SUPREME COURT OF NEW JERSEY
NO. 64,032

IRON MOUNTAIN INFORMATION MANAGEMENT, INC., Plaintiff, vs. THE CITY OF NEWARK, MUNICIPAL COUNCIL OF THE CITY OF NEWARK CENTRAL PLANNING BOARD OF THE CITY OF NEWARK and CITY OF NEWARK HOUSING AUTHORITY, Defendants.	ON PETITION FOR CERTIFICATION OF THE FINAL ORDER OF THE SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-006561-06T2 SAT BELOW: Mary Catherine Cuff, J.A.D. Linda G. Baxter, J.A.D. Clarkson S. Fisher, J.A.D.

RESPONDENT, CITY OF NEWARK'S OPPOSITION TO PETITIONER'S PETITION FOR CERTIFICATION

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PRELIMINARY STATEMENT

The Petition for Certification filed by Petitioner Iron Mountain Information Management, Inc. ("Iron Mountain") fails to raise any matter of general public importance, and misstates that the decision by the Appellate Division below is in conflict with prior case law. In fact, the decision below is entirely consistent with the case upon which Petitioner rests its own argument. Further, the Appellate Division decision below is simply a plain application of New Jersey Statutory language. Conversely, Petitioner's argument would have this Court abandon the notice provisions of the Local Redevelopment and Housing Law ("LRHL") and impose the burden of personal notice by the condemning authority to all tenants within a proposed Redevelopment Area. As noted by the Appellate Division Opinion below, such a requirement would "add an enormous burden to the redevelopment process". Iron Mountain Information Management, Inc. v. City of Newark, et al., 405 N.J. Super. 599, 618 (App.Div.2009). As Petitioner's complaints herein are of a private nature, there is no question of public importance which might require Certification to this Court.

COUNTER-STATEMENT OF FACTS

On June 28, 2004, while Iron Mountain was continuing in its lease, the Planning Board recommended the City Council designate an area which included the Subject Property as being an area in need of redevelopment pursuant to the LRHL. Petitioner's continuing argument is over the blight designation, which Complaint was dismissed as untimely in July 2005. (Pa339).

Contrary to Petitioner's unsubstantiated allegation, there was no surreptitious land swap involving a redeveloper and the property Petitioner was leasing. The completion of the Redevelopment of the subject area involved a number of complex transactions.

In order to commence the implementation of the Redevelopment Plan, the NHA entered into three primary redevelopment agreements. The first was with Devils Renaissance Development, LLC on February 2, 2005 for the development of the Arena. The second was made with Edison on August 5, 2005 to provide the City with land for the Arena, and to obligate Edison to develop the properties received in exchange in order to revitalize the Downtown Core, and to establish a framework for the further improvement of the Downtown Core through the development of both area wide general improvements (e.g., a park and a pedestrian bridge). The third Redevelopment Agreement with Lafayette Broad, LLC was entered into on March 9, 2006 with

goals and provisions similar to the agreement with Edison. (Da424-514).

In order for the Arena to be completed on time, and in addition to the three redevelopment agreements, the NHA, the City, a local land owning church, an escrow bank, and the Newark Downtown Core Redevelopment Corporation, as agent of the NHA, needed to agree on a methodology for subdivision, infrastructure improvements, land exchange, environmental remediation and reimbursement, and escrowing of monies to accomplish all of these tasks within the Downtown Core. Accordingly, a Master Land Exchange Escrow Agreement was either entered into or acknowledged, by each of these entities, on July 12, 2007. Simultaneously with that agreement, all applicable lands were exchanged and title passed on such properties, thereby allowing the Arena to be completed for its grand opening in October of 2007, and the rest of the Redevelopment Plan to commence implementation. Petitioner is the only entity complaining of this long-overdue improvement to the Downtown Core area, most of which is now functioning and generating much needed capital for the City. (Db9).

On November 22, 2004, Iron Mountain filed an action in lieu of prerogative writ challenging the redevelopment designation on two bases, both of which the Appellate Division subsequently determined lacked any merit worth discussing. See Iron Mountain

Information Management, Inc. v. City of Newark, et al., 405 N.J. Super. 599, 620 (App.Div.2009).

Petitioner's Amended Complaint (Pa290), filed in August 2005, superseded the original Complaint, and does not even mention the Area In Need of Redevelopment Resolution as an item from which Petitioner sought relief. Rather, the Amended Complaint sought relief solely with respect to the Redevelopment Plan, adopted October 6, 2004.

After summary judgment was entered below, and with the trial court failing to find any evidence to support a challenge to the Redevelopment Plan, Petitioner appealed. After the Appeal was filed, the case of Harrison Redevelopment Agency v. DeRose, 398 N.J. Super. 361 (App.Div.2008) was decided, and Petitioner seized upon that opinion to raise its new-found argument that the commercial tenants' "property rights" required individual notice of blight determination hearings.

The Appellate Division, in reading the applicable statutory language, unanimously found Petitioner's claims lacking, and properly affirmed the trial court's grant of summary judgment against Iron Mountain. That opinion is clearly supported by the legislative language and is entirely consistent with prior case law. The remainder of Petitioner's claims on appeal, as previously noted, lacked merit.

There is no need for this Court to exercise its supervision in this regard.

LEGAL ARGUMENT

THE UNANIMOUS DECISION OF THE APPELLATE DIVISION WAS NOT ERROR AND DOES NOT WARRANT CERTIFICATION

R. 2:12-4 is specific in that "Certification will not be allowed on final judgments of the Appellate Division except for special reasons". The reasons asserted by Petitioner, Iron Mountain, are that the issues herein present a question of general public importance and are in conflict with State v. Jan-Mar, et al., 236 N.J. Super. 28 (App.Div.1989). In truth, however, neither reason has any basis.

A. The Appellate Division Opinion Below Is Consistent With State v. Jan-Mar, et al., and Provides No Basis for Granting Certification

Petitioner does not really challenge the Appellate Division Opinion below, as the Appellate Division applied the statutory language of the "Local Redevelopment and Housing Law", N.J.S.A. 40A:12A-1, et seq., as written. Rather, Petitioner argues that this Court should engraft additional requirements to the statutory language, and that the Appellate Division erred in not doing so.

As this Court noted in U.S. Sportsmen's Alliance Foundation v. N.J. Dep't of Environ. Protection, 182 N.J. 461, 469 (2005);

> In interpreting a legislative enactment, the starting point is always the language of the

> statute itself. If it is clear, "the sole function of the courts is to enforce it according to its terms.'" Hubbard ex rel. Hubbard v. Reed, 168 N.J. 387, 392, 774 A.2d 495 (2001)(quoting Sheeran v. Nationwide Mut. Ins. Co., 80 N.J. 548, 556, 404 A.2d 625 (1979)(quoting Cuminetti v. United States, 242 U.S. 470, 485, 37 S. Ct. 192, 194, 61 L. Ed. 442, 452 (1917)).

Petitioner in the instant case is not just quibbling over the interpretation of the statute; it wants this Court to add entirely new language to satisfy Petitioner's argument.

In referencing statutory language, this Court routinely gives deference to the interpretation given by an agency like Newark's Central Planning Board:

> When interpreting a statute or regulation that an agency is charged with enforcing, we give substantial deference to the agency's interpretation which "will prevail provided it is not plainly reasonable". Merin v. Maglaki, 126 N.J. 430, 436 (1992).

In the instant case, the interpretation was easy: the Agency, the trial court and the Appellate Division utilized the plain language of the statute with respect to the giving of notice to owners, and those whose names are noted in the assessment records. N.J.S.A. 40A:12A-6(b)(3). "If the language is clear, then the interpretation process will end without resort to extrinsic sources". Bedford v. Riello, 195 N.J. 210, 221-22 (2008).

A review of the entire "notice" provision of the LRHL, not just the specific section to which Petitioner points, reveals no ambiguity; the plain language of that legislative enactment makes it clear to whom notice must be given.

In construing a statute, the Courts are required to effectuate the legislative intent in light of the language used and the objects sought to be achieved. Wendling v. N.J. Racing Comm'n, 279 N.J. Super. 477, 482 (App.Div.1995). Courts must give effect to the language employed by the legislative body. Dixon v. Gassert, 26 N.J. 1, 9 (1958).

Petitioner complains that its citation to State v. Jan-Mar, Inc., 236 N.J. Super. 28 (App.Div.1989) was given no consideration by either the trial court or the Appellate Division. Both courts ignored Plaintiff's reliance on that case for good reason: it has no bearing on the facts of this case.

As the Court stated in Jan-Mar, "This is an appeal concerning compensable interests in a condemnation case". Id. at 29. The Jan-Mar Court considered whether a tenant had a compensable interest, other than the value remaining on the lease, which could be assessed in the condemnation proceeding.

In addition to the fact that the proceeding in the Jan-Mar case was condemnation, not the hearing to designate an area in need of redevelopment, Petitioner's argument fails for a second reason: neither Judge Milberg in his reported Opinion, nor the

Appellate Division in theirs, mentioned anything about notice provisions in the prior redevelopment designation.

If anything, Judge Milberg's Opinion undermines Petitioner's argument:

> The relevant section, N.J.S.A. 20:3-6 is clear that the obligation of the condemnor to "make a reasonable disclosure of the manner in which the amount of... offered compensation has been calculated" extends only "to the prospective condemnee *holding the title of record* to the property being condemned." [Emphasis supplied.]
>
> Jan Mar, not Mobil, was the owner of record of the subject premises and the State property made its disclosure to Jan Mar alone. This conclusion is no-wise altered by anything in the as yet unpublished opinion of Judge Haines in State, by Comm'r. of Transportation v. Hancock, 208 N.J. Super. 737, 506 A.2d 855 (Law Div.1985), the case cited by Mobil in support of the motion to dismiss.
>
> State v. Jan-Mar, Inc., 210 N.J. Super. 236, 247 (Law Div.1985).

Thus, even at the later stages of the Redevelopment process, and even though a lessee with an option to purchase may participate in the valuation process, the statutory language regarding notice to the record owner does not extend to the lessee. The Appellate Division's reasoning below is, therefore, entirely consistent with the two Jan-Mar opinions, neither of which support Petitioner's claims.

B. **Petitioner Waived Its Right to Challenge the Blight Determination By Failing to Comply With Statutory Requirements. No Due Process Arguments Exist In this Case**

R. 4:69-6(c) provides for the relaxation of the forty-five day time limit "where it is manifest that the interest of justice so requires". The exception is typically applied to "cases involving (1) important and novel constitutional questions; (2) informal or *ex parte* determinations of legal questions by administrative officials; and (3) important public rather than private interests which require adjudication or clarification." Brunetti v. Borough of New Milford, 68 N.J. 576, 586, 350 A.2d 19 (1975) (footnotes omitted). Accord Reilly, supra, 109 N.J. at 558, 538 A.2d 362; Damurjian v. Board of Adjust. of Colts Neck, 299 N.J. Super. 84, 98, 690 A.2d 655 (App.Div.1997).

None of the exceptions apply here, as this case does not present any important or novel constitutional questions.

Contrary to Petitioner's claims, the record on appeal demonstrates that the Planning Board properly complied with the notice requirements set forth in the LRHL. N.J.S.A. 40A:12A-6(a) provides that a redevelopment designation "shall be made after public notice and public hearing as provided in Subsection b of this Section". Section (b) sets forth the requirements of

publication and notice to owners and those whose names are of record with the Assessor's Office.

In Concerned Citizens of Princeton, Inc. v. Mayor and Council of the Borough of Princeton, 370 N.J. Super. 429 (2004), the Appellate Division affirmed the trial court's rejection of plaintiff's challenge to the redevelopment designation on the basis of insufficient notice. Though approving the trial court's enlargement of time in Concerned Citizens, the Appellate Division also affirmed the summary judgment entered against the plaintiffs.

Judge Hoens' concurring opinion is particularly enlightening with regard to the issues in this case.

> The time-enlargement provision contained in the court rule requires a showing that it is "manifest that the interest of justice so requires." R. 4:69-6(c). That standard recognizes that the forty-five day rule is designed to provide a measure of repose to the municipality and is aimed at those who slumber on their rights. Reilly v. Brice, 109 N.J. 555, 558-60, 538 A.2d 362 (1988); Schack v. Trimble, 28 N.J. 40, 49, 145 A.2d 1 (1958); Tri-State v. City of Perth Amboy, 349 N.J. Super. 418, 423, 793 A.2d 834 (App.Div.), certif. denied, 174 N.J. 189, 803 A.2d 1161 (2002); Adams v. DelMonte, 309 N.J. Super. 572, 578-79, 707 A.2d 1061 (App.Div.1998); Washington Township Zoning Bd. of Adjustment v. Washington Township Planning Bd., 217 N.J. Super. 215, 225, 525 A.2d 331 (App.Div.), certif. denied, 108 N.J. 218, 528 A.2d 36 (1987). Our Supreme Court has cautioned, in a related context, that extensions of time for filing actions in lieu of prerogative writs should be

> granted in limited circumstances. Robbins v. City of Jersey City, 23 N.J. 229, 238-39, 128 A.2d 673 (1957)(extensions of time "should be but exceptionally condoned, and only in the most persuasive circumstances").
>
> Concerned Citizens, at 472.

In the final analysis, Petitioner's Complaint in the instant case is private, not public, and does not provide the exceptional circumstance required to enlarge the 45-day filing deadline. Additionally, there has never been a meaningful reason proffered for Petitioner's delay in filing its Complaint in the first place.

Throughout this litigation, Petitioner has perpetuated its Complaint that it had no notice of the blight determination, without submitting any substantiation for that claim; not even a Certification from a principal of the corporation. While Petitioner did file a Certification in support of its allegation that it had a right of first refusal and an option to purchase (Pa175), it has never similarly supported its "lack of notice" claim.

Now, it argues the "indecisiveness of the Redevelopment Plan" as a basis for extending the 45 day filing time, again, based solely on argument of counsel, and without any factual substantiation. Both the trial court and the Appellate Division found these arguments, as raised below, lacked merit.

Certainly, none of these pseudo-arguments rises to the level required by R. 2:12-4.

Petitioner's "judicial economy" argument also falls short of the mark, and should similarly be disregarded. The Appellate Division below both succinctly and correctly stated:

> Unquestionably, the EDA provides clear and adequate procedural safeguards that protect a commercial tenant's leasehold interest in condemned property by affording the tenant the right to challenge the authority to condemn, and by affording him compensation for any losses that result from lease termination. As we have observed, the LRHL and the Eminent Domain Act must be read in tandem, not in isolation. DeRose, supra, 398 N.J. Super. at 409, 942 A.2d 59. The provisions of these related statutes must be "construed together as a unitary and harmonious whole." Am. Fire and Cas. Co. v. N.J. Div. of Taxation, 189 N.J. 65, 80, 912 A.2d 126 (2006)(citation omitted). So viewed, when the two statutes are read as a whole, it is evident that the notice procedures and substantive rights afforded a commercial tenant pursuant to the EDA make unnecessary any additional procedural safeguards at the earlier blight designation stage.
>
> Iron Mountain at 618.

Although Petitioner correctly states that its Complaint alleged constitutional deprivations, it fails to advise this Court that it subsequently filed a First Amended Complaint which made no such claim. An amended pleading completely supersedes the pleading it amends, and the contents of the initial pleading cannot be availed of for any purpose. While this Defendant has

found no New Jersey case law in support, it is clear from jurisdictions which have addressed the issue, and reason dictates, that once an amended pleading is filed, the prior pleading is, in effect, withdrawn as to all matters not restated in the amended pleading. Sunset Financial Resources, Inc. v. Redevelopment Group, LLC, 417 F. Supp.2d 632, 642 (D.N.J.2006); Snyder v. Pascack Valley Hospital, 303 F.3d 271, 276 (3d Cir.2002).

C. Petitioner Does Not Meet the Three-Prong Test Set Forth In Matthews v. Elddrige, 424 U.S. 319 (1976)

Petitioner, without any factual support, claims the alleged lack of notice impacted somehow on its "constitutional rights", without specifying what those "rights" are. The Appellate Division below dispatched any notion that a tenancy could be a constitutionally protected right, and properly determined that a 15-year lease, such as Petitioner's, is a contract right, and had no "per se protectible interest". Iron Mountain at 615.

Petitioner makes the wholly unsupported claim that it now has the right to participate in the redevelopment process, based on the Jan-Mar case, discussed supra. However, Petitioner fails to appreciate the clear distinction, made by both the trial court and the Appellate Division in that case, between a property right and a compensable contractual right. The cases cited by Petitioner, and the Nichols treatise, all deal with the

question of valuing an option to purchase at the condemnation proceeding, no more. Those cases provide no support for Petitioner's argument of a constitutional right to participate in the redevelopment process. A compensable property right is not a constitutional right. The first hurdle of the Matthews test has clearly not been cleared by Petitioner.

