SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2630-20

PHILIP BLAZESKI, as
Successor-In-Interest
to GOCE BLAZESKI,

Plaintiff-Appellant,

v.

LANDER PROPERTY
CONSULTING GROUP, LLC
and LEVI KELMAN,

Defendants-Respondents.

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Argued April 4, 2022 – Decided April 25, 2022

Before Judges Sumners and Petrillo.

On appeal from the Superior Court of New Jersey, Law Division, Passaic County, Docket No. L-1214-20.

Erin Murphy Yoeli argued the cause for appellants (Reynolds Law Group, LLC, attorneys; Scott E. Reynolds and Erin Murphy Yoeli, on the briefs).

John J. Reilly argued the cause for respondents (Bathgate, Wegener, & Wolfe, PC, attorneys;

Dominic J. Aprile, of counsel and on the brief; Daniel J. Carbone, on the brief).

PER CURIAM

Philip Blazeski, (plaintiff) appeals from a Law Division order dated April 14, 2021, granting Lander Property Consulting Group, LLC, and Levi Kelman's (defendants) motion for summary judgment in lieu of an answer. Plaintiff's appeal is limited to that part of the order dismissing counts two and three of his complaint. We reverse and remand for further findings.

I.

On April 18, 2020, plaintiff filed suit in the Law Division asserting three causes of action: breach of a promissory note; breach of a payment guaranty; and unjust enrichment. In the complaint, plaintiff, whose name appears nowhere on either the note or the guaranty, asserts that he is a successor-in-interest to Goce Blazeski[1] via an assignment of the note. The thrust of the suit was an effort to recover monies owed under a promissory note (note) which was executed on December 23, 2019, by Blazeski, an unnamed third party who was the lender under the note, and defendant Lander Property Consulting Group,

[1] Goce Blazeski and plaintiff share the same sur name. To avoid confusion only Goce Blazeski will be referred to as "Blazeski." Plaintiff will be referred to as "plaintiff."

LLC (Lander), who was the recipient of the funds borrowed pursuant to the note, receiving a loan of $500,000.[2] By its plain terms the note could not be assigned without consent of both parties. It is undisputed that Lander never gave any such consent.

The note was secured by a payment guaranty (guaranty) executed on the same date by defendant Levi Kelman.[3] The guaranty acknowledges the existence of the note calling it a "guaranteed obligation" and promises, "unconditionally," the payments and performance owed by the note. In the guaranty, Kelman, the guarantor, "irrevocably and unconditionally covenants and agrees that [he] is liable" for the note as a "primary obligor." The guaranty "unconditionally guarantees" the payment of the guaranteed obligation to Goce Blazeski "and [his] successors, and assigns."

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[2] The recipient of funds under a promissory note is commonly referred to as "the maker" to represent that the recipient is thereby "making" a promise to pay. The lender is commonly referred to as the "payee" representing its status as the one to be paid under the note. Those terms were used in the promissory note at issue here. Kelman executed the promissory note for Lander as its authorized signatory.

[3] Kelman also executed the note as a "pledgor" in his individual capacity regarding a security interest bearing on the obligation under the guaranty, as set forth in section 17 of the note, and as an authorized signatory of 14 Summit Street Holdings Urban Renewal Entity, LLC (Holdings) which pertained solely to section 17.5 of the note. Neither Kelman individually nor Holdings executed the note as a guarantor or obligor.

The complaint alleges a default under the note and describes the circumstances of collection and the rights and obligations under the note and guaranty. The complaint specifically describes the assignment of the note as having occurred on April 1, 2020. There is no reference in the complaint to the guaranty having ever been assigned. Count one seeks recovery under the note from Lander alone; count two seeks recovery under the guaranty from Kelman alone; and count three seeks recovery under an unjust enrichment theory from Kelman alone.

On May 26, 2020, defendants filed a motion for summary judgment in lieu of an answer in accordance with Rule 4:6-2(e) and Rule 4:46. As a result of a delay attributable to the COVID-19 pandemic, the court did not hear oral argument until February 8, 2021. On April 14, 2021, the trial court granted the motion for summary judgment and dismissed all three counts of plaintiff's complaint.

In granting the motion, the court considered section 14(b) of the note that prohibited assignment, sale, negotiation, pledging, hypothecation, or transfer, without the express written consent of Lander. No such consent was ever given. The agreement was clear that any assignment made without the required consent "is void ab initio." Given that there were no disputes of fact on this point, the

court concluded in short order that the assignment was exactly that and thus without "legal force or effect." The court further ruled that as the holder of a defective assignment, plaintiff was not a party in interest and had no standing to sue under the note. This appeal followed.[4] Plaintiff seeks reversal of the court's dismissal of its guaranty claim (count two) and its unjust enrichment claim (count three) arguing that both were assignable and dismissal was erroneous as a matter of law.

II.

We begin our examination of the trial court order in light of our standard of review. We review a ruling on a summary judgment motion de novo, applying the same standard governing the trial court. Conley v. Guerrero, 228 N.J. 339, 346 (2017) (citing Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016)). Thus, we consider, as the motion judge did, "whether 'the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.'" Holmes v. Jersey City Police Dep't, 449 N.J. Super. 600, 602-03 (App.

[4] The appeal is taken only as to that part of the order dismissing counts two and three.

Div. 2017) (citation omitted) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)). "If there is no genuine issue of material fact, we must then 'decide whether the trial court correctly interpreted the law.'" DepoLink Ct. Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 333 (App. Div. 2013) (quoting Massachi v. AHL Servs., Inc., 396 N.J. Super. 486, 494 (App. Div. 2007)). We review issues of law de novo and accord no deference to the trial judge's legal conclusions. Nicholas v. Mynster, 213 N.J. 463, 478 (2013).

In this case, the trial court was presented with a strictly legal question: the interpretation of a contract. The construction of a written contract is almost always a legal question for the court, suitable for disposition on summary judgment, unless there is ambiguity or the need for parol evidence to aid in interpretation. Driscoll Constr. Co. v. State Dep't of Transp., 371 N.J. Super. 304, 313-14 (App. Div. 2004) (citations omitted). The court's aim is to determine the intentions of the parties to the contract, as revealed by the language used, the relations of the parties, the attendant circumstances, and the objects the parties were trying to attain. Id. at 313 (citation omitted). "[W]here the terms of a contract are clear and unambiguous there is no room for interpretation or construction and the courts must enforce those terms as

written." Schor v. FMS Fin. Corp., 357 N.J. Super. 185, 191 (App. Div. 2002) (quoting Karl's Sales and Serv., Inc. v. Gimbel Bros., Inc., 249 N.J. Super. 487, 493 (App. Div. 1991)).

In this appeal it is not argued that there is any ambiguity or need for parol evidence. The appeal is premised entirely on the argument that the trial court committed legal error in dismissing counts two and three because the guaranty is a separately enforceable agreement that may be assigned and, like the guaranty, the unjust enrichment claim is also freely assignable. It is also argued that as to these counts the court mistakenly applied the summary judgment standard under Rule 4:46 as opposed to the motion to dismiss standard under Rule 4:6-2(e).

Unfortunately, we cannot discern the basis for the court's decision regarding counts two and three, nor can we determine the standard applied by the court as there is absolutely no discussion of counts two and three in the court's opinion attached to its order dismissing the case. While the order is captioned as "GRANTING DISMISSAL/SUMMARY JUDGMENT" and dismisses the action, the opinion addresses only count one. Only the note is discussed, and the legal conclusion is limited to the assignment of the note is void ab initio. The standing determination is similarly limited in scope. While

the parties have offered vigorous and clearly stated arguments in support of their positions, and in opposition to one another's, without the benefit of knowing why the court ruled as it did, we are incapable of rendering a decision.

III.

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, 302 (App. Div. 2018). 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 were memorialized regarding dismissal of counts two and three. The court referenced these claims in its opinion when

summarizing the arguments made by the parties but then ignored them and addressed just count one. The court was clearly aware of these other counts as they were distinct from count one and were asserted against a different defendant.

Neither did the trial court supplement the record with its findings or reasons pursuant to Rule 2:5-1(b) after the appeal was filed.[5] We cannot determine from the record before us how and whether and under what standard the trial court analyzed the parties' arguments regarding counts two and three. 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 basis for its decision to dismiss shall be articulated orally or in writing and shall include

[5] 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).

reference to the standard upon which it is relying. The remand proceeding shall be completed within sixty days of the date of this opinion. We defer to the trial court as to whether or not supplemental 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