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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-2188-16T1

SAMUEL A. MALAT,

Plaintiff-Appellant,

v.

FARAZ AHMAD and
FATIMA JAVED,

Defendants-Respondents.

Submitted February 14, 2018 – Decided March 23, 2018

Before Judges Nugent and Currier.

On appeal from Superior Court of New Jersey,
Law Division, Camden County, Docket No.
L-3418-15.

Samuel A. Malat, appellant pro se.

Respondents have not filed a brief.

PER CURIAM

Plaintiff Samuel Malat appeals from the December 16, 2016
order dismissing his complaint following a proof hearing. Because
we find the trial judge did not permit plaintiff to present his

proofs regarding his claim, and failed to provide findings of facts and conclusions of law in issuing the dismissal, we reverse.

Defendants', Faraz Ahmad and Fatima Javed, home was severely damaged in a fire. Because Ahmad's father and plaintiff had worked together and known one another for more than twenty years, the father contacted plaintiff on behalf of defendants requesting plaintiff assist them with the reconstruction of the house.

Plaintiff agreed to help, serving in the capacity of a consultant, and the parties agreed upon an hourly consulting rate. Plaintiff stated that he recommended contractors and laborers and advanced sums for materials and labor. Defendants applied for the required permits and supervised the work each day. Plaintiff also worked as a laborer on many occasions himself and advanced payments to other laborers. Plaintiff only charged the agreed upon \$35 hourly rate for all of his services.

During the course of the renovations, plaintiff issued detailed invoices to defendants outlining the provided services and their costs. Although substantial payments were made, plaintiff alleged that at the completion of the work there remained a balance due of \$52,881.66, which defendants refused to pay. Defendants did not dispute any of the provided services.

Plaintiff instituted suit in September 2015. Defendants failed to answer the complaint, and plaintiff requested the entry

of default judgment in November 2015. In his request, plaintiff included affidavits of service and detailed spreadsheets pertaining to the work done, charges assessed, and payments received. Eventually, after plaintiff made numerous inquiries of the court as to the status of his application, a proof hearing was scheduled for May 23, 2016. Defendants appeared at the hearing and were advised by the judge that since they had defaulted on the complaint, they would not be permitted to testify or present evidence on their behalf.

As plaintiff began his testimony, he stated: "Your Honor, the matter started shortly after," but the judge immediately interrupted him saying, "All right. It's not going to be a speech from you." He then told plaintiff to have a seat and asked him "You're the landlord in this matter?" Plaintiff responded: "No, Your Honor. I was working on a job." The judge said: "[t]hat's [a] yes or no answer." Plaintiff responded: "I am not the landlord, Your Honor."

In response to the judge's questions, plaintiff advised that he was not a licensed contractor, and there was no written contract between the parties. He attempted to explain that he did not perform the services of a general contractor, but he was not permitted to finish. The judge stated: "I'm not hearing this matter. I'm about to dismiss this matter."

Several minutes later, as plaintiff attempted to explain the information in the spreadsheets he had submitted to support his claim, the judge advised him that the documents had no headings and made no sense. The judge continued:

I'm going to explain something to you
You want to be wise with me?

. . . .

Well, I'm . . . trying to give you an opportunity to make this out, but you – you want to be wise with me? Is that what it is?

. . . .

There's no headings. I understand math. I understand it better than you. What I understand right now is zero. Case dismissed.

. . . .

You'll remove yourself from the [c]ourtroom.

No order was entered in the matter or provided to plaintiff until after he came to the courthouse several times and contacted court personnel on numerous occasions. An order was eventually signed on December 16, 2016, dismissing the case nunc pro tunc to the May 23, 2016 hearing date.

During the eighteen-minute court proceeding, the court demonstrated little or no patience with plaintiff, and though we have only a transcript and not an audio recording, one might readily infer from the transcript the judge was at times caustic

and argumentative. Although the case was not a landlord-tenant matter, plaintiff was told he had to answer "yes or no" to the judge's inquiry of whether plaintiff was a landlord. Once the judge heard there was no written contract and plaintiff was not a licensed contractor, he refused to consider any further testimony.

Due to their default, defendants were foreclosed from presenting any defenses. Although we do not comment upon the ultimate merits of plaintiff's claim, we note potential theories under which plaintiff was entitled to a recovery had he been permitted to provide a more complete explanation of the circumstances and his documentary evidence. Defendants paid substantial sums to plaintiff for services he rendered during the reconstruction of their home. Plaintiff also presented proofs of substantial sums of monies he paid towards labor and materials. Perhaps recovery might be appropriate under a theory of unjust enrichment or the existence of an oral contract.

On remand, plaintiff must be accorded his due process rights; a litigant's right to be heard is paramount to the underpinnings of our judicial system. In our view, plaintiff was deprived of that fundamental right. We do not comment upon the ultimate merits of plaintiff's case, but only upon the paucity of due process afforded to him. Similarly, we find it inexplicable for seven months to elapse prior to the issuance of an order.

We, therefore, reverse and remand for a determination by the trial court that plaintiff's request for default judgment either be adjudicated on the submitted papers or that a new proof hearing be conducted. Plaintiff, like all litigants, must be afforded an opportunity to present his proofs. He also is entitled to an order from the court that includes findings of fact and conclusions of law. See R. 1:7-4. Lastly, he is entitled to be treated with the patience, dignity and courtesy to which all litigants, represented or not, are entitled. See Revised Code of Judicial Conduct, Canon 3, Rule 3.5 (2016).

Reversed and remanded for further proceedings consistent with this opinion. 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