EGDC C/O AM RESURG MGMT, Plaintiff, v. RUTHERFORD BOROUGH, Defendant.	TAX COURT OF NEW JERSEY DOCKET NOS. 004521-2012; 002730-2013; 002112-2014; 003453-2015; 003586-2016; 003546-2017

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ORSEN, J.T.C.

This opinion constitutes the court's decision with respect to defendant, Rutherford Borough's ("Rutherford"), motion for partial summary judgment seeking entry of an Order directing that the parcels under appeal be treated and valued as a single economic unit along with two contiguous parcels owned by an unrelated party and not under appeal. Plaintiff, EGDC C/O AM Resurg Mgmt ("EGDC") opposed the motion, arguing that Rutherford failed to satisfy both prongs of the single economic unit doctrine, and that its application by the court would produce an unfair and unconstitutional result.

For the reasons stated more fully below, the court concludes that the parcels do not share a unity of use. However, even if the court were to find unity of use between the parcels, Rutherford has failed to demonstrate the second crucial component of the single economic unit doctrine — namely, unity of ownership. Accordingly, the two contiguous parcels owned by an unrelated party cannot be deemed as a single economic unit with the parcels under appeal. Therefore, Rutherford's motion for partial summary judgment is denied.

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FACTS

The following findings of facts are based on the certifications and exhibits submitted in support of and in opposition to the motion.

EGDC, a New Jersey corporation, owned Block 219, Lots 1 and 3HM (collectively the "EGDC Parcels") and Block 219, Lots 2 and 2T01 (collectively the "HPI Parcels") until August 25, 1995, when it sold the HPI Parcels to HPI-Linque Partners One, L.P. ("HPI"). The HPI Parcels have changed ownership since 1995. Pursuant to Rutherford's records, Block 219, Lot 2 was acquired by Meadows Office LLC in 2012 and was sold to Meadows Landmark LLC in 2015. Block 219, Lot 2T01 was acquired by Meadows Office LLC in 2012.

The EGDC Parcels consist of parking lots each measuring 5.72 and 5.27 acres respectively. The former lies within Rutherford's ORD (office, research, development) zone, and the latter in the Rutherford's A (light industrial) zone. The HPI Parcels are located in the ORD zone and comprise an office building, parking garage and a parking lot. The HPI Parcels are separate and contiguous to the EGDC parcels as they are located in between the two EDGC lots.

As part of the August 25, 1995 sales transaction, EGDC entered into a Reciprocal Easement Agreement ("Agreement") with HPI. Pursuant to the Agreement, each entity "reserve[d] unto itself, its successors and assigns, the unrestricted and free right to the uninterrupted enjoyment of [its] Parcel(s)." The parties further retained to "its successors and assigns, agents, contractors, subcontractors, tenants, subtenants, and invitees, a non-exclusive, perpetual right and [reciprocal] easement" for (1) performing services on each entity's property for the construction, improvements or repairs of any utility, such as sewer or drainage; and (2) access to "pedestrian and vehicular ingress, egress and parking upon and across" each other's property in furtherance of the services

easement, and for "driving, walking or going upon any access road, sidewalk, walkway or parking area and garages."

EGDC filed an appeal contesting the assessments on the EGDC parcels for tax years 2012 through 2017. For each tax year, the aggregate assessment of the EGDC Parcels, Block 219, Lots 1 and 3HM, was $5,042,300 ($2,624,400 and $2,417,900, respectively).

In 2017, Rutherford filed a motion for partial summary judgment asserting that the EGDC Parcels and the HPI Parcels "should be valued as a single economic unit as a matter of law based upon the vested rights between the parcels and the actual operation of the properties in question." As a single economic unit, the assessment of the EGDC Parcels and HPI Parcels would aggregate to $88,767,300 ($5,042,300 and $83,725,000, respectively).[1] While acknowledging that the EGDC Parcels and HPI Parcels are "under separate ownership," Rutherford alleges that the "rights and actual operation of the subject parcels are intertwined and connected" because the EGDC parcels "operate as points of ingress, egress, and parking lots for" the HPI Parcels. In support of its argument, Rutherford emphasizes that Section 3.2 of the Agreement provides as follows:

> 3.2 Covenants and Restrictions Specific to EGDC Parcels.
> 3.2.7 If as of the date of this Agreement there are not located on the HPI Parcel at least 2261 parking spaces, then during any Construction involving the EGDC Parcels or either of them EGDC shall ensure that, except as hereinafter provided, at no time during Construction shall the number of parking spaces located on the HPI Parcels and the EGDC Parcels be less than 2261 plus the greater of (1) the number of parking spaces required by applicable municipal ordinance or approval for then-existing buildings located on the EGDC Parcels or (b) the product of the number of square feet of rentable floor area contained in then-existing buildings located on the EGDC Parcels times 0.004. Notwithstanding the foregoing, subject to HPI's prior written approval (which shall not be unreasonably withheld or delayed), to satisfy the foregoing requirement EGDC may during Construction make available

[1] Block 219, Lot 2 had a total assessment of $83,500,000, and Block 219, Lot 2T01 had a total assessment of $225,000.

> parking spaces not located on the EGDC Parcels provided such spaces are located within a reasonable proximity of the Parcels and further provided EGDC provides either valet parking services with respect to such spaces or shuttle service form the location of such spaces to the Parcels. (emphasis added)

As claimed by Rutherford, since the EGDC Parcels and the HPI Parcels have "reciprocal rights of egress and parking on each other's parcels" and Section 3.2.7 of the Agreement outlines an "affirmative duty [for EGDC] to maintain a minimum of 2261 parking spaces between them" during "any Construction involving the EGDC Parcels or either of them," the EGDC Parcels and the HPI Parcels should be valued as a single economic unit. Accordingly, Rutherford argues that because of this duty, the parcels "legally cannot and do not actually operate independently from one another."

Article 3 of the Agreement, captioned "COVENANTS AND RESTRICTIONS," additionally provides for the permanent closure of each owner's respective parcel, as follows:

> 3.1.1 Except as hereinafter provided, all access roads, sidewalks, walkways, parking areas and garages now or hereafter existing on the Parcels shall be kept open at all times (except for temporary closings for emergencies, maintenance, repair and replacement work). No unreasonable obstruction of the free flow of traffic in such areas shall be permitted. Notwithstanding the foregoing, however, either Owner shall be entitled to close permanently any such area located on such Owner's Parcel(s) if and to the extent such area is to be occupied by a building or other improvement not in the nature of an access road, sidewalk, walkway, parking area or garage in connection with such Owner's commercial development of such Owner's Parcel. (emphasis added)

EGDC opposes Rutherford's motion and argues that there is no unity of ownership nor unity of use between the EGDC Parcels and the HPI Parcels. EGDC highlights that the EGDC Parcels are operated separately and independently from the HPI Parcels, and further emphasizes that EGDC does not operate, manage or have any control over the HPI Parcels. Finally, EGDC alleges that Rutherford has failed to adhere to its obligations under the square corners doctrine by

now arguing, six years after EGDC filed its first tax appeal in these matters, that the EGDC Parcels and HPI Parcels should be valued as a single economic unit. Oral argument was held.

DISCUSSION

I. Summary Judgment Standard

Summary judgment will be granted if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter law. R. 4:46-2(c); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995). The underlying facts are to be viewed in the light most favorable to the party opposing the motion, and if the "evidential materials presented . . . are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party," a motion for summary judgment must be denied. Brill, 142 N.J. at 540. However, summary judgment fills a vital role in affording protection against "groundless claims and frivolous defenses, not only to save antagonists the expense of protracted litigation but also to reserve judicial manpower and facilities to cases which meritoriously command attention." Id. at 542. "The express import of the Brill decision was to 'encourage trial courts not to refrain from granting summary judgment when the proper circumstances present themselves.'" Howell Twp. v. Monmouth County Bd. of Taxation, 18 N.J. Tax 149, 153 (Tax 1999) (quoting Brill, 142 N.J. at 541). Summary judgment may be rendered on any issue in an action although there is a genuine factual dispute as to any other issue. R. 4:46-2(c).

Rutherford contends that the EGDC Parcels and HPI Parcels "should be valued as a single economic unit as a matter of law based upon the vested rights between the parcels and the actual operation of the properties in question," as evidenced by their "assemblage and development."

According to Rutherford, valuing the EGDC Parcels and HPI Parcels as a single economic unit directly bears upon the substantive issues to be faced in EGDC's tax appeals. The court finds that genuine issues of material fact are not in dispute, and therefore, it can decide whether the EGDC Parcels should be valued as a single economic unit with the HPI Parcels through summary judgment.

II. Single Economic Unit Doctrine

In New Jersey, the single economic unit doctrine has become an essential tool for appraising properties at their highest and best use. See City of Atlantic City v. Ginnetti, 17 N.J. Tax 354, 362–63 (Tax 1998), aff'd, 18 N.J. Tax 672 (App. Div. 2000) (citing Purex Corp. v. City of Paterson, 8 N.J. Tax 121 (Tax 1986); Mobil Oil Corp. v. Twp. of Greenwich, 9 N.J. Tax 123 (Tax 1986)). In order for the doctrine to apply to a combination of noncontiguous parcels, there must be a unity of use and a unity of ownership. Housing Auth. of Newark v. Norfolk Realty Co. ("Norfolk"), 71 N.J. 314, 322–24 (1976).

