SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0948-21

BENDER ENTERPRISES, INC. and CENTRAL JERSEY ELECTRICAL SALES & SERVICE, INC.,

Plaintiffs-Respondents,

v.

WEST RAC CONTRACTING CORP.,

Defendant-Appellant,

and

SAPTHAGIRI, LLC,

Defendant-Respondent.

SAPTHAGIRI, LLC,

Third-Party Plaintiff-Respondent,

v.

GARY P. KRUPNICK,

VICTOR WEISBERG, R.A., and
GLOBAL CONTRACTING
CONCEPTS, LLC,

Third-Party Defendants-
Appellants.

Submitted March 28, 2022 – Decided April 8, 2022

Before Judges Firko and Petrillo.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-3359-21.

Forchelli Deegan Terrana, LLP, attorneys for appellants (Parshhueram T. Misir, on the briefs).

Skolnick Legal Group, PC, attorneys for respondent Sapthagiri, LLC (Martin P. Skolnick and Scott H. Bernstein, on the brief).

PER CURIAM

In this construction matter, defendants West Rac Contracting Corporation (W.R.C.), Gary P. Krupnick, Victor Weisberg, R.A., and Global Contracting Concepts, LLC (G.C.C.) (collectively defendants), appeal the November 23, 2021 Law Division order denying their motion to compel arbitration. We reverse and remand for further findings of fact and conclusions of law in accordance with Rule 1:7-4.

I.

The facts are taken from the motion record and are summarized as follows. On May 27, 2015, W.R.C. and defendant/third-party plaintiff Sapthagiri, LLC, entered into a contract to construct a Hyatt Place Hotel in Fort Lee. The parties agreed all claims and disputes between them, unless waived, would be: (1) subject to mediation; and (2) if not resolved by mediation, be arbitrated. The record shows the parties participated in two arbitrations relative to the construction work, one in 2018, and the second in 2019. In 2018, the arbitrator awarded W.R.C. $70,740.43 for extra work completed relative to the design and construction of the flooring. In 2019, the arbitrator awarded W.R.C. $551,518.71 for costs incurred due to delays attributable to Sapthagiri.

On January 5, 2021, Sapthagiri filed a complaint against W.R.C., Krupnick, and Weisberg alleging a conspiracy "to engage in an undisclosed related party transaction."[1] In response, defendants moved for dismissal because Sapthagiri failed to mediate first as agreed. On March 5, 2021, the complaint was voluntarily dismissed without prejudice to allow the parties to participate

[1] The complaint was also filed against East Coast Pre-Engineered Buildings, LLC, and the Westwood Companies, Inc., who are not parties to this appeal. In the complaint, Sapthagiri alleged East Coast was an undisclosed related party to W.R.C.

in mediation. Sapthagiri filed a request for mediation with the American Arbitration Association naming W.R.C. as the sole opposing party.

On May 21, 2021, plaintiffs Bender Enterprises, Inc. and Central Jersey Electrical Sales & Service, Inc. filed a complaint in the Law Division against W.R.C. and Sapthagiri alleging breach of contract for unpaid labor and materials. According to Sapthagiri, in summer of 2015, W.R.C., Krupnick, and Weisberg fraudulently modified the hotel's plans and specifications to provide for an Ecospan Composite Floor System (Ecospan System) instead of the materials designated in the existing plans and specifications to speed up completion of the project and save "over one million dollars of construction costs." Sapthagiri alleged the contract was violated because W.R.C. purchased the Ecospan System through G.C.C., a "related party," for $988,000, without providing the requisite notice in writing and obtaining Sapthagiri's consent.

The parties' mediation was unsuccessful. Thereafter, on July 6, 2021, W.R.C. and Sapthagiri filed their answers to the complaint. Sapthagiri also filed cross-claims against W.R.C. and a third-party complaint alleging similar claims involving use of the Ecospan System.

On August 17, 2021, defendants filed a motion to dismiss Sapthagiri's cross-claims and the third-party complaint pursuant to Rule 4:6-2(e), "failure to

state a claim upon which relief can be granted." Defendants also requested the court to appoint an arbitrator. Sapthagiri opposed defendants' motion to dismiss and their request to appoint an arbitrator. On October 18, 2021, the trial court conducted oral argument on defendants' motion.[2] That day following oral argument, the court issued an order and attached a rider denying defendants' motion to dismiss.

