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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NOS. A-0836-14T1
A-0183-15T1
A-0307-15T1

34 LABEL STREET ASSOCIATES,

Plaintiff-Respondent,

v.

RICHARD CECERE,

Defendant-Appellant.

Argued October 17, 2017 — Decided December 4, 2017

Before Judges Reisner, Hoffman, and Gilson.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Docket No. L-0496-
12.

Marlo J. Hittman argued the cause for appellant
Richard Cecere in A-0836-14 and A-0307-15
(Cozzarelli & Hittman, LLC, attorneys; Ms.
Hittman on the briefs, Frank P. Cozzarelli, on
the brief in A-0836-14).

Stephen N. Dratch argued the cause for
appellants Cozzarelli Law LLP and Frank J.
Cozzarelli in A-0183-15 (Franzblau Dratch, PC,
attorneys; Mr. Dratch, on the brief).

Richard D. Trenk argued the cause for
respondent (Trenk, DiPasquale, Della Fera &
Sodono, PC, attorneys; Mr. Trenk, of counsel;

Henry M. Karwowski and Jessica A. Buffman,
on the brief).

PER CURIAM

To quote one of our earlier opinions: "This is a convoluted commercial landlord/tenant" dispute. Defendant Richard Cecere, individually and through a corporation he controlled, leased portions of property owned by plaintiff 34 Label Street Associates (34 Label). The dispute among the parties has engendered several lawsuits and multiple appeals.

In this consolidated opinion, we address three appeals: two filed by Cecere, and one filed by Cecere's lawyers, Cozzarelli Law, LLP and Frank J. Cozzarelli (collectively, Cozzarelli).

Cecere appeals from three judgments, entered after two trials, that (1) awarded 34 Label monetary damages for Cecere's repeated breaches of a ground lease, and (2) rescinded the lease because Cecere failed to pay the judgments, failed to comply with the terms of the ground lease, and failed to comply with court orders. We affirm the judgments entered on August 25, 2014, September 8, 2014, and August 26, 2015, because the facts found at trial established that Cecere materially breached the ground lease from 2007 until 2015, and intentionally failed to cure those breaches. Therefore, rescission was an appropriate equitable remedy.

Cozzarelli appeals from partial judgments that extinguished a mortgage and security interest that it took in one of Cecere's leased properties. Cozzarelli obtained that mortgage and security interest after judgment had been entered against Cecere for breach of that lease. Cozzarelli also appeals from an August 28, 2015 order denying its motion to intervene in the lawsuit between 34 Label and Cecere. We affirm the July 23, 2015 partial judgment, the August 6, 2015 amended partial judgment, and the August 28, 2015 order, because the trial court acted within its discretion in denying Cozzarelli the right to intervene due to its failure to make a timely application.

I.

34 Label owns real property in Montclair. It leased portions of that property to Cecere and R.C. Search Co., Inc. (R.C. Search), a company wholly owned and controlled by Cecere.

The disputes giving rise to these appeals concern a lease for property on which Cecere operated a restaurant (the Restaurant Property). Cecere initially leased the Restaurant Property under a ten-year lease. In 2002, 34 Label and Cecere entered into a ninety-nine-year ground lease for the Restaurant Property (the Ground Lease). Thereafter, Cecere operated a restaurant on the property until 2012, and he continued to occupy the property until 34 Label took possession in September 2015.

Cecere prepaid the full rent of \$387,199.20 when the Ground Lease was executed in 2002. It was the parties' intent to transfer ownership of the Restaurant Property to Cecere. In that regard, the Ground Lease provided:

It is the Lessor's intent to deed to the Lessee the entire premises, Fee Simple, referred to above (property) upon the Lessee's obtaining subdivision approval as described in the attached exhibit A.

The Ground Lease also provided that, pending the subdivision, Cecere was required to pay his proportional share of the property taxes, and 100 percent of any increase in the taxes resulting from improvements to the Restaurant Property. Cecere was also required to pay his proportional share of other expenses. Finally, the Ground Lease required Cecere to obtain \$2 million in insurance and name 34 Label as an additional insured party.

Since executing the Ground Lease, Cecere has failed to satisfy several obligations. Cecere has not paid any taxes or expenses under the Ground Lease since 2007. Cecere also failed to obtain insurance. Finally, Cecere never obtained subdivision approval. These failures, as well as disputes over other leases between 34 Label, Cecere, and his company, R.C. Search, resulted in three lawsuits.

A. The First Lawsuit

Separate from the Restaurant Property, in 1993, 34 Label leased an office to R.C. Search (the Office Property). In 1996, 34 Label also leased a garage unit to Cecere (the Garage Property). When Cecere stopped making tax and expense payments for the Restaurant Property, he and R.C. Search also stopped paying rents for the Office and Garage Properties. Accordingly, 34 Label brought a summary disposition action against Cecere and R.C. Search for possession of the Office and Garage Properties. The Special Civil Part granted 34 Label possession, and we affirmed that order. 34 Label St. Assocs. v. R.C. Search Co., No. A-4556-08 (App. Div. Apr. 8, 2010).¹

B. The Second Lawsuit

In 2009, Cecere and R.C. Search sued 34 Label, its principal, Howard Silver, and its accountant, Emer Featherstone. Cecere and R.C. Search claimed that they were overcharged for rents on the Office Property and that Silver and Featherstone engaged in fraud. 34 Label filed a counterclaim seeking to recover past due rents for the Office and Garage Properties and past due taxes and expenses for the Restaurant Property.

¹ Cecere appealed from the judgment for possession of the Garage Property, but that appeal was dismissed for failure to prosecute. 34 Label St. Assocs. v. Cecere, No. A-0574-09, order entered on June 10, 2010.

On January 5, 2011, the trial court entered an order directing Cecere to file an application to subdivide the Restaurant Property. The court also ordered Cecere to "diligently pursue" the subdivision application to conclusion. Cecere failed to comply with that order.

Thereafter, all of the claims by Cecere and R.C. Search were dismissed, and in March 2011, the trial court entered a judgment in favor of 34 Label (the March 2011 Judgment). Under the March 2011 Judgment, R.C. Search was ordered to pay \$190,501.32 for unpaid rents on the Office Property, and Cecere was ordered to pay \$22,126.51 for unpaid rents on the Garage Property and \$149,468.96 for unpaid taxes and expenses on the Restaurant Property. The trial court also denied 34 Label's application for attorney's fees.

In May 2011, shortly after the entry of the March 2011 Judgment, Cecere gave Cozzarelli a mortgage and security interest in the Restaurant Property for \$350,000 that Cecere owed to Cozzarelli for legal services.

Cecere and R.C. Search appealed from the March 2011 Judgment, and 34 Label cross-appealed from the denial of its application for attorney's fees. We affirmed the March 2011 Judgment against Cecere and R.C. Search for the unpaid rents on the Office and Garage Properties, and for the unpaid taxes and expenses on the

Restaurant Property. We reversed the portion of the March 2011 Judgment denying 34 Label's application for attorney's fees and remanded that part of the case for further proceedings. R.C. Search Co., Inc. v. Silver, No. A-4332-10 (App. Div. July 19, 2012).²

Thereafter, Cecere did not pay any portion of the March 2011 Judgment. He also failed to pay the taxes and other property expenses that continued to accrue under the Ground Lease.

C. The Third Lawsuit

In January 2012, while the March 2011 Judgment was pending appeal, 34 Label sued Cecere for his continued breaches of the Ground Lease. 34 Label also asserted a claim for rescission.

The third lawsuit was stayed for several months when Cecere filed for bankruptcy. In June 2014, after Cecere's bankruptcy case was dismissed, the trial court found Cecere in contempt for his failure to file a subdivision application as required by the January 5, 2011 order. Cecere finally filed the subdivision application in May 2014.

In June 2014, the trial court conducted a four-day bench trial on the claims in the third lawsuit. After hearing the

² Cecere has filed a separate appeal from the order that granted 34 Label attorney's fees following the remand proceedings. That appeal is addressed in a separate opinion. R.C. Search Co., Inc. v. Silver, No. A-4512-14 (App. Div. Dec. 4, 2017).

evidence, the trial court issued an oral decision on July 11, 2014. The court found that Cecere (1) failed to pay any of the March 2011 Judgment; (2) failed to pay the ongoing expenses, including taxes, for the Restaurant Property under the Ground Lease; (3) failed to obtain insurance as required by the Ground Lease; and (4) failed to comply with the January 5, 2011 order that required him to file for subdivision of the Restaurant Property. The court also found that 34 Label paid all of the taxes and expenses on the Restaurant Property since 2007.

Thus, the trial court found that Cecere breached the Ground Lease in three material respects, by failing to (1) pay taxes and expenses, (2) obtain insurance, and (3) diligently pursue a subdivision of the Restaurant Property.

Turning to 34 Label's claim for rescission, the court decided it would give Cecere one last chance to cure his defaults. Accordingly, the court directed that Cecere would have until January 1, 2015, to cure his defaults, either by paying what he owed and subdividing the property, or by selling the property.

The court embodied its rulings in a judgment filed on August 25, 2014 (the August 2014 Judgment). The August 2014 Judgment ordered Cecere to pay 34 Label \$163,510.62 plus interest and costs, which was the amount of unpaid taxes and fees accrued on the Restaurant Property since the March 2011 Judgment. The August

2014 Judgment also ordered a conditional rescission, which provided that if Cecere failed to pay the judgments owed to 34 Label and failed to obtain subdivision approval for the Restaurant Property, the court would conduct further hearings to implement the rescission of the Ground Lease.

On September 8, 2014, the August 2014 Judgment was amended to include \$13,542.46 in additional property taxes accrued through August 31, 2014. Thus, the monetary judgment increased to \$177,053.08. Cecere moved for reconsideration, but the court denied that application in an order entered on September 19, 2014.

On October 8, 2014, Cecere filed a notice of appeal from the August 2014 Judgment, and the September 8, 2014 amended judgment. Thereafter, Cecere filed an amended notice of appeal, adding the September 19, 2014 order denying his motion for reconsideration.

In November 2014, the Montclair Planning Board denied Cecere's subdivision application. The Planning Board issued a resolution finding that the application was incomplete primarily because Cecere failed to explain how he would provide parking for the restaurant if the property was subdivided and the Ground Lease ended.

By January 2015, Cecere had failed to satisfy the conditions imposed by the court in the August 2014 Judgment. In that regard, Cecere had not paid any of the monetary judgments entered against

him, continued to fail to pay new taxes and expenses on the Restaurant Property, and had not subdivided the Restaurant Property. Therefore, 34 Label filed an order to show cause seeking rescission of the Ground Lease. The trial court entered an order on January 13, 2015, scheduling a hearing on rescission and related damages for February 6, 2015.

In response, Cecere filed an emergent motion for leave to appeal, arguing that the trial court did not have jurisdiction because of the pending appeal. In a January 30, 2015 order, we denied the motion and explained that the trial court had "continuing jurisdiction to enforce judgments and orders."

Following the denial of Cecere's emergent motion, the trial court ordered him to allow 34 Label to inspect the Restaurant Property to evaluate the improvements that he made. Cecere never allowed that inspection. As a result, the trial court found Cecere in contempt and entered an order barring him from presenting a claim based on his improvements to the Restaurant Property. The court entered that sanction because of "Cecere's history of intentional non-compliance with court orders and the apparent inadequacy of monetary sanctions[.]" That order did not preclude Cecere from using an expert to appraise the property, but he ultimately chose not to present an expert at trial.

In March 2015, Cozzarelli assigned its rights under the mortgage and security agreement to an entity known as "Ice Pick, Inc." An associate of Cozzarelli, who works at the law firm, owns Ice Pick.

A trial on the remedy of rescission and related damages began in July 2015. 34 Label presented an expert on the fair market rental value of the Restaurant Property. After counsel for Cecere cross-examined 34 Label's expert for approximately six hours, the court took a lunch break. Following the lunch break, counsel for Cecere announced that Cecere had discharged her. The trial court denied an application for a mistrial, but granted a continuance to allow Cecere to either retain new counsel or proceed self-represented.

At that time, the trial court entered a partial judgment granting 34 Label immediate possession of the property. In awarding immediate possession, the trial court noted "the long and tortured history of this case and Cecere's continuous use of delay tactics and flouting of court orders." The partial judgment, entered on July 23, 2015, also extinguished Cozzarelli's mortgage and security interest in the Restaurant Property. On August 5, 2015, Cozzarelli filed a motion to intervene. The following day, the court issued an amended partial judgment, and an opinion explaining its ruling. Thereafter, on August 28, 2015, the trial

court entered an order denying Cozzarelli's motion to intervene. Cozzarelli filed a motion with us for a stay, which we denied.

In the meantime, on August 17, 2015, the rescission trial resumed, with Cecere representing himself. 34 Label presented its accountant who testified as to the amount of property taxes and expenses that 34 Label had paid on the Restaurant Property. The trial court found the accountant to be credible.

On August 26, 2015, the trial court entered a judgment rescinding the Ground Lease, and entered a monetary judgment to restore the parties to their status quo as much as possible (the August 2015 Judgment). When the Ground Lease was executed in 2002, Cecere prepaid rent of \$387,199.20. Using evidence submitted by Cecere, the court found that the present value of Cecere's prepaid rent (as of 2015) was \$531,663.22. The court found that 34 Label was entitled to \$716,481 for Cecere's use and possession of the Restaurant Property. The court also awarded 34 Label \$49,530.23 in other expenses. Accordingly, the court found that 34 Label was entitled to rents and expenses totaling \$766,011.23, and Cecere was entitled to reimbursement of his prepaid rent in the present value of \$531,633.22. Offsetting those two amounts, the court entered a net judgment in favor of 34 Label for \$234,348.01.

In addition, the court found that the March 2011 and August 2014 Judgments established the correct amount of taxes and expenses owed by Cecere to 34 Label for the time between October 2007 and August 2014. In that regard, the court found that the rent credited to 34 Label did not include property taxes and expenses. Thus, the August 2015 Judgment left the March 2011 and August 2014 Judgments "in full force and effect[.]"

On September 2, 2015, 34 Label executed the writ of possession and took possession of the Restaurant Property.

As already noted, Cecere and Cozzarelli have filed three separate appeals. In A-0836-14, Cecere appeals from the August 2014 Judgment, the September 8, 2014 amended judgment, and the September 19, 2014 order denying reconsideration. In A-0307-15, Cecere appeals from the August 2015 Judgment. In A-0183-15, proposed intervenor, Cozzarelli, appeals from the July 23, 2015 partial judgment, the August 6, 2015 amended partial judgment, and the August 28, 2015 order denying his motion to intervene.

II.

In his appeals, Cecere primarily contends that rescission was an improper remedy and challenges, on various grounds, the August 2015 Judgment granting rescission. Cecere also challenges the adequacy of the trial court's factual findings throughout the litigations, arguing that (1) the trial court erred in admitting

expert testimony on behalf of 34 Label; (2) the trial judge should have recused herself; (3) 34 Label frustrated the subdivision process; (4) the trial court lacked jurisdiction to issue the August 2015 Judgment; (5) the trial court exceeded its authority by holding Cecere in contempt; (6) the trial court's findings were not based on adequate credible evidence; and (7) the trial court improperly restrained Cecere from use of his assets.

Cozzarelli makes six arguments on appeal: (1) the trial court lacked personal jurisdiction over it; (2) it should have been allowed to intervene; (3) the trial court lacked jurisdiction after Cecere appealed the August 2014 Judgment; (4) it had viable defenses to the extinguishment of its mortgage; (5) any claims against it should have been dismissed due to 34 Label's violation of Rule 4:5-1; and (6) 34 Label's claims for payments made after May 5, 2011, lack priority over its mortgage.

These arguments lack merit and, for the reasons set forth below, we reject them. We will first address Cecere's arguments, focusing principally on rescission. We will then address Cozzarelli's arguments.

A. The Judgment of Rescission

We begin our analysis with the August 2015 Judgment granting rescission, because that was the final judgment entered against Cecere.

As an equitable remedy, rescission lies within the inherent discretion of the trial court. First Am. Title Ins. Co. v. Lawson, 177 N.J. 125, 140 (2003). Accordingly, we review an equitable judgment granting rescission for abuse of discretion. Sears Mortg. Corp. v. Rose, 134 N.J. 326, 353-54 (1993); Civil S. Factors Corp. v. Bonat, 65 N.J. 329, 333 (1974).

Moreover, the trial court's factual findings will be upheld if they are supported by substantial credible evidence in the record. MacKinnon v. MacKinnon, 191 N.J. 240, 253-54 (2007) (citing N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 279 (2007)). Such deference is especially appropriate "when the evidence is largely testimonial and involves questions of credibility." Cesare v. Cesare, 154 N.J. 394, 412 (1998).

The remedy of rescission is rooted in considerations of equity. Rutgers Cas. Ins. Co. v. LaCroix, 194 N.J. 515, 527 (2008). Where monetary damages alone will not satisfy the injury sustained by the aggrieved party, courts can look to the equitable remedy of rescission to provide adequate relief. Ibid. Accordingly, our Supreme Court has explained:

Rescission remains a form of equitable relief in whatever setting its need arises, and courts wielding that remedy retain the discretion and judgment required to ensure that equity is done. In furtherance of that objective, a court may shape the rescission remedy in order to serve substantial justice.

[Id. at 528-29.]

Ordinarily, rescission serves as a remedy for fraud, mistake, or misrepresentation. E. Newark Realty Corp. v. Dolan, 15 N.J. Super. 288, 292-93 (App. Div. 1951). Nevertheless, rescission can be granted even in the absence of fraud, mistake, or misrepresentation. See ibid. ("The equitable remedy of cancellation of documents is generally based on fraud or mistake in the inception of the document, but on occasion the remedy is applied even though fraud and mistake are absent.").

Where a party materially breaches a contract and there is no adequate monetary remedy, rescission may be appropriate. Contracts may be rescinded where there is "original invalidity, fraud, failure of consideration or a material breach." Farris v. Cty. of Camden, 61 F. Supp. 2d 307, 336 (D.N.J. 1999) (quoting Notch View Assocs. v. Smith, 260 N.J. Super. 190, 197 (Law Div. 1992)). The trial court should mold the rescission remedy to restore the parties to the positions that they would have been in had the contract never been formed, and to prevent the breaching party from gaining a benefit. LaCroix, supra, 194 N.J. at 527 (citing Bonnco Petrol, Inc. v. Epstein, 115 N.J. 599, 612 (1989)). In short, as an equitable remedy, the availability of rescission

depends on the totality of the circumstances in a given case. Lawson, supra, 177 N.J. at 143.

Here, the factual findings of the trial court support the equitable remedy of rescission. In that regard, Cecere materially breached the Ground Lease and those breaches could not be remedied by monetary judgments. Specifically, the trial court conducted two trials and made the following factual findings, many of which were not in dispute:

1. Cecere had been in breach of the Ground Lease since 2007, when he stopped paying taxes and expenses on the Restaurant Property;
2. Two judgments were entered against Cecere in 2011 and 2014, but he failed to pay either judgment;
3. Cecere also continued to occupy the Restaurant Property, but continued to fail to pay the newly accruing property taxes and expenses; and
4. Cecere initially refused to obey the order requiring him to seek subdivision of the Restaurant Property; was found to be in contempt of that order; and ultimately failed to get the subdivision because he had no plan regarding parking accommodations for the restaurant.

In light of those findings, the trial court determined that Cecere would never comply with his obligations under the Ground Lease. Indeed, the trial court stated: "[I]t's clear to this [c]ourt based upon the testimony of Mr. Cecere, his demeanor, his

attitude which this [c]ourt had the ability to observe firsthand over the period of . . . a full day of testimony that [Cecere] has no intention of making those payments."

The trial court initially entered conditional rescission and gave Cecere an additional six months to avoid rescission by complying with his obligations. It was only after Cecere failed to satisfy the conditions imposed by the court that the trial court, after a further trial, entered a final judgment of rescission. Those facts and proceedings support the equitable remedy of rescission.

We also hold that the factual findings made during the 2015 rescission trial were supported by substantial credible evidence. The court determined that the present value of the rent that Cecere paid in 2002 was \$531,663.22. In making that finding, the court relied on evidence submitted by Cecere. The court also found that 34 Label was entitled to compensation from Cecere for use and possession of the Restaurant Property from 2002 to 2015. The court based that finding on expert testimony, which it found to be credible. Accordingly, the court found that 34 Label was entitled to rents and expenses totaling \$766,011.23. Offsetting those two amounts, the court entered a net judgment in favor of 34 Label for \$234,348.01. In addition, the court found that the March 2011 and August 2014 Judgments established the correct amount

of taxes and expenses owed by Cecere to 34 Label through August 2014. All of the court's findings are supported by substantial credible evidence in the record and we find no basis to disturb those findings. Moreover, the court's rulings restored the parties to their original positions in light of the rescission. See LaCroix, supra, 197 N.J. at 527.

Cecere makes a series of arguments challenging the remedy of rescission. None of those arguments are persuasive.

First, Cecere contends that rescission requires findings of clear and convincing evidence and that the trial court failed to apply such a standard. In making that argument, Cecere relies on a case that discusses proving fraud by clear and convincing evidence. See Armel v. Crewick, 71 N.J. Super. 213, 217 (App. Div. 1961) (stating that a "court of equity has frequently applied the 'clear and convincing' quantum to averments of fraud"). Here, however, 34 Label's claim was not based on equitable fraud. Instead, the claim was based on material breaches of the Ground Lease, which Cecere refused to cure. Consequently, clear and convincing evidence was not required. Even if we were to apply that standard, it has been met. Cecere himself acknowledged that he was not paying the taxes and that he had not obtained insurance. Those admissions clearly and convincingly established the breaches of the Ground Lease.

Second, Cecere argues that rescission was barred by judicial estoppel and the entire controversy doctrine. 34 Label never took a position that estopped it from seeking rescission. See Kimball Int'l, Inc. v. Northfield Metal Prods., 334 N.J. Super. 596, 606 (App. Div. 2000) ("A threat to the integrity of the judicial system sufficient to invoke the judicial estoppel doctrine only arises when a party advocates a position contrary to a position it successfully asserted in the same or a prior proceeding."). Instead, 34 Label initially tried to enforce the lease, but even after judgments were entered against Cecere, he continued to breach the Ground Lease. Consequently, 34 Label did not change its position; rather, Cecere refused to comply with court judgments.

For similar reasons, the entire controversy doctrine does not apply against 34 Label. See Oliver v. Ambrose, 152 N.J. 383, 392 (1998) ("For over sixty years, it has been established in New Jersey that the entire controversy doctrine requires the mandatory joinder of all claims to a single transaction."). 34 Label only sought rescission after Cecere failed to comply with the March 2011 Judgment that ordered him to pay the taxes and expenses for the Restaurant Property. Moreover, Cecere continued to possess the Restaurant Property, but refused to pay the ongoing property taxes and expenses.

Third, Cecere argues that rescission was barred by the statute of limitations and the doctrine of laches. Cecere never asserted those defenses before the trial court. Therefore, he waived them. See Pressler & Verniero, Current N.J. Court Rules, cmt. 1.2.1 on R. 4:5-4 (2018) ("While the rule does not expressly so state, it is clear that ordinarily an affirmative defense that is not pleaded or otherwise timely raised is deemed to have been waived."); see also Triffin v. Am. Int'l Grp., Inc., 372 N.J. Super. 517, 520 (App. Div. 2004) (declining to consider an issue on appeal because appellant failed to properly raise it before the trial court).

Even if we considered these arguments substantively, however, they lack merit. The applicable statute of limitations for claims of rescission is six years. N.J.S.A. 2A:14-1. Cecere breached the Ground Lease in 2007, and 34 Label obtained a judgment in March 2011. After Cecere refused to pay that judgment, 34 Label filed its claim for rescission in 2012. All of that took place within the applicable six years. Cecere's claim for laches fails for the same reasons. In short, 34 Label acted timely in responding to Cecere's ongoing breaches of the Ground Lease.

Fourth, Cecere contends that there is no such thing as conditional rescission. That argument lacks merit because by putting conditions on the rescission, the trial court was giving Cecere one last opportunity to cure his long-standing material

breaches of the Ground Lease. As already explained, it is within the court's discretion to mold the rescission remedy to provide adequate relief based upon the totality of the circumstances. See Lawson, supra, 177 N.J. at 143. Cecere's continued non-compliance with both the requirements of the Ground Lease and court judgments demonstrates that the trial court acted within its discretion in granting conditional rescission.

B. Cecere's Other Arguments on Appeal

Cecere also makes a series of arguments to challenge the adequacy of the trial court's factual findings. Having found that rescission was an appropriate remedy, and that it was correctly implemented, we will briefly analyze why we reject the remainder of his arguments.

Cecere contends that the trial court improperly relied upon certain evidence. Specifically, he contends that the trial court should not have admitted and relied upon expert testimony of Charles Blau regarding the fair rental value of the Restaurant Property, and a summary document of the expenses incurred by 34 Label. We review such evidentiary issues for abuse of discretion. Brenman v. Demello, 191 N.J. 18, 31 (2007). Having evaluated the court's evidentiary rulings in light of the applicable rules of evidence, we find no such abuse.

Next, Cecere argues that the judge who conducted the 2015 rescission trial was biased and should have recused herself. In support of this argument, Cecere cites nothing that would demonstrate any biased or improper conduct by the trial judge. Instead, Cecere simply points to statements that the judge made based on the facts presented during the litigation. The judge did not engage in conduct warranting recusal. See Panitch v. Panitch, 339 N.J. Super. 63, 68-71 (App. Div. 2001) (reviewing the denial of a motion for recusal for abuse of discretion, and stating that a judge's comments do not, by themselves, require recusal). Here, we find no abuse of discretion. Indeed, Cecere's arguments are based on factual assertions not supported by the record.

Cecere also contends that 34 Label frustrated his efforts to subdivide the property. Here again, the record does not support his contention. As part of Cecere's subdivision application, the Montclair Planning Board requested that he clarify how he would provide parking for the restaurant if the property was subdivided and the Ground Lease ended. Cecere asserted that he could continue to use the garage as permitted under the Ground Lease. Counsel for 34 Label informed the Planning Board that if the property was subdivided, the Ground Lease would no longer exist and, therefore, Cecere would not have access to the parking garage. The trial

court reviewed this issue and found that 34 Label did not act improperly. That finding is amply supported by the record.

Cecere argues that the trial court lacked jurisdiction to conduct the rescission trial in 2015, while his appeal from the August 2014 Judgment was pending. That argument fails because the rescission trial was a proceeding to enforce the August 2014 Judgment. Consequently, the trial court had "continuing jurisdiction to enforce judgments and orders" R. 2:9-1(a). Indeed, we clarified that point in denying Cecere's emergent motion seeking leave to appeal the January 13, 2015 order to show cause.

Further, as the procedural history of this case unfolded, it now can be argued that the August 2014 Judgment was an interlocutory judgment. That judgment was specifically conditioned on certain events taking place before January 2015. The judgment also provided that the court would conduct further proceedings regarding rescission if those conditions were not met. Consequently, when Cecere failed to comply with the August 2014 Judgment, the court conducted further proceedings, including another trial, to implement rescission of the Ground Lease. Thus, although Cecere now has the right to appeal the August 2014 Judgment, that right arose after the August 2015 Judgment granting rescission was entered. We have not required Cecere to amend his

notice of appeal and have already addressed and rejected his arguments challenging the August 2014 Judgment, as well as the September 8, 2014 amended judgment and September 19, 2014 order denying reconsideration.

Cecere also claims that the trial court improperly held him in contempt twice; once in June 2014, and again in May 2015. We review a trial court's order of contempt for abuse of discretion. Gonzalez v. Safe & Sound Sec. Corp., 368 N.J. Super. 203, 209 (App. Div. 2004), rev'd on other grounds, 185 N.J. 100 (2005). Given the detailed factual findings regarding Cecere's actions, we find no such abuse.

Both times the trial court held Cecere in contempt, it noted that he had ignored clear prior court orders. Indeed, Cecere was first found in contempt after he failed to comply with the January 5, 2011 order directing him to submit an application for subdivision. The second time Cecere was held in contempt, the court stated that it was imposing contempt because of his blatant disregard of discovery obligations to his adversary, including his deliberate refusal to provide 34 Label access to the Restaurant Property, and his long-standing history of "flouting" court orders. Those sanctions were appropriate given Cecere's prior actions and refusal to obey prior court orders.

Finally, Cecere's remaining arguments lack sufficient merit to warrant discussion in a written opinion and, therefore, we reject them without further comment. R. 2:11-3(e)(1)(E).

C. Cozzarelli's Appeal

Only one of the issues that Cozzarelli raises on appeal is properly before us: whether the trial court correctly denied its request to intervene. We hold that the trial court did not abuse its discretion in denying Cozzarelli's belated motion to intervene. See Town of Phillipsburg v. Block 1508, Lot 12, 380 N.J. Super. 159, 172 (App. Div. 2005) (reviewing a trial court's denial of permissive intervention pursuant to Rule 4:33-2 for abuse of discretion). Lacking status as a party, Cozzarelli does not have standing to make its other arguments. Williams v. State, 375 N.J. Super. 485, 530 (App. Div. 2005) (recognizing that intervenors are not parties in the action until a motion to intervene is granted). Moreover, by failing to timely intervene, Cozzarelli effectively waived its right to challenge the trial court's ruling that extinguished its mortgage. J.L.B. Equities v. Dumont, 310 N.J. Super. 366, 374 (App. Div. 1998).

Rule 4:33-1 governs applications for intervention as of right, and Rule 4:33-2 addresses permissive intervention. Both rules require a "timely application." Here, the trial court found that Cozzarelli's motion to intervene was not timely.

Specifically, the trial court found that Cozzarelli had notice of the rescission claim starting in 2012, but waited until August 2015, to seek intervention. In making that determination, the trial court relied on the following factual findings.

Cozzarelli represented Cecere in the lawsuit that resulted in the March 2011 Judgment. Cozzarelli then took the mortgage and security interest in the Restaurant Property in May 2011. Notably, the mortgage and security agreement both required Cecere to be in compliance with his obligations under the Ground Lease. Cozzarelli, however, knew that Cecere was in breach of those obligations and had been in continuous breach since 2007.

Cozzarelli was also on notice when 34 Label filed the third lawsuit in 2012 seeking rescission of the Ground Lease. Despite knowing that 34 Label sought rescission, Cozzarelli chose not to intervene at that time.

Cozzarelli continued to delay even after the trial court entered the August 2014 Judgment. That judgment granted 34 Label conditional rescission and spelled out the exact conditions that needed to be met within six months. It is undisputed that those conditions were not satisfied by January 2015. Thereafter, the trial court conducted proceedings to implement the final rescission. Those proceedings included a trial in July 2015, during which an associate of Cozzarelli Law represented Cecere.

Accordingly, from January 2012 through July 2015, Cozzarelli had actual notice that 34 Label was seeking rescission of the Ground Lease. An obvious component of rescission would be the extinguishment of any interest in the Restaurant Property transferred by Cecere, including Cozzarelli's mortgage and security interest. Nevertheless, Cozzarelli did not move to intervene until August 2015. Based on those facts, the trial court acted well within its discretion in denying Cozzarelli's motion to intervene.

On appeal, Cozzarelli suggests that there are differences between Cozzarelli Law, associates of the firm, and Frank J. Cozzarelli in his individual capacity. Whatever distinctions there may be for other purposes, the individuals and entities with a mortgage and security interest in the Restaurant Property indisputably knew in January 2012 that 34 Label was seeking rescission of the Ground Lease. Thus, they are all precluded by the trial court's judgments.

While we need not address Cozzarelli's other arguments, we note that even if we were to reach them, they lack merit. The court clearly had jurisdiction over Cecere and the Ground Lease. Consequently, when the court granted rescission, it had the jurisdiction and authority to extinguish Cecere's property interests under the Ground Lease and any interest that Cecere had

transferred, including the mortgage and security interest transferred to Cozzarelli, which were subsequently transferred to Ice Pick.

Having carefully reviewed this entire record, and the myriad of arguments put forward both by Cecere and Cozzarelli, we see no viable defense that Cozzarelli could have asserted to the extinguishment of the mortgage and security interest in the Restaurant Property.

Finally, as our prior analysis has established, given the way the mortgage and security interest were created, and Cozzarelli's clear notice of the rescission claim, 34 Label had no obligation to identify, much less move to join, Cozzarelli. Thus, we see no violation of Rule 4:5-1.

In summary, we affirm the judgments and orders entered on August 25, 2014, September 8, 2014, September 19, 2014, July 22, 2015, August 6, 2015, August 26, 2015, and August 28, 2015.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION