

**NOT FOR PUBLICATION WITHOUT THE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-1816-14T2

FTA FINANCIAL L.L.C.,

Plaintiff-Respondent,

v.

JAMES WHITE,

Defendant-Appellant.

Submitted October 11, 2016 – Decided March 7, 2017

Before Judges Espinosa and Suter.

On appeal from Superior Court of New Jersey,
Law Division, Special Civil Part, Passaic
County, Docket No. DC-9962-14.

James White, appellant pro se.

Zager Fuchs, P.C., attorneys for respondent
(Michael T. Warshaw, on the brief).

PER CURIAM

Defendant James White appeals a November 14, 2014 order that denied his motion to vacate a \$14,250 judgment entered against him in favor of plaintiff FTA Financial, L.L.C. (FTA).¹ We affirm.

Defendant and four other individuals signed a \$20,000 "Promissory Note" (Note) in April 2012 that was payable to John's Bail Bonds (John's) in order to obtain a recognizance bond for defendant Donny Bono's appearance on criminal charges, where bail was set at \$200,000. They also signed an "Unpaid Premium Agreement" (Agreement) with John's which obligated them to pay the \$15,000 remaining balance for the bond in \$400 bi-weekly installments, a document that listed "Conditions of Release," a "Detainer Notice," and individual indemnity agreements with the surety on the bond, First Indemnity of America Insurance Company. The Agreement required defendant to "pay all . . . costs of collections including attorney's fees and court costs." John's received an initial \$5,000 down payment and another \$2,950, leaving an unpaid balance of \$12,050.

In August 2014, John's assigned this account receivable to FTA for collection. FTA then sued defendant and the other signatories in the Passaic County Superior Court, Special Civil

¹ Defendant's Notice of Appeal only referenced the November 14, 2014 order and not the October 17, 2014 order that entered the judgment.

Part, seeking \$14,250 in damages for the unpaid balance and collection costs, and \$750 in attorney's fees. Defendant was the only party who answered the complaint.

FTA requested summary judgment, contending there were no genuine issues of fact regarding defendant's obligation to pay under the Note and Agreement. Defendant opposed the motion saying that he was "lied to and misled by John's." He asserted the documents were blank when he signed them at 10:00 p.m. in a van at his house, that John's rushed him to sign and he was tired at the time. He claimed he was signing for a bond and did not remember signing a "fee contract." He asserted the documents were not filled out when he signed them nor properly notarized.

Defendant asked to consolidate this case with a case he filed in the Hudson County Special Civil Part. In that case, defendant sued John's for \$15,000 claiming he was "tricked into signing a paper [in] which I was made a guarantor of the bondsman's fee." He claimed he was not advised of the delinquency, and questioned the amount due under the contract. Defendant contested the venue of FTA's case in Passaic County because he said Bono moved out of the county before suit was filed.

On October 17, 2014, the trial judge granted FTA's motion for summary judgment. In his written opinion, the judge found the case was properly venued in Passaic County because Bono lived in

Clifton and defendant had no proof to corroborate that Bono had moved. The court declined to consolidate this case with the case pending in Hudson County because neither FTA nor defendant had "any bona fide connection to Hudson County."² The judge also found there were no factual issues precluding summary judgment because defendant acknowledged signing the documents and did not provide "documentary evidence" in support of his claims that the documents were not filled out when he signed them nor properly notarized. The trial court entered a \$14,250 judgment against defendant and denied FTA's request for attorney's fees without prejudice because it failed to submit a certification of services.

Defendant filed a motion under Rule 4:50-1 to vacate the judgment, claiming he had new evidence that Bono was not living in Clifton when the complaint was filed. FTA opposed the motion and filed a cross-motion for sanctions and attorney's fees.

The trial court denied defendant's motion to vacate, finding the case was properly venued in Passaic County because Bono was residing in Passaic County "at the time that this suit was filed," that Bono was served with the complaint in Passaic County and that defendant presented no documentary evidence to show Bono's current

² The Hudson County case was dismissed according to FTA, and reconsideration denied, but those orders are not part of our record.

address or to corroborate his claim Bono had moved. The court found that although settlement discussions may have occurred between the parties, those discussions could not be considered by the court, citing to N.J.R.E. 408. The court denied FTA's request for sanctions because it had not sent the pre-action letter notice required by Rule 1:4-8(b).³

Defendant appeals the November 14, 2014 order that denied his request to vacate the judgment. He contends the trial court erred by failing to consider the concept of joint and several liability, and by also failing to consider that, before collecting on the bond, FTA was required to prove substantial efforts to capture the defendant. We discern no error by the trial court in denying his motion to vacate the judgment.

We review trial court decisions on motions to vacate judgments, R. 4:50-1, with greater deference than our review of summary judgment orders. See Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994) (internal citations omitted) ("The decision granting or denying an application to open a judgment will be left undisturbed unless it represents a clear abuse of discretion.").

³ We omit discussion of subsequent motions involving collection activities because they have no bearing on our resolution of the issues.

Defendant raises nothing in this appeal that demonstrates an abuse of discretion. Instead, defendant cites to principles of tort law involving joint and several liability as a ground to vacate the judgment. However, joint and several liability has no relevance to this breach of contract action. Defendant signed a contract that allowed FTA to seek the full amount from defendant or any of the co-signers, either individually or jointly. This then was not a basis under Rule 4:50-1 to vacate the judgment.

Similarly, defendant's contention on appeal that FTA needed to show efforts to recapture an at-large defendant to recover under the note is simply incorrect. This is not a case where there was a failure by a criminal defendant to appear; rather, defendant and others obligated under the note failed to pay for the bail bond.

Defendant did not appeal the October 17, 2014 order that entered judgment because it was not listed in his Notice of Appeal. See W.H. Indus., Inc. v. Fundicao Balancins, Ltda, 397 N.J. Super. 455, 458 (App. Div. 2008) (citing Sikes v. Twp. of Rockaway, 269 N.J. Super. 463, 465-66 (App. Div.), aff'd o.b., 138 N.J. 41 (1994)) ("It is clear that it is only the orders designated in the notice of appeal that are subject to the appeal process and review."). Defendant's Case Information Statement did list the October 17, 2014 order that granted FTA summary judgment. However,

even if we elected to review the summary judgment order, see Tara Enters. Inc. v. Daribar Mgmt. Corp., 369 N.J. Super. 45, 60 (App. Div. 2004), it provided no basis to vacate the judgment. See Liberty Surplus Ins. Corp., Inc. v. Nowell Amoroso, P.A., 189 N.J. 436, 445-46 (2007) (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 536 (1995) (finding that summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law)). We review a summary judgment decision using the same standards that govern the trial court. Murray v. Plainfield Rescue Squad, 210 N.J. 581, 584 (2012).

Here, defendant acknowledged signing the documents without first reading them.⁴ He contended he thought he was signing for the bond, and not for the amount needed to purchase the bond. Although he described the circumstances under which he signed the documents, he never asserted that he signed them based on threats made or wrongful conduct by the bail bondsman. See Shanley & Fisher, P.C. v. Sisselman, 215 N.J. Super. 200, 213 (App. Div. 1987) (internal quotation marks and citation omitted) (holding that acts or threats do not constitute duress unless they are wrongful). Instead, he believed he was doing Bono a favor by

⁴ Defendant apparently abandoned his claim of forgery at oral argument where he admitted signing the documents.

agreeing to the bond. Defendant acknowledges the documents were available for him to read when he signed them and that he could have asked for and obtained a copy. The pre-printed portions of those documents were clear in setting forth that defendant was financially obligated because one was a "Promissory Note," and another was an "Unpaid Premium Agreement." Defendant did not plead legal or equitable fraud as a defense, nor did he raise with any specificity facts that would support his bald assertion he was misled. See R. 4:5-8(a). Additionally, he acknowledged he signed the documents, which, for him, obviated any issue about the notarization of the document.

The certification submitted in connection with the motion for summary judgment supported the judgment for \$14,250. The promissory note was for \$15,000 but because \$2,950 has been paid, and \$2,200 had been assessed for the costs of collection, the total amount awarded was \$14,250. The record is devoid of any genuine issue challenging these amounts.

Finally, venue in Special Civil Part is proper "in the county in which at least one defendant in the action resides." Rule 6:1-3(a). Defendant twice failed to show Bono had moved out of the county prior to the filing of the suit.⁵ Therefore, venue was

⁵ The trial court's opinion references "jurisdiction." Defendant does not allege on appeal that the court lacked jurisdiction.

proper in Passaic County because the trial court found Bono lived there when the complaint was served and filed.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION