SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0925-21

CAWTHER QASIM,

Plaintiff-Appellant,

v.

FULTON BANK OF NEW JERSEY,

Defendant-Respondent.

Submitted January 31, 2023 – Decided February 13, 2023

Before Judges Sumners and Geiger.

On appeal from the Superior Court of New Jersey, Chancery Division, Middlesex County, Docket No. C-000152-19.

Steven D. Janel, attorney for appellant.

Dilworth Paxson, LLP, attorneys for respondent (Benjamin W. Spang, on the brief).

PER CURIAM

In this case involving the enforceability of a promissory note secured by a mortgage, plaintiff Cawther Qasim appeals from: (1) an order denying Qasim's motion for leave to amend the complaint; (2) an order granting summary judgment to defendant Fulton Bank of New Jersey on its counterclaim for breach of contract; and (3) a final judgment in favor of Fulton Bank in the amount of $246,985.25, inclusive of attorney's fees and costs, and directing the Superior Court Trust Fund to pay all funds on deposit to Fulton Bank to be applied against the judgment. We are unpersuaded by the arguments advanced by Qasim and affirm the orders and judgment that she challenges.

In July 2009, Qasim purchased property on Linda Lane in Edison Township (the property). She remained its sole owner. In 2013, Qasim's husband, Wajdi Zein El Dean,[1] sought to purchase a gasoline service station.

In 2013, Qasim and El Dean applied to Fulton Bank for a home equity loan and mortgage to fund the purchase of the gas station. Although the initial loan application listed Qasim and El Dean as the borrowers, El Dean did not qualify as a borrower for the loan after disclosing he had recently immigrated to the United States, owned no real property, did not have sufficient established credit, and had not filed any tax returns in the United States. After El Dean was

[1] At various places in the record, El Dean's name is spelled "El Dein."

removed from the loan application, Fulton Bank approved the revised loan application with Qasim as the sole borrower. The Note was to be secured by a mortgage on the property (Mortgage) in the amount of $260,000.

On July 9, 2013, Qasim executed and delivered a promissory note (Note) in the principal amount of $260,000 as the sole borrower. The Note required Qasim to remit 180 monthly payments of $1,924.14 each, commencing August 23, 2013. On the same day, Qasim and El Dean executed and delivered the Mortgage to Fulton Bank. Fulton Bank deposited the loan proceeds into Qasim's joint bank account with El Dean on July 15, 2013.

Qasim made timely monthly payments for almost five years until February 2018, when she defaulted on the payments due on the Note and Mortgage. Her last payment was on September 24, 2018.

On September 24, 2019, more than six years after the loan documents were executed and the loan closed, Qasim filed a verified complaint and order to show cause seeking preliminary restraints and the discharge of the Mortgage. That same day, Qasim sold the property to a third party. The title company retained $225,000 in escrow pending the outcome of this litigation.

On October 29, 2019, the trial court denied Qasim's application to discharge the Mortgage and directed that the escrowed $225,000 be deposited with the Superior Court Trust Fund, to be held pending further court order.

Despite the terms of the loan documents, Qasim alleged there was a separate oral understanding that she was only acting as a limited co-signor for her husband (who was not even listed on the Note as a borrower) and that she would be relieved of all liability on the Note after six months. Qasim also claimed that the Mortgage she gave to Fulton Bank to secure the Note was to be discharged after six months, even though the Mortgage was the only collateral securing the Note.

Qasim and El Dean were members of 7514 Tonnelle Avenue LLC. In a separate transaction, Fulton Bank issued a $100,000 line of credit to the LLC, secured by a second mortgage on the property executed and delivered by Qasim and El Dean on March 25, 2015. The LLC's loan was paid in full in December 2018, and Fulton Bank issued a discharge of the second mortgage. The LLC was dissolved prior to the initiation of this case.

Fulton Bank filed an answer and counterclaim for breach of contract and unjust enrichment, seeking to recover the amount due on the Note and for release of the escrowed funds. Discovery ensued.

In her answers to her requests for admissions, Qasim admitted the following material facts. Qasim signed the Note as the borrower, but El Dean did not. The Note does not state that Qasim was acting as a limited co-signor for her husband. Qasim and El Dean signed the Mortgage. Fulton Bank deposited $260,000 into their joint bank account on July 15, 2013. Qasim does not claim that she made payments that were not credited to the loan account.

Qasim further admitted that the Note does not state that anyone else is responsible for repaying the amounts due under the Note. The Note does not state that Qasim would be relieved of liability after six months. The Mortgage does not state that it would be discharged after six months.

On March 16, 2021, Qasim moved to amend the complaint to add three additional counts alleging fraud, equitable fraud, and consumer fraud. Trial was scheduled for June 23, 2021. Fulton Bank opposed the motion, arguing that allowing the amendment so late in the litigation would prejudice its rights as discovery had "effectively concluded" and it "would be unable to conduct discovery with regards to the new claims." Fulton Bank further argued the new claims were futile, lacked merit, and failed to state a claim upon which relief can be granted because they were not pled with sufficient specificity and were barred by the statute of limitations. Fulton Bank contended Qasim, who was an

attorney, should have been aware of the discrepancies between the alleged representations and the terms of the loan documents by the loan closing on July 9, 2013, yet waited until September 2019, more than six years after the cause of action accrued.

On April 16, 2021, the trial court issued an order denying Qasim's motion to amend. In an accompanying comprehensive written statement of reasons, the court found that Qasim's "allegations of fraud, equitable fraud, and consumer fraud [were] not pled with specificity as required by Rule 4:5-8," noting she "fail[ed] to plead how she suffered any damages due to the alleged misrepresentations as she agreed to the terms of the Note and Mortgage and from which she received the proceeds of the loan."

The court also found Qasim's new claims were "clearly barred by the statute of limitations," reasoning:

> [Qasim] alleges that the misrepresentations were made in June/July 2013 and was aware or should have been aware that the alleged misrepresentations were false at that time because they are contradicted by the very terms of the documents. See Dreier Co. v. Unitronix Corp., 218 N.J. Super. 260, 274 (App. Div. 1986) (the limitation period for fraud begins to run upon the discovery of the fraud, or "the time when, by reasonable diligence, it could have been discovered"). [Qasim] did not file the original complaint until September 2019 or more than six years after the cause of action accrued. Accordingly, the [c]ourt finds that

> the fraud, equitable fraud and consumer fraud claims are all barred by the statute of limitations and the proposed amendment is thus futile.

The court further found that granting leave to amend the complaint "would unnecessarily delay the trial" and adversely impact Fulton Bank, noting:

> Fulton Bank would be prejudiced by such amendments if they are allowed this late as discovery has effectively concluded. Fulton Bank would be unable to conduct discovery into the new causes of action asserted by [Qasim]. See Bldg. Materials Corp. of Am. [v. Allstate Ins. Co., 424 N.J. Super. 448, 485 (App. Div. 2012)] (upholding denial of amendment where litigant offered no real explanation as to the delay and where adversary would suffer prejudice by inability to conduct discovery or a delay in the trial date). Here all the facts contained in the proposed [a]mended [c]omplaint were known to [Qasim] at the time the original [c]omplaint was filed. Moreover, in the present matter the [c]ourt finds that [Qasim] has not presented any satisfactory explanation as to why the new causes of actions were not pled in the original [c]omplaint.

Fulton Bank moved for summary judgment. Qasim opposed the motion, arguing there was a genuine issue of material fact as to whether the omission from the loan documents regarding the alleged six-month period of enforceability constituted a mutual mistake and that parol evidence otherwise barred by an integration clause can be considered if the written agreement was entered into by mutual mistake. The court summarized Qasim's argument:

> [Qasim] and Aloke Chakravarti, [d]efendant Fulton Bank's Branch Manager of their Edison location, reached an agreement whereby she would be liable on the loan and mortgage for six months, and her home would be encumbered for the same time period, contingent upon timely installment payments on the loan being made. [Qasim] argues that the record before the [c]ourt supports the finding of a meeting of the minds between [Qasim], El Dean and Mr. Chakravarti consum[m]ating the agreement for loan and mortgage. [Qasim] argues that the April 5, 2018 correspondence of Mr. Chakravarti, as an "Authorized Signatory" of [d]efendant Fulton Bank supports and confirms an initial agreement between the [p]arties to the loan transaction as containing a six month liability limitation for [Qasim] and her property, respectively.
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> [Qasim] argues that she has established a genuine issue of material fact as to whether [Qasim] and [d]efendant Fulton Bank, through Mr. Chakravarti, had a "meeting of the minds" to conditionally limit her liability and the encumbrance to six months subject to establishing a compliant payment history, and that the omission from such terms in the transactional documents was a mistake of both [p]arties.

On May 26, 2021, the trial court issued an order and fifteen-page statement of reasons granting Fulton Bank summary judgment dismissing each count of plaintiff's complaint and judgment on its counterclaim in the amount of $205,801.10 plus interest accruing after April 1, 2021, attorney's fees, and costs. After recounting the undisputed facts of the loan application, transaction, and documents, which we need not repeat, the court found:

The Mortgage granted Fulton [Bank] a mortgage lien on real property owned by [Qasim] . . . in the Township of Edison . . . . The Mortgage provides in pertinent part: . . . "When Lender has been paid all amounts due under the Note and under this Security Instrument, Lender will discharge this Security Instrument by delivering a certificate stating that this Security Instrument has been satisfied." The Mortgage further provides: "What is written in this Security Instrument and in the Related Documents is my entire agreement with Lender concerning the matters covered by this Security Instrument. To be effective, any change or amendment to this Security Instrument must be in writing and must be signed by whoever will be bound or obligated by the change or amendment." . . .

Payments were made towards the Note and Mortgage with the last payment being made on or about September 24, 2018. No further payments have been made on the Note or Mortgage after September 24, 2018. As of April 1, 2021, the amount due under the Note and Mortgage is $205,801.10, including late fees, interest, and other fees. Pursuant to the terms of the Note and Mortgage, Fulton Bank is also entitled to recover attorney fees and costs incurred in enforcing its rights under the Note and Mortgage.

[Qasim's] allegations and defenses reference her husband's business which is a limited liability company known as 7514 Tonnelle Avenue LLC. The business . . . was formed on May 22, 2014. The members of [the LLC] were [Qasim] and her husband.

On or about March 25, 2015, [Qasim] and husband, as members of [the LLC], granted a second mortgage on the same Edison property in exchange for a line of credit in the amount of $100,000. On or about December 13, 2018, [the LLC] repaid all amounts due

> on the LLC Loan and as a result, Fulton Bank issued a satisfaction of the LLC Mortgage . . . . On or about February 18, 2019, [the LLC] was dissolved.

The court noted that to recover under the Note, Fulton Bank "must only demonstrate the existence of the Note and the lack of payment." The court concluded Qasim "ha[d] not established a factual, legal or equitable basis sufficient to defeat [Fulton Bank's] right to judgment." "Despite the alleged oral representations, the terms of the Note and Mortgage which [Qasim] admits to signing are clear and unambiguous. [Qasim] agreed to repay the full amount due under the Note and [Qasim] agreed that her obligations to do so would be secured by the Mortgage." "There is no dispute that [Qasim] signed the Note and Mortgage, thereby agreeing to their terms, and also failed to repay the amounts due."

The court further found:

> In order for [Qasim] to establish a mutual mistake and that reformation is appropriate, [Qasim] must establish by clear and convincing proof that both Fulton Bank and [Qasim] reached an agreement in accordance with the terms that [Qasim] claims, namely that she would be released after six months, and not the express terms of the Note and Mortgage. See St. Pius X House of Retreats, Salvatorian Fathers v. Diocese of Camden, 88 N.J. 571, 580-81(1982) (requiring clear and convincing proof of mutual mistake before a contract can be reformed). "For a court to grant reformation there must be 'clear and convincing proof' that the contract in its reformed, and not original, form is the one that the

contracting parties understood and meant it to be." Cent, State Bank v. Hudik-Ross Co., 164 N.J. Super. 317, 323 [(App.Div.1978)]. The [c]ourt finds that [Qasim] has not met this burden as it is clear Fulton Bank did not agree to the terms as alleged by [Qasim].

In certifications submitted by [Qasim], she suggests that her husband should have been the actual borrower and that the real collateral for the loan should have been the gas station that [Qasim] was purchasing. This position is also contradicted by the documentary evidence and facts. [Qasim] admits that her husband was on the initial application for a loan but also admits that he was removed from the loan application prior to the loan being approved. . . . If [Qasim's] husband was removed from the loan application, he could not be the borrower on the loan.

Here the [c]ourt finds that the self-serving certifications of [Qasim] and her husband fail to establish by clear and convincing evidence that there was any mutual mistake on the part of the parties. Indeed, the [c]ourt finds that a rational consideration of [Qasim's] arguments fail to demonstrate any factual basis to find mutual mistake. [Qasim] has her version of events established by her certification as well as that of her husband. She asserts that the letter of Aloke Chakravarti corroborates her version, but it does not do so. The letter on its face is deficient in the attempt to create a material issue of fact as it does not confirm the version suggested by [Qasim]. Indeed, the letter was created five years after the loan transaction which makes inaccurate statements, as pointed out by [d]efendant.

The [c]ourt agrees and finds that the letter is completely silent as to [Qasim's] liability under the Note because it only references property and assets

> belonging to [Qasim]. The [c]ourt finds that it does not say that [Qasim] is not obligated to repay the loan or that the debt has been paid in full. As such, it has no impact whatsoever on [Qasim's] liability under the Note.
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> Moreover, the Court finds that the letter is factually inaccurate because the Mortgage was still of record (and had not been discharged) and there is no document related to this loan which grants any security interest in any assets owned by 7514 Tonnelle Avenue LLC. Defendant observes that as of the date of the Note and Mortgage were executed, [the LLC] did not even exist. The letter is also factually inaccurate because as of the date it was written, the LLC Mortgage, which did secure a loan to [the LLC], was also of record and therefore there was "liability" in the property owned by [Qasim] which was owed to Fulton Bank separate from the Mortgage.

The court found the alleged oral representations, which directly contradicted the clear and unambiguous terms of the integrated loan documents, were barred from consideration by the parol evidence rule and the statute of frauds.

The court directed Fulton Bank to submit a certification of attorney's fees and costs pursuant to Rule 4:42-9. Fulton Bank submitted certifications Benjamin W. Spang, in support of its application for an award of $39,466 in attorney's fees and $581.29 in costs. Qasim opposed the application.

On October 18, 2021, the court entered final judgment in favor of Fulton Bank in the amount of $246,985.25, comprised of principal and interest due on the note through May 26, 2021, attorney's fees of $39,466, and costs of $581.29.

In its accompanying written statement of reasons, the court provided a fulsome analysis of the Fulton Bank's fee application, initially finding the bank was entitled to recover attorney's fees and costs under the terms of the Note and Mortgage. The court considered the hourly rates charged and examined the hours billed during the various stages of the litigation, and the monthly billing invoices that detailed each time entry. Applying the factors enumerated in RPC 1.5(a), the court found attorney's fees charged were reasonable considering "the legal issues presented and the lengthy nature of this case, having persisted for three years." The court also considered the amounts involved and that Fulton Bank prevailed on its claims and defenses. The court further considered the experience of the attorneys rendering the services and found the hourly rates charged were reasonable. The court concluded the hours expended and fees charged "were necessary and are reasonable" and awarded the amounts sought.

The court rejected Qasim's argument that the fee limitation imposed by Rule 4:42-9(a)(4) applied to Fulton Bank's counterclaim, explaining "this case

has always turned on the Note rather than any issue of mortgage foreclosure," "thus, the limitations described in Rule 4:42-9(a)(4) do not apply."

On January 7, 2022, the court granted Fulton Bank's application to withdraw the funds on deposit with the Superior Court Trust Fund pursuant to Rule 4:57-2 and directed the Superior Trust Fund to turn over the funds on deposit with the court to counsel for Fulton Bank, which were to be applied against the judgment.

On appeal, Qasim argues the court erred or abused its discretion in denying leave to amend the complaint, contending the proposed amendments set forth prima facie causes of action for fraud in the inducement and equitable fraud, and those claims were not barred by the statute of limitations.

Next, Qasim argues the court erred by granting summary judgment because: (a) a genuine issue of material fact existed on the issue of mutual mistake; and (b) in determining the statute of frauds precluded recission or reformation of the loan documents where there was mutual mistake. As to the final judgment, Qasim argues the court erred or abused its discretion in awarding Fulton bank attorney's fees in the amount of $39,466.

We affirm the orders and judgment on appeal substantially for the reasons expressed in Judge Vincent LeBlons's cogent and comprehensive statements of reasons. We add the following comments.

The decision whether to grant leave to file an amended complaint is "left to the sound discretion of the trial court in light of the factual situation existing at the time each motion is made." Fisher v. Yates, 270 N.J. Super. 458, 467 (App. Div. 1994). We discern no abuse of discretion. Denial of a motion to amend a complaint is appropriate if the amendment would prejudice the non-moving party or the new causes of action asserted in the amendment are futile. See Notte v. Merchs. Mut. Ins. Grp., 185 N.J. 490, 501 (2006). Trial "courts are free to refuse leave to amend when the newly asserted claim is not sustainable as a matter of law." Ibid. (quoting Interchange State Bank v. Rinaldi, 303 N.J. Super. 239, 256-57 (App. Div. 1997)). The trial court cogently explained that granting the motion would prejudice Fulton Bank and the newly asserted causes of action for fraud, equitable fraud, and consumer fraud were time-barred and therefore futile. The court's findings were supported by the record and its legal analysis was sound.

As to the motion for summary judgment, we note that Qasim was trained in the law and an attorney licensed in New Jersey. She acknowledged signing

the loan documents, which she could readily understand. Qasim is the sole borrower listed on the promissory note. She is not listed as co-signer, much less a limited co-signer, or guarantor. Notably absent from the Note is any language indicating anyone other than Qasim is obligated for repaying the loan or that she would be relieved of any liability on the Note after six months. Also absent is any subsequent signed written agreement modifying the Note.

Similarly, Qasim and her husband, El Dean, executed the Mortgage as the mortgagors. Notably absent is any language in the Mortgage or the existence of any signed written modification agreement indicating that the mortgage would be discharged after six months.

Qasim remitted timely monthly loan payments for almost five years. She claims she was not obligated to do so after only six months yet waited years to file this case and even longer to assert fer fraud-based claims. Her position strains credulity.

Qasim relies entirely on alleged oral statements by bank officials and a single inaccurate letter sent by a bank representative years after the closing. Judge LeBlon found the alleged oral representations by bank officials, which contradicted by the clear and unambiguous terms of the fully integrated loan documents, were barred from consideration by the parol evidence rule and the

statute of frauds. We agree. Qasim is bound by the terms of the Note and Mortgage. Judge Leblon correctly enforced those terms by granting summary judgment and final judgment in favor of Fulton Bank.

We review de novo the grant of summary judgment to defendant applying the same standard as the motion judge. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). That standard requires us to "determine whether 'the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.'" Ibid. (quoting R. 4:46-2(c)). Applying these principles, we discern no reason to disturb the trial court's order granting summary judgment.

Qasim's challenge to the final judgment is limited to her attack of the order granting summary judgment to Fulton Bank, which we have already addressed, and the attorney's fee awarded to the bank. Qasim contends the trial court erred or abused its discretion in awarding $39,466 in attorney's fees to Fulton Bank. We are unpersuaded. Although New Jersey generally applies the American rule regarding the award of attorney's fees, "a prevailing party can recover those fees if they are expressly provided for by statute, court rule, or contract." Packard-

Bamberger & Co., Inc. v. Collier, 167 N.J. 427, 440 (2001). Fulton Bank was the prevailing party. The Note and Mortgage contain attorney fee provisions under which Qasim agreed to pay reasonable attorney's fees and costs incurred by Fulton Bank in enforcing the Note or Mortgage and protecting its interests thereunder and to collect the Note. Thus, Fulton Bank was eligible for an award of reasonable attorney's fees and costs.

In determining the amount of the award, the trial court must "calculate the 'lodestar,' which is that number of hours reasonably expended by the successful party's counsel in the litigation, 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)). In turn, Rule of Professional Conduct 1.5(a) mandates that "[a] lawyer's fees shall be reasonable" and requires courts to consider eight enumerated factors. The court must also consider the degree of success of the prevailing party, Furst, 182 N.J. at 23, and the reasonableness of the total fee requested compared to the amount recovered, Litton Indus., 200 N.J. at 387-88. Here, Fulton Bank prevailed at each step of the litigation and obtained a judgment for the full amount of its claim, which was largely paid by the amount recovered from the Superior Court Trust Fund.

We review the award of attorney's fees under an abuse of discretion standard. Id. at 388. An abuse of discretion occurs where the trial court's decision is "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Ripp v. Cnty. of Hudson, 472 N.J. Super. 600, 610-11 (App. Div. 2022) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)). Attorney's fees determinations will be disturbed "only on the rarest of occasions, and then only because of a clear abuse of discretion." Litton Indus., 200 N.J. at 386 (quoting Packard-Bamberger, 167 N.J. at 444). Applying these principles, we discern no abuse of discretion in awarding $39,466 in attorney fees.

Qasim's remaining arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.