SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2430-22

RYAN MURPHY and TINA MURPHY,

Plaintiffs-Appellants,

v.

113 EAST CEDAR, LLC and GEORGE GARAS,

Defendants-Respondents.

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Submitted July 18, 2023 – Decided July 24, 2023

Before Judges Mayer and Gummer.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Essex County, Docket No. DC-008522-22.

Rabinowitz, Lubetkin & Tully, LLC, attorneys for appellants (John J. Harmon, of counsel and on the brief).

Michael V. Calabro, attorney for respondents.

PER CURIAM

In this residential-lease case, plaintiffs Ryan Murphy and Tina Murphy appeal an order granting the motion of defendants 113 East Cedar, LLC (the LLC) and George Garas to vacate the final judgment by default plaintiffs had obtained against defendants. Agreeing with the motion judge that plaintiffs did not properly serve defendants with the summons and complaint, we affirm.

I.

On August 1, 2021, plaintiff Tina Murphy entered a one-year lease with the LLC for a residential property located at 113 East Cedar Street, Livingston. The address listed in the lease for the LLC was "354 Eisenhower Parkway, Livingston, NJ Suite #2200." Pursuant to the terms of the lease, plaintiffs paid $9,000 total in first and last month's rent and $6,750 as a security deposit. The security deposit was to be returned to the "[l]essee, without interest, and less any set off for damages to the [p]remises upon termination of [the lease]." The parties subsequently agreed to terminate the lease early.

On July 12, 2022, plaintiffs filed in the Special Civil Part a verified complaint against the LLC and Garas. According to plaintiffs, defendant Garas was the managing member of the LLC and had conducted all negotiations and communications with plaintiffs on behalf of the LLC. In the complaint, plaintiffs asserted the LLC maintained its principal place of business and Garas

maintained an office at "354 Eisenhower Parkway, Suite 2250, Livingston, New Jersey." Plaintiffs also alleged that after they and Garas had conducted a walk-through of the property on May 31, 2022, Garas did not identify any damages or defects to the property and told them the security deposit and the last month's rent likely would be returned to them within a week. However, according to plaintiffs, defendants had since then refused to return the funds. Plaintiffs sought the return of the funds plus double damages, reasonable attorney's fees, interest, and costs pursuant to N.J.S.A. 46:8-21.1. According to a court notice sent to plaintiffs' counsel, a copy of the summons was mailed to defendants on July 14, 2022, presumably to the address provided by plaintiffs in the complaint.

The court entered default against defendants on August 23, 2022. On September 2, 2022, plaintiffs filed a request for entry of default judgment pursuant to Rule 6:6-3(a), seeking entry of an order of final judgment by default in the amount of $20,000, representing double the amount of the security deposit and the last month's rent up to the court's jurisdictional amount plus attorney's fees, interest, and costs. On November 23 or 24, 2022, the court entered default judgment against defendants. Plaintiffs' counsel sent a copy of the judgment to defendants under cover of a December 1, 2022 letter, addressed to defendants at "354 Eisenhower Parkway, Suite 2250, Livingston, NJ 07039."

On December 23, 2022, defendants moved to vacate the default judgment. In support of that motion, defendants submitted the certification of their then counsel, Adam S. Kessler. Kessler certified the LLC had issued a $11,250 check dated June 28, 2022, payable to Ryan Murphy and that the check had been cashed on July 18, 2022. Attached to his certification was a copy of the check and a text exchange, including a July 8 text apparently to Ryan Murphy from Garas stating, "Once again your security deposit is ready for pick up or need an address to send it." Kessler also certified and submitted a document he described as a "Business Status Search" indicating that the main business address of the LLC was 10 Sandalwood Drive, Livingston, and the address of its registered "SOP" (presumably service of process) agent was 76 East Cedar Street, Livingston. According to Kessler, neither defendant maintained an office at the address plaintiffs had provided for them in the complaint: 354 Eisenhower Parkway, Suite 2250, Livingston. Instead, 354 Eisenhower Parkway, Plaza I, Suite 2250, Livingston is the address of Kessler Law, LLC. Kessler certified that neither he nor defendants had been served with the complaint. He denied plaintiffs had provided notice of the lawsuit to Garas by email and asserted plaintiffs' application for default judgment had not included a certification of service and had not been served on defendants.

