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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0164-14T1

STRUCTURED ASSETS TRUST,

Plaintiff-Respondent,

v.

RANDALL R. LONG and
CHARLOTTE F. LEWIS,

Defendants-Appellants.

Submitted December 6, 2016 – Decided April 6, 2017

Before Judges Fasciale and Kennedy.

On appeal from Superior Court of New Jersey,
Law Division, Monmouth County, Docket No. L-
941-13.

Randall R. Long and Charlotte F. Lewis,
appellants pro se.

Giordano, Halleran & Ciesla, P.C., attorneys
for respondent (Matthew N. Fiorovanti, of
counsel and on the brief).

PER CURIAM

Randall R. Long and Charlotte F. Lewis (collectively
defendants) appeal from a May 23, 2014 order granting plaintiff

Structured Assets Trust (SAT) summary judgment against Long, and seek direct review of an arbitration award against Lewis in the amount of \$67,285.99. We affirm.

Long authorized SAT, an organization engaged in the business of arranging for the sale of fixed monthly income streams, to act as his authorized agent and locate a buyer for his periodic payments. Lewis executed an Individual Guaranty of Performance guaranteeing the performance of all of Long's obligations under Long's agreement with SAT. SAT secured a buyer (the buyer) for Long's income streams.

Long entered into a contract for the sale of these periodic payments with the buyer. The contract entitled the buyer to Long's monthly-pension benefits issued by the state of Washington. Long agreed to accept the pension payments using a designated sub-trust account, created in Long's name, and serviced by an independent trustee.

Pursuant to section 6.2 of the contract, Long agreed not to alter the payment instructions without written consent from the buyer. Pursuant to section 8.1 of the contract, in the event of a breach by Long, the buyer "may bring an action for liquidated damages in an amount equal to the aggregate amount of the unpaid purchased payments." Section 3.3 also described what would occur in the event of default:

If there is any disruption, interruption, decrease or elimination of the Purchased Payments described herein, caused by [Long], or by [Long's] failure to take reasonable steps to insure the delivery of such payments, such interruption or disruption shall be deemed to be a material breach of this Agreement by [Long]. In the event of such a breach, then it is agreed that all of the remaining and unpaid future Purchased Payments, shall be immediately due and payable in full, and [Long] shall be responsible for all costs of collection, including reasonable attorney fees, incurred by the Buyer.

The buyer assigned her rights to enforce the contract to SAT. SAT filed a complaint against defendants seeking damages due to Long's failure to comply with the contract. SAT then moved for summary judgment. The court granted SAT's motion for summary judgment as to Long, but not as to Lewis.

As to Long, the court found that Long breached the contract by failing to make payments and failing to direct the payments from the state of Washington. The court found that although Long had signed a letter directing the state of Washington to forward his pension payments to a lockbox address, he never actually sent the letter or followed through on his obligation to ensure that the pension payments were deposited into the lockbox or forwarded to the buyer. As to Lewis, the judge found that an issue of material fact existed.

The matter then proceeded to non-binding mandatory arbitration. See R. 4:21A-1(a)(3). In Lewis's absence, the arbitrator entered an arbitration award against Lewis in favor of SAT. The arbitrator reasoned that Lewis was liable as a personal guarantor on the contract.

SAT filed a motion to confirm the arbitration award. On August 8, 2014, the court confirmed the arbitration award of \$67,285.99. The court reasoned that judgment entered against Lewis was appropriate, pursuant to Rule 4:21A-4(f), as she failed to appear without good cause. Defendants have not appealed from the August 8, 2014 order.

On appeal, defendants argue that the judge erred by granting summary judgment to Long, and by granting SAT's motion to confirm the arbitration award as to Lewis.

At the outset, we note that defendants filed deficient merits briefs. Their briefs lack a table of contents or citations (Rule 2:6-2(a)(1)); legal arguments with "appropriate point headings" or any legal citations (Rule 2:6-2(a)(6)); and conformance with spacing, type-size, and reproduction requirements (Rule 2:5-4 and Rule 2:6-2(c)). Although similar procedural mishaps have resulted in dismissal of the appeal, see Cherry Hill Dodge, Inc. v. Chrysler Credit Corp., 194 N.J. Super. 282 (App. Div. 1984) and Rule 2:8-2, we will address the appeal on the merits.

