1[0]-3's departure from the American Rule.[] Additionally, R[ule] 4:42-9(b) requires the submission of an affidavit of services. The court finds that the affidavit of services submitted by UBS's attorney is satisfactory. However, the court rejects portions of the claimed counsel fees, as they were not related to the motion to enforce the settlement's prejudgment interest provision.
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> The court analyzed each line-item provided in the schedule of requested fees.
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> . . . .
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> After multiplying each line-item by its percentage and rounding the numbers, the court found that $2,291 in attorney's fees would be a fair and just amount.

Accordingly, we discern no abuse of discretion.

Affirmed.