

Jersey Walk E Jersey Urb. Renewal, LLC v. City of Elizabeth

Superior Court of New Jersey, Appellate Division

September 14, 2026, Argued; September 29, 2026, Decided

DOCKET NO. A-3871-24

Reporter

2026 N.J. Super. Unpub. LEXIS 2141 *; 2026 LX 577677; 2026 WL 2916047

JERSEY WALK E JERSEY URBAN RENEWAL, LLC, JERSEY WALK LAFAYETTE URBAN RENEWAL, LLC, JERSEY WALK GARAGE URBAN RENEWAL, LLC, JERSEY WALK CONDOMINIUM ASSOCIATION, LLC, and DAVID KRAMER, Plaintiffs-Respondents, v. CITY OF ELIZABETH, Defendant-Appellant.

Notice: NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW **JERSEY RULE 1:36-3** FOR CITATION OF UNPUBLISHED OPINIONS.

Prior History: [*1] On appeal from the Superior Court of New **Jersey**, Law Division, Union County, Docket No. L-3429-24.

Core Terms

ordinance, redevelopment, municipality, entity, impairment, arbitrate, ownership, tax exemption, ultra vires, terminate, trial court, cure, **urban renewal**, contractual, redevelopment project, notice, audit, summary judgment, void ab initio, rescind, remaining claim, public purpose, garage, pilot, **walk**, retroactively, unilateral

Counsel: Michael S. Simitz argued the cause for appellant (Kologi Simitz, attorneys; Edward J. Kologi and Michael S. Simitz, of counsel and on the briefs).

Michael J. Caccavelli argued the cause for respondents (Sills Cummis & Gross, PC, attorneys; Michael J. Caccavelli, of counsel and on the brief; Grace Chun, on the brief).

Judges: Before Judges Berdote Byrne and Perez Friscia.

Opinion

PER CURIAM

Defendant City of Elizabeth appeals from an order granting partial summary judgment in plaintiffs' favor on its action in lieu of prerogative writs, challenging the trial court declaration that the City's retroactive rescission of the parties' financial agreements and termination of their tax exemptions by ordinance was unconstitutional pursuant to the Contracts Clause of the New **Jersey** Constitution.

The underlying dispute arose from three financial agreements the City entered into with plaintiffs **Jersey Walk E Jersey Urban Renewal, LLC, Jersey Walk Lafayette Urban Renewal, LLC, and Jersey Walk Garage Urban Renewal, LLC** (collectively, the "UREs") pursuant to the **Long Term Tax Exemption Law ("LTTEL")**, **N.J.S.A. 40A:20-1 to - 22**, which granted long-term tax exemptions for a mixed-use redevelopment project. The City and the UREs originally [*2] executed these agreements in 2018 and amended them in 2023, executing the operative First Amended Financial Agreements (the "Agreements") at issue on appeal. Throughout this period, however, the redevelopment property remained titled to a for-profit entity, CMT Developers, **LLC** ("CMT"), until the property was deeded to the UREs in September 2024. After the UREs' accountant reported in September 2023 that the redevelopment project's revenues and expenses could not be audited on a URE-by-URE basis because all transactions had run through CMT, the City adopted Ordinance No. 6028, retroactively rescinding the Agreements and terminating the tax exemptions without providing written notice and the 120-day cure period the Agreements require before termination.

The City argues the Agreements are ultra vires and void ab initio because the UREs did not own or control the redevelopment project when the Agreements were executed as required by the LTTEL. Further, they posit if the Agreements are found to be valid, Ordinance No. 6028 did not violate the Contracts Clause of the New **Jersey** Constitution by unilaterally rescinding the

Agreements and retroactively terminating the tax exemptions outside the notice-and-cure procedure the parties negotiated [*3] in the Agreements.

After careful review, we affirm the trial court's decision finding Ordinance No. 6028 violated the Contracts Clause of the New Jersey Constitution. The LTTEL does not require a URE to own or control a redevelopment project when the parties execute a financial agreement, and the Agreements in this case did not require ownership or control by a certain date. The City's authority to enter into the Agreements did not depend on the UREs already holding title to the redevelopment property or controlling the redevelopment. Accordingly, we agree with the trial court the Agreements are not ultra vires or void ab initio.

Because the Agreements are valid, a contractual right existed for purposes of the New Jersey Contracts Clause, and Ordinance No. 6028 substantially impaired that right. This impairment was neither reasonable nor necessary to serve an important public purpose and violated the Contracts Clause of the New Jersey Constitution.

Therefore, we affirm the order of the trial court. However, we vacate the portion of order dismissing the remaining claims without prejudice in favor of binding arbitration, and remand for entry of an order staying the action pending the arbitration. See N.J.S.A. 2A:23B-7(g) ("If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves [*4] a claim subject to the arbitration.")

I.

The record before us reveals that in 2017, the City designated a parcel formerly occupied by Elizabeth General Hospital, located at 901-931 East Jersey Street and identified as Block 7, Lot 312 on the City's official tax map, as an area in need of redevelopment pursuant to N.J.S.A. 40A:12A-4. At the time, the parcel was owned by CMT Developers, LLC ("CMT"), which had purchased the property in January 2016. Plaintiff David Kramer held a controlling membership interest in CMT. CMT applied to the City of Elizabeth Planning Board (the "Board") to develop the property, and CMT received approval by Resolution dated September 7, 2017.

On September 19, 2017, plaintiffs Jersey Walk E Jersey Urban Renewal, LLC ("E Jersey"), Jersey Walk Lafayette Urban Renewal, LLC ("Lafayette"), and Jersey Walk Garage Urban Renewal, LLC ("Garage") were formed by David Kramer, Dov Zabrowsky, Moshe

Glatzer, and Yaakov Glatzer. Kramer held a 60.001% membership interest in each of the UREs. The UREs filed applications seeking approval of an urban renewal project and a financial agreement for redevelopment of the property pursuant to the LTTEL.

Three months after the Board approved CMT's redevelopment [*5] plan, by ordinances dated December 27, 2017, the City approved tax abatement applications and associated financial agreements for the project, one for each of the three UREs. The City and E Jersey entered into a financial agreement effective January 26, 2018,¹ where the City approved construction of the 274-unit mixed-use development and granted a tax exemption for the land and improvements to the extent permitted pursuant to the LTTEL. The City and Lafayette, and the City and Garage entered into materially similar financial agreements effective the same date, concerning a six-story residential apartment building and a five-story parking garage with a tenant amenity building, respectively.

Due to changed economic and market conditions precipitated by the COVID-19 pandemic, the UREs filed applications in 2020 to amend the financial agreements and scale back the scope of the project. At the City's request, the UREs also submitted amended payment-in-lieu of taxes ("PILOT") applications reflecting the revised project. The amended PILOT applications and First Amended Financial Agreements were approved by Ordinance Nos. 5617, 5618, and 5619 on March 9, 2022. All noted CMT was the principal [*6] owner of the land. The Agreements between the City and each of the UREs were executed on January 19, 2023.

At the time the Agreements were executed, the property remained titled to CMT.² Each Agreement recites the applicable URE's agreement "to use, lease, manage

¹ The record does not contain the original financial agreements executed in 2018, only the First Amended Financial Agreements executed in 2023.

² CMT and David Kramer commenced an action in federal court on June 14, 2021, against other principals affiliated with CMT and the UREs, seeking a declaratory judgment concerning ownership of CMT and damages for alleged misappropriation of project funds. The content of the federal litigation is not relevant to this appeal; mention is included only because plaintiffs attributed CMT's continued ownership of the property and project during this period to the pendency of the federal litigation. The litigation was resolved by a settlement agreement executed on April 19, 2024, and a consent order and judgment entered May 22, 2024.

and control the redevelopment of the Land in accordance with the provisions of the Redevelopment Plan," and states "the Land and Improvements to be constructed and maintained by the Entity [URE] shall be exempt from taxation as provided for herein." Section 8(c) of each Agreement provides:

*If the Entity, or its successors or assigns fails to comply with any applicable provision of this Agreement or the LTTE Law, then the City shall give written notice thereof to the Entity at the address set forth in Section 17 of this Agreement. If the failure to comply is not cured within one hundred twenty (120) days following the date of such notice or, if the failure cannot be cured within the aforementioned one hundred twenty (120) day period, the Entity fails to commence to correct the failure within the one hundred twenty (120) day period and the Entity fails thereafter to diligently complete the cure of such failure, then the City's [*7] sole remedy for such breach shall be to terminate this Agreement and the tax exemption provided hereunder, by giving written notice thereof to the Entity in accordance with the provisions of Section 17 of this Agreement.*

[(Emphasis added).]

Section 5 of each Agreement provides for resolution of disputes in the Tax Court of New Jersey or, if the Tax Court declines jurisdiction, before the American Arbitration Association.

Certificates of Occupancy were issued to E Jersey on October 27, 2022, Lafayette on May 23, 2022, and Garage on March 2, 2023. The first phase of construction was completed on or about May 23, 2022, and the second phase on or about March 6, 2023.

On September 18, 2023, the UREs' outside accountant submitted the annual audit required by N.J.S.A. 40A:20-3 and advised the City:

*In regards to the consolidated audit for CMT Developers, please be advised that CMT Developers are the owners of these properties and all transactions related to this project went through CMT. The [UREs] . . . were formed for the sole purpose of entering into their respective PILOT agreements. The [UREs] . . . are subsidiaries of CMT. Furthermore, the [UREs] . . . have not incurred any expenditure for development, and [*8] have no rental income or expenses. Therefore it is practically impossible to perform a financial*

statement audit for the UREs individually.

[(Emphasis added).]

On August 2, 2024, the UREs were copied on correspondence from the City's Department of Law to the City Council, requesting adoption of an ordinance to terminate the tax exemptions and rescind the Agreements. The letter stated the project was "owned, operated, managed, and otherwise controlled in its entirety by CMT Developers LLC, a for-profit entity," and the tax exemptions were accordingly "impermissibly being utilized and benefitting a for-profit LLC not a duly formed and qualified urban renewal entity." By letter dated August 6, 2024, the UREs asked the City to remove the proposed ordinance from its agenda so the transfer from CMT to the UREs could be completed and the matter resolved without litigation. The City did not respond to the request, and the ordinance remained on the City Council's agenda.

