SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4423-15T2

WINCENTER CONDOMINIUM
ASSOCIATION, INC.,

Plaintiff-Respondent,

v.

SHELDON A. BERGER,

Defendant-Appellant.

Submitted January 8, 2018 - Decided March 26, 2018

Before Judges Accurso and O'Connor.

On appeal from Superior Court of New Jersey, Chancery Division, Bergen County, Docket No. F-005438-11.

Sheldon A. Berger, appellant pro se.

Ehrlich, Petriello, Gudin & Plaza, PC, attorneys for respondent (John Petriello, on the brief).

PER CURIAM

Defendant Sheldon A. Berger appeals from three orders in this action to foreclose two liens for unpaid condominium charges: the April 13, 2012 order granting summary judgment to

plaintiff Wincenter Condominium Association, Inc., in the two lien foreclosure actions and consolidating the cases for entry of final judgment; the March 4, 2015 order awarding a counsel fee of $15,000 to plaintiff following a plenary hearing on its application for $60,390.66 in fees; the July 30, 2015 order setting the amount due at $19,831.04 and remanding to the Office of Foreclosure for entry of final judgment; and the final judgment entered on March 31, 2016. We affirm, substantially for the reasons expressed by Judge Escala in the careful and comprehensive statements appended to each of the orders from which defendant appeals.

This appeal stems from defendant's refusal to pay certain condominium charges following a water leak in 2006, which plaintiff failed to repair to defendant's satisfaction. That dispute has led to years of litigation, including two Special Civil Part actions, one resulting in a trial, a tax sale proceeding and these two consolidated lien foreclosures. Defendant claims the trial court erred in not dismissing the action based on plaintiff's failure to give him reasonable notice of the liens in violation of N.J.S.A. 46:8B-21(a), see Loigman v. Kings Landing Condo. Ass'n, Inc., 324 N.J. Super. 97, 101-02 (Ch. Div. 1999), and its violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p. He further

claims the trial court erred in awarding plaintiff $2671 for real estate taxes and $15,000 in legal fees.

Judge Escala rejected each of defendant's claims for reasons thoroughly explained in the statements appended to the orders. Defendant admitted he failed to pay common charges assessed for three years between 2007 and 2010, and does not dispute plaintiff's right under the governing documents to impose common expenses as well as interest, late fees and collection costs on unit owners. The judge found defendant had notice of the liens, which were filed after plaintiff filed complaints in the Special Civil Part to recover the amounts owed, and did not dispute their validity or the amount claimed to be due.

Relying on the Special Civil Part judgment against defendant for $12,791.37 following trial, which amount included a $400 credit on defendant's counterclaim and another default judgment for $7783.75, Judge Escala barred defendant's attempt to relitigate those claims in the foreclosure action. The judge accordingly struck defendant's defenses and counterclaims, but permitted him to advance as setoffs any credits to which he claimed he was entitled in response to plaintiff's motion for final judgment of foreclosure.

Plaintiff thereafter sought attorney's fees of $60,390.66. Judge Escala refused to enter any award on the papers and required the parties to appear for a plenary hearing. After hearing testimony from plaintiff's bookkeeper and attorney, as well as defendant, Judge Escala awarded plaintiff $15,000 in fees. Following a meticulous review of plaintiff's ledger, documenting years of charges and payments, including plaintiff's redemption of tax sale certificates and defendant's subsequent payment to the tax assessor, the judge concluded a balance of $4831.04 remained on defendant's account, and that an attorney fee award was amply justified.

The judge found defendant had been "consistently elusive and evasive in an effort to prolong this litigation" and that his "background as an accountant not only provide[d] him the necessary skills to manipulate the interpretation of Plaintiff's ledger, but also gave him multiple opportunities to submit a counter-statement of accounting," which "did not prove illuminating." The judge concluded that as a result of defendant's "actions and inactions, Plaintiff has had to take extra measures to complete what should have been routine tasks" warranting a fee award "double what would normally be awarded ($7500) for even the largest mortgage in a routine mortgage foreclosure" but well less than the sum plaintiff sought.

We affirm, substantially for the reasons expressed by Judge Escala in his thorough and thoughtful statements appended to the orders from which defendant appeals.[1] We have nothing to add to his analysis. Our June 5, 2017 order staying the sheriff's sale pending appeal is dissolved.

Affirmed.

[1] Although we are satisfied Judge Escala carefully considered and rejected each of plaintiff's claims, and that his factual findings as to the amount due are "supported by adequate, substantial and credible evidence," Meshinsky v. Nichols Yacht Sales, Inc., 110 N.J. 464, 475 (1988) (quoting Rova Farms Resort v. Investors Ins. Co., 65 N.J. 474, 484 (1974)), we note defendant's failure to include a statement of items submitted to the court on the summary judgment motion and his "selective inclusion of exhibits" would make it impossible to determine whether there might have been any technical defect in plaintiff's notice of the lien or any potential violation of the Fair Debt Collection Practices Act. See Noren v. Heartland Payment Sys., Inc., 448 N.J. Super. 486, 500 (App. Div. 2017). As the record we have leaves no doubt the parties were in active litigation over assessments defendant admits he received and refused to pay when plaintiff filed its liens, Loigman has no applicability here.