

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

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-0826-15T2

VICTOR LOURO AND
JENNIFER LOURO,

Plaintiffs-Respondents,

v.

FELIPE PEDROSO, PEDROSO LAW
FIRM, P.C., AND PEDROSO LEGAL
SERVICES, L.L.C.,

Defendants-Appellants.

Argued April 6, 2017 – Decided June 14, 2017

Before Judges O'Connor and Whipple.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Docket No. L-5717-
12.

Filipe Pedroso,¹ appellant, argued the cause
pro se.

Monique D. Moreira argued the cause for
respondents (Moreira & Moreira, P.C.,
attorneys; Ms. Moreira, on the brief).

¹ Filipe Pedroso's name is spelled as Felipe in the captions and orders in this matter. However, he signs his documents as Filipe. Therefore, we refer to him as Filipe Pedroso throughout this opinion.

PER CURIAM

On January 8, 2014, the trial court entered a \$21,673 judgment against defendants Pedroso Law Firm, P.C. and Pedroso Legal Services, L.L.C., after a jury found defendants owed plaintiffs unpaid rent. Because defendants have not paid the judgment, plaintiffs sought to compel Filipe Pedroso, as principal of Pedroso Law Firm, P.C., to attend a deposition, to provide plaintiffs with financial documents, and to pay attorney's fees. Defendants now appeal from August 21, September 10, October 9, and October 23, 2015 orders compelling Pedroso to do so. We affirm in part and remand in part.

On August 1, 2012, plaintiffs filed suit against Pedroso individually and Pedroso Law Firm, P.C. for unpaid rent and fraud. Tried before a jury, the matter concluded on December 16, 2013, when the jury rendered a verdict finding defendants occupied the first floor at 38 Jefferson Street in Newark in 2012 and 2013, and did not pay the fair monthly rental value of \$1500. The jury found no fraud, and thus, the judge dismissed a fraud claim against Filipe Pedroso.

The January 8, 2014 judgment ordered "Pedroso Law Firm[,] P.C. shall pay the plaintiffs in this matter \$21,000.00," as well as \$673.15 in pre-judgment interest, for a total of \$21,673.15. The judgment also included Pedroso Legal Services, L.L.C. This

entity was included because Pedroso had created this LLC while litigation was ongoing, an act that was the subject of a direct appeal from the judgment. We agreed it was not error for the trial court to include Pedroso Legal Services, L.L.C. as a successor law firm, in the judgment. Louro v. Pedroso Law Firm, P.C., No. A-2599-13 (App. Div. June 4, 2015).

At a point unclear from the record, plaintiffs served an information subpoena on defendants, which resulted in the production of defendants' bank account number. In May 2014, a writ of execution disclosed this account had a balance of \$0.

On August 4, 2015, plaintiffs moved to compel Filipe Pedroso, as principal of Pedroso Law Firm, P.C. and Pedroso Legal Services, L.L.C., to appear for a post-judgment deposition and produce "any and all tax returns for the years 2012, 2013, and 2014, bank account statements, and all pertinent financial information for both Pedroso Law Firm[,] P.C. and Pedroso Legal Services, L.L.C." Plaintiffs also sought legal fees and costs, as well as any other relief the court might "deem just and equitable." Defendants opposed the motion.

On August 21, 2015, the court ordered Pedroso to attend a post-judgment deposition within twenty days and produce the requested financial documents. The order also provided "defendant shall pay plaintiff's attorney fees in connection with this motion

in an amount to be decided pursuant to the submission of an affidavit of services."

Defendant moved for a protective order, with a signature date of September 3, 2015, seeking in camera review of the tax returns and other financial documents. Plaintiff opposed the motion and submitted an affidavit of services requesting \$925 in legal fees. On September 10, 2015, the court ordered "defendants, Felipe Pedroso and Pedroso Law Firm[,] P.C. and Pedroso Legal Services, [L.L.C.] shall pay the moving party \$925."

On September 11, 2015, defendants wrote to the court, asserting they should not have to pay plaintiffs' legal fees related to the motion because they had no prior notice of plaintiffs' request for a deposition.²

Defendants received the September 10, 2015 fee order on September 16, 2015. Defendants moved for reconsideration on September 25, 2015, arguing Pedroso, as an individual, was not subject to the order, and the award of counsel fees was inappropriate. Defendants continued to press for a protective order.

² A post-judgment deposition took place on October 29, 2015. Whether defendant ever provided any requested financial documents is unclear.

The court issued another order for payment of costs and fees of \$925 on October 9, 2015. That order provided "defendant shall pay plaintiff's attorney fees in connection with this opposition in an amount to be decided pursuant to the submission of an affidavit of services." The court also denied defendants' motion for a protective order on October 9, 2015, and again, ordered Pedroso to attend the deposition and provide the relevant financial documents at the deposition. In denying the motion, the judge wrote "no privilege" and "no 'good cause.'" On October 23, 2015, the judge denied defendants' motion for reconsideration, indicating, "denied, relief sought was previously adjudicated and movant has proven no legal basis for its motion."

Defendants appealed the August 21, 2015 and October 9, 2015 orders on October 23, 2015. Defendants then filed an amended notice of appeal adding the September 10, 2015 and October 23, 2015 orders.

On appeal, defendants argue the judge erred by refusing an in camera review of the financial documents before compelling their release to plaintiffs. Because the notes on the October 9, 2015 order justifying its entry are ambiguous, and possibly contradict denial of relief, we are constrained to remand this matter for clarification.

Tax returns are not privileged, Finnegan v. Coll, 59 N.J. Super. 353, 356 (Law Div.), certif. denied, 32 N.J. 357 (1960); however, individuals have "a legitimate interest" in their tax records remaining confidential, Lepis v. Lepis, 83 N.J. 139, 157 (1980). Thus, New Jersey courts have allowed "discovery and inspection of income tax returns for good cause." De Graaff v. De Graaff, 163 N.J. Super. 578, 582 (App. Div. 1978) (requiring in camera review before disclosure of tax returns in child support litigation) (quoting Ullmann v. Hartford Fire Ins. Co., 87 N.J. Super. 409, 415 (App. Div. 1965)).

Disclosure should only be required when it serves a "substantial purpose," and disclosure of full returns should not be required "if partial disclosure will suffice." Ibid. "[I]n all but the clearest cases[,] the return should be examined by the judge before any disclosure is ordered." Ullman, supra, 87 N.J. Super. at 416. Further, if the information sought from the tax records can be obtained through other means, a party has not shown good cause for production. De Graaff, supra, 163 N.J. Super. at 582. Good cause is a term without a precise definition, but good cause must be determined on a case-by-case basis based on the facts presented. Ullman, supra, 87 N.J. Super. at 414.

Here, the denial of defendants' motion for a protective order includes the handwritten notes "no privilege applies" and "no

'good cause.'" We can only surmise the denial language is a reference to defendants' form of order, which proposed "[d]efendant filed this motion for a protective order asking the court to undergo an in camera review of the documents to determine whether production is appropriate; and the court having reviewed the motion papers, opposition (if any), and oral argument (if granted); and for good cause shown" (emphasis added).

Good cause, however, is the standard plaintiffs must show to gain access to defendant's tax returns. By finding "no 'good cause,'" the judge's reasons implies plaintiffs did not meet their burden to justify the release of the tax returns; however, the relief denied defendant's request for a protective order and in camera review, which appears in direct conflict with the reasoning. Therefore, we remand for the judge to clarify why the protective order was denied.

Defendants next argue the trial court erred by granting plaintiff counsel fees in the August 21, 2015 order because "defendant(s) were not in violation of any discovery order." We disagree and affirm the order for defendants to pay costs.

Under Rule 6:7-2(b), an information subpoena can be served upon a judgment debtor. If a judgment debtor fails to comply with the information subpoena, a judgment creditor can commence proceedings for relief through a motion to the court. R. 6:7-

2(e). The proceedings should comply with Rule 1:10-3, which states, "[t]he court in its discretion may make an allowance for counsel fees to be paid by any party to the action to a party accorded relief under this rule."

Rule 4:59-1(f) provides for the deposition of a judgment debtor by the judgment creditor to aid in the execution of a judgment pursuant to Rule 6:7-2, discussed above. This rule allows a judgment creditor to obtain an order requiring a deposition of any person who may have information concerning property of a judgment debtor. R. 6:7-2(a). The rule does not require notice of a motion to compel a deposition but requires service of the order for discovery. R. 6:7-2(c). Additionally, "[t]he court may make any appropriate order in aid of execution." R. 4:59-1(f).

Defendant contends counsel fees were erroneously awarded because plaintiffs never made a request for a deposition prior to filing their motion to compel a deposition. Defendant relies on the rules for conducting discovery depositions, found in Rule 4:23-1.

Plaintiffs were not required to request a deposition of defendant prior to filing a motion to compel one. Plaintiffs moved for the court to compel the deposition of Pedroso based upon defendants' failure to comply with an information subpoena and actions that plaintiffs characterized as defendants' attempts to

evade paying the judgment. The judge was presented with a record upon which he could have reasonably concluded defendants were avoiding paying the judgment by failing to comply with the information subpoena. Thus, we discern no abuse of discretion, and the imposition of counsel fees was appropriate.

Defendant also argues the trial judge erred by entering two orders on October 9, 2015, because they had been prepared by plaintiffs when plaintiffs had not filed cross-motions. Defendants' argument lacks merit. R. 2:11-3(E)(1)(e).

On August 21, the court ordered "defendant shall pay plaintiffs' attorney fees in connection with this motion in an amount to be decided pursuant to the submission of an affidavit of services." When plaintiffs responded to defendant's motion for a protective order, they provided a certification of the legal services and a form order, so the appropriate fees could be determined by the court. The judge then issued an order stating the specific fees defendants must pay plaintiff. No cross-motion was necessary, and the orders were appropriate.

Last, defendant argues the motion judge erred by entering the September 10, 2015 and October 9, 2015 orders against Pedroso as an individual, in addition to his law firm entities. We agree and remand for the trial judge to correct such orders.

We previously determined the original judgment applied to both defendant's original law firm entity, Pedroso Law Firm, P.C., and a subsequently created entity, Pedroso legal Services, L.L.C. Louro, supra, No. A-2599-13. We stated the ultimate jury verdict for unpaid rent "was only against the law firm and not against Pedroso personally." The caption of this decision also has a footnote providing, "The party was incorrectly designated as Felipe Pedroso."

Plaintiff argues Pedroso should be included individually on the order for legal fees as the attorney for the law firm because he deliberately obstructed the discovery process. See Baxt v. Liloia, 155 N.J. 190, 210-11 (1998). However, the use of Pedroso's name after the word "defendant" implies he was included in the order as a defendant and not for his role as counsel for his law firms. We agree Felipe Pedroso, as an individual, should not have been included on the orders for costs. We therefore remand for the trial judge to re-issue the orders with the appropriate defendants.

Affirmed in part and remanded in part. We do not retain jurisdiction.

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


CLERK OF THE APPELLATE DIVISION