SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0189-16T1

ROBERT BUCKINGHAM,

Plaintiff-Appellant,

v.

MICHAEL J. SAVIANO, JR.,

Defendant-Respondent.

Argued April 18, 2018 – Decided May 2, 2018

Before Judges Nugent and Geiger.

On appeal from Superior Court of New Jersey, Law Division, Monmouth County, Docket No. L-2187-15.

Richard B. Gelade argued the cause for appellant.

Elias Abilheira argued the cause for respondent (Abilheira & Associates, PC, attorneys; Elias Abilheira, on the brief).

PER CURIAM

Plaintiff Robert Buckingham appeals from an August 5, 2016 order releasing escrowed funds to defendant Michael Saviano, Jr. We affirm.

The parties' eight-year dispute began in August 2009 when they formed 3411 Route 9, LLC, to purchase real estate on Route 9 North (the Property) in Freehold. The parties obtained financing secured by a mortgage for most of the purchase price and were each to pay an equal share of the balance. Each party owned a business: Buckingham owned Freehold Auto Body, LLC, and Saviano owned MJS Automotive, Inc. Freehold Auto Body and MJS Automotive each entered into a lease with 3411 Route 9, LLC, to operate a business on the property.

The venture was doomed from the start. Buckingham did not pay his share of the balance of the purchase price. It does not appear either lessee remained current on the rent, yet the parties paid their real estate taxes and managed to keep the mortgage from going into foreclosure. In February 2015, when the parties were required to obtain refinancing or a new mortgage, they were unable to amicably resolve their dispute. Saviano filed a summary dispossess action against Freehold Auto Body and listed the Property for sale. Buckingham responded by filing an order to show cause and verified complaint against Saviano, seeking to preclude him from taking any further steps to sell the Property and prosecute the summary dispossess action.

In July 2015, the parties dismissed the pending litigation and entered into a "Stipulation of Settlement and Release" (the

Stipulation). In one of the Stipulation's prefatory paragraphs, the parties declared:

> Through this Agreement, the Parties have fully compromised and settled all known claims and claims which should have been known between the Parties and those individuals also named in the Action. All Parties agree that all disputes between the Parties have been resolved per the terms of this agreement.

The Stipulation's provisions concerning the sale of the property are not relevant to this appeal. The parties included provisions concerning adjustments to be made at settlement to equalize past arrearages incurred by the parties and their businesses. In the Stipulation's tenth paragraph, the parties agreed to the amount of rent and member contributions due 3411 Route 9, LLC, from the parties' respective businesses. Following the specification of those amounts, the paragraph continued:

> Said amounts remain due and owing to the company, less a credit for any amounts paid by the members towards the monthly mortgage, tax and interest payments made by the members. An adjustment at closing will be made to the amount due to each member for any over/under payment in the total rents due without and [sic] interest adjustments or penalties applied to the rent over/under payments. This term shall be void upon breach of this agreement.

The parties do not appear to dispute that the word "and" in the phrase "without and interest adjustments or penalties" is a typographical error.

The Stipulation's thirteenth paragraph identified the amount the parties contributed toward "litigation costs and acquisition costs to purchase the [P]roperty" and characterized the contributions as loans to 3411 Route 9, LLC. The specified amounts were "subject to an accounting for the exact sums loaned." The last sentence of paragraph thirteen stated, "[s]aid loans were made at an interest rate of 8%, to be paid back by the company to the members at closing, or at refinancing." The last paragraph subject to this appeal, paragraph fifteen, states:

> The parties shall select a neutral accountant, agreed to by both parties, to perform an accounting for the company and adjustments of rents and amounts due to/from the company in accordance with the terms of this agreement and file the Company's 2015 tax returns and any amended tax returns as may be required.

In addition to some intervening motion practice and litigation over the settlement agreement that is not relevant to this appeal, Buckingham challenged the neutral accountant's accounting. Specifically, he contested two aspects of the accounting: first, the accountant compounded the eight percent designated in paragraph thirteen as the interest rate on the purchase money loans. Buckingham argued the accountant should have computed simple, not compound, interest. Second, Buckingham claimed the accountant should have computed the interest not on

the loans stipulated in the same paragraph, subject to the accounting, but rather on the difference by which the loans exceeded other offsets, such as those for past due rent from the parties' businesses.

The trial court determined the accountant should compute interest as simple interest, not compound interest, but also found the accountant should compute interest on the amount of the purchase money loans, without reducing the loans by any offsets. Buckingham appealed from the implementing order. On appeal, Buckingham raises a single point:

> WHETHER THE TRIAL COURT'S FAILURE TO MAKE FINDINGS OF FACT REGARDING THE PARTIES' UNDERSTANDING AND INTENT HOW INTEREST WAS TO BE CALCULATED PURSUANT TO THE JULY, 2015 STIPULATION OF SETTLEMENT AND RELEASE CONSTITUTED REVERSIBLE ERROR.

Having carefully considered this argument in view of the submissions of the parties, the record, and controlling legal principles, we have determined the argument to be without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We add only that the plain, unambiguous language of paragraph thirteen identifies the amount of the "loans" and states the loans were made at an interest rate of eight percent. Nothing in the paragraph suggests the interest rate should be calculated on some differential derived from an amalgam that

disregards the existence of separate legal entities of the individuals, 3411 Route 9, LLC, and businesses owned by the individuals.

"[O]ur courts have refused to vacate final settlements absent compelling circumstances. In general, settlement agreements will be honored 'absent a demonstration of fraud or other compelling circumstances.'" Nolan v. Lee Ho, 120 N.J. 465, 472 (1990) (quoting Pascarella v. Bruck, 190 N.J. Super. 118, 125 (App. Div. 1983) (citation omitted)). The parties settled their dispute by vesting authority in a jointly selected and acceptable, neutral accountant, to make the appropriate adjustments in accordance with the Stipulation. This is precisely what the accountant did.

Affirmed.