

To: New Jersey Law Review Commission
From: Arshiya M. Fyazi, Counsel
Re: Interpretation of the Receivership Act - N.J.S. 2A:42-117 (*Manufacturers and Traders Trust Company v. Marina Bay Towers Urban Renewal II, LP*, 2019 WL 5395937 (App. Div. 2019))
Date: July 6, 2021

MEMORANDUM

Executive Summary

In *Manufacturers and Traders Trust Company v. Marina Bay Towers Urban Renewal II, LP*, the Appellate Division considered whether the trial court had discretion to deny the appointment of a receiver per N.J.S. 2A: 42-117.¹ On appeal, the State and a group consisting of certain of the tenants (the “Litigating Tenants”) argued that the trial court erred in denying the application for a receiver.² The Litigating Tenants argued that the Receivership Act mandated that the court appoint a receiver if either of two statutory conditions are met, and that the criteria for appointment had been satisfied.³

The Appellate Division noted that there is “apparent ambiguity within N.J.S. 2A:42-117,” explaining that while some of the language of the statute appears to be mandatory (“shall appoint”), the legislative history indicates that the Legislature intended to give the trial court broad discretion to appoint or deny a receiver.”⁴ The Court held that the trial court acted within its discretion to deny the appointment of a receiver.⁵

Relevant Statutes

The relevant portion of N.J.S. 2A:42-117, concerning a summary action to appoint a receiver, states the following:

* * *

A building shall be eligible for receivership if it meets one of the following criteria:

- a. The building is in violation of any State or municipal code to such an extent as to endanger the health and safety of the tenants as of the date of the filing of the complaint with the court, and the violation or violations have persisted, unabated, for at least 90 days preceding the date of the filing of the complaint with the court; or

¹ *Manufacturers & Traders Tr. Co. v. Marina Bay Towers Urban Renewal II, LP*, A-5879-17T2, 2019 WL 5395937 (N.J. Super. Ct. App. Div. Oct. 22, 2019).

² *Id.* at *27.

³ *Id.*

⁴ *Id.* at *29.

⁵ *Id.* at *30.

b. The building is the site of a clear and convincing pattern of recurrent code violations, which may be shown by proofs that the building has been cited for such violations at least four separate times within the 12 months preceding the date of the filing of the complaint with the court, or six separate times in the two years prior to the date of the filing of the complaint with the court and the owner has failed to take action as set forth in section 9 of

A court, upon determining that the conditions set forth in subsection a. or b. of this section exist, based upon evidence provided by the plaintiff, shall appoint a receiver, with such powers as are herein authorized or which, in the court's determination, are necessary to remove or remedy the condition or conditions that are a serious threat to the life, health or safety of the building's tenants or occupants.⁶

Background

In the City of North Wildwood, the State of New Jersey and two of its agencies were parties to a suit that involved an income restricted senior citizen housing project that was “built with the assistance of several sources of governmental funding”⁷ and complex financing agreements.⁸

In October of 2012, the housing project suffered significant damage as a result of Superstorm Sandy.⁹ The estimate for the repair cost, issued in June 2013, exceeded \$11 million.¹⁰ Litigation ensued between the owner of the building and the insurance carrier.¹¹ In August 2014, the Litigating Tenants filed an Order to Show Cause and a “Petition for Receivership, Verified Complaint for Specific Performance and for Declaratory and Injunctive Relief” in the Superior Court, Chancery Division.¹² The Litigating Tenants alleged habitability problems and repeated code violations for which the owner had been cited by enforcement officials.¹³ In addition to other relief, the Litigating Tenants “sought the appointment of a receiver, pursuant to the Multifamily Housing Preservation and Receivership Act, N.J.S.A. 2A:42-114 to -142 (“the Receivership Act”)....”¹⁴

In November of 2014, approximately three months after the Litigating Tenants filed the receivership petition, the trustee for the company that purchased the bonds issued by the Essex

⁶ N.J.S. 2A:42-117 (Summary action to appoint receiver) (emphasis added).

⁷ *Manufacturers & Traders Tr. Co. v. Marina Bay Towers Urb. Renewal II, LP*, No. A-5879-17T2, 2019 WL 5395937 *1 (N.J. Super. Ct. App. Div. Oct. 22, 2019).

⁸ *Id.* at *2-6. The details of these financing agreements exceed the scope of this Memorandum. The Appellate Division noted that, “this case is one of novelty and complexity, involving fourteen days of abstruse financial detail and literally dozens of motions, conferences and meetings with the parties over more than two years.” (Internal quotation marks omitted). *Id.* at *3.

⁹ *Id.* at *7.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

County Improvement authority to help finance the project filed a foreclosure action.¹⁵ The foreclosure complaint set forth a number of allegations, including: 135 storm-damaged units; 50 uninhabitable units; damage to major building systems; the failure of the borrower to fund the repair work to restore the building to pre-casualty condition; “extraordinary legal costs” from litigation with the City; and defaulting limited partners.¹⁶ These events left the owner “woefully and inadequately capitalized.”¹⁷ As a result, the trustee “sought a judgment directing that it be paid the amounts due, that the project be sold to satisfy the bondholders, and that it be granted possession of the premises.”

Ultimately, the Chancery Division “approv[ed] a plan to restructure and rehabilitate... [the housing project]... pursuant to foreclosure litigation, and den[ied] the appointment of a receiver.”¹⁸ The trial court’s determination that it had the discretion to deny the appointment of a receiver raised the issue of apparent internal inconsistencies within the Receivership Act.¹⁹

Analysis

The Appellate Division found that the statutory language in N.J.S. 2A:42-117 was “internally inconsistent” and “look[ed] for guidance to a separate portion of the Receivership Act, section 123.”²⁰ The Court reviewed the Receivership Act’s legislative history to resolve the ambiguity of the statute.²¹

The Court explained that the language of N.J.S. 2A:42-117, “seems internally inconsistent, as it first provides that a building ‘shall be eligible’ for receivership’ if either of the two criteria are met, but then provides that if a court determines that either of the conditions exist, it ‘shall appoint’ a receiver.”²² The Court said that the “apparent ambiguity within N.J.S.A. 2A:42-117 may be resolved by looking for guidance to a separate portion of the Receivership Act, section 123.”²³

Subsection a. of N.J.S. 2A:42-123 states that “[i]f the court determines, after its summary hearing, that the grounds for relief...have been established, the court may appoint a receiver...” The word “may” is generally seen as permissive, rather than mandatory, under the plain meaning rule of statutory construction.²⁴

The mandatory language of a portion of N.J.S. 2A:42-117 and the permissive language of N.J.S. 2A:42-123, within the same Act, led the Court to examine the legislative history of the

¹⁵ *Id.* at *1 and *7.

¹⁶ *Id.* at *7.

¹⁷ *Id.*

¹⁸ *Id.* at *1.

¹⁹ *Id.* at *27-*28.

²⁰ *Id.* at *28.

²¹ *Id.* at *29.

²² *Id.* at *28.

²³ *Id.*

²⁴ *Id.* at *29.

Receivership Act.²⁵ The Sponsor’s Statements to the bills that became the Receivership Act indicate an intention by the Legislature to “giv[e] the court broad discretion to appoint the most appropriate entity to act as receiver”²⁶ Granting the court broad discretion to act “strongly suggest[] a legislative intent that the selection of any particular statutory remedy should remain within the sound discretion of the municipal or other authorities.”²⁷

The Court concluded that “[in] sum, given the contradictory language contained within the statute, the legislative history favors reading N.J.S. 2A:42-117 as permissive rather than mandatory” and that the trial court did not abuse its discretion in denying a receiver.²⁸

Legislation

Currently, there are no bills pending that would address the issue raised by the Court in N.J.S. 2A:42-117.

Conclusion

Staff seeks authorization to engage in additional research and outreach to determine whether a modification to the statutory language could clarify the statute and avoid future litigation concerning the interpretation of the receivership provisions considered by the Court in *Manufacturers & Traders Tr. Co. v. Marina Bay Towers Urb. Renewal II, LP*, No. A-5879-17T2, 2019 WL 5395937 (App. Div. 2019).

²⁵ *Id.* at 29.

²⁶ *Id.* citing Sponsors Statements to Assembly bill 2539 and Senate Bill 1676, which was later codified as L. 2003, c. 295) (emphasis in original).

²⁷ *Id.* quoting *Jones v. Buford*, 71 N.J. 433, 439-40 (1976) (emphasis in original).

²⁸ *Id.* at 29.