In rejecting defendants' argument that Sapthagiri's third-party complaint must be dismissed for failure to state a claim, the trial court found "there are viable claims" and "questions of fact" that prevent granting of defendants' motion. The court also rejected W.R.C.'s argument that Sapthagiri's claims are barred by res judicata and the entire controversy doctrine. In addition, the court noted defendants' motion is "premature" because discovery was incomplete. The court also emphasized defendants relied on "extrinsic evidence" outside of the complaint in order to support their motion for dismissal. However, the court did not address defendants' motion insofar as it sought appointment of an arbitrator.

[2] The transcript for the October 18, 2021 motion hearing is not contained in the appendices.

On October 26, 2021, following an ex parte phone call between the court and defendants' counsel, the court apparently denied defendants "plea for relief as to the arbitration clause in the contract" because "the issue was not thoroughly briefed or presented within the body of the motion[] nor was the plea to remove proceedings to arbitration in the proposed form of [o]rder." Thereafter, on October 28, 2021, defendants filed their answers to Sapthagiri's cross-claims and third-party complaint. On November 1, 2021, Sapthagiri served discovery demands on defendants.

On November 3, 2021, defendants filed a motion to compel arbitration. No oral argument was conducted. On November 23, 2021, the court entered an order denying defendants' motion to compel arbitration. No oral or written findings accompanied the order under Rule 1:7-4(a).

On November 30, 2021, defendants filed a notice of appeal of the November 23, 2021 order. On December 1, 2021, defendants moved for a stay

of the litigation before the trial court as to the cross-claims and third-party complaint pending the outcome of this appeal,[3] pursuant to Rule 2:9-5(c).[4]

On appeal, defendants raise the following arguments for our consideration:

> POINT I
>
> STANDARD OF REVIEW FOR DENIAL OF A MOTION TO COMPEL ARBITRATION.
>
> POINT II
>
> SAPTHAGIRI IS REQURIED TO ARBITRATE THE CLAIMS UNDER THE MANDATORY ARBITRATION AGREEMENT.

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[3] On January 3, 2022, the trial court issued an order staying the cross-claims and third-party complaint filed by Sapthagiri pending the outcome of the appeal until April 1, 2022.

[4] Rule 2:9-5(c) provides:

> If an order compelling or denying arbitration is appealed as of right . . . in circumstances where the trial court retains jurisdiction over remaining claims or parties[,] . . . any party may move in that court for a stay of proceedings pertaining to such remaining claims or parties pending appeal. The trial court shall exercise its sound discretion in the interests of justice in deciding whether to grant or deny the stay and whether any conditions shall apply.

POINT III

THE THIRD-PARTY DEFENDANTS MAY COMPEL ARBITRATION OF THE CLAIMS EVEN THOUGH THEY ARE NOT SIGNATORIES TO THE CONTRACT.

A. KRUPNICK AND WEISBERG ARE OFFICERS/AGENTS OF [W.R.C.] AND CAN COMPEL SAPTHAGIRI TO ARBITRATE THE CLAIMS ALLEGED AGAINST THEM.

B. [G.C.C.] CAN COMPEL SAPTHAGIRI TO ARBITRATE THE CLAIMS ASSERTED AGAINST IT IN THE THIRD-PARTY COMPLAINT.

POINT IV

THE COURT SHOULD STAY ANY FURTHER LITIGATION OF THE CROSS-CLAIMS AND THE THIRD-PARTY COMPLAINT PENDING THE OUTCOME OF THE ARBITRATION.

POINT V

SMITH[5] SHOULD BE APPOINTED AS THE ARBITRATOR FOR THE CROSS-CLAIMS AND THE THIRD-PARTY COMPLAINT.

POINT VI

[W.R.C.] AND THE THIRD-PARTY DEFENDANTS DID NOT WAIVE THEIR RIGHT TO ARBITRATE.

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[5] The reference is to Peter J. Smith, Esq., who arbitrated the prior two arbitrations in this matter.

II.

Orders compelling or denying arbitration are treated as final orders for purposes of appeal. R. 2:2-3(3); GMAC v. Pittella, 205 N.J. 572, 575 (2011). Arbitration is a matter of contract, Bruno v. Mark MaGrann Assocs., 388 N.J. Super. 539, 546 (App Div. 2006), and, as such, is a question of law, Antonucci v. Curvature Newco, Inc., ___, ___ (App. Div. 2022) (slip op. at 3). Therefore, we review de novo an arbitration agreement's: (1) validity, Atalese v. U.S. Legal Servs. Grp., L.P., 219 N.J. 430, 442, 445-46 (2014); (2) enforceability, Goffe v. Foulke Mgmt. Corp., 238 N.J. 191, 207 (2019); and (3) waiver, Cole v. Jersey City Med. Ctr., 215 N.J. 265, 275 (2013). Under the de novo standard, we "need not give deference to the analysis by the trial court." Goffe, 238 N.J. at 207. Formation of an arbitration agreement, however, is an issue of fact "to be decided by the trial court." Knight v. Vivint Solar Dev., LLC, 465 N.J. Super. 416, 426, 428 (App. Div. 2020), cert. denied, 246 N.J. 222 (2021), and cert. denied, 246 N.J. 223 (2021); see also Cole, 215 N.J. at 275 (noting factual findings underlying the trial court's determination, such as waiver, to be entitled to deference and "subject to review for clear error").

Although not raised by defendants on appeal, we note the trial court's November 23, 2021 order denying their motion to compel arbitration was denied

without setting forth factual findings or legal conclusions. Although this court's standard of review for an order compelling or denying arbitration is de novo, Goffe, 238 N.J. at 207, the function of "an appellate court is to review the decision of the trial court, not to decide the motion tabula rasa." Est. of Doerfler v. Fed. Ins. Co., 454 N.J. Super. 298, 301-02 (App. Div. 2018); but see Carbajal v. Patel, 468 N.J. Super. 139, 147 n.4 (App. Div. 2021) (noting where a trial court failed to develop a full record or make legal conclusions, the reviewing court may "analyze the legal questions on appeal de novo without directing the [trial court] to do so in the first instance" (citation omitted) (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995))).

Rule 1:7-4(a) states "[t]he 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." "Naked conclusions do not satisfy the purpose of [Rule] 1:7-4." Curtis v. Finneran, 83 N.J. 563, 570 (1980). These requirements are unambiguous. See Romero v. Gold Star Distrib, LLC, 468 N.J. Super. 274, 304 (App. Div. 2021). "Meaningful appellate review is inhibited unless the judge sets forth the reasons for his or her opinion." Giarusso v.

Giarusso, 455 N.J. Super. 42, 53 (App. Div. 2018) (quoting Strahan v. Strahan, 402 N.J. Super. 298, 310 (App. Div. 2008)).

Here, the trial court failed to comply with Rule 1:7-4(a) because no findings of fact or conclusions of law regarding defendants' motion to compel arbitration were made. The court simply signed an order denying the motion to compel arbitration. No oral argument was conducted either.

Thus, we cannot determine from the record whether the trial court analyzed defendants' arguments and proofs that arbitration should be compelled. Moreover, the trial court did not avail itself of the opportunity to supplement the record with its findings or reasons pursuant to Rule 2:5-1(b) after the appeal was filed.[6]

[6] Rule 2:5-1(b) permits a judge "to file an amplification of a prior decision if it is appealed." In re Proposed Quest Acad. Charter Sch. of Montclair Founders Grp., 216 N.J. 370, 383 (2013). An amplification may supplement the court's prior decision with a statement, opinion, or memorandum even if the aforementioned did not exist prior to the appeal. See R. 2:5-1(b) ("If there is no such prior statement, opinion or memorandum, the trial judge . . . [may] file with the [c]lerk of the Appellate Division and mail to the parties a written opinion stating findings of fact and conclusions of law."). As such, the Rule "anticipates" and "expressly permits" a judge to file an amplification after a party has filed an appeal and does not prohibit the judge from addressing issues raised on appeal. In re Quest Acad. Charter Sch., 216 N.J. at 390; see, e.g., Scheeler v. Atl. Cnty. Mun. Joint Ins. Fund, 454 N.J. Super. 621, 625 n.1 (App. Div. 2018) (affirming an order based on the trial court's amplification that "thoroughly and correctly addressed" the issues on appeal).

Therefore, we reverse and remand to the trial court to make the requisite findings of fact and conclusions of law in accordance with Rule 1:7-4. The remand proceeding shall be conducted within thirty days of the date of this opinion. We express no opinion as to what the outcome of defendants' motion to compel arbitration should be. We also defer to the trial court as to whether or not oral argument should be held.

Reversed and remanded for proceedings consistent with this opinion. 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