SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0050-16T4

BERGEN COUNTY IMPROVEMENT AUTHORITY AND BERGEN COUNTY,

Plaintiffs-Respondents,

v.

BERGEN REGIONAL MEDICAL CENTER, LP, SOLOMON HEALTH GROUP, LLC, SOLOMON HEALTHCARE GROUP, LLC, GLOBAL EMPLOYEE BENEFITS MANAGEMENT, LLC, BERGEN REGIONAL ANESTHESIOLOGY GROUP, PA, BERGEN REGIONAL MEDICAL CENTER RADIOLOGY ASSOCIATES, PA, LIFE SOURCE SERVICES, LP, INTERNATIONAL INFORMATION TECHNOLOGIES, LP, CURRENT ELEVATOR TECHNOLOGY, INC, JOSEPH GLASKI, HERMAN LINDENBAUM, DAVID SEBBAG, UNITED STATES ELEVATOR, INC., ELNATAN RUDOLPH,

Defendants,

and

EDWARD H. HYNES,

Defendant-Respondent,

and

BERGEN REGIONAL MEDICAL CENTER, LP,

Third-Party Plaintiff,

v.

COUNTY OF BERGEN, JOHN M. CARBONE, in his capacity as the Bergen County Adjuster, and PROPOCO, INC. d/b/a PROFESSIONAL SERVICES,

Third-Party Defendants.

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Argued October 30, 2017 – Decided March 2, 2018

Before Judges O'Connor and Vernoia.

On appeal from Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-0374-12.

Ronald L. Israel argued the cause for pro se appellant Chiesa Shahinian & Giantomasi, PC.

Padraig P. Flanagan argued the cause for respondents Bergen County Improvement Authority and the County of Bergen (Florio Perrucci Steinhardt & Fader, attorneys; Brian R. Tipton, on the brief).

Michael J. Breslin, Jr., argued the cause for respondent Edward H. Hynes.

PER CURIAM

Appellant is the law firm Chiesa Shahinian & Giantomasi PC, which has claimed to be the successor of the firm Wolff & Samson PC (Wolff). At one time, Wolff represented plaintiff Bergen County Improvement Authority (Authority) in this matter.

Neither appellant nor Wolff have ever been parties to this litigation.

Appellant appeals from a September 1, 2015 order compelling the Authority and plaintiff County of Bergen to pay defendant Edward H. Hynes's attorney $180,465.50 in counsel fees and $4854.20 in costs, pursuant to N.J.S.A. 2A:15-59.1. We dismiss this appeal because appellant failed to file a motion for leave to intervene.

I

From 2003 to 2012, defendant Hynes was the executive director of the Authority. In addition to its many functions, the Authority was in part responsible for the management of defendant Bergen Regional Medical Center (hospital). In 2012, Wolff filed a complaint in federal district court on behalf of the Authority, alleging defendants engaged in various acts of wrongdoing, none of which is pertinent here. Defendant Hynes was not named in that complaint.

Later that year, Wolff filed a second amended complaint on the Authority's behalf naming Hynes as a defendant.[1] The Authority alleged an elevator company had billed the hospital for repair and maintenance services the company had not in fact

[1] Two months after the second amended complaint was filed, the federal district court remanded this matter to the State court.

provided, and the company also billed for materials the company had never supplied to the hospital. Hynes approved the payment of these fraudulent bills. Further, when he did so, he signed the form of certification pre-printed on each voucher, which stated "I hereby certify from personal knowledge that all of the goods and services charged for in the within claim have been received and rendered."

The Authority alleged Hynes's misrepresentations the subject services had been performed and the materials supplied constituted a malicious breach of his fiduciary and contractual duties to the Authority. However, the Authority did not allege Hynes colluded with or was in fact aware the elevator company had overbilled and defrauded the hospital.

In 2014, Wolff was substituted as counsel by Archer & Greiner and, in 2015, Archer & Greiner was substituted by Florio Perrucci Steinhardt & Fader. Thereafter, the court granted Hynes's unopposed motion for summary judgment. Believing the claims against him had been frivolous, Hynes filed an application for sanctions in the form of counsel fees and costs against appellant and both plaintiffs, pursuant to Rule 1:4-8 and N.J.S.A. 2A:15-59.1.

By order dated September 1, 2015, the court granted Hynes's request for sanctions against plaintiffs, directing they

reimburse his counsel $185,319.79 in the aggregate for fees and costs. In its oral findings[2], the court noted the claims against Hynes had "no merit from the outset." The court found it was "painfully obvious" plaintiffs knew it was not the function of a person as high on the "chain of command" as Hynes to both personally inspect the work done on the elevators and to account for materials received by the hospital. The court further observed:

> [T]here were others along the way who would approve invoices, et cetera. And [Hynes] would look to see if those people along the way down at the hospital, et cetera, had signed off on the work, which they had done, and then he signed off on their . . . paperwork.
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> Dragging [Hynes] in [was] in fact a very despicable act on behalf of the County because there was no basis [to do so]. . . .
>
> [E]veryone knew what he had done and how he had done it, that he had signed a piece of paper that was submitted in accordance with the chain of authority that he had, that he looked at the paper and just signed it and that was . . . merely his function.

By order dated September 25, 2015, the court denied Hynes's request to similarly sanction appellant. Appellant appeals only the September 1, 2015 order.

[2] The court subsequently supplemented its oral findings with a written opinion.

II

On appeal, appellant's primary contention is the trial court erred when it ordered plaintiffs to pay Hynes's counsel fees and costs. Appellant argues the Authority's claims against Hynes were grounded in law and fact; therefore, there was no justification for finding the Authority had prosecuted a frivolous claim against him. In its initial brief, appellant does not address whether it has standing to challenge the September 1, 2015 order.

Plaintiffs' and Hynes's principal argument in response is appellant lacks standing to appeal the September 1, 2015 order, because the order was entered against only plaintiffs, the sole parties aggrieved by the order. They further argue appellant cannot assert the rights of a third party and, as appellant was not harmed by the September 1, 2015 order, appellant cannot claim to be the real party in interest, see Rule 4:26-1.

Although the issue of its standing is an obvious and essential question, appellant makes no mention of this issue except in reply to plaintiffs' and Hynes's briefs. In its reply brief, appellant endeavors to show it has standing by revealing Hynes "took an adverse action" against Wolff as a result of the September 1, 2015 order. Appellant does not disclose the nature of the action, claiming the Rules of Court prohibit it from

doing so, but asserts, without any explanation, that Hynes's action confers it with standing to challenge the September 1, 2015 order.

Another issue has surfaced. In its briefs before us, appellant takes the position it is the successor to the Wolff firm. In fact, a form of order appellant submitted to the court for its use after deciding Hynes's motion to sanction appellant states it was "formerly known as Wolff & Samson PC." Yet, during oral argument, appellant's counsel admitted he was unsure of the relationship between appellant and Wolff, and whether appellant is Wolff's successor. Counsel also advised that the Wolff firm has not yet dissolved.

If Wolff and appellant are separate and distinct entities, appellant may not represent Wolff, unless it does so as Wolff's counsel. Therefore, without question, the issue of standing is pivotal and one appellant should have addressed by filing a timely motion to intervene. "Whether a party has standing is 'a threshold justiciability determination . . . .'" N.J. Dep't of Envtl. Prot. v. Exxon Mobil Corp., ____ N.J. Super. ____, ____ (App. Div. 2018) (slip op. at 19) (quoting In re Six Month Extension of N.J.A.C. 5:91-1 et seq., 372 N.J. Super. 61, 85 (App. Div. 2004)). "[A] lack of standing . . . precludes a court from entertaining any of the substantive issues for

determination." Ibid. (alterations in original) (quoting EnviroFinance Grp. v. Envtl. Barrier Co., 440 N.J. Super. 325, 339 (App. Div. 2015)).

In general, to appeal from an order, one must be aggrieved by it. Calabro v. Campbell Soup Co., 244 N.J. Super. 149, 169 (App. Div. 1990) (quoting Howard Savings Inst. v. Peep, 34 N.J. 494, 499 (1961)). In order to be aggrieved, "a party must have a personal or pecuniary interest or property right adversely affected by the judgment in question." State v. A.L., 440 N.J. Super. 400, 418 (App. Div. 2015) (quoting Howard Sav. Inst., 34 N.J. at 499).

The fact a party aggrieved by an order has not appealed from it does not necessarily preclude another party from doing so. "Our prior decisions have recognized the appropriateness of granting a party affected by a judgment leave to intervene to pursue an appeal if a party with a similar interest who actively litigated the case in the trial court has elected not to appeal." CFG Health Sys., L.L.C. v. Cty. of Essex, 411 N.J. Super. 378, 385 (App. Div. 2010). Moreover, the right to appeal is not conditioned upon having participated as a party in the prior proceeding. Exxon Mobil Corp., ____ N.J. Super. ____ (slip op. at 32) (quoting SMB Assocs. v. N.J. Dep't of Envtl. Prot., 264 N.J. Super. 38, 44 (App. Div. 1993)).

Here, appellant has not identified how it is aggrieved by the September 1, 2015 order. More important, appellant did not avail itself of the remedy of filing a motion for leave to intervene, see Rule 4:33-1 and Rule 4:33-2, so the question of its standing could have been properly reviewed and decided. Because the question of whether appellant has standing and is entitled to intervene remains unanswered, we are precluded from considering the substantive issues appellant asserts. Exxon Mobil Corp., ____ N.J. Super. ____ (slip op. at 19) (quoting EnviroFinance, 440 N.J. Super. at 339). Accordingly, the appeal is dismissed.

Dismissed.