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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3285-15T3

IN THE MATTER OF THE
LIQUIDATION OF INTEGRITY
INSURANCE COMPANY.

Argued October 26, 2017 – Decided January 19, 2018

Before Judges Simonelli, Haas and Rothstadt.

On appeal from Superior Court of New Jersey,
Chancery Division, Bergen County, Docket No.
C-007022-86.

Nancy L. Kahn (Foster Swift Collins & Smith PC) of the Michigan bar, admitted pro hac vice, argued the cause for appellant Road Commission for Oakland County, Michigan (Fox Rothschild, LLP and Nancy L. Kahn, attorneys; Nancy L. Kahn and Brian J. Renaud (Foster Swift Collins & Smith PC) of the Michigan bar, admitted pro hac vice, of counsel and on the briefs; Benjamin R. Kurtis, on the briefs).

William B. Puskas, Jr., Deputy Attorney General, argued the cause for respondent Integrity Insurance Company (Christopher S. Porrino, Attorney General, attorney; Melissa Dutton Schaffer, Assistant Attorney General, of counsel; William B. Puskas, Jr., on the brief).

PER CURIAM

This appeal involves an attempt by appellant Road Commission for Oakland County, Michigan (RCOC) to reopen the liquidation of Integrity Insurance Company (Integrity or Estate) in order to pursue decades-old proofs of claim. RCOC appeals from the March 18, 2016 Chancery Division order, which denied its motion to intervene and for reconsideration of the January 6, 2016 order approving the final accounting of Integrity's assets and liabilities and closing of the Estate.¹ We affirm.

On March 24, 1987, the court entered an order placing Integrity into liquidation (the liquidation order). Paragraph 18 required the Liquidator to "give or cause to be given notice of the entry of this [o]rder as soon as possible" to policyholders.² Paragraph 19 provided, in relevant part, that the notice "shall require that any person seeking to receive distributions in liquidation as a claimant file with the Liquidator a claim . . .

¹ RCOC's notice of appeal indicates that it also appealed from the March 28, 2014 order, which approved the final distribution of Integrity's assets and closing of the Estate and vested the Liquidator with broad discretion to wind down the Estate. Because RCOC did not address this issue in its merits brief, it is deemed waived. See Sklodowsky v. Lushis, 417 N.J. Super. 648, 657 (App. Div. 2011); Pressler & Verniero, Current N.J. Court Rules, cmt. 5 on R. 2:6-2 (2018).

² RCOC was an insured of Integrity under a \$10 million excess policy.

together with proof of loss" no later than March 25, 1988. Paragraph 20 provided that if the Liquidator gave notice in accordance with paragraphs 18 and 19, "the distribution of the assets of Integrity shall be conclusive with respect to all policyholders and claimants, whether or not they receive actual notice[.]" The liquidation order authorized the Liquidator to enter into agreements with guaranty associations of other states and alter the notification and filing requirements with those associations.

RCOC does not dispute it received notice of the entry of the liquidation order. On March 18, 1988, it filed two proofs of claim with Integrity's Liquidator (the POCs) concerning two separate motor vehicle accidents that were being litigated against RCOC in Michigan (the POCs). The POCs were contingent at the time of filing because coverage, liability, and amount had not yet been determined.

On September 16, 1988, the Deputy Liquidator issued two notices of determination to RCOC, allowing the POCs in an unstated amount. However, the allowance was subject to the terms and conditions of the Integrity policy and the future determination

by the Michigan Property & Casualty Guaranty Association (MPCGA) as to coverage, payee, and amount.³

The notices advised RCOC it had to file a written objection with the Deputy Liquidator within sixty days of the date of notice of allowance or disallowance of the POCs. The notices further advised that if the Deputy Liquidator did not receive an objection within sixty days of the date of the notice, "the allowance or disallowance . . . shall constitute the final determination and judgment of the Superior Court of New Jersey with regard to the . . . [POCs] and you shall be barred thereafter from objecting to the allowance or disallowance of such [POCs]."

The Liquidator referred the POCs to the MPCGA. On November 22, 1988, the Liquidator notified RCOC that the POCs had been transferred to the MPCGA and RCOC should thereafter communicate with the MPCGA regarding the POCs. On January 6, 1989, the MPCGA confirmed the transfer and directed RCOC to submit documents necessary to determine if the POCs qualified for payment as "covered claims."

³ State guaranty associations provide mechanisms for paying the covered claims of their respective residents, as defined by statute, without excessive delay and to minimize financial loss because of an insurer's insolvency. See N.J.S.A. 17:30A-2 (property and liability insurance); N.J.S.A. 17B-32A-2 (life and health insurance). The MPCGA serves a similar purpose. See Mich. Comp. Law § 500.7931.

In 1989, RCOC settled the Michigan litigation involving the two motor vehicle accidents. After applying its self-retention liability and primary policy limits, RCOC's remainder liability was \$562,003. At that point, the POCs became absolute and eligible for payment from the Estate; however, RCOC did not file a final proof of claim with the Liquidator.

In 1992, the MPCGA disallowed the POCs, finding they were excluded as "covered claims" under the Property and Casualty Guaranty Association Act (the Michigan PCGA Act), Mich. Comp. Law § 500.7901 to 500.7949, because RCOC's net worth exceeded the statutory limit (the net-worth exclusion).⁴ RCOC did not file a written objection with the Deputy Liquidator of the MPCGA's disallowance of the POCs.

RCOC appealed the MPCGA's decision. In 1996, the Michigan Court of Appeals affirmed. See Oakland Cty. Bd. of Rd. Comm'rs v. Mich. Prop. & Cas. Guar. Ass'n, 550 N.W.2d 856 (Mich. Ct. App. 1996). In 1998, the Michigan Supreme Court affirmed. See Oakland Cty. Bd. of Rd. Cty. Comm'rs v. Mich. Prop. & Cas. Guar. Ass'n,

⁴ Under Mich. Comp. Law § 500.7925(3) and (4), "'[c]overed claims'" shall not include obligations to an insurer, insurance pool, underwriting association, "or to a person who has a net worth greater than 1/10 of 1% of the aggregate premiums written by member insurers in this state in the preceding calendar year."

575 N.W.2d 751 (Mich. 1998). The court found the net-worth exclusion applied to RCOC, and "covered claims" do not include obligations of an insolvent insurer to a person whose net worth exceeded the statutory limit. Id. at 599-600.

RCOC took no further action regarding the POCs until nearly twenty years later. In the meantime, on June 20, 2008, Judge Robert C. Wilson entered an order approving the Liquidator's Amended Liquidation Closing Plan (Amended LCP), which provided that claimants could only share in the distribution of the Estate if they submitted a final proof of claim by September 30, 2009, demonstrating the claim was absolute as of June 30, 2009.

On March 28, 2014, Judge Wilson entered an order approving the final distribution of Integrity's assets and closing of the Estate (the March 2014 order). The order directed the Liquidator to distribute Integrity's funds in accordance with the order and provide a final accounting. The order authorized the Liquidator to transfer any unclaimed funds to the New Jersey Unclaimed Property Trust Fund (NJUPTF), and authorized the trustees of the NJUPTF to escheat all abandoned funds and assets to the State pursuant to the New Jersey Uniform Unclaimed Property Act, N.J.S.A. 46:30B-1 to - 109.

The March 2014 order authorized the Liquidator to destroy all of the Estate's policy and claim files, and its human resources,

accounting, and data processing records. The order empowered the Liquidator to take any and all additional action as he deemed advisable for the Estate's administration and closure without need for further applications to the court. The order discharged and released the Liquidator and his staff from any and all further liability arising out of the liquidation, and terminated the liquidation proceeding without need for any further court order. As authorized by the March 2014 order, the Liquidator destroyed all of Integrity's records by the summer of 2015, nearly thirty years after the court placed Integrity into liquidation.

The Liquidator subsequently submitted a final accounting to the court. Judge Wilson entered an order on January 6, 2016, approving the final accounting and closing of the Estate and discharging the Liquidator and his agents from any liability and further obligation to the Estate (the January 2016 order). The order authorized the Liquidator to escheat Integrity's remaining assets to the NJUPTF, required Integrity to conclude its business and close, and again empowered the Liquidator to take any and all additional action he deemed advisable for the Estate's administration and termination without need for further applications to the court.

On January 21, 2016, RCOC complained to the New Jersey Department of Banking and Insurance (Department) that the

Liquidator failed to make a distribution on the POCs. RCOC also complained that, after transfer of its claims files to the MPCGA, the Liquidator had no procedures for continued notice to RCOC or for the return of the files to the Liquidator in the event the MPCGA denied the POCs, and failed to provide notice of the Amended LCP. RCOC posited there may be reinsurance available to satisfy the POCs and requested an investigation and distribution.

On January 25, 2016, RCOC filed a motion to intervene and for reconsideration of the January 2016 order, raising arguments that mirrored its complaints to the Department. RCOC sought to reopen the liquidation and requested a limited period of discovery to determine if there were potential sources of funds to satisfy the POCs, such as reinsurance, claw back agreements,⁵ or escheated funds. RCOC acknowledged that the Michigan courts had affirmed the MPCGA's disallowance of the POCs, but argued the POCs were still viable because the courts based their decisions on RCOC's eligibility for payment under the Michigan PCGA Act, not the Integrity policy.

⁵ From 1994 to 2013, the court approved monetary advances to state guaranty associations, subject to the guaranty associations signing a "claw back" agreement requiring them to return the advance in the event the Liquidator needed the funds to pay claims of an equal or greater priority.

In opposition, the Liquidator argued the Estate was closed, there were no funds left to distribute, and the Estate could not claw back money because the records of those paid were destroyed, as authorized by the March 2014 order. The Liquidator emphasized that RCOC knew for nearly twenty years it would not receive a distribution from the Estate and had numerous opportunities during that time to contact the Liquidator. The Liquidator also argued that RCOC received adequate notice in 1988 of the liquidation order, and took no action after the MPCGA disallowed the POCs. Lastly, the Liquidator argued the doctrine of laches barred RCOC's claim for relief.

In a written opinion, Judge Wilson denied reconsideration, finding that RCOC failed to show the January 2016 order was based upon a palpably incorrect or irrational basis. The judge found no evidence that the Liquidator failed to properly consider the POCs or mishandled the Estate's liquidation. The judge emphasized that at no point during the liquidation's extensive thirty-year period did RCOC attempt to litigate the factual or legal predicates it now asserted in its motion.

Judge Wilson also held that RCOC failed to proffer newly discovered evidence to warrant reconsideration of the January 2016 order. The judge determined that the Liquidator met his obligation to provide all claimants with notice of the liquidation and was

not obligated to provide continual notice. The judge also found the Liquidator considered the POCs, determined they were not absolute, and transferred them to the MPCGA, which disallowed them. The judge concluded that RCOC had ample opportunity to reassert the POCs after the MPCGA's disallowance and slept on its rights for years. The judge emphasized that the factual and legal predicates on which RCOC sought to reassert the POCs were available to it well before the entry of the January 2016 order. This appeal followed.

On appeal, RCOC contends Judge Wilson abused his discretion in denying reconsideration of the January 2016 order and refusing to reconsider the Estate's closure based on the lack of potential sources of assets and documents and the age of the Estate. RCOC reiterates there may be potential sources of assets available to satisfy the claims, such as reinsurance, claw back agreements, or escheated funds.

RCOC also contends that Judge Wilson disregarded the mandate of the New Jersey Insurance Rehabilitation Act (Act), N.J.S.A. 17:30C-1 to -31, to afford claimants the broadest possible protection, which includes the opportunity to engage in a limited period of discovery in order to locate reinsurance, escheated

funds, claw back obligations, bonds, or other sources of assets.⁶ RCOC also contends the Liquidator deprived it of an established property right without notice and an opportunity to be heard "by literally shipping off [its] claims files to the MPCGA, instructing [it] to submit all communications regarding its claims against Integrity to MPCGA, and making no provision for distributions, follow up of further notice to [it] regarding its claims."⁷ Lastly, RCOC contends that the distribution of Integrity's assets was not conclusive because the Liquidator failed to provide notice, as required by Paragraph 20 of the liquidation order.⁸

⁶ RCOC also argues that the Act's protection includes "estoppel of the Liquidator's argument that RCOC's submission of claims documents to MPCGA was insufficient." However, the record does not reveal the Liquidator argued that RCOC's submissions to the MPCGA were insufficient.

⁷ RCOC also argues, incorrectly, that N.J.S.A. 17:30C-30 required the Liquidator to notify it of the final bar date and send it a final proof of claim form. However, the statute only applies to those, unlike RCOC, who did not file a proof of claim.

