SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2802-15T4

CARMINE P. AMELIO,

Plaintiff-Appellant,

v.

ROBERT GORDON, ROBERT MACALLISTER, and RUSHMORE CAPITAL PARTNERS, LLC,

Defendants-Respondents.

Submitted December 12, 2017 — Decided January 25, 2018

Before Judges Gilson and Mayer.

On appeal from Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-0980-14.

Carmine P. Amelio, appellant pro se.

Sheikh Partners, PC, attorneys for respondents (Umar A. Sheikh, of counsel and on the brief).

PER CURIAM

Plaintiff Carmine Amelio appeals from orders dated June 30, 2015, and October 23, 2015, that dismissed his complaint for lack of standing. He also appeals from orders dated October 23, 2015,

and January 8, 2016, that denied his motions to vacate the dismissal. We are constrained to vacate the orders dismissing the complaint for lack of standing because the current record does not support dismissal on that ground. Thus, we remand for further proceedings.

I.

The complaint was dismissed on an in limine motion based on a review of the complaint and the loan documents referenced in the complaint. Thus, we take the facts as pled by plaintiff and read them in the light most favorable to plaintiff. See, e.g., Green v. Morgan Props., 215 N.J. 431, 452 (2013) ("[P]laintiffs are entitled to every reasonable inference of fact." (citations omitted)); Cho v. Trinitas Reg'l Med. Ctr., 443 N.J. Super. 461, 471 (App. Div. 2015) (holding that an in limine motion to dismiss a plaintiff's claim is subject to the rules governing summary judgment motions). Indeed, on this appeal, defendants have accepted the facts and procedural history as recited by plaintiff.

Plaintiff owns an apartment building in Hoboken, consisting of five condominium units. Sometime before July 2009, plaintiff contacted defendant Rushmore Capital Partners, LLC (Rushmore) to obtain a loan. Plaintiff dealt with defendants Robert Gordon and Robert McAllister, who are principals at Rushmore. Plaintiff contends that he was seeking a loan of several hundred thousand

dollars so that he could finish construction work on three of the units, as well as the common areas of the building. Plaintiff also asserts that Gordon and McAllister directed him to establish a corporate entity for the purpose of obtaining a commercial loan from Rushmore.

On July 17, 2009, plaintiff registered a business entity in New Jersey under the name Ironhouse, LLC (Ironhouse). Shortly thereafter, on July 30, 2009, Ironhouse took a loan from Rushmore. The loan documents consisted of a promissory note (Note) and mortgage and security agreement (Mortgage). Both the Note and Mortgage were signed by plaintiff as "MANAGING MEMBER" of Ironhouse. The record contains only excerpts of the Note and Mortgage.[1]

The parties did not tell us the current status of the loan or whether the Note or Mortgage are in default. Instead, plaintiff alleges that the loan fees and interest payments on the loan exceed the amount allowable under New Jersey usury law. Plaintiff further contends that defendants fraudulently convinced him to form

[1] The record contains only pages one and four of the Note, and the cover page and page thirty-seven of the Mortgage. In his complaint, plaintiff initially states that the loan was for $790,000. Later in the complaint, however, plaintiff states that the loan was for $350,000. The excerpts from the Note and Mortgage state that the loan was for $790,000.

Ironhouse to take a commercial loan so that they could charge him usurious fees and interest.

In March 2014, plaintiff, who is self-represented, filed a complaint against defendants. The complaint asserted two counts, alleging that defendants (1) "violated applicable civil and criminal usury laws," and (2) engaged in fraud. Plaintiff contended that he was suing in his individual capacity, and Ironhouse was not named as a party to the complaint.

In June 2014, defendants filed an answer denying the allegations of usury and fraud. Defendants also asserted several affirmative defenses, but those defenses did not include lack of standing. Nor did defendants seek to join Ironhouse.

The matter was listed for trial on June 24, 2015. Two days before that date, defendants filed three in limine motions seeking to (1) strike plaintiff's demand for a jury trial, (2) dismiss the claims against Gordon and McAllister, and (3) substitute Ironhouse as plaintiff, require Ironhouse to obtain legal counsel, and prohibit plaintiff's "personal appearance." Plaintiff requested an adjournment and objected to the timing of defendants' in limine motions. Plaintiff claims that he was informed that the motions would not be heard because they were filed late, and his request for an adjournment was denied. The matter was then assigned to a judge for trial.

When the parties appeared before the trial judge, defendants' counsel raised the in limine motions. The court heard limited arguments on those motions. During those arguments, defense counsel contended that plaintiff did not have standing to pursue the claims in his complaint. Although neither party had briefed that issue, and although defense counsel did not cite any law to support the standing argument, the court considered the argument. Ultimately, the court took a break to review the law on standing. The court then came back and dismissed without prejudice plaintiff's complaint for lack of standing. The court did not cite to any law in support of its ruling. Instead, it noted that plaintiff might have standing as the managing member of Ironhouse or as an interested party, if Rushmore was to sue Ironhouse in the future.

Defense counsel thereafter submitted a form of order dismissing the complaint with prejudice. The court entered that order on June 30, 2015. Plaintiff filed a motion to vacate the June 30, 2015 order. Plaintiff also filed a motion to recuse the judge who entered that order. The judge heard arguments on those motions on October 23, 2015, and denied both motions in orders dated the same day. The judge entered an additional order, also dated October 23, 2015, amending the June 30, 2015 dismissal order to a dismissal without prejudice.

Plaintiff filed a second motion to vacate the orders dismissing his complaint and to recuse the trial judge who entered those orders. A different judge considered that second motion because the first judge had been reassigned to another division. Apparently without hearing oral argument, on January 8, 2016, the second judge entered an order that struck out the relief requested by plaintiff and stated:

> Judge [] reconsidered his June 30, 2015 order once and signed his October 23, 2015 order converting the previous dismissal with prejudice to a dismissal without prejudice. [Plaintiff] may seek to reinstate the heretofore dismissed complaint or appeal [the] October 23, 2015 order. Judge [] is no longer assigned to the Civil Division and has already reconsidered this matter once.

Plaintiff filed a notice appealing the orders entered on June 30, 2015, October 23, 2015, and January 8, 2016. We granted plaintiff's motion to file his appeal as within time.

II.

On appeal, plaintiff makes three arguments, contending that (1) he has standing, (2) the trial court erred in hearing defendants' untimely in limine motions, and (3) his due process

rights were violated.[2] Because we hold that plaintiff had standing, we reverse and remand for further proceedings.

"Standing 'refers to the plaintiff's ability or entitlement to maintain an action before the court.'" In re Adoption of Baby T, 160 N.J. 332, 340 (1999) (quoting N.J. Citizen Action v. Riviera Motel Corp., 296 N.J. Super. 402, 409 (App. Div. 1997)). "Standing is a threshold requirement for justiciability." Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 421 (1991). New Jersey courts liberally grant a litigant standing to sue. Jen Elec., Inc. v. Cty. of Essex, 197 N.J. 627, 645 (2009). Generally, there is standing if the party seeking relief has a sufficient personal stake in the controversy to assure adverseness, and the controversy is capable of resolution by the court. Bondi v. Citigroup, Inc., 423 N.J. Super. 377, 436-37 (App. Div. 2011).

Here, defendants frame the standing issue in light of the loan documents, which are the Note and Mortgage. They essentially contend that the loan was made to Ironhouse, which, as a limited liability corporation, is not permitted to "plead or set up the defense of usury to any action brought against it to recover

[2] Plaintiff initially argued that defendants waived the standing defense, but in his reply brief, plaintiff correctly conceded that standing cannot be waived. R. 4:6-2; R. 4:6-7; see also Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 417-18 (1991) ("Standing, like jurisdiction, involves a threshold determination of the court's power to hear the case.").

damages or enforce a remedy on any obligation [that it] executed[.]" N.J.S.A. 31:1-6. Additionally, defendants argue that individual endorsers or guarantors of a corporate loan——like plaintiff——do not have standing to assert usury as a defense to a commercial obligation. Selengut v. Ferrara, 203 N.J. Super. 249, 258-59 (App. Div. 1985).

Over sixty years ago, however, our Supreme Court held that an individual can recover usury payments on a loan made to a corporation if the individual can prove that the lender fraudulently caused the individual to create the corporation as a device to evade the usury laws. Gelber v. Kugel's Tavern, Inc., 10 N.J. 191, 196 (1952). In Gelber, the lender loaned money to a corporate entity that was created solely to execute that commercial loan. The corporation, thereafter, defaulted on the loan, and the lender sued the corporation. The individual owner filed counterclaims against the lender, contending that the lender fraudulently advised him to create the corporation to subvert the usury laws. Specifically, he testified that the lender told him that it would not give him a loan in his individual capacity, but if he formed a corporation, it would lend money to the corporation. While the lender disputed that contention, the Court held that those conflicting claims presented jury questions of whether the loan was made to the individual, and whether the corporation was

created at the insistence of the lender to cloak a usurious transaction. Gelber, 10 N.J. at 196-97.

Following the Court's decision in Gelber, New Jersey courts have consistently recognized that a lender cannot evade the usury laws by using a corporate shell to cloak a loan that, in effect, is actually being made to an individual borrower. In re Greenberg, 21 N.J. 213, 220 (1956); Selengut, 203 N.J. Super. at 256-57; Spiotta v. Shelter Cove Estates, 68 N.J. Super. 457, 467 (App. Div. 1961); Feller v. Architects Display Bldgs., Inc., 54 N.J. Super. 205, 212 (App. Div. 1959). If, however, the corporation is not a shell and was not formed solely to cloak the loan, then the individual will not be allowed to assert usury. Selengut, 203 N.J. Super. at 256-57.

Here, defendants are correct that plaintiff cannot assert individual claims based on alleged breaches of the Note and Mortgage. Read in the light most favorable to plaintiff, however, plaintiff's complaint can be understood to assert a claim that he was fraudulently induced into creating Ironhouse as a way for Rushmore to subvert the usury laws. If he can prove facts supporting that claim, he may be entitled to relief.

We emphasize that we were provided with a very limited record. As previously noted, we do not have the complete Note or Mortgage. There may be defenses available to defendants in those documents.

On the current record, however, we cannot affirm the holding that plaintiff had no standing to assert any claim against defendants.

In light of our holding on the standing issue, plaintiff's arguments concerning the untimeliness of defendants' in limine motions are moot. We also find that his arguments concerning due process are not viable in light of our remand. The complaint shall be reinstated, and the case shall be rescheduled for trial.

Reversed and remanded. We do not retain jurisdiction.