SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3961-22

BERNARDO DIAZ and
UNIVERSAL GENERAL
INVESTMENT CORP.,

Plaintiffs-Appellants,

v.

SIXTO BOBADILLA and
JUAN VARGAS,

Defendants-Respondents.

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Submitted June 3, 2024 – Decided June 25, 2024

Before Judges DeAlmeida and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law Division, Passaic County, Docket No. L-3309-12.

Tomas Espinosa, attorney for appellants.

Respondents have not filed a brief.

PER CURIAM

In this appeal, which returns to us from a remand, plaintiffs Bernardo Diaz and Universal General Investment Corp. (Universal) appeal from the July 11, 2023 order of the Law Division denying their motion to reinstate their complaint. We affirm.

I.

On August 10, 2012, plaintiffs filed a complaint alleging various causes of action against defendants Sixto Bobadilla and Juan Vargas arising out of a contract to purchase real property in Paterson. Diaz is the principal and sole shareholder of Universal. According to the complaint, plaintiffs entered into a contract to purchase the property from defendants, paid a deposit of $50,000, and obtained a loan commitment. Plaintiffs alleged defendants breached the agreement.

Plaintiffs also claimed they had leased space at the property they intended to purchase from defendants. Plaintiffs alleged that after they fell behind in their lease payments, defendants obtained a judgment of possession for the premises. Plaintiffs alleged defendants took possession of their machinery, equipment, inventory, and files, which had been at the leased premises. They estimated the property was worth more than $40,000. Plaintiffs sought specific performance

of the real estate contract, compensatory and punitive damages, interest, costs of suit, and attorney's fees.

On September 26, 2012, defendants filed an answer denying liability and asserting various counterclaims. Thereafter, the parties engaged in discovery and related motion practice, and the court scheduled the matter for trial on October 15, 2013. Plaintiffs' counsel submitted a trial brief and proposed jury charges to the court.

On October 15, 2013, the matter was not tried. On that day, at the court's direction, the parties participated in a settlement conference with a judge, but were unable to settle the matter. According to plaintiffs, the judge who handled the conference "stated that the case was adjourned and that it was to be placed on call for a jury trial within [six] weeks." It appears, however, that the court dismissed the action. The record does not contain an order dismissing the complaint. The court docket contains an entry for October 15, 2013, indicating "trial" and "cancel."

More than four years later, on January 29, 2018, plaintiffs moved to vacate the dismissal and restore the matter to the trial calendar. In support of the motion, plaintiffs submitted certifications from their attorney and Diaz

purporting to explain the delay in seeking reinstatement of the complaint. They requested oral argument.

In his certification, plaintiffs' counsel asserted that on October 14, 2014, a year after what he thought was the adjournment of the trial, he wrote to the court and stated that the parties had appeared for trial in October 2013, but that the trial was adjourned because a judge was not available to try the case.[1] The attorney stated that in chambers, a judge told the parties that they would be informed of the new trial date by mail. According to the attorney, after "an inordinate amount of time" passed, he checked the court's docket and discovered that the case had been marked as having been voluntarily dismissed.

The attorney stated that he had not requested voluntary dismissal of the complaint, nor agreed to such a dismissal. In addition, the attorney denied having executed a stipulation of dismissal. He asked the court to reinstate the case "to the calendar without any need of (sic) my client to file a motion." The attorney stated that he had no record of a response to his letter from the court,

[1] As will be explained below, several certifications were submitted to the trial court. Plaintiffs did not include in their appendix copies of those certifications. Our description of the contents of the certifications are derived from our opinion on plaintiffs' first appeal, which is explained more fully below.

but the court file includes a note that a staff member had called him and left a voicemail message instructing him to file a motion to reinstate the complaint.

Diaz stated in his certification that after the court adjourned the trial on October 15, 2013, he expected to receive a new trial date within six weeks but the notice "never came." He stated that neither he nor his attorney dismissed the case voluntarily, and that he thought the dismissal was either the result of gross negligence, a reckless mistake, or foul play.

Diaz claimed the motion to reinstate the complaint had not been filed earlier because he had to trace witnesses. According to Diaz, one witness had been deported to the Dominican Republic. He stated that he intended to retain an attorney to determine if that witness would be permitted to return to the United States to testify at trial. According to Diaz, another witness had disappeared, but he was located in New Jersey "a few weeks" before he signed the certification.