⁸ We decline to address RCOC's additional contention that it is entitled to vacate the January 2016 order under Rule 4:50-1(a), (b), (e) and (f). RCOC did not raise this argument before Judge Wilson, it is not jurisdictional in nature, and it does not substantially implicate the public interest. Zaman v. Felton, 219 N.J. 199, 226-27 (2014) (citation omitted). We also decline to address RCOC's argument, improperly raised for the first time in its reply brief, that the doctrine of unclean hands precludes the Liquidator's reliance on the doctrine of laches. See Goldsmith v. Camden Cty. Surrogate's Office, 408 N.J. Super. 376, 386 (App. Div. 2009).

Integrity counters that RCOC was not entitled to reconsideration and the doctrine of laches bars its claim for relief. Integrity also argues that RCOC cannot usurp funds that have been escheated to the NJUPTF.

We have determined that

[r]econsideration itself is 'a matter within the sound discretion of the [c]ourt, to be exercised in the interest of justice[.]' It is not appropriate merely because a litigant is dissatisfied with a decision of the court or wishes to reargue a motion, but 'should be utilized only for those cases which fall into that narrow corridor in which either 1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence.'

[Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010) (citations omitted).]

We will not disturb a trial judge's denial of a motion for reconsideration absent a clear abuse of discretion. Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 383 (App. Div. 2015) (citation omitted). An "abuse of discretion only arises on demonstration of 'manifest error or injustice[,]'"
Hisenaj v. Kuehner, 194 N.J. 6, 20 (2008) (quoting State v. Torres, 183 N.J. 554, 572 (2005)), and occurs when the trial judge's "decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible

basis.'" Milne v. Goldenberg, 428 N.J. Super. 184, 197 (App. Div. 2012) (quoting Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002)).

We discern no abuse of discretion here. RCOC did not establish that the January 2016 order was based on a palpably incorrect or irrational basis, or that the court failed to appreciate the significance of probative, competent evidence in entering that order. The record is devoid of evidence of any improprieties in the Liquidator's final accounting, closure of the Estate, escheat of Integrity's remaining assets to the NJUPTF, or destruction of Integrity's records. Accordingly, Judge Wilson properly denied RCOC's motion for reconsideration of the January 2016 order.

RCOC attempts to circumvent this impregnable result by arguing that the Liquidator's transfer of the POCs to the MPCGA without providing further notice deprived it of an established property right without notice and an opportunity to be heard. RCOC also argues that the distribution of Integrity's assets was not conclusive because the Liquidator failed to provide notice, as required by Paragraph 20 of the liquidation order.

These arguments are easily rejected. The liquidation order authorized the Liquidator to transfer the POCs to the MPCGA, and only required the Liquidator to notify policyholders of the entry

of the order and that claims must be filed by March 25, 1988. Paragraph 20 of the liquidator order provided that if the Liquidator gave such notice, the distribution of Integrity's assets "shall be conclusive with respect to all policyholders and claimants, whether or not they receive actual notice" of the liquidation proceedings. (Emphasis added.)

RCOC does not deny it received the notices required by the liquidation order. RCOC had no right to further notice of the liquidation proceedings. See In re Liquidation of Integrity Ins. Co., 231 N.J. Super. 152, 158 (Ch. Div. 1988) (holding that policyholders "can assert no right to notice as to all proceedings in this matter under the [Uniform Liquidation Act]"). Accordingly, the distribution of Integrity's assets was conclusive as to RCOC whether or not RCOC received actual notice of the liquidation proceedings.

RCOC's remaining argument that Judge Wilson disregarded the mandate of the Act and deprived it of discovery lacks sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E). We conclude that RCOC failed to establish entitlement to reconsideration of the January 2016 order.

We also conclude that the doctrine of laches bars RCOC's claims. The doctrine of laches "is invoked to deny a party enforcement of a known right when the party engages in an

inexcusable and unexplainable delay in exercising that right to the prejudice of the other party." Knorr v. Smeal, 178 N.J. 169, 180-81 (2003). "Laches may only be enforced when the delaying party had sufficient opportunity to assert the right in the proper forum and the prejudiced party acted in good faith believing that the right had been abandoned." Id. at 181. "The core equitable concern in applying laches is whether a party has been harmed by the delay." Ibid.

All of the relevant equitable factors support application of the doctrine of laches in this case. RCOC waited approximately two decades to pursue the POCs in New Jersey. RCOC's delay in seeking relief was inexcusable, and its attempt to justify the delay by laying blame on the Liquidator has no merit whatsoever.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION