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APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0235-16T2

MARGARET REARDON,

Plaintiff-Respondent,

v.

ROSSY SANTOS, LESBIA V.  
MENDEZ, MY OWN HANDS SERVICES,  
LLC, and ESTEBAN MANUEL,

Defendants-Appellants.

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Submitted November 8, 2017 - Decided November 30, 2017

Before Judges Hoffman and Mayer.

On appeal from Superior Court of New Jersey,  
Law Division, Bergen County, Docket No.  
L-2662-16.

Ernest G. Ianetti, attorney for appellants.

Murano & Roth, LLC, attorneys for respondent  
(John F. Murano, on the brief).

PER CURIAM

Defendants Rossy Santos, Lesbia V. Mendez, My Own Hands Services, LLC and Esteban Manuel appeal from a June 24, 2016 order<sup>1</sup> awarding \$1400 in attorney's fees to plaintiff as a result of defense counsel's failure to prepare and provide a brief in opposition to a summary judgment motion filed on behalf of plaintiff Margaret Reardon. We reverse.

Plaintiff sued defendants for the return of money she paid for reconstruction of her home after it was destroyed by a fire. Defendants filed a counterclaim seeking payment for work performed.

Plaintiff filed a motion for summary judgment against defendants two months after filing her complaint. Plaintiff's motion was filed prior to the service of discovery by either party.

Defendants requested a two-week adjournment of the summary judgment motion because their counsel was defending back-to-back criminal trials as a pool attorney for the Office of the Public Defender. Plaintiff's counsel was unable to agree to the adjournment request because: he would be on vacation the following motion cycle, his client was elderly and anxious about the loss of the money she paid to defendants, and plaintiff's counsel

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<sup>1</sup> On August 5, 2016, the judge certified the order "as final to permit [defense counsel] to seek appellate review."

believed defendants had no valid defense and one of the individually named defendants was in the country illegally.

Four days prior to the original return date of plaintiff's motion, defense counsel wrote to the court requesting a two-week adjournment. Plaintiff's counsel opposed the requested adjournment and the motion judge denied the adjournment.

Both counsel appeared in court on the return date of plaintiff's motion. Defense counsel renewed his request for a two-week adjournment of the motion. The judge heard from both counsel on the renewed adjournment application. During argument on the adjournment request, plaintiff's attorney sought counsel fees for his time spent preparing and attending court. Plaintiff's counsel advised the motion judge that he spent four hours of time, including driving to/from the court that day and preparing for the summary judgment argument, at a rate of \$375 per hour.<sup>2</sup> Defense counsel asked the motion judge to delay any decision on an award of attorney's fees pending the outcome of the summary judgment motion. The motion judge adjourned the motion, but ordered defense counsel to pay plaintiff's counsel \$1,400 in fees.

Defendants filed timely opposition to the adjourned summary judgment motion on behalf of the individual defendants and

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<sup>2</sup> The motion judge awarded \$350 per hour as a "fair and reasonable rate."

stipulated that the corporate defendant committed a regulatory violation of the Consumer Fraud Act. Plaintiff's summary judgment motion was eventually denied on the merits.

We review an award of sanctions pursuant to Rule 1:2-4 for abuse of discretion. Shore Orthopaedic Grp., LLC v. Equitable Life Assurance Soc'y, 397 N.J. Super. 614, 623 (App. Div. 2008), aff'd, 199 N.J. 310 (2009) (awarding of attorney's fees should not be disturbed unless it constitutes a clear abuse of discretion). A court may award reasonable attorney's fees when authorized to do so by rule or statute. Id. at 623-24. Rule 1:2-4, provides:

(a) Failure to Appear. If without just excuse or because of failure to give reasonable attention to the matter, no appearance is made on behalf of a party on the call of a calendar, on the return of a motion, at a pretrial conference, settlement conference, or any other proceeding scheduled by the court, or on the day of trial, or if an application is made for an adjournment, the court may order any one or more of the following: (a) the payment by the delinquent attorney or party or by the party applying for the adjournment of costs, in such amount as the court shall fix, to the Clerk of the Court . . . or to the adverse party; (b) the payment by the delinquent attorney or party or the party applying for the adjournment of the reasonable expenses, including attorney's fees, to the aggrieved party . . . .

(b) Motions; Briefs. For failure to comply with the requirements of R. 1:6-3, 1:6-4 and 1:6-5 for filing motion papers and briefs and for failure to submit a required brief, the court may dismiss or grant the motion or

application, continue the hearing to the next motion day or take such other action as it deems appropriate. If the hearing is continued, the court may impose sanctions as provided by paragraph (a) of this rule.


Judges should impose sanctions sparingly when "litigants have failed to comply precisely with particular court schedules, unless such noncompliance was purposeful and no lesser remedy was available." Connors v. Sexton Studios, Inc., 270 N.J. Super. 390, 395 (App. Div. 1994). Before a court imposes sanctions, the judge should consider whether there has been a showing of prejudice on the part of the requesting party. Mayfield v. Cmty. Med. Assocs., 335 N.J. Super. 198, 207 (App. Div. 2000). Our review of an order imposing sanctions "requires us to abstain from interfering with those discretionary decisions unless an injustice has been done." Mandel v. UBS/PaineWebber, Inc., 373 N.J. Super. 55, 82-83 (App. Div. 2004) (quoting Cavallaro v. Jamco Prop. Mgmt., 334 N.J. Super. 557, 571 (App. Div. 2000)).

We conclude the motion judge mistakenly exercised her discretion in sanctioning defense counsel by awarding attorney's fees to plaintiff. Defense counsel was reasonable in requesting an adjournment due to his back-to-back criminal trial schedule as a pool attorney for the Office of the Public Defender. Defense counsel explained that his workload increased dramatically as a result of being assigned additional cases by the Office of the

Public Defender. Under the circumstances, defense counsel's noncompliance with the court rule governing the filing of a timely opposition brief was not an act of purposeful defiance. Nor did the motion judge find defense counsel acted in bad faith. Further, plaintiff's counsel failed to articulate any substantial prejudice to his client as a result of a two-week adjournment of the motion. Thus, the motion judge's imposition of sanctions under the circumstances was an injustice.

Reversed.

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

  
CLERK OF THE APPELLATE DIVISION