

**RECORD IMPOUNDED**

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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-0757-15T1

MYEONG H. CHOI,

Plaintiff-Appellant,

v.

JAMES JIN CHOI,

Defendant-Respondent.

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Submitted March 28, 2017 – Decided May 12, 2017

Before Judges Espinosa and Grall.

On appeal from the Superior Court of New  
Jersey, Chancery Division, Family Part,  
Bergen County, Docket No. FM-02-0874-15.

Kimm Law Firm, attorneys for appellant  
(Michael S. Kimm and Adam Garcia, on the  
briefs).

Joonil Kim Lee, attorney for respondent.

PER CURIAM

Plaintiff Myeong H. Choi appeals from an order entered on  
September 4, 2015 in an action for divorce. The order denies  
plaintiff's motion to enforce an order entered on March 25,  
2015. For reasons that follow, we reverse and remand.

A discussion of the pertinent procedural history provides essential background. Plaintiff filed her complaint in October 2014 and eighteen days later filed a motion for pendente lite relief. Defendant filed an answer and counterclaim on October 31, 2014. The judge denied the plaintiff's motion without prejudice in December 2014 and a subsequent motion for reconsideration in January 2015.

Plaintiff sought leave to appeal on February 17, 2015, which we denied on April 9, 2015, following a remand for and receipt of the judge's statement of reasons. On March 25, 2015, following a case management conference, the judge issued the order plaintiff sought to enforce.

The single paragraph of the March 25 order, entered by the same judge with the parties' consent, provides:

[T]he Parties' respective pleadings are dismissed; Parties are to attend mediation to binding arbitration with [a designated retired judge]. Defendant shall be responsible for all costs of mediation and arbitration, subject to final allocation.  
[(Emphasis added).]

The matter proceeded before the arbitrator, who entered a case management order on June 17, 2015, that includes a provision requiring "each party to deposit \$5000 to be applied toward Arbitrator hearing fees." The provision sparked plaintiff's motion to enforce the provision of the judge's March

25, 2015 order requiring defendant to pay all costs subject to final allocation.

On September 4, 2015, the judge entered the order denying enforcement of his March 25, 2015 order. The judge provided this brief statement of reasons: "[m]atter has been dismissed by [o]rder of March 25, 2015. Application must be made to the arbitrator."<sup>1</sup>

Plaintiff filed her notice of appeal from the September 4 order denying enforcement and the requisite supporting case information statement, on October 16, 2015. Before the notice of appeal was filed, the arbitrator withdrew. He memorialized and explained his withdrawal in an order dated September 14, 2015.<sup>2</sup>

In part most pertinent here, the arbitrator stated:

Withdrawal of Arbitrator. Since neither party has the financial ability to pay Arbitrator's fees, I hereby withdraw as Arbitrator. If the parties cannot agree upon the selection of a replacement Arbitrator and pay his or her fees, this matter should be restored by the Court to the divorce FM calendar of the Bergen

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<sup>1</sup> This statement quoted is inconsistent with the statement the judge made on March 25, 2015, indicating that the parties could return to court to enforce the March 25 order.

<sup>2</sup> Although not mentioned in the notice of appeal, the case information statement advises that the arbitrator withdrew "due to the parties' financial inability to pay Arbitrator's Fees." "Exhibit D" of the case information statement is the arbitrator's order of September 14, 2015.

County Chancery Division Family Part. Copies of the Arbitrator's Case Management Orders are attached hereto.

It is not clear whether the parties brought the September 14 order to the attention of the Family Part, but nothing in the papers submitted on appeal suggests that the order was brought to the attention of the judge.

The posture of this case requires a remand to permit the judge to reinstate the parties' pleadings, consider the arbitrator's order and decision of September 14, 2015, and take appropriate action in light of the arbitrator's withdrawal. At present, the parties have been left without a forum for litigating their divorce in the first instance, which this court cannot provide.

Reversed and remanded.

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



CLERK OF THE APPELLATE DIVISION