SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4440-13T3
A-2284-14T1
A-2299-14T1

TANGIBLE SECURED FUNDING, INC.,
(Substituted for Plaintiff
General Electric Credit Corporation),

Plaintiff-Respondent,

v.

IMAGING CENTER OF ORADELL, LLC,
JOHN M. MAVROUDIS, THOMAS DINARDO,
and JOSEPH F. BELASCO,

Defendants,

and

MICHAEL J. MAVROUDIS,

Defendant-Appellant,

and

IMAGING CENTER OF ORADELL, LLC,

Third-Party Plaintiff,

v.

NORTH MOUNTAIN HEALTHCARE, LLC,
and GE HEALTHCARE,

Third-Party Defendants.

---

TANGIBLE SECURED FUNDING, INC.,

Plaintiff-Respondent,

v.

IMAGING CENTER OF ORADELL, LLC,
THOMAS DINARDO, and JOSEPH F. BELASCO,

Defendants,

and

JOHN M. MAVROUDIS and
MICHAEL J. MAVROUDIS,

Defendants-Appellants,

and

IMAGING CENTER OF ORADELL,
LLC,

Third-Party Plaintiff,

and

NORTH MOUNTAIN HEALTHCARE,
LLC, and GE HEALTHCARE,

Third-Party Defendants.

---

ANNE MAVROUDIS and JOHN
MAVROUDIS,

Plaintiffs-Appellants,

v.

GENERAL ELECTRIC CAPITAL
CORPORATION and the SHERIFF
OF BERGEN COUNTY,

Defendants-Respondents.

Submitted January 31, 2017 – Decided June 23, 2017

Before Judges Reisner and Rothstadt.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket Nos. L-825-11 and L-2249-13.

Mavroudis Law, LLC, attorneys for appellants (John M. Mavroudis, Philip L. Guarino and Michael D. Camarinos, on the briefs).

Pfund McDonnell, PC, attorneys for respondent Bergen County Sheriff's Office (Michael A. Augello, Jr., on the brief).

Respondent Tangible Secured Funding, Inc. has not filed a brief.

Respondent General Electric Capital has not filed a brief.

PER CURIAM

These three appeals, which we have consolidated for purposes of writing one opinion, all relate to Tangible Secured Funding, Inc.'s (Tangible) pursuit of the satisfaction of a judgment previously entered in its predecessor's favor against Michael J. Mavroudis and John M. Mavroudis. We affirmed the judgment in an earlier opinion. See Gen. Elec. Capital Corp. v. Imaging Ctr. of Oradell, LLC., No. A-3001-11 (App. Div. June 12, 2013) (slip op.

at 11-12). Michael[1] now appeals (A-4440-13) from the Law Division's May 22, 2014 denial of his application for a statutory exemption for household goods and furniture, N.J.S.A. 2A:26-4. He and John also appeal (A-2284-14) from the court's award of $1,433,496.10 in counsel fees and costs in the action underlying the judgment. John and his wife, Anne Mavroudis, appeal (A-2299-14) from a $67,219.93 counsel fee and cost award in a separate action they filed against Tangible seeking to exclude certain personal property — a painting — from being levied upon by the Bergen County Sheriff.[2]

We affirm the denial of the statutory exemption sought by Michael, but vacate and remand the counsel fee awards in the remaining matters for the reasons that follow.

The material facts as gleaned from the various motion records are not in dispute and can be summarized as follows. The Law Division entered the underlying judgment in 2012 against Michael,

---

[1] In order to avoid confusion created by the parties' common surname, we refer to them by their first names.

[2] We previously considered that matter as well in an earlier opinion, in which we rejected Anne's and John's challenge to "a November 1, 2013 order finding them in contempt for violating two court orders and, as a sanction, requiring them to pay $10,000 and [Tangible]'s counsel fees and costs. We affirm[ed] in all respects except with regard to the $10,000 sanction, which we reverse[d] and remand[ed]." Mavroudis v. Tangible Secured Funding Inc., No. A-1118-13T1 (App. Div. June 14, 2016) (slip op. at 2).

John, and others for in excess of $2.5 million as a result of defendant, Imaging Center of Oradell, LLC's (ICO), breach of an equipment lease between it and Tangible's predecessor, General Electric Capital Corp. (GECC), and based upon Michael's and John's status as guarantors of ICO's performance. See Gen. Elec. Capital Corp., supra, slip op. at 1-5. The court also determined that, based on the provisions of the parties' agreements, GECC was entitled to attorneys' fees, but it could not fix the amount due to deficiencies in the information supplied by GECC's counsel.[3]

After the entry of the judgment, the court issued a writ of execution, and the Office of the Bergen County Sheriff levied on what it determined to be Michael's assets[4] and scheduled a sale. Michael filed an objection to the levy and an election of exemptions, asserting he was entitled to two $1,000 exemptions, one for household goods and furniture under N.J.S.A. 2A:26-4, and

---

[3] In the ensuing appeal, in addition to affirming the entry of the judgment, we remanded for consideration of the open issue of counsel fees and costs. Id. at 16.

[4] In 2014, when Tangible sought to have the Bergen County Sheriff levy on personal property in Michael's home, a dispute arose about the property's ownership between Tangible, Michael's former wife Vanessa, and two entities that claimed ownership to a car and certain items located in Michael's and Vanessa's former marital home. The Law Division released the property claimed by the two entities from the levy and dismissed Vanessa's action without prejudice to her filing a separate action. Vanessa never pursued the claim.

another for personal property under N.J.S.A. 2A:17-19. The sale took place, and the next day the court considered the issue of the exemptions. At the hearing, Michael asserted that the property in the house belonged to his former wife under their property settlement agreement.[5] After considering Michael's and the Bergen County Sheriff's positions, the court granted the exemption for the personal property, but refused to grant Michael an additional exemption for household goods and furniture. The court entered its May 22, 2014 order memorializing its decision, and Michael filed his appeal from that order.

Later in 2014, Tangible's attorneys filed a motion for an order fixing the amount of the counsel fees and costs awarded in the 2012 judgment against Michael and John and for the same relief for services rendered through June 2014, without prejudice to future applications for fees incurred after that date. Tangible filed a separate motion to fix the amount of fees that the court awarded in its November 1, 2013 order finding John and Anne in contempt for attempting to alienate the painting. In support of its fee applications, Tangible's attorneys submitted

[5] On January 7, 2014, the Family Part entered a final judgment of divorce that incorporated their property settlement agreement. The settlement agreement stated that "[h]usband and [w]ife agree that all personal property in the marital home shall be the property of the [w]ife."

certifications, detailing the tasks performed, and an expert report asserting the work done was reasonable. The submission included billing records for work performed by Arlene N. Gelman, Esq., and Daniel P. Jackson, Esq., who were attorneys admitted in other jurisdictions. Gelman was eventually admitted to New Jersey pro hac vice, but Jackson never made application for admission. The Mavroudises' attorney and John filed certifications in opposition to Tangible's motions. Both matters were scheduled for oral argument, which the court held on November 21, 2014.[6]

At oral argument, the Mavroudises argued it was inappropriate for the court to award fees generated by attorneys practicing law in New Jersey without a license. They noted that Gelman and Jackson billed for services that were performed before Gelman was admitted pro hac vice and Jackson never sought admission pro hac vice. Additionally, they claimed the hourly rates were unreasonable, and, in any event, Tangible was not entitled to post-judgment attorneys' fees, as the parties' agreements did not contain a provision for payment of post-judgment collection fees or costs. As to the counsel fee application relating to the action filed by John and Anne, they argued that the work performed

[6] The application was considered by a different Law Division judge than the one who denied Michael's application for the second exemption.

relating to the pursuit of an unsuccessful action in New York should not be considered by the court.

On December 5, 2014, the court entered an order, accompanied by a statement of reasons, awarding Tangible attorneys' fees and costs incurred in the action filed by Anne and John in the amount of $74,486.93 to be paid by Anne and John, "jointly and severally." On December 15, 2014, the court amended its order, reducing the fees and costs awarded to $67,219.93.

In its statement of reasons, the court relied upon a rate for Tangible's attorneys' fees that was established by another judge in a separate action involving the same parties. The other judge relied upon his "experience as a former practicing attorney and current judge in Bergen County" to determine that the proper rate to be applied was "$400 per hour for the lead counsel, and $300 per hour for associate counsel," rather than the hourly rate in excess of that sought by counsel. Based on the other judge's assessment, the court here determined that it should apply the same rate and that the adjusted full amount should be awarded based on the amount involved - the $2,503,551.90 judgment - and that "Tangible prevailed in every action arising in this case."

As to John's and Anne's argument that the New York action was unnecessary, the court stated "Tangible filed that action in New York in order to preclude [the] transfer[ of] any money to the

[plaintiffs] after the sale of the painting." Although "[t]he New York action was ultimately dismissed due to the pending New Jersey action . . . , the New York action was required, despite the ultimate results." Finally, the court stated Tangible's attorneys are experts in their respective fields, and due to plaintiffs' conduct, Tangible was forced to act quickly, which required senior attorneys most familiar with the matter to do work that would typically be delegated to associates.

On December 8, 2014, the court entered an order, accompanied by a statement of reasons, awarding Tangible attorneys' fees and costs in the amount of $1,433,496.10 to be paid by Michael and John, "jointly and severally." On January 13, 2015, it entered a supplemental order, removing language from the prior order that required Michael and John to pay the award within seven days.

