SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0053-21

DEEGAN ROOFING, INC.,

Plaintiff-Respondent,

v.

RICHARD BAHADURIAN,

Defendant-Appellant.

Argued February 15, 2023 - Decided May 19, 2023

Before Judges Currier and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Docket No. L-0145-18.

Gary E. Fox argued the cause for appellant (Fox & Melofchik, LLC, attorneys; Gary E. Fox, on the briefs).

Lawrence J.T. McGivney and Mathew C. Dorsi argued the cause for respondent (McGivney, Kluger, Clark & Intoccia, PC, and DiFrancesco, Bateman, Coley, Yospin, Kunzman, Davis, Lehrer & Flaum, PC, attorneys; Lawrence J.T. McGivney and Matthew C. Dorsi, on the brief).

PER CURIAM

In this contract action, defendant appeals from the trial court orders confirming the arbitration award and granting plaintiff attorney's fees as well as from orders regarding discovery issues and denying reconsideration. We affirm the orders confirming the arbitration award and the grant of counsel fees.[1]

Defendant contracted with plaintiff to repair a section of a roof on a commercial building defendant owned. Plaintiff performed the work and sent defendant an invoice. After defendant failed to pay for the work, plaintiff instituted suit, alleging breach of contract. In addition to the unpaid invoice, interest and costs, plaintiff sought counsel fees as permitted under the contract.

In his answer to the complaint, defendant admitted he did not pay for the work. He alleged claims of negligence and breach of contract regarding plaintiff's work in a counterclaim, which caused "extensive and significant damage" to the building as well as to a commercial tenant's equipment and personal property.

Following extensive discovery, the parties attended court-ordered arbitration via Zoom on September 30, 2020. In a lengthy oral decision read to counsel that day, the arbitrator ruled in favor of plaintiff, awarding $34,150, plus

[1] We need not consider the discovery issues in light of our determination regarding the arbitration award.

counsel fees and costs to be determined by the court and dismissing defendant's counterclaim. The arbitrator advised counsel the decision would be uploaded into eCourts.[2] On October 1, 2020, the arbitration award was entered into eCourts.

Immediately after the arbitration hearing, defense counsel emailed plaintiff's attorneys expressing his dissatisfaction with the arbitration award, stating it "only insured a de novo."

On November 3, 2020, plaintiff moved to confirm the arbitration award. Defendant opposed the motion, stating he never received an email advising the award was uploaded into eCourts nor did he receive a copy of the award. One week later, on November 10, 2020, defendant filed his notice of demand for trial de novo.

On February 1, 2021, the trial court granted plaintiff's motion to confirm the arbitration award. In a comprehensive written decision, the court found defendant failed to comply with Rule 4:21A-6(b), which requires a party to file a notice of rejection of the arbitration award and demand for a trial de novo within thirty days after the filing of the award.

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[2] eCourts is a web-based application that allows attorneys to electronically file documents with the courts and provides attorneys and the public with access to case information. See https://www.njcourts.gov/attorneys/ecourts.html.

The court noted the arbitration award was uploaded into eCourts on October 1, 2020. The fact that defendant did not receive an email stating the award was posted on eCourts did not relieve him from filing a demand for a trial de novo within the thirty-day period. In addition, the court found defendant did not present the "extraordinary circumstances" necessary to permit the filing of a trial de novo outside the prescribed thirty-day period.

The court directed plaintiff to submit an affidavit of services and appropriate documentation to support its request for counsel fees. Defendant was permitted to respond.

On July 28, 2021, the court granted plaintiff's motion for attorney's fees and ordered defendant to pay plaintiff $8,001 in counsel fees and costs.[3] In its accompanying opinion, the court found the submitted certification of services complied with Rule 1:4-4(b) as it contained the required language. After a reasoned analysis, the court found the amount of billed hours and hourly rate for attorney services was reasonable.

On appeal, defendant contends the trial court erred in confirming the arbitration award because counsel was not provided with a copy of the award as

[3] Plaintiff only sought counsel fees incurred by the attorney retained to prosecute the contract action.

required under Rule 4:21A-5 and there was good cause to extend the time to file a demand for trial de novo. Defendant also asserts the court erred in granting plaintiff counsel fees. Defendant also appealed from the discovery orders which we have declined to consider as they are moot in light of our determination regarding the arbitration award.

Our review of the order confirming the arbitration award is de novo, as it involves the interpretation of Rules 4:21A-5 and 4:21A-6. See Meehan v. Antonellis, 226 N.J. 216, 230 (2016) (appellate courts interpret statutes and court rules de novo).

Defendant contends he was not properly notified about the arbitration award under Rule 4:21A-5 because counsel did not receive an emailed notice when the award was posted to eCourts. Moreover, he states plaintiff's counsel should have alerted him that an arbitration award had been uploaded to eCourts.

Rule 4:21A-5 states:

> No later than ten days after the completion of the arbitration hearing, the arbitrator shall file the written award with the civil division manager. The court shall provide a copy thereof to the parties who appear at the hearing. The award shall include a notice of the right to request a trial de novo and the consequences of such a request as provided by Rule 4:21A-6.

The Rule was implemented prior to the institution of eCourts. However, in an order and Notice to the Bar, the Supreme Court stated that "documents filed through an approved electronic filing system are deemed filed upon receipt into the system." See Order: Filing of Documents Electronically Using a Judiciary-Authorized Electronic Filing System—Supreme Court Relaxation of *Rule* 1:5-6 (Nov. 15, 2017).

Rule 4:21A-6(b)(1) requires the trial court to dismiss an action unless "within 30 days after filing of the arbitration award, a party thereto files with the civil division manager and serves on all other parties a notice of rejection of the award and demand for a trial de novo and pays a trial de novo fee . . . ." Following a timely trial de novo, the action is returned to the trial calendar. R. 4:21A-6(c).

Our Supreme Court has held that a party must show extraordinary circumstances to extend the thirty-day time limit in which to file a demand for trial de novo. Hartsfield v. Fantini, 149 N.J. 611, 617-18 (1997). The Court emphasized that "extraordinary circumstances" should be strictly construed, determined on a fact-sensitive, case-by-case basis, and does not include excusable neglect nor does it encompass an attorney's or their staff's negligence or carelessness. Id. at 618-19. Otherwise, a liberal construction permitting a

party to set aside an arbitration award for a mere error would render Rule 4:21A-6 meaningless and thwart the purpose and effectiveness of arbitration. Id. at 617 (citing Behm v. Ferreira, 286 N.J. Super. 566, 574 (App. Div. 1996)).

The Hartsfield Court held that "extraordinary circumstances" does not arise from an attorney's "mere carelessness" or "lack of proper diligence." Id. at 618-19) (holding that an attorney's failure to supervise staff or maintain their workload does not satisfy the "extraordinary circumstances" requirement) (citing In re T., 95 N.J. Super. 228, 235 (App. Div. 1967)). The circumstances permitting a relaxation of Rule 4:21A-6 must be "exceptional and compelling." Id. at 619 (quoting Baumann v. Marinaro, 95 N.J. 380, 393 (1984)); see also Martinelli v. Farm-Rite, Inc., 345 N.J. Super. 306, 313 (App. Div. 2001) (finding a computer error is not an extraordinary circumstance to permit a late filing of a trial de novo demand).

The court did not err in confirming the arbitration award. The arbitrator informed counsel of her decision immediately following the hearing. She advised the award would be uploaded to eCourts. The award was filed when it was uploaded to eCourts the following day.

Moreover, defendant's counsel immediately reacted to the arbitrator's decision when he emailed plaintiff's attorney after the arbitration hearing,

expressing his dissatisfaction with the award and his intention to file a trial de novo demand. Defendant cannot now assert he was not bound by the thirty-day time limitation under Rule 4:21A-6 in which to file a trial de novo demand because he did not receive an email that the order was in the eCourts system.

The time to file and serve a notice of rejection of the award and a demand for a trial de novo expired on November 2, 2020. Defendant's argument that he did not receive an email advising him that the arbitration award was posted on eCourts does not qualify as an "extraordinary circumstance" to relax the thirty-day filing period and permit the untimely November 10 de novo filing.

We turn to defendant's contentions regarding the grant of counsel fees to plaintiff. Defendant asserts the trial court erred in awarding fees because plaintiff's counsel failed to submit an affidavit in accordance with Rule 4:42-9(b). We are not persuaded.

"[A] reviewing court will disturb a trial court's award of counsel fees 'only on the rarest of occasions, and then only because of a clear abuse of discretion.'" Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 386 (2009) (quoting Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 444 (2001)); see also Strahan v. Strahan, 402 N.J. Super. 298, 317 (App. Div. 2008) (citing Rendine v. Pantzer, 141 N.J. 292, 317 (1995)).

Rule 4:42-9(b) requires a party applying for fees to support its application with an affidavit of services. In granting plaintiff's motion for fees, the trial court found counsel had submitted a "[c]ertification of [s]ervices" because his filing lacked a notary signature. Under Rule 1:4-4(b), an individual may submit, in lieu of an affidavit, a dated and signed certification which states "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment." Counsel's "affidavit of services" contained this language. The document also included the information required under Rule 4:42-9.

Defendant also contends that the attorney's fee provision in the parties' contract does not apply because defendant is not a "homeowner." The provision states:

> If [plaintiff] retains the services of any attorney to enforce collection of any amounts due to [plaintiff], the homeowner agrees to pay [plaintiff] reasonable costs and attorney fees. In addition, if the homeowner brings lawsuit and [plaintiff] prevails, the homeowner agrees to pay [plaintiff] reasonable costs and attorney fees.

When interpreting a contractual attorney's fees provision, the fundamental principles of contract law dictate that courts should enforce agreements based on the parties' intent, the contract's express terms, as well as the surrounding circumstances and purpose of the contract. Cypress Point Condo. Ass'n v. Adria

Towers, L.L.C., 226 N.J. 403, 415 (2016) (quoting Manahawkin Convalescent v. O'Neill, 217 N.J. 99, 118 (2014)).

The plain contract language dictates that plaintiff was entitled to attorney's fees when it was required to institute an action to collect monies owed for performance of services under a contract. That the contract refers to a "