SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4136-15T2

KATHLEEN G. SABO, a/k/a KATHLEEN SABO and JOHN SABO, her husband,

Plaintiffs-Respondents,

v.

MILLENNIUM COMMUNICATIONS GROUP, INC., and J. FLETCHER CREAMER & SON, INC.,

Defendants-Respondents,

and

VERIZON NEW JERSEY, INC., a/k/a VERIZON FIOS, PUBLIC SERVICE ELECTRIC AND GAS COMPANY, a/k/a PSE&G, INC., PASSAIC COUNTY SHERIFF'S DEPARTMENT, SHERIFF RICHARD H. BERDNIK, TOWNSHIP OF WAYNE, and STATE OF NEW JERSEY,

Defendants,

and

COUNTY OF PASSAIC,

Defendant-Appellant.

Argued November 28, 2017 – Decided December 12, 2017

Before Judges Fasciale and Moynihan.

On appeal from Superior Court of New Jersey, Law Division, Passaic County, Docket No. L-0100-14.

Paul J. Giblin, Jr., argued the cause for appellant.

Lisa A. Lehrer argued the cause for respondents Kathleen G. Sabo and John Sabo (Davis, Saperstein & Salomon, PC, attorneys; Lisa A. Lehrer, of counsel and on the brief).

Peter S. Cuddihy argued the cause for respondent Millennium Communications Group Inc. (Margolis Edelstein, attorneys; Peter S. Cuddihy, on the brief).

Thomas M. Licata argued the cause for respondent J. Fletcher Creamer & Son, Inc. (Malapero, Prisco, Klauber, & Licata LLP, attorneys; Thomas M. Licata, on the brief).

PER CURIAM

Defendant County of Passaic appeals from a May 24, 2016 order denying its Rule 4:50-1(f) motion to vacate a December 29, 2015 order, which confirmed a personal injury arbitration award. Defendant argues that the judge abused his discretion. We disagree and affirm.

In June 2015, the parties arbitrated plaintiff's personal injury claim.[1] Defendant's portion of the award amounted to $78,000. Defendant failed to file a timely trial de novo (TDN). Plaintiff moved to confirm the award and defendant filed a cross-motion seeking permission to file the TDN out-of-time. In support of the cross-motion, defendant's counsel submitted a certification explaining primarily that the failure to file a timely TDN was essentially due to his vacation schedule. The judge granted plaintiff's motion, confirmed the award, and denied defendant's cross-motion.

After the judge confirmed the award and entered judgment for plaintiff, defendant moved for reconsideration of the order denying its request to file a late TDN. In January 2016, the judge denied defendant's reconsideration motion. Plaintiff then attempted to execute on the judgment.

Defendant then appealed from the December 29, 2015 order. Plaintiff moved before us to dismiss the appeal as out-of-time. Plaintiff argued that defendant's counsel had known about the December 29, 2015 order as early as January 27, 2016. In support of that argument, plaintiff's counsel produced a letter from

[1] We refer to Kathleen G. Sabo as plaintiff, not her husband John Sabo, who brought a per quod claim.

defendant's counsel dated January 27, 2016 referring to the December 29, 2015 order. On April 12, 2016, we dismissed defendant's appeal from the December 29, 2015 order, concluding that defendant filed it untimely.

Defendant then filed its Rule 4:50-1(f) motion seeking to vacate the December 29, 2015 order. Defendant had argued that the arbitrator incorrectly found defendant at fault for the accident. According to defense counsel, plaintiff named defendant as a party incorrectly. The judge denied that motion, pointed out that defendant could have rejected the award by filing a TDN, and rendered an oral opinion. He concluded that Subsection (f) of Rule 4:50-1 was "not meant to dilute the severity of the arbitration rules." The judge also remarked that if defendant believed it was entitled to judgment as a matter of law, defense counsel had the opportunity to engage in motion practice before the arbitration, which he did not do.

The decision whether to grant a motion for relief from a final judgment under Rule 4:50-1 "is left to the sound discretion of the trial court." Mancini v. EDS ex rel. N.J. Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330, 334 (1993). "The rule is 'designed to reconcile the strong interests in finality of judgments and judicial efficiency with the equitable notion that

courts should have authority to avoid an unjust result in any given case.'" US Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012) (quoting Mancini, 132 N.J. at 334). "The trial court's determination . . . warrants substantial deference, and should not be reversed unless it results in a clear abuse of discretion." Ibid. An abuse of discretion occurs "when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Id. at 467-68 (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)).

Defendant contends that relief under Subsection (f) applies because plaintiff named it incorrectly as a party. This subsection of the rule, however, is only available when "truly exceptional circumstances are present." Baumann v. Marinaro, 95 N.J. 380, 395 (1984). "The rule is limited to 'situations in which, were it not applied, a grave injustice would occur.'" Guillaume, supra, 209 N.J. at 484 (quoting Hous. Auth. of Morristown v. Little, 135 N.J. 274, 289 (1994)). As the judge stated, a party cannot use Rule 4:50-1(f) to circumvent the proscribed process for challenging an arbitration award. Even if Subsection (f) controlled, we see no abuse of discretion, let alone a clear abuse of discretion.

At the oral argument before the judge on defendant's motion to vacate, defense counsel stated that before the arbitration occurred, the court had suppressed defendant's answer without prejudice for failure to provide discovery. Assuming that was true, defendant could have moved to restore the pleading, extend the discovery end date, adjourn the arbitration proceeding, file a TDN, or timely appeal from the December 29, 2015 order. And if defendant believed plaintiff had named it as a party erroneously, then defendant could have moved for summary judgment or could have aggressively pursued other avenues to dismiss the complaint against it.

Affirmed.