SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2762-15T2

ROBERT NEDESKI,

Plaintiff-Respondent,

v.

WINFIELD SCOTT CORP.,

Defendant,

and

WINFIELD SCOTT TOWER URBAN RENEWAL ASSOCIATES, L.P.,

Defendant-Respondent,

and

GIOVANNI SCALZULLI, d/b/a ENVY NIGHTCLUB,

Defendant-Appellant.

Submitted March 28, 2017 – Decided August 23, 2017

Before Judges Messano and Espinosa.

On appeal from Superior Court of New Jersey, Law Division, Union County, Docket No. L-2429-14.

Trenk, DiPasquale, Della Fera & Sodono, PC, attorneys for appellant (Michele M. Dudas, of

counsel and on the briefs; Franklin Barbosa, Jr., on the briefs).

Mintz & Geftic, LLC, attorneys for respondent (Bryan H. Mintz, on the brief).

PER CURIAM

Defendant Giovanni Scalzulli appeals from an order denying his motion to vacate a default judgment entered against him in this slip and fall personal injury action. We reverse and remand for further proceedings.

I.

Rule 4:50-1 "governs an applicant's motion for relief from default when the case has proceeded to judgment." US Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 466 (2012). The rule permits a court to

> relieve a party . . . from a final judgment or order for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; . . . (d) the judgment or order is void; . . . or (f) any other reason justifying relief from the operation of the judgment or order.
>
> [R. 4:50-1.]

"[T]he opening of default judgments should be viewed with great liberality, and every reasonable ground for indulgence is tolerated to the end that a just result is reached." Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283-84 (1994) (alteration in original) (quoting Marder v. Realty Constr. Co., 84 N.J. Super.

313, 319 (App. Div.), aff'd o.b., 43 N.J. 508 (1964)). Furthermore, "[a]ll doubts . . . should be resolved in favor of the parties seeking relief." Nowosleska v. Steele, 400 N.J. Super. 297, 303 (App. Div. 2008) (alterations in original) (quoting Mancini v. EDS ex rel. N.J. Auto Full Ins. Underwriting Ass'n, 132 N.J. 330, 334 (1993)).

II.

The original complaint was filed against Winfield Scott Corp. d/b/a Envy Night Club (Winfield Scott) and fictitious corporations in July 2014. It alleged plaintiff was lawfully on property owned, occupied, operated, or maintained by Winfield Scott when he was injured due to Winfield Scott's negligence.

In February 2015, an amended complaint was filed, naming the defendants as "Winfield Scott Corp.; Winfield Scott Tower Urban Renewal Associates, L.P., and Giovanni Scalzulli d/b/a Envy Night Club" and fictitious corporations. The amended complaint alleged that all the defendants owned, occupied, operated or maintained the property where plaintiff was injured.

According to a lease for the property, Winfield Scott Tower Urban Renewal Associates, L.P. (Winfield) owns the property; GS Entertainment Productions, LLC (GS Entertainment) is Winfield's tenant and operates a nightclub on the property. Scalzulli is the sole managing member of GS Entertainment and the signatory on the

lease.

Scalzulli failed to file an answer. Plaintiff moved for entry of default judgment and his counsel hand-delivered the motion papers to Scalzulli's office at the property on April 27, 2015.

On May 29, 2015, the court entered a default judgment against defendants "on the issue of liability" and scheduled a proof hearing for June 29, 2015. Plaintiff served a copy of the order on Scalzulli at the property by regular mail on June 2, 2015. In addition, on June 24, 2015, plaintiff served the notice of the scheduled proof hearing on Scalzulli at the property via FedEx overnight mail, which was received and signed for by Scalzulli's daughter.

Scalzulli did not appear at the proof hearing on June 29, 2015.

On July 6, 2015, the court entered a final judgment by default in favor of plaintiff for $250,000 against defendants Winfield Scott, Winfield and Scalzulli jointly and severally. Plaintiff served a copy of the judgment on Scalzulli at the property by regular mail on July 8, 2015.

Both Winfield and Scalzulli filed motions to vacate the default judgment. Winfield contended there had been improper service of the amended complaint and filed an answer and third-

party complaint against GS Entertainment.[1]

In his motion to vacate the default judgment, Scalzulli sought relief under: Rule 4:50-1(a), arguing his default was excused because he was never served and his meritorious defense was that he could not be held personally liable for plaintiff's injury because it occurred in a nightclub owned by GS Entertainment; Rule 4:50-1(d), arguing the judgment was void due to defective service; and Rule 4:50-1(f), arguing "a $250,000 judgment against an individual, when the alleged incident occurred at a night club . . . justif[ied] the relief."

In support, Scalzulli submitted a certification in which he made a number of factual assertions to support his argument that he was not properly served. He also stated he was improperly named as a defendant and had no "personal liability to" plaintiff; he was "the sole member of" GS Entertainment which operates a nightclub at the property; and "is not an owner of the [p]roperty, and is a tenant" of Winfield GS Entertainment.

Plaintiff opposed both motions. The trial court granted

[1] In response to the identification of GS Entertainment as a liable party, plaintiff (1) filed a second amended complaint adding GS Entertainment as a defendant on December 16, 2015; and (2) initiated a separate action alleging the same facts against GS Entertainment on January 6, 2016. On April 4, 2016, the trial court consolidated the two actions.

Winfield's motion, finding Winfield was not properly served because plaintiff did not serve its registered agent.

The trial court denied Scalzulli's motion. It rejected Scalzulli's claim he had not been properly served, and found he had not shown excusable neglect. Although the trial court recognized Scalzulli "clearly ha[d] a meritorious defense, as he is an individual and the night club's apparently operated under an LLC," it found "a meritorious defense [was] not enough" because it was "satisfied that he was properly served."

In his appeal, Scalzulli argues, in sum, the trial court abused its discretion under Rules 4:50-1(a), (d), and (f) in denying his motion to vacate the default judgment because he was never properly served, he had a meritorious defense, and the result of him being held personally liable for claims against GS Entertainment was unjust. Because we agree that relief should have been granted pursuant to Rule 4:50-1(f), Scalzulli's remaining arguments require little discussion. R. 2:11-3(e)(1)(E).

III.

We grant substantial deference to a trial court's decision on a motion to vacate a default judgment and will only reverse when the denial "results in a clear abuse of discretion." Guillaume, supra, 209 N.J. at 467.

We discern no abuse of discretion in the trial court's rejection of Scalzulli's arguments that relief was warranted under subsections (a) and (d) of Rule 4:50-1, which rested on his disputed and uncorroborated claims regarding ineffective service and his corresponding claim of excusable neglect.[2]

Rule 4:50-1(f) "affords relief only when 'truly exceptional circumstances are present.'" Guillaume, supra, 209 N.J. at 468 (quoting Little, supra, 135 N.J. at 286). It is applied only to "situations in which, were it not applied, a grave injustice would occur." Id. at 484 (quoting Little, supra, 135 N.J. at 289). To this end, courts "focus on equitable considerations in determining whether the specific circumstances warrant the unique remedy authorized by the Rule." Little, supra, 135 N.J. at 294. Although "[n]o categorization can be made of the situations which would warrant redress under [Rule 4:50-1(f)]," DEG, LLC v. Twp. of Fairfield, 198 N.J. 242, 269-70 (2009), where exceptional circumstances are found, the Rule applies "as expansive[ly] as the

[2] For the first time on appeal, Scalzulli also argues the judgment is void under Rule 4:50-1(d) because, due to plaintiff's failure to "plead or assert any legal theory supporting [his] personal liability," the default judgment "conflicts with established law" that a managing member cannot be held personally liable for claims against an LLC. Although we need not address this issue, see Guillaume, supra, 209 N.J. at 483, we note that such an error would not render the default judgment void under Rule 4:50-1(d), see Hendricks v. A.J. Ross Co., 232 N.J. Super. 243, 248 (App. Div. (1989).

need to achieve equity and justice," Guillaume, supra, 209 N.J. at 484 (quoting Court Inv. Co. v. Perillo, 48 N.J. 334, 341 (1966)).

Typically, Rule 4:50-1(f) relief "is applied 'sparingly, in exceptional situations' to prevent grave injustice." Nowosleska, supra, 400 N.J. Super. at 304 (quoting Cmty. Realty Mgmt., Inc. v. Harris 155 N.J. 212, 237 (1998)). However, judgments obtained by default are considered to be "more vulnerable to being set aside." Morales v. Santiago, 217 N.J. Super. 496, 505 (App. Div. 1987). Thus, applications to vacate default judgments are "treated 'indulgently'" and Rule 4:50-1(f) "is applied more liberally" in this context. Nowosleska, supra, 400 N.J. Super. at 304 (quoting Mancini, supra, 132 N.J. at 336).

Here, Scalzulli argues the default judgment should be vacated in the interest of justice under Rule 4:50-1(f) because it is "fundamentally unfair" to hold him personally liable for claims against an LLC. He also argues the default judgment should be vacated because $250,000 "is exorbitant as compared to the actual injuries suffered by plaintiff" and the trial court "created the danger of an inconsistent judgment" when it vacated the judgment against Winfield and not him.

In cases where, as here, the applicant seeks to vacate a default judgment entered as a result of inexcusable neglect, Rule

4:50-1(f) may provide relief if "there is at least some doubt as to whether the defendant was in fact served with process." Davis v. DND/Fidoreo, Inc., 317 N.J. Super. 92, 100 (App. Div. 1998) (quoting Goldfarb v. Roeger, 54 N.J. Super. 85, 92 (App. Div. 1959)), certif. denied, 158 N.J. 686 (1999). "In that regard, even though the neglect was inexcusable, the absence of evidence establishing willful disregard of the court's process is an important consideration." Ibid. (citing Mancini, supra, 132 N.J. at 336).

However, this court has granted Rule 4:50-1(f) relief even where the inexcusable neglect was willful. In Arrow Manufacturing Co. v. Levinson, 231 N.J. Super. 527, 529-30 (App. Div. 1989), the defendant was properly served with a complaint naming him individually and alleging he failed to respond to a demand notice on a judgment against a corporation in which he was a shareholder. After the defendant failed to respond to the complaint and ignored numerous other communications throughout the litigation, default judgment was entered against him and he moved to vacate. Id. at 531. The defendant asserted a meritorious defense – that he was not personally liable for the judgment against his corporation and did not believe he had to respond to the demand notice – but the trial court nevertheless denied his motion due to his "various attempts to evade service of process upon [his corporation] and

of the demand notice and summons and complaint upon him." Id. at 532. This court reversed and vacated the judgment under subsections (a) and (f) of Rule 4:50-1, holding that, although "the devious tactics of [the defendant] may have been the genesis of the ultimate default judgment entered against him, the sanction of piercing the corporate veil and entering a judgment against him individually for the corporate debt was far too severe for that conduct." Id. at 534.

Here, as in Arrow, although the facts support a finding that Scalzulli deliberately evaded service of process of the amended complaint and ignored subsequent notices regarding this litigation, the default judgment against him has the same effect that is "far too severe," ibid., of piercing the corporate veil and entering a judgment against him individually for claims against GS Entertainment. None of the three complaints alerted him to this potential peril because they did not plead a basis for piercing the corporate veil and holding Scalzulli personally liable for injuries that uncontestably occurred at a nightclub owned and operated by GS Entertainment. The result of the denial of his motion allows a judgment to stand that holds him personally liable when he had no notice of that possible outcome and there was no legal basis for that result. The grave injustice standard for relief under Rule 4:50-1(f) was met.

Although we conclude the default judgment must be vacated, we note this relief may be conditioned upon appropriate sanctions. "[J]udges are authorized, in relieving a party from a judgment or order, to impose 'such terms as are just.'" ATFH Real Prop., LLC v. Winberry Realty P'ship, 417 N.J. Super. 518, 528 (App. Div. 2010) (quoting R. 4:50-1), certif. denied, 208 N.J. 337 (2011); see also Arrow, supra, 231 N.J. Super. at 534.

The order denying Scalzulli's motion to vacate default judgment is reversed and remanded for the trial court to determine what sanctions, if any, constitute appropriate conditions of relief. We do not retain jurisdiction.