SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3271-22

THE VILLAGE GREEN AT BEDMINSTER NEIGHBORHOOD CONDOMINIUM ASSOCIATION, INC., a New Jersey nonprofit corporation,

Plaintiff-Respondent,

v.

DAVID E. SHIELDS,

Defendant-Appellant.

Submitted May 7, 2024 – Decided May 23, 2024

Before Judges Mayer and Enright.

On appeal from the Superior Court of New Jersey, Law Division, Somerset County, Docket No. L-1165-22.

The Law Office of Rajeh A. Saadeh, LLC, attorneys for appellant (Rajeh A. Saadeh and Sierra K. Chandler, on the briefs).

Curcio Mirzaian Sirot LLC, attorneys for respondent (Jason S. Haller, of counsel; Jessica A. Tracy, on the brief).

PER CURIAM

Defendant David E. Shields appeals from June 9, 2023 orders denying his motion for leave to file a third-party complaint against proposed third-party defendants NorthEast Contractors, LLC (NorthEast) and Michael Fratesi and granting summary judgment to plaintiff The Village Green at Bedminster Neighborhood Condominium Association, Inc. (Association). Defendant also appeals from a June 27, 2023 order granting the Association's application for attorney's fees and costs. We affirm all orders on appeal.

We recite the facts from the motion record. The Village Green at Bedminster Neighborhood Condominium (Village Green) is a condominium community located in Bedminster and formed pursuant to the Village Green at Bedminster Neighborhood Condominium Master Deed (Master Deed). The Association administers, manages, and operates Village Green's day-to-day operations. The Association and its members are governed by the Master Deed, the Association's by-laws (By-Laws), and the rules and regulations issued by the Association's Board of Trustees (Board). Defendant is the owner of a condominium unit in Village Green and a member of the Association.

In January 2022, the Association informed defendant that the Association "[was] . . . made aware of an odor . . . coming from [defendant's] unit that [was]

starting to affect other neighboring units" and requested he "advise if there [was] any issue within [his] unit that [was] causing the odor that need[ed] to be addressed."

Because defendant did not respond, the Association directed defendant to "contact a licensed contractor to inspect [his] unit," "take the necessary steps to rectify the noxious odor," and provide "a certification . . . that the odor[] ha[d] been remediated." If defendant failed to do so by a date certain, the Association stated it would impose a $50.00 fine daily until the violation was abated. Further, if defendant did not remediate the situation, the Association "reserve[d] its right to perform the remediation services and charge back all costs incurred to [defendant's] unit."

Defendant failed to remediate the odor problem in his unit. Thus, the Association engaged NorthEast to determine the cause of the odor emanating from defendant's unit. Upon inspection of defendant's unit, NorthEast "determined that the odor was caused by [defendant] allowing his dog to urinate and defecate in multiple locations throughout his unit."

Consequently, the Association notified defendant that "the smell from the unit [was] due to unhealthy/unsanitary living conditions." The Association further advised it retained NorthEast to clean defendant's unit and replace

"flooring, baseboards, molding, [and] paint." The Association estimated the cost for NorthEast's work would be between $5,000 to $7,000, and defendant's maintenance account with the Association would be charged accordingly.

NorthEast performed work on defendant's unit, including "installing new floors, replacing major appliances and plumbing, and repainting." The Association sent a letter to defendant, stating he owed the Association $7,000 for NorthEast's remediation work, in addition to other past due assessments and charges to defendant's Association account, for a total due and owing of $15,072.11.

Defendant requested "[d]etailed receipts of all work done by [NorthEast] including all supplies and labor," as well as "a copy of the contract" between NorthEast and the Association. The Association gave defendant copies of NorthEast's invoices for the repair work to his unit. Defendant further requested the Association provide an "itemized invoice" from NorthEast and a "specific breakdown of legal fees" sought by the Association.

The Association sent defendant an invoice from NorthEast, documenting the $7,000 for materials and labor to remediate defendant's unit. In addition, the Association's attorney provided an itemized list of all assessments, charges, and fees that defendant owed to the Association. When defendant failed to pay the

balance due and owing on his account, the Association asserted its right under Village Green's governing documents to accelerate defendant's annual assessment.

Because he failed to pay all sums due and owing, the Association filed a debt collection action against defendant for $20,086.26, representing unpaid "dues, assessments, charges and other expenses owed," plus "interest and costs of collection, including reasonable attorneys' fees and disbursements," as allowed under the Master Deed and By-Laws.

Defendant filed an answer, in which he denied failing to pay valid dues, assessments, charges, or other expenses. He also asserted various affirmative defenses. However, defendant failed to allege a violation of the Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 to -227.

After the close of discovery, the Association moved for summary judgment on its debt collection claim. Before the return date of that motion, defendant filed a motion for leave to file a third-party complaint against NorthEast and NorthEast's owner, Fratesi, alleging violations of the CFA.

Defendant also opposed the Association's summary judgment motion. However, defendant did not dispute the amount paid by the Association for NorthEast's work related to his unit. Nor did he claim NorthEast's work was

deficient or inadequate. Further, defendant did not deny the Association's governing documents, including the Master Deed, By-Laws, and rules and regulations, required him to maintain his unit in good condition and free from noxious odors. As a unit owner, defendant was required to comply with the Association's governing documents.

On June 9, 2023, Judge Kevin M. Shanahan issued orders granting the Association's motion for summary judgment, entering judgment against defendant in the amount of $9,051.59, and denying defendant's motion for leave to file a third-party complaint. In his accompanying written statement of reasons, the judge found "no materially disputed facts" regarding defendant's failure to pay dues, assessments, and other charges owed to the Association under the Association's governing documents. The judge held "a unit owner is not entitled to withhold payment of legitimate assessments imposed by a community association" as authorized under the Association's governing documents. The judge concluded defendant provided no justification for his failure to pay all fees and charges due and owing to the Association.

Further, Judge Shanahan found it was "clear from the [Association's] [B]y[-]laws and Handbook of Rules and Regulations that [d]efendant [was] responsible for maintaining his 'unit in good condition, order and repair at [his]

own expense . . . in such a manner tha[t] noxious odors . . . [did] not affect neighboring units," and required to "keep his unit in a good state of preservation and cleanliness.'" The judge further found the Association "attempted to contact [defendant] . . . regarding the odor" several times before engaging NorthEast to undertake the remediation work in defendant's unit. Based on the photographs submitted in support of the Association's summary judgment motion, the judge concluded defendant's unit contained "filthy, urine-soaked floors and fecal matter throughout the unit prior to NorthEast's cleaning."

Regarding defendant's motion for leave to file a third-party complaint against Northeast and Fratesi, Judge Shanahan found defendant "ha[d] not proven any ascertainable loss in a definite and measurable way." Rather, as the judge stated, defendant "received a cleaner, newly renovated, and better working unit." The judge further found the Association was "not a consumer for purposes of the [CFA] and [d]efendant [was] not a third-party beneficiary, making recovery under [the CFA] unfeasible."

Regarding the Association's request for attorney's fees, the judge stated:

> . . . [The Association] submits [it] has incurred legal fees for its collection efforts on [d]efendant's account through April 20, 2023 in the amount of $23,236.59 . . . .

> [The Association] notes [its] By-Laws provide that interest and costs of collection, including reasonable attorneys' fees, shall be a personal liability of the delinquent unit owner. . . .
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> . . . .
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> [The Association] submits [its attorneys] . . . spent the minimum amount of time required to collect the amount past due from [d]efendant, and all services provided and time spent performing them were both reasonable and necessary. Additionally, [the Association] contends it is clear that [its counsel] is attempting to reach an efficient resolution of this action by filing the instant motion for summary judgment rather than simply awaiting trial.
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> [The Association] states [its counsel] has been general counsel for the Association since 2015. According to [the Association], the firm is well-known in the field of community association law and the attorneys involved in this matter are qualified in their respective areas of concentration. . . . According to [the Association], all fees charged by [its counsel] are comparable to other firms in this geographic area of similar size and experience.

In his June 9, 2023 order, the judge required the Association to "make an application and submit an aff[i]davit of services of attorneys' fees for consideration." In a June 27, 2023 order, the judge granted the Association's application for attorney's fees and costs in the amount of $23,236.59.

On appeal, defendant contends the judge erred in granting the Association's motion for summary judgment because the alleged CFA violations

committed by NorthEast and Fratesi served as an affirmative defense against the Association's debt collection action. Additionally, defendant argues the judge erred in granting attorney's fees and costs to the Association. Further, defendant asserts the judge erred in denying his motion for leave to file a third-party complaint. We reject defendant's arguments and affirm substantially for the reasons expressed in Judge Shanahan's cogent written opinion. We add only the following comments.

