SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2445-15T3

EAGLE ROCK DRYWALL, L.L.C.,

Plaintiff-Appellant,

v.

RIO VISTA HOMES, L.L.C., RIO VISTA CONSTRUCTION, L.L.C., RIO VISTA HOMES AT NORTHVALE, L.L.C. and JOHN MAVROUDIS,

Defendants-Respondents.

RIO VISTA HOMES, L.L.C., RIO VISTA CONSTRUCTION, L.L.C., RIO VISTA HOMES AT NORTHVALE, L.L.C.,

Third-Party Plaintiffs,

v.

ANDREW ROTHSCHILD,

Third-Party Defendant.

Submitted May 2, 2017 – Decided July 28, 2017

Before Judges Messano and Grall.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Docket No. L-877-12.

Hilberth & McAlvanah, P.A., attorneys for appellant (Thomas R. Hilberth, on the brief).

Mavroudis Law, L.L.C., attorneys for respondents (John M. Mavroudis, on the brief).

PER CURIAM

Following a bench trial, the Law Division entered an order for judgment in favor of defendants, Rio Vista Homes, L.L.C. (RV Homes), Rio Vista Construction, L.L.C. (RV Construction), Rio Vista Homes at Northvale, L.L.C. (RV Northvale), and John Mavroudis, the managing member of those limited liability corporations, dismissing the complaint of plaintiff Eagle Rock Drywall L.L.C.[1] We affirm the order under review, but clarify its effect.

I.

It is necessary to explicate the tortuous procedural history leading to trial to explain the legal arguments plaintiff now raises.

In 2012, plaintiff filed suit against RV Homes, RV Construction and Mavroudis, seeking monies owed for subcontracting work it performed at various locations. Plaintiff's complaint

[1] The order also dismissed defendants' counterclaim against plaintiff and their third-party complaint against Andrew Rothschild, plaintiff's managing member. Defendants filed no cross-appeal from these provisions of the order for judgment.

included additional counts alleging fraud, intentional and negligent interference with contractual rights, quantum meruit and allegations intended to support piercing the corporate veils of RV Homes and RV Construction and hold Mavroudis personally liable. In February 2013, the parties entered into a written settlement agreement (the agreement).[2]

Defendants agreed to make monthly payments until the claimed balance due was paid. The agreement specifically provided that upon defendants' failure to cure any default in payments, defendants' answer would be stricken. Defendants made three payments before the check for the fourth payment was returned for insufficient funds.

Plaintiff then moved for judgment.[3] The court entered judgment in November 2013, specifically providing that it was not entered against "Mavroudis, individually, as he did not sign [the agreement]." The court also granted plaintiff's subsequent motion seeking counsel fees as part of the judgment.

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[2] The settlement agreement included only signature lines for RV Homes and RV Construction, which Mavroudis signed as each entity's managing member. In his decision, the trial judge stated "it was stipulated" that all claims against Mavroudis were dismissed "at the outset of the litigation." That is undisputed.

[3] The motion also sought to set aside a "consent order." There is no consent order in the record, but we assume that was the stipulation of settlement referenced in the agreement.

In August 2014, plaintiff moved to set aside the judgment and amend the complaint. Notably, plaintiff never sought to vacate the agreement.

Rothschild certified that during efforts to collect the judgment, he learned RV Homes did not own the property where he performed the work. Rather, RV Northvale, another company managed by Mavroudis, "was the owner of all the properties for which [plaintiff] performed work." Plaintiff attached copies of checks for payments received under the agreement that were drawn upon RV Northvale's account.

RV Homes and RV Construction filed opposition, supported by Mavroudis' certification. He denied that RV Northvale was the common owner of all the properties. Instead, Mavroudis stated that, from 2007 to 2013, plaintiff entered into subcontracts with RV Homes and RV Construction as general contractors and was paid more than $400,000 for the work it performed.

Apparently without argument, the judge granted plaintiff's motion, set aside the judgment and joined Northvale as an additional defendant. His only ratio decidendi appears in the following handwritten notation on the order: "The issue of whether [RV] Northvale might be liable is not a proper subject for this motion." Defendants moved for reconsideration, which plaintiff opposed. Although there is no order in the record, the judge

apparently denied defendants' motion because plaintiff filed its amended complaint, including the same causes of action as in the original complaint and adding RV Northvale as a defendant.[4] The court denied RV Northvale's motion to dismiss, defendants filed an answer, counterclaim and third-party complaint against Rothschild, and the matter proceeded to trial.

Rothschild was plaintiff's only witness, and the judge admitted various documents into evidence. Among other things, Rothschild admitted that, although he had performed work for Mavroudis on various properties over the years, he only signed one contract, in March 2013 shortly after the agreement was executed, for work on the "Adams" building (the Adams Contract), part of Rio Vista Greens in Northvale. That contract was expressly between plaintiff and RV Construction. Rothschild claimed that his wife read him the contract because he had a limited understanding of English. Rothschild claimed he never understood his prior oral agreements were with different entities, but, rather, he assumed Mavroudis was in control of all the RV properties and projects.

Defendants moved for a directed verdict at the end of plaintiff's case, and the judge granted the motion as to

[4] Although the amended complaint named Mavroudis as a defendant, there was no count seeking to pierce the corporate veils, and the complaint contained no factual allegations alleging Mavroudis' was personally liable.

plaintiff's allegations of fraud and misrepresentation. Mavroudis was the only witness produced by defendants, and the judge admitted various documents into evidence during his testimony.

Plaintiff and defendants submitted post-trial written summations, and the judge subsequently issued an oral decision on the record. He reiterated his mid-trial ruling dismissing those counts in plaintiff's complaint alleging fraud and misrepresentation, i.e., counts two, three and four. The judge also concluded that count one of the complaint contained only factual allegations and sought "no relief." He therefore limited his decision to count five of the complaint which "sound[ed] in quantum meruit."

The judge initially reasoned that plaintiff's motion to vacate the prior judgment "did nothing to affect the underlying settlement of the prior litigation." He concluded, "the breach of working agreement and contract or quasi contract claims asserted by plaintiff in the present litigation against defendants, [RV] Homes and [RV] Construction are virtually identical to the claims asserted in the prior litigation and accordingly, the claims in the present litigation are barred as to those defendants" by the doctrine of res judicata.

The judge further found Rothschild's testimony was not credible, and "Rothschild clearly understood that his [only]

contractual relationship . . . was with [RV] Construction." The judge added: "Fundamentally, the plaintiff failed to prove, by a preponderance of the evidence that there was any contractual relationship whatsoever, established with [RV] Northvale."

Additionally, the judge concluded,

> the claims plaintiff asserts against [RV] Northvale were available to be asserted in the prior litigation. The principle of res judicata applies both to matters litigated and determined or settled . . . because that's a determination, by the parties and those which could have been presented but were not.

He also rejected plaintiff's argument that a lack of discovery prevented it from raising the claims against RV Northvale prior to settlement. He dismissed plaintiff's complaint and entered the order under review.

II.

Plaintiff argues the judge improperly applied the doctrine of res judicata to bar its claims against RV Northvale. It contends the doctrine does not apply because it vacated the earlier judgment secured against RV Homes and RV Construction and amended its complaint before the second trial, so as to name all three entities as defendants. We agree that the doctrine does not apply to bar plaintiff's claims against RV Northvale.

"The application of res judicata is a question of law" which we review de novo. Walker v. Choudhary, 425 N.J. Super. 135, 151

(App. Div.) (quoting Selective Ins. Co. v. McAllister, 327 N.J. Super. 168, 173 (App. Div.), certif. denied, 164 N.J. 188 (2000)), certif. denied, 211 N.J. 274 (2012). The doctrine "serves the purpose of providing 'finality and repose; prevention of needless litigation; avoidance of duplication; reduction of unnecessary burdens of time and expenses; elimination of conflicts, confusion and uncertainty; and basic fairness[.]'" Wadeer v. N.J. Mfrs. Ins. Co., 220 N.J. 591, 606 (2015) (quoting First Union Nat'l Bank v. Penn Salem Marina, Inc., 190 N.J. 342, 352 (2007)). "[W]hen a controversy between parties is once fairly litigated and determined it is no longer open to relitigation." Ibid. (quoting Lubliner v. Bd. of Alcoholic Beverage Control, 33 N.J. 428, 435 (1960)).

We have explained that for the doctrine to apply,

> (1) the judgment in the prior action must be valid, final, and on the merits; (2) the parties in the later action must be identical to or in privity with those in the prior action; and (3) the claim in the later action must grow out of the same transaction or occurrence as the claim in the earlier one.
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> [Bondi v. Citigroup, Inc., 423 N.J. Super. 377, 422 (App. Div. 2011) (emphasis added) (quoting Watkins v. Resorts Int'l Hotel and Casino, Inc., 124 N.J. 398, 412 (1991)), certif. denied, 210 N.J. 478 (2012).]

It is clear, and indeed it was RV Northvale's essential defense, that the other defendants were different legal entities, and their

obligations to plaintiff were not RV Northvale's obligations. As such, res judicata does not bar plaintiff's claims against RV Northvale.[5]

However, appeals are taken from orders and final judgments, and not the reasoning employed by judges in reaching their decisions. Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001). For the reasons explained in Part III, we affirm the order as to RV Northvale because, in the end, the judge concluded plaintiff failed to prove any of the claims made in its complaint as to that defendant.

We affirm the order as to RV Homes and RV Construction because, even though plaintiff inexplicably vacated the judgment against these entities, the agreement, which was never set aside, is entitled to preclusive effect. Generally speaking, both res judicata and collateral estoppel require the entry of a final judgment on the merits in the previous action. Bondi, supra, 423 N.J. Super. at 422; see also Hennessey v. Winslow Twp., 183 N.J. 593, 599 (2005) (setting forth elements of collateral estoppel,

[5] Later in his decision, the judge determined plaintiff's claims against RV Northvale were barred by "the doctrine of res judicata, collateral estoppel and/or waiver." (Emphasis added). Plaintiff does not specifically address collateral estoppel or waiver in its brief. Because we are affirming for other reasons, there is no need to address those issues.

including "the court in the prior proceeding issued a final judgment on the merits") (citations omitted). "Obviously, once a vacatur motion is granted, collateral estoppel will not apply, because the requisite judgment on the merits will be lacking." Perez v. Rent-A-Center, Inc., 186 N.J. 188, 200 (2006) (citing Aetna Cas. & Sur. Co. v. Ply Gem Indus., Inc., 313 N.J. Super. 94, 107 (Law Div. 1997)), cert. denied, 549 U.S. 1115, 127 S. Ct. 984, 166 L. Ed. 2d 710 (2007).

However, the Court has recognized that "the doctrine of collateral estoppel applies whenever an action is 'sufficiently firm to be accorded conclusive effect.'" Hills Dev. Co. v. Bernards, 103 N.J. 1, 59 (1986) (quoting Restatement (Second) of Judgments, § 13 at 132 (1982)). "Simply put, for collateral-estoppel purposes, 'the question to be decided is whether a party has had his day in court on an issue.'" State v. K.P.S., 221 N.J. 266, 278 (2015) (quoting McAndrew v. Mularchuk, 38 N.J. 156, 161 (1962)).

Here, plaintiff had its day in court against RV Homes and RV Construction and obtained a settlement of its claims. Both sides relied on that settlement and began to perform, before plaintiff obtained a judgment because of defendants' default. Despite the order vacating that judgment, plaintiff was precluded from re-litigating allegations against those two entities.

We address briefly the impact of this conclusion. As noted, plaintiff moved to vacate the judgment against RV Homes and RV Construction based upon their breach of the agreement, but it never sought to set aside the agreement reached with those defendants. In their written summation, defendants argued that in its amended complaint, plaintiff failed to assert any claim under the agreement, but defendants never argued the agreement was void or unenforceable.

As a result, we wish to make clear that the agreement is still in full force and effect, and plaintiff retains all its rights thereunder.

III.

The balance of plaintiff's arguments addressed to the order for judgment as to RV Northvale lack sufficient merit to warrant extensive discussion in a written opinion. R. 2:11-3(e)(1)(E). We address them briefly seriatim.

Plaintiff argues Mavroudis, who admittedly no longer had any ownership interest in RV Northvale at the time of trial, had "a serious credibility issue," implying the judge should have rejected his testimony and assumedly accepted Rothschild's. This ignores the well-known standard guiding our review:

> Final determinations made by the trial court sitting in a non-jury case are subject to a limited and well-established scope of review:

> "we do not disturb the factual findings and legal conclusions of the trial judge unless we are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice[.]"
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> [Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011) (quoting In re Trust Created By Agreement Dated December 20, 1961, ex. rel. Johnson, 194 N.J. 276, 284 (2008) (internal quotation marks omitted)).]

Moreover, "[b]ecause a trial court hears the case, sees and observes the witnesses, and hears them testify, it has a better perspective than a reviewing court in evaluating the veracity of witnesses." Ibid. (quoting Cesare v. Cesare, 154 N.J. 394, 412 (1998)).

Plaintiff also contends the judge relied on specific lien release language in the Adams Contract, which defendants urged foreclosed any claim against RV Northvale. Importantly, in rendering his decision, the judge specifically reached no conclusion on the effect of the lien release language, nor do we.

Plaintiff argues the judge erred in directing a verdict in defendants' favor on those counts sounding in breach of the implied covenant of good faith and fair dealing. Notably, none of the counts in the original complaint or the amended complaint actually contained such allegations, and, in his ruling, the judge never referred to counts two, three and four as stating such a claim.

Nevertheless, in its summation, plaintiff argued the proofs established a breach of the implied covenant of good faith and fair dealing, and, for the sake of completeness, we address the argument.

"[E]very contract in New Jersey contains an implied covenant of good faith and fair dealing." Sons of Thunder, Inc. v. Borden, Inc., 148 N.J. 396, 420 (1997). "Neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract[.]" Kalogeras v. 239 Broad Ave., L.L.C., 202 N.J. 349, 366 (2010) (quoting Palisades Props, Inc. v. Brunetti, 44 N.J. 117, 130 (1965)). Here, however, there was no contract, written or oral, between plaintiff and RV Northvale. McQuitty v. Gen. Dynamics Corp., 204 N.J. Super. 514, 520 (App. Div. 1985) (finding that "one cannot read additional terms," including a duty of good faith and fair dealing, "into a non-existent contract").

Finally, plaintiff contends the judge should have awarded judgment in its favor on the theory that RV Northvale was unjustly enriched. "To prove a claim for unjust enrichment, a party must demonstrate that the opposing party 'received a benefit and that retention of that benefit without payment would be unjust.'" Thieme v. Aucoin-Thieme, 227 N.J. 269, 288 (2016) (quoting Illiadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 110 (2007)). "That quasi-

contract doctrine also 'requires that plaintiff show that it expected remuneration from the defendant at the time it performed or conferred a benefit on defendant and that the failure of remuneration enriched defendant beyond its contractual rights.'" Ibid. (emphasis added) (quoting Illiadis, supra, 191 N.J. at 110).

Here, plaintiff admitted that it was paid for all the work it supplied under the Adams Contract, and it only sought remuneration on the unpaid balance for prior work from RV Northvale because the checks it received under the settlement agreement were drawn on RV Northvale's account. In other words, when it performed the work upon which it based the claim, plaintiff never expected remuneration from RV Northvale.

Affirmed.