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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-5752-13T3

JARWICK DEVELOPMENTS, INC.,
ADA REICHMANN and JOSEF HALPERN,

Plaintiffs-Respondents,

v.

JOSEPH WILF and THE ESTATE OF
HARRY WILF, deceased, individually
and as partners in the partnership
known as J.H.W. ASSOCIATES;
LEONARD A. WILF; ZYGMUNT WILF, MARK WILF;
SIDNEY WILF; RACHEL AFFORDABLE HOUSING;
HALWIL ASSOCIATES, a partnership; and
PERNWIL ASSOCIATES, a partnership,

Defendants-Appellants,

and

MARVIN L. COHEN CPA and MIRONOV,
SLOAN & PARZIALE, LLC f/k/a BECK,
WEISS & COMPANY, P.A.,

Defendants.

Argued April 17, 2018 – Decided June 1, 2018

Before Judges Yannotti, Carroll and DeAlmeida.

On appeal from Superior Court of New Jersey,
Chancery Division, Morris County, Docket No.
C-000184-92.

Peter C. Harvey argued the cause for appellants (Patterson Belknap Webb & Tyler, LLP and Lasser Hochman, LLC, attorneys; Peter C. Harvey, on the brief; Sheppard A. Guryan and Bruce H. Snyder, of counsel and on the briefs).

Alan M. Lebensfeld argued the cause for respondent Josef Halpern (Lebensfeld Sharon & Schwartz, PC, attorneys; Alan M. Lebensfeld and David M. Arroyo, on the briefs).

Price O. Gielen (Neuberger, Quinn, Gielen, Rubin & Gibber, PA) of the Maryland bar, admitted pro hac vice, argued the cause for respondents Jarwick Developments, Inc. and Ada Reichmann (Lowenstein Sandler LLP, and Price O. Gielen, attorneys; Michael B. Himmel, Michael T.G. Long and Price O. Gielen, on the brief).

PER CURIAM

Defendants Joseph Wilf, Estate of Harry Wilf, Leonard A. Wilf, Zygmunt Wilf, Mark Wilf, Sidney Wilf, Rachel Affordable Housing, Halwil Associates ("the Wilfs"), and Pernwil Associates ("the Partnership") appeal a trial court order awarding \$10,000 in attorney's fees and costs against them pursuant to Rule 1:10-3 for failure to comply with an order of the trial court. We affirm.

I.

This appeal was argued back-to-back with the Wilfs' appeal and plaintiffs Jarwick Developments, Inc. and Josef Halpern's cross-appeal in No. A-2053-13 from the December 20, 2013 judgment entered in favor of plaintiffs following a lengthy bench trial.

The judgment awarded plaintiffs substantial compensatory and punitive damages along with attorney's fees, and ordered dissolution of the Partnership. The decades-long history that resulted in that judgment is fully set forth in our unpublished opinion in No. A-2053-13 and incorporated by reference here.

On November 4, 2013, prior to the entry of judgment, but after the court had expressed its intention to order dissolution of the Partnership, Halpern moved to appoint Kislak Company, Inc. ("Kislak"), an independent real estate broker, to market and sell Rachel Gardens, a multi-unit residential development that was the primary asset of the Partnership. In support of the motion, Halpern submitted a proposed form of listing agreement with Kislak acceptable to plaintiffs.

The Wilfs opposed the motion. Their opposition papers were accompanied by a certification from their counsel that set forth numerous comments about, and suggested revisions to, the proposed listing agreement.

On November 27, 2013, the Wilfs moved before the trial court for a stay of dissolution of the Partnership and sale of Rachel Gardens during the pendency of their anticipated appeal to this court from the expected final judgment of the trial court.

On December 20, 2013, the trial court denied the Wilfs' motion to stay dissolution of the Partnership and sale of Rachel Gardens

pending appeal. The court, however, stayed dissolution of the Partnership until January 21, 2014, to allow the Wilfs to file an appeal and move for a stay before this court. The trial court ordered that in the event that an appeal and stay motion were filed in this court, dissolution of the Partnership would be stayed pending this court's resolution of the stay motion.

Also on December 20, 2013, the trial court entered an order appointing Kislak as the broker authorized, upon the consent of the parties as to the terms of the listing agreement, promptly to market and sell Rachel Gardens. The trial court ordered that "within thirty (30) days following the Appellate Division's resolution of the Wilf Defendants' application to stay dissolution of the Partnership pending appeal, the partners are ordered to commence the winding up of the Partnership's affairs pursuant to and in accordance with N.J.S.A. 42:1A-41."

On January 21, 2014, the Wilfs, having previously filed a Notice of Appeal from the final judgment of the trial court, moved before this court for a stay of dissolution of the Partnership and sale of Rachel Gardens.

On February 18, 2014, this court denied the Wilfs' motion for a stay. Although this court's order denying the stay is dated February 14, 2014, it was docketed by the Clerk of the court on February 18, 2014. Thirty days from February 18, 2014, the date

on which the parties were, by the trial court's order, to commence winding up the Partnership, was March 20, 2014.

After this court's denial of the Wilfs' motion for a stay, plaintiffs' counsel, in an effort to advance the parties' negotiation of the Kislak listing agreement, reached out to the Wilfs' counsel. He also secured the agreement of Kislak to each of the comments and suggested edits to the listing agreement proffered by the Wilfs' counsel several months earlier. Plaintiffs' counsel edited the listing agreement accordingly and forwarded the revised agreement to the Wilfs' counsel for approval. No response was forthcoming.

On March 10, 2014, prior to the expiration of the thirty-day period provided in the trial court's order, Halpern moved by order to show cause, pursuant to Rule 1:10-3, for an order in aid of litigant's rights: (1) compelling the Wilfs to execute the revised Kislak listing agreement; or, in the alternative; (2) empowering and authorizing plaintiffs to execute the Kislak listing agreement on behalf of the Partnership; and (3) awarding Halpern attorney's fees and costs incurred in connection with the motion. The trial court judge signed the order to show cause the same day.

Also on March 10, 2014, the Wilfs filed an application in the Supreme Court for a stay of dissolution of the Partnership and sale of Rachel Gardens.

On March 11, 2014, the Wilfs filed an order to show cause in the trial court seeking a stay of Halpern's order to show cause filed in aid of litigant's rights, pending the Supreme Court's resolution of the Wilfs' application for a stay. They also opposed Halpern's order to show cause.

On April 9, 2014, the Supreme Court denied the Wilfs' application for a stay of dissolution of the Partnership and sale of Rachel Gardens.

On April 10, 2014, the trial court heard argument on Halpern's order to show cause. The judge placed his findings of fact and conclusions of law on the record. Finding no support for the Wilfs' position, and concluding that the Wilfs failed to comply with the trial court's December 20, 2013 order despite having their requests for a stay denied by this court and the Supreme Court, the trial court granted Halpern's application for relief. In addition, the court awarded Halpern attorney's fees and costs, holding that "there is no legitimate defense to the Order to Show Cause that I can see."

On April 11, 2014, the trial court entered an order: (1) directing the Wilfs to execute the revised Kislak listing agreement within five days; (2) deeming the revised Kislak listing agreement fully executed in the event the Wilfs did not execute the agreement within five days; and (3) awarding Halpern reasonable attorney's

fees and costs incurred in moving for relief in aid of litigant's rights.

On April 15, 2014, Halpern's counsel submitted a certification of services, with supporting documentation, pursuant to Rule 4:42-9(b) and (c), seeking \$25,418.25 in attorney's fees and costs incurred with respect to the order to show cause. The Wilfs thereafter moved for reconsideration of the trial court's award of attorney's fees and costs.

On June 30, 2014, the trial court denied the Wilfs' motion for reconsideration, and awarded Halpern \$10,000 in attorney's fees and costs. The trial court's handwritten findings of fact and conclusions of law were brief:

The court has reviewed the certification of services. The hourly rates are appropriate. The nature of the issue, enforcement of an order[,] cannot justify fees of \$25,000 to be paid by defendant[s]. Explanation of fees were not always clear. For example, page 9 – Tel conf. w/J Hansbury's chambers re: return date of OSC; drafted correspondence to counsel re: same (2); a telephone call and 2 letters = 8.5 hours does not seem warranted.

This appeal followed.

II.

We review a trial court's order enforcing litigant's rights pursuant to Rule 1:10-3 under an abuse of discretion standard. Barr v. Barr, 418 N.J. Super. 18, 46 (App. Div. 2011); see also

Innes v. Carrascosa, 391 N.J. Super. 453, 498 (App. Div. 2007). An abuse of discretion occurs when a decision is "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002) (quotations omitted).

The decision to award counsel fees "rests within the sound discretion of the trial court." Maudsley v. State, 357 N.J. Super. 560, 590 (App. Div. 2003). We afford trial courts "considerable latitude in resolving fee applications" Grow Co. v. Chokshi, 424 N.J. Super. 357, 367 (App. Div. 2012). Such "'determinations by trial courts will be disturbed only on the rarest occasions, and then only because of a clear abuse of discretion.'" Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 444 (2001) (quoting Rendine v. Pantzer, 141 N.J. 292, 317 (1995)).

The Wilfs argue that it was an abuse of the trial court's discretion to award attorney's fees and costs against them because, at the time that Halpern's order to show cause was filed, and up to the day before the return date of the order to show cause, the Wilfs were awaiting a decision from the Supreme Court on their application for a stay. In addition, they argue that the trial court erred because it cited no rule or other legal basis for its award of attorney's fees and costs on the return date of the order

to show cause, and cited Rule 1:10-3 as the authority on which it relied only when denying the Wilfs' motion for reconsideration.

They argue further that the rule does not support the award of attorney's fees and costs here because there was no finding by the trial court that the Wilfs willfully violated the trial court's order, and the award of fees and costs was punitive, and would not have a coercive effect. Finally, the Wilfs argue that the trial court did not sufficiently analyze Halpern's attorney's fees application, or explain the quantum awarded.

We are satisfied that the trial court exercised its discretion appropriately. The December 20, 2013 order was plain. Kislak was appointed as the broker authorized, upon the consent of the parties to the terms of the listing agreement, to market and sell Rachel Gardens. In addition, the court ordered that within thirty days of this court's resolution of the Wilfs' motion to stay dissolution of the Partnership and sale of Rachel Gardens, the Wilfs and the other partners were to commence winding up the Partnership's affairs.

As of March 20, 2014, this court had denied the Wilfs' motion for a stay, and the thirty-day period in the trial court's December 20, 2013 order had expired. Yet, the Wilfs had not consented to the terms of the listing agreement, or engaged plaintiffs' counsel in meaningful negotiations with respect to the agreement. In

fact, the Wilfs had taken no steps to commence winding down the Partnership's affairs.

While the Wilfs had filed an application for a stay of dissolution of the Partnership and sale of Rachel Gardens with the Supreme Court, they did not ask this court to stay the dissolution order pending a decision by the Supreme Court on their stay motion, or seek emergent relief from the Supreme Court. They instead elected to await the outcome of their request for relief from the Supreme Court.

Although the Wilfs argue that they "were entitled" to refrain from complying with the trial court's December 20, 2013 order while their Supreme Court application was pending, they cite no legal authority for this proposition. To the contrary, it is well established that a party's obligation to perform under a trial court order is not automatically stayed by the filing of an appeal or other proceedings in an appellate court. R. 2:9-5(a). As of March 20, 2014, the Wilfs were in defiance of the December 20, 2013 order.

By April 10, 2014, when the Wilfs appeared before the trial court on Halpern's order to show cause, the Supreme Court had denied their stay application. Still, the Wilfs had not consented to the terms of the listing agreement, informed the trial court through counsel that they were unwilling to do so unless active

marketing of the property was held in abeyance while they considered seeking further judicial relief, and had taken no steps to commence the winding up of the Partnership's affairs. There were ample grounds for the trial court decision granting Halpern relief in aid of litigant's rights.

We are not persuaded by the argument that the award of attorney's fees and costs lacked a coercive purpose and therefore was beyond the tools available to the court under Rule 1:10-3. We disagree with the notion that the trial court was punishing the Wilfs by awarding attorney's fees and costs, rather than attempting to coerce their compliance with the December 20, 2013 order.

Having found no basis for the Wilfs' failure to consent to the terms of the Kislak listing agreement, and having been informed by their counsel on the return date of the order to show cause that they still were unwilling to sign the agreement in its revised form, the trial court surely acted within its discretion to award attorney's fees and costs to coerce the Wilfs to comply with the order, as a warning that further refusal to conform their behavior to the trial court's orders will come at a financial cost to them.

With respect to the quantum of the fee award, in calculating the amount of reasonable attorney's fees, "an affidavit of services addressing the factors enumerated by RPC 1.5(a)" is required. R. 4:42-9(b). Courts determine the "lodestar," defined as the "number

of hours reasonably expended" by the attorney, "multiplied by a reasonable hourly rate." Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 386 (2009) (citing Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 21 (2004)). "The court must not include excessive and unnecessary hours spent on the case in calculating the lodestar." Furst, 182 N.J. at 22 (citing Rendine, 141 N.J. at 335-36). The court is required to make findings on each element of the lodestar fee. Furst, 182 N.J. at 22. The fee awarded must be "reasonable," RPC 1.5(a), and reasonableness is a calculation to be made in every case. Furst, 182 N.J. at 21-22.

While we acknowledge the trial court's written analysis of Halpern's attorney's fee application is sparse, we also conclude that it reflects the court's careful review of the submissions, which complied with RPC 1.5(a), and supports its determination as to the quantum of attorney's fees and costs awarded.

We have considered the other arguments the Wilfs have raised on appeal, and conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).¹

Affirmed.

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


CLERK OF THE APPELLATE DIVISION

¹ Plaintiffs' request for the award of attorney's fees and costs associated with this appeal, contained in their merits brief, is premature. See R. 2:11-4 (requiring that an application for attorney's fees be filed "within 10 days after the determination of the appeal.")