We review an order granting a motion for summary judgment de novo, applying the same standard as the trial court. Samolyk v. Berthe, 251 N.J. 73, 78 (2022). We consider "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Ibid. (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)).

Further, we review a condominium association's master deed and related governing documents de novo. Belmont Condo. Ass'n, Inc. v. Geibel, 432 N.J. Super. 52, 86 (App. Div. 2013) (citing Spinelli v. Golda, 6 N.J. 68, 79-80 (1950) and Toll Bros., Inc. v. Twp. of W. Windsor, 173 N.J. 502, 549 (2002)).

Additionally, we "review [a] trial court's award of fees and costs in accordance with a deferential standard." Hansen v. Rite Aid Corp., 253 N.J. 191, 211 (2023). "Such an award 'will be disturbed only on the rarest occasions, and then only because of a clear abuse of discretion.'" Id. at 211-12 (quoting Rendine v. Pantzer, 141 N.J. 292, 317 (1995)). An abuse of discretion occurs "when the court's decision 'was based on irrelevant or inappropriate factors, or amounts to a clear error in judgment.'" Id. at 212 (quoting Garmeaux v. DNV Concepts, Inc., 448 N.J. Super. 148, 155-56 (App. Div. 2016)).

Moreover, we review a trial court's decision to grant or deny a motion for leave to file a third-party complaint under Rule 4:8-1 for abuse of discretion. N.J. Dep't of Env't Prot. v. Dimant, 418 N.J. Super. 530, 547 (App. Div. 2011).

Here, Judge Shanahan properly granted summary judgment to the Association for reimbursement of expenses charged against defendant's account under the Condominium Act, N.J.S.A. 46:8B-1 to -38, and the Association's governing documents. The Condominium Act grants condominium associations the power to "levy and collect assessments duly made by the association for a share of common expenses or otherwise, including any other moneys duly owed the association, upon proper notice to the appropriate unit owner, together with interest thereon, late fees, and reasonable attorneys' fees, if authorized by the

master deed or by[-]laws." N.J.S.A. 46:8B-15(e). The Condominium Act further permits a condominium association to exercise any powers "set forth in the master deed or [B]y[-]laws" not prohibited by law. N.J.S.A. 46:8B-15(g).

Additionally, Article V, section 5.06(F) of the Master Deed empowers the Board to "make, establish and promulgate . . . such [r]ules, not in contradiction of this Master Deed, as it deems proper covering any and all aspects of its function, including the use and occupancy of the Condominium Property." Under this provision of the Master Deed, the Board promulgated the Village Green Condominium Association Handbook of Rules & Regulations (Handbook), which provides:

> Residents shall maintain their [u]nits in good condition, order[,] and repair at their own expense in accordance with the following:
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> 1. Residents shall maintain [u]nits in such a manner that noxious odors, smoke, pests or other offenses do not affect neighboring [u]nits. Each unit owner shall keep his unit in a good state of preservation and cleanliness.
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> . . . .
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> 8. Each unit owner must properly maintain the interior of the unit. Failure to do so may result in the Association performing the work and assessing the unit owner for the cost.

Article VII, Section 7.03 of the Master Deed holds a unit owner responsible to remediate violations arising under the Handbook and specifies the consequences if a unit owner fails to do so. In the event a unit owner fails to cure a defect or default, the Master Deed expressly authorizes the Association to take action. The cost incurred as a result of the Association taking action to correct a unit owner's defect or default is assessed as a lien against the unit.

The Association's By-Laws, specifically Article IX, Section 1, authorize the Board "[t]o establish, levy, assess, and collect the [a]ssessments or charges referred to in the Master Deed." Under Article VII, Section 5 of the By-Laws, "[t]he amount of any delinquent [a]ssessment or charge . . . and the costs of collecting the same, including reasonable attorneys' fees, shall be both a personal liability of the [o]wner, enforceable in any court of competent jurisdiction, and a lien upon such [u]nit or any improvements thereon."

Defendant is bound by the Association's governing documents under Article I, Section 1.01 of the Master Deed. This provision states "[o]wnership . . . of any [u]nits in [Village Green] shall be conclusively deemed to mean that said owners . . . ha[ve] accepted and ratified this Master Deed, . . . the By-Laws and the Rules of the [Association], and shall comply with them." Because

defendant owns a unit in Village Green, he accepted and agreed to comply with the Association's governing documents.

In accordance with the Association's governing documents, Judge Shanahan correctly concluded defendant had an unconditional obligation to pay all outstanding sums charged against his account and he failed to do so. Those charges included outstanding maintenance fees, late fees, pet violations, special assessments, cleaning fees, accelerated maintenance fees, and legal fees. Nothing in defendant's answer supported his failure to pay his outstanding financial obligations to the Association.

Defendant attempted to avoid his obligation to pay his outstanding charges to the Association by seeking to file a third-party complaint against NorthEast and Fratesi, asserting they violated the CFA. We are satisfied the judge properly denied defendant's motion for leave to file a third-party complaint as defendant lacked standing to assert a CFA claim and he suffered no ascertainable loss under the CFA.

"The CFA was enacted to 'protect [the consumer] against fraudulent and unconscionable practices in the sale of goods and services.'" Sprenger v. Trout, 375 N.J. Super. 120, 135 (App. Div 2005) (alteration in original) (quoting

Marascio v. Campanella, 298 N.J. Super. 491, 500 (App. Div. 1997)). N.J.S.A. 56:8-19 provides:

> Any person who suffers any ascertainable loss of moneys or property, real or personal, as a result of the use or employment by another person of any method, act, or practice declared unlawful under [the CFA] . . . may bring an action or assert a counterclaim therefor in any court of competent jurisdiction.

Here, the Association did not provide goods or services to defendant under the CFA. Rather, the Association hired NorthEast to clean defendant's unit and remediate the wafting noxious odors.

Further, defendant lacked any relationship with either NorthEast or Fratesi to assert violations of the CFA. The Association contracted with NorthEast for the remediation work in defendant's unit and the Association paid NorthEast for the work.

Under the Association's governing documents, it was entitled to reimbursement from defendant for the work in defendant's unit. Because the Association's debt collection action did not involve the Association's contract with NorthEast, defendant lacked standing to assert a CFA claim as a defense to the Association's action.

Defendant had an unconditional obligation to pay all assessments and other charges related to his unit. See Glen v. June, 344 N.J. Super. 371, 376-77

(App. Div. 2001). He offered no reason, other than purported violations of the CFA by NorthEast and Fratesi, why he withheld payment of his outstanding financial obligation to the Association.

Moreover, even if we agreed defendant had standing to assert a CFA violation, which we do not, defendant suffered no ascertainable loss. "[T]o have standing to sue under the CFA[,] a consumer must suffer an 'ascertainable loss of moneys or property' as a result of a CFA violation." DepoLink Ct. Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 339 (App. Div. 2013) (quoting Weinberg v. Sprint Corp., 173 N.J. 233, 250 (2002)).

Here, as Judge Shanahan found, "[d]efendant received a cleaner, newly renovated, and better working unit." Thus, defendant failed to demonstrate he suffered any loss of moneys or property as a result of the Association retaining NorthEast to clean and repair defendant's uninhabitable unit.

Nor does the Association's lien against defendant's unit or request for defendant's payment of attorney's fees constitute an ascertainable loss. As we previously explained, the Association's governing documents expressly authorized the Association to repair a unit in poor condition, assess the unit owner for the cost of the repair work, impose a lien against the unit for the unpaid costs, and seek attorney's fees associated with the cost of collection.

Thus, contrary to defendant's argument, neither the Association's lien against defendant's unit nor the Association's request for attorney's fees are improper and therefore do not qualify as an ascertainable loss under the CFA.

Nor did the judge err in granting the Association's application for attorney's fees and costs. Defendant never challenged the reasonableness of the awarded sum. Rather, defendant claimed "such relief was in violation of the CFA and the strict liability prohibition on collecting from a CFA violation." On this record, we are unable to discern any violation of the CFA. It is undisputed that N.J.S.A. 46:8B-15(e) and the Association's By-Laws permit the Association to recover attorney's fees associated with collection of a unit owner's delinquent payments. Because the judge properly found defendant liable to the Association for unpaid charges on his account, the judge correctly awarded attorney's fees and costs to the Association.

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

Affirmed.