Ordinance No. 6028 was introduced on August 27, 2024. It recites the UREs' 2022 PILOT applications had represented the UREs would own the improvements to be built, and the project was instead owned and controlled by CMT, rendering [*9] the tax abatements void ab initio. The City Council adopted Ordinance No. 6028 on September 10, 2024, rescinding Ordinance Nos. 5617, 5618, and 5619, and retroactively terminating the tax exemptions granted. Ordinance No. 6028 became effective September 30, 2024. It is undisputed the City did not provide the UREs 120 days' notice to cure set forth in the Agreements before proceeding to terminate the tax exemptions by ordinance.

Deeds effectuating the transfer of the project from CMT to the respective UREs were executed on September 26, 2024, and recorded on October 4, 2024. By letters dated October 8, 2024, the City advised each of the UREs of tax assessments for the 2023 and 2024 tax years.

On August 23, 2024, plaintiffs filed an Order to Show Cause and Verified Complaint in the Tax Court of New Jersey, invoking the dispute-resolution provisions of the Agreements. On September 16, 2024, the Tax Court entered an order dismissing and transferring the matter to the Superior Court.

Plaintiffs subsequently amended their pleadings, and filed a Second Amended Complaint against the City, asserting: breach of contract (count one); breach of the covenant of good faith and fair dealing (count

two); [*10] action in lieu of prerogative writs (count three), which alleged "[t]he adoption of Ordinance No. 6028 was arbitrary, capricious, and unreasonable because it violates the Contracts Clause of the U.S. and State Constitutions"; and a tax appeal of the 2023 and 2024 assessments (count four). Among other relief, the Second Amended Complaint sought a judgment declaring Ordinance No. 6028 invalid.

The City answered and asserted three counterclaims: fraud (count one), alleging plaintiffs misrepresented and omitted material facts in their 2022 amended tax exemption applications; fraud in the inducement (count two), alleging plaintiffs' misrepresentations concerning ownership and operation of the project induced the City to enter into the Agreements; and piercing the corporate veil (count three), seeking to hold Kramer individually liable.

Before any discovery was exchanged, plaintiffs moved for summary judgment. The trial court entered an order granting summary judgment in plaintiffs' favor on count three, the action in lieu of prerogative writs. It dismissed the remaining claims, without prejudice, in favor of binding arbitration.

The trial court held "defendant's unilateral rescission of the First Amended Financial Agreements was an unreasonable [*11] exercise of the City's police power and violated the [New Jersey] Contracts Clause." The court further ruled "the City's actions were unsupported by the LTTEL, impermissible under the express language of the Agreements, and an arbitrary use of legislative authority." It determined the LTTEL and the Agreements contained no requirement a URE own or manage an approved project as of the date the agreement was executed, and neither identified a date certain by which such ownership or management must be obtained. The trial court also reasoned:

While nothing in Section 2, or any other section within this Agreement, stated that CMT had the ability to manage and control the redevelopment of the Land under the Agreement, defendant indicated at oral argument that it was always aware CMT owned the property but was not aware of the extent of its involvement. Defendant also conceded that it received PILOT payments from CMT and not the UREs but nonetheless believed that the UREs were participating in the ownership and management of the Project until or about September 2023. These uncontradicted facts would indicate that defendant believed the UREs would be primarily responsible

for the ownership and control of the Project by [*12] some point; but, the record does not indicate that defendant was under a mistaken belief that the UREs were actually in control of the Project at the time of contracting. Under such circumstances, defendant should have invoked the notice and time to cure provisions of Section 8 based on plaintiffs' lack of participation in the management and control of the Project well after the signing of the Agreements.

The trial court also found it did not have jurisdiction to hear the remaining claims and counterclaims, as they "must be determined in arbitration under [Section 5] of the First Amended Financial Agreement[s]," and dismissed them without prejudice. This appeal followed.

II.

On appeal, the City argues it properly rescinded the Agreements as void ab initio and ultra vires pursuant to the plain language of the LTTEL, which requires ownership or control of the redevelopment. It also argues if the Agreements are found to be valid, the rescission of the Agreements had a "significant and legitimate purpose," and Ordinance 6028 did not violate the Contracts Clause of the New Jersey Constitution.

The UREs argue the trial court correctly granted summary judgment on the action in lieu of prerogative writ because Ordinance No. 6028 was unconstitutional [*13] and the LTTEL does not require them to own, operate, construct or redevelop their respective projects at the time the parties entered into the Agreements. They further argue the Agreements also did not require the UREs to own the property by a certain date and the Ordinance violates the New Jersey Contracts Clause.

III.

"We review a trial court's grant of summary judgment de novo." *Christakos v. Boyadjis*, 262 N.J. 447, 467, 348 A.3d 966 (2026). Summary judgment shall be granted if "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits . . . 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 of law." R. 4:46-2(c). We therefore consider "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Mist

[Pharms., LLC v. Berkley Ins. Co., 263 N.J. 554, 577, 355 A.3d 253 \(2026\)](#) (quoting [Padilla v. Young II An, 257 N.J. 540, 547, 315 A.3d 778 \(2024\)](#)).

The LTTEL.

We first address whether plaintiffs' actions in not owning or controlling³ the property prior to the inception of the Agreements violated the plain language of the LTTEL. Our Constitution provides, "corporations may be authorized by law to undertake [*14] . . . clearance, replanning, development, or redevelopment" of "blighted areas," and "improvements made for these purposes . . . may be exempted from taxation, in whole or in part, for a limited period of time" during which the corporation's "profits . . . and dividends . . . shall be limited by law." *N.J. Const.* art. VIII, § 3, ¶ 1. In enacting the LTTEL, the Legislature sought "to encourage private capital and participation by private enterprise" in "the restoration of deteriorated or neglected properties . . . in the elimination of the blighted condition," in exchange for "special financial arrangements, including the granting of property tax exemptions." [N.J.S.A. 40A:20-2](#). The Legislature declared "that the provisions of [LTTEL] are one means of accomplishing the redevelopment and rehabilitation purposes of the 'Local Redevelopment and Housing Law,' [\[N.J.S.A. 40A:12A-1 to - 49\]](#) . . . and that this act should be construed in conjunction with that act." *Ibid.* "Among other things, the LTTEL authorizes qualified '**urban renewal**' entit[ies] to enter into financial agreements with municipalities and conduct long-term redevelopment projects." [Mack-Cali Realty Corp. v. State, 466 N.J. Super. 402, 421, 246 A.3d 847 \(App. Div. 2021\)](#), *aff'd*, 250 N.J. 550, 275 A.3d 409 (2022), (quoting [N.J.S.A. 40A:20-8](#)); see also [N.J.S.A. 40A:20-4](#) ("The governing body of a municipality which has adopted a redevelopment plan . . . may [*15] enter into a financial agreement with an **urban renewal** entity . . .").

The City argues the LTTEL and the Agreements "expressly require" a URE to own and control its redevelopment project from "at least the time the financial agreement[s] [are] executed, if not earlier," and cannot obtain ownership and control after completion. Accordingly, the City contends the Agreements "are void ab initio, ultra vires, and unenforceable because the

[p]laintiff UREs never owned, controlled, constructed, and developed the projects" as required by the LTTEL.

"[A] municipality is a creature of the Legislature, and as such is a government of enumerated powers which can act only by delegated authority.' Thus, 'while a public body may make contracts as an individual, it can only do so within its express or implied powers . . .'" [MEPT Journal Square Urb. Renewal, LLC v. City of Jersey City, 455 N.J. Super. 608, 625, 190 A.3d 1113 \(App. Div. 2018\)](#) (citations omitted). "Any exercise of a delegated power by a municipality in a manner not within the purview of the governing statute is capricious and ultra vires of the delegated powers." [Mack-Cali Realty Corp., 466 N.J. Super. at 433](#) (quoting [Giannone v. Carlin, 20 N.J. 511, 517, 120 A.2d 449 \(1956\)](#)).

"Two forms of ultra vires acts exist under the law: ultra vires acts in the primary sense and ultra vires acts in the secondary sense." [City Council of City of Orange Tp. v. Edwards, 455 N.J. Super. 261, 272, 189 A.3d 356 \(App. Div. 2018\)](#). "Ultra vires acts in the primary sense [*16] are 'act[s] utterly beyond the jurisdiction of a municipal corporation' and are void." *Ibid.* (quoting [Summer Cottagers' Ass'n v. Cape May, 19 N.J. 493, 504, 117 A.2d 585 \(1955\)](#)). "For a municipal decision or action to be considered ultra vires in the primary sense, the municipality must be 'utterly without capacity to perform the act.'" *Id. at 273* (quoting [Maltese v. Township of North Brunswick, 353 N.J. Super. 226, 246, 802 A.2d 529 \(2002\)](#)); see also [Wood v. Borough of Wildwood Crest, 319 N.J. Super. 650, 657, 726 A.2d 310 \(App. Div. 1999\)](#) ("An ultra vires contract [in the primary sense] has been defined as one which 'is not within the power of a municipal corporation to make under any circumstances or for any purpose'" (quoting 10 *McQuillin Municipal Corporations* § 29.10 (3d ed. 1999))).

In contrast, ultra vires acts in the secondary sense, also known as intra vires acts, "arise[] from the 'irregular exercise of a basic power under the legislative grant in matters not in themselves jurisdictional . . . [and do] not preclude ratification or the application of the doctrine of estoppel.'" [Edwards, 455 N.J. Super. at 272](#) (quoting [Middletown Twp. Policemen's Benevolent Ass'n Local No. 124 v. Twp. of Middletown, 162 N.J. 361, 368, 744 A.2d 649 \(2000\)](#)). "[A]n intra vires act . . . is one that is 'voidable for want of authority.'" [Casamasino v. City of Jersey City, 158 N.J. 333, 347, 730 A.2d 287 \(1999\)](#) (emphasis added) (quoting [Bauer v. City of Newark, 7 N.J. 426, 434, 81 A.2d 727 \(1951\)](#)). "[A]n act is ultra vires in the secondary sense when the action is

³ Although the City's briefs argue the UREs violated the LTTEL because they did not "own" the parcels of land, at oral argument, the City conceded the LTTEL did not require ownership, but rather "control" of the redevelopment project.

generally within the power of the municipality but was carried out improperly or irregularly." *Edwards*, 455 N.J. Super. at 273.

Applying this standard to the matter before us, if the LTTEL requires a [*17] URE's ownership or control prior to execution of a financial agreement as a condition precedent to the City's authority to enter into a financial agreement, the Agreements would be ultra vires in the primary sense and void ab initio. If, however, we conclude the City possessed authority to enter into the Agreements before the UREs satisfied any ownership-or-control obligation, the UREs' alleged noncompliance would not render the Agreements ultra vires. Rather, the City's claim would concern the UREs' alleged failure to comply with the LTTEL (as opposed to a defect in the City's authority to enter into the Agreements or an improper use of municipal power), for which Section 8(c) of the Agreements expressly prescribes the City's sole remedy.

The City's argument primarily rests upon four statutory provisions. First, the City points to [N.J.S.A. 40A:20-3\(g\)](#), which defines a URE as "[u]rban renewal entity which enters into a financial agreement . . . with a municipality to undertake a project pursuant to a redevelopment plan for the redevelopment of all or any part of a redevelopment area" Second, the City relies on [N.J.S.A. 40A:20-5\(d\)](#) ("[subsection \(d\)](#)"), which provides a URE's organizational documents "shall contain"

[a] declaration [*18] that the entity has been organized to serve a public purpose, that its operations shall be directed toward: (1) the redevelopment of redevelopment areas, the facilitation of the relocation of residents displaced or to be displaced by redevelopment, or the conduct of low and moderate income housing projects; (2) the acquisition, management and operation of a project, redevelopment relocation housing project, or low and moderate income housing project under P.L. 1991, c. 431 ([C. 40A:20-1 et seq.](#)); and (3) that it shall be subject to regulation by the municipality in which its project is situated

Third, the City cites to [N.J.S.A. 40A:20-5\(c\)](#) ("[subsection \(c\)](#)"), which states a URE's organizational documents "shall contain . . . [a] provision that so long as the entity is obligated under financial agreement with a municipality . . . , it shall engage in no business other than the ownership, operation and management of the project" (emphasis added). Lastly, the City relies on [N.J.S.A. 40A:20-4](#), which, among other things, provides:

An urban renewal entity pursuant to an agreement may undertake a project, and when so authorized by the financial agreement, acquire by purchase or lease for not less than the term of the tax exemption, plan, develop, construct, alter, maintain [*19] or operate housing, senior citizen housing, business, industrial, commercial, administrative, community, health, recreational, educational, cultural, or welfare projects, or any combination of two or more of these types of improvement in a single project. The conditions of use, ownership, management and control of the improvements in a project shall be regulated by this act and the terms of the financial agreement.

[(Emphasis added).]

From these provisions, the City argues the LTTEL "expressly requires that [a] URE own and control the project" at the time the financial agreements are executed.

We rely on familiar principles of statutory interpretation to give effect to the Legislature's intent. [State v. A.M.](#), 252 N.J. 432, 450, 286 A.3d 660, (2023). We begin by looking to the statute's plain language, and "presume that the Legislature intended the words that it chose and the plain and ordinary meaning ascribed to those words" unless the statute includes specific definitions. [Paff v. Galloway Township](#), 229 N.J. 340, 353, 162 A.3d 1046, (2017); accord [N.J.S.A. 1:1-1](#). "If the Legislature's intent is clear from the statutory language and its context with related provisions, we apply the law as written." [Shelton v. Restaurant.com, Inc.](#), 214 N.J. 419, 429, 70 A.3d 544 (2012).

We conclude none of the City's illustrated provisions support a reading that the UREs must own or operate the redevelopment [*20] project prior to contracting with the City. [N.J.S.A. 40A:20-3\(g\)](#) identifies the type of entity that qualifies as a URE and requires the entity to enter into a financial agreement with the municipality to "undertake a project." It does not state, or even imply, the entity must hold title to the redevelopment property or must exercise a certain degree of control over the project. Likewise, it does not specify when title or control must be obtained.

Significantly, [subsections \(c\)](#) and [\(d\)](#) identify declarations a URE's organizational documents must contain, but neither subsection establishes the particular functions the URE must perform. Furthermore, although [subsection \(c\)](#) provides a URE shall "engage in no business outside the ownership, operation, and

management of the project[.]" this is a restriction on the permissible scope of the URE's business; it is not an express requirement the URE exclusively exercise each listed function. Likewise, [subsection \(d\)](#)'s reference to "acquisition, management, and operation" identifies objects toward which the URE's operations must be "directed," rather than imposing a mandate the URE itself undertake each activity at any particular time.

Importantly, even if [subsections \(c\)](#) and [\(d\)](#) were read to require some URE involvement in ownership [*21] or management, the LTTEL does not specify when the involvement must commence. It certainly does not require the URE to acquire or manage the project before the financial agreements are executed, as the City asserts. Most instructive is [N.J.S.A. 40A:20-4](#), which employs "may" rather than "shall" to introduce the actions a URE is authorized to take. See [Aponte-Correa v. Allstate Ins. Co.](#), 162 N.J. 318, 325, 744 A.2d 175 (2000) ("Under the 'plain meaning' rule of statutory construction, the word 'may' ordinarily is permissive and the word 'shall' generally is mandatory."). Because "may" governs the entire coordinated verb series that follows a URE is permitted, but not mandated, to "acquire . . . , plan, develop, construct, alter, maintain or operate" the enumerated projects authorized by the financial agreement. See [State v. Gandhi](#), 201 N.J. 161, 178-80, 989 A.2d 256 (2010) (directing statutory language be construed in context and meaning be drawn from the statute's composition and structure).

This reading is reinforced by the Legislature's subsequent use of "shall" in the statute, directing "[t]he conditions of use, ownership, management and control of the improvements in a project shall be regulated by this act and the terms of the financial agreement." [N.J.S.A. 40A:20-4](#); see [Aponte-Correa](#), 162 N.J. at 325 ("Where a statutory provision contains both the words 'may' and 'shall,' [*22] it is presumed that the lawmaker intended to distinguish between them, 'shall' being construed as mandatory and 'may' as permissive.").

Furthermore, [N.J.S.A. 40A:20-4](#) uses the disjunctive "or" when describing the permissible activities of a URE, indicating a URE need not perform every enumerated function, but may instead perform any one, or any combination, of those functions, subject to the terms of the financial agreement. [Secaucus Town v. Jersey City](#), 19 N.J. Tax 10, 40 (Tax 2000) ("[N]either the Constitution nor the . . . Long Term Law requires that the entity obtaining the tax exemption be actively involved in all aspects of construction, operation and maintenance of the property").

The City cites no authority contending that, if pursuant to [N.J.S.A. 40A:20-4](#) and [40A:20-5](#), ownership and control had to be maintained by an "urban renewal entity" CMT was not a registered entity, and the transfers were not timely effectuated to the UREs that titling or ownership could not be cured. We are mindful the City has received a benefit from the completion of the redevelopment project. "In other words, even if it is determined that entering into the First Financial Agreements with the UREs was an irregular exercise of power because the UREs failed to satisfy some provision of the LTTEL, equitable [*23] estoppel must be used to ratify the actions of the municipality especially since here, the City received the benefit of a completed redevelopment project."

Moreover, the City's contention on appeal, that "[t]hroughout 2021, 2022 and 2023, [p]laintiff's continually represented to the [d]efendant that the [p]laintiff UREs owned and operated their respective projects" is belied by the record. The application for the redevelopment project was submitted by CMT, not the UREs, and CMT received approval from the Board in September of 2017. Only three months later, the initial three financial agreements between the City and the respective UREs were executed. If the City required the UREs to have ownership or control of the properties before executing the financial agreements, it was incumbent upon the City to ascertain whether transfer of ownership or control had occurred during the intervening three months. The UREs were registered pursuant to [N.J.S.A. 40A:20-4](#), as required by the LTTEL at the time they executed the financial agreements. Certainly, nothing in the financial agreements states the date by which the UREs are required to own or control the redevelopment project. As late as January 2023, when the [*24] third round of financial agreements were executed between the City and the respective UREs, the ordinances contained a whereas clause noting CMT was the "principal owner," and the Agreements attached the master deed for each property as Exhibit A-1, which clearly demonstrated CMT still owned the properties when the Agreements were signed in 2023.

Further, Ordinance No. 6028 was introduced on August 27, 2024, adopted on September 10, and became effective September 30th. The deeds transferring the properties were executed on September 26, 2024. Finally, as noted by the trial court, the City admitted it was "[a]lways aware CMT owned the property but unaware of the extent of [its] involvement." The City also received PILOT payments from CMT, not the UREs,

which it accepted. This record shows the City neither believed the UREs owned or controlled the respective properties before executing the Agreements, nor required them to, either pursuant to the LTTEL or the Agreements. At minimum, it demonstrates the City viewed CMT and the UREs interchangeably in its dealings.

The LTTEL does not expressly condition a URE's eligibility for a tax exemption on ownership or operational control as of the [*25] date of execution, leaving those arrangements instead to the terms the parties negotiate in the agreement. If a municipality wishes for a URE to own the redevelopment property at a certain time or to exert a certain degree of control over the project, it may certainly require it expressly within a financial agreement. A URE's failure to comply with such a provision would present a breach of contract issue governed by the agreement's remedial terms; it would not, without more, render the agreement void ab initio as contrary to the LTTEL. Accordingly, the trial court did not err in concluding the LTTEL contains "no language . . . indicating that the applicable URE must already own and manage the approved project at the time of entering into a financial agreement with the municipality." We conclude the Agreements are not ultra vires contracts in either the primary or secondary sense.

The Contracts Clause.

The City also argues its ordinance did not violate the New Jersey Constitution's Contracts Clause because no substantial impairment occurred as the Agreements are part of a heavily regulated, statutory scheme pursuant to the LTTEL, and the UREs' own noncompliance, not any City action, prompted the rescission.

The Contract Clause of the United States Constitution provides, "No State shall . . . [*26] . . . pass any . . . Law impairing the Obligation of Contracts" U.S. Const. art. I, § 10, cl. 1. Similarly, the Contracts Clause of the New Jersey Constitution states, "The Legislature⁴ shall

not pass any . . . law impairing the obligation of contracts" N.J. Const. art. IV, § 7, ¶ 3; see also Burgos v. State, 222 N.J. 175, 193, 118 A.3d 270 (2015) (noting "that the Federal and State Contracts Clauses provide 'parallel guarantees'" (quoting Fid. Union Trust Co. v. N.J. Highway Auth., 85 N.J. 277, 299 (1981), 426 A.2d 488)).

Claims of contractual impairment brought pursuant to the State's Contract Clause are subject to a two-prong analysis: [*27] first "whether a change in state law results in the substantial impairment of a contractual relationship and, if so, then . . . whether the impairment nevertheless is 'reasonable and necessary to serve an important public purpose.'" Berg v. Christie, 225 N.J. 245, 259, 137 A.3d 1143 (2016) (quoting U.S. Trust Co. of N.Y. v. New Jersey, 431 U.S. 1, 25 (1977), 97 S. Ct. 1505, 52 L. Ed. 2d 92). "The first step in the analysis involves three inquiries: (1) whether a contractual right exists in the first instance; (2) whether a change in the law impairs that right; and (3) whether the defined impairment is substantial." *Ibid.*

Determining whether government action has created a substantial impairment of a "contract requires 'a careful examination of the nature and purpose of the state legislation.'" Kravitz v. Murphy, 468 N.J. Super. 592, 625, 260 A.3d 880 (App. Div. 2021) (quoting Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 245, 98 S. Ct. 2716, 57 L. Ed. 2d 727 (1978)). Our courts consider "'the extent to which the law undermines the contractual bargain, interferes with a party's reasonable expectations, and prevents the party from safeguarding or reinstating his rights.'" *Ibid.* (quoting Sveen v. Melin,

do so; see also Kessler v. Tarrats, 194 N.J. Super. 136, 144, 476 A.2d 326 (App. Div. 1984) (quoting Trenton v. New Jersey, 262 U.S. 182, 187, 43 S. Ct. 534, 67 L. Ed. 937 (1923)):

In New Jersey it has been held that within the limits prescribed by the state constitution, the legislature may delegate to municipalities such portion of political power as they may deem expedient, withholding other powers, and may withdraw any part of that which has been delegated.

In the absence of state constitutional provisions safeguarding it to them, municipalities have no inherent right of self-government which is beyond the legislative control of the State. A municipality is merely a department of the State, and the State may withhold, grant, or withdraw powers and privileges, as it sees fit. However great or small its sphere of action, it remains the creature of the State, exercising and holding powers and privileges subject to the sovereign will. (Internal citations omitted).

⁴ Although the New Jersey Contracts Clause utilizes the word "Legislature," we have long recognized municipalities are bound by the New Jersey Constitution's Contract's Clause. See West Point Island Civic Ass'n v. Twp. Comm. of Dover Twp., 54 N.J. 339, 345, 255 A.2d 237 (1969) ("The powers of a New Jersey municipality are wholly derivative from state statute.") The municipality would not be able to enter into a contract with a LTTEL but for the state statute authorizing it to

[584 U.S. 811, 819, 138 S. Ct. 1815, 201 L. Ed. 2d 180 \(2018\)](#)). "Whether the parties were operating in a regulated industry is '[a]n important factor in determining the substantiality of any contractual impairment'" *Ibid.* (alteration in original) (quoting [Am. Exp. Travel Related Servs., Inc. v. Sidamon-Eristoff](#), 669 F.3d 359, 369 (3d Cir. 2012)). "When a party enters an industry that is regulated in a particular manner, it is entering subject to further [*28] legislation in the area, and changes in the regulation that may affect its contractual relationships are foreseeable." *Ibid.* (quoting [Am. Exp. Travel Related Servs.](#), 669 F.3d at 369).

It is manifestly clear Ordinance No. 6028 impaired the parties' contractual relationship, as it retroactively and unilaterally terminated the tax exemptions and rescinded the Agreements. The LTTEL's comprehensive regulation of financial agreements does not render this impairment insubstantial. Whether the parties operated in a regulated industry bears on foreseeability: what regulatory change a party could foresee upon entering the agreement, because a party entering a regulated industry does so subject to further legislation in the area, and changes in the regulation affecting its contractual relationships are accordingly foreseeable. Here, the LTTEL remained unchanged throughout this period. Ordinance No. 6028 did not change the regulatory framework pursuant to which the parties contracted; it is a municipal ordinance directed specifically at the three Agreements, terminating them for alleged noncompliance, which the Agreements had already addressed in the notice-and-cure procedure in Section 8(c).

The LTTEL requires amendments and modifications to [*29] a financial agreement be made by mutual consent of the municipality and the URE, [N.J.S.A. 40A:20-9](#), and provides the tax exemption terminates "by relinquishment by the entity or by terms of the financial agreement." [N.J.S.A. 40A:20-13](#) (emphasis added). Nothing in the LTTEL, nor the Agreements, authorizes termination of a financial agreement by unilateral action through an ordinance. See *MEPT Journal Square*, 455 N.J. Super. at 624 ("Where [a] statute sets forth the procedure to be followed, no governing body, or subdivision thereof, has the power to adopt any other method of procedure."). Ordinance No. 6028 therefore interfered with the UREs' reasonable expectation that any alleged noncompliance would be addressed through the Agreements' prescribed notice-and-cure procedure. See [Kravitz](#), 468 N.J. Super. at 625. It likewise prevented the UREs from safeguarding their rights by foreclosing the written notice and 120-day

cure period [Section 8\(c\)](#) required before the City could terminate the Agreements, and exemptions for alleged violations.

If an ordinance substantially impairs a contract, it may still be "constitutional if it is reasonable and necessary to serve an important public purpose." [Burgos](#), 222 N.J. at 240-41. However, "[s]ignificantly, when the State impairs its own contract, as here, 'complete deference to a legislative [*30] assessment of reasonableness and necessity is not appropriate because the State's self-interest is at stake.'" *Id.* at 241 (emphasis omitted) (quoting [U.S. Trust Co.](#), 431 U.S. at 26). "In assessing whether a State's impairment of its own contractual obligations is reasonable and necessary, two considerations must be kept in mind." *Ibid.* "First, as a general principle, 'a State is not completely free to consider impairing the obligations of its own contracts on a par with other policy alternatives.'" *Ibid.* (quoting [U.S. Trust Co.](#), 431 U.S. at 30-31). Second, "a State is not free to impose a drastic impairment when an evident and more moderate course would serve its purposes equally well." *Ibid.* (quoting [U.S. Trust Co.](#), 431 U.S. at 30-31).

The City maintains Ordinance No. 6028 served a significant and legitimate public purpose because the UREs perpetrated a fraud upon the City, enabling CMT to receive tax benefits to which it was not entitled, a defect the City asserts cannot be cured because CMT's revenues and expenses cannot reliably be imputed to the individual UREs for purposes of calculating the annual service charge. The LTTEL requires a financial agreement to provide for the URE's annual submission of auditor's reports, and to permit the municipality to inspect the URE's "property, [*31] equipment, buildings, and other facilities" and "examin[e] and audit . . . its books, contracts, records, documents, and papers." [N.J.S.A. 40A:20-9\(d\) to \(e\)](#); see also [N.J.S.A. 40A:20-3](#). This statutory obligation renders the audit issue raised by the City material as to whether the UREs breached the Agreements or the LTTEL, but it does not create a separate municipal power to rescind the Agreements by ordinance, and it does not displace the contractual termination the parties adopted in [Section 8\(c\)](#).

Indeed, [Section 8\(c\)](#) specifically contemplates non-compliance that cannot be cured within 120 days. In such circumstance, the City must give written notice, and termination becomes available only if the URE fails to commence corrective action during the 120-day period and thereafter fails to cure. Thus, even accepting the City's assertion an audit could not be completed

because CMT's finances are combined and cannot be unraveled as to each URE project, the Agreements required notice and afforded the UREs the opportunity to begin corrective measures and attempt to cure. The City could not determine in advance the audit issue was incurable without first invoking that process.

Because [Section 8\(c\)](#)'s notice-and-cure procedure offered an "evident and more moderate course" [*32] for addressing the audit issue, Ordinance No. 6028's unilateral rescission was not reasonable nor necessary to serve an important public purpose. See [Burgos, 222 N.J. at 240-41](#). Ordinance No. 6028 violated the Contracts Clause of the New **Jersey** Constitution. Therefore, we affirm the trial court's grant of summary judgment to plaintiffs on count three and the referral of the other counts to arbitration.

However, we part company with the trial court when it dismissed those remaining claims, albeit without prejudice. The trial court was required instead to stay the action pending arbitration. See [Perez v. Sky Zone LLC, 472 N.J. Super. 240, 251, 276 A.3d 190 \(App. Div. 2022\)](#) ("Under the [Federal Arbitration Act] and the [New **Jersey** Arbitration Act], a court must stay an arbitrable action pending the arbitration."); [N.J.S.A. 2A:23B-7\(g\)](#) ("If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.").

Partial summary judgment is affirmed. We vacate the portion of the order dismissing the remaining claims without prejudice, and remand for entry of an order staying the remaining claims pending arbitration. We do not retain jurisdiction.