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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NOS. A-2066-07T2
A-2071-07T2

ALLEGHENY/AA BAIL BONDS, INC., ATTORNEY IN FACT FOR ALLEGHENY CASUALTY COMPANY,

Plaintiff-Respondent,

v.

SHAWN WRIGHT, FLOYD A. BOOKER and DEBORAH BOOKER a/k/a DEBORAH WRIGHT-BOOKER, jointly, severally, and in the alternative,

Defendants-Appellants.

ALLEGHENY/ACE BAIL BONDS, INC., ATTORNEY IN FACT FOR ALLEGHENY CASUALTY COMPANY,

Plaintiff-Respondent,

v.

SHAWN WRIGHT, FLOYD A. BOOKER, DEBORAH BOOKER a/k/a DEBORAH WRIGHT-BOOKER, and SANDRA WRIGHT, jointly, severally, and in the alternative,

Defendants-Appellants.

Submitted: January 18, 2011 – Decided: March 22, 2011

Before Judges Grall and C.L. Miniman.

On appeal from Superior Court of New Jersey, Law Division, Special Civil Part, Salem County, Docket Nos. DC-000410-07 and DC-000457-07.

Shawn Wright, Floyd A. Booker, Deborah Booker, and Sandra Wright, appellants pro se.

C. Peter Burro, attorney for respondents.

PER CURIAM

Defendants Floyd A. Booker (Floyd) and Deborah Booker (Deborah) appeal from a judgment entered on November 9, 2007, in favor of plaintiff Allegheny/AA Bail Bonds, Inc., Attorney in Fact for Allegheny Casualty Company (AA), in the amount of $6684.39. Floyd, Deborah, and defendant Sandra Wright appeal from another judgment entered on November 9, 2007, in favor of plaintiff Allegheny/Ace Bail Bonds, Inc., Attorney in Fact for Allegheny Casualty Company (Ace), in the amount of $5538.63. Defendant Shawn Wright (Shawn) appeals from two judgments entered on March 6, 2008, one in favor of AA in the amount of $6684.39, and one in favor of Ace in the amount of $5538.63.

Defendants collectively raise two issues on appeal: (1) a claim that the trial judge disregarded Shawn's claim that plaintiffs entered into an oral agreement waiving their entitlement to the premiums on the bail bonds issued for Shawn's release from jail and (2) a claim that plaintiffs violated their rights under the Truth in Lending Act, 15 U.S.C.A. §§ 1601-1667f

(TILA), 12 C.F.R. § 226 (Regulation Z), and N.J.S.A. 12A:2-104 (Uniform Commercial Code (UCC) § 2-104). We have consolidated the appeals in both cases for purposes of this opinion. Finding no merit in defendants' contentions, we now affirm in all respects.

Shawn was incarcerated in federal prison at the time he filed his appellate briefs. Defendants are family members: Deborah and Sandra are Shawn's sisters, and Floyd is Deborah's husband. Shawn used plaintiffs' services on at least three occasions——November 7 and December 12, 2003, and April 21, 2004——following his arrests. The present dispute concerns unpaid premiums related to bail bond services provided in November 2003 and April 2004.

Upon Shawn's first arrest, bail was set at $115,000. Shawn called Lenny Corbin, plaintiffs' agent, by telephone from jail on November 7, 2003. He informed Corbin that he "could not come up with the needed 10% to have a bond posted." He admitted that Corbin "explained that if [he] were to miss a payment [on the $10,000 bail-bond premiums at the rate of $100 per month each], or miss a schedule[d] court date, he could withdraw his bond and have [him] rearrested." Shawn "was familiar with the procedure" so he agreed.

Sandra and Deborah both admitted receiving a call from Shawn that day asking them to co-sign a bond for his release. According to Deborah, Shawn "stated that he would make the monthly payments while waiting to go to court" so she agreed. Sandra, Deborah, and Floyd met with Corbin; Shawn's sisters admitted that they and Floyd co-signed the Ace bond. Sandra and Deborah agreed that Corbin explained that the bond would be withdrawn if Shawn failed to make court appearances; according to Sandra, Corbin did not "state that [she] had to pay after Shawn went to jail and . . . received his bond back."

According to Deborah, Shawn's fiancée brought her money that day to make the initial bond payment of $5000 toward the $10,000 premium. Floyd, Deborah, and Sandra executed co-signer information Forms and promissory notes agreeing to make $100 monthly payments toward the balance of $5000. The co-signer information forms expressly stated that "[t]he premium is not refundable." The promissory notes contained the following language: "The borrower waives demand, presentment for payment, protest and notice. In the event of any default, the borrower will be responsible for any costs of collection [on] this note, including court costs and attorney fees." Twelve monthly payments were made on the premium, leaving an outstanding balance of $3800.

After Shawn's April 2004 arrest, bail was set at $100,000. He again telephoned Corbin regarding a bail bond. Shawn "explained also that the Feds/DEA might adopt[] [his] case and . . . void the bond." Shawn "made arrangements to give [his] sister $5000 so she could co-sign another bond for [him]."

Two days later, Shawn called Deborah from jail, asking her to co-sign the third bond. She agreed and subsequently met Shawn's fiancée to obtain the $5000. Thereafter, she met Corbin and made the initial payment toward the AA bond premium of $10,000. Co-Signer Information forms executed by Floyd and Deborah stated that "[t]he premium is not refundable." The bail bond application and indemnity agreement were signed "Shawn Wright." Promissory notes executed by Floyd and Deborah, which contained the same language as those from November 2003, reflected an agreement to make $100 monthly payments toward the balance due.

Shawn admitted that Deborah, Sandra, and Floyd had previously co-signed for the two bail bonds from November and December 2003. Based on "past dealings," Shawn asserted that he had given Corbin $20,000 in business. He also admitted that Corbin went to Deborah's home in April 2004 to obtain payment on the third bond premium and subsequently placed a bond at the Salem County Correctional Facility (SCCF) on Shawn's behalf.

Shawn's bail was revoked a few days later; he was sent to Cumberland County Jail (CCJ) and was told that the DEA was going to prosecute him under federal law. Because Shawn had not forfeited his bail by misconduct, he contacted Corbin and asked for the return of the $5000 initial premium payment; Corbin refused this request. Thereafter, four monthly payments were made, reducing the balance to $4600.

Deborah admitted making payments on one bond or the other from April to September 2004 when she visited Shawn at the CCJ, requesting money to continue making the monthly payments. She related that Shawn told her not to make payments because he had made an agreement with Corbin. Because they believed that Shawn and Corbin had an agreement resolving the matter, and because they did not receive any payment demands for at least two years, Sandra, Deborah, and Floyd believed that the bills were satisfied and did not make any more payments.

Shawn was released from jail on September 27, 2004. He claimed that he met with Corbin in October to discuss their payment dispute because he believed that Deborah should not have been making payments following his April 2004 telephone conversation with Corbin (although Shawn admitted that, in the April 2004 telephone conversation, Corbin refused to apply the April $5000 premium to the November bail bond). Inconsistently

with Deborah's claim that Shawn told her in September about his "agreement" with Corbin, Shawn claimed that Corbin orally agreed in October to apply the $5000 paid in April on the third bond to the balance due on the first bond, which "satisfied [their] bond situation and disagreement." Corbin denied ever agreeing to this arrangement.

In February 2007, plaintiffs each filed a complaint seeking payment of the premiums due, and defendants filed answers. Shawn also filed counterclaims and ultimately moved for summary judgment in both matters. In his supporting certification, he asserted that Corbin had "falsified documents by filling out the Bail Bond Applications hi[m]self" and had "engaged in an act of [f]orgery by having [Deborah] forge [his] name" on the application. He further asserted that Corbin engaged in deception and manipulation constituting fraud as the bail bond application contained "false and inaccurate information" and was incomplete. He urged that he was not aware that there was a bail bond application because Corbin refused to visit him in jail. Moreover, he asserted violations of TILA and sought a judgment voiding the bail bonds in their entirety and refunding all payments made toward the bond premiums.

Deborah and Floyd thereafter moved for summary judgment in both matters; their certification in support of their motion

mirrors Shawn's arguments. Deborah asserted that Corbin completed the AA bail bond application and "requested" that she sign in place of Shawn. She further asserted that she completed part of the Ace bail bond application "with false and incorrect information."

Last, Sandra moved for summary judgment in the Ace matter. In her supporting certification, she asserted that she was told by Shawn and Corbin that she only needed to sign "to assure" Shawn's court appearance and that her name was printed in an incorrect section of the co-signer form. Like the other defendants, she also asserted that "the contract [was] deceptive, unclear, and was misrepresented by [Corbin]."

Plaintiffs cross-moved for summary judgment and submitted certifications from Corbin. In opposition to Shawn's motions, Corbin disputed the forgery and falsification claims. Further, as to the AA bail bond, he asserted that he processed Shawn's release and conferred with him at the jail. He asserted that Shawn signed the bail bond application and indemnity agreement, reviewed the paperwork without altering the information provided by his sister, and signed "complaining not one iota about sections being left blank or incomplete." As to the Ace bond, he asserted that he processed the paperwork for Shawn's release and then met with Shawn at his office where Shawn signed the

bail bond application and indemnity agreement after reviewing it and making no changes to the documents.

The judge held a hearing on November 9, 2007, the date set for trial. Deborah and Sandra appeared and argued; Shawn participated by telephone from a federal correctional facility, although he did not call until halfway through the hearing. Shawn, Deborah, Sandra, and Corbin all testified. Floyd had recently had surgery and did not appear; the judge considered his arguments based on the papers.

Before Shawn was on the telephone, Sandra admitted, "I did sign it. But, I never heard from this guy, I didn't know what was going on. I just know that I never heard from him until now. So, I thought everything was taken care of." She further stated that she "never made . . . payments. They were being taken care of by my brother."

Deborah also admitted, "I did sign. But, the agreement was that -- I wasn't really paying the payments. My brother's girlfriend was giving me the money to make the payments for him." Deborah also stated that Corbin typically would call her if a payment was late and, because she stopped hearing from him, she "thought that him [sic] and my brother had settled it. I didn't hear nothing until I heard from the lawyer saying that I owed money." When asked by the judge if she acknowledged being

a guarantor in both matters, Deborah replied, "Right." She asserted: "I thought that they had it settled. If [Corbin] didn't have it settled, he should have called me, because I was the one that signed it."

Still not having heard from Shawn, the judge began to place his decision on the record. When the judge was almost finished, he was informed that Shawn was on the telephone. When the call was connected, Shawn denied meeting with Corbin in jail, but admitted he had spoken with him by phone. He stated, "I had my sister and them call him with the funds for me to post a bond." He denied signing any of the documents but, when asked if he disputed that plaintiffs had bailed him out, he replied, "No, I'm not disputing that." Shawn also told the judge that it was his understanding that he only had to make payments during the time he was out on bail and not once he kept his court date. He argued that if Corbin "came to the jail, explained [t]he paperwork to me, and explained the paperwork to my family as far as these promissory notes and stuff like that, I would never have took the bail bond from him under those circumstances."

Corbin disputed Shawn's account and testified that he had met with Shawn in person in both matters and that Shawn had signed the relevant documents after they were explained to him.

The judge determined that there was "a factual dispute as to whether [Shawn] actually signed at least one of these documents." As a result, he denied all motions for summary judgment but determined that, based on the entire record, he could render judgments in favor of plaintiffs and against defendants without any further testimony. In the judge's earlier findings, he determined that the statute of limitations had not run. He found from the whole of the Ace documents that it was clear that Sandra was signing as a guarantor, even though she signed on the wrong line. He found it irrelevant that Deborah and Sandra had never personally advanced any funds on the bond premiums because guarantors generally do not make payments absent default by the prime obligor. He observed that plaintiffs had no obligation to contact defendants prior to filing suit. He determined that Shawn and his family were "all very familiar with the process" based on prior experience. Both contracts were valid and binding, but neither premium was paid in full. Because Deborah, Floyd, and Sandra were all guarantors, all were liable to Ace for the $3800 unpaid premium plus $1266.67 in collection fees, and Deborah and Floyd were liable to AA for the $4600 unpaid premiums and $1532.33 in collection costs.

After hearing from Shawn, the judge further found that Shawn's claim that he was not required to pay the full premium as long as he showed up for court "just doesn't make much sense." The issue was the payment of the premiums; thus, he found:

> [I]t appears to me, even with the arguments made by [Shawn] and his sisters, that there was a bond issued in each case, that . . . the amount of the premium really is not disputed. What's disputed is whether . . . [Shawn] and the family members . . . were required to pay the full premium.
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> And, . . . in listening to the testimony, I find that there was a valid contract, that Allegheny performed on it, that [Shawn] had the benefit of it, . . . that is, he was released . . . and therefore Allegheny is entitled to the premium, plus the costs that are requested.

These appeals followed. Defendants contend that (1) the judge erred when he disregarded Shawn's alleged October 2004 agreement with Corbin; (2) plaintiffs violated their rights under "the Consumer Protection Act" by failing to allow Shawn to fill out the bail bond applications, by not disclosing the procedures, terms and specifics of the bail bonds, and by capitalizing on their ignorance; (3) plaintiffs violated N.J.S.A. 12A:2-104 requiring merchants to understand the legal consequences of their words and deeds; (4) plaintiffs violated TILA by not explaining the full details of the promissory notes;

and (5) Floyd never met with Corbin or signed the promissory notes.

Plaintiffs argue that the judge's decision was amply supported by the record. They contend that TILA "is inapplicable to bail premium transactions" as "there is zero authority for its application to the bail bond scenarios created in the context of the cases before this [c]ourt." In any event, they assert that "the plain and simple language of the Promissory Notes, executed and delivered by the co-signers in this case, evidence just the sort of [necessary] disclosures" required by applicable law.

"The scope of appellate review of a trial court's fact-finding function is limited." Cesare v. Cesare, 154 N.J. 394, 411 (1998). "The general rule is that findings by the trial court are binding on appeal when supported by adequate, substantial, [and] credible evidence." Id. at 411-12. Deference is also given to a trial judge's credibility determinations. N.J. Div. of Youth & Family Servs. v. M.C., 201 N.J. 328, 342 (2010). However, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

We will not consider Floyd's claim that he never signed the promissory notes. This assertion was not raised below and will not be considered for the first time on appeal. Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973). Furthermore, it is contradicted by Floyd's and Deborah's certifications in support of summary judgment and Sandra's answer to Ace's complaint.

We begin with the general proposition that "[f]ailing to read a contract does not excuse performance unless fraud or misconduct by the other party prevented one from reading." Gras v. Assocs. First Capital Corp., 346 N.J. Super. 42, 56 (App. Div. 2001) (internal quotation marks omitted), certif. denied, 171 N.J. 445 (2002); see also Stelluti v. Casapenn Enters., LLC, 203 N.J. 286, 305 (2010) ("When a party enters into a signed, written contract, that party is presumed to understand and assent to its terms, unless fraudulent conduct is suspected."). Here, as stated above, the repayment terms were expressly stated on the documents that all parties signed, documents with which all parties were familiar based on past dealings. Defendants' allegations of misrepresentation and deception are not supportable as a matter of contract law, and they are all bound by the agreements. See Gras, supra, 346 N.J. Super. at 56.

As to Sandra's and Deborah's argument that they had not received payment demands and believed the matter was settled,

notice of default may be waived in a guaranty agreement, 38 Am. Jur. 2d Guaranty § 84 (2010), as the guaranty agreements expressly so provided here.

Shawn's arguments that he did not actually sign the documents and that his signature was forged also lack merit because "[a]ctual authority (express or implied) may 'be created by written or spoken words or other conduct of the principal which, reasonably interpreted, causes the agent to believe that the principal desires him so to act on the principal's account.'" Jennings v. Reed, 381 N.J. Super. 217, 231 (App. Div. 2005) (quoting Restatement (Second) of Agency § 26 (1958)). The principal will be bound by contracts with third parties entered into by an agent with actual authority to act on his behalf. Restatement (Third) of Agency § 6.01 (2006).

Here, Shawn and his sisters admitted that he explicitly instructed them to secure bail bonds for his release in November 2003 and April 2004, and he provided the money for the down payment of the premium. Thus, Deborah and Sandra were acting on his behalf in the transaction, and he is bound by their actions. Shawn received the benefits under the contracts as he was released on bail. Furthermore, the documents signed contain express language regarding the repayment obligations and nonrefundable nature of the premiums. Thus, there is ample

support in the record to affirm the judgments against Shawn based on contract and agency principles. See Cesare, supra, 154 N.J. at 411-12.

Contrary to Shawn's claim, the judge did not "disregard" the alleged October 2004 "agreement"; he rejected it as not credible. Consequently, we must defer to the judge's credibility determination, M.C., supra, 201 N.J. at 342, as he had the opportunity to see and hear the witnesses testify, whereas we review only a cold record. Thus, we consider only the claims under "the Consumer Protection Act," N.J.S.A. 12A:2-104, and TILA.

It is not entirely clear what authority defendants refer to as the "Consumer Protection Act" because they provide us with no statutory citations other than citations to TILA, Regulation Z, and UCC § 2-104. It is not our job to identify the legal authorities on which parties rely, and there are many consumer protection acts, including TILA. As such, we will consider defendants claims only under TILA (which has a short title of the "Consumer Credit Protection Act," Pub. L. No. 90-321, § 1, 82 Stat. 146, 146 (1968)), Regulation Z, and N.J.S.A. 12A:2-104.

As to defendants' general arguments concerning TILA and Article 2 of the UCC, they do not provide any authority for their application in the bail-bond context, nor have we been

able to locate any binding authority. However, the Eleventh Circuit has found that TILA does not apply in this context. See Buckman v. Am. Bankers Ins. Co. of Fla., 115 F.3d 892, 892-94 (11th Cir. 1997). The plaintiff there argued "that a bail bond transaction which includes a contingent promissory note and mortgage[, as distinct from an indemnity agreement,] is subject to [TILA]." Id. at 892. The court held that "the giving of such a note and mortgage as part of a bail bond transaction does not constitute the extension of 'credit' subject to [TILA]." Id. at 893.

Finally, we find no merit to defendants' claim that plaintiffs violated N.J.S.A. 12A:2-104. That statutory section merely contains definitions of terms, including "merchant," as used in Article 2 of the UCC and, by itself, does not impose any duties upon a merchant. We need not reach the issue of whether Article 2 applies to a surety contract because defendants have not identified any section of the UCC plaintiffs allegedly violated. As such, we find no merit to this claim and affirm without discussion. 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