SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3184-21

THE REINVESTMENT FUND, INC.,

Plaintiff-Respondent,

v.

JOSEPH RAUH, SR., JOSEPH RAUH, JR., COLLEEN RAUH, 360 GREENTREE RD., LLC, JRMT, INC., and JR MARKETS, INC.,

Defendants/Third-Party Plaintiffs-Appellants,

v.

MORAN FOODS, INC., d/b/a SAVE-A-LOT STORES, LTD, and MORAN FOODS, LLC, f/k/a MORAN FOODS, INC., d/b/a SAVE-A-LOT FOOD STORES, LTD.,

Third-Party Defendants-Respondents.

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Submitted December 6, 2022 – Decided December 13, 2022

Before Judges Geiger and Fisher.

On appeal from the Superior Court of New Jersey, Law Division, Gloucester County, Docket No. L-0844-20.

Hagner & Zohlman, LLC, attorneys for appellants (Thomas J. Hagner and Thomas A. Hagner, on the brief).

Troutman Pepper Hamilton Sanders LLP, attorneys for respondent Moran Foods, Inc. d/b/a Save-A-Lot, Ltd. (A. Christopher Young, of counsel and on the brief).

PER CURIAM

Joseph Rauh, Jr., is the president of JR Markets, Inc., and JRMT, Inc., and a self-described "highly experienced businessman in the grocery market industry with almost 30 years' experience." In 2012, Moran Foods, LLC, which does business as Save-A-Lot Stores and operates over 1,300 grocery stores nationwide, approached Rauh, Jr., and asked about his interest in acquiring its stores in Millville and Rio Grande. During their discussions, Save-A-Lot introduced Rauh, Jr. to The Reinvestment Fund, its chosen lender. Eventually, the parties developed a business plan that anticipated funding from Reinvestment and the involvement of John Rauh, Sr. and his limited liability company, 360 Greentree Rd., LLC.

In connection with the parties' business plan, Reinvestment made two loans, the first in 2012 and the second in 2015. The first was a $1,395,000 loan to JR Markets, the repayment of which was personally guaranteed by Rauh, Jr., Rauh, Sr., and Greentree. The second was a $650,000 loan to JRMT that was guaranteed by Rauh, Jr., and Rauh, Sr.

Rauh, Jr., his spouse Colleen Rauh, JR Markets, and JRMT also entered into licensing agreements with Save-A-Lot concerning the acquisition of the stores in Millville and Rio Grande. These agreements contained mediation and arbitration provisions that obligated the parties to mediate "[a]ny controversy, claim, or dispute of whatever nature" and, if unsuccessful, to submit their claims to "binding arbitration" in St. Louis, Missouri.[1] These provisions also contained the parties' stipulation that they had "knowingly and voluntarily waive[d] their rights to have their dispute tried and adjudicated by a judge or jury." The licensing agreements' signature pages included the following in boldface print: "THIS AGREEMENT CONTAINS A BINDING ARBITRATION AGREEMENT WHICH MAY BE ENFORCED BY THE PARTIES."

A few years later, Reinvestment alleged a default in the repayment of the loans and commenced this action against Rauh, Jr., Rauh, Sr., Colleen Rauh,

[1] Save-A-Lot is a Missouri corporation.

360 Greentree Rd., JRMT, and JR Markets for damages in the form of the unpaid accelerated amount due on the two loans. Responding to Reinvestment's complaint, all these defendants asserted counterclaims against Reinvestment and a third-party complaint against Save-A-Lot alleging fraudulent inducement of the loan agreements, common law fraud, and violations of the New Jersey Franchise Practices Act[2]; they also alleged that Reinvestment and Save-A-Lot engaged in a civil conspiracy.

Relying on the arbitration provision in the licensing agreements, Save-A-Lot promptly moved to compel arbitration of the claims asserted against it. The motion judge found the arbitration provisions enforceable and ordered the parties to the licensing agreements – Save-A-Lot, Rauh, Jr., Colleen Rauh, JR Market and JRMT – into arbitration. The judge, however, denied the motion insofar as it sought to compel the arbitration of any other claims. Those other claims – those of Rauh, Sr. and Greentree against Save-A-Lot – were severed from the arbitrable claims and stayed pending the completion of arbitration. Reinvestment's claims against all the Rauhs and their companies on the loan agreements were not stayed. The judge later denied a reconsideration motion

[2] N.J.S.A. 56:10-1 to -31.

aimed at the earlier determination that the claims under the Franchise Practices Act were arbitrable.

Because orders granting or denying applications to compel arbitration are appealable as of right, R. 2:2-3(a)(3), defendants appeal despite the lack of finality on any of the pleaded claims. They argue: (1) the orders that compelled arbitration and denied reconsideration "must be vacated because the arbitration provisions relied upon do not comport with the mandates of" Atalese v. U.S. Legal Servs. Grp., L.P., 219 N.J. 430 (2014), and (2) if their first argument is rejected, then the stay of the non-arbitrable claims against Save-A-Lot and Reinvestment was "manifestly unjust and contrary to law."

We find insufficient merit in the first argument to warrant extended discussion in a written opinion. R. 2:11-3(e)(1)(E).

In their first point, defendants argue that arbitration cannot be compelled because the provision does not clearly or unambiguously express a waiver of the right to pursue in court any statutory remedies. In support, they rely on Atalese and other decisions, where our courts considered the sufficiency of arbitration provisions extracted from an employee or consumer. See, e.g., Morgan v. Sanford Brown Institute, 225 N.J. 289, 310 (2016) (consumer contract); Garfinkel v. Morristown Obstetrics & Gynecology Assoc., P.A., 168 N.J. 124,

132-34 (2001) (employment contract); Barr v. Bishop Rosen & Co., 442 N.J. Super. 599, 607 (App. Div. 2015) (employment contract). Atalese itself concerned an arbitration provision in a consumer contract. 219 N.J. at 436. But, here, we are considering the language of an arms-length agreement formulated by sophisticated parties that memorialized a commercial undertaking. Unlike the circumstances usually present in consumer or employment contracts, there is no evidence here of unequal bargaining power. Considering that context, we are satisfied that the mutual agreement to submit "[a]ny controversy, claim or dispute of whatever nature arising between the parties" was entitled to enforcement despite the lack of any specific mention of the parties' statutory rights.

But defendant's second argument – that the stay of defendants' non-arbitrable claims was inequitable – has merit. We vacate the stay order because the judge did not provide a clear rationale for staying some claims while allowing others to proceed.

Justice Cardozo explained in Landis v. N. Am. Co., 299 U.S. 248, 254 (1936) that "the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." Our courts have taken

the same general approach when considering whether separate or separable civil proceedings should be stayed or allowed to proceed. See State v. Kobrin Securities, Inc., 111 N.J. 307, 315 (1988); Procopio v. Gov. Emp. Ins. Co., 433 N.J. Super. 377, 380-82 (App. Div. 2013); Taddei v. State Farm Indem. Co., 401 N.J. Super. 449, 465-66 (App. Div. 2008).

Cases, of course, vary, and the test for such a ruling can only be stated in general terms. We leave it to judges to use their discretion to determine whether the interest of justice and efficient and fair management of a bundle of claims warrant the entry of a stay, a denial of a stay, or a little of both. To determine whether that discretion was abused or soundly exercised, we require a clear understanding of the parties' specific claims and a sound explanation for why the judge believed it was appropriate to allow the arbitration to precede the litigation of what seem to be similar if not identical non-arbitrable claims. Indeed, considering that the judge recognized in his brief decision that all defendants are represented by the same attorneys, and that the discovery those attorneys will receive in the arbitration will also benefit those defendants not in arbitration, it is not clear why he only stayed part of the bundle of claims. That is, if there is, as the judge believed, an overlap of discovery in both the arbitrable

and non-arbitrable matters, why shouldn't they both proceed simultaneously, leaving for later the question as to which should be adjudicated first?

A more nuanced question unanswered by the judge's decision concerns the stay of defendants' claim that both Save-A-Lot and Reinvestment engaged in a civil conspiracy to cause them injury. It seems, at least on the surface, inequitable to allow Reinvestment to go forward with its claims against defendants on the loan agreements while barring defendants from pursuing their tort claims against Reinvestment.

In short, while there may be a sound reason for allowing some but not all the claims to proceed simultaneously, the judge did not provide it. In the final analysis, the decision to grant or deny a stay of civil proceedings is a matter left to the trial judge's discretion, but the exercise of that discretion must be informed by considerations of judicial economy, fairness to all the parties, and the interests of justice. Procopio, 433 N.J. Super. at 380-82. In his brief, conclusory decision, the judge did not explain how these factors support the stay of some claims but not others. While appellate courts normally defer to an exercise of discretion, it cannot do so when the trial judge has not explained how his discretion was exercised. See Kornbleuth v. Westover, 241 N.J. 289, 302 (2020).

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Those parts of the orders under review that compelled arbitration of the claims of Rauh, Jr., Colleen Rauh, JRMT, and JR Markets, against Save-A-Lot are affirmed. Those parts of the orders that stayed some of the claims but not others are vacated and the matter is remanded for the trial judge's further consideration in conformity with this opinion.

Affirmed in part, vacated in part, and remanded. We do not retain jurisdiction.