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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3761-22**

**LIGIA RIZESCU and
TIMOTHY KING,**

Plaintiffs-Appellants,

v.

**RUSS SCHAEFER, a/k/a
RUSSELL SCHAEFER,
INNA SCHAEFER, SCHAEFER
HOME REMODELING, LLC,
SCHAEFER REMODELING
GROUP INCORPORATED, and
FORD STREET, LLC,**

Defendants-Respondents.

Submitted June 4, 2024 – Decided June 13, 2024

Before Judges Mayer and Whipple.

On appeal from the Superior Court of New Jersey, Law
Division, Monmouth County, Docket No. L-3517-21.

Louis E. Granata, PC, attorneys for appellants (Louis
E. Granata, on the briefs).

Fox & Melofchik, LLC, attorneys for respondents
(Gary E. Fox, on the brief).

PER CURIAM

Plaintiffs Ligia Rizescu and Timothy King appeal from a June 27, 2023 order denying reconsideration of a January 11, 2023 order granting summary judgment in favor of defendants Schaefer Remodeling (SR), Russ Schaeffer, Inna Schaeffer, Schaeffer Remodeling Group, Inc., and Ford Street, LLC. We affirm.

In 2015, plaintiffs entered into a home improvement contract with SR for renovations to their home. Russ Schaeffer was the managing member of SR. Unhappy with the workmanship, plaintiffs fired SR. SR filed suit against plaintiffs for breach of contract. Plaintiffs counterclaimed against SR but brought no individual claims against Russ Schaefer. The case settled and judgment was entered in favor of plaintiffs for \$400,000 against SR. Simultaneously, SR lost its license to operate and its insurance policy was cancelled because it owed substantial additional insurance premiums.

Russ Schaeffer then created a new company, Schaefer Home Remodeling, LLC (SHR, LLC). SR filed for Chapter 7 Bankruptcy on July 11, 2018, and plaintiffs were listed as unsecured creditors in SR's bankruptcy petition. Plaintiffs filed an adversary proceeding in the bankruptcy court on March 18,

2020, seeking a denial of SR's judgment discharge, and a money judgment of \$400,000, in the bankruptcy. Plaintiffs' adversary proceeding was closed on April 21, 2020.

On November 30, 2018, plaintiffs filed a complaint in Superior Court naming the following parties: SR, SHR, LLC, Schaefer Remodeling Group, Inc., Russ, and Inna Schaefer alleging fraudulent transfers under the Fraudulent Transfer Act, N.J.S.A. 25:2-25; and violations of New Jersey Racketeering Statute (RICO), N.J.S.A. 2C:41-1 to -6.2 (2018 complaint). The 2018 complaint violated the bankruptcy action's automatic stay because it was filed prior to the completion of the bankruptcy matter. Thus, on March 15, 2021, the 2018 complaint was dismissed. Plaintiffs unsuccessfully moved for reconsideration.

On October 18, 2021, once the bankruptcy stay was lifted, plaintiffs filed a new complaint in the Superior Court naming the same defendants as the 2018 complaint, but now including Ford Street, LLC as well (2021 complaint). This complaint raised the same claims as the 2018 complaint and added individual claims against Russ Schaefer under the Consumer Fraud Act, N.J.S.A. 56:8-1 to -228. Each party moved for summary judgment.

On July 22, 2022, the court conducted a hearing addressing both summary judgment motions. On January 11, 2023, the court denied plaintiffs' motion for

summary judgment without prejudice and granted in part and denied in part defendants' cross-motion without prejudice. In its written opinion the court found no fraudulent transfers or evidence of intent by defendants to avoid creditors. The court stated the bankruptcy trustee previously closed the "adverse proceeding without clawing back any monies for plaintiffs in this case on the theory that they were improperly diverted to the new company or any other defendants." Additionally, the court explained, "[e]ven if \$400,000 had been identified as having been fraudulently transferred, it would be the [t]rustee's decision to determine which creditors would be entitled to these monies." The court also found since Russ and Inna Schaefer were not sued in the original 2016 contractual matter, and "had not filed for bankruptcy," they "were not liable to plaintiffs for the judgment."

The motion court rejected plaintiffs' argument they still had a viable claim that Russ was personally liable for the judgment. The court relied upon the entire controversy doctrine which was designed to "prevent piecemeal or fragmented litigation and to promote comprehensive and final litigation and judicial efficiency." Under Rule 4:5-1(b), "plaintiffs were required to identify any non-party who essentially could have been joined or who was involved with the same transactional facts." The court found this matter rose out of the same

transactional facts as plaintiffs' first counterclaim wherein they failed to implead Russ. The court dismissed the claim against Russ personally. Additionally, the court found no support for either a civil conspiracy or RICO claims.

Plaintiffs moved for reconsideration arguing Russ fraudulently transferred his goodwill from SR to SHR, LLC. Defendants cross-moved for reconsideration of the denial of summary judgment of the two remaining counts. The court denied plaintiffs' motion, reaffirming that bankruptcy court was the proper venue to address the fraudulent transfer issues and there was no evidence of fraudulent transfer of goodwill, nor expert opinion addressing any fraudulent transfer. There was no evidence defendants placed any "assets beyond the reach of the creditor that would have been available to the creditor but for the transfer," including that of Russ's goodwill. The court reiterated it was SR that owed the judgment, not Russ or Inna or subsequent companies.

The court granted defendants' motion for reconsideration, dismissing the remaining counts of the 2021 complaint. This appeal followed.

We review grants of summary judgment de novo, applying the same legal standard as the trial court. Green v. Monmouth Univ., 237 N.J. 516, 529 (2019). There must be "competent evidential materials presented" that "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." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995); see Rule 4:6-2.

If no genuine issue of material fact exists, we then decide "whether the trial court correctly interpreted the law." DepoLink Court Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 333 (App. Div. 2013) (quoting Massachi v. AHL Servs., Inc., 396 N.J. Super. 486, 494 (App. Div. 2007)). We review issues of law de novo and accord no deference to the trial court's legal conclusions. Nicholas v. Mynster, 213 N.J. 463, 478 (2013). "The factual findings of a trial court are reviewed with substantial deference on appeal and are not overturned if they are supported by 'adequate, substantial and credible evidence.'" Manahawkin Convalescent v. O'Neill, 217 N.J. 99, 115 (2014) (quoting Pheasant Bridge Corp v. Twp. of Warren, 169 N.J. 282, 293 (2001)).

Plaintiffs argue they demonstrated defendants transferred a "substantial amount" of SR assets, "without [SR] receiving value in exchange, to avoid creditors" in violation of the Fraudulent Transfer Act. Plaintiffs contend their claims are supported because the bankruptcy trustee found payments Inna Schaefer made from various SR bank accounts were fraudulent transfers. They argue both Schaefer entities were created by, and are under, Russ Schaeffer's

control, and, as such there are no separate entities between the LLCs and Schaeffer. Thus, plaintiffs contend the trial court should have pierced SR's corporate veil and held Russ Schaeffer liable for the judgment against SR.

Plaintiffs' arguments regarding the fraudulent transfer of assets are without merit and are not germane to our discussion. The bankruptcy court found certain payments to Inna Schaefer's personal accounts from SR were fraudulent and set aside many of those payments. These claims are only associated with the bankruptcy estate of SR and are not linked to plaintiffs' claims.

Here, the bankruptcy trustee pursued the claims during the administration of the estate. Since the trustee did not abandon these claims, the trial court did not err in finding that "if plaintiffs believed that defendants fraudulently transferred any tangible or intangible assets, the forum where that should have been addressed was the bankruptcy court." As noted by the trial court, the "trustee . . . closed the adverse proceeding without clawing back any monies for plaintiffs in this case." Thus, plaintiff cannot establish defendants placed some asset beyond the reach of creditors and did so with the intent to defraud. See Gilchinsky v. Nat'l Westminster Bank N.J., 159 N.J. 463, 732 (1999). The

trustee closed out these fraudulent transfer claims, and the trial court did not err granting summary judgment.

Moreover, plaintiffs did not raise the issue of a fraudulent transfer of goodwill during the 341(a) hearing in the bankruptcy court nor did they move to reopen the bankruptcy proceedings. We recognize plaintiffs are frustrated by their inability to collect the judgment amount from SR. However, their fraudulent transfer arguments were required to be presented to the bankruptcy court.

Finally, plaintiffs cannot now assign liability to Russ Schaeffer when he was not party to the initial suit where judgment was entered against SR. Under Rule 4:5-1(b)(2), plaintiffs are required to "identify any non-party who should be joined in the action . . . because of potential liability to any party on the basis of the same transactional facts." Plaintiffs had the opportunity to implead Russ and chose not to. Thus, liability cannot be imputed to Russ Schaeffer for the SR judgment.

Any remaining arguments raised by plaintiffs are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

CLERK OF THE APPELLATE DIVISION