SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0255-15T3

ALLIANCE SHIPPERS, INC.,

Plaintiff-Appellant/
Cross-Respondent,

v.

CASA DE CAMPO, INC.; PEDRO PEREZ, individually and as an agent of CASA DE CAMPO, INC.; ARTHUR DE PINTO; FELIX PRODUCE CORP.; FELIX CEBALLO, individually and as an agent of FELIX PRODUCE CORP.; GFP DISTRIBUTORS, INC. t/a GARDEN FRESH PRODUCE; JOSEPH T. GUARRACINO, individually and as an agent of GFP DISTRIBUTORS, INC. t/a GARDEN FRESH PRODUCE; JOSEPH KOLINEK, individually and t/a C&M PRODUCE; LIONXEN CORP. AND PRODUCE BIZ LLC t/a POSEIDON FOOD SERVICE; XENOFON GIALIAS, individually and as agent of LIONXEN CORP. AND PRODUCE BIZ LLC t/a POSEIDON FOOD SERVICE; VILLAGE PRODUCE, INC.; MOHAMMED HADI, individually and as agent of VILLAGE PRODUCE, INC.; ALEX PRODUCE CORP.; ALEX BONILLA a/k/a ALEJANDRO BONILLA, individually and as an agent of ALEX PRODUCE CORP.; HEE JAE PARK d/b/a J&S PRODUCE COMPANY; LUIS JOSE BONILLA d/b/a LUIS JOSE PRODUCE; ZEF DELJEVIC; HENRY GARLAND, individually and t/a

PRO QUALITY PRODUCE and BALMANGAN PRODUCE, INC.; GEORGE V. ROUSSOS; SANANJOS PRODUCE CORP. d/b/a FRIEMAN BROS.; KOREAN PRODUCE CORP.; PAUL KIM a/k/a PIL JUNG KIM and STELLA KOUFALIS, individually and t/a KMS FRUIT & VEGETABLES; and HAVANA PRODUCE, INC.,

Defendants,

and

ERNESTO REGUITTI, individually and as an agent of SANANJOS PRODUCE CORP. d/b/a FRIEMAN BROS.,

Defendant-Respondent/
Cross-Appellant.

Argued December 1, 2016 - Decided April 24, 2017

Before Judges Lihotz and Hoffman.

On appeal from Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-2650-13.

Ronald Horowitz argued the cause for appellant/cross-respondent.

Mark C. H. Mandell argued the cause for respondent/cross-appellant.

PER CURIAM

This mundane collection action involving extremely litigious parties has blossomed into a procedurally complex matter, which includes removal and remand to federal court, disjointed review by two Law Division judges, and ended with an order for sanctions. Not surprisingly, the parties filed cross-appeals from that order.

Plaintiff, Alliance Shippers, Inc. (Alliance) appeals from two Law Division orders: a May 29, 2015 order imposing sanctions and an August 21, 2015 order denying reconsideration of that order. Defendant Ernesto Reguitti filed a cross-appeal challenging the same orders, arguing the attorney's fees awarded were insufficient. We reverse both orders and remand the matter for further proceedings as discussed in this opinion.

Alliance initiated a collection action against Kris-Pak Sales Corp. (Kris-Pak), for outstanding freight transportation services (Docket No. MID-L-2024-12). Judgment was entered against Kris-Pak (Judgment No. J-155860-12) and Alliance commenced discovery in aid of execution. Alliance learned various entities owed receivables to Kris-Pak. Alliance sought to collect those sums to satisfy its judgment.

Kris-Pak's debtors include Sananjos Produce Corp. d/b/a Frieman Bros. (Sananjos) and its principal, Ernesto Reguitti, individually. This debt for purchased produce was governed by the Perishable Agricultural Commodities Act (the Act), 7 U.S.C.A. § 499(c)(5). The Act includes provisions imposing personal liability on the principals who fail to satisfy corporate debts. Although Sananjos was formally dissolved, a portion of its debt due Kris-Pak was assessed personally against Reguitti, as Sananjos' principal.

A February 24, 2010 consent judgment entered by the United States District Court for the District of New Jersey (USDC judgment) memorialized Reguitti's obligation. Under the terms of the USDC judgment, Reguitti made monthly payments to an escrow agent, who would allocate the monies received among the respective creditors entitled to payment. Included among those debtors was Kris-Pak, which was owed $77,172.50, but only entitled to receive $54,020.75 under the USDC judgment. Additionally, the USDC judgment provided: "The [j]udgment [h]older[] shall refrain and forbear for [sic] any enforcement of their rights under the consent judgment."

In the Law Division, Alliance moved for an order requiring the escrow agent to turnover monies due Kris-Pak. The motion served on Sananjos and Kris-Pak was unopposed. The July 26, 2013 order, entered under Docket No. MID-L-2024-12, provided the debt of $77,172.50 due by Sananjos to Kris-Pak shall be paid to Alliance, not Kris-Pak. Further, Sananjos and Kris-Pak were enjoined from compromising the debt and Kris-Pak's rights to payment were transferred to Alliance, which could execute and liquidate same.

When he received the turnover order, counsel for Reguitti took the position Sananjos was dissolved, and because Sananjos had not made payments to the escrow agent, the order did not bind his

client. He also contended Alliance's judgment against Kris-Pak was defective.

Alliance filed a new complaint under Docket No. MID-L-2650-13, naming as defendants the entities it believed were indebted to Kris-Pak, which included Reguitti. Alliance explained "[t]he action [sought] to reduce the obligations . . . into judgments against the [Kris-Pak] account debtors and their principles."

Reguitti's counsel issued correspondence dated December 2, 2013. He reiterated Alliance should contact the escrow agent and not sue Reguitti, advising:

> [T]his letter shall serve to notify you that your Superior Court action against my client constitutes a direct violation of the settlement and the District Court order above noted. Demand, therefore, is herewith made upon you to discontinue said action against my client, with prejudice, not later than December 9[,] and to forward a filed-stamped copy of such discontinuance for receipt in this office not later than December 11, 2013. If you fail or refuse to do so, an appropriate application will be made to the District Court and my fees and costs to do so will be deducted from any amount [that] may remain due to Kris-Pak under the settlement.
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> "Please guide yourself accordingly."

Alliance had not received payment. Counsel wrote to the escrow agent demanding the release of payments made toward Kris-Pak's debt, as required by the July 26, 2013 turnover order. The letter suggested failure to do so could trigger contempt

proceedings. Counsel for Reguitti, who received a copy of the letter, responded again warning Alliance's "litigation style" violated the USDC judgment. He informed Alliance Reguitti would continue making monthly payments to the escrow agent to discharge his personal liability, and would not do otherwise unless directed by "a new" District Court order. Kris-Pak's counsel, who was also copied with the pleadings and correspondence, wrote to the escrow agent asserting an attorney charging lien against the funds. Because of the disputes, the escrow agent declined to remit funds to Alliance.

Next, Reguitti issued a petition to remove the Law Division action to the District Court, maintaining the original obligation arose pursuant to the Act. In the District Court, Reguitti filed an answer and counterclaim alleging Alliance, standing in the shoes of Kris-Pak, breached the terms of forbearance stated in the USDC judgment when it initiated litigation seeking to recover more than the amount stipulated, sought to accelerate payments, and acted to harass Reguitti, forcing him to incur unnecessary counsel fees. Reguitti additionally filed a motion to stay Alliance's action against Reguitti and sought to deposit all funds with the court to determine the various claims against the funds. Alliance opposed the motion and requested remand. The federal judge reviewed the application and concluded Reguitti's removal was

improper and the motion was denied. She ordered the matter remanded to the Law Division.

A second turnover motion was filed by Alliance and granted over Reguitti's opposition. The February 14, 2014 order (Docket No. MID-L-2024-12) required the escrow agent turn over all monies paid by Reguitti to Alliance. Reguitti was enjoined from compromising the agreed settlement amount in the USDC judgment or from paying the sums to others. Immediately thereafter, Alliance requested entry of default against Sananjos, under Docket No. MID-L-2650-13.

Counsel for Reguitti sent a letter to Alliance and the escrow agent tendering the balance of the amount due under the USDC judgment. The transmittal letter stated payment was conditioned on "full and final [s]atisfaction of the [c]onsent [j]udgment," a "general release" from Alliance, and stipulation of dismissal of the Law Division action, including Reguitti's previously filed counterclaim. Reguitti's payment by the escrow agent was delayed stating Alliance failed to respond to the "time sensitive" letter. Alliance accepted the escrow agent's May 2014 warrant to satisfy the obligation, but declined Reguitti's demand for a general release. Alliance requested the Law Division enter default against Reguitti.

On July 2, 2014, Reguitti moved for default on his previously filed counterclaim. Alliance responded, asserting Reguitti's action was frivolous, and requested Reguitti withdraw his application within twenty-eight days because no Law Division responsive pleadings were served upon Alliance, and no factual or legal basis existed for relief. This engendered additional motion practice.

Alliance moved to dismiss its action as to Reguitti and to dismiss Reguitti's counterclaim. Alliance explained Reguitti filed no pleadings in the Law Division, and it never received the District Court pleadings, which likely were electronically filed. Further, Alliance maintained Reguitti's recent request for default was moot, as a stipulation to dismiss with prejudice was circulated as to all claims between Alliance and Reguitti regarding the Kris-Pak debt. However, Reguitti cross-moved for a judgment on its counterclaim.

The motion judge issued an order on September 8, 2014. The order dismissed Alliance's complaint against Sananjos and denied Alliance's request for sanctions. Further, the order denied Alliance's request to dismiss the counterclaim, because default was entered. Apparently, judgment on the counterclaim was also denied. The record contains no statement of reasons.

Civil case management assigned a September 22, 2014 trial date. Alliance wrote to the Clerk's office explaining default judgments were entered against all but one recently named defendant (not Reguitti), and default against that defendant was pending. Alliance closed its letter stating "this case should be removed from the trial list."

On September 22, 2014, a different judge (the trial judge) considered the matter. On that date, Reguitti appeared, Alliance did not. The record on appeal does not contain a transcript of this proceeding, and the recited facts are gleaned from the court's decisions and counsel's pleadings.

The judge called Alliance's counsel, who was in Florida; he did not answer. Counsel later returned the call, which the trial judge declined to accept because Reguitti's counsel had left the courthouse.

During the hearing, Reguitti's counsel moved for entry of a default judgment against Alliance on its counterclaim. He sought an award of sanctions amounting to attorney's fees and costs expended as a result of Alliance's violation of the USDC judgment. The trial judge allowed Reguitti to submit proof of the amount due.

Alliance moved to vacate default on October 22, 2014, stating default was improvidently granted and restated its position.

Believing Alliance did not file opposition to the requested amount of sanctions, the trial judge entered final judgment, ordering Alliance to pay $21,750. That same day, Alliance filed a letter memorandum explaining it was unaware a trial was held, as it relied on its prior correspondence explaining trial was unnecessary.

The motion judge was assigned to review Alliance's application to vacate default and dismiss the counterclaim. The October 10, 2014 order denied the request as moot because a default judgment was entered. Alliance then moved to vacate the default judgment. Reguitti opposed the motion. The matter returned to the trial judge, who issued an order and written opinion on December 2, 2014. The order vacated default and default judgment and scheduled an evidentiary hearing, on a date agreed to by counsel.

Subsequent correspondence and orders reflect the trial judge's intention was to limit Alliance's challenge to the amount of fees paid as sanctions. Alliance objected insisting once the court vacated default judgment and default, the right to challenge the validity of the underlying counterclaim remained. Alliance urged there was no basis to award relief on the counterclaim because there was no violation of the USDC judgment. This disagreement prompted Alliance to again move to dismiss Reguitti's counterclaim and request sanctions for advancing frivolous

litigation. On March 20, 2015, the motion judge granted the motion to dismiss the counterclaim, as unopposed, but denied Alliance's request for frivolous suit sanctions.

The trial judge scheduled the previously ordered evidentiary hearing for April 22, 2015. However, because of his schedule, he modified the proceeding to allow oral argument on April 24, 2015, and reserved decision.

In a May 29, 2015 opinion, the trial judge stated "this court conferred with [the motion judge] about this matter. Clearly her order of March 20, 2015, was entered in error. Accordingly, she has signed an order dated May 6, 2015, vacating it." The trial judge's opinion addressed the pending issue, which he defined as limited to the amount of sanctions. The trial judge again noted Alliance's failure to appear for the scheduled trial date or immediately move to open the default judgment. He stated the order allowed Alliance to challenge the quantum of damages. Instead of "addressing the merits of the counterclaim calculations," Alliance's counsel chose to again move to vacate the counterclaim. The trial judge found the motion represented an impermissible attack on a prior court order, as two prior requests to dismiss the counterclaim were denied. Reguitti's request for additional attorney's fees incurred since the

September 22, 2014 trial was denied. Alliance's subsequently filed motion for reconsideration was also denied.

We begin by addressing Alliance's appeal from the May 29, 2015 order imposing sanctions and the August 21, 2015 order denying reconsideration. Alliance argues the final settlement of the matter precludes Reguitti from thereafter raising a counterclaim. Alliance maintains it was required to file this complaint to secure funds Reguitti owed to Kris-Pak because Reguitti objected to the initial turnover order sent to the escrow agent. Also, Alliance asserts it never sought to collect more than Kris-Pak was entitled to receive and insists the matter was settled, resolving all claims; however, Reguitti's resistance and insistence Alliance issue a "New York form" of general release rather than a stipulation of dismissal caused additional motion practice. Alliance notes Reguitti improperly moved for removal, which was denied as was its motion to dismiss its action, and never filed responsive pleadings or an appearance in the Law Division, urging the trial judge incorrectly assumed the federal pleadings were transferred to the Law Division. Finally, Alliance urges reversal because the trial judge erroneously concluded Alliance violated the USDC judgment, a position presented and denied by the District Court judge.

The nature of this court's review is clear.

> In considering the legal and substantive issues raised on appeal, we stress at the outset our limited scope of review of the trial court's findings of fact . . . . It is well-settled that the factual findings of a trial judge sitting without a jury are "considered binding on appeal when supported by adequate, substantial and credible evidence."
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> [539 Absecon Blvd., L.L.C. v. Shan Enter. Ltd. P'ship, 406 N.J. Super. 242, 272 (App. Div.) (quoting Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 483-84 (1974)), certif. denied, 199 N.J. 541 (2009).]

This same deference is not afforded "[a] trial court's interpretation of the law and the legal consequences that flow from established facts," which we review de novo. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

We reject Alliance's first argument stating settlement of the underlying obligation due Kris-Pak mooted Reguitti's counterclaim. R. 2:11-3(e)(1)(E). We also decline to examine substantive claims regarding each party's conduct during the litigation.

Briefly, we address whether the counterclaim filed in the District Court automatically becomes part of the Law Division record, despite the lack of a formal action to do so. We find no specific record reference demonstrating the court considered this issue.

The District Court may require the party petitioning for removal to file copies of the state court record with the clerk

of the federal court, pursuant to 28 U.S.C.A. § 1447(b); however, neither federal nor state law specifically addresses the procedure following remand. Indeed, 28 U.S.C.A. § 1447(c) provides:

> If at any time before final judgment it appears that the case was removed improvidently and without jurisdiction, the district court shall remand the case, and may order the payment of just costs. A certified copy of the order of remand shall be mailed by its clerk to the clerk of the State court. The State court may thereupon proceed with such case.

The effect given pleadings filed in the federal court remains a matter of state policy, which is not subject to federal determination. Edward Hansen, Inc. v. Kearny Post Office Assocs., 166 N.J. Super. 161, 165 (Ch. Div. 1979); see also Ayres v. Wiswall, 112 U.S. 187, 190-91, 5 S. Ct. 90, 92, 28 L.Ed. 693, 695 (1884) ("It will be for the State court, when the case gets back there, to determine what shall be done with the pleadings filed and testimony taken during the pendency of the suit in the other [federal] jurisdiction.").

Our sister states have not uniformly adopted a policy on the effect of federal pleadings once a matter is remanded. For example, some state a strict position not to accept pleadings filed in federal court. See Steve Standridge Ins. v. Langston, 900 S.W. 2d 955, 958 (Ark. 1995) (reinforcing policy that whatever happens in a federal court has no bearing on the proceedings in

state court once the case has been remanded after an unsuccessful removal attempt); Tract Loan & Trust Co. v. Mutual Life Ins. Co., 7 P. 2d 280, 292 (Utah 1932) (concluding an answer filed in federal court was "without effect" after a remand); Citizens' Light, Power & Telephone Co. v. Usnik, 194 P. 862, 863-64 (N.M. 1921) (holding filing of a petition for removal of a cause from the state to the federal court . . . does not extend the time to appear and plead therein). Many of these cases are aged.

States addressing the issue more recently have chosen to give effect to all federal pleadings filed before remand. See Laguna Vill. v. Laborers' Int'l Union of N. Am., 672 P. 2d 882, 885-86 (Cal. 1983) (holding a timely answer filed in District Court following timely removal of the action is sufficient to prevent a default in a state court if the case is subsequently remanded); Williams v. St. Joe Minerals Corp., 639 S.W.2d 192, 194-95 (Mo. App. 1982) (amended complaint filed in federal court properly permitted in state court on remand, absent refiling); Armentor v. General Motors Corp., 399 So.2d 811, 812 (La. App. 1981) (answer filed in federal court treated as if filed in state court); Shelton v. Bowman Transp., Inc., 230 S.E.2d 762, 764 (Ga. App. 1976) (affirming vacation of state court default of defendant who filed an answer in federal court before remand); Citizens Nat. Bk.,

Grant Cty. v. First Nat. Bk., Marion, 331 N.E.2d 471, 476-77 (Ind. App. 1975) (same).

New Jersey's jurisprudence addressing the subject is surprisingly limited. Other than the Chancery Division's discussion in Edward Hansen, supra, 166 N.J. Super. at 165, we locate no other New Jersey case directly addressing this issue and, frankly, none is identified by the parties on appeal.

Alliance notes Rule 4:24-1(d) now requires the Law Division to conduct a case management conference, within thirty days of the remand from federal court. Certainly, application of this process could have obviated what appears to be motion practice driven by entrenched divergent positions. However, the rule's effective operational date was January 1, 2015, which postdated the February 18, 2014 remand.

Because we perceive more clarity may be necessary, we refer the issue to the Supreme Court's standing Committee on Civil Practice, requesting it consider whether Rule 4:24-1 should specifically address the post-remand review and adoption of filed federal court pleadings.

No specific motion requested the Law Division accept or reject the District Court pleadings. Although Alliance asserted the District Court considered and denied Reguitti's motion to enforce the USDC judgment and award it damages, perhaps the issue of the

status of the federal filings was not well articulated, and unfortunately, the effect of the federal filings in the Law Division was never squarely addressed. Instead, the trial judge accepted the pleadings because Alliance was aware an answer was filed. In doing so, we note the trial judge did not consider whether the District Court's order denying Reguitti's motion for relief, touched on the counterclaim's asserted violation of the USDC judgment. These procedural lapses do not determine the result we now order, but certainly they fueled the parties' fire for continued disagreement.

Our conclusion to reverse the May 29, 2015 order and denial of reconsideration is more fundamentally based. We reverse the orders because they are insufficiently supported and legally incorrect.

The judge noted Alliance's prior motions to dismiss Reguitti's counterclaim were denied, and he concludes, without review, Reguitti was granted relief because Alliance purportedly violated an order entered by the District Court. The trial judge labeled the award as one for sanctions for what Reguitti characterized as "the 'scorched earth' conduct of Alliance and its counsel during February 2014." On appeal, Reguitti maintains the award was not one for frivolous litigation sanction under Rule 1:4-8 or N.J.S.A. 2A:15-59.1(a)(1), but merely compensation for

the breach of the USDC judgment. The terms of judgment did not specifically contain provisions for an award of compensatory damages and we reject Reguitti's attempt to parse the facts, noting the trial judge made no findings to suggest the award represented attorney's fees under Rule 4:42-9.

Here, the judge ordered sanctions, but failed to review the merits of the substantive claims advanced by either party or to determine if sanctions were appropriate under the statute or the rule. Accordingly, the unsupported order represents an abuse of discretion, which must be reversed. Tagayun v. AmeriChoice of N.J., Inc., 446 N.J. Super. 570, 577 (App. Div. 2016).

Rule 1:4-8(a) provides:

> By signing, filing or advocating a pleading, . . . an attorney or pro se party certifies that to the best of his or her knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
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> > (1) the paper is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
> >
> > (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law[.]

Prior to issuing an award of sanctions under the rule, subsection (c) requires the court issue "an order describing the specific conduct that appears to violate this rule and directing the attorney or pro se party to show cause why he or she has not violated the rule." R. 1:4-8(c).

As we noted, the trial judge did not identify what conduct violated the rule, nor did he consider Alliance's position expressing its pursuit of direct relief against Reguitti resulted because of Reguitti's refusal to acknowledge the validity of the turnover order as well as Reguitti's challenge to the escrow agent's release of funds to Alliance. Frankly, we find several instances where positions articulated by each side fail to advance reasonableness or respect. That said, we cannot determine, and the trial judge did not articulate, specific findings establishing Alliance filed its complaint simply to harass Reguitti.

We also note, the trial judge imposed sanctions against Alliance, not counsel, without mention of the requisites mandated by N.J.S.A. 2A:15-59.1(a)(1). "An award of fees against a party, as opposed to a lawyer or a self-represented litigant, engaging in frivolous litigation is governed by N.J.S.A. 2A:15-59.1(a)(1), which requires a judge to determine whether a pleading filed by a non-prevailing party was frivolous." Tagayun, supra, 446 N.J. Super. at 578.

> In order to award fees under the statute, the court must find that a claim or defense was either pursued "in bad faith, solely for the purpose of harassment, delay or malicious injury" or that the non-prevailing party knew or should have known it "was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law."
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> [Ibid. (quoting N.J.S.A. 2A:15-59.1(b)(1), (2)).]

Moreover, we determine the trial judge mistakenly suggested Alliance unnecessarily refiled its motion to dismiss Reguitti's counterclaim as a basis for relief. The judge also mentioned his particular displeasure with Alliance for "proceed[ing] before two judges simultaneously without making each aware of the other. [Alliance's] motions to dismiss the counterclaim raised before me did not note that [the motion judge] . . . denied a similar motion earlier." This apparently rejected Alliance's position that the order vacating default judgment and default allowed a substantive attack on the merits of Reguitti's counterclaim.

We remain puzzled by these comments. Alliance's first motion to dismiss the counterclaim was denied because default was entered, a fact of which Alliance was not aware. The second motion, although filed first, was denied because the trial judge entered default judgment. The third motion granted relief after Reguitti did not file opposition. However, the motion judge vacated her

order on May 6, 2015, without notice to the parties, or a statement of reasons for doing so.

We reject the imposition of sanctions purportedly based on the suggestion Alliance improperly moved to dismiss Reguitti's counterclaim once default and default judgment were vacated. A review of the procedural history reveals neither the motion nor the trial judge considered the merits of this request.

> Sanctions for frivolous litigation are not imposed because a party is wrong about the law and loses his or her case. The nature of conduct warranting sanction under Rule 1:4-8 and under the statute has been strictly construed. The term frivolous should not be employed broadly or it could limit access to the court system. First Atl. Fed. Credit Union v. Perez, 391 N.J. Super. 419, 432-33 (2007). Imposing sanctions is not appropriate where a party "has a reasonable good faith belief in the merit of his action." J.W. v. L.R., 325 N.J. Super. 543, 548 (1999). In discussing the frivolous litigation statute, the Supreme Court, in McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546, 561-62 (1993), explained the legislative history as follows:
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> > The predecessor bill, A. 1086, allowed the prevailing party to recover fees from the non-prevailing party if that party's pleading was "not substantially justified." In the course of the legislative process, the term "frivolous" replaced "not substantially justified." Senate Judiciary Committee Statement to Assembly Committee Substitute for A. 1086, 2029, 783, and 1260 (Oct.

> 2, 1986). Indeed, the Governor's conditional veto message noted the "bill's restrictive definition of 'frivolous.'" The replacement of "not substantially justified" with "frivolous" reflects the legislative intent to limit the application of the statute. That limitation is consistent with the premise that in a democratic society, citizens should have ready access to all branches of government, including the judiciary.
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> [Taqayun, supra, 446 N.J. Super. at 579-81.]

In our review, the court, not Alliance, is responsible for the confusion created by assigning two judges to handle separate aspects of a single matter. The record suggests each judge reviewed a single aspect of the case without regard to other pending issues.

Another troubling aspect contained in the trial judge's opinion is the reference to his consultation with the motion judge, which resulted in her sua sponte vacation of her prior order to dismiss Reguitti's counterclaim. Although a judge has the right to amend or vacate an interlocutory order, he or she may not do so without complying with due process requisites. The Supreme Court has instructed:

> It is well established that "the trial court has the inherent power to be exercised in its sound discretion, to review, revise, reconsider and modify its interlocutory orders

at any time prior to the entry of final judgment." Johnson v. Cyklop Strapping Corp., 220 N.J. Super. 250, 257 (App. Div. 1987), certif. denied, 110 N.J. 196 (1988) (emphasis added); see also Marconi v. Wireless Telegraph Co. of Am. v. United States, 320 U.S. 1, 47, 63 S. Ct. 1393, 1415, 87 L. Ed. 1731, 1757 (1943) (finding trial court has "power at any time prior to entry of its final judgment . . . to reconsider any portion of its decision and reopen any part of the case"). That power, which is rooted in the common law, see, e.g., Lyle v. Staten Island Terra Cotta Lumber Co., 62 N.J. Eq. 797, 805 (E & A 1901), is broadly codified in Rule 4:42-2, which provides expansively that "any order . . . which adjudicates fewer than all the claims as to all the parties shall not terminate the action as to any of the claims, and it shall be subject to revision at any time before the entry of final judgment in the sound discretion of the court in the interest of justice." (Emphasis added); see also R. 1:7-4(b) ("Motions for reconsideration of interlocutory orders shall be determined pursuant to R. 4:42-2."). That Rule, like the jurisprudence on which it is based, sets forth no restrictions on the exercise of the power to revise an interlocutory order.

. . . .

Although the rule is expansive, the power to reconsider an interlocutory order should be exercised "only for good cause shown and in the service of the ultimate goal of substantial justice." Johnson, supra, 220 N.J. Super. at 263-64 . . . .

[Lombardi v. Masso, 207 N.J. 517, 534, 536, (2011).]

In doing so:

> Procedurally, where a judge is inclined to revisit a prior interlocutory order, what is critical is that he [or she] provide the parties a fair opportunity to be heard on the subject. It is at such a proceeding that the parties may argue against reconsideration and advance claims of prejudice, ... Moreover, once the judge has determined to revisit a prior order, he [or she] needs to do more than simply state a new conclusion. Rather, he [or she] must apply the proper legal standard to the facts and explain his reasons.
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> [Id. at 537.]

Here, even if the motion judge determined she entered the order of dismissal in error, Lombardi's procedural safeguards must be followed. They were not.

For all of these reasons, we vacate the order imposing sanctions. The matter is remanded for further proceedings including case management and scheduling of Alliance's motion to dismiss Reguitti's motion seeking judgment on the counterclaim. To the extent Alliance raises other arguments not specifically addressed in our opinion, we have determined further discussion was not warranted. R. 2:11-3(e)(1)(E).

In his cross-appeal, Reguitti argues the trial judge erred when he denied the request to supplement proof of attorney's fees and costs incurred since September 21, 2014. The identified deficiencies requiring the order to be vacated, obviate consideration of this claim.

Finally, based on our opinion, which includes setting aside the order based on deficient or erroneous factual findings, we require the case be reassigned by the Presiding Judge of the Civil Division to a different judge to conduct the remand proceedings. See In re Baby M., 109 N.J. 396, 463 n.19 (1988) ("The original trial judge's potential commitment to [his] findings and the extent to which a judge has already engaged in weighing the evidence, persuade us to make that change." (citations omitted)).

Reversed and remanded for further proceedings consistent with this opinion.