SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3317-20

MARK NEWTON,

Plaintiff-Appellant,

v.

S. LICKER, INC.[1] and
JOYCE LICKER,

Defendants-Respondents.

Submitted February 15, 2023 – Decided March 27, 2023

Before Judges Vernoia and Firko.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. DC-008762-21.

Mark Newton, appellant pro se.

Respondents have not filed a brief.

PER CURIAM

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[1] Plaintiff refers to the corporate defendant as "S.L. Licker, Inc." in his complaint and throughout the record. In our opinion, we refer to this defendant as "S. Licker, Inc.," which is the proper corporate name.

Plaintiff Mark Newton, who is self-represented, appeals from a June 28, 2021 Special Civil Part order dismissing his complaint, which sought a temporary and permanent restraining order requiring defendants S. Licker, Inc. and Joyce Licker (Licker) to remove a lock placed on a storage unit rented by him at defendants' storage facility. Following a hearing, the court concluded plaintiff's complaint alleged a cause of action for an improper lock-out of a commercial tenancy but the record established the unit was located in a self-service storage facility, as defined by the Self-Service Storage Facility Act (SSFA), N.J.S.A. 2A:44-187 to -193. The court held the parties could seek monetary and other relief in a separate action pursuant to the SSFA. We affirm.

I.

The record establishes the following underlying chronology of events. Plaintiff leased a storage unit—garage #38—located in Orange from defendants. In September 2012, the parties entered into an oral agreement allowing plaintiff to store personal property at defendants' self-service storage facility for a monthly fee. Plaintiff checked the unit regularly. On February 27, 2019, while it was snowing, plaintiff inspected his unit and claims the roof covering his storage unit was removed and replaced without any prior notice to him. Plaintiff asserts the items in his unit—a new stove, convection oven, washing machine,

microwave oven, and two air conditioners—were exposed to snow, ice, and rain because of the "defective" roof, causing damage and destruction to his property. Plaintiff immediately notified defendants' employees about the damage to his unit and property. In addition, plaintiff claims his unit was filled with "wood chips, debris, tar, nails, screws, and water." Plaintiff criticized defendants for not taking "any reasonable steps" to protect his property.

Plaintiff alleges he advised Licker of the property damage repeatedly between March 2019 through June 2021. On April 29, 2019, plaintiff and Licker inspected the unit and observed the stated damage. On May 20, 2019, Licker sent plaintiff a letter stating:

> Due to your failure to return our lease, we no longer wish to continue our month-to-month rental of the garage unit you currently occupy.
>
> Please accept his letter as a [thirty]-day notification that we are terminating our month-to-month agreement effective June 1, 2019. We would expect you to pay June's rent and move out no later than June 30th.
>
> If you fail to either execute our lease or vacate the premises by June 30th, we will have you dispossessed by the constable.

According to plaintiff, Licker advised him that he would receive a "credit" for his loss of property and "clean-up" costs. Plaintiff claimed defendants owed

him "in excess" of $4,500[2] for the damaged property and $800 to "clean up" the unit. Plaintiff contends these dollar amounts were supposed to be credited against his outstanding rent payments, but plaintiff claims he "still remunerated rental payments" to defendants, including a $2,000 payment in January 2020, which Licker confirmed she received. Licker advised plaintiff the facility was changed to a "self-[service] storage entity," but, according to plaintiff, Licker did not provide him with any documents evidencing this change. Because of medical reasons, plaintiff could not regularly visit the unit as he previously did or return Licker's telephone calls.

On May 19, 2021, Licker called plaintiff while he was undergoing medical testing, and he could not accept her call. Afterwards, he returned her call and left her a message advising he "was ill" and that Licker "should not engage in any unlawful conduct . . . regarding the rental [u]nit." On May 29, 2021, "despite being in great pain," plaintiff went to defendants' storage facility and discovered the lock to his unit had been cut off and replaced with a new lock. Plaintiff tried to call Licker to obtain access to the property in his unit, but she did not return his telephone calls.

[2] In his merits brief, plaintiff represents the damage is in excess of $5,300.

The next day, plaintiff returned to the storage facility. His unit was still locked, and he was denied access. Plaintiff sought police assistance to gain entry to his unit. According to plaintiff, a police officer spoke to Licker, who advised the officer that the lock on plaintiff's unit was cut due to an electrical problem. Licker then advised plaintiff she would not provide him with a key to access his unit until he either gave her "a check," which plaintiff claims was for an unstated amount, or he "move[d] out."

In response, plaintiff filed an emergent order to show cause (OTSC), accompanied by a verified complaint pursuant to Rule 4:52-1, seeking to remove the lock "illegally and unlawfully" installed on his unit by defendants, and to prevent the destruction or removal of his personal items stored in the unit. Plaintiff alleged he was denied access to his unit and deprived of the chance to remove his possessions because Licker wrongfully resorted to "self-help remedies." Plaintiff posited the parties entered into a "commercial tenancy" as tenant and landlord "at a real property location."

On June 9, 2021, the court entered the OTSC and scheduled a return date of July 21, 2021, to address the issues raised in plaintiff's verified complaint. The OTSC order specifically stated no relief was granted at that time, and the

OTSC was entered for the sole purpose of scheduling a hearing to address the allegations pled in plaintiff's verified complaint.

On June 14, 2021, the OTSC return date was changed from July 21, 2021, to June 28, 2021. At the OTSC hearing, plaintiff reiterated the allegations contained in his verified complaint. After the OTSC was entered, plaintiff returned to the unit and discovered that the lock had been cut "for the third time" and "all the items" had been "moved." He explained Licker failed to provide him with "notice" that his lock would be "cut" and replaced with a new lock. Plaintiff characterized Licker's actions as prohibited under the OTSC and that she treated his property as "abandoned." He also asserted Licker "deliberately" stole his property.

Plaintiff sought immediate access to his personal property and for his "expenses in bringing this action" and replacing the lock. He claimed rent was not an issue, and Licker did not comply with the SSFA, assuming defendants' representation was true that the facility was now a self-service storage facility. In response to a question posed by the court, plaintiff agreed the real property was "designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access for the purpose of storing and

removing personal property." Plaintiff also stated he did not sign a lease that Licker presented to him in 2019 "because she owes [him] money."

Defendants were represented by counsel at the hearing. Counsel argued that this "is not a landlord tenant matter," but rather a "self-[service] storage facility" matter covered by the SSFA. Counsel represented to the court that plaintiff was duly provided notice of nonpayment of rent due under N.J.S.A. 2A:44-191, and defendants "have the right to a lien" on the personal property contained in his unit.[3] In addition, counsel stated plaintiff's property was

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[3] N.J.S.A. 2A:44-191 provides for satisfaction of a lien under the SSFA. Relevant here, the statute provides:

> An owner's lien for claim which is more than [thirty] days overdue may be satisfied as follows:
>
> a. The occupant shall be notified;
>
> b. The notice shall be delivered in person or sent by verified mail or electronic mail to the last known address of the occupant;
>
> c. The notice shall include:
>
> > (1) An itemized statement of the owner's claim showing the sum due at the time of the notice and the date when the sum became due;

"secure," and defendants were "perfectly willing to deliver [the] property to [plaintiff]." However, plaintiff refused the delivery offer and requested an opportunity to inspect the contents in the location in which defendants had them.

> (2) A brief and general description of the personal property subject to the lien. The description shall be reasonably adequate to permit the person notified to identify it, except that any container including, but not limited to a trunk, valise, or box that is locked, fastened, sealed, or tied in a manner which deters immediate access to its contents may be described without listing its contents;
>
> (3) A notice of denial of access to the personal property, if this denial is permitted under the terms of the rental agreement, which provides the name, street address, and telephone number of the owner, or the owner's designated agent, whom the occupant may contact to respond to this notice;
>
> (4) A demand for payment within a specified time not less than [fourteen] days after delivery of the notice; and
>
> (5) A conspicuous statement that unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale. The notice shall specify time and place of the sale[.]
>
> [N.J.S.A. 2A:44-191.]

The parties did not reach an agreement on this issue. Plaintiff then responded that "sometime in 2018 or early 2019, [Licker] decided to change everything."

After considering plaintiff's and defense counsel's arguments, the court concluded the property is a self-service storage facility. Under the SSFA, the court observed the issue was "a matter of enforcement of the lien, not abandonment of the property." The court found the unit or "garage" rented by plaintiff from defendants satisfied the criteria of the SSFA, which defines a self-service storage facility as one "designed and used for the purpose of renting or leasing individual storage space."

Turning to the substance of the matter, the court highlighted plaintiff improperly pled in his verified complaint that defendants' facility is not a self-service storage facility under the SSFA, which is "different than a commercial leasehold." Based on the evidence presented, the court dismissed the verified complaint without prejudice because it was improperly filed as a lock-out of a commercial tenancy and plaintiff did not seek relief under the SSFA. The court expressly stated both plaintiff and defendants reserved their rights to pursue any

actions for monetary damages or other relief in the complaint under the SSFA in a separate proceeding.[4] A memorializing order was entered.

On appeal, plaintiff maintains the court erred and employed the wrong legal standard: (1) by not determining whether defendants violated the June 14, 2021 order; (2) not determining whether the unit was governed by the SSFA; and (3) not addressing whether defendants' conduct in cutting the locks on the unit and refusing to give plaintiff access violated the SSFA.

II.

We note that factual determinations "made by the trial court sitting in a non-jury case are subject to a limited and well-established scope of review." Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011) (citing In re Trust Created by Agreement Dated Dec. 20, 1961, ex. rel. Johnson, 194 N.J. 276, 284 (2008)). We will not "disturb the factual findings and legal conclusions of the trial judge unless we are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably

[4] In his appendix, plaintiff includes documents that were not part of the record below in violation of Rule 2:5-4(a). Therefore, we are not considering these documents for purposes of our opinion. We note, however, that plaintiff acknowledges in his merits brief that following the dismissal of his verified complaint, both he and defendants filed complaints against each other for damages and other relief under the SSFA. The status of those actions is unknown and not part of this record.

credible evidence as to offend the interests of justice." Ibid. (quoting In re Trust, 194 N.J. at 284). Reversal is warranted when there is insufficient evidentiary support for the trial court's findings. See ibid.

The trial court's decisions on issues of law are, however, subject to plenary review. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). "A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Ibid. (citations omitted).

Our Legislature has "enacted specific legislation pertaining to self-service storage, entitled the [SSFA]." DePetro v. Twp. of Wayne Plan. Bd., 367 N.J. Super. 161, 176 (App. Div. 2004) (citing N.J.S.A. 2A:44-187 to -193). The SSFA "specifically distinguishe[s] between facilities subject to the [SSFA] and those warehouse activities subject to Article 7 of the Uniform Commercial Code [(UCC)]." Ibid. Specifically, the SSFA defines a self-service storage facility as:

> any real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access for the purpose of storing and removing personal property. No occupant shall use a self-service storage facility for residential purposes. A self-service storage facility is not a warehouse as used in chapter 7 of Title 12A of the New Jersey Statutes [UCC].

[N.J.S.A. 2A:44-188.]

In relevant part, the SSFA provides that a self-service storage facility is not a warehouse as defined under the UCC, N.J.S.A 12A:7-102(a)(13), unless the storage facility's owner has title to the property stored at the facility. See N.J.S.A. 2A:44-188, -190. The SSFA makes clear that this State's UCC is applicable to self-service storage rentals unless a bailment[5] was established. See N.J.S.A. 2A:44-188.

Moreover, the SSFA addresses the consequences of a tenant's failure to pay rent in a self-service storage facility. See N.J.S.A. 2A:44-191. The statute requires owners of self-service storage facilities to comply with a notice-and-wait procedure prior to selling a tenant's property for failing to pay rent. Ibid. Specifically, the procedure for satisfying "[a]n owner's lien for a claim which is more than [thirty] days overdue" mandates that owners provide notice to occupants before attempting to sell the property in satisfaction of the lien. Ibid.

[5] "The elements of 'bailment' are delivery of personal property by one person to another in trust for a specific purpose, acceptance of such delivery, and express or implied agreement to carry out the trust and return of the property to the bailor." Pisack v. B & C Towing, Inc., 240 N.J. 360, 380 (2020) (quoting Mattson v. Aetna Life Ins. Co., 124 F. Supp. 3d 381, 393 (D.N.J. 2015)).

"A demand for payment within a specified time [must be no] less than [fourteen] days after delivery of the notice." N.J.S.A. 2A:44-191(c)(4).

The SSFA also governs the manner in which the sale will take place and provides that tenants may recover the property, without any liability, before the sale if they "pay the amount necessary to satisfy the lien, and the reasonable expenses incurred by the owner to redeem the personal property." N.J.S.A. 2A:44-191(i).

Applying the governing law, the court did not err in dismissing plaintiff's verified complaint. Plaintiff presented no competent evidence to the court to sustain a claim for an improper lock-out of a commercial tenancy. When the court asked plaintiff if defendants' facility was a self-service storage facility as defined in the SSFA, he answered, "Basically, yes, [j]udge. Yes." Thus, plaintiff's claim that the court erred by finding the SSFA applied is undermined by his own testimony. Moreover, no evidence was presented that a bailment was created.

For the foregoing reasons, we affirm the dismissal of plaintiff's verified complaint because we are satisfied there is sufficient credible evidence supporting the court's determination defendants' facility is a self-service storage facility governed by the SSFA. And, the parties were given the opportunity to

file separate actions seeking monetary and other relief under the SSFA, which they have done. Therefore, no prejudice has been shown. Given our disposition of the case, there is no reason to discuss plaintiff's arguments about whether defendants violated the original OTSC, which barred defendants from removing plaintiff's property in his unit pending disposition of the scheduled hearing. We note the record shows that during the hearing, plaintiff argued defendants violated the order, but he did not seek any further relief from the court based on the alleged violation.

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

Affirmed.