When reviewing an order granting summary judgment, we apply "the same standard governing the trial court." Oyola v. Liu, 431 N.J. Super. 493, 497 (App. Div.), certif. denied, 216 N.J. 86 (2013). We owe no deference to the motion judge's conclusions on issues of law. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). When the movant is the plaintiff, as is the case here, the court "must view the record with all legitimate inferences drawn in the defendant's favor and decide whether a reasonable factfinder could determine that the plaintiff has not met its burden of proof." Globe Motor Co. v. Igdaley, 225 N.J. 469, 481 (2016). Applying these standards, we conclude there was no error in granting summary judgment in favor of SAT against Long.

To establish a prima facie breach of contract claim, a plaintiff must show four elements: (1) the parties entered into a contract with specific terms; (2) the moving party acted in accordance with the contract; (3) the non-moving party failed to act ("breached") accordingly; and (4) the breach resulted in damages to the moving party. Id. at 482. In interpreting a contract, courts read the document as a whole, impose clear and unambiguous terms, and enforce the contract as written. Barr v. Barr, 418 N.J. Super. 18, 31-32 (App. Div. 2011).

The contract in question is clear. Long promised to forward his pension payments for 120 months, at \$500 per payment, in exchange for a lump sum payment of \$25,000. Long then failed to forward his payments, breaching the contract. Long's pension payments were eligible for sale. Pension payments in the state of Washington are governed by RCW 51.32.040(1), which states in relevant part:

Except as provided in RCW 43.20B.720, 72.09.111, 74.20A.260, and 51.32.380, no money paid or payable under this title shall, before the issuance and delivery of the payment, be assigned, charged, or taken in execution, attached, garnished, or pass or be paid to any other person by operation of law, any form of voluntary assignment, or power of attorney. Any such assignment or charge is void unless the transfer is to a financial institution at the request of a worker or other beneficiary and made in accordance with RCW 51.32.045.

[RCW 51.32.040(1) (emphasis added).]

The statute permits, like here, the assignment of pension payments when disbursed to a beneficiary or a financial institution at the request of the beneficiary.

As to the arbitration award, and as a threshold matter, we note that the "decision and award of an arbitrator is not subject to appeal." Grey v. Trump Castle Assocs., L.P., 367 N.J. Super. 443, 447 (App. Div. 2004) (citing R. 4:21A-6(a)). A trial court's decision whether to confirm or vacate an arbitration award,

however, is appealable and reviewed de novo, as it is a matter of law. Minkowitz v. Israeli, 433 N.J. Super. 111, 136 (App. Div. 2013) (quoting Manger v. Manger, 417 N.J. Super. 370, 376 (App. Div. 2010)). Here, defendants have not appealed from the August 8, 2014 order confirming the arbitration award. Instead, they seek direct review of the arbitration award, which contravenes our court rules and case law. See also R. 4:21A-6(a). Even though direct appeal from the arbitration is improper, we nevertheless add the following brief remarks.

Lewis failed to establish good cause for her absence at the arbitration proceedings. The judge who confirmed the award found that Lewis did not credibly demonstrate that she was excused from appearing or that the matter should not proceed. A letter dated May 31, 2014, from Long, on behalf of Lewis, did not provide a sufficient basis as Long could not represent Lewis.

Lewis was still an active party even though the court had granted summary judgment to Long, and Lewis's presence was required at the mandatory arbitration. Subsection (f) of the rule addresses a party's failure to appear at a proceeding, and states in pertinent part that

An appearance on behalf of each party is required at the arbitration hearing
If a party defending against a claim of damages does not appear, that party's pleading shall be stricken, the arbitration shall

proceed and the non-appearing party shall be deemed to have waived the right to demand a trial de novo Relief from any order entered pursuant to this rule shall be granted only on motion showing good cause, which motion shall be filed within 20 days of the date of service on the non-appearing party by the appearing party. Relief shall be on such terms as the court may deem appropriate, including litigation expenses and attorney's fees incurred for services directly related to the non-appearance.

[R. 4:21A-4(f).]

Lewis's failure to appear waives the trial de novo opportunity, and although she opposed SAT's motion to confirm the award, Lewis did not demonstrate a basis for denying that motion or vacating the arbitration award. We conclude that Lewis failed to offer any credible evidence substantively challenging the merits of the arbitration award.

We conclude that defendants' remaining arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION