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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-2062-15T3

KATHARINE LAI,

Plaintiff-Appellant,

v.

SAM SHIMONI and
AIR-O-MATIC INC.,

Defendants-Respondents.

Submitted May 10, 2017 – Decided June 6, 2017

Before Judges Simonelli and Carroll.

On appeal from the Superior Court of New
Jersey, Law Division, Middlesex County, Docket
No. L-3123-15.

Katharine Lai, appellant pro se.

Meister Seelig & Fein LLP, attorneys for
respondents (Jeffrey Schreiber, on the brief).

PER CURIAM

Plaintiff Katharine Lai appeals from two December 4, 2015 Law
Division orders, which denied her motion for reconsideration of
an October 30, 2015 order that denied her motion to enter default
against defendants Sam Shimoni (Shimoni) and Air-O-Matic Inc.

(AOMI),¹ and granted defendants' cross-motion to dismiss the complaint and for sanctions. Lai also appeals from the January 13, 2016 judgment entered against her in the amount of \$11,620.80 for frivolous lawsuit sanctions. We affirm.

We derive the following facts from the record. Fantastic Realty Co., Inc. (Fantastic) owned property located at 308 Raritan Avenue in Highland Park (the property) from July 23, 2001, to January 2, 2004, and re-acquired ownership on October 25, 2007. Lai previously owned the property, but was merely the property manager at all times relevant to this matter.

On August 16, 2012, Fantastic, as landlord, and AOMI, as tenant, through their respective agents Lai and Shimoni, entered into a lease agreement for AOMI to rent two parking garage spaces at the property for a term of five years at the rate of \$100 per month. Lai did not dispute that AOMI timely made all rent payments to Fantastic. On January 30, 2015, Golden Eagle Foundation, Inc. (Golden Eagle) acquired the property from Fantastic. Plaintiff advised AOMI to make all future rent payments to Golden Eagle, which Lai did not dispute occurred. Sometime thereafter, Lai demanded that AOMI pay \$200 per month, alleging it was using

¹ We shall sometimes collectively refer to Shimoni and AOMI as defendants.

additional parking spaces. AOMI refused to pay the additional amount, as it was not required under the lease.

On May 29, 2015, Lai filed a pro se complaint against Shimoni and AOMI, alleging fraud, negligence, violations of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49, and the Americans With Disabilities Act (ADA), 42 U.S.C.A. § 12101, based on sex, age, national origin, disability, and discriminatory negligence. Lai also alleged violations of 42 U.S.C.A. § 1981, and 42 U.S.C.A. § 1983. Lai did not dispute that she served a copy of the summons and complaint on defendants' former attorney, not defendants. The record does not reveal that the attorney had the authority or agreed to accept service on defendants' behalf.

In September 2015, Lai filed a motion to enter default against defendants. On September 24, 2015, defendants' then-attorney sent Lai a notice pursuant to Rule 1:4-8 and N.J.S.A. 2A:15-59.1, stating the complaint was frivolous, demanding it be withdrawn within twenty-eight days, and advising that defendants would seek sanctions if Lai failed to withdraw (the safe harbor notice). On October 14, 2015, defendants filed a cross-motion to dismiss the complaint with prejudice pursuant to Rule 4:6-2(e) for failure to state a claim upon which relief may be granted.

In an October 30, 2015 order and written opinion, the court denied Lai's motion, finding that defendants were not served with

the summons and complaint. The court granted defendants' cross-motion, finding that Lai lacked standing to sue because she did not own the property, she failed to plead sufficient facts to support any of her claims, and no cause of action existed for negligent discrimination.

Lai did not appeal from the October 30, 2015 order. Instead, she filed a motion for reconsideration. In a December 4, 2015 order and written opinion, the court denied the motion based on Lai's failure to provide legal or factual reasons that warranted reconsideration. The court reiterated that plaintiff lacked standing to sue because she did not own the property and could not represent a corporation under the applicable Rules of Court.

Defendants filed a cross-motion for sanctions pursuant to Rule 1:4-8 and N.J.S.A. 2A:15-59.1. In a separate December 4, 2015 order and written opinion, the court granted the cross-motion, finding as follows:

Lai's motion [for reconsideration was] utterly devoid of merit. There was no reasonable or rational basis to reconsider the court's prior decision. Moreover, the motion [was] procedurally defective because it fail[ed] to state the matters or controlling decisions which were overlooked.

The [c]ourt finds that the application is frivolous and warrants sanctions under Rule 1:4-8(a)(1). From the papers submitted, the [c]ourt finds that . . . Lai is a sophisticated and experienced litigant who is attempting to

manipulate the court system with the filing of frivolous motions and claims.^[2] In this case, the property is apparently owned by a corporation and not by . . . Lai. Yet, she persists to make claims in her own name and without an attorney representing the corporation.

The court directed defendants' attorney to submit a certification of services.

Defendants' attorney submitted a certification of services requesting fees in the amount of \$11,620.80. The certification complied with Rules of Professional Conduct 1.5(a) (R.P.C. 1.5(a)) and was supported by the attorney's billing statements. In her opposition, Lai did not dispute that she received the safe harbor notice, and did not challenge the reasonableness of the hours defendants' attorney claimed he expended, the hourly rates, or the amount sought. She merely argued that defendants' attorney failed to produce a signed retainer agreement or defendants' cancelled checks showing payment. On January 13, 2016, the court entered judgment against Lai in the amount of \$11,620.80. This appeal followed.

"[T]he decision to grant or deny a motion for reconsideration rests within the sound discretion of the trial court." Pitney

² In support of their motion for frivolous lawsuit sanctions, defendants presented evidence that plaintiff filed numerous pro se complaints in State and federal court.

Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 383 (App. Div. 2015). "Reconsideration should be used only where '1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence.'" Ibid. (quoting Capital Fin. Co. of Delaware Valley, Inc. v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div.), certif. denied, 195 N.J. 521 (2008)). Thus, we will not disturb a trial court's reconsideration decision unless it represents a clear abuse of discretion. Ibid. (citing Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994)). An abuse of discretion "arises when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Flaqq v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002) (quoting Achacoso-Sanchez v. Immigration & Naturalization Serv., 779 F.2d 1260, 1265 (7th Cir. 1985)). There was no abuse of discretion in the denial of the motion for reconsideration.

Lai makes no comprehensible argument warranting reversal of the denial of her motion for reconsideration. Like this appeal, her motion for reconsideration was devoid of any factual or legal basis for reconsideration. We are satisfied that the court

appropriately exercised its discretion to deny reconsideration and discern no basis to disturb that decision.

We also discern no basis to reverse the grant of frivolous lawsuit sanctions. We review a trial's judge's award of attorney's fees pursuant to Rule 1:4-8 for abuse of discretion. McDaniel v. Man Wai Lee, 419 N.J. Super. 482, 498 (App. Div. 2011). We will reverse a judge's decision to award attorney's fees pursuant to Rule 1:4-8 "only if it 'was not premised upon consideration of all relevant factors, was based upon consideration of irrelevant or inappropriate factors, or amounts to a clear error in judgment.'" Ibid. (quoting Masone v. Levine, 382 N.J. Super. 181, 193 (App. Div. 2005)). There was no abuse of discretion in the grant of frivolous lawsuit sanctions.

A party may apply for frivolous litigation sanctions by "describ[ing] the specific conduct alleged to have violated" the rule against frivolous litigation. R. 1:4-8(b)(1). Prior to making such an application, the party seeking sanctions must provide the other party with a notice that must:

- (i) state that the paper is believed to violate the provisions of [Rule 1:4-8],
- (ii) set forth the basis for that belief with specificity,
- (iii) include a demand that the paper be withdrawn, and
- (iv) give notice, except as otherwise provided herein, that an application for sanctions will be made within a reasonable time thereafter if the offending

paper is not withdrawn within 28 days of service of the written demand.

[R. 1:4-8(b)(1).]

Defendants complied with Rule 1:4-8(b)(1).

The court may award "reasonable" expenses and attorney's fees to the prevailing party on a motion for frivolous lawsuit sanctions. R. 1:4-8(b). In order to establish reasonableness, the moving party's attorney must submit an affidavit of services that complies with R.P.C. 1.5(a). The affidavit of services must also include "a detailed statement of the time spent and services rendered by paraprofessionals, a summary of the paraprofessionals' qualifications, and the attorney's billing rate for paraprofessional services to clients generally[,]" and a statement as to how much the client had paid, and "what provision, if any, has been made for the payment of fees to the attorney in the future." R. 4:42-9(b) and (c). There is no requirement that an attorney submit a signed retainer agreement or proof of his client's payment. Defendants' attorney's certification of services complied with Rule 4:42-9(b) and (c), and Lai did not dispute the reasonableness of the hours the attorney claimed he expended, the hourly rates, or the amount sought.

Litigation is considered frivolous when it is "commenced, used or continued in bad faith, solely for the purpose of

harassment, delay or malicious injury" or if the party "knew, or should have known, that the complaint, counterclaim, cross-claim or defense was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law." N.J.S.A. 2A:15-59.1(b). A motion for sanctions under Rule 1:4-8 will be denied where the pleading party had an objectively reasonable and good faith belief in the merit of the claim. See First Atl. Fed. Credit Union v. Perez, 391 N.J. Super. 419, 433 (App. Div. 2007); K.D. v. Bozarth, 313 N.J. Super. 561, 574-75 (App. Div.), certif. denied, 156 N.J. 425 (1998); Pressler & Verniero, Current N.J. Court Rules, comment 2 on R. 1:4-8 (2017). However, litigation may become frivolous, and therefore sanctionable, by continued prosecution of a meritless claim, even if the initial pleading was not frivolous. DeBrango v. Summit Bancorp, 328 N.J. Super. 219, 227-28, 230 (App. Div. 2000). This is because the "requisite bad faith or knowledge of lack of well-groundedness may arise during the conduct of the litigation." United Hearts, L.L.C. v. Zahabian, 407 N.J. Super. 379, 390 (App. Div.), certif. denied, 200 N.J. 367 (2009) (citations omitted). In such cases, the party seeking sanctions would only be entitled to fees and/or costs incurred from the time the litigation became frivolous, rather than from

the beginning of the litigation. DeBranco, supra, 328 N.J. Super. at 230.

The litigation in this case was clearly frivolous. Lai lacked standing to sue defendants, and she knew or should have known that her claims had no reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification, or reversal of existing law. N.J.S.A. 2A:15-59.1(b). Lai's claims were frivolous, and therefore sanctionable.

Even if Lai had an initial objectively reasonable and good faith belief in the merits of her claims, the litigation became frivolous, and therefore sanctionable, when she continued prosecuting meritless claims by moving for reconsideration. Accordingly, the court properly granted defendants' motion for frivolous lawsuit sanctions, and properly entered judgment in the undisputed amount of \$11,620.80.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION