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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-0308-16T4

CALISTO BERTIN and BERTIN
ENGINEERING ASSOCIATES, INC.,

Plaintiffs-Respondents,

v.

MANHAR PATEL, GREENTREE
DEVELOPERS, LLC, BZ CLEANERS
CORP, and SHIRIJI DEVELOPERS,
LLC,

Defendants,

and

MANTRIB CORP,

Defendant-Appellant.

Submitted October 12, 2017 – Decided November 6, 2017

Before Judges Alvarez and Currier.

On appeal from the Superior Court of New
Jersey, Law Division, Bergen County, Docket
No. L-2464-13.

Thomas D. Williamson, attorney for appellant.

Law Offices of Jae Y. Lee, LLC, attorneys for
respondent (Crew Schielke, on the brief).

PER CURIAM

Defendant Mantrib Corporation appeals an August 12, 2016 order denying a Rule 4:50-1(f) motion to vacate a final judgment. Because we conclude that the Law Division judge did not abuse his discretion, we affirm.

Plaintiffs provided architectural and/or engineering services, as well as loaned money, to defendant Manhar Patel. Patel is a half-owner of the corporate stock of Mantrib, as well as its vice-president and secretary. Patel's brother, Tribhuvan¹, is the president of the corporation, and owns the remaining half of the stock.

It is unnecessary to detail the varied transactions that resulted in the indebtedness, other than to note that it is undisputed that Tribhuvan was unaware of them. Eventually, because the sums due the plaintiffs went unpaid, plaintiffs filed a complaint against Patel and all of his known corporate interests, including Mantrib. Only Mantrib appeals the entry of summary judgment in plaintiffs' favor. Only Tribhuvan, on behalf of the corporation, is pursuing the appeal.

¹ We refer to him by his first name for the sake of clarity.

The March 28, 2013 complaint triggered an answer filed by Mantrib's first attorney, retained only by Patel², on behalf of all defendants, including Mantrib. Plaintiffs then moved on February 14, 2014, to strike defendants' answer for failure to comply with discovery demands. On March 3, 2014, plaintiffs were awarded \$126,375 in arbitration. See R. 4:21A. On March 19, 2014, the court entered an order striking defendants' answer for failure to comply with discovery. Apparently unaware that the answer was stricken, defendants demanded a trial de novo, which request was denied on March 28, 2014, because the answer had been suppressed. To further add to the confusion, on April 24, 2014, the court sua sponte dismissed the complaint because plaintiffs had not confirmed the arbitration award as required by the rules.

Once they learned of the dismissal, plaintiffs on June 5, 2014, filed a motion seeking to reinstate the complaint and confirm the arbitration award. Plaintiffs alleged that they were unaware that defendants' demand for a trial de novo had been denied and their answer suppressed, and that they therefore did not proceed on the arbitration award as they assumed defendants' demand for a trial de novo would be granted. Defendants opposed the motion to reinstate the complaint and confirm the arbitration award. On

² We draw the inference from correspondence included in the parties' appendices.

June 26, 2016, Judge Robert L. Polifroni reinstated the complaint, but granted defendants thirty days in which to file a separate motion to vacate suppression of the answer.

On August 12, 2014, plaintiffs moved for summary judgment. As a separate ground, plaintiffs argued that despite Judge Polifroni's June order, defendants had not sought to vacate suppression of the answer or taken other steps to address their default status. On September 19, 2014, the judge granted summary judgment, which was unopposed.

The judge said in that decision, "[d]efendants lack of concern or attention to this matter is chronic and inexcusable. The contentions set forth by [plaintiffs] are uncontradicted." A few days later, on October 21, 2014, judgment was entered in the amount of \$179,461.49.

On May 12, 2016, the same attorney who had previously represented all the defendants in the proceedings, filed a motion to vacate the judgment. Current counsel, retained by Tribhuvan, filed a separate motion to set aside the judgment exclusively on behalf of Mantrib. In the application, Tribhuvan alleged he had no knowledge of any of the underlying transactions, or the legal proceedings which resulted in entry of the judgment, and that he learned about the judgment only when Mantrib sold its real estate holdings and he was informed of a lien against the property. Some

\$220,000 from sale proceeds remains in escrow because of the disputed judgment. Both motions, filed by separate counsel, were denied. This appeal is taken from the motion denial rendered on Mantrib's application, not the order issued as to all defendants.

Judge Polifroni began his decision by reference to R. 4:50-1(f)'s requirement that a movant's circumstances be exceptional, and enforcement of the judgment "unjust, oppressive, or inequitable." He concluded such circumstances were not present in the case.

The judge noted that the motion for summary judgment was granted on September 19, 2014. Because the two-year old judgment entered by way of summary judgment, and not by way of default, the application did not need to be viewed with "great liberality." Defendants had at one time actually filed an answer, and were granted the opportunity to reinstate their answer and participate in the litigation. Almost by definition, that meant, contrary to current counsel's arguments on behalf of Mantrib, that the corporation could not assert any impropriety in service. There was no legal basis for barring Patel from obligating the corporation, or requiring plaintiffs to engage in some other steps in order to acquire a valid lien against Mantrib's assets. That Tribhuvan, the registered agent for Mantrib, was not served with

the complaint was not dispositive, since an answer was filed on behalf of the corporation.

With regard to Mantrib's argument that N.J.S.A. 14A:3-3, which addresses relief from actions engaged in by "rogue shareholders," required that the judgment be set aside, the judge found the second section of the statute controlling. Although the "rogue officer" protection embodied in the first section gave the president of the corporation an additional basis to pursue the vice-president, as between the corporation and a creditor, it afforded Mantrib no relief. The judge opined that the intent of the statute was to protect third-party creditors "who should not be victimized by the actions of purportedly rogue shareholders acting in their own self-interest." Since he found the judgment issued properly, there were no exceptional circumstances which warranted setting it aside. Enforcement would not be unjust, oppressive or inequitable. Both motions to vacate were denied.

On appeal, Mantrib contends that the judge exercised his discretion inappropriately because the situation was exceptional; an innocent party should not be forced to satisfy an unknown judgment; service was defective; and N.J.S.A. 14A:3-3(1) was intended to provide relief in these circumstances. Mantrib also urges us to consider that had plaintiffs engaged in "due diligence," they would have served Tribhuvan, Mantrib's registered

agent, and thereby given him notice in a timely fashion. Tribhuvan would have been able to protect both the corporation, which allegedly did not benefit from plaintiffs' work, as well as his own interests. Finally, the corporation argues that Rule 4:50-1(f) entitles Mantrib to relief in light of equitable considerations.

Our scope of review of a trial court's decision on a Rule 4:50-1(f) motion is limited. Such decisions are within the sound discretion of the trial court, guided by principles of equity. Hous. Auth. of Town of Morristown v. Little, 135 N.J. 274, 283 (1994)(citations omitted). We afford substantial deference to the trial court's exercise of discretion, and do not disturb it unless it represents a "clear abuse[.]" U.S. Bank Natl Ass'n v. Guillaume, 209 N.J. 449, 467 (2012)(citations omitted).

We do not find an abuse of discretion unless it can be demonstrated that "the discretionary act was not premised upon consideration of all relevant factors, was based upon consideration of irrelevant or inappropriate factors, or amounts to a clear error in judgment." Masone v. Levine, 382 N.J. Super. 181, 193 (App. Div. 2005)(citing Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002)). With regard to Rule 4:50-1(f) specifically, our Supreme Court has emphasized that the provision applies "only when truly exceptional circumstances are present[.]"

Little, supra, 135 N.J. at 286 (internal quotation marks and citation omitted), and when "such relief is necessary to achieve a fair and just result." Manning Eng'g, Inc. v. Hudson Cty. Park Comm'n, 74 N.J. 113, 122 (1977). No such abuse of discretion occurred here.

As the judge clearly explained in his decision, Mantrib had not one, but two opportunities to timely defend the action. The first arose when it filed the answer ultimately stricken for failure to comply with discovery. The second arose when it was granted time in which to reinstate an answer. Neither opportunity was taken.

Mantrib's argument that plaintiffs should have engaged in some "due diligence" before undertaking work, lending money, or filing suit lacks merit. Patel owned half the corporate stock and was the Vice-President. Mantrib identifies no authority in support of the assertion that plaintiffs should have done more than rely on Patel's representations.

The statutory argument is similarly without merit. As Judge Polifroni correctly stated, the purpose of the statute is not to cripple routine commerce because of disputes between shareholders, but to enable them to sue a rogue shareholder while protecting creditors.

Additionally, the conduct of Mantrib's allegedly rogue shareholder does not constitute exceptional circumstances that provide a basis for relief from the judgment. N.J.S.A. 14A:3-3(2) is designed and intended to protect creditors when it states in the plainest of words: "Nothing in subsection 14A:3-3(1) shall be deemed to diminish the rights, if any, of the corporation's creditors." No exceptional circumstances which afford Tribhuvan relief are created by the statute.

Indeed, to find exceptional circumstances here would diminish the rights of Mantrib's creditors. The dispute is between the shareholders of the corporation, not as between a creditor and the corporation.

We will not disturb the trial court's findings that Mantrib had sufficient opportunities to respond and defend, and chose not to do so. The circumstances are not so exceptional and do not warrant Rule 4:50-1(f) relief.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION