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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1952-16T4

NADER B. GHATAS, individually and on behalf of BEST WASH LAUNDROMAT, LLC, PARADISE BEVERAGE, LLC, SUNSHINE LEARNING CENTER, LLC, and NEW GENERATION OF CONTRACTORS, LLC, Limited Liability Companies of the State of New Jersey,

Plaintiffs-Appellants,

v.

MAMDOH A. HANA,

Defendant.

Submitted May 1, 2018 – Decided May 9, 2018

Before Judges Fisher and Sumners.

On appeal from Superior Court of New Jersey, Chancery Division, Passaic County, Docket No. C-000033-13.

De Marco & De Marco, attorneys for appellant (Michael P. De Marco, on the brief).

Greenbaum, Rowe, Smith & Davis, LLP, respondent pro se (Irene Hsieh, on the brief).

PER CURIAM

In the course of litigation commenced by plaintiff Nader B. Ghatas against his business partner, defendant Mamdoh A. Hana, the Chancery judge appointed a receiver[1] to take control of the businesses at stake — a day-care facility, a laundromat, and the entity that owns the Paterson property where the other businesses operate — and directed the receiver to expeditiously advise whether the businesses ought to continue to operate or be liquidated. Although the receiver reached the latter conclusion,[2] both litigants objected and the judge permitted the continuation of the businesses but with the receiver's continued involvement and oversight. The receiver thereafter periodically sought and was granted compensation. After the parties agreed to arbitrate the

[1] For reasons that are not apparent from the record on appeal, the judge first appointed one attorney and then another from the same firm — Greenbaum, Rowe, Smith & Davis — directing that they act as co-receivers. For present purposes, we will refer to the co-receivers as "receiver."

[2] In his report, the receiver outlined the precarious financial position of the limited liability companies. Paradise Beverage, LLC, merely owned the Paterson property where the other business operated; the property was collateral for a bank loan then in default. The receiver also advised that Best Wash Laundromat, LLC, during the preceding two months, generated $15,801.25 in gross revenue and $19,116.70 in expenses, for a net loss. And, while Sunshine Learning Center, LLC, yielded in that same time period a sizeable profit ($32,647.29 in gross revenue and $21,387.30 in expenses), the receiver found that to be outside the historical norm; he reported that, over the course of the prior eighteen months, Sunshine had a gross revenue of $259,006.85 and expenses of $254,379.76.

disputes that inspired this lawsuit, the trial court entered judgment against all the litigants, jointly and severally, for the $166,106.07 in compensation awarded to the receiver.

Plaintiff appeals, arguing that both judges involved in the proceedings[3] erred: (1) by "failing to find facts and state conclusions of law through either a written or oral opinion"; (2) by "failing to conduct a plenary hearing to determine the disputed facts in the motion record and perform an analysis as required by" Rule 4:53-4(a); and (3) by imposing liability for the receiver's fees on the individual plaintiff. For the reasons that follow, we remand the matter for further proceedings.

As plaintiff correctly argues in his Point I, we are greatly hampered by the first judge's failure to explain the grounds for compensating the receiver in the amount of $43,935.34, and granting equitable relief to ensure its payment,[4] by order entered on May 24, 2016; despite a notation in the order that the court's reasons

[3] With the exception of the last trial court motion, it appears that the judge who appointed the receiver presided over nearly all of these proceedings. That judge will be referred to as "the first judge," and the successor will be referred to as "the second judge."

[4] The order imposed a constructive trust in favor of the Greenbaum firm against the assets of the businesses and an equitable lien on the property on which the businesses operated.

were set forth on the record, no such opinion was ever rendered.[5] The receiver sought clarification and, by way of a June 8, 2016 order, the first judge vacated the May 24, 2016 order, awarded the receiver $86,323.25 for the "instant application," recognized that a total of $130,258.59 in compensation had been awarded to the receiver, and again imposed the constructive trust and equitable lien described in the May order. The June order observed, like the May order, that the first judge's reasons were set forth on the record. And, as before, that statement was not accurate; the first judge provided no reasons for entering that order.

In October 2016, the receiver moved for $47,137.50 in additional compensation — for the time expended and costs incurred since the June order — and plaintiff again objected. By this time, the first judge had retired; the second judge granted that fee application in full and entered judgment on December 5, 2016, against all the parties, jointly and severally, in the amount of $166,105.07, without hearing oral argument or setting forth

[5] Near the conclusion of counsel's argument in the trial court on May 13, 2016, the first judge said — without explanation — that "an order establishing a constructive lien for the cost and the fees" would be entered. When plaintiff's attorney then sought to question "the quantum of the fees," the judge gave him "until Monday to object to the [receiver's] certification of services." The order was entered on May 24 without any apparent explanation from the judge beyond the conclusory statement made during the May 13 proceeding just quoted.

grounds for the determination. After plaintiff commenced this appeal — seeking review of the May, June, and December orders — the second judge issued a written decision explaining why the December judgment was entered. Although the second judge's January 26, 2017 written decision, filed pursuant to Rule 2:5-1(b), provides this court with a helpful overview of the underlying proceedings otherwise absent from the record, it contains no analysis of why the fees sought by the receiver in his last fee application — let alone the earlier fees — were reasonable.

In responding to this appeal, the receiver acknowledges that the first judge failed to provide a rationale for the earlier rulings. He nevertheless argues that plaintiff's failure to cogently express his objections to particular services precludes his questioning of the judges' rulings in this appeal. He also argues that, to the extent we find problematic the absence of the trial court's rationale for the earlier rulings, we could simply exercise original jurisdiction and make our own determination about the reasonableness of the fees.

We reject these contentions. No one — not the parties and not this court — can properly function or proceed without some understanding of why a judge has rendered a particular ruling. The Supreme Court said in Curtis v. Finneran, 83 N.J. 563, 569-70 (1980) (quoting Kenwood Assocs. v. Bd. of Adjustment, Englewood,

141 N.J. Super. 1, 4 (App. Div. 1976)), that the absence of an adequate expression of a trial judge's rationale "constitutes a disservice to the litigants, the attorneys and the appellate court." And this admonition has been repeated time and again. Gnall v. Gnall, 222 N.J. 414, 428 (2015); Estate of Doerfler v. Federal Ins. Co., __ N.J. Super. __, __ (App. Div. 2018) (slip op. at 5-6); State v. Lawrence, 445 N.J. Super. 270, 276-77 (App. Div. 2016); Raspantini v. Arocho, 364 N.J. Super. 528, 533 (App. Div. 2003); In re Farnkopf, 363 N.J. Super. 382, 390 (App. Div. 2003); T.M. v. J.C., 348 N.J. Super. 101, 106-07 (App. Div. 2002). The parties and this court are entitled to the judge's reasons for entering the orders under review. We should not be put in the position of guessing or assuming what the judge or judges might have been thinking. And we are not enticed by the receiver's invitation to exercise original jurisdiction. As Judge Fuentes said last month in Estate of Doerfler, "our function as an appellate court is to review the decision of the trial court, not to decide the motion tabula rasa." __ N.J. Super. at __ (slip op. at 6).

We also reject the notion that plaintiff's lack of clarity in responding to the receiver's fee requests calls for an assumption that the fees are reasonable. The receiver was appointed by the trial court and it was the trial court's obligation –

regardless of plaintiff's inability to cogently respond — to ensure that only reasonable compensation was awarded. See R. 4:53-4(a). While it may be true that plaintiff did not dispute that the receiver did what he said he did, plaintiff questioned the appropriateness of the overall fee request. We, too, have questions about the proportionality of the fees awarded when considering what was at stake. See n.2, above. Indeed, legitimate concerns leap from the pages of the application. For example, the receiver — who sought compensation at the rate of $300 per hour[6] — recounted how he would visit the businesses on a regular basis, count the children in attendance at the day care center, watch as one of the business partners counted the money in the cash drawer, supervise the emptying of change from seventy-four laundry machines and dryers, took "note of the weight of the quarters" removed, travel with one of the litigants to the bank to recount and deposit the cash, and engage in other actions that arguably might have been handled by someone at a lower hourly rate, such as a property manager.

This, however, is not the time or place to closely analyze these fee applications. As we have observed, this analysis should have occurred in the first instance in the trial court. We

[6] The receiver reduced his usual $415 hourly rate in this matter.

therefore remand for further proceedings with respect to all the fees granted to the receiver by way of the orders under review. We recognize that the chancery judge now involved entered the picture near the end of this odyssey, and his understanding of the proceedings may be hampered by the retirement of the first judge, who appointed the receiver and awarded most of the fees in question. Although a brief evidentiary hearing might prove helpful to the second judge's understanding of the receiver's overall performance and the proportionality of the compensation sought, we do not compel such a proceeding. In fact, it does not immediately appear to us that plaintiff disputes whether the receiver did what he said he did, but whether the receiver's actions could have been performed more economically — for example, through the receiver's retaining of a property manager to report to him, thereby reserving the triggering of the receiver's higher hourly rate for things more deserving of his considerable talents. We leave these and any other relevant questions, as well as the mode of expeditiously tackling them, to the judge's sound discretion.

In the proceedings that follow, the judge should also examine the propriety of imposing personal liability and, if it is appropriate, to explain why. See generally Catsouphes v. Atex Assocs., Inc., 287 N.J. Super. 459 (App. Div. 1996).

Remanded. We do not retain jurisdiction.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION