

The Court Has Prepared This Order

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| _____ | : | SUPERIOR COURT OF NEW JERSEY | |
| | : | LAW DIVISION: SPECIAL CIVIL PART | |
| Shari Ghobrial, | : | HUDSON COUNTY | |
| Plaintiff, | : | DOCKET NO. DC-10038-18 | |
| v. | : | | FILED |
| | : | Civil Action | DEC 24 2018 |
| Wahid Elnashfan, | : | | MARYBETH ROGERS, J.S.C. |
| Defendant. | : | | |
| _____ | : | | |


ORDER

THIS MATTER having come before this Court by defendant, Wahid Elnashfan, *Pro Se* (“Defendant”) by way of a Motion for Reconsideration of the Court’s Order of October 29, 2018, and upon notice to plaintiff Shari Ghobrial, *Pro Se* (“Plaintiff”), and Plaintiff having filed an Opposition to Defendant’s Motion on November 26, 2018; and the Court having considered the papers submitted and arguments therein; and good cause having been shown;

It is on this 24th day of December, 2018:

ORDERED that Defendant’s Motion for Reconsideration is DENIED for the reasons stated below; and it is further

ORDERED that a copy of this Order shall be served by Wahid Elnashfan, *Pro Se*, upon all interested parties within seven (7) days of the date of this Order.



 Hon. Marybeth Rogers, J.S.C.

Defendant, Wahid Elnashfan (“Defendant”) Moves for reconsideration of the Order entered by the Hon. Marybeth Rogers, J.S.C., on October 29, 2018. Plaintiff Shari Ghobrial (“Plaintiff”) Opposes Defendant’s Motion.

Facts

1. On July 19, 2018 Plaintiff filed a Complaint.
2. On August 27, 2018 Defendant filed an Answer and Counterclaim.
3. On October 29, 2018 the Court entered an Order in favor of Plaintiff, directing Defendant to pay Plaintiff \$4,500 plus Court costs, and dismissing Defendant’s Counterclaim with Prejudice.
4. On October 30, 2018 Defendant filed the instant Motion for Reconsideration.
5. On November 26, 2018 Plaintiff filed an Opposition to Defendant’s Motion for Reconsideration.

Defendant’s Contentions

Defendant states that Plaintiff has failed to serve Defendant with a copy of the Court’s Order entered on October 29, 2018, which directed Plaintiff to serve a copy of the Order within ten days of entry of the Order. Defendant accordingly requests that the Court dismiss the ruling.

Alternatively, Defendant requests that the Court reconsider the Court’s prior Order. Defendant states that the Court overlooked numerous facts that cannot be reconciled with the Court’s Opinion. Defendant first points out Plaintiff’s claim that Plaintiff paid Defendant \$9,000 in cash in advance. Defendant notes that Plaintiff’s explanation for the advance payment was to meet a Fannie Mae deadline that would allow Plaintiff to live in Plaintiff’s home by May of 2017. However, according to Defendant, Plaintiff stated that Plaintiff paid Defendant in August of 2017. Defendant notes that Plaintiff advised the Judge that Plaintiff suffered no penalties or problems due to the delay, and thus Plaintiff was never under any pressure. Defendant explains that Plaintiff was never obliged to pay \$9,000 to a handyman without any binding agreement or contract in place.

Defendant also notes several answers provided by Plaintiff that Defendant states should not be taken for “face value.” Defendant makes the following assertions:

- Plaintiff did not provide a specific start date for performance, but said that it was at the beginning of a month. Defendant notes that Plaintiff had no witnesses corroborating this statement.
- Plaintiff advised that Plaintiff wanted to pay in cash because Plaintiff wanted Defendant to pay workers in cash. Plaintiff also advised Defendant that although the \$9,000 was withdrawn from a bank, Plaintiff had no statements evincing that Plaintiff made a withdrawal from Plaintiff’s bank.
- Defendant also states that Plaintiff failed to respond to Defendant’s interrogatories for more than a month.

Defendant concludes by noting that it was improper for the Court to strike the testimony of the two witnesses called by Defendant “because they were hostile to the witness.” Defendant states that Plaintiff had a relationship with the two witnesses as well.

Defendant argues that during a recess, when the parties were directed not to interact with the witnesses, Plaintiff did so with the intent to “annul the testimony of [the first] witness,” and that when Plaintiff’s attempts to do so were unsuccessful, Plaintiff provoked the first witness by alleging that the first witness committed fraud. Defendant states that Defendant objected because this testimony was irrelevant. Defendant also contends that Plaintiff accused the first witness of attempting to bribe Plaintiff with \$2,000.00 to prevent the present matter from reaching the Court, but the first witness denied this and asserted that Plaintiff was dishonest. With regards to the second witness, Defendant notes that the second witness repeatedly mentioned that Defendant used to speak highly of Plaintiff prior to the present disagreement, and that taken together, Defendant questions how any of the testimony provided can be interpreted as being “hostile to [Plaintiff].”

Defendant argues that the witnesses’ testimony was crucial to Defendant’s Counterclaim because Plaintiff had asked the witnesses to resolve the financial disagreements between the parties, and the witnesses heard Plaintiff confirm that Defendant tutored Plaintiff in four courses and that Plaintiff refused to pay Defendant. Defendant also stresses that the Court overlooked several full assignments submitted by Defendant as evidence that Defendant completed research and assignments for Plaintiff. Defendant argues that Plaintiff failed to answer any questions in those assignments and that Defendant did so for Plaintiff.

Plaintiff’s Contentions

Plaintiff contends that the Court provided Defendant with three copies of the Court’s Order entered on October 29, 2018 at Plaintiff’s request, and thus Plaintiff has abided by the Court’s rules and procedures.

Plaintiff clarifies that the Fannie Mae deadline was two months from the closing date on Plaintiff’s home. Plaintiff states that Plaintiff had already purchased Plaintiff’s house in the last week of May, and the agreement between Plaintiff and Defendant was executed in the last week of August. Plaintiff notes that Plaintiff provided the Court with evidence of the contract and deed for Plaintiff’s home.

Plaintiff advises that Defendant was the individual who had requested that Plaintiff pay Defendant in cash so that Defendant could pay Defendant’s workers in cash. Plaintiff states that two separate payments were made to Defendant, one being for \$4,000 and the other being for \$5,000. Plaintiff contends that Defendant received the first payment on the day work began, and that a written contract between the parties was submitted to the Court. Plaintiff contends that Defendant told Plaintiff that Defendant was a construction handyman, and Defendant showed Plaintiff numerous transactions made on Defendant’s Home Depot credit card related to previous jobs to evince that Defendant worked in construction.

Plaintiff states that although Plaintiff had no witnesses, all of Plaintiff's testimony had evidentiary support. Plaintiff argues that Plaintiff provided proof that Defendant received funds from Plaintiff by providing Arabic text messages that were translated into English detailing certain items and jobs, such as removal of dirt from Plaintiff's home, which Defendant dumped at a nearby cemetery, and for which Defendant charged Plaintiff \$3,900.

Plaintiff also notes that Plaintiff replied to Defendant's Counterclaim, contending that Plaintiff was unable to respond to Defendant's interrogatories in a timely fashion because Defendant sent such documents to Plaintiff's neighbor in an attempt to mislead Plaintiff. Plaintiff notes that Defendant was unable to explain to the Court why the addresses on the envelopes sent to Plaintiff were written and typed incorrectly.

Plaintiff states that Defendant failed to provide notice to Plaintiff that Defendant intended to call witnesses, and that Plaintiff allowed the witnesses to participate at trial anyway. Plaintiff confirms that Plaintiff has known both witnesses for a little over a year, but Plaintiff contends that Defendant has known both witnesses for more than seven years. Plaintiff explains that one witness purchased a condominium property from Defendant and still lives with Defendant, and that both witnesses have used and continue to use Defendant's interpretation services. Plaintiff explains that the relationship between Defendant and the witnesses was such that there is a clear conflict of interest, and the Court's rejection of the witness' testimony was proper.

Plaintiff explains that Plaintiff reported the first witness for fraud because the first witness used Plaintiff's address for the witness's car insurance without Plaintiff's permission. Plaintiff states that contrary to Defendant's assertion that Plaintiff offered for the first witness to live in Plaintiff's home, the first witness owns a residence at which the first witness lives, and Plaintiff would gain no benefit from granting this request. Plaintiff also states that Plaintiff had only met the second witness twice, one being at the Court appearance for the present matter. Plaintiff denies that either witness confirmed that Defendant tutored Plaintiff, and that this is supported in the record.

Plaintiff explains that the Court allowed both parties sufficient time for both parties to question the other regarding the alleged tutoring services offered by Defendant, and that Defendant failed to adequately evince that Defendant had indeed offered such services. Plaintiff also alleges that Plaintiff's relief is only 50% of the amount of money provided in total because the Court found that certain work was completed by Defendant.

Plaintiff also contends that Defendant offered conflicting testimony. Plaintiff explains that Defendant stated in messages sent to Plaintiff that Defendant would give money to Plaintiff to compensate Plaintiff for work not completed by Defendant. Plaintiff notes, however, that Defendant advised the Court that Plaintiff did not perform any work for Plaintiff, yet also admitted to the Court that Defendant worked at Plaintiff's house for a construction job.

Analysis

Reconsideration

Pursuant to R. 4:49-2, a motion to alter or amend a judgment or order must be served not later than twenty days after service of the judgment or order upon all parties by the party obtaining it. Id. A motion for reconsideration must state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred. Id. The rule is applicable only when the court's decision is based on plainly incorrect reasoning or when the court failed to consider evidence or there is good reason for it to reconsider new information. Cummings v. Bahr, 295 N.J. Super. 374, 384-85 (App. Div. 1996). It is well-settled that a motion for reconsideration is not warranted where the movant merely recapitulates the arguments or cases previously analyzed by the court. DelVicchio v. Hemberger, 388 N.J. Super. 179, 188-89 (App. Div. 2006).

Additionally, a motion for reconsideration is not warranted where the apparent purpose of the motion is for the movant to express disagreement with the Court's initial decision. D'Atria v. D'Atria, 242 N.J. Super. 392, 401-02 (Ch. Div. 1990) ("A litigant should not seek reconsideration merely because of dissatisfaction with a decision of the Court."). Essentially, "a litigant must initially demonstrate that the Court acted in an arbitrary, capricious, or unreasonable manner, before the Court should engage in the actual reconsideration process." Ibid.

Reconsideration should be utilized only for those cases where (1) the court has expressed its decision based upon a palpably incorrect or irrational basis, or (2) it is obvious that the court either did not consider, or failed to appreciate the significance of probative, competent evidence." Ibid. But if a litigant wishes to bring new or additional information to the court's attention, which it could not have provided, on the first application, the court should, in the interest of justice (and in the exercise of sound discretion), consider the evidence. Nevertheless, motion practice must come to an end at some point, and if repetitive bites at the apple are allowed, the core will swiftly sour. Thus, the court must be sensitive and scrupulous in its analysis of the issues in a motion for reconsideration." Ibid.

In the present matter, the Court finds that Defendant has failed to sufficiently persuade the Court that the Court should reconsider its Order entered on October 29, 2018. Contrary to the aims inherent in a court's application of R. 4:49-2, that is to correct a decision that has been based upon a palpably incorrect or irrational basis or where it is obvious that the Court failed to consider or did not appreciate the significance of certain evidence, the Court finds that the aim of the present Motion is to express disagreement with the Court's factual determinations.

Defendant makes no mention of new information that has come to light that should be brought to the Court's attention. Additionally, the factual determinations to which Defendant refers were will within the Court's discretion to make as the finder of fact in this case. While no witnesses corroborated Plaintiff's claims regarding the start date of the quasi-contract between the parties; the determination that Defendant was the individual who requested payment in cash; or whether Plaintiff's failure to respond to interrogatories in a timely manner was excusable, the Court

found the account provided by Plaintiff to be more credible, and Plaintiff provided the Court with substantive evidence to rely on in making that determination.

Additionally, while Defendant disagrees with the Court's decision to disregard the testimony of the witnesses called by Defendant, it is at the Court's discretion to decide how much weight should be afforded the testimony offered by such witnesses. In the present matter, the Court found the testimony of these witnesses to be biased in favor of Defendant. While Plaintiff may have had a relationship with the witnesses, the witnesses were called by Defendant, and both had significant relationships with Defendant. One witness was previously in a business relationship with Defendant, and had purchased a condominium from Defendant, and while Defendant stated that this transaction took place over seven years ago, the witness stated that the transaction had taken place only three to four years ago. Additionally, the second witness called by Defendant currently uses Defendant's interpreting services. Conversely, Plaintiff's relationships with the witnesses were insignificant. The Court is satisfied that the relationship between Defendant and the two witnesses is too connected, and thus the Court's disregard of such testimony was proper.

The Court also considered the testimony offered by Defendant regarding the tutoring services Defendant rendered to Plaintiff, which were central to Defendant's Counterclaim. The Court found Defendant's account to be incredible. Namely, it was incredible that the parties would have executed an agreement in which Defendant was to be paid \$50.00 per hour for tutoring services rendered to Plaintiff for four classes. The Court is not persuaded that Defendant is owed \$8,000, or \$2,000 per course, for such services, representing 160 hours of tutoring services. The Court found Plaintiff's representation that some help was provided by Defendant, for which Plaintiff paid Defendant \$160.00, to be the more believable account. Additionally, the Court found Defendant's account that Plaintiff retained Defendant to renovate Plaintiff's home with the purpose of renting out said home to pay off money owed to Defendant for tutoring services rendered is without merit. The premise that Defendant now chooses to seek compensation for such tutoring services nearly two years later, on the heels of Plaintiff's filing a Complaint in this matter for construction services, is suspect, and the Court rightly sided with Plaintiff's account of the factual determinations in this case.

Ultimately, Defendant has failed to persuade the Court that the Court acted arbitrarily, capriciously, or unreasonably. The Court considered all cogent evidence, and made a determination based on the Court's review and interpretation of such evidence, in accordance with this Court's role as the finder of fact. Accordingly, Defendant's Motion for reconsideration is denied.

Conclusion

For the foregoing reasons, Defendant's Motion is hereby DENIED.