ESPINOSA, J., concurring in part and dissenting in part. In this foreclosure action, the defendant John Neubig filed a motion to determine priorities of encumbrances running with the subject property owned by the defendant Alexandria Estates, LLC (Alexandria Estates). Specifically, Neubig claimed that his interest in the subject property was prior in right to that of the plaintiff mortgagee, Ginsberg & Ginsberg, LLC, trustee of the Wiyot Trust. On appeal, the plaintiff challenges the judgment of strict foreclosure on the ground that the court improperly determined that Neubig's interest was superior to its interest in the property. I agree with my colleagues in the majority that the judgments of the trial court should be reversed. Respectfully, I disagree with the majority that the case should be remanded to that court for further proceedings related to Neubig's interest in the property. I would direct the court, on remand, to grant the plaintiff priority over any interest of Neubig.

The relevant background facts and procedural history are not in dispute. Neubig was the former owner of the subject property, located in North Haven, having sold it to Dale Construction 01, LLC (Dale Construction), on November 7, 2002, by virtue of a purchase and sale agreement. By mutual agreement, at the time of the closing, Neubig transferred title of the property to Alexandria Estates, which was closely associated with Dale Construction as a business entity.[1] It appears that Alexandria Estates intended to subdivide the property into building lots for the construction of single family homes. In 2007, Alexandria Estates executed a promissory note, promising to pay the plaintiff $860,000 with interest. The note was secured by a mortgage lien on the subject property. In 2008, the plaintiff initiated the present foreclosure action, claiming that Alexandria failed to make a required interest payment on the note. Thereafter, Neubig was made a defendant in the action and filed a motion to determine whether his encumbrance on the subject property was superior to the plaintiff's mortgage lien on the property.

Before the trial court, Neubig attempted to demonstrate the nature of his interest in the subject property by relying on several written agreements filed on the North Haven land records. First, he relied on an agreement between him and Dale Construction, which agreement was recorded on the land records on March 4, 2004. In relevant part, that agreement required Dale Construction to pay Neubig $35,000 for each lot, after the first lot, later approved for residential development on the subject property. Second, Neubig relied on an agreement between him and Alexandria Estates, which

was recorded on the land records on November 7, 2002. That agreement required Alexandria Estates to pay Neubig $35,000 for each lot, after the first lot, later approved for residential development on the subject property. Third, Neubig relied on a notice of equitable interest, recorded on the land records on May 3, 2005. That notice referred to the $35,000 payments due Neubig for approved lots and described with particularity the agreement between him and Dale Construction, which agreement was recorded on the land records.

In concluding that Neubig's interest was superior to that of the plaintiff, the court specifically relied on the agreement between Neubig and Alexandria Estates, recorded on the land records on November 7, 2002. The court reasoned that the parties intended that the agreement be recorded on the land records. On this ground, the court concluded that the agreement ran with the land and, thus, gave Neubig a superior interest to that of the plaintiff.

The dispositive issue is as follows: Was the agreement between Neubig and Alexandria Estates a personal covenant *or* a real covenant? If the agreement was personal, it cannot be said to have run with the land and, thus, have bound the plaintiff, a future grantee. "For purposes of the distinction between real covenants and personal covenants, a covenant may 'run with the land,' or may simply be a matter between the grantor and purchaser. If the covenant does not touch or concern the occupation or enjoyment of the land, it is the collateral and personal obligation of the grantor or lessor and does not run with the land." 21 C.J.S. 359–60, Covenants § 32 (2006). "A covenant that touches and concerns the land can be one that calls for either doing physical things to the land, or refraining from doing physical things to the land." 21 C.J.S., supra, p. 359. "Whether a promise with respect to the use of land is a covenant real as distinguished from a personal covenant depends upon the intent of the parties to the promise, to be determined in the light of the attendant circumstances. *If it touches the land involved to the extent that it materially affects the value of that land, it is generally to be interpreted as a covenant which runs with the land.*" (Emphasis added.) *Carlson* v. *Libby*, 137 Conn. 362, 367, 77 A.2d 332 (1950). "A covenant in a deed which restrains the use to which the land may be put in the future as well as in the present and which might very likely affect its value, touches and concerns the land." *Dick* v. *Sears-Roebuck & Co.*, 115 Conn. 122, 125, 160 A. 432 (1932). There is no dispute as to what agreements Neubig relied on to demonstrate the nature of his interest in the subject property. Thus, the issue is one of law and is entitled to plenary review by this court.

Here, the agreements at issue certainly are *related to the land*. The agreements contained descriptions of the subject property and included language that

appeared to bind the heirs and assigns of the parties.[2] Moreover, the agreements were recorded on the land records. Yet, it cannot be said that the agreements are covenants that *touch and concern the land* and, thus, run with the land. The agreements require that payment be made to Neubig, the former owner of the subject property, when certain lots on the subject property are approved for subdivision. The agreements do not call for anything to be done to the land, do not call for anything not to be done to the land, do not materially affect the value of the land or restrain the future use of the land. Simply put, the agreements do not concern the occupation or enjoyment of the land by any party. The agreements did not run with the land, but were merely personal covenants between Neubig, on the one hand, and Dale Construction and Alexandria Estates, on the other, that were filed on the land records. The court improperly relied on the agreements to grant Neubig priority over the plaintiff, which was not bound by the agreements.

I would remand the case to the court with direction to grant the plaintiff priority with respect to Neubig's claimed interest in the property. On several grounds, I respectfully disagree with the majority's decision to remand the case to the trial court for the purpose of examining the deed that conveyed the subject property from Neubig to Alexandria Estates.

This is not an action to quiet title. The narrow issue is whether the agreements relied on by Neubig entitle him to priority over the plaintiff, as argued. Neubig did not rely on any language in the deed before either this court or the trial court. There is nothing in the record to suggest that the deed was in any way part of Neubig's theory of superior priority over the plaintiff. Even if we were to assume that the language in the deed was relevant to the issue before this court, I do not believe that it is proper for this court, on its own initiative, to raise that ground on Neubig's behalf. There is no claim that Neubig did not avail himself of a full and fair opportunity to present his case before the trial court and to defend his appeal before this court. Because this court is not an advocate for any party; see *Nieves* v. *Cirmo*, 67 Conn. App. 576, 587 n.4, 787 A.2d 650 ("[t]he court is not an advocate and should not be placed in a position of making tactical decisions for the attorneys before it"), cert. denied, 259 Conn. 931, 793 A.2d 1085 (2002); I would not look beyond the grounds properly relied on by Neubig, as well as the specific claim of error brought before this court. "It is a bedrock principle of appellate jurisprudence that, *generally*, claims of error not raised before the trial court will not be considered by a reviewing court. The principle is rooted in considerations of fairness as well as judicial economy." (Emphasis in original.) *State* v. *Elson*, 125 Conn. App. 328, 340–41, 9 A.3d 731 (2010) (en banc), cert. granted on other grounds, 300 Conn. 904, 12 A.3d 572 (2011). Like-

wise, it is "well established that [appellate] review is limited to claims raised by the parties in their briefs." *Payton* v. *Payton*, 103 Conn. App. 825, 841, 930 A.2d 802 (*Schaller*, *J.*, concurring), cert. denied, 284 Conn. 934, 935 A.2d 151 (2007); see also *Sequenzia* v. *Guerrieri Masonry, Inc.*, 298 Conn. 816, 822, 9 A.3d 322 (2010) (reviewing court lacks authority to resolve case on any basis, regardless of claims raised on appeal).

For the foregoing reasons, I concur with the majority's judgment, insofar as it reverses the judgments of the trial court. I dissent from that portion of the majority's judgment remanding the case to the trial court for further proceedings to examine the deed conveying the subject property from Neubig to Alexandria Estates.

[1] Although it is not dispositive of the issue before this court, it is worth noting by way of background Neubig's unchallenged assertion that Alexandria Estates was an assign of Dale Construction, such that Dale Construction's agreement bound Alexandria Estates. He asserted that "[e]ach was the alter ego of the other as the companies were closely held within the same family and Alexandria Estates . . . was formed for the sole purpose of holding the property in question."

[2] The agreement between Neubig and Dale Construction, recorded on March 4, 2004, stated in relevant part: "The covenants and stipulations of this agreement shall apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties hereto." That agreement, like the agreement between Neubig and Alexandria, recorded on November 7, 2002, included, in "Schedule A," a detailed description of the property at issue.