A. Unity of Use

"[U]nity of use" is determined based on whether the parcels are "functionally integrated; that each is reasonably necessary to the use and enjoyment of the other." Norfolk Realty Co., 71 N.J. at 325. The court also looks to see whether there is a "connection or relation of adaption, convenience and actual . . . use" between the parcels. Manalapan v. Genovese, 187 N.J. Super. 516, 521 (App. Div. 1983) (quotation omitted).

For instance, in Ginnetti, the court determined that four lots owned by defendant, one of which was not contiguous to the others, had to be valued as a single economic unit as they were operated together, would be sold together as one parcel of land, and would be developed together for one use. 17 N.J. Tax at 364. See also American Cyanamid Co. v. Wayne Twp., 17 N.J. Tax

542, 545 (Tax 1998) (finding that three lots appealed were "functionally integrated and constitute[d] a single economic unit operated as an office complex"), aff'd, 17 N.J. Tax 542 (App. Div. 2000). In State v. Bakers Basin Realty Co., the court found that the properties were fully integrated where three owners sold three different properties to a single developer for the use as a future shopping center and the deeds contemplated assemblage so as to be viewed as one tract. 138 N.J. Super. 33, 42–43 (App. Div. 1975), aff'd, 74 N.J. 103 (1977) (finding that unity of use was "sufficiently imminent to permit treatment as a combined property for condemnation purposes" where the parties had shown an integration of the properties through "planning and preparation"). The court also explained that "[c]ourts are reluctant to award severance damages with respect to separate tracts of land that 'are not at least in present use as one unit for the same purposes.'" Id. at 42 (quoting State v. Rachl, 136 So.2d 105, 109 (La. App. 1961)). With respect to future unity of use, the court noted that "[t]here must be a reasonable probability of the [parcels] in question being combined with other tracts for a particular purpose in the reasonably near future." Ibid.

In this case, Rutherford relies on the parcels' reciprocal rights of ingress and egress, as well as EGDC's affirmative duty to maintain a minimum of 2261 parking spaces, to contend that the EGDC Parcels are "reasonably necessary" to the use and enjoyment of the HPI parcels. However, analyzing Section 3.2 of the Agreement, the court finds that the affirmative duty to maintain parking spaces during construction is not unique to the EGDC Parcels. Section 3.2 of the Agreement provides that during construction, EGDC has the option of providing off-site parking. Any other parcel — any parking lot — can satisfy the Agreement obligation. This purported use relationship is further eroded by the fact that either owner — EGDC or the HPI Parcels' owner —

has the right under Section 3.1.1 of the Agreement to permanently close its parcel for ingress and egress.

In furtherance of its argument that the EGDC Parcels and HPI Parcels cannot, and do not, operate independently from one another, Rutherford provided a proposed future site plan that contemplates the construction of a hotel and office building on the EGDC Parcels. However, this proposed plan merely demonstrates the Agreement in action, because it shows that EGDC plans to exercise its right to permanently close off some of the parking spaces on its parcels and provide temporary parking elsewhere for new construction, precisely as contemplated by Section 3.1.1 of the Agreement. The proposed plan provided by Rutherford does not show any dependence by either party on the other's parcels beyond the Agreement to provide parking spaces during construction.

Property ownership entails wide discretion in exercising control over the use and operation of a property, including excluding others from using the property, permitting others to use the property, and freely transferring those property rights. As presented to the court, the Agreement merely provides for the continuation of a symbiotic relationship between the property owners. Rutherford has not established that the EGDC Parcels and HPI Parcels operate together, will be developed together, or are currently, or in the future, going to be used for a unifying purpose. As such, the court concludes that the EGDC Parcels and HPI Parcels are not functionally integrated to rise to the level of a unity of use.

B. Unity of Ownership

Even if the court was satisfied that a unity of use existed between the EGDC Parcels and HPI Parcels, the second crucial component of the single economic unit analysis is nonetheless missing here.

Easements do not convey an actual ownership interest. In its simplest form, an easement is a "nonpossessory incorporeal interest in another's possessory estate in land, entitling the holder of the easement to make some use of the other's property." Leach v. Anderl, 218 N.J. Super. 18, 24 (App. Div. 1987) (finding that "the content of the interest [is] as a "limited use or enjoyment of the land in which the interest exists"); see also Wellmore Builders, Inc. v. Wannier, 49 N.J. Super. 456, 465 (App. Div. 1958) (explaining that "[a]n easement, of course, is an encumbrance — a grant of a legal estate, distinct from ownership, to use in some way the land of another."). However, "the grant of an easement is not a sale. The owner of the servient estate still owns the fee and has all the rights and benefits of ownership consistent with the enjoyment of the easement." Ibid.

It is undisputed that EGDC has not held legal title to the HPI Parcels since 1995. In analyzing unity of ownership under the single economic unit doctrine, our Supreme Court contemplated "whether strict unity of title in a given entity must exist, or whether ownership is a matter of substance rather than form so that identity of beneficial interest will suffice." Norfolk Realty Co., 71 N.J. at 324. While acknowledging a general reluctance to "pierce the corporate veil," the Court found a unity of ownership. Id. at 324–25. Although the entities operated under different legal names and under different legal structures, because the three principal owners of the entities were substantially identical, the Court concluded that "the realities underlying corporate ownership of land [must] be fairly recognized." Id. at 324. As a result, the Court extended the concept of unity ownership to encompass the concept of beneficial ownership in addition to actual ownership by title. Id. at 325. A beneficial owner is "[o]ne who does not have title to property but has rights in the property which are the normal incident of owning the property." Black's Law Dictionary 142 (5th ed. 1979).

In embracing expanding realities underlying ownership, the court in Union Cty. Imp. Auth. v. Artaki, LLC determined that while "[t]he concept of 'unity of ownership' suggests that physically separate parcels are owned in their entirety by one owner or set of owners . . . [the concept] is flexible and does not require a rigid definition of ownership on the basis of bare legal title." 392 N.J. Super. 141, 149 (App. Div. 2007). This adaptable interpretation of ownership has, however, been curtailed in several circumstances. For instance, in State v. N.J. Zinc Co., the Court found that "[a]n option does not create any interest in the land . . . and in New Jersey, at least, the holder of an unexercised option is not entitled to share in the condemnation award." 40 N.J. 560, 576 (1963). Similarly, the court found that unity of ownership did not exist between an owned lot and a long-term leasehold on an adjacent lot because ownership interests do not vest in a lessee. Bakers Basin Realty Co., 138 N.J. Super. at 44.

As a preliminary matter, the court emphasizes that Rutherford has acknowledged that the EGDC Parcels and HPI Parcels have been under separate ownership since 1995, and as such, Rutherford has not established that there is a unity of actual ownership by title. In embracing the generous interpretation of unity of ownership and realities of ownership structures, however, the court continues its analysis by evaluating whether beneficial ownership arises by virtue of the Agreement.

Here, Rutherford has not established, and the record does not show, any beneficial ownership interest granted by the Agreement. There is no proof in the record of a corporate scheme, partnership or joint control between the owner of the EGDC Parcels and the owner of the HPI Parcels that evinces a goal to share equally in expenses, gains, losses or tax benefits with respect to the parcels or that the owners had any expectation to be joint beneficial owners of the parcels. There is no evidence that EGDC manages or exercises any degree of control over the HPI

Parcels, or that the owners of the HPI Parcels manage or exercise any degree of control over the EGDC Parcels. While Rutherford maintains that the "rights and actual operation of the subject parcels" are "intertwined and connected" because Section 3.2.7 of the Agreement outlines an "affirmative duty [for EGDC] to maintain a minimum of 2261 parking spaces between them" during "any Construction involving the EGDC Parcels," the reality is that the relationship between the EGDC Parcels and HPI Parcels is anchored in the Agreement, which is foundationally based on compliance with variances and zoning requirements as a result of the "sandwiching" of the HPI Parcels and the EGDC Parcels.

The court again notes that Section 3.1.1 of the Agreement grants either owner of the HPI Parcels or EGDC Parcels the independent right to permanently close any area or all of their respective parcel without the other's approval. Ingress, egress, and a duty to maintain a limited number of parking spaces pursuant to an easement that can be modified does not grant a beneficial ownership right sufficient for the court to find unity of ownership under existing law. Accordingly, the court finds that unity of ownership has not been established based on the evidence presented.[2]

CONCLUSION

For the above stated reasons, Rutherford's motion for partial summary judgment is denied.

[2] EGDC alleged that Rutherford failed to adhere to its obligations under the square corners doctrine by waiting six years after EGDC filed its first tax appeal in these matters to argue that the parcels at issue should be valued as a single economic unit. "In dealing with the public, government must turn square corners." F.M.C. Stores Co. v. Morris Plains, 100 N.J. 418, 426 (1985). The court does not need to address the merits of such argument as the court has found no unity of use between the EGDC Parcels and HPI Parcels or unity of ownership between the owners of the EGDC Parcels or the owners of the HPI Parcels.