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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-4329-15T4

ANCHORAGE POYNTE CONDOMINIUM ASSOCIATION, INC.,

Plaintiff-Respondent,

v.

CHRISTOPHER DI CRISTO and PATRICIA DI CRISTO,

Defendants-Appellants.

Argued August 1, 2017 – Decided August 17, 2017

Before Judges O'Connor and Whipple.

On appeal from Superior Court of New Jersey, Law Division, Atlantic County, Docket No. L-1315-13.

David A. Kasen argued the cause for appellants (Kasen & Kasen, attorneys; Mr. Kasen, on the briefs).

Richard M. Kitrick argued the cause for respondent.

PER CURIAM

Defendants Christopher and Patricia DiCristo appeal from an April 29, 2016 order denying defendants' motion to vacate an April 4, 2016 judgment in favor of plaintiff and dismissing their counterclaim. For the reasons that follow, we affirm.

On July 8, 2005, defendants purchased a condominium with a boat slip in Anchorage Cove, LLC, a development known as Anchorage Poynte Condominiums. Defendants stopped paying their association dues when their unit went into foreclosure. Plaintiff sued defendants for failure to pay these dues and counsel fees, filing a complaint on March 13, 2013. Defendant Christopher, then self-represented, filed an answer on June 14, 2013.[1]

Plaintiff moved for summary judgment, which was entered by the court on August 27, 2014. However, on August 15, 2013, defendants filed a Chapter 11 petition in the United States Bankruptcy Court, staying the suit in Superior Court; therefore, the August 27 judgment was vacated. The Bankruptcy Court dismissed the Chapter 11 case on October 24, 2014, and plaintiff moved to reinstate its complaint and enter summary judgment for $52,456.89

[1] We use defendant's first names to differentiate them, as they have the same last name. We do not intend any disrespect by this informality.

against defendants.[2] Defendants opposed the motion. On January 26, 2015, the motion judge reinstated the complaint, and instructed defendants to file an answer bearing both their signatures and plaintiff to refile the summary judgment motion in accordance with the court rules. Defendants filed an answer and counterclaim on February 17, 2015, and the parties engaged in discovery.

After plaintiff refiled for summary judgment, three hearings were conducted. At the first hearing, on February 5, 2016, the motion judge heard argument from plaintiff's counsel and defendant Christopher, pro se. Defendant argued, pursuant to the master deed and by-laws of the condominium association, he was no longer obligated to pay accrued fees and assessments because title was transferred after the foreclosure proceeding. The court permitted defendant thirty days to retain an attorney, rescheduled the motion for oral argument, and carried the matter until March 18, 2016. On March 18 the motion judge resumed the matter, noting defendant did not appear despite notice sent by the court.

The motion judge reviewed the papers submitted and found no material factual issues in dispute regarding plaintiff's complaint and entered judgment for plaintiff in the amount of $52,456.89.

[2] Plaintiff moved for summary judgment against Christopher and for the entry of default against Patricia, who did not file an answer.

The motion judge dismissed defendants' counterclaim because they had not provided sufficient responses to plaintiff's discovery requests to ascertain the factual basis for the conclusory statements in the counterclaim. The judge entered the order on April 4, 2016.

Thereafter, defendant Christopher, pro se, moved under Rule 4:50 to reinstate his counterclaim and vacate the April 4, 2016 judgment. At the third hearing, held on April 29, 2016, the motion judge denied defendant's motion. This appeal followed.

On appeal, defendant argues his pleadings should have been held to a less stringent standard because he was self-represented, the motion judge did not apply the required summary judgment standard of giving all reasonable inference to the non-moving party, and he is entitled to a set-off because plaintiff breached its fiduciary duty to the association members. Defendant also argues he raised genuine issues of material fact not addressed by the motion judge and the judge did not make findings of fact and conclusions of law as required by Rule 1:7-4 and Rule 4:46-2(c).

At the outset, we note this appeal is from the denial of a motion for relief from a judgment pursuant to Rule 4:50. Defendant's motion did not specify specific grounds for relief, but merely requested reinstatement of his counterclaim and reconsideration of the judgment entered against him. At the April

29, 2016 hearing, the motion judge asked defendant "is there anything new since the time that I made the decision that would if presented alter the decision I previously made?"

Defendant responded by expressing his general dissatisfaction with the prior proceeding, the outcome, and the conduct of the attorneys. Based upon the judge's review of the parties' submissions and the responses provided at oral argument, the motion judge found no basis to vacate the April 4, 2016 judgment, predominately because defendant failed to identify the specific basis to vacate the judgment under Rule 4:50. "It is within the trial court's sound discretion, guided by equitable principles, to decide whether relief should be granted pursuant to Rule 4:50-1." In re Guardianship of J.N.H., 172 N.J. 440, 473 (2002) (citing Housing Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994)). That decision "will be left undisturbed unless it represents a clear abuse of discretion." Ibid.

Moreover, defendants appeal only the denial of the April 29 2016 order and not the original order granting summary judgment. See Fusco v. Bd. of Educ., 349 N.J. Super. 455, 461-62 (App. Div.) (citing Pressler, Current N.J. Court Rules, cmt. 6 on R. 2:5-1(f)(3)(i) (2002)) (explaining this court only considers judgments and orders listed in a notice of appeal), certif. denied, 174 N.J.

544 (2002). Accordingly, we review for an abuse of discretion. Ibid.

We address each argument in turn. We recognize that the United State Supreme Court has stated in Haines v. Kerner, 404 U.S 519, 520, 92 S. Ct. 594, 596, 30 L. Ed. 2d 652, 654 (1972), that a self-represented litigant's pleadings are held to a less stringent standard than an attorney's. However, self-represented litigants are not entitled to greater rights than litigants who are represented by counsel and are expected to adhere to the court rules. Rubin v. Rubin, 188 N.J. Super. 155, 159 (App. Div. 1982).

Here, the motion judge accommodated defendants by permitting the filing of an amended answer and counterclaim upon reinstatement of the complaint after the lifting of the automatic stay. Defendants' pleadings did not request a jury, asserted claims of fraud generally without reference to the requirements of Rule 4:5-8, and provided incomplete and unclear responses to discovery requests. Moreover, defendants did not provide a response to plaintiff's summary judgment motion that raised material questions of fact.

Notwithstanding defendants' initial response to plaintiff's motion, the motion judge offered defendants an additional thirty days to retain an attorney to address the motion. Defendants did not appear on March 18, 2016, and the court was within its

discretion to enter judgment at that time. The motion judge made findings after reviewing the documents submitted and entered an order awarding judgment of $52,456.89 to plaintiff, and dismissed the counterclaim because defendant did not provide the court with anything other than generalized allegations of fraud and submitted no documentation he suffered any damages.

Our review of the record reveals the motion judge's enormous patience with defendant Christopher as a self-represented litigant. Although he argues his inartful pleadings should have been held to a less stringent standard, defendant does not provide any particular example of how his pleadings were either misread, misconstrued, or misinterpreted. We discern no abuse of the court's discretion or evidence defendant Christopher was unfairly treated as a self-represented litigant.

We reject defendants' argument the court did not give all reasonably favorable inferences to defendants as required by Rule 4:46-2(c). They provide no examples of specific inferences erroneously assigned by the motion judge.

Defendants assert they are entitled to a set-off against their obligation to pay dues and assessments to plaintiff pursuant to The Glen, Section I Condo. Ass'n v. June, 344 N.J. Super. 371 (App. Div. 2001). We disagree because defendants provided no proof of any damages and misreads Glen.

In Glen, we concluded condominium unit owners are required by law to pay their share of the common expenses. Id. at 376 (citing N.J.S.A. 46:8B-17). N.J.S.A. 46:8B-17 provides that "[a] unit owner shall, by acceptance of title, be conclusively presumed to have agreed to pay [her] proportionate share of common expenses accruing while [she] is the owner of a unit." Additionally, N.J.S.A. 46:8B-17 states "[n]o unit owner may exempt himself from liability for his share of common expenses by waiver of the enjoyment of the right to use any of the common elements or by abandonment of his unit or otherwise." Furthermore, we have stated the obligation to pay condominium fees is unconditional. Glen, supra, 344 N.J. Super. at 376.

In Glen, we also concluded a homeowners association's breach of its duty of good faith and fair dealing by installing a lolly column in defendant's driveway damaged defendant, but did not relieve defendant of his obligation to pay fees and assessments. In that matter, we remanded for a trial on the limited issue of defendant's damages resulting from the actions of the homeowners association denying access to his driveway, and we said those damages would be a set-off against defendant's obligations to common areas. Here, the motion judge determined defendants established no claim for such damages and we find no error in that determination.

The motion judge addressed plaintiff's claim for fees and costs at the February 5, 2016 hearing, asking defendant Christopher if he had any defense to the claim he and his wife owed the amount sought by plaintiff. His only argument was, pursuant to the bylaws, he was no longer obligated to pay the association payments as he had lost the property to foreclosure. The motion judge stated he was granting summary judgment on unpaid dues, interest, the assessment and attorneys fees, but offered to hold the amount of the judgment in abeyance for twenty days in order for defendant Christopher to submit a letter to the court opposing or disputing any of the items. Defendant Christopher did not submit a written objection.

Regarding the motion to dismiss the counterclaim, the court permitted defendant Christopher thirty days to retain an attorney and told the parties to return on the second motion day in March. Defendants did not appear.

We also reject defendants' assertion their counterclaim and defenses precluded entry of summary judgment in favor of plaintiff. In opposition to plaintiff's motion, defendants did nothing more than rely on unsupported allegations. The record does not include a certification attesting to facts or referencing evidence in support of specific defenses or counterclaims.

Defendants were required to raise a genuine dispute of material fact supported by the evidential materials submitted on the motion. They could not rely on the allegations and denials in their pleadings. _See_ _R_. 4:46-5(a); _Robbins v. Jersey City_, 23 _N.J._ 229, 241 (1957)(noting where a prima facie claim warranting summary judgment is established, the party opposing the motion must "demonstrate by competent evidential material that a genuine issue of fact exists").

Defendants proffered no proof other than bald assertions unsupported by, and in many instances contradicted by, the record. Conclusory and self-serving assertions by defendants are insufficient to overcome the plaintiff's motion. _See_ _Petersen v. Twp. of Raritan_, 418 _N.J. Super_. 125, 132 (App. Div. 2011).

Any additional arguments raised in defendants' submissions that have not been specifically addressed were found to lack sufficient merit to warrant discussion in our 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.