NORTH ORATON URBAN RENEWAL, L.P.,	:	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION-ESSEX COUNTY DOCKET NO. C-146-14
	:	DOCKET NO. C-147-14
Plaintiff,	:	DOCKET NO. C-148-14
v.	:	NOT FOR PUBLICATION
CITY OF EAST ORANGE, and BOCA ENVIRONMENTAL, INC.,	:	CITY OF EAST ORANGE'S MOTION TO CERTIFY THE MARCH 7, 2016 JUDGMENT AS FINAL PURSUANT TO R. 4:42-2 AND FOR A STAY OF THE MARCH 7, 2016 JUDGMENT AND BOCA ENVIRONMENTAL, INC.'S MOTION TO ENFORCE LITIGANT'S RIGHTS PURSUANT TO R. 4:59-1(f) AND R. 1:10-3
Defendants.	:	
and	:	
THE MARY COCOZIELLO IRREVOCABLE TRUST, and TOWER LIEN, LLC,	:	
Intervenors.	:	MEMORANDUM OPINION

Dated: July 15, 2016

Andrew M. Baron, Esq., for plaintiff North Oraton Urban Renewal, L.P. (Kochanski, Baron & Galfy, P.C., attorneys)

John F. Casey, Esq., for defendant City of East Orange (Chiesa, Shahinian & Giantomasi, P.C, attorneys)

Jerrold S. Kulback, Esq., for defendant Boca Environmental, Inc. (Archer & Greiner, P.C., attorneys)

J. Barry Cocoziello, Esq., for intervenor The Mary Cocoziello Irrevocable Trust (Podvey, Meanor, Catenacci, Hildner, Cocoziello & Chattman, P.C., attorneys)

Robert A. Del Vecchio, Esq., and Susan B. Fagan-Rodriguez, Esq. for intervenor Tower Lien, LLC (Robert A. Del Vecchio, LLC, attorneys)

DeALMEIDA, P.J.T.C. (t/a)

On October 20, 2014, this court issued an Order and Judgment on Count I of the Complaints and related Counterclaims in the above-referenced matters. Those Counts and Counterclaims

concern a December 1995 Financial Agreement between plaintiff North Oraton Urban Renewal, L.P. ("North Oraton") and defendant City of East Orange (the "City") relating to the improvements at Block 261, Lot 50 in the City (the "subject property"). The Financial Agreement provides for a tax abatement on improvements at the subject property pursuant to the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 to -22, in connection with North Oraton's construction of low- and moderate-income housing for elderly and disabled residents. The Financial Agreement requires North Oraton to make an annual payment in lieu of taxes ("PILOT") to the City based on a percentage of gross revenues collected as rent at the subject property, with credit for any of taxes North Oraton paid on land at the subject property which is not exempt under the Financial Agreement.

A detailed recitation of what transpired between the parties after execution of the Financial Agreement is set forth in the court's October 20, 2014 written opinion and will not be repeated here. In short, neither party fulfilled its obligations under the Financial Agreement. North Oraton, for more than a decade, made none of the PILOTs required by the agreement. Nor did North Oraton provide the City with annual audited financial statements to assist in the calculation of the payments due from North Oraton. The City, on the other hand, for more than a decade, made no attempt to collect the PILOTs due under the Financial Agreement. At an evidentiary hearing, neither party adequately explained why the PILOTs were not made or how North Oraton was permitted to flout its financial obligations to the City for an extended period of time without consequence.

On or about June 14, 2005, the East Orange tax collector, after reading a newspaper article about the number of exempt properties in the City, unilaterally rescinded the abatement provided by the Financial Agreement and issued a delinquency notice to North Oraton indicating a

delinquency, including interest, of $251,739.94. It is not clear from the record whether this amount reflects delinquent PILOTs, delinquent taxes, or a combination thereof. Nor is it clear what periods are covered by the notice, although the notice states figures for "04" and "05."

North Oraton did not pay the delinquency, leading to the City's sale of a tax sale certificate to Fidelity Tax, LLC. The tax sale certificate ultimately was transferred to defendant Boca Environmental, Inc. ("Boca"). After the sale, the holder of the tax sale certificate made several payments of tax on the subject property to protect its investment and preserve the priority of the tax lien.

In 2007, East Orange implemented a city-wide revaluation. As part of the revaluation, the assessment on the subject property was set as follows:

Land	$1,260,000
Improvement	$ 991,300
Total	$2,251,300

On April 27, 2007, North Oraton filed a Petition of Appeal with the Essex County Board of Taxation challenging the 2007 assessment on the subject property.

On August 27, 2007, the county board issued a Judgment affirming the assessment without prejudice to North Oraton seeking Tax Court review.

On October 9, 2007, North Oraton filed three Complaints in the Tax Court. Each Complaint contains two Counts and named the City and Fidelity Tax, LLC as defendants.[1]

Count I of each Complaint alleges that the City violated the Financial Agreement by illegally revoking the abatement for the subject property. North Oraton also alleges that the City's sale of a tax sale certificate to Fidelity Tax, LLC was invalid because the abatement on the subject

[1] The court subsequently entered an Order substituting Boca as a defendant in place of Fidelity Tax, LLC.

property was unilaterally revoked by the City. On these Counts, North Oraton demands that the court: (1) declare the tax sale certificate null and void; (2) assign the tax sale certificate to the City and order the City to refund the lienholder; and (3) reinstate the Financial Agreement.

Count II of each Complaint alleges that the assessment on the subject property for tax years 2005, 2006 and 2007, respectively, exceeds its true market value or is otherwise invalid.

On October 26, 2007, the city filed Counterclaims in response to each of the Complaints. The Counterclaims assert that the Tax Court lacks jurisdiction over North Oraton's Complaints as they relate to tax years 2005 and 2006 due to untimely filing. In addition, the City alleges that in the event the Tax Court does have jurisdiction over those years, the assessments on the subject property should be raised. The City does not make untimely filing allegations with respect to tax year 2007, but alleges that the assessment on the subject property for that year should be raised.

In light of the holding in McMahon v. City of Newark, 195 N.J. 526 (2008), the Tax Court determined that the parties' Count I claims and counterclaims are in the nature of contractual allegations properly venued in the Superior Court. As a result, on May 29, 2014, the Hon. Stuart Rabner, C.J., issued an Order transferring these matters to the Superior Court, Chancery Division, Essex County, and temporarily assigning the undersigned to that court for resolution of all issues raised in the Complaints and Counterclaims.

In its October 20, 2014 Opinion, the court concluded that both the City and North Oraton breached the 1995 Financial Agreement. North Oraton breached the agreement by failing over a ten-year period to make any PILOTs to the City. The City breached the agreement by unilaterally revoking the abatement at the subject property and issuing the tax sale certificate now held by Boca.

In light of these conclusions, the court ordered that the tax abatement provided in the Financial Agreement be restored commencing with the issuance of the 1995 certificate of occupancy for the improvements at the property. The court also held that the tax sale certificate held by defendant Boca with respect to the subject property was invalid when issued. See Brinkley v. Western World, Inc., 292 N.J. Super. 134 (App. Div. 1996).

Among other remedies, the court vacated the tax sale certificate held by Boca and ordered that the City refund to Boca an amount equal to: (1) the price paid to the City for the tax sale certificate, together with interest on that amount from the date paid at the rate set forth in R. 4:42-11(a), id. at 137; N.J.S.A. 54:5-43; and (2) all subsequent taxes paid to the City on the tax sale certificate together with interest on those amounts from the dates paid, at a rate to be determined by the court after further briefing by the parties.

The parties subsequently submitted briefs on the rate of interest question noted above. In addition, the City subsequently raised the question of whether the court could order that the City refund the amounts specified in the Judgment within a specified period of time.

On February 8, 2016, the court issued a Memorandum Opinion resolving the outstanding issues. As a result of its legal conclusions, on March 7, 2016, the court entered Judgment providing: (1) that upon the assignment of the tax sale certificate by Boca to the City, the City refund to Boca the sum of $219,849.52, reflecting the amount paid for the tax sale certificate, together with interest thereon calculated pursuant to R. 4:42-11(a) accruing from the date of purchase through and including the date of this Court's February 8, 2016 written opinion, and post-judgment interest shall accrue on the sum of $219,849.52 pursuant to R. 4:42-11(a) from February 8, 2016 until the date such amount is paid by the City; (2) that upon the assignment of the tax sale certificate by Boca to the City, the City refund to Boca the sum of $820,563.56, representing

subsequent tax and related advances made with respect to the subject property, together with interest thereon at a rate of eighteen percent (18%) pursuant to N.J.S.A. 54:4-67 accruing from the respective payment date of each such advance through and including the date of the Court's February 8, 2016 written opinion (with a per diem thereafter of $404.66 until such amount is paid by the City); and (3) that all amounts ordered refunded with interest by the City to Boca as detailed in the March 7, 2016 Judgment shall be paid by the City to Boca within sixty days of the date the tax sale certificate is so assigned by Boca to the City.

Shortly after issuance of the March 7, 2016 Judgment, the City filed a Notice of Appeal with the Superior Court, Appellate Division. The appellate court questioned the finality of the Judgment and, as a result, the City's right to file an appeal without moving for leave to appeal an interlocutory trial court order. It is the court's understanding that although the Appellate Division assigned a docket number to the appeal, it has not accepted the appeal pending resolution of the question of whether the March 7, 2016 Judgment is final.

In light of the apparent interlocutory nature of the March 7, 2016 Judgment, the City moved pursuant to R. 4:42-2 for an Order certifying the March 7, 2016 Judgment as final so that it may pursue an appeal. In addition, the City moved to stay the March 7, 2016 Judgment pending resolution of the appeal it anticipates the Appellate Division will accept once the March 7, 2016 Judgment is certified as final.

Boca does not oppose the motion to certify the March 7, 2016 Judgment as final. In fact, Boca intends to enforce the Judgment and has moved for relief in aid of litigant's rights pursuant to R. 4:59-1(f) and R. 1:10-3. In addition, Boca seeks a Writ of Mandamus in the event that the City does not comply with an Order enforcing Boca's rights.

A. Certification of the March 7, 2016 Judgment as Final.

An appeal as of right to the Appellate Division may be taken only from a "final judgment." R. 2:2-3(a)(1). "To be a final judgment, an order generally must 'dispose of all claims against all parties.'" Janicky v. Point Bay Fuel, Inc., 396 N.J. Super. 545, 549 (App. Div. 2007)(citing S.N. Golden Estates, Inc. v. Cont'l Cas. Co., 317 N.J. Super. 82, 87 (App. Div. 1998)). "This rule, commonly referred to as the final judgment rule, reflects the view that piecemeal appellate reviews, ordinarily, are an anathema to our practice." Janicky, supra, 396 N.J. Super. at 550 (internal quotations and brackets omitted).

Rule 4:42-2 allows for the certification of a Judgment as final even if other claims raised in the action remain unresolved. The rule provides in relevant part as follows:

> If an order would be subject to process to enforce a judgment pursuant to R. 4:59 if it were final and if the trial court certifies that there is no just reason for delay of such enforcement, the trial court may direct the entry of final judgment upon fewer than all the claims as to all parties, but only in the following circumstances: (1) upon a complete adjudication of a separate claim; or (2) upon complete adjudication of all the rights and liabilities asserted in the litigation as to any party; or (3) where a partial summary judgment or other order for payment of part of a claim is awarded.
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> [R. 4:42-2.]

Certification of a Judgment as final allows for an appeal as of right. See R. 2:2-3.

A party's desire to seek appellate review of an interlocutory Judgment, however, is not a basis for certification as final under R. 4:42-2. The purpose of Rule 4:42-2 is "to permit execution on a partial summary judgment fully adjudicating a separable claim for affirmative relief or all claims by and against a single party in multi-party litigation." D'Oliviera v. Micol, 321 N.J. Super. 637, 641 (App. Div. 1999). "The appealability of an interlocutory order certified as final under Rule 4:42-2 is solely 'an ancillary consequence of [a] finality certification.'" Janicky, supra, 396

N.J. Super. at 550-551 (quoting D'Oliviera, supra, 321 N.J. Super. at 641). "Consequently, a party may not seek a finality certification to bypass [the Appellate Division's] exclusive authority to determine whether to grant leave to appeal an interlocutory order." Id. at 551 (citing Tradesfort Techs, Inc. v. Franklin Mutl. Ins. Co., 329 N.J. Super. 137, 141 (App. Div. 2000)).

As Judge Pressler explained in the comments to Rule 4:42-2:

> [I]t is only an order susceptible to enforcement as a final order which is eligible for certification. This limited eligibility excludes orders dismissing as to particular parties, denying summary judgment, and indeed the whole panoply of orders which, if final, would confer no enforcement rights under R. 4:59.

The March 7, 2016 Judgment satisfies the requirement set forth in R. 4:42-2 for certification as final. The Judgment represents a complete adjudication of Boca's claim against the City of East Orange. Boca's only interest in these matters is the validity of its tax sale certificate. Its only claim is to be reimbursed for the amount expended on the certificate and subsequent advances to pay taxes on the subject property. The March 7, 2016 Judgment fully resolves that claim by revoking its tax sale certificate and ordering the City to reimburse Boca for sums certain. The March 7, 2016 Judgment is, therefore, enforceable against the City. See Allstate Ins. Co. v. Fisher, 408 N.J. Super. 289, 297 n.3 (App. Div. 2009); Newstead Builders, Inc. v. First Merchants Nat'l Bank, 146 N.J. Super. 295 (App. Div. 1977).

In addition, Boca's claim is completely separate from the claims asserted by the property owner and the City with respect to PILOTs due under the Financial Agreement. There are two claims remaining unresolved: (1) the amount North Oraton owes to the City under the Financial

Agreement; and (2) whether the land portion of the subject property is properly assessed for tax year 2005 through 2007. Boca has no interest in these claims.[2]

The court concludes that certification of the March 7, 2016 Judgment as final pursuant to R. 4:42-2 is warranted and that no just reason for delay of enforcement of the Judgment exists.

B. City's Request for a Stay of the March 7, 2016 Judgment.

The standards for entry of stay are set forth in Crowe v. DeGioia, 90 N.J. 126, 133 (1982). The court must weight several factors, including whether a stay is necessary to prevent irreparable harm, whether the party seeking a stay is likely to succeed on the legal rights asserted, and whether a balancing of the relative hardships to the parties of granting or denying relief favors entry of a stay. Id. at 132-35. Each factor is examined in turn.

(1) Prevention of Irreparable Harm.

As our Supreme Court has explained, "[h]arm is generally considered irreparable in equity if it cannot be redressed adequately by monetary damages." Id. at 132-33. The City's moving papers do not contain a statement of the harm that would be visited upon the City in the absence of a stay. Nor are the City's moving papers supported by an Affidavit from a City official explaining the City's financial situation, the steps that would be necessary to satisfy the Judgment, or the impact that compliance with the Judgment would have on the City. Simply put, there is no suggestion, let alone proof, of a threat of irreparable harm if the City is compelled to return to Boca the amounts it collected for an invalid tax sale certificate and for subsequent tax payments made to preserve the interests of the holder of the certificate. The City was not entitled to the

[2] On June 20, 2016, the court entered a Consent Order permitting Tower Lien, LLC, the holder of a tax sale certificate with respect to the subject property, to intervene as a defendant in this matter. Tower Lien, LLC is, in effect, in the same position as Boca and seeks relief consistent with the relief provided to Boca in the March 7, 2016 Judgment.

approximately $1 million it collected from Boca and its predecessor in interest. Having to return money to which the City had no entitlement does not constitute irreparable harm. The first factor of the Crowe test has not been met.

(2) Likelihood of Success on the Merits.

The City identifies the central argument it intends to raise on appeal as "to how to calculate interest to be returned to the tax sale certificate holder . . . ." (Pb4). The City makes no argument in its moving papers that it will challenge the underlying determination by the court that the City's revocation of the tax exemption on the improvements at the subject property was invalid, that the tax sale certificate held by Boca was void, and that Boca is entitled to recover funds improperly collected by the City.[3]

The City's moving papers do not cite legal authority supporting its contention that the court erred with respect to the interest rate to be paid by the City on the amounts it was ordered to refund to Boca. The court concluded that interest on the refund to Boca of the amount paid for the tax sale certificate would be pursuant to R. 4:42-11(a). This is the standard rate of interest paid on monetary awards and does not appear to be contested by the City.

The question of the interest to be paid to Boca on tax and related advances made after issuance of the tax sale certificate was contested by the parties and addressed by the court in its February 8, 2016 Memorandum Opinion. The court concluded that Boca is entitled to interest on

[3] At oral argument on the City's motion, counsel suggested that the City would challenge the court's determination that revocation of the tax exemption on the subject property was invalid. This argument was not raised in the City's moving papers, nor did counsel cite any legal precedents on which it would rely to support its contention that the City was entitled unilaterally to revoke the exemption on the improvements at the subject property and issue a tax sale certificate for outstanding taxes. Having cited no legal authority in support of its position, the City plainly has not established a likelihood of success on the merits of any claim that the court erred in reinstating the exemption at the subject property and vacating Boca's tax sale certificate.

tax and related advances made subsequent to issuance of the tax certificate at 18% pursuant to N.J.S.A. 54:4-67. In reaching this conclusion the court relied on the holding in Crusader Servicing Corp. v. City of Wildwood, 345 N.J. Super. 456 (Law Div. 2001). The City offers no argument in support of its stay motion that it is likely to succeed in convincing the Appellate Division that a different rate of interest should apply to the refund of tax and other advances made after issuance of the tax sale certificate. While there is no appellate precedent directly on point, the Crusader Servicing court addressed circumstances quite similar to those before this court in a comprehensive opinion this court found persuasive. There has been no demonstration by the City that an appellate court is likely to conclude that the holding and rationale in Crusader does not apply here.[4]

The second Crowe factor, therefore, is not satisfied.

(3) Balancing of the Hardships.

The City has produced no evidence establishing the hardship it would endure as a result of satisfying the March 7, 2016 Judgment. The City's claim that a refund to Boca would harm the public fisc rings hollow. After an evidentiary hearing, this court concluded that the City utterly failed to enforce its Financial Agreement with North Oraton. For more than a decade the City made no effort to collect PILOTs from plaintiff. There is no evidence that the City contacted plaintiff, requested financial statements, sent plaintiff a notice seeking a PILOT, or made any effort to collect funds to which the City was entitled. Nor did the City send plaintiff tax bills for the land at the subject property, which the Financial Agreement quite plainly provides is not exempt from taxation. The City's protection of the public fisc was decidedly lacking.

[4] Even if the City had demonstrated a likelihood of success with respect to the interest rate on the refund of tax and other advances made by Boca after issuance of the tax sale certificate, it is not clear that the City would be entitled to a stay of the entire Judgment, including the underlying amounts to be refunded and the interest to be provided pursuant to R. 4:42-11 on the amount paid for the tax sale certification, which the City does contest.

Once a City official focused on the North Oraton property, as a result of media coverage, the official unilaterally revoked the Financial Agreement, rescinded the exemption on the improvements at the subject property, calculated a delinquency in a manner the City cannot explain, and sent a delinquency notice to an incorrect address. All of these actions were in violation of the Financial Agreement with plaintiff. Because the delinquency was sent to an address other than the address specifically provided in the Financial Agreement, the delinquency was not paid and a tax sale certificate was issued. The City collected the money from the sale of the certificate and subsequent tax payments and other advances by the lien holder.

Although a principal of plaintiff met with the East Orange Mayor and informed him of financial difficulties faced by plaintiff, the City did not act pursuant to N.J.S.A. 41A:20-18 to notify the Local Finance Board and request that North Oraton be summoned to a hearing before the Board. N.J.S.A. 41A:20-18 permits the Board to modify the terms of a financial agreement executed pursuant to the Long Term Tax Exemption Law to ensure the success of housing projects constructed under the Law.

Instead, the City spent the funds it collected on the tax sale certificate, along with the subsequent advances. The City subsequently issued a second tax sale certificate with respect to the subject property to Tower Lien. Remarkably, at oral argument on the stay motion, counsel for the City informed that court that even after the court issued its Judgment concluding that the North Oraton and the City breach the Financial Agreement, reinstating the exemption for the improvements at the subject property, and vacating Boca's tax sale certificate, the City still has not sought PILOTs from North Oraton or even requested North Oraton to produce financial statements to permit the City to calculate the amount of PILOTs due under the Financial Agreement.

Boca, on the other hand, will suffer harm if the March 7, 2016 Judgment is stayed. Boca is a good faith participant in the tax sale certificate market created by statute to facilitate the smooth collection of revenue by municipalities and to discourage tax delinquencies by property owners. After purchase of the certificate, the certificate holder paid what was characterized by the City as taxes on what should have been exempt improvements at the subject property. The tax sale statutes encourage the payment of taxes by the lienholder to prevent further delinquencies and the issuance of subsequent tax sale certificates. It is the City's error, not any act by the lienholder, which resulted in the subsequent payment of taxes on the subject property. The municipality, therefore, should bear the cost of its error. Accord Pioneer Gun Club v. Township of Bass River, 61 N.J. Super. 104, 109 (Ch. Div. 1960) ("[B]ecause the municipality caused the invalid tax sale to be held upon an improper assessment, it should be required to pay interest upon the total amount paid at the tax sale, even though part of the price was a premium. Interest should also be paid on the refund on all taxes paid after the tax sale.").

If the March 7, 2016 Judgment is stayed Boca will continue to be denied the return of money the City should never have collected and will, in effect, be compelled to continue to subsidize the City and North Oraton's breach of the Financial Agreement. Boca should not bear the financial burden of the errors of the other parties to these actions. The balance of harms does not favor entry of a stay.

Having examined each of the Crowe factors and given appropriate weight to the competing considerations arising from the City's request for relief, the court concludes that a stay of its March 7, 2016 Judgment is not warranted.[5]

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[5] The court is not persuaded by the City's argument that N.J.S.A. 54:3-27.2 warrants the issuance of a stay. That statute provides that "in the event that a taxpayer is successful in an appeal from an assessment on real property, the respective taxing district shall refund any excess taxes

C. Defendant Boca Environmental, Inc.'s Motion to Enforce Litigants Rights.

Pursuant to R. 4:59-1(f), "the court may make any appropriate order in aid of execution" of a Judgment. In addition, R. 1:10-3 provides that "[n]otwithstanding that an act or omission may also constitute a contempt of court, a litigant in any action may seek relief by application in the action." This is intended to be a device to enable a litigant to enforce a right. In re: N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 17 (2015). "The scope of relief in a motion in aid of litigant's rights is limited to remediation of the violation of a court order." Abbott v. Burke, 206 N.J. 332, 371 (2011). Willful violation of an order is not a predicate to relief under R. 1:10-3. "[C]ourts have recognized that 'demonstration of a mens rea, willful disobedience and lack of concern for the order of the court, is necessary for a finding of contempt, but irrelevant in a proceeding designed simply to enforce a judgment on a litigant's behalf.'" In re: N.J.A.C. 5:96 & 5:97, supra, 221 N.J. at 17 (citing Lusardi v. Curtis Point Prop. Owners Ass'n, 138 N.J. Super. 44, 49 (App. Div. 1995) (emphasis omitted). The "Appellate Division correctly held that upon a litigant's application for enforcement of an injunctive order, relief should not be refused merely because the violation was not willful." Department of Heath v. Roselle, 34 N.J. 331, 347 (1961).

The March 7, 2016 Judgment provide a clear directive to the City to refund sums certain to Boca within 60 days of the assignment of the tax sale certificate by Boca to the City. The

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paid, together with interest thereon from the date of payment . . . within 60 days of the date of final judgment." N.J.S.A. 54:3-27.2. This statute has been interpreted to require the municipality to issue a refund 60 days after the conclusion of any appeal from a decision reducing an assessment. Universal Folding Box Co. v. City of Hoboken, 362 N.J. Super. 429 (App. Div. 2003). The City argues that because this court referred to N.J.S.A. 54:3-27.2 when determining that the City be required to issue its refund to Boca within 60 days of the March 7, 2016 Judgment, the court should also rely on the statute to issue a stay of the March 7, 2016 Judgment. While there is surface appeal to the City's argument, the controlling legal precedents for the issuance of a stay control the court's resolution of the City's motion. The court is not convinced that it has authority to apply N.J.S.A. 54:3-27.2, which is not directly applicable here, to override the clear holding in Crowe setting forth the appropriate factors to be considered to decide a motion for a stay.

assignment took place on March 9, 2016, triggering the start of the 60-day period. The City did not thereafter comply with the court's directive. Nor did the City seek a stay before expiration of the 60-day period. Instead, the City merely allowed the 60-day period to lapse without complying with the Judgment. While the City filed a Notice of Appeal with the Superior Court, Appellate Division, prior to the expiration of the 60-day period, it is well established that the filing of a Notice of Appeal does not stay the trial court order challenged on appeal. R. 2:9-5 (a). Application for a stay must first be made before the court that issued the order that is subject to the appeal. The City did not seek a stay from this court until May 20, 2016, after expiration of the 60-day period.

The City's argument that the interlocutory nature of the March 7, 2016 Judgment excuses the City's compliance with the Judgment is not supported by law. Although the March 7, 2016 Judgment was not final until certified as such by this court pursuant to R. 4:42-2, an interlocutory order of a trial court directing a party to perform an act within a specified period of time is enforceable. The City cites no legal authority which suggests that it may ignore a trial court order to perform a specified act merely because the order is interlocutory. It was incumbent on the City to seek a stay before this court prior to the expiration of the 60-day period.

Because a stay of the March 7, 2016 Judgment is not warranted, Boca is entitled to the relief in aid of litigant's rights it seeks. The court will enter an Order directing the City to comply with the March 7, 2016 Judgment within 30 days. While Boca seeks an Order requiring compliance by the City within 10 days, it is the court's understanding that the City intends to seek a stay from the Appellate Division. A 30-day period will provide an opportunity for the City to seek relief from the Appellate Division without significantly interfering with Boca's rights.[6]

[6] The court reserves decision with respect to Boca's request for a Writ of Mandamus. Should the City not secure a stay from the Appellate Division, and fail to comply with this court's Judgment, Boca may renew its request for a Writ of Mandamus.