In opposition to defendants' motion, plaintiffs submitted the certification of their counsel, John J. Harmon. He certified that on the day plaintiffs filed the complaint, his office had sent a copy of the complaint to Garas by email and Garas responded in an email stating, "Good luck in court!" The signature block in Garas's responding email referenced Garas Real Estate Brokerage and Primrose School of West Orange; contained website addresses for Garas Development, Garas Real Estate, and Primrose West Orange; and listed a physical address of 354 Eisenhower Parkway, Suite 2250, Livingston. Harmon also certified that Garas's real estate company, Garas Development, listed its business address as "354 Eisenhower Parkway, Suite 2250, Livingston, New Jersey" on its website. According to Harmon, Garas delivered to his office a $11,250.68 check the day after plaintiffs filed the complaint.

After hearing argument, the motion judge granted defendants' motion. The judge found plaintiffs had not properly served the summons and complaint on defendants and that defendants had a meritorious defense based on "the issue of the quantum of damages . . . ." The judge issued an order vacating final judgment by default and permitting defendants to file an answer within twenty days.

On leave, plaintiffs appeal, arguing the judge erred by vacating the default judgment. We disagree and affirm.

II.

A court may relieve a party from a final judgment or order if it finds

> (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial under R. 4:49; (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) the judgment or order is void; (e) the judgment or order has been satisfied, released or discharged, or a prior judgment or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or order should have prospective application; or (f) any other reason justifying relief from the operation of the judgment or order.
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> [R. 4:50-1.]

A court considers a motion to vacate default judgment "'with great liberality,' and should tolerate 'every reasonable ground for indulgence . . . to the end that a just result is reached.'" BV001 REO Blocker, LLC v. 53 West Somerset St. Props., LLC, 467 N.J. Super. 117, 123 (App. Div. 2021) (quoting Mancini v. EDS ex rel. N.J. Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330, 334 (1993)).

"[A] court should resolve '[a]ll doubts . . . in favor of the part[y] seeking relief.'" Id. at 124 (quoting Mancini, 132 N.J. at 334).

A "trial court's determination under [Rule 4:50-1] warrants substantial deference and should not be reversed unless it results in a clear abuse of discretion." U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012); see also BV001 REO Blocker, LLC, 467 N.J. Super. at 124. "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.'" Kornbleuth v. Westover, 241 N.J. 289, 302 (2020) (quoting Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015)).

A motion to vacate a default judgment for lack of service is governed by Rule 4:50-1(d). "A default judgment will be considered void when a substantial deviation from service of process rules has occurred, casting reasonable doubt on proper notice." Jameson v. Great Atl. & Pac. Tea Co., 363 N.J. Super. 419, 425 (App. Div. 2003); see also BV001 REO Blocker, LLC, 467 N.J. Super. at 125. Even if there was actual notice of the suit comporting with due process, a default judgment should be set aside if there is a substantial deviation from rules. Sobel v. Long Island Ent. Prods., Inc., 329 N.J. Super. 285, 293-94 (App. Div. 2000).

Generally, service is governed by Rule 4:4-4. However, Rule 6:2-3(b) sets forth the "[m]anner of [s]ervice" for lawsuits pending in the Special Civil Part:

> Service of process within this State shall be made in accordance with R. 6:2-3(d) or as otherwise provided by court order consistent with due process of law, or in accordance with R. 4:4-5. Substituted service within this State shall be made pursuant to R. 6:2-3(d). Substituted or constructive service outside this State may be made pursuant to the applicable provisions in R. 4:4-4 or R. 4:4-5.

Rule 4:4-5 is inapplicable, and the court did not issue an order regarding service. Thus, in this case, service had to be made in accordance with the "service-by-mail" procedure permitted in Rule 6:2-3(d). See T & S Painting & Maint., Inc. v. Baker Residential, 333 N.J. Super. 189, 191 (App. Div. 2000).

Rule 6:2-3(d) provides for service of process by mail for lawsuits pending in the Special Civil Part. For initial service, the plaintiff is required to provide to the clerk of the court the mailing addresses of the parties to be served, and the clerk then sends by certified and ordinary mail copies of the summons and complaint to those addresses. R. 6:2-3(d)(1). Service by mail pursuant to Rule 6:2-3(d) "constitute[s] effective service unless the mail is returned to the court by the postal service with a marking indicating it has not been delivered . . . or the court has other reason to believe that service was not effected." R. 6:2-

3(d)(4). "Where process is addressed to the defendant at a place of business or employment, with postal instructions to deliver to addressee only, service will be deemed effective only if the signature on the return receipt appears to be that of the defendant to whom process was mailed." Ibid.

The motion judge had "reason to believe that service was not effected." Ibid. The address provided by plaintiffs to the clerk of the court was not the mailing address of either defendant; instead, it was the mailing address of defendants' former law firm. The record is devoid of any indication defendants' counsel had agreed to accept service on behalf of defendants and does not contain a return receipt with Garas's signature. Ibid.; cf. Romero v. Gold Star Distrib., LLC, 468 N.J. Super. 274, 285-86 (App. Div. 2021) (finding trial court properly denied motion to vacate default judgment based on allegedly ineffective service when the summons and complaint were served by regular and certified mail on the defendant corporation's president at his home address and the record contained a certified mail green card with his signature).

Looking beyond Rule 6:2-3(d), a copy of the summons and complaint was not delivered to Garas personally and was not left at his "dwelling place or usual place of abode." R. 4:4-4(a)(1). Nor was a copy of the summons and complaint served on the LLC in the manner required in Rule 4:4-4(a)(1) on "any officer,

director, trustee or managing or general agent, or any person authorized by appointment or by law to receive service of process on behalf of the corporation, or on a person at the registered office of the corporation in charge thereof" or "on a person at the principal place of business of the corporation in this State in charge thereof." R. 4:4-4(a)(6); see also T & S Painting & Maint., Inc., 333 N.J. Super. at 191-92 (finding service had not been "effected in compliance with R. 6:2-3" when "service was not made at the registered office or principal place of business, nor at the place[] designated . . . for receipt of service").

Plaintiffs' failure to effect service pursuant to either Rules 6:2-3 or 4:4-4 is not based on mere "technical imperfections," Romero, 468 N.J. Super. at 301, and is not excused by their reliance on the address contained in the lease or their counsel's use of email. Plaintiffs have failed to support their position with citation to any rule or case that permits service of process by email alone. See Modan v. Modan, 327 N.J. Super. 44, 49 (App. Div. 2000) (faulting the plaintiff for not advising the court he knew the defendant's email address when he moved for an order permitting him to serve the defendant by publication).

Moreover, defendants' "promptness in moving for relief also supports [their] request" to vacate default judgment. BV001 REO Blocker, LLC, 467 N.J. Super. at 126. "A motion to vacate default judgment implicates two oft-

competing goals: resolving disputes on the merits, and providing finality and stability to judgments." Id. at 123. "The competing goal of promoting finality does not loom so large when the ink has barely dried on the final judgment. At that early stage, 'a plaintiff's expectations regarding the legitimacy of the judgment and the court's interest in the finality of judgments are at their nadir.'" Id. at 127 (quoting Reg'l Constr. Corp. v. Ray, 364 N.J. Super. 534, 545 (App. Div. 2003)).

In sum, perceiving no abuse of discretion by the motion judge in granting defendants' motion to vacate default judgment, we affirm. Because the motion to vacate default judgment was based on defective service, we need not address plaintiffs' argument concerning whether defendants established a meritorious defense. See Jameson, 363 N.J. Super. at 425 (finding "[i]f defective service renders the judgment void, a meritorious defense is not required to vacate the judgment under R. 4:50-1(d)").

Affirmed.