SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0944-16T1
A-1087-16T1

JCPO, LLC,

Plaintiff-Appellant,

v.

CLAYTON PERLMAN and EVA PERLMAN,

Defendants-Respondents.

JCPO, LLC,

Plaintiff-Respondent,

v.

CLAYTON PERLMAN and EVA PERLMAN,

Defendants-Appellants.

Submitted October 31, 2017 – Decided November 14, 2017

Before Judges Fisher and Sumners.

On appeal from Superior Court of New Jersey, Chancery Division, Monmouth County, Docket No. C-000196-14.

Werner Suarez & Moran, LLC, attorneys for appellant in A-0944-16 and respondent in A-1087-16 (Anthony R. Suarez, on the briefs).

Ferrara Law Group, PC, attorneys for respondents in A-0944-16 and appellants in A-1087-16 (Ralph P. Ferrara and Morgan J. Zucker, on the briefs).

PER CURIAM

Plaintiff JCPO, LLC brought this chancery action against defendants Clayton and Eva Perlman, alleging a fraudulent transfer of property from Clayton to Eva. At the conclusion of JCPO's case-in-chief, Chancery Judge Patricia Del Bueno Cleary dismissed the complaint pursuant to Rule 4:37-2(b). Later, the judge denied defendants' motion, based on both Rule 1:4-8 and N.J.S.A. 2A:15-59.1, for frivolous litigation fees. JCPO appeals the involuntary dismissal, as well as the judge's later denial of its motion for reconsideration and a new trial. And defendants appeal the denial of their motion for fees.

We calendared these appeals back-to-back and now affirm the orders under review by way of this single opinion. Indeed, we affirm those orders substantially for the reasons set forth by Judge Cleary in her oral decisions. We add only the following brief comments regarding JCPO's appeal of the involuntary dismissal.

As the judge recognized, there was no dispute that, in 2010, JCPO lent $170,000 to FHF Enterprises, LLC, to fund the latter's acquisition and liquidation of foreclosed Florida properties.

Defendant Clayton Perlman, as a principal of FHF, signed the loan agreement on FHF's behalf. But there was no evidence to support the contention that Clayton Perlman signed the agreement in an individual capacity or otherwise obligated himself personally on the promise to repay.

The evidence reveals that FHF later defaulted on the loan agreement. JCPO then sued FHF, Clayton Perlman, and Frank Ficca, another FHF principal, in a Florida court, alleging securities fraud. In January 2013, the parties to the Florida suit entered into a settlement agreement which called for a release of the claims asserted by JCPO and the payment to JCPO by those defendants of $120,000 in two installments. The first $20,000 installment, due in April 2013, was paid; the second $100,000 installment, due by the end of 2013, was not. Pursuant to the stipulation in the settlement agreement that authorized JCPO's entitlement to a $150,000 consent judgment, less any paid settlement proceeds, a $130,000 judgment was entered in January 2014 against FHF, Clayton Perlman, and Frank Ficca.

This chancery action, commenced in November 2014 sought to set aside a 2010 conveyance made by defendant Clayton Perlman — a judgment debtor on the 2014 judgment based on the Florida settlement agreement — to his wife, defendant Eva Perlman. Judge Cleary, correctly applying Rule 4:37-2(b), which required that she

accept as true all the evidence that supported JCPO's position and provide JCPO with all reasonable legitimate inferences, Verdicchio v. Ricca, 179 N.J. 1, 30 (2004) — found no evidence to suggest anything but that the underlying 2010 transaction was between only JCPO and FHF and that, although Clayton Perlman executed the loan agreement, he did so only in his capacity as a member of FHF and not personally. In reviewing this determination, like the chancery judge we too must honor the juridical distinction between the business entity that incurred the 2010 obligation and the individual who allegedly transferred assets at about the same time as the loan agreement and who only, three years later, incurred personal liability toward the claimant by entering into the settlement agreement. See Motorworld, Inc. v. Benkendorf, 228 N.J. 311, 317, 332-33 (2017). For these reasons, as well as those set forth by Judge Cleary in her cogent and thoughtful oral decision, we affirm the order granting an involuntary dismissal of JCPO's action.

The orders under review in A-0944-16 and A-1087-16 are affirmed.