

**NOT FOR PUBLICATION WITHOUT THE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-4720-14T3

LUIS CATANHO and BARBARA
CATANHO, his wife,

Plaintiffs-Appellants,

v.

DELTA RANCH, LLC, CARLOS
MILANES and ALINA MILANES,

Defendants-Respondents,

and

DELTA RANCH, LLC, CARLOS
MILANES and ALINA MILANES,

Defendants/Third-Party
Plaintiffs-Respondents,

v.

JOSE CATANHO and SELECTIVE
INSURANCE COMPANY,

Third-Party Defendants-
Respondents.

Submitted February 28, 2017 - Decided March 15, 2017

Before Judges Reisner and Summers.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Docket No. L-2757-13.

Ramon A. Camejo, attorney for appellants.

Zirulnik, Sherlock & DeMille, attorneys for respondents Carlos Milanes and Alina Milanes (Louis J. DeMille, Jr., on the brief).

Methfessel & Werbel, attorneys for respondents Delta Ranch LLC, Carlos Milanes and Alina Milanes (Lori Brown Sternback and Ashlee Murph, on the brief).

Burke & Potenza, attorneys for respondent Jose Catanho (Janet L. Pisansky, on the brief).

PER CURIAM

Plaintiff Luis Catanho and his wife Barbara Catanho appeal from a May 8, 2015 order, granting an unopposed summary judgment motion filed by defendants Delta Ranch, L.L.C., Carlos Milanes and Alina Milanes.¹ We affirm substantially for the reasons stated by Judge James Hely in his oral opinion placed on the record on May 8, 2015. We add the following comments.

In 2011, Luis was injured by fireworks, which his brother Tony set off behind a barn while the two of them were attending a family birthday party at the vacation home of Barbara's parents, Carlos and Alina Milanes. Luis and Barbara filed this lawsuit in 2013. On February 17, 2015, shortly before the March 1, 2015

¹ Intending no disrespect, because multiple parties share the same last name we will refer to them by their first names.

discovery end date, defendants filed a summary judgment motion. The motion was supported by legally competent evidence that Tony intended the fireworks as a "surprise" for everyone; he summoned them all to come to the back of the barn without telling anyone what he had planned; Carlos and Alina had not given Tony permission to bring or use fireworks at the party; and they had no idea that he intended to set them off.

On February 25, 2015, plaintiffs' counsel served his adversary with amended interrogatory answers. He also served his adversary with a hand-printed sworn statement from Barbara's sister, attesting that she had attended the party and knew that their mother Alina gave Tony permission to set off the fireworks.² According to counsel's cover letter to his adversary, the sister simply appeared at his office and gave him the statement. The letter did not explain why the sister waited two years to reveal this information.

In addition to serving the amended answers and the sister's statement, plaintiffs' counsel served a notice to depose Alina, who had not been deposed during the discovery period. However, he did not file a motion to extend the discovery end date. He

² The copy of the statement in plaintiffs' appendix is illegible; however, there appears to be no dispute as to its essential content.

also did not file opposition to the summary judgment motion, even though he possessed a certification that, on its face, created a material factual dispute as to whether Alina knew about Tony's plans. Instead, he repeatedly sent the court letters asking to adjourn the motion, due to an asserted need to depose Alina, without explaining why he needed to depose her.

The parties attended non-binding arbitration on May 7, 2015, the day before the rescheduled motion hearing. On May 7, plaintiffs' counsel also faxed Judge Hely a letter asking that the motion once again be adjourned so that he could depose Alina. Judge Hely denied the request. After oral argument, he granted summary judgment, because the motion was unopposed and was supported by legally competent evidence entitling defendants to judgment as a matter of law.

Plaintiffs now contend that Judge Hely's May 8, 2015 order "should be reversed in the interest of justice." We review Judge Hely's decision to deny the adjournment request for abuse of discretion. See Rocco v. N.J. Transit Rail Operations, Inc., 330 N.J. Super. 320, 343 (App. Div. 2000). On this record, we find none. Further, in light of the undisputed material facts presented in defendants' unopposed motion, Judge Hely's decision to grant summary judgment is legally unassailable. Plaintiffs' appellate

arguments are without sufficient merit to warrant further discussion. 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.



CLERK OF THE APPELLATE DIVISION