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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0121-21

GL TRINITY HOLDINGS, LLC,

Plaintiff-Respondent,

v.

SHATHA EMACHAH, a/k/a SHATHA SAAB, an individual, and as a manager/owner of INSURED ADVISOR LLC,

Defendant-Appellant.

Submitted November 10, 2022 – Decided November 22, 2022

Before Judges Gooden Brown and Mitterhoff.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-2354-19.

David M. Shafkowitz, attorney for appellant.

Sarofiem & Antoun, and Damian Lawandi, LLP, attorneys for respondent (Mekhail E. Sarofiem and David C. Rosciszewski, on the brief).

PER CURIAM

Defendant, Shatha Emachah, a/k/a Shatha Saab, appeals from an August 16, 2019 order denying her motion to vacate the entry of default judgment against her and extend the time for filing an answer. We affirm, substantially for the reasons set forth in Judge J. Randall Corman's well-reasoned written opinion.

We discern the following facts from the record. Plaintiff, GL Trinity Holdings, LLC is a New Jersey corporation in the business of real estate investments. Defendant is the sole owner, member, manager, and registered agent of Insured Advisor, LLC (Insured Advisor), d/b/a HomeOwner Advisor, another New Jersey corporation.

On or about June 3, 2018, plaintiff contacted Firas Emachah,[1] defendant's husband, regarding home improvements on property owned by plaintiff. Firas allegedly presented himself as the owner of HomeOwner Advisor. Firas entered into an oral agreement to undertake home improvements on plaintiff's property.[2]

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[1] To avoid confusion, we refer to defendant's husband by his first name, Firas; we intend no disrespect.

[2] Defendant contends that there was no home improvement contract; rather, she alleges that the facts and circumstances of the complaint arise out of an oral agreement to lend money between Firas and plaintiff, to which she was not a party, obligee, or guarantor.

On or about June 7, 2018, Firas requested an advance to allegedly purchase products and materials necessary for the agreed upon improvements. Plaintiff provided Firas with $20,000 and secured a promissory note to be paid back in two weeks in the event Firas did not fulfil his obligation to plaintiff. Firas then provided a post-dated check for repayment and deposited plaintiff's check in an account owned by Insured Advisor and defendant. Defendant and her husband then put a stop payment on the repayment check. Plaintiff was never refunded the money, nor have the agreed upon home improvements been made.

On August 14, 2018, plaintiff filed the original complaint in this matter against: (1) Firas; (2) defendant, as an individual; and (3) Insured Advisor. As against Insured Advisor and Firas, plaintiff alleged: (count one) breach of contract; (count two) breach of the implied covenant of good faith and fair dealing; (count three) promissory estoppel; (count five) negligent and fraudulent misrepresentation; (count six) fraud; and (count seven) consumer fraud. As against Insured Advisor and defendant, plaintiff alleged: (count eight) negligent entrustment and (count nine) negligent supervision. The complaint further asserted (count four) unjust enrichment against Firas, defendant, and Insured Advisor.

On August 23, 2018, Firas and defendant were served with the original complaint; defendant was served both in her individual capacity and as Insured Advisor's registered agent. Despite being served, all named defendants failed to plead or otherwise defend the lawsuit. As a result, a default judgment was entered against Insured Advisor and Firas on November 28, 2018 in the amount of $25,215.02.[3] The claims against defendant in her individual capacity were voluntarily dismissed by plaintiff at a proof hearing by way of a stipulation of dismissal.

On January 15, 2019, pursuant to the entry of judgment, plaintiff served defendant, in her capacity as corporation agent, with an information subpoena. To date, defendant has not responded. Also following the entry of judgment, Firas filed for personal protection under Chapter 7 of the United States Bankruptcy Code.

On March 22, 2019, plaintiff filed the instant complaint, naming only defendant in her personal capacity as the sole officer of Insured Advisor. In this ancillary lawsuit, plaintiff sought to pierce the corporate veil against defendant pursuant to N.J.S.A. 2A:17-75. Plaintiff further asserted (count three) conspiracy and reinstated the previously dismissed claims against defendant

[3] Neither Firas nor Insured Advisor appealed this judgment.

from the original complaint: (count two) unjust enrichment; (count four) negligent entrustment; and (count five) negligent supervision. On April 9. 2019, defendant was served, through personal service, by Guaranteed Subpoena Service on defendant's mother, Yosra Onasha, at defendant's residence. However, defendant once again failed to plead or otherwise defend the ancillary lawsuit.

The court then scheduled a proof hearing for June 11, 2019. Defendant was put on notice of the scheduled proof hearing by certified mail. Ultimately, defendant did not appear for the proof hearing and the judge entered final judgment by default against her[4] for a total of $85,194.99.

On August 16, 2019, the court denied defendant's motion to vacate the entry of default and to extend the time for filing an answer to plaintiff's complaint. On December 8, 2020, we vacated the June 11, 2019 judgment and remanded the matter to the trial court to issue findings of fact and conclusions of law, pursuant to Rule 1:7-4.[5] GL Trinity Holdings, LLC v. Emachah, No. A-

[4] The order pierced the corporate veil, rendering defendant individually liable to plaintiff; found defendant liable under a theory of unjust enrichment; and awarded treble damages to plaintiff for negligent entrustment. The order awarded no relief for conspiracy or negligent supervision.

[5] Rule 1:7-4(a), entitled Required Findings, states:

0376-19 (App. Div. Dec. 8, 2020) (slip op. at 4). We did not address the merits of defendant's claims.

On August 6, 2021, the trial court issued a written opinion outlining the court's reasoning for choosing not to vacate default judgment in this matter. After a detailed summation of the facts, the court addressed each of defendant's arguments in turn:

> The [d]efendant's claim that the judgment should be vacated because she was not properly served is without merit because the [p]laintiff has presented proof that the summons and complaint were personally served by Guaranteed Subpoena Service on [d]efendant's mother, Yosra Onasha, at [d]efendant['s] . . . residence, on April 9, 2019. Pursuant to [Rule] 4:4-4, this constitutes valid service of process.
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> The [d]efendant's argument to vacate the judgment under [Rule] 4:50-1(c) is equally unavailing. The [d]efendant alleges that the [p]laintiff's attorney misrepresented that he would allow [d]efendant time to retain an attorney before moving forward with the proof hearing and request for default judgment. However, Plaintiff's counsel vehemently denies ever making such

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> The court shall, by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law thereon in all actions tried without a jury, on every motion decided by a written order that is appealable as of right, and also as required by [Rule] 3:29. The court shall thereupon enter or direct the entry of the appropriate judgment.

an agreement with the [d]efendant and the [d]efendant offers no proof of such an agreement. Furthermore, the defendant's lack of credibility with regard to this bald assertion is highlighted by the fact that the letter from [d]efendant's counsel requesting an adjournment for the proof hearing makes no claim that he has consent of the [p]laintiff's counsel and the denial of the adjournment request by the [c]ourt specifically states that [d]efendant's counsel does not have the consent of his adversary for an adjournment.

The [d]efendant also argues the judgment should be vacated because she was deemed not liable in the underlying action (MID-L-4884-18), presumably claiming grounds to vacate under [Rule] 4:50-1(e). Similarly, the defendant seeks to vacate pursuant to [Rule] 4:50-1(f)[,] claiming the entire controversy doctrine bars the present matter because a prior action on the same facts resulted in a dismissal against the [d]efendant. However, [d]efendant . . . was dismissed in the underlying lawsuit by stipulation of dismissal and her liability in the matter was not decided on [the] merits. The instant lawsuit was filed after [d]efendant Insured Advisor, LLC and its officers refused to comply with subpoena requests addressing the outstanding judgment obtained under L-4884-18. N.J.S.A. 2A:17-75 allows a judgment creditor to pursue any agent or officer of a corporation who neglects or refuses to comply with the provisions of this section and constitutes a new and separate cause of action from those litigated in L-4884-18. This [c]ourt notes that [] nowhere in the [d]efendant's certification or elsewhere in her pleadings does she claim that she did comply with the information subpoena, which would constitute a meritorious defense to the [p]laintiff's claims under N.J.S.A. 2A:17-75.

> It is not until after a corporation's refusal to satisfy an outstanding judgment that its officers may be sought out personally to satisfy the judgment if they fail to comply with N.J.S.A. 2A:17-75. If the [d]efendant's view of N.J.S.A.:17-75 were to prevail, any corporate officer who was dismissed from a case for lack of individual liability, where the case resulted in a judgment against the corporation, would then have free rein to actively impede efforts to execute upon the judgment without fear of consequence, thus eviscerating the purpose of the statute.

On September 15, 2021,[6] defendant filed this appeal. On appeal, defendant raises the following argument:

> LEGAL ARGUMENT
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> I. THE TRIAL COURT ERRED IN ITS APPLICATION OF NJ RULE 4:50-1, IN DENYING THE DEFENDANT'S MOTION TO VACATE THE DEFAULT JUDGMENT AND EXTEND TIME TO FILE AND ANSWER DESPITE DEFENDANT'S SATISFACTION OF THE REQUIREMENTS OF RULE 4:50-1.

We find insufficient merit in defendant's contentions to warrant extended discussion in a written opinion. Rule 2:11-3(e)(1)(A). We write only to add the following comments.

[6] On October 7, 2021, we granted defendant's motion to file a notice of appeal as if within time.

Rule 4:50-1 sets forth the various circumstances in which a party may obtain relief from a final judgment or order, including: "(a) mistake, inadvertence, surprise, or excusable neglect; . . . or (f) any other reason justifying relief from the operation of the judgment or order."[7] "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.'" U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012) (quoting Mancini v. EDS ex rel. N.J. Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330, 334 (1993)).

Decisions whether to vacate a default judgment are left to the sound discretion of the trial court. Mancini, 132 N.J. at 334. Courts should view "the opening of default judgments . . . with great liberality," and should tolerate "every reasonable ground for indulgence . . . to the end that a just result is reached." Marder v. Realty Constr. Co., 84 N.J. Super. 313, 319 (App. Div. 1964). Nevertheless, a trial court's decision, pursuant to Rule 4:50-1, "warrants

[7] Subsections (a) and (f) are the only two subsections relied on by defendant on appeal. It appears defendant has abandoned her improper service of process argument on appeal; we deem that issue waived. See Sklodowsky v. Lushis, 417 N.J. Super. 648, 657 (App. Div. 2011) ("An issue not briefed on appeal is deemed waived.").

substantial deference, and should not be reversed unless it results in a clear abuse of discretion." Guillaume, 209 N.J. at 467.

An abuse of discretion "arises when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Flagg v. Essex County Prosecutor, 171 N.J. 561, 571 (2002) (quoting Achacoso-Sanchez v. I.N.S., 779 F.2d 1260, 1265 (7th Cir. 1985)). "In other words, a functional approach to abuse of discretion examines whether there are good reasons for an appellate court to defer to the particular decision at issue. It may be 'an arbitrary, capricious, whimsical, or manifestly unreasonable judgment.'" Ibid. (quoting Coletti v. Cudd Pressure Control, 165 F.3d 767, 777 (10th Cir. 1999)). However, this court "accord[s] no deference to the judge's interpretation of applicable law, which we review de novo." Barlyn v. Dow, 436 N.J. Super. 161, 170 (App. Div. 2014).

After careful examination of the record, we discern no abuse of discretion by the judge's August 16, 2021 denial of defendant's motion to vacate default judgment. In his written opinion, the judge addressed each of defendant's claims and, in great detail, explained why vacating default judgment was unwarranted.

First, the motion judge correctly found that the entire controversy did not provide defendant with a meritorious defense that would warrant setting aside

the default judgment. See Pressler & Verniero, Current N.J. Court Rules, cmt. on Rule 4:43-3 (2022) ("the showing of a meritorious defense is a traditional element for setting aside . . . a default judgment[.]"). Specifically, the judge found that N.J.S.A. 2A:17-75 "allows a judgment creditor to pursue any agent or officer of a corporation personally who neglects or refuses to comply with" its provisions and, therefore, held that the instant action constituted a new and separate cause of action not precluded by the entire controversy doctrine. The motion judge found that defendant's only meritorious defense to plaintiff's claim under N.J.S.A. 2A:17-75 would have been an assertion that she complied with plaintiff's information subpoena, which she never argued. Further, the judge held that the three counts against defendant individually, which were included in the original complaint, were dismissed voluntarily and, therefore, her liability in the original matter was "not decided on [the] merits."

Even if defendant were equipped with a meritorious defense, she is not entitled to relief pursuant to Rule 4:50-1(a) or (f). Excusable neglect under Rule 4:50-1(a) has been defined as excusable carelessness "attributable to an honest mistake that is compatible with due diligence or reasonable prudence." Mancini, 132 N.J. at 335. "[R]elief under Rule 4:50-1(f) is available only when 'truly exceptional circumstances are present.'" House. Auth. of Morristown v. Little,

135 N.J. 274, 286 (1994) (quoting Baumann v. Marinaro, 95 N.J. 380, 395 (1984)). In determining whether such exceptional circumstances exist to warrant relief, the court considers the following factors: "(1) the extent of the delay [in making the application], (2) the underlying reason or cause, (3) the fault or blamelessness of the litigant, and (4) the prejudice that would accrue to the other party." Jansson v. Fairleigh Dickinson Univ., 198 N.J. Super. 190, 195 (App. Div. 1985).

Here, defendant has not demonstrated excusable neglect, nor any unique or exceptional circumstances which would warrant the relief sought. Defendant has not explained why the judgment against her should be vacated, considering that she has failed to plead, answer, or otherwise defend various pleadings and the information subpoena, and further failed to attend the June 11, 2019 proof hearing, despite receiving notice via certified mail.

To the extent we have not addressed defendant's remaining arguments, we find they are without sufficient merit to warrant discussion in this opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION