

To: New Jersey Law Revision Commission
From: Laura C. Tharney, Executive Director
Re: Theft of Immovable Property
Date: April 11, 2022

MEMORANDUM

Project Summary

In January of 2018, the Commission authorized a project concerning the definition of the word “transfer” in N.J.S. 2C:20-3(b) as it pertains to the theft of immovable property. At the time of the initial presentation of this potential project to the Commission, it did not appear that any bills were pending that addressed the issue raised for Commission consideration.

As a result of subsequent legislative initiatives, however, Staff held off substantive work in the area.

Background

State v. Kosch, 444 N.J. Super. 368 (App. Div. 2016), was the case that brought this matter to the attention of the Commission. In *Kosch*, the Appellate Division considered the definition of the word “transfer” in N.J.S. 2C: 20-3(b). The Court determined that the term, and the legislative intent regarding its meaning, are unclear.

Robert Kosch was convicted in the Superior Court of the theft of immovable property and trafficking in personal identifying information.¹ He argued on appeal that the evidence did not support the jury’s finding that he committed theft of immovable property pursuant to N.J.S. 2C:20-3(b).²

During the trial, the jury heard evidence regarding several instances of the defendant’s alleged theft of immovable property. The first instance involved a residential property owned by an individual who moved out of the home property in 2010, and was contacted by a neighbor in 2011 and told that someone was living in the home.³ The defendant had prepared a fraudulent deed to the home and was using the deed to lease the property.⁴ The second instance involved a residential property that the owner had agreed to sell to another party.⁵ Before the full purchase price had been paid for the home, the selling owner found out that a family, not the intended purchaser, had moved into the home as a result of a fraudulent deed prepared by the defendant

¹ *State v. Kosch*, 444 N.J. Super. 368, 373 (App. Div. 2016).

² *Id.* at 378.

³ *Id.* at 374.

⁴ *Id.* at 374-375.

⁵ *Id.* at 375.

indicating that ownership of the property had been transferred to the defendant.⁶ The third instance was slightly different, since the defendant actually contacted the owner of the property and offered to purchase it and negotiate a settlement with the mortgage holder to resolve an outstanding tax lien and financial difficulties.⁷ When the intended seller requested the return of the deed, she discovered that the defendant had already leased the home to a family that had been living in it.⁸

N.J.S. 2C:20-3(b) reads as follows: “A person is guilty of theft if he unlawfully transfers any interest in immovable property of another with purpose to benefit himself or another not entitled thereto.”

The *Kosch* Court explained that “there is no question these three properties were owned by others and, although, as the ostensible contract purchaser, defendant may have possessed a partial interest... he never lawfully acquired the interest he was charged with taking. We, thus, turn to whether a ‘transfer’ occurred within the meaning of *N.J.S.A. 2C:20–3(b)*.”⁹

New Jersey’s Criminal Code does not define the term “transfer,” and the Court looked to a variety of sources to find a definition that it deemed appropriate, ultimately adopting the definition that appears in New Jersey’s Statute of Frauds, which states that “[t]ransfer of an interest in real estate” means “the sale, gift, creation or extinguishment of an interest in real estate.”¹⁰ This left unanswered the question of whether doing so might criminalize actions not intended by the Legislature to subject an individual to criminal penalties.

Bills Introduced

A983 was pre-filed for introduction in the current legislative session and then introduced and referred to the Assembly Housing Committee.¹¹ The bill, sponsored by Assemblywoman Reynolds-Jackson and Assemblyman Verrelli, and co-sponsored by Assemblyman Caputo, Assemblywoman Speight, Assemblywoman Jasey, Assemblywoman Timberlake, Assemblyman Spearman, and Assemblywoman Quijano, criminalizes certain actions of those who offer residential properties for rent that they do not own or legally possess.¹² The bill proposes a new provision in the law to deal with “impostor landlords,” and seems to be tailored so that it does not apply to those with a lawful occupancy interest in the property.¹³ S2293 is the Senate companion to A983, and was sponsored by Senator Turner.¹⁴

⁶ *Id.* at 375.

⁷ *Id.* at 376.

⁸ *Id.*

⁹ *Id.* at 381.

¹⁰ *Id.* at 382 quoting N.J.S. 25:1-10.

¹¹ A.B. 983, 2022 Leg., 220th Sess. (N.J. 2022), <https://www.njleg.state.nj.us/bill-search/2022/A983> (last visited March 31, 2022).

¹² A.B. 983, 2022 Leg., 220th Sess. (N.J. 2022).

¹³ *Id.*

¹⁴ S.B. 2293, 2022 Leg., 220th Sess. (N.J. 2022)

Both bills were referred to committee after introduction. A983 was reported out of the Assembly Housing Committee with amendments and referred to the Assembly Judiciary Committee on March 7, 2022.¹⁵

Conclusion

In light of the ongoing legislative attention to this issue, Staff recommends the conclusion of the open Commission project in this area at this time.

¹⁵A.B. 983, 2022 Leg., 220th Sess. (N.J. 2022), <https://www.njleg.state.nj.us/bill-search/2022/A983> (last visited March 31, 2022).