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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-0555-16T1

VORTEX INVESTMENT, LLC,
a/k/a VRTX INVESTMENTS,
INC., and ILYA CHEBOTAR,

Plaintiffs-Respondents,

v.

RICCO CONSTRUCTION CORP.,
a/k/a RICCO DEMOLITION
and DREW RICCO,

Defendants-Appellants.

Submitted November 8, 2017 – Decided December 6, 2017

Before Judges Reisner and Hoffman.

On appeal from Superior Court of New Jersey,
Law Division, Camden County, Docket No.
L-0232-15.

Law Offices of Conrad J. Benedetto, attorneys
for appellants (Conrad J. Benedetto, of
counsel and on the brief).

Law Offices of David A. Avedissian, attorneys
for respondents (David A. Avedissian, on the
brief).

PER CURIAM

Defendants Ricco Construction Corp. and Drew Ricco appeal from an Amended Order for Judgment entered against them on August 30, 2016. The order awarded plaintiffs damages and attorney's fees in connection with an action they filed against defendants for breach of contract, malicious prosecution and malicious abuse of civil process. After reviewing the record and applicable legal principles, we affirm.

I

This case arises from a \$15,000 contract for the demolition of a building. The parties dispute whether plaintiffs made a scheduled payment of \$5500. The parties agree plaintiffs initially gave defendants a check for the \$5500, which was returned for insufficient funds. Plaintiffs allege they then paid the \$5500 in cash, but defendants dispute this claim.

Both parties filed separate complaints against the other, which the court consolidated. Defendants filed a Special Civil Part complaint alleging non-payment of services. Although the record contains no evidence that plaintiffs received service of the complaint, the clerk entered default. At the proof hearing, counsel for defendants appeared, but defendants themselves were not there to testify. Nevertheless, the judge entered judgment in favor of defendants without any supporting testimony or

affidavits. Defendants then obtained a writ of execution and a levy on plaintiffs' bank account for over \$15,000. After learning of the levy, plaintiffs filed a motion to vacate the default judgment, which the court granted. Notwithstanding the court granting plaintiffs this relief, defendants once again levied upon plaintiffs' bank account. Defendants thereafter failed to provide discovery and the court dismissed their complaint. Defendants also filed a criminal complaint against plaintiffs for passing a bad check, which was eventually dismissed.

Meanwhile, plaintiffs filed their own complaint alleging breach of contract and malicious abuse of civil process for defendants obtaining a levy for more than the amount owed and obtaining a second levy after the court vacated the initial judgment. Plaintiffs later amended their complaint to add a claim of malicious prosecution, alleging defendants maliciously filed a criminal complaint against plaintiffs for passing a bad check. The court entered default after defendants failed to answer. Following a proof hearing, the court executed an order for judgment, ordering defendants to pay plaintiffs \$11,990 for breach of contract and counsel fees. The court issued a writ of execution and subsequently, an order to turnover funds.

In their brief, defendants challenge: (1) the trial court's judgment awarding attorney's fees, (2) the trial court's order

denying their motion to vacate the defaults entered against them, and (3) the trial court's order dismissing their complaint. Defendants also argue we should quash the writ of execution and the turnover order against them.

II

For the reasons set forth below, we only consider the appeal of the August 30, 2016 order awarding plaintiffs a judgment including attorney's fees. We affirm that order.

"[T]he notice of appeal . . . shall designate the judgment, decision, action or rule, or part thereof appealed from" Rule 2:5-1(f)(3)(A). Therefore, "it is only the judgments or orders or parts thereof designated in the notice of appeal which are subject to the appeal process and review." Pressler & Verniero, Current N.J. Court Rules, comment 6.1 on R. 2:5-1(f) (2018); see also Campagna v. Am. Cyanamid Co., 337 N.J. Super. 530, 550 (App. Div.) (refusing to consider an order not listed in the notice of appeal), certif. denied, 168 N.J. 294 (2001). Furthermore, when procedural deficiencies prevent meaningful appellate review, dismissal is appropriate. In re Zakhari, 330 N.J. Super. 493, 495 (App. Div. 2000).

Defendants' notice of appeal lists only the order entered on August 30, 2016. However, defendants' brief, in Points Two, Three, and Four, references orders entered on June 9, 2015, June 8, 2015,

December 23, 2015, and November 18, 2016. Not only did defendants fail to list these four orders in their notice of appeal, they also failed to provide the transcripts necessary for a proper review of the issues raised. See R. 2:8-2; R. 2:9-9. We therefore limit our review to the August 30, 2016 order awarding attorney's fees, as raised in defendants' brief as follows:

POINT ONE

THE COURT ERRED BY AWARDING DAMAGES, INCLUDING ATTORNEY'S FEES, BASED ON A THEORY OF MALICIOUS ABUSE OF CIVIL PROCESS.

We grant substantial deference to the trial judge's findings of fact. Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974). 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 v. Manalapan Twp. Comm., 140 N.J. 366, 378 (1995). Our standard of review of a trial court's ruling on an application for sanctions is limited. We only must determine whether the court's disposition constituted an abuse of discretion. Gilbert v. Electro-Steam Generator Corp., 328 N.J. Super. 231, 236 (App. Div. 2000) (affirming a trial court's denial of sanctions and its rejection of claims that a litigant's pleadings were frivolous). "[F]ee determinations by trial courts will be disturbed only on the rarest occasions, and then only because of a clear abuse of discretion."

Stoney v. Maple Shade Twp., 426 N.J. Super. 297, 317 (App. Div. 2012) (quoting Rendine v. Pantzer, 141 N.J. 292, 317 (1995)).

"[W]here there is a civil wrong, there should be a remedy." Triffin v. Automatic Data Processing Inc., 394 N.J. Super. 237, 251 (App. Div. 2007). "[T]he court may exercise inherent power to sanction a party when he or she has, 'acted in bad faith, vexatiously, wantonly or for oppressive reasons.'" Id. at 252 (quoting Chambers v. Nasco, Inc., 501 U.S. 32, 45-46, 111 S. Ct. 2123, 2133, 115 L. Ed. 2d 27, 45 (1991)). In addition, for a malicious prosecution claim, "[c]ounsel fees and costs in defending the action maliciously brought may be an element of damage in a successful malicious prosecution" Penwag Prop. Co. v. Landau, 76 N.J. 595, 598 (1978).


The trial court here relied on the reasoning in Triffin for sanctions in malicious abuse of civil process cases, and the policy of awarding attorney's fees in malicious prosecution cases to include an award of attorney's fees for malicious abuse of civil process. We agree with the trial court's determination to award attorney's fees in connection with plaintiffs' malicious abuse of civil process claim.

Here, even if defendants filed the original \$5500 claim in good faith, defendants clearly acted in bad faith by obtaining a levy for more than their claim, and then continuing collection

efforts after the court vacated the judgment. The trial court was therefore within its discretion to impose sanctions. See Triffin, supra, 394 N.J. Super. at 251. The trial court was also well within its discretion to award damages including attorney's fees on the malicious prosecution claim. See Penwag, supra, 76 N.J. at 598. Therefore we conclude the trial court did not abuse its discretion in awarding attorney's fees.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION