SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0594-16T3

816 BERGENLINE AVENUE, LLC,

Plaintiff-Respondent,

v.

BLAS PENA,

Defendant-Appellant.

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Submitted May 1, 2018 – Decided May 22, 2018

Before Judges Mayer and Mitterhoff.

On appeal from Superior Court of New Jersey, Law Division, Special Civil Part, Hudson County, Docket No. LT-007028-16.

Dario, Albert, Metz & Eyerman, LLC, attorneys for appellant (Regina I. Rodriquez, on the briefs).

Ledesma, Diaz, Lopez & Noris, PC, attorneys for respondent (Adolfo L. López, on the brief).

PER CURIAM

This is a summary dispossess action that was tried in the Special Civil Part pursuant to the Anti-Eviction Act, N.J.S.A.

2A:18-61.1 to-61.12 (Act). Defendant Blas Pena appeals from an August 22, 2016 Judgment of Possession pursuant to N.J.S.A. 2A:18-61.1(c) and a September 16, 2016 order denying his motion for reconsideration. We affirm.

On June 7, 2016, plaintiff Bergenline Avenue LLC filed a verified complaint for eviction against defendant pursuant to N.J.S.A. 2A:18.61.1(c). The trial began on July 26, 2016, and was continued and completed on August 15, 2016. Defendant was represented by counsel throughout the proceedings.

The Act provides that a residential tenant can only be evicted for good cause. N.J.S.A. 2A:18-61.1 lists the causes that are sufficient for eviction from a residential premises. One of the enumerated examples of good cause is where a tenant "has willfully or by reason of gross negligence caused or allowed destruction, damage or injury to the premises." N.J.S.A. 2A:18-61.1(c). Although some of the statutory good-cause grounds for eviction are curable after the commencement of a summary dispossess action, that is not the case where eviction is sought on the grounds of willful destruction, damage or injury to the premises. Muros v. Morales, 268 N.J. Super. 590, 596 (App. Div. 1993). That is because "[t]he law does not require a warning to cease such behavior because it is so clearly improper and antithetical to the landlord-tenant relationship, and because repetition is not an

element of the impropriety of the behavior." Ibid. "For the same reasons, cessation of such behavior does not bar eviction." Ibid.

After the trial in this case, the judge concluded plaintiff had proven that defendant committed two willful acts that caused damage to the apartment. First, the judge found that defendant willfully removed the chimney exhaust from the water heater, which not only caused physical damage to the water heater, but also allowed for the release of carbon dioxide (sic) into the building.[1] In addition, the judge found that defendant caused physical damage to the apartment's front door by replacing the lock, which damage required plaintiff to replace the entire door. The court entered a Judgment of Possession for plaintiff.

The judge's ruling was supported by defendant's own testimony, admitting he removed the chimney exhaust. Jose Constante, who works for plaintiff, testified that he observed that the exhaust chimney had been removed, and that the exhaust hole in the wall had been covered with tape. Constante testified that defendant told him that the reason he removed the exhaust chimney was because it was "rusted." When Constante told defendant he wanted to reinstall the chimney, defendant responded "no." The

[1] A licensed plumber, Humberto Carcamo, testified that the removal of the chimney exhaust would cause carbon monoxide to leak into the apartment.

court found Constante's testimony to be credible and rejected defendant's testimony that he removed the chimney exhaust to facilitate painting in the area of the exhaust hole. The judge noted that because the wall area in which the exhaust hole was located was tiled, there did not appear to be a reason to remove the exhaust chimney in order to paint.

In addition, Constante testified that defendant damaged the front door of his apartment by placing his own lock on the door. Although defendant initially denied replacing the lock on the door, at trial defendant testified that he changed the lock because he was not satisfied with plaintiff's lock. Constante testified that as a result of the damage caused by the defendant's changing the lock, plaintiff had to replace the entire door and frame. Based on the testimony, the judge found Constante credible and defendant not credible.

On September 13, 2016, defendant applied for post-judgment relief pursuant to Rule 4:50-1(b), alleging he had "newly discovered evidence which would probably alter the judgment." By order dated September 16, 2016, the trial court denied the application, stating that the evidence that defendant sought to admit post-judgment "was discoverable with due diligence prior to trial, and not submitted as post-trial evidence".

On appeal, defendant argues that the trial court's finding that defendant violated N.J.S.A. 2A:18-61.1(c) was against the weight of the evidence. "Our review of a judge's findings of fact in a bench trial is limited." Mountain Hill, LLC v. Twp. of Middletown, 399 N.J. Super. 486, 498 (App. Div. 2008). "Findings by the trial court are considered binding on appeal when supported by adequate, substantial and credible evidence." Ibid. (quoting Rova Farms Resort, Inc. v. Inv'rs. Ins. Co., 65 N.J. 474, 484 (1974)). We do not disturb the factual findings and legal conclusions of the trial judge in a bench trial "unless we are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Ibid. (quoting Rova Farms Resort, 65 N.J. at 484).

In this case, the judge's finding that defendant willfully caused damages to the premises contrary to N.J.S.A. 2A:18-61.1(c) is amply supported by adequate, substantial and credible evidence in the record. Defendant admitted he removed the chimney exhaust and replaced the lock on the door. The judge did not find defendant's reasons for doing so credible. The judge correctly found that defendant's testimony that he replaced the chimney exhaust, thereby curing the violation, did not bar an order of eviction. See Muros, 268 N.J. Super. at 596 (holding that

cessation of the violation is not a bar to eviction pursuant to N.J.S.A. 2A:18-61.1(c)). We therefore reject defendant's argument that the trial court's findings were against the weight of the evidence.

Next, although couched in terms of failing to consider newly discovered evidence, it is clear that defendant's primary complaint is that the trial court erred in denying his request to adjourn the trial to allow him to secure the testimony of Jose Gonzalez, a Union City Building Department inspector, and Betty, the superintendent of the building. We review a trial court's decision to grant or deny an adjournment request under an abuse of discretion standard. State ex rel. Com'r of Transp. v. Shalom Money St., LLC, 432 N.J. Super. 1, 7 (App. Div. 2013). In this case, we find no abuse of discretion. Defendant sought to produce the building inspector to establish that the admitted statutory violations were cured by the time of trial, testimony that would not have altered the outcome of the trial. See Muros, 268 N.J. Super. at 596.

Insofar as the trial court denied defendant's motion for relief from the judgment based on "newly discovered evidence" pursuant Rule 4:50-1, we also discern no error.

Rule 4:50-1 states, in relevant part, that:

> On motion, with briefs, and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment or order for . . . (b) newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial under R. 4:49.

A party seeking relief from a judgment based on newly discovered evidence must demonstrate "[t]hat the evidence would probably have changed the result, that it was unobtainable by the exercise of due diligence for use at the trial, and that the evidence was not merely cumulative. All three requirements must be met." DEG, LLC v. Twp. of Fairfield, 198 N.J. 242, 264 (2009) (citation omitted).

As the trial court correctly concluded, defendant made no showing that the evidence was unobtainable by the exercise of due diligence for use at trial. The record is clear that defendant was aware of the proffered witnesses months before trial and simply failed to secure their attendance by subpoena or otherwise. In addition, defendant has failed to show how the evidence would have altered the outcome of the trial in light of the largely undisputed testimony that defendant removed the chimney exhaust and changed the lock on the door.

Defendant's argument that the notice to quit was deficient in that it lacked sufficient specificity to put him on notice of

the allegations against him does not have sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.