SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1275-21

SHERMAN AVENUE CONDOMINIUM ASSOCIATION, INC., a New Jersey nonprofit corporation,

Plaintiff-Respondent,

v.

FRANCISCO MEJIA and MICHAEL A. MEJIA,

Defendants/Third-Party Plaintiffs-Appellants,

v.

MELVIN STEINHARDT and SHERMAN AVENUE CONDOMINIUM ASSOCIATION, INC.,

Third-Party Defendants-Respondents.

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Submitted on February 1, 2023 – Decided May 23, 2023

Before Judges Mayer and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Docket Nos. L-1100-19 and L-1101-19.

Hugo Villalobos, attorney for appellants.

Becker & Poliakoff, LLP, attorneys for respondents (Vincenzo M. Mogavero, of counsel and on the brief).

PER CURIAM

Defendants/third-party plaintiffs Francisco Mejia and Michael Mejia[1] appeal from five Law Division orders: a November 19, 2021 order granting summary judgment in favor of plaintiff/third-party defendant Sherman Avenue Condominium Association, Inc. (SACA), and dismissing with prejudice the Mejias' counterclaims; a July 23, 2021 order denying the Mejias' motion to dismiss SACA's complaint, compel SACA and third party defendant Melvin Steinhardt[2] to provide discovery responses and produce Steinhardt for

[1] Francisco and Michael are father and son and share the same last name. We refer to the parties by their first names to avoid any confusion. No disrespect is intended.

[2] In April 2019, Steinhardt, the sole member of 962 Sherman Ave, LLC, filed a separate complaint in federal court, 962 Sherman Avenue, LLC v. Mejia, Docket No. 2:19-cv-09208, seeking damages for a fire that occurred on March 12, 2015, in Unit A-1 located at SACA, allegedly caused by Francisco's negligence. Steinhardt is also the President of SACA.

deposition; suppress SACA's and Steinhardt's answers for failure to provide discovery; a November 18, 2020 order denying the Mejias' motion to dismiss SACA's complaint based on the entire controversy doctrine; and a October 16, 2020 order granting SACA's motion to consolidate parallel complaints. We affirm.

I.

We recite the salient facts from the motion records. SACA, a residential condominium association responsible for the operation and management of a nine-unit condominium development in Elizabeth, was established in 1988 by the recording of the Master Deed and Bylaws in the Union County Clerk's Office under the Condominium Act (Act), N.J.S.A. 46:8B-1 to -38. Francisco is the record owner of two units, A-1 and C-1, and the record owner of another unit with Michael,[3] B-1.

The condominium development is governed by the Master Deed and Bylaws. Under §5 of the Master Deed, SACA is authorized to assess, levy, and collect from each unit owner the "proportionate part of the expenses of maintenance, repair, replacement, administration and operation of the common

[3] In the Mejias' merits brief, Michael contends that he is not the record owner of the unit; however, no proofs were submitted in support of his contention.

elements" based on the owners' undivided ownership interest in the common elements of the entire condominium. Under §20 of the Master Deed, SACA is authorized to pursue claims against a unit owner for unpaid assessments.

The Bylaws similarly delegated authority to the Board of Trustees (Board) to access and collect common expenses and special assessments from each unit owner. Article IV, §2(u) authorized SACA to assess and collect special assessments limited to one or more units as authorized by the Master Deed, Bylaws, or the Act.

Article VI, §4(A), expressly provided that "[a]ll Unit Owners are obligated to pay the "Common Expenses" assessed by the Board under the Bylaws.

Likewise, under Article VI, §5, the unit owners are personally obligated to pay the special assessments when levied by the Board in a manner as may be determined by the Board, provided the contribution of the unit owner is apportioned the same as common expenses.

Further, the Bylaws granted the Board the ability to charge late fees resulting from untimely payments for monthly maintenance fees and special assessments and entitled SACA to reasonable attorney's fees for collection of delinquent payments.

June 2018 Special Assessment

At a June 20, 2018 emergency meeting, the Board voted and authorized a $238,000 special assessment for sprinkler system repair, fire alarm system, exterior lights and related electrical work, and roof replacement. Francisco received a $19,573.12 assessment for Unit A-1 and a $15,024.94 assessment for Unit C-1. Francisco and Michael received a $15,024.94 assessment for Unit B-1. The Mejias received notice the assessments were due by June 30, 2018. Francisco admitted he attended the June 20 meeting and acknowledged receipt of the special assessment notification. Michael did not attend the meeting but was notified of the special assessment by certified mail on the same date.

October 2018 Special Assessment

At an October 3, 2018 emergency meeting, the Board voted and authorized another $144,000 special assessment for a parking lot survey, civil engineering plans, parking lot reconstruction, and Unit A-1 common element repairs. Francisco received a $11,842.56 assessment for Unit A-1 and a $9,090.72 assessment for Unit C-1. Both Mejias were assessed $9,090.72 for Unit B-1. The notice of assessment payments required payment within ten days, or October 13, 2018. Again, Francisco attended the meeting and acknowledged

receipt of the notice of special assessment. Michael did not attend the meeting but was notified by certified mail.

SACA's Complaint against Francisco

On March 21, 2019, SACA filed a complaint against Francisco captioned Sherman Avenue Condominium Association, Inc. v. Mejia, Docket No. L-1100-19 (A-1/C-1 complaint). SACA sought recovery of $32,727.27 in special assessments for Unit A-1 and $25,427.25 for Unit C-1, plus interest and attorney's fees. On June 26, 2019, SACA amended the A-1/C-1 complaint and corrected the assessments due in the aggregate amount of $135,636.73, ($76,561.19 for Unit A-1) and ($59,075.54 for Unit C-1).

Default was entered in November 2019 for Franciso's failure to answer the A-1/C-1 complaint. As of January 2020, Francisco had a total unpaid assessment in the amount of $177,797.95 ($100,264.65 for Unit A-1) and ($77,533.30 for Unit C-1). In March 2020, SACA's request for the entry of default judgment against Francisco was denied. Francisco moved to vacate the entry of default arguing the "multiplicity of suits" was prohibited and acknowledged that there were several shared circumstances with the March 12, 2015 fire in the A-1 unit.

Francisco filed a complaint against SACA captioned Mejia v. Sherman Avenue Condominium Association, Inc., Docket No. L-3433-16 (2016 litigation) which alleged SACA failed to maintain the common elements that caused the fire on March 12, 2015 in the A-1 unit. On July 3, 2018, Francisco released SACA from the claims in the matter The claims were resolved, memorialized in the parties' settlement agreement that released SACA from liability, and precluded Francisco from relying on the agreement in any future proceeding with SACA, except in a motion to enforce the settlement. The matter was dismissed with prejudice on July 18, 2018.

Francisco argued SACA and Steinhardt failed to disclose to him that SACA did not purchase and could not apply proceeds from the insurance mandated to protect the condominium from the March 12, 2015 fire losses. He further argued SACA violated the Act and failed to repair the common elements damaged because of the fire. Thus, the Board authorized "sham" assessments, charges and liens imposed on the Mejias were the responsibility of SACA since they were born out of the March 2015 fire.

On May 22, 2020, Francisco answered the A-1/C-1 complaint and asserted counterclaims and third-party claims as to Steinhardt and SACA as follows: civil conspiracy by Steinhardt and SACA; failure to comply with the Act;

wrongful actions in the form of fraud, self-dealing and unconscionable conduct; wrongful action in "assessments" and recording of other liens, common law fraud, and deceit. Francisco asserted a counterclaim for contribution against SACA and for indemnification against SACA and Steinhardt.

On June 10, 2020, SACA filed a second amended complaint seeking a special assessment payment of $46,954.79 for Unit A-1 and $36,268.74 for Unit C-1, plus common assessment contributions of $4,282.39 for Unit A-1 and $3,356.43 for Unit C-1.

May 17, 2019 Special Assessment

At a third emergency meeting on May 29, 2019, the Board voted and authorized a $533,000 special assessment to address an additional parking lot assessment, sidewalk repair, fire escape demolition and removal, stairway/elevator addition, roof insulation, and drywall. Francisco was assessed $43,833.92 for Unit A-1 and $33,648.29 for Unit C-1. The Mejias were assessed $33,648.29 for Unit B-1 and notified by certified mail that payment was required by June 8, 2019. Francisco attended this Board meeting and acknowledged receipt of the notice of special assessments. Michael did not attend the meeting but notified of the special assessment by certified mail on the same day.

SACA's Complaint against Francisco and Michael

On March 21, 2019, SACA filed a second amended complaint for the balance of the special assessments against Francisco and Michael, as record owners of Unit B-1, captioned Sherman Avenue Condominium Association, Inc. v. Francisco Mejia and Michael A. Mejia, Docket No. L-1101-19 (B-1 complaint). The B-1 complaint sought recovery of $25,615.09, plus interest and reasonable attorney's fees and costs.