The second prong of Matthews was whether a tenant's rights could be vindicated at the condemnation proceeding. This Court, the Appellate Division, and the legislature have all stated that the condemnation proceeding is where the tenant's rights are addressed. Indeed, all the cases cited by Petitioner support that proposition as well. It is not that the Appellate Division Opinion below was plowing virgin soil; it was simply reciting the statutory language that applies to these routine types of cases. By statute, it is during the condemnation phase that all of Petitioner's claims can be addressed.

Petitioner's factual arguments in support of its position all demonstrate the private basis of its Petition for Certification. Also, Petitioner fails to note that it has been the only entity to challenge the instant Redevelopment Plan.

Since the Redevelopment Plan's enactment, the City has seen the expenditure of hundreds of millions of dollars for the acquisition of land, title conveyance pursuant to unchallenged Redevelopment agreements in order to accomplish exchanges of

lands for lands underneath the now-completed Prudential Arena, clearance and demolition of acres of improvements and construction of a new sports and entertainment arena to effectuate the plan, all in reliance on well-publicized and duly-enacted official determinations underpinning the redevelopment of the 24-acre tract of downtown Newark designated the "Downtown Core". (Da116-223).

The Redevelopment Plan includes provision for construction of a sports and entertainment facility, a community center, a 300-room Class-A hotel, 550,000 square feet of office space and 150,000 square feet of retail space. (Da1-115). The sports and entertainment facility (the Prudential Arena) has been completed and is operating. The remaining redevelopment is allocated to a number of redevelopers, only one of which Petitioner complains. Petitioner's challenge is directed solely to the property in which Plaintiff has a leasehold interest, and is purely a private, not a public issue.

Petitioner's argument as to the third prong of the Matthews test is just that - argument. That argument is specious at best, as it is based solely on the facts of this case, and entirely ignores the far-reaching consequences any decision by this Court would have.

The Appellate Division correctly understood the impact Petitioner's argument would have on municipalities:

> Unquestionably, requiring a municipality to ascertain the identity of each tenant and provide individual notice to that tenant adds an enormous burden to the redevelopment process. Moreover, it is likely that from the time the municipality first requests its Planning Board to undertake an investigation of whether a designated area is blighted through the time of the ultimate adoption of the redevelopment plan, one commercial tenant may vacate the premises and a new one may take its place. Such turnover creates the possibility of an almost endless cycle of challenges to the redevelopment process if each new commercial tenant were to be afforded the right to file a complaint challenging the blight designation. That possibility has the capacity to create unreasonable burdens on the redevelopment process.
>
> Iron Mountain at 618.

Despite the tortured argument Petitioner makes, one thing is made clear: Petitioner's claim is of private, not public concern. If one were to understand Petitioner's argument, the only way a condemning authority could truly learn that a tenant had an option would be to personally interview every tenant. Query, however, whether a misinformed employee of any tenant incorrectly advises no option exists. Would the burden then be on the Authority to personally review all leases? And, what if a commercial tenant assigns the lease; who must be notified? What about a sub-lease? Is there no requirement for notice? Further, what is to differentiate the rights of a commercial tenant with an option to purchase from those of a residential tenant with an

option to purchase? Petitioner's argument would require the complete abandonment of the notice provisions of the LRHL in favor of personal notice to all tenants. The cost, in both labor and time, would grossly overburden the Authority and create "unreasonable burdens on the Redevelopment process". Iron Mountain at 618. For obvious reasons, Petitioner has not addressed the extraordinarily negative impact its augured - for position would have on any condemning authority.

CONCLUSION

Iron Mountain has presented no basis for this Court to grant Certification. The questions presented are of private, not public importance; the Appellate Division Opinion below is consistent with other decisions of this Court and Appellate Courts in New Jersey, and is not palpably wrong, unfair or unjust. The interests of justice do not require the Court to address the issues herein, as there are no significant legal, political or economic repercussions which could result from the decision rendered below. Finally, noticeably absent in the Petition are any "special reasons" which would merit Certification.

Accordingly, the Petition should be denied.

Respectfully submitted,

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Dated: April 21, 2009