In determining the reasonableness of the fees expended by Tangible's counsel, the court did not comment on the Mavroudises' argument regarding the award of fees for services performed by attorneys not admitted to practice in New Jersey. In its consideration of the reasonableness of the rate charged by Tangible's counsel, the court again relied upon the fee award made by the other judge in the separate action and again reduced the rate sought by Tangible's counsel. Finally, the court rejected the Mavroudises' argument that post-judgment collection fees could

not be awarded, relying on what the court perceived to be a "[p]ublic policy [that] require[s] attorneys[']  fees and costs be awarded post-judgment . . . due to the Mavroudises' litigation tactics," and the language of the guaranty that required "the defaulting party to pay attorney[s'] fees and costs," which the court believed encompassed a default in the payment of the 2012 judgment.[7]

Michael, John, and Anne filed appeals from these attorneys' fees awards.

We begin our review by considering Michael's argument that he was entitled to a $1,000 exemption pursuant to N.J.S.A. 2A:26-4, and conclude it is without sufficient merit to warrant discussion in a written opinion.[8] R. 2:11-3(e)(1)(E). Suffice it to say, the statute he relies upon states "[h]ousehold goods and

[7] The clause in the guaranty stated: "Undersigned does hereby further guarantee to pay upon demand . . . attorneys[']  fees and expenses which may be suffered by you by reason of [c]ustomer's default or default of the undersigned."

[8] Michael also raises an issue about the court not adjudicating his last minute argument that the property being levied upon belonged to his ex-wife, Vanessa. As the judge made clear at the hearing, it was not going to consider the amended objection submitted by Michael that morning and proceeded to consider only the exemption issue. As the issue of Vanessa's ownership was not properly raised before the court, we choose not to consider it on appeal for the first time. See Nieder v. Royal Indem. Ins. Co. 62 N.J. 229, 234 (1973). We only observe that Vanessa chose not to pursue her claim as noted supra.

furniture not exceeding $1,000.00 in value of a person shall be exempt from attachment." N.J.S.A. 2A:26-4 (emphasis added). Contrary to Michael's argument, however, his property was never subjected to the pre-judgment attachment of property that N.J.S.A. 2A:26-4 addresses, as compared to post-judgment execution and levy. Compare N.J.S.A. 2A:17-19 (addressing exemption governing post-judgment executions), and Borromeo v. DiFlorio, 409 N.J. Super. 124, 136 (App. Div. 2009), with N.J.S.A. 2A:26-4, Pomeroy v. Simon, 17 N.J. 59, 65 (1954), and In re Estate of Balgar, 399 N.J. Super. 426, 439-40 (Ch. Div. 2007).

Next, we consider the Mavroudises' challenge to the court's counsel fee awards. On appeal, they argue that there was no basis to award fees and costs for Tangible's attorneys' services and fees should not have been awarded for services rendered by attorneys who were not admitted to practice in New Jersey. In addition, they contend Michael should not have been charged for fees incurred in an action in which he was never involved and that the court erred in awarding post-judgment attorneys' fees and costs. They also argue that the fees billed were unreasonable or unnecessary. In the action filed by John and Anne, they contend that the court did not focus on the contempt matter, but rather matters stemming from the 2012 judgment. Moreover, they assert Tangible's research costs were excessive, and that the court erred

in awarding fees for work following the November 1, 2013 contempt order. Also, they argue the New York action was unnecessary, the hourly rates were not customary, and work was not properly delegated.

We review fee awards for an abuse of discretion. Rendine v. Pantzer, 141 N.J. 292, 317 (1995). Fee determinations made by trial courts "will be disturbed only on the rarest occasions." Ibid. See also Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 444 (2001).

Applying the abuse of discretion standard, and after considering the Mavroudises' and Tangible's contentions in light of the record and our review of the applicable legal principles, we conclude that the counsel fee award in both actions was a misapplication of the court's discretion. We vacate and remand for reconsideration.

The party seeking attorneys' fees bears the burden of proving they are entitled to an award and that the fees sought are reasonable. Green v. Morgan Props., 215 N.J. 431, 455 (2013). When considering an award of legal fees, we are mindful that under the "American Rule," generally, each party is required to pay its own attorney[s'] fees and other litigation costs. Rendine, supra, 141 N.J. at 322. For that reason, attorneys' fees are only recoverable "if they are expressly provided for by statute, court

rule, or contract." Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 385 (2009) (quoting Packard-Bamberger, supra, 167 N.J. at 440). Accordingly, prevailing parties to a contract action may seek attorneys' fees where the underlying contract includes a fee-shifting provision. Id. at 386. Such contractual provisions will, however, be strictly construed in light of the general policy disfavoring counsel fee awards. See N. Bergen Rex Transp., Inc. v. Trailer Leasing Co., 158 N.J. 561, 570 (1999).

We have held that contractual agreements to pay attorneys' fees must expressly provide for post-judgment collection services if they are to be enforceable. See Hatch v. T & L Assocs., 319 N.J. Super. 644, 649 (App. Div. 1999). The obligation to pay attorneys' fees for post-judgment collection efforts has to be clear and specifically provided for. Ibid. Unless the agreement is express as to the obligation for post-judgment collection efforts, we will not construe it as imposing that obligation. Ibid.

Attorneys' fees can only be recovered for services rendered by attorneys admitted to practice in New Jersey, those admitted pro hac vice, and those "preparing for a proceeding in which the lawyer reasonably expects to be so admitted and is associated in that preparation with a lawyer admitted to practice in this jurisdiction." RPC 5.5. "Recovery of compensation for legal

services by one not authorized to practice law will not be permitted . . . ." Slimm v. Yates, 236 N.J. Super. 558, 564 (Ch. Div. 1989). "The 'no recovery for unauthorized practice' rule also applies to out-of-state attorneys practicing in New Jersey in violation of Court Rules." Mitchels, New Jersey Attorney Ethics, 981 (2017) (citing Appell v. Reiner, 81 N.J. Super. 229, 241 (Ch. Div. 1963), rev'd on other grounds, 43 N.J. 313 (1964)).

The calculation of attorneys' fees requires the trial court to determine the lodestar, the "number of hours reasonably expended by the successful party's counsel in the litigation, multiplied by a reasonable hourly rate." Litton, supra, 200 N.J. at 386. The trial court must "evaluate carefully and critically the aggregate hours . . . advanced by counsel for the prevailing party to support the fee application." Rendine, supra, 141 N.J. at 335. The court should "exercise its discretion to exclude" from the lodestar calculation hours found to be "excessive, redundant, or otherwise unnecessary," Id. at 335-36 (quoting Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir. 1990)), and it should award fees only if the party prevailed in the underlying action. Litton, supra, 200 N.J. at 386. A party will be considered prevailing, "if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." R.M. v. Supreme Court of N.J., 190 N.J. 1, 9-10 (2007)

(quoting Hensley v. Eckerhart, 461 U.S. 424, 433, 103 S. Ct. 1933, 1939, 76 L. Ed. 2d 40, 50 (1983)). The party seeking fees must then "establish that the 'lawsuit was causally related to securing the relief obtained; a fee award is justified if [the party's] efforts are a necessary and important factor in obtaining relief.'" Litton, supra, 200 N.J. at 386 (alteration in original) (quoting N. Bergen, supra, 158 N.J. at 570).

Applying these guiding principles, we take issue with the scope of the fee awards to the extent they included matters in which a party was not involved or went beyond the appropriate time frame. Also, the fee awards here were improper to the extent they included fees for services rendered by an attorney — Jackson — who was never admitted to practice in this state. The appropriate time period for the action in which John and Michael were found liable terminated with the entry of the judgment, as there was no contractual provision allowing for post-judgment collection efforts, regardless of their alleged bad faith.[9] In the same vein,

[9] We observe that the security agreement signed by ICO sets forth obligations as to collateral and provides the "[o]bligor shall reimburse [c]ompany for any expenses incurred by [c]ompany in protecting or enforcing its rights under this [a]greement before and after judgment, including, without limitation, reasonable attorney[s'] fees and legal expenses." (Emphasis added). However, Tangible did not assert any breach of obligation stemming from the security agreement nor did the judge rely on that agreement in making her award.

the award of counsel fees for services rendered after the entry of the November 1, 2013 contempt order should not have been made by the court in the action filed by John and Anne. If additional fees were being sought after the entry of the order, at a minimum, they would have had to be the subject of an additional application. Additionally, a person can be responsible for counsel fees in an action only to the extent he or she was a party. The counsel fee award therefore must also be vacated to the extent it imposed on one of the Mavroudises an obligation to pay for fees in any action in which he or she was not a party.[10]

The order of the Law Division denying Michael the second exemption he claimed is affirmed; the awards of counsel fees in both of the remaining actions are vacated and remanded for reconsideration.

Affirmed in part, vacated and remanded in part. We do not retain jurisdiction.



[10] In its certification, Tangible lists five actions that were related, yet tangential to the judgment for which it was awarded attorneys' fees. For example, Tangible billed for tasks completed in relation to John's bankruptcy proceeding (this action did not involve Michael), an action commenced by John and his wife Anne regarding ownership of personal property (this action did not involve Michael), and an action commenced by two entities asserting ownership interest in personal property at John's residence (this action involved non-judgment debtors).