On June 18, 2019, the Mejias filed an answer to the B-1 complaint asserting affirmative defenses and a counterclaim fraud; self-dealing and unconscionable conduct; failure to follow the Act; wrongful action in assessment and recording of other liens; common law fraud; and deceit.

SACA was granted leave to amend the B-1 complaint to reflect $59,263.38 in delinquent charges owed by the Mejias. Discovery was extended for sixty days to January 16, 2020.

Francisco answered the second amended B-1 complaint and asserted a third-party claim and a counterclaim for contribution against SACA and for indemnification against SACA and Steinhardt similar to A-1/C-1 complaint.

In April 2020, SACA moved for summary judgment. In a May 27, 2020 oral decision accompanied by an order, the trial court denied the motion. The court concluded there were "disputes of material fact [that] do exist with respect

to the reasonableness of the assessments -- assessments by [SACA]." The court further determined there were "genuine issues of fact [that] exist with respect to whether [Francisco] had the opportunity to meet and vote on reconstruction or repair, as is his right as a unit owner," and "the assessments were adopted to operate and maintain the 'common elements.'"

Consolidated Complaints

SACA moved to consolidate the two complaints. In support of the motion to consolidate, Steinhardt certified the maintenance fee ledgers for Units A-1, B-1, and C-1, reflected outstanding balances as of September 1, 2020, for maintenance fees and other charges allocable to the three units. The total maintenance fees and late charges due were $3,183.05 for Unit A-1, $2,791.97 for Unit B-1, and $2,791.97 for Unit C-1. The proportionate share of the special assessment fees allocable to these units was also recalculated to remove the cost of a proposed elevator addition resulting in the following: $49,623 for Special Assessment No. 1; $30,024 for Special Assessment No. 2; and $36,070.50 for Special Assessment No. 3. At the time of the motion to consolidate, the A-1/C-1 complaint did not have an assigned trial date and discovery was ongoing, while the B-1 complaint had a December 14, 2020 trial date.

On October 16, 2020, the trial court granted SACA's motion to consolidate the A-1/C-1 complaint and the B-1 complaint. The trial court stated, "[n]othing in the nearly indecipherable opposition papers defeats the plain fact that both of these matters involve the same set of transactions and thus that consolidation is appropriate under R[ule]. 4:38-1."

Shortly thereafter, the Mejias filed an "amended notice of motion to dismiss the consolidated complaint based on the N.J. [e]ntire [c]ontroversy [d]octrine and [s]upporting [r]ules."[4]

On November 18, 2020, the trial court denied the Mejias' motion to dismiss the consolidated complaint under the entire controversy doctrine. See R. 4:30A. In its oral opinion, the trial court expressly rejected the Mejias' contention that the consolidated complaint was barred by the entire controversy doctrine, collateral estoppel and res judicata. The trial court stated:

> Specifically, here defendants assert that the [e]ntire [c]ontroversy [d]octrine bars plaintiff's claims because they did not attempt to amend the complaint to add the claims asserted in the [consolidated complaint].
>
> This [c]ourt disagrees with that argument. Here, [SACA's] claims in the present matter pertain to special assessments and/or unpaid maintenance fees owed to SACA which was not ripe until December of 2019.

[4] We discern from the record the "amended motion" was the Mejias' only motion to dismiss based on the entire controversy doctrine.

> Particularly, the account statements reflect the non-payment of common assessments which were unpaid and remain unpaid.

The trial court concluded that although the consolidated complaint partially arose out of March 2015, the consolidated complaint was based on special assessments and unpaid maintenance fees which arose in December 2019. Accordingly, SACA's claims remained "completely separate" and related to "distinctive transactions."

Discovery Issues

In a February 10, 2021 case management order, discovery was extended to May 7, 2021. The court directed depositions not for contribution against SACA and for indemnification against SACA and Steinhardt be conducted until completion of paper discovery, ordered responses to any outstanding discovery requests to be provided in thirty days, and held Steinhardt's deposition would not be conducted until paper discovery was completed.

In May 2021, the trial court again extended discovery to July 31, 2021. The trial court also struck the Mejias' requests for admission as "overbroad and unduly burdensome" and restricted the scope of the requests. The trial court also limited the scope of Steinhardt's deposition to the three special assessments, maintenance fees, and the Mejias' allegations of fraud pertaining to those fees.

The Mejias were also precluded from addressing any facts arising from the prior litigation related to the March 2015 fire or the settlement agreement.

On July 23, 2021,[5] the trial court denied the Mejias' motion to dismiss SACA's complaint for failure to comply with the February 2021 discovery order. The trial court similarly denied the Mejias' "motion to suppress third[-]party defendants SACA and [] Steinhardt's answer and other pleadings for failure to provide discovery."

In August 2021, SACA filed a motion for summary judgment on its affirmative claims and to dismiss the Mejias' counterclaims.

Following oral argument on November 19, 2021, the trial court entered judgment in favor of SACA against Francisco in the amount of $242,265.55, and against Michael in the amount of $82,958.28, plus post-judgment interest, costs and attorney's fees, and dismissed the Mejias' counterclaims with prejudice.

In rendering an oral opinion, the trial court concluded there were no genuine issues of material facts. The trial court found "all of the evidence aside

[5] We discern the denial of the Mejias' motions from the orders as the motion hearing transcript was not included the appendix.

from the allegations show[ed] that SACA lawfully assessed maintenance fees and special assessments and is entitled to a judgment as a matter of law."

The trial court rejected the Mejias' argument that SACA's allegations in the consolidated complaint should have been addressed in the 2016 litigation brought by Francisco. The judge stated "there [were] no proofs brought forward to bear [the argument] out" despite the exchange of fact discovery for over two years which had since closed. The trial court separately dismissed counts three and four of the Mejias' counterclaims as unopposed.

II.

On appeal, the Mejias argue the trial court committed reversible error by granting summary judgment to SACA and dismissing their counterclaims and third-party claims against Steinhardt. They also assert the trial court abused its discretion in denying their motions: to dismiss the consolidated complaint; suppress SACA's and Steinhardt's answers to the counterclaims and third-party complaint for the failure to provide discovery; compel Steinhardt's deposition; and dismiss the consolidated complaint based on the entire controversy doctrine.

A. Summary Judgment

We review a trial court's grant of summary judgment de novo. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). "Summary judgment is

appropriate 'if 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.'" Friedman v. Martinez, 242 N.J. 449, 471-72 (2020) (quoting R. 4:46-2(c)). In reviewing a summary judgment order, we consider the evidence in the light most favorable to the non-moving party. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

A condominium association's "operations are governed not only by the Condominium Act, but also through the contents of the master deed and the condominium by-laws." Jennings v. Borough of Highlands, 418 N.J. Super. 405, 420 (App. Div. 2011). SACA exercised its authority "[s]ubject to the provisions of the master deed, the by[-]laws, rules and regulations and the provisions of [the Condominium Act, N.J.S.A. 46:8B-1 to -38] or other applicable law." N.J.S.A. 46:8B-15. Here, the Mejias do not dispute that the common element assessments constituted a special assessment which required approval at a meeting of SACA's Board held in accordance with the Master Deed and Bylaws.

The Mejias argue the trial court erred in granting summary judgment because "there was no basis – in the form of evidence or a statement of uncontroverted material facts established by SACA – to support judgment in

SACA and Steinhardt's favor." The Mejias further argue SACA committed "fraud" and the collection of the assessments against Unit A-1 and C-1 violated the Bylaws and the Act. We are not persuaded.

"To defeat a motion for summary judgment, the opponent must 'come forward with evidence that creates a genuine issue of material fact.'" Sullivan v. Port Auth. of N.Y. & N.J., 449 N.J. Super. 276, 282-283 (App. Div. 2017) (citing Cortez v. Gindhart, 435 N.J. Super. 589, 605 (App. Div. 2014)). "[C]onclusory and self-serving assertions by one of the parties are insufficient to overcome the motion." Id. at 283 (alteration in original) (quoting Puder v. Buechel, 183 N.J. 428, 440-41 (2005)).

Under the Bylaws and Master Deed, the Mejias were obligated to pay common expenses and special assessments related to repairs to the common elements. Here, they failed to pay the special assessments, arguing the assessments were unreasonable and contrary to the Master Deed and Bylaws. We are satisfied the Board properly noticed, voted on, and authorized the three special assessments proportionally to the Mejias' ownership of the three units.

As noted by the trial court, the Mejias failed to present any competent evidence establishing any material disputed facts regarding the delinquent fees and assessments. Moreover, the judge noted the Mejias engaged in litigation

designed to delay their payment obligation to SACA. We are convinced the trial court properly determined there were no genuine disputes of material fact. Therefore, SACA and Steinhardt are entitled to summary judgment as a matter of law on the collection of the delinquent special assessment and attorney's fees. R. 4:46-2(c).

B. Entire Controversy Doctrine

The entire controversy doctrine "'embodies the principle that the adjudication of a legal controversy should occur in one litigation in only one court.'" Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 108 (2019) (quoting Cogdell ex rel. Cogdell v. Hosp. Ctr. at Orange, 116 N.J. 7, 15 (1989)). "The doctrine 'seeks to impel litigants to consolidate their claims arising from a "'single controversy whenever possible.'" Ibid. (quoting Thorton v. Potamkin Chevrolet, 94 N.J. 1, 5 (1983)).

Rule 4:30A codifies the entire controversy doctrine and provides:

> Non-joinder of claims required to be joined by the entire controversy doctrine shall result in the preclusion of the omitted claims to the extent required by the entire controversy doctrine, except as otherwise provided by [Rule] 4:64-5 (foreclosure actions) and [Rule] 4:67-4(a) (leave required for counterclaims or cross claims in summary actions).

Thus, to preclude a claim under the entire controversy doctrine, a party must show

> (1) The judgment in the prior action must be valid, final, and on the merits; (2) the parties in the later action must be identical or in privity with those in the prior action; and (3) the claim in the later action must grow out of the same transaction or occurrence as the claim in the earlier one.
>
> [McNeil v. Legis. Apportionment Comm'n of State, 177 N.J. 364, 395 (2003) (citing Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 412-413 (1991)).]

"The purpose of the doctrine is not to bar meritorious claims." Olds v. Donnelly, 150 N.J. 424, 447 (1997). Our Supreme Court "has always emphasized that preclusion is a remedy of last resort." Id. at 446. A cause of action is considered "part of a single 'claim'" where both "arise out of the same transaction or occurrence." Watkins, 124 N.J. at 416. The doctrine, however, does not apply "to bar component claims either unknown, unarisen or unaccrued at the time of the original action." Pressler & Verniero, Current N.J. Court Rules, R. 4:30A, cmt. 3.3 (2023); Dimitrakopolous, 237 N.J. at 118-21.

Further, the doctrine "does not mandate that successive claims share common legal issues in order for the doctrine to bar a subsequent action." Ibid. Rather, the principal significance is "whether individual claims are of a single

larger controversy because they arise from interconnected facts." Ibid. (quoting DiTrolio v. Antiles, 142 N.J. 253, 267 (1995)).

We find the Mejias' contention that SACA's claims should have been brought in the 2016 litigation and subsequent settlement agreement triggered the entire controversy doctrine lacks merit. As to the first prong, the order with prejudice entered in July 2018 was a final judgment. Citizens Voices Ass'n v. Collings Lakes Civic Ass'n, 396 N.J. Super. 432, 444 (App. Div. 2007).

Despite satisfying the first prong, the Mejias failed to satisfy the second and third prongs of the entire controversy doctrine. Regarding the second prong, a review of the record shows that the claims are not identical. For there to be identity, the individual plaintiffs and all defendants must be the same. Watkins, 124 N.J. at 423-24. Here, the pleadings show there were additional parties named in the consolidated complaint while the 2016 litigation was limited to Francisco and SACA.

Nor are the claims in the litigations identical under the third prong. The gravamen of the 2016 litigation was the March 2015 fire in the A-1 Unit. The special assessments for the common elements are separate and distinct from the 2015 fire. The special assessments addressed the following common elements: sprinkler system repair, fire alarm system, exterior lights and related electrical

work, roof replacement civil engineering plans, Unit A-1 common element repairs, sidewalk repair, fire escape demolition and removal, stairway/elevator addition, roof insulation, drywall, parking lot survey, reconstruction, and additional lot assessment. Despite the Mejias' arguments to the contrary, the special assessments did not arise from the "same transaction or occurrence." DiTrolio, 142 N.J. at 268.

C. Discovery

The Mejias argue the trial court's order granting the consolidation of the complaints ran "afoul of the rule by permitting consolidation after the end date for discovery had passed." The Mejias' argument is unavailing.

Having reviewed the record, we are satisfied the trial court appropriately consolidated the complaints during the discovery period. At the time the consolidation motion was filed; discovery was ongoing for the second amended complaint as to Unit B-1. Thus, we discern no basis to disturb the trial court's ruling.

To the extent we have not discussed any of the Mejias' remaining arguments, we deem them to be without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.