

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-6770-04T5

TOWNSHIP OF BLOOMFIELD,

Plaintiff-Appellant,

v.

110 WASHINGTON STREET ASSOCIATES,

Defendant-Respondent.

Argued: March 7, 2006 - Decided: August 29, 2006

Before Judges Kestin, R. B. Coleman and
Seltzer.

On appeal from the Superior Court of New
Jersey, Law Division, Civil Part, Essex
County, L-2318-05.

Catherine E. Tamasik argued the cause for
appellant (DeCotiis, Fitzpatrick, Cole &
Wisler, attorneys; Ms. Tamasik, of counsel
and on the brief).

James M. Turteltaub argued the cause for
respondent (Carlin & Ward, attorneys; Mr.
Turteltaub and William J. Ward, of counsel
and, with John J. Carlin, Jr. and Scott A.
Heiart, on the brief).

PER CURIAM

This is a condemnation proceeding commenced as a summary
action in a complaint filed with an order to show cause. See R.
4:67. Plaintiff, Township of Bloomfield, asserted its eminent

domain powers as conferred by the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 to -49, and the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 to -47. The trial court dismissed the condemnation complaint, concluding, inter alia, that the record lacked adequate basis for finding that the use of defendant's property posed a detriment to the public health, safety or welfare, see N.J.S.A. 40A:12A-5d, or was underutilized in the same sense, see N.J.S.A. 40A:12A-5e.

Plaintiff appeals, posing several arguments that were presented to the trial court. One argument is that, in the light of the lack-of-timeliness dismissal in a prior proceeding in lieu of prerogative writs in which defendant-owner, 110 Washington Street Associates, had challenged the redevelopment designation and sought, inter alia, to restrain condemnation proceedings, the trial court erred in not applying the doctrines of res judicata and collateral estoppel to bar the challenge, in this proceeding, to the redevelopment designation. Plaintiff also argues that the challenges advanced by defendant were time-barred; and that, in any event, defendant failed to discharge its burden of overcoming the presumption of validity attending a redevelopment designation. The trial court rejected the issue-preclusion arguments and related contentions on the basis that a dismissal of the prerogative writ challenge on lack-of-

timeliness grounds was not an adjudication of the merits, and that defendant was entitled to a full and fair opportunity to litigate the issues it raised. We affirm that ruling essentially for the reasons announced by the trial court.

We have reviewed the record in detail in the light of the written and oral arguments advanced by the parties and prevailing legal standards. On appeal, plaintiff has asserted that the standard of review pertaining to appeals from grants or denials of summary judgment controls. Based on this premise, plaintiff has argued that we are obliged to apply the same standard to resolve the dispute as the trial judge was required to use, see Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div.), certif. denied, 154 N.J. 608 (1998), that is, to engage in a de novo assessment of all the issues.

Plaintiff is manifestly incorrect in the basic assertion, however. The trial court's ruling was not a resolution of a summary judgment motion, it was a full decision on the merits in a summary action. "A summary action is, of course, not a summary judgment proceeding. In a summary action, findings of fact must be made, and a party is not entitled to favorable inferences such as are afforded to the respondent on a summary judgment motion for purposes of defeating the motion." Pressler, Current N.J. Court Rules, comment 1 on R. 4:67-5 (2006). See Courier News v.

Hunterdon County Prosecutor, 358 N.J. Super. 373, 378-79 (App. Div. 2003); O'Connell v. New Jersey Manufacturers Ins. Co., 306 N.J. Super. 166, 172 (App. Div. 1997), appeal dismissed, 157 N.J. 537 (1998).

We are, therefore, bound on appeal by the trial court's findings and conclusions of fact to the extent they are supported by adequate, substantial, credible evidence in the record. See Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974). There was no dispute of underlying fact in these proceedings in the trial court, and we must defer to the trial court's view of the background and the factual dynamic between the parties as established in the record. See Township of West Windsor v. Nierenberg, 150 N.J. 111, 132-33 (1997).

Of course, we are never bound by a trial court's interpretations of law. See Balsamides v. Protameen Chem., Inc., 160 N.J. 352, 372 (1999); Manalapan Realty, L.P. v. Township Committee of Manalapan, 140 N.J. 366, 378 (1995). Given the trial court's view of the facts, however, our independent analysis of the legal arguments presented leads us to substantial agreement with many of the reasons for decision Judge Costello articulated in her letter decision of August 3, 2005. We discern no error of law or any misapplication of discretion in evaluating issues committed to the trial court in matters of this type.

Accordingly, we affirm, also, regarding the redevelopment and condemnation issues for reasons essentially similar to the trial court's expressed rationale in those respects.

In arriving at our conclusions on the issue-preclusion and condemnation-issue aspects of the case, we do not reach other issues addressed by the trial court, including whether the Township's attorneys' representation of both the Township and its land use boards so tainted the redevelopment designation as to render it invalid. Plaintiff's argument that the trial court erred in relying on dictum in Kelo v. City of New London, ___ U.S. ___, ___, 125 S. Ct. 2655, 2670, 162 L. Ed. 2d 439, 460 (2005), is without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION