NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5727-05T5

CHERRY HILL SELF STORAGE, LLC,

Plaintiff-Appellant,

v.

RACANELLI CONSTRUCTION COMPANY,
INC.,

Defendant-Respondent.

Submitted May 21, 2007 - Decided June 18, 2007

Before Judges Lintner, S.L. Reisner
and Seltzer.

On appeal from the Superior Court of
New Jersey, Chancery Division, Camden
County, C-33-06.

Seyfarth Shaw, attorneys for appellant
(Marc J. Gurell and James S. Yu, on
the brief).

McElroy, Deutsch, Mulvaney & Carpenter,
attorneys for respondent (Craig H. Parker,
on the brief).

PER CURIAM

Plaintiff appeals from a June 19, 2006, order dismissing its complaint seeking the discharge of a construction lien filed by defendant and for related relief. We reverse and remand.

The operative facts underlying the judge's decision are not in substantial dispute. Plaintiff acquired real property in Cherry Hill in 2004 on which was constructed a building containing both warehouse and showroom space. The building was occupied, pursuant to a lease with plaintiff's predecessor in title, by an entity designated in the lease as either tenant or Levitz. The lease, to which plaintiff succeeded as landlord, required Levitz to move the showroom entrance and build out a store-front facade, on notice that plaintiff intended to occupy the warehouse portion of the property.

That notice was given and Levitz engaged defendant to perform the work required of it by the lease. Section 10.03 required Levitz "to give prompt notice to Landlord of the commencement of any work or alteration or improvement on the Demised Premises" and granted "to Landlord the right to post notices of non-responsibility on the Demised Premises and record verified copies thereof in connection with all work of any kind upon the Demised Premises." Although the judge did not deal with the issue in his decision, there is no suggestion that Levitz failed to comply with its notification obligation; the judge found affirmatively that plaintiffs did not give notice of non-responsibility.

After making partial payment to defendant, Levitz filed for bankruptcy protection and defendant, unable to secure payment from plaintiff, filed a lien claim pursuant to the Construction Lien Law, N.J.S.A. 2A:44A-1 to -38. Plaintiff then instituted this action to discharge the lien. See N.J.S.A. 2A:44A-15. Plaintiff premised its claim for relief on N.J.S.A. 2A:44A-3 which provides:

> Any contractor, subcontractor or supplier who provides work, services, material or equipment pursuant to a contract, shall be entitled to a lien for the value of the work or services performed, or materials or equipment furnished in accordance with the contract and based upon the contract price, subject to the provisions of sections 9 and 10 of this act. The lien shall attach to the interest of the owner in the real property. If a tenant contracts for improvement of the real property and the contract for improvement has not been authorized in writing by the owner of a fee simple interest in the improved real property, the lien shall attach only to the leasehold interest of the tenant.
>
> Nothing in this act shall be construed to limit the right of any claimant from pursuing any other remedy provided by law. (Emphasis added.)

Plaintiff asserted that it had not "authorized in writing" the contract by which defendant and Levitz contracted for the improvement of the real estate. Defendant argued that the lease provisions, including the provision requiring Levitz to do the

work for which it had contracted, was sufficient to satisfy the authorization requirement of the statute. The judge accepted defendant's position, opining that, "There's no question that this lease and the provisions noted were more than adequate to provide the requisite written agreement."[1]

We are, accordingly, called upon to determine if the lease provisions to which the judge referred constitute a written authorization of "the contract for improvement" between Levitz and defendant within the meaning of the statute. The interpretation of the statute is a legal issue. See Hodges v. Sasil Corp., 189 N.J. 210, 220-21 (2007); In re Petition of S. Jersey Gas Co., 226 N.J. Super. 327, 332 (App. Div. 1988), aff'd 116 N.J. 251 (1989). Our review of the judge's interpretation is de novo without any deference to the conclusions of the motion judge. Balsamides v. Protameen Chems., Inc., 160 N.J.

[1] The judge identified the lease provisions at issue: (1) Section 2.07 (requiring the work); Section 2.08 (requiring Levitz to contribute or to cooperate in obtaining governmental approvals); Section 31.01 (requiring plaintiff to contribute to the work in the amount of $150,000 "in the form of a Basic Rent credit against the next succeeding monthly Basic Rent due under this Lease," conditioned however on the completion of the work and the payment in full of the cost of the work) and Section 31.02 (giving plaintiff the right to compel tenant to make "any modifications to . . . [the] plans and specifications" that are "necessary to move tenants current showroom entrance").

352, 372 (1999); Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

"When construing a statute, the judicial role is to give effect to the legislative intent." Brooks v. Odom, 150 N.J. 395, 401 (1997) (citing State v. Madden, 61 N.J. 377, 389 (1972)). "[G]enerally, the best indicator of that intent is the statutory language." DiProspero v. Penn, 183 N.J. 477, 492 (2005) (citing Frugis v. Bracigliano, 177 N.J. 250, 280 (2003)). "Sometimes, a court need look no further than the statutory language" because when the language is unambiguous no further examination is necessary. Brooks, supra, 150 N.J. at 401 (citing Munoz v. N.J. Auto. Full Ins. Underwriting Ass'n., 145 N.J. 377, 384 (1996)). We conclude that is the case here.

The plain language of N.J.S.A. 2A:44A-3 requires written authorization of "the contract for improvement" pursuant to which the work is done; it does not require written authorization for the tenant to undertake the improvement. Said another way, the statutory reference is to the contract pursuant to which the work is performed and not to the work undertaken pursuant to the contract. Because the lease provisions identified by the judge do not even reference a particular contract, they cannot constitute authorization for the execution of a specific contract.

Our conclusion is supported by the language of the statute governing the right to lien a landlord's interest before the adoption of N.J.S.A. 2A:44A-3, which became effective April 22, 1994, shortly before the effective date of the lease between plaintiff's predecessor and Levitz. Prior to that date, the relevant statute was N.J.S.A. 2A:44-68,[2] which provided:

> When a building is altered, repaired or added to by a tenant or by a person other than the owner of the land upon which it is erected, only the estate of the tenant or person so altering, repairing or adding to such building shall be subject to the lien created by this article, unless such alteration, repair or addition was made with the written consent of the owner of such land.

In contrast to the present statute, N.J.S.A. 2A:44-68 permitted a lien on the fee estate when work was done pursuant to a contract with a tenant only if the work "was [performed] with the written consent of the owner of such land." That language refers to the landlord's consent to the work rather than the landlord's authorization of a contract. The change in language is significant. "[O]rdinarily, a change in legislative language signifies a purposeful alteration in the substance of the law." State v. Magner, 151 N.J. Super. 451, 453 (App. Div. 1977) (citing William H. Goldberg & Co. v. Div. of Employment

[2] L. 1942, c. 242.

Sec., 21 N.J. 107, 112-13 (1956); Stauhs v. Bd. of Review, 93 N.J. Super. 451, 456-57 (App. Div. 1967)). "This [principle] rests upon the theory 'that the legislature is not presumed to do a useless act.'" State v. Foglia, 182 N.J. Super. 12, 16 (App. Div. 1981) (quoting 2A Sutherland Statutory Construction, §49.11 at 265 (4th ed. 1973)), certif. granted, 89 N.J. 436, appeal dismissed, 91 N.J. 523 (1982).

Given the legislature's evident intent to require a landlord to authorize a particular contract that may result in a lien upon the landlord's property and the undisputed fact that no such authorization was provided here, we conclude that the lien was improperly filed. The parties have not briefed the issue of whether the reversal of the judge's determination requires any further proceedings. Accordingly, we reverse the order of June 19, 2006, and remand for the entry of an order discharging the lien and for such further proceedings as may be appropriate.

Reversed and remanded.

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