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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4399-16T3

PROSPECT COMMONS, a
Condominium, Inc.,

Plaintiff-Appellant,

v.

ARIA WRIGHT, an individual,

Defendant-Respondent,

and

DAVID HAZIZA, an individual,
JOHN C. GIARRUSO, an individual,
and VTL ELECTRIC CO., a New Jersey
Corporation,

Defendants.

Submitted April 11, 2018 – Decided May 17, 2018

Before Judges Manahan and Suter.

On appeal from Superior Court of New Jersey,
Law Division, Bergen County, Docket No. L-
0389-14.

Jonathan I. Dorman, attorney for appellant.

Litvak & Trifiolis, PC, attorneys for
respondent (Michael C. Trifiolis and James W.
McCartney, on the brief).

PER CURIAM

Plaintiff Prospect Commons appeals from a September 16, 2016 order of the Law Division granting defendant Aria Wright's motion for summary judgment for failure to file an expert report. Given the motion judge's failure to hold oral argument and to provide the requisite statement of reasons with the order per Rule 1:7-4(a), we reverse and remand.

We recite a summary of the underlying facts and procedural history for the purpose of context. In January 2014, Prospect Commons filed its complaint against Wright, a unit owner at the condominium complex, and other defendants alleging they negligently installed a patio deck which caused damage to a retaining wall owned by Prospect Commons.¹ Prospect Commons further alleged the patio deck was unapproved by the condominium board and failed to conform to customary principles.

Wright filed a motion to dismiss Prospect Commons's complaint for failure to answer interrogatories and to respond to a notice to produce in August 2014. The motion was granted and the complaint was dismissed without prejudice. Due to the continued failure to comply with discovery, Wright filed a motion to dismiss the complaint with prejudice per Rule 4:23-5(a)(2). Subsequent

¹ The other named defendants are not participants in the appeal.

thereto, Wright withdrew the motion as Prospect Commons provided the requested documentation. Thereafter, counsel for Wright sent three letters to counsel for Prospect Commons stating that its complaint remained dismissed.

In February 2016, Wright again filed a motion to dismiss Prospect Commons's complaint with prejudice. Prospect Commons filed a cross-motion to reinstate the complaint. In deciding the motions, a consent order was entered, which provided in pertinent part that: all written discovery must be served by Prospect Commons within 10 days of the order; Prospect Commons's expert report was due within 45 days; and discovery was extended by 120 days. Notwithstanding the express terms of the order, Prospect Commons did not produce an expert report within the specified time.

In August 2016, Wright filed a motion for summary judgment. In response, Prospect Commons filed a cross-motion to extend time to file an expert report and to extend discovery. Prospect Commons then provided an expert report by Craig L. Moskowitz of CLM Engineering Associates, LLC.

On September 16, 2016, the judge assigned to the motions granted summary judgment and dismissed all claims against Wright with prejudice. The order granting summary judgment did not reference the judge's decision on the cross motion. Prospect

Commons filed a motion for reconsideration, which was denied on November 4, 2016. This appeal followed.²

On appeal, Prospect Commons raises the following points:

POINT I

THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT WITHOUT ENTERTAINING ORAL ARGUMENT.

POINT II

THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT WITHOUT SETTING FORTH FINDINGS OF FACTS AND CONCLUSIONS OF LAW.

POINT III

THE TRIAL COURT ERRED IN NOT PERMITTING PLAINTIFF TO SUBMIT ITS EXPERT REPORT.

Prospect Commons argues that the judge erred in that he failed to hold oral argument regarding Wright's motion for summary judgment and failed to attach a statement of reasons to the order granting the relief, per Rule 1:7-4(a). We agree.

In the notice of motion accompanying the motion for summary judgment, Wright waived oral argument unless opposition was presented. Prospect Commons opposed the motion for summary

² We note that the notice of appeal only references the September 16, 2016 order, although the case information statement makes reference to both the September order and the November 4, 2016 order for reconsideration. The notice of appeal must include the judgment or decision appealed from. R. 2:5-1(f)(3)(A). Neither party has briefed the denial of the motion for reconsideration. Therefore, the only order under review is the September 16, 2016 order.

judgment and filed a cross-motion to extend discovery and a certification in support of the cross-motion. Despite the opposition which triggered the request, the judge did not conduct oral argument and did not articulate the basis for the decision.

Except for pre-trial discovery motions or motions directly addressed to a calendar, oral argument "shall be granted as of right" if a party requests it in the moving, answering, or reply papers. R. 1:6-2(d). Where a request for oral argument on a substantive motion is properly made, denial, absent articulation of specific reasons for denial on the record, constitutes reversible error. Raspantini v. Arocho, 364 N.J. Super. 528, 531-34 (App. Div. 2003). However, the court may deny such request when special or unusual circumstances exist. Filippone v. Lee, 304 N.J. Super. 301, 306 (App. Div. 1997). The court may also deny such a request if the motion is frivolous or unsubstantiated. Kozak v. Kozak, 280 N.J. Super. 272, 274-76 (Ch. Div. 1994).

Here, Wright requested oral argument if opposition was filed, and Prospect Commons filed opposition. In the absence of adherence to the requirement to conduct oral argument or to articulate the specific reasons for denial, we are constrained to remand.

Further, while we conclude the denial of oral argument without an articulated basis alone compels a remand, we further conclude

that the judge erroneously failed to render "an opinion or memorandum decision, either written or oral, [with] find[ings of] fact[] and . . . conclusions of law thereon in all actions tried without a jury." R. 1:7-4(a). "The purpose of the rule is to make sure that the court makes its own determination of the matter." In re Tr. Created by Agreement Dated Dec. 20, 1961, by & between Johnson & Hoffman, Lienhard & Perry, 399 N.J. Super. 237, 254 (App. Div. 2006).

"When a trial court issues reasons for its decision, it 'must state clearly [its] factual findings and correlate them with relevant legal conclusions, so that parties and the appellate courts [are] informed of the rationale underlying th[ose] conclusion[s].'" Avelino-Catabran v. Catabran, 445 N.J. Super. 574, 594-95 (App. Div. 2016) (alterations in original) (quoting Monte v. Monte, 212 N.J. Super. 557, 565 (App. Div. 1986)). In particular, when a trial judge issues an order granting summary judgment, the "judge is required to detail the findings of fact and conclusions of law in a written or oral opinion. Those findings and conclusions must then be measured against the standards set forth in [Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)]." Allstate Ins. Co. v. Fisher, 408 N.J. Super. 289, 299-300 (App. Div. 2009) (citations omitted) (quoting Great Atl. & Pac. Tea Co. v. Checchio, 335 N.J. Super.

495, 498 (App. Div. 2000)). When that is not done, a reviewing court does not know whether the judge's decision is based on the facts and law or is the product of arbitrary action resting on an impermissible basis. See Monte, 212 N.J. Super. at 565.

"[A]n articulation of reasons is essential to the fair resolution of a case." O'Brien v. O'Brien, 259 N.J. Super. 402, 407 (App. Div. 1992). Here, there is nothing in the order under review that is indicative that the judge made an independent decision based upon an analysis of the facts and applicable law.

"While the failure to provide reasons necessitates a remand, we are left with the option of remanding for a statement of reasons or reversing and remanding for consideration of the motion . . . anew. We determine that the latter course of action is appropriate here." Fisher, 408 N.J. Super. at 303. As in Fisher, upon remand, the judge shall conduct oral argument, consider the motion anew, and enter a new order together with a written or oral statement of reasons in conformity with Rule 1:7-4(a). Given our determination, we have not addressed the merits of the remaining substantive issues raised on appeal.

Reversed and remanded. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION