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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0470-21**

ROBERT J. TRIFFIN,

Plaintiff-Appellant,

v.

**PROGRESSIVE PIPELINE
MANAGEMENT LLC, and
CHRISTOPHER R. HEIN,**

Defendants-Respondents,

and

AYN UNDERWOOD,

Defendant.

Argued March 14, 2023 – Decided July 5, 2023

Before Judges Sumners and Susswein.

On appeal from the Superior Court of New Jersey, Law
Division, Gloucester County, Docket No.
DC-004811-20.

Robert J. Triffin, appellant, argued the cause pro se.

Erica S. Mekles argued the cause for respondents (Bowman and Brooke LLP, attorneys; Christopher R. Carton and Erica S. Mekles, on the brief).

PRE CURIAM

Plaintiff Robert Triffin appeals Special Civil Part's orders of: (1) April 22, 2021 denying his cross-motion for summary judgment and granting defendant Progressive Pipeline Management LLC's cross-motion for summary judgment; (2) August 4, 2021 sanctioning him \$12,155.50 in attorneys' fees and costs for frivolous litigation per Rule 1:4-8 and N.J.S.A. 2A:15-59-1; and (3) August 25, 2021 sanctioning him \$3,010 in additional attorneys' fees and costs. We affirm.

I

On April 15, 2020, Progressive issued a \$988.25 check payable to Ayn Underwood, a former employee, drawn on its account at Investors Bank. Underwood electronically deposited the check on April 17, resulting in payment to him.

On April 21, Underwood cashed the same check with Paramount Financial, Inc., a cash checking agency. Paramount was unaware the check was already electronically deposited and paid to Underwood.

On April 22, Investors Bank rejected the check because it had already accepted it earlier in the week through Underwood's electronic deposit and paid him \$988.25 from Progressive's account.

Plaintiff bought the rights to the dishonored check and sued Progressive, Christopher R. Hein, Progressive's Chief Financial Officer, and Underwood, for \$1,575.17 plus costs of \$81, alleging violations of N.J.S.A. 12:3-414, the Federal Check Clearing Act, 12 U.S.C. §§ 5001-5018, and 12 U.S.C. § 5001. Underwood was not served and did not file an answer to the lawsuit. Thus, references to defendants hereinafter applies only to Progressive and Hein.

Plaintiff later filed a summary judgment motion, claiming acceptance of the unendorsed check invalidated the transaction under N.J.S.A. 12A:3-201(b), and defendants were liable for payment under N.J.S.A. 12A:3-203(c). In response, defendants' counsel sent plaintiff a safe harbor frivolous litigation letter advising him that if the summary judgment motion was not withdrawn and the complaint was not dismissed with prejudice, they would seek sanctions against him. Plaintiff did neither. Defendants promptly opposed plaintiff's motion and submitted a cross-motion for summary judgment, claiming N.J.S.A. 12A:3-414(c) removes "a drawer of a draft of any liability once the draft is accepted by a bank."

In an April 22, 2021 order, together with a written statement of reasons, the trial court denied plaintiff's summary judgment motion and granted defendant's cross-motion for summary judgment. About a week later, Triffin filed a notice of partial dismissal requesting that all his claims against Hein and Underwood be dismissed with prejudice.

II

Plaintiff argues the trial court erred in granting summary judgment to Progressive. He maintains Progressive is liable for Investors Bank's payment of the dishonored check because payment without Underwood's endorsement as the check's payee is a violation of 2 U.S.C. § 5003(b)(1)-(2), as codified by New Jersey law, N.J.S.A. 12A:3-203(c). Plaintiff also contends an electronic deposit is not included in the statute and thus is not applicable to this case. Additionally, Plaintiff questions whether the check was "accepted" under federal statute, 12 U.S.C. § 5002.

Because this appeal reflects the same issues we addressed in Triffin v. SHS Group, LLC, 466 N.J. Super. 460, 467 (App. Div. 2021) (certif. den. 253 N.J. 191 (2022)), plaintiff's arguments are without sufficient merit to warrant extensive discussion in a written opinion. R. 2:11-3(e)(1)(E). We add the following brief comments regarding the precedential impact of SHS Group.

We recognized in SHS Group that pursuant to New Jersey's version of the Uniform Commercial Code:

[A] "check" is a draft, N.J.S.A. 12A:3-104(f); a "drawer" is the person who signs a draft ordering payment from [his, her, or its] account (i.e., the person[or entity] who wrote the check), N.J.S.A. 12A:3-103(a)(3); and a "depository bank" is "the first bank to take an item," such as a draft. N.J.S.A. 12A:4-105.

[Id. at 467.]

The drawer of a check, or draft, is discharged of any obligation in an enforcement action when it establishes acceptance by a depository bank. Id. at 469-470. In reading N.J.S.A. 12A:3-414(c)¹ in conjunction with N.J.S.A. 12A:4-205.3 and drawing on the official comments to New Jersey's version of the Code, we found a customer's indorsement of an electronically deposited check is "immaterial" to acceptance by the depository bank, which may supply the missing indorsement of its customers pursuant to N.J.S.A. 12A:4-205(b). Id. at 469. Thus, where the drawer proves acceptance by a bank, a previous payment defense to bar subsequent holders in due course seeking enforcement against the drawer is established. Ibid.

¹ N.J.S.A. 12A:3-414(c) provides: "If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained."

The undisputed record here demonstrates that when Underwood electronically deposited the draft, the money was deducted from the drawer Progressive's account at the payor bank,² Investors Bank. The draft was therefore accepted at the depository bank as contemplated by N.J.S.A. 12A:4-205, relieving Progressive of the obligation towards the check pursuant to N.J.S.A. 12A:3-414(c). Based on SHS Group, defendants had no obligation to honor the dishonored check plaintiff purchased from Paramount. Accordingly, summary judgment was properly granted to defendants.³

III

Plaintiff argues the trial court abused its discretion when it granted defendants' motion for frivolous litigation sanctions, because he had a "good faith belief" that under the Supremacy Clause, 12 U.S.C. § 5003(b)(1)-(2) supersedes New Jersey law, making the SHS decision "legally and factually un[]substantiated." We disagree.

² A "payor bank" is "the drawee of the draft." N.J.S.A. 12A:4-105(c).

³ The trial court's order and statement of reasons were issued on April 22, 2021. SHS Group was issued on March 3, 2021. 466 N.J. Super. at 460. Neither plaintiff, who was the plaintiff in SHS Group, nor defendants brought that ruling to the court's attention in appearances before the court on March 25, 2021, when the summary judgment motions were pending. The court did not mention SHS Group in its ruling.

Our review of a trial court's imposition of sanctions is reviewed for abuse of discretion. Masone v. Levine, 382 N.J. Super. 181, 193 (App. Div. 2005) (citing R. 1:4-8). An abuse of discretion arises when a decision is "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002) (quoting Achacoso-Sanchez v. Immigr. & Naturalization Servs., 779 F.2d 1260, 1265 (7th Cir. 1985)).

A court has the inherent authority to sanction a party for behavior that is vexatious, burdensome, and harassing. See Brundage v. Est. of Carambio, 195 N.J. 575, 610 (2008) (recognizing the inherent power of courts to sanction parties as means of enforcing ordinary rules of practice); Abtrax Pharm., Inc. v. Elkins-Sinn, Inc., 139 N.J. 499, 513 (1995) (recognizing the inherent power to punish for discovery violations). The frivolous litigation statute permits a court to award reasonable counsel fees and litigation costs to a prevailing party in a civil action if the court determines that the complaint, counterclaim, cross-claim, or defense is frivolous. N.J.S.A. 2A:15-59.1. A claim is considered frivolous when: "no rational argument can be advanced in its support"; "it is not supported by any credible evidence"; "a reasonable person could not have expected its success"; or "it is completely untenable." Belfer v. Merling, 322 N.J. Super.

124, 144 (App. Div. 1999). "[F]alse allegations of fact [will] not justify [an] award . . . unless they are made in bad faith, 'for the purpose of harassment, delay or malicious injury.'" McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546, 561 (1993) (quoting N.J.S.A. 2A:15-59.1(b)(1)). An honest attempt to pursue a perceived, though ill-founded, claim is not considered frivolous. Id. at 563. The burden of proving bad faith is on the party seeking attorneys' fees and costs. Id. at 559.

Rule 1:4-8 supplements N.J.S.A. 2A:15-59.1. A Rule 1:4-8 sanction is "specifically designed to deter the filing or pursuit of frivolous litigation." LoBiondo v. Schwartz, 199 N.J. 62, 98 (2009). "For purposes of imposing sanctions under Rule 1:4-8, an assertion is deemed 'frivolous' when 'no rational argument can be advanced in its support, or it is not supported by any credible evidence, or it is completely untenable.'" United Hearts, L.L.C. v. Zahabian, 407 N.J. Super. 379, 389 (App. Div. 2009) (quoting First Atl. Fed. Credit Union v. Perez, 391 N.J. Super. 419, 432 (App. Div. 2007)). "Where a party has [a] reasonable and good faith belief in the merit of the cause, attorney's fees will not be awarded." Ibid. (alteration in original).

In awarding attorneys' fees and costs in its August 4, 2021 order, as well as supplementing the award in its August 24, 2021 order, the court deemed

plaintiff's filing frivolous because he failed to provide any federal or state law support for his claim that Progressive's check to Underwood had not been accepted by the electronic deposit. Finding the check was electronically deposited and previously paid by Investors Bank, the court determined it was not a substitute check as defined under 12 U.S.C. § 5002⁴ and was properly rejected by Investors Bank when it was presented because it had already been electronically cashed. The court determined plaintiff failed to provide "a substantive defense in fact or law countering the 'safe harbor' letter" sent by defendants' counsel. By not heeding the safe harbor letter request to dismiss his complaint, the court sanctioned plaintiff per N.J.S.A. 2A:15-59.1 and Rule 1:4-8.

We cannot conclude the trial court abused its discretion in sanctioning plaintiff for frivolous litigation. Even before this court's ruling in SHS Group,

⁴ 12 U.S.C. § 5002 provides:

The term "substitute check" means a paper reproduction of the original check that (a) contains an image of the front or back of the original check; (b) bears a [magnetic ink character recognition] line containing all of the information; (c) conforms, in paper stock, dimension, and otherwise, with generally applicable industry standards for substitute checks; and (d) is suitable for automated processing in the same manner as the original check.

which as noted confirms the trial court's summary judgment order, there was no federal or state law support for plaintiff's contention that the electronic deposit and cashing of a check was not a legally binding negotiation of the instrument to the detriment of subsequent attempts. Defendants complied with Rule 1:4-8(b)(1) and timely notified plaintiff that his complaint was frivolous and requested that he withdraw his summary judgment motion.

To the extent we have not specifically address any remaining arguments raised by plaintiff, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION