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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-0340-16T2

TARLOCK SINGH,

Plaintiff-Appellant,

v.

GURMET SINGH,

Defendant-Respondent.

Submitted November 14, 2017 — Decided December 14, 2017

Before Judges Leone and Mawla.

On appeal from Superior Court of New Jersey,
Chancery Division, Cape May County, Docket No.
C-000029-10.

Mark J. Molz, attorney for appellant.

Respondent has not filed a brief.

PER CURIAM

Plaintiff appeals the August 31, 2016 order denying his motion
to enforce litigant's rights. We affirm.

I.

The parties are brothers who were in the gas station business. In May 2010, plaintiff Tarlock Singh filed an action against defendant Gurmet Singh. Defendant filed an answer and a counter-claim, and the matter was referred to mediation. On April 13, 2011, a final settlement agreement was reached. The agreement was signed by counsel in the presence of the parties, and duly filed.

The agreement, in relevant part, states:

4. Gurmet will indemnify Tarlock from any claims arising out of the corporate operations, past, present, or future, of Punjab Petroleum, GSDC, Soun Gas, Inc., and US Gasoline, Inc., including all tax obligations.

5. Tarlock will indemnify Gurmet from any claims arising out of the corporate operations, past, present, or future, of 777 Enterprises, including all tax obligations.

On June 25, 2012, Judge Anne McDonnell conducted a plenary hearing to determine the enforceability of the agreement. After hearing testimony from plaintiff, defendant, and the mediator, Judge McDonnell found the agreement to be binding and enforceable. The judge ordered defendant to pay plaintiff a total of \$50,000 by July 31, 2012, plus another payment of \$50,000 if paid by September 30, 2015, or \$60,000 if paid by September 30, 2016.

In 2015, plaintiff filed a motion to enforce litigant's rights. On August 31, 2016, Judge Mark H. Sandson denied

plaintiff's motion to enforce litigant's rights. Plaintiff appeals.

II.

A motion to enforce litigant's right is governed by Rule 1:10-3. "Rule 1:10-3 provides a 'means for securing relief and allow[s] for judicial discretion in fashioning relief to litigants when a party does not comply with a judgment or order.'" N. Jersey Media Grp., Inc. v. State Office of the Governor, 451 N.J. Super. 282, 296 (App. Div. 2017) (citation omitted) (quoting In re N.J.A.C. 5:96, 221 N.J. 1, 17-18 (2015)). Thus, a trial court's order is reviewed for abuse of discretion. Id. at 299. We must hew to that standard of review.

III.

Plaintiff's notice of motion and certification complained that his accounts had been levied for \$37,221.29 on March 20, 2012, and for other amounts on later dates. Plaintiff generally alleged that "the State of New Jersey has held me jointly and severally liable for debts arising from Panjab Petroleum[,] GJDC, US Gas and Soungas [sic] Gas, Inc."

A.

Judge Sandson denied plaintiff's motion to enforce litigant's rights regarding the \$37,221.29 levy because:

The doctrine of collateral estoppel prevents Plaintiff from revisiting the March 20, 2012 levy of Plaintiff's TD Bank Account which occurred approximately three (3) months before the plenary hearing of June 25, 2012 and the issue regarding the levy was raised by Plaintiff's counsel in his trial brief and argued at the hearing[.]

We agree with Judge Sandson that the doctrine of collateral estoppel prevents plaintiff from relitigating the March 20, 2012 levy of \$37,221.29 from his bank account. Plaintiff does not deny his counsel raised the May 20, 2012 levy for \$37,221.29 prior to Judge McDonnell's June 25, 2012 ruling, which ordered defendant to pay plaintiff over \$100,000. Judge Sandson properly found defendant had proven the elements of collateral estoppel:

[T]he party asserting the bar must show that: (1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.

[Winters v. N. Hudson Reg'l Fire & Rescue, 212 N.J. 67, 85 (2012) (citation omitted).]

B.

Judge Sandson rejected plaintiff's motion to enforce litigant's rights regarding the other levies because plaintiff

failed to carry his burden of proof. In a claim for breach of contract,

[o]ur law imposes on a plaintiff the burden to prove four elements: first, that "[t]he parties entered into a contract containing certain terms"; second, that "plaintiff[s] did what the contract required [them] to do"; third, that "defendant[s] did not do what the contract required [them] to do[,]" defined as a "breach of the contract"; and fourth, that "defendant[s'] breach, or failure to do what the contract required, caused a loss to the plaintiff[s]."

[Globe Motor Co. v. Igdalev, 225 N.J. 469, 482 (2016) (alterations in original) (citation omitted) (quoting Model Jury Charge (Civil) § 4.10A "The Contract Claim-Generally" (May 1998)).]

Plaintiff failed to carry his "burden of proof to establish all elements of [his] cause of action, including damages." Cumberland Cty. Improvement Auth. v. GSP Recycling Co., 358 N.J. Super. 484, 503 (App. Div.) (citation omitted), cert. denied, 177 N.J. 222 (2003).

Judge Sandson ruled that "[p]laintiff did not meet his burden of proof to show the tax levies to his bank accounts were the result of 'claims arising out of the corporate operations, past, present, or future, of Punjab Petroleum, GSDC, US Gasoline, Inc., and Soun Gas, Inc., including all tax obligations. . . .'" We agree with Judge Sandson that plaintiff has not shown that any of the remaining levies are the result of the corporate operations

of defendant's listed companies. None of the tax or levy documents dated after 2012 lists Punjab Petroleum, GSDC, Soun Gas, Inc., or US Gasoline, Inc. as the responsible party.

Rather, the documents list "Tarlock Singh," his company "777 Enterprises," or both as the responsible party.¹

Plaintiff cites an August 17, 2006 letter from accountant Bruce L. Young, which attached an IRS Form 4549 issued to plaintiff in 2009. Young states that the form shows dividends were assessed to plaintiff because of cash not reported in Punjab's income tax returns for 2006-2008, and that the total tax for those dividends was \$59,231. However, that sum does not correspond to the amounts in plaintiff's notice of motion or certification. Moreover, the form listed the taxpayer as "Tarlok Singh" and did not mention Punjab at all. Because the forms appeared to address plaintiff's personal tax obligation rather than a claim arising out of Punjab's corporate operations, Judge Sandson found no basis for indemnification.

Given the paucity of evidence presented by the plaintiff, we agree with the judge that plaintiff's bare assertion that the

¹ For example, plaintiff's certification cites "a letter dated August 18, 2014[,] which says that the total amount due for an audit from November, 2009 to December, 2010 is \$100,978.11." That letter from the State Division of Taxation is addressed to "Tarlock Singh," and states the "responsible person" is Tarlock Singh, trading as 777 Gas Enterprises."

referenced debts are defendant's responsibility are insufficient to warrant granting the motion to enforce litigant's rights.

IV.

Plaintiff argues defendant was not entitled to a favorable ruling on the motion to enforce litigant's rights because defendant did not comply with the 2016 order setting the discovery schedule for both parties. However, plaintiff did not make any such argument to Judge Sandson. Instead, plaintiff's counsel simply noted to Judge Sandson, "unfortunately, neither party has been able to complete the discovery that you ordered." Plaintiff's counsel then proceeded to argue the motion without seeking findings or relief regarding discovery.

Accordingly, we decline to address this claim. "[O]ur appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available 'unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest.'" Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) (citation omitted). That is not the case here.


Finally, plaintiff cites a line in Judge Sandon's oral opinion that plaintiff's claim "is barred by the statute of limitations."

We need not reach that issue because plaintiff's claim failed on the grounds discussed above.

Plaintiff's remaining arguments lack sufficient merit to warrant discussion in a written opinion. 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