Defendants opposed the motion and filed a cross-motion to dismiss the complaint with prejudice. Defendants submitted an affidavit from their attorney in support of the motion and argued that plaintiffs had effectively abandoned their claims by not seeking reinstatement of the complaint for forty months after becoming aware that it had been dismissed. They too requested oral argument.

Defendants' counsel submitted a certification stating that the matter had been scheduled for trial on October 15, 2013, and was assigned to a judge who conferenced the matter "at length." He claimed that Diaz was not present at that time. According to defendants' attorney, the judge encouraged the parties to negotiate, and they were supposed to attend a meeting in the courthouse cafeteria, but Diaz was "nowhere to be found." He stated that the parties then appeared before another judge, who conferenced the case and marked it ready for trial. According to the attorney, when Diaz failed to appear, the court marked the matter dismissed.

Defendants' attorney claimed that plaintiffs' attorney "was aware of the dismissal." He added that defense witnesses who previously appeared for trial "are no longer available and [reside] outside of the United States." He asserted that defendants "strenuously object to any reinstatement of the complaint because it will unduly and severely prejudice" defendants.

On February 27, 2018, the trial court, without hearing oral argument, entered an order denying plaintiffs' motion to vacate the dismissal of the complaint and restore the case to the calendar. The court wrote on the order, "Application denied. This case was neglected for the last 4 1/2 years." The

court provided no further findings of fact or conclusions of law explaining its decision.

On March 22, 2018, the trial court entered another order, which again denied plaintiffs' motion to vacate the dismissal and reinstate the case, and granted defendants' cross-motion to dismiss the complaint with prejudice. On the order, the court wrote only that the motion was "opposed by mot[ion] to reinstate." The court provided no oral or written decision.

We reversed and remanded for further proceedings because the court failed to provide adequate reasons for its decisions. Diaz v. Bobadilla, No. A-3944-17 (App. Div. Apr. 8, 2019). We directed the court to hear oral argument, if the parties still wanted to be heard, and to issue findings of fact and conclusions of law explaining its decision on the motions, as required by Rule 1:7-4.

On remand, despite our instructions, the trial court did not hear oral argument on plaintiffs' motion until plaintiffs filed a new motion to reinstate the complaint. That motion was not filed until April 12, 2023, four years after we issued our remand. The court then heard oral argument on plaintiffs' renewed motion without plaintiffs' counsel's participation, although he had requested oral argument, and entered an order denying the motion. The court subsequently

vacated that order because it had failed to provide plaintiffs' counsel with notice of the oral argument date.

On July 11, 2023, the trial court heard oral argument on plaintiffs' renewed motion. On that day, the court issued an oral opinion denying plaintiffs' motion to reinstate the complaint under Rule 4:50-1(f). The trial court found that it erred when it dismissed the complaint in October 2013:

> I agree that it wasn't settled. I agree that for the year we may be complicit in having it marked improperly as settled . . . .
>
> So, I'm not [holding you responsible for anything] that occurred between October 13th – October 14th of 2013 and October 14th of 2014. That's on us . . . .

The court continued, "if you had filed the motion on October 14th of 2014[,] I would have reinstated it like that, but you didn't."

The court found that plaintiffs were aware of the erroneous dismissal of the complaint by October 14, 2014, when plaintiffs' counsel faxed a letter to the court asking that the complaint be reinstated. The court found that on October 15, 2014, a member of its staff left a voicemail message at the office of plaintiffs' attorney instructing him to file a motion to reinstate the complaint. The court's

finding was based on a handwritten notation on the letter plaintiffs' attorney faxed to the court.[2]

Plaintiffs' counsel disputed receipt of a voicemail message. He informed the court that he had no secretarial staff in October 2014 and intentionally kept his voicemail box full so that no one could leave him a voicemail message. According to plaintiffs' attorney, he took those steps to ensure that all communications to him would be through mail, email, or fax. He asserted that he was never informed by the court that plaintiffs were required to file a motion to reinstate their complaint.

The court found that regardless of whether plaintiffs' counsel received the voicemail message, plaintiffs did not establish exceptional circumstances warranting reinstatement of the complaint. The court explained,

> you claim you never got that verbal message . . . . Even though that's the case, you didn't do anything for [forty] months when you then – at which point you filed the motion. . . . .
>
> And that's why I find there are no exceptional circumstances to reinstate your case. You cannot rely

[2] Plaintiffs did not include a copy of the October 14, 2014 letter, either with or without the handwritten notation, in their appendix. The parties do not dispute that plaintiffs' attorney sent the letter. In addition, plaintiffs do not dispute that a handwritten notation appears on the letter, but do dispute that the staff member left a voicemail message. Plaintiffs' omission of the letter from their appendix is not material to our resolution of this appeal.

> on the [c]ourt's calendaring for your calendaring. You have a fiduciary duty to your client and you – you did initially pick up on the fact after a year.
>
> I find that is permissive, but not [forty] months later when you made the motion and so for that reason, I am finding that there is no basis under [Rules] 4:50-1, or 4:50-1, wouldn't apply because it's not a reasonable amount of time. [A]nd I find that therefore the motion to reinstate is denied.

The court also found that defendants would be prejudiced by reinstatement of the complaint because during the forty-month period two of their witnesses became unavailable. A July 11, 2023 order memorializes the trial court's decision.[3]

This appeal followed. Plaintiffs argue the trial court: (1) failed to comply with our remand instructions by requiring plaintiffs to file a new motion to reinstate the complaint; (2) erred when it concluded that plaintiffs had not established exceptional circumstances warranting reinstatement of their complaint; and (3) erroneously concluded that plaintiffs were responsible for any prejudice suffered by defendants because it was the court's "disarray" that caused the erroneous dismissal of the complaint, the failure to notify plaintiffs'

[3] There is no indication in the record that the trial court decided defendants' cross-motion despite our remand instructions that it do so.

counsel to file a motion to reinstate the complaint in October 2014, and the four-year delay in complying with our remand.

II.

We agree with plaintiffs' argument that the trial court failed to follow our remand instructions. Justice Brennan long ago expressed the well-established principle that a trial judge "is under a peremptory duty to obey in the particular case the mandate of the appellate court precisely as it is written." Flanigan v. McFeely, 20 N.J. 414, 420 (1956) (citing In re Plainfield-Union Water Co., 14 N.J. 296, 303 (1954); McGarry v. Central R. Co. of N.J., 107 N.J.L. 382 (E. & A. 1931); Hellstern v. Smelowitz, 17 N.J. Super. 366, 371 (App. Div. 1952); Jewett v. Dringer, 31 N.J. Eq. 586 (Ch. 1879)); see also Park Crest Cleaners, LLC v. A Plus Cleaners & Alterations Corp., 458 N.J. Super. 465, 472 (App. Div. 2019).

Our mandate here could not have been clearer:

> We therefore reverse the orders of February 27, 2018, and March 22, 2018, and remand the matter to the trial court for further proceedings on the motions. If the parties wish to be heard, the court shall permit them to present oral argument on the motions. Thereafter, the court shall make findings of fact and conclusions of law, as required by Rule 1:7-4.
>
> [Diaz, slip op. at 11.]

We reversed the orders the trial court had entered on plaintiffs' motion to reinstate the complaint and defendants' cross-motion to dismiss the complaint with prejudice and directed the court to consider those motions, after hearing oral argument if the parties still wished to be heard, and to issue findings of fact and conclusions of law in support of the trial court's decision.

Nothing in our remand instructions suggests plaintiffs were required to file a new motion to reinstate the complaint. Nor did we suggest that the trial court refrain from complying with the mandate for four years. As plaintiffs correctly argue, the inordinate delay in fulfilling the mandate exacerbated the prejudice to the parties by increasing the likelihood that witnesses' memories would fade or that they would become unavailable to testify.

However, as we explain below, we conclude that plaintiffs' counsel's forty-month delay in moving to reinstate the complaint after he became aware of its dismissal was a sufficient basis on which to deny plaintiffs' motion to reinstate the complaint, regardless of the additional prejudice that may have arisen by the delay in carrying out the remand. We note as well that, even though the trial court's insistence on plaintiffs' filing a new motion was outside our mandate, plaintiffs' counsel offers no reasonable explanation for his four-year delay in filing that motion, which, we assume, relied on essentially the same

moving papers that plaintiffs filed in 2018. We do not, therefore, agree with plaintiffs' contention that the trial court's failure to promptly resolve the two motions that were the subject of the remand and its insistence that plaintiff file a new motion to reinstate the complaint compels reversal of the orders on appeal.

Turning to the merits of the trial court's denial of plaintiffs' motion, plaintiff sought relief under Rule 4:50-1(f), which provides:

> [o]n motion, with briefs, and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment or order for the following reasons: . . . (f) any other reason justifying relief from the operation of the judgment or order.

Relief under this provision is available only when "truly exceptional circumstances are present." Hous. Auth. v. Little, 135 N.J. 274, 286 (1994) (quoting Baumann v. Marinaro, 95 N.J. 380, 395 (1984)). "The movant must demonstrate the circumstances are exceptional and enforcement of the judgment or order would be unjust, oppressive or inequitable." Johnson v. Johnson, 320 N.J. Super. 371, 378 (App. Div. 1999).

In addition, when determining whether a party should be relieved from a judgment or order, courts must balance "the strong interests in the finality of litigation and judicial economy with the equitable notion that justice should be done in every case." Jansson v. Fairleigh Dickinson Univ., 198 N.J. Super. 190,

193 (App. Div. 1985). "[J]ustice is the polestar and our procedures must ever be moulded and applied with that in mind." Id. at 195 (quoting N.J. Highway Auth. v. Renner, 18 N.J. 485, 495 (1955)).

A motion under Rule 4:50-1(f) must be "made within a reasonable time . . . ." R. 4:50-2. When determining whether a motion has been made within a reasonable time, the court must consider "the surrounding circumstances including the length of time that has passed and a due consideration for competing rights and interests which have come to exist." Friedman v. Monaco & Brown Corp., 258 N.J. Super. 539, 543 (App. Div. 1992) (citing City of Newark v. (497) Block 1854, Lot 15, 244 N.J. Super. 402 (App. Div. 1990)).

An application to set aside an order pursuant to Rule 4:50 is addressed to the motion judge's sound discretion, which should be guided by equitable principles. Little, 135 N.J. at 283. The trial court's determination is entitled to substantial deference and will not be reversed in the absence of a clear abuse of discretion. US Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). To warrant reversal, plaintiffs must show that the decision denying their motion was "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Ibid. (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007) (internal quotations omitted)).

We have carefully considered the record in light of these principles and find no basis on which to reverse the trial court's order. We acknowledge, as did the trial court, that dismissal of the complaint in October 2013 was the court's error. It is undisputed that the plaintiffs did not voluntarily dismiss their claims. We also agree with the trial court that plaintiffs' counsel's one-year delay in contacting the court after what he thought was the adjournment of a trial, while lengthy, could be interpreted as a reasonable amount of time within which to seek relief under Rule 4:50-1(f).

However, we conclude that it was within the trial court's discretion to find that the forty-month delay between counsel's October 14, 2014 letter to the court inquiring about the dismissal of the complaint and the filing of plaintiffs' motion to reinstate the complaint was not a reasonable time in which to seek relief under Rule 4:50-1(f). Whether plaintiffs' counsel received the voicemail message from the court's staff or not, it was not reasonable for him to wait forty months to file a motion to reinstate the complaint. Once plaintiffs' counsel was aware of the erroneous dismissal of the complaint, it was incumbent on him to take affirmative steps to reinstate his clients' claims. Writing a letter to the court and waiting forty months for a response before filing a motion to reinstate was not a

reasonable course of action. Denial of the motion was, therefore, warranted under Rule 4:50-2.

Moreover, both parties represented that witnesses had become unavailable between the dismissal of the complaint and the filing of plaintiffs' motion to reinstate, highlighting the fact that reinstatement of the complaint would be unjust to defendants. It is not surprising that the defendants' ability to present a defense to plaintiffs' claims would have been hampered by plaintiffs' delay in waiting until 2018 to move to reinstate a complaint filed in 2012 and dismissed in 2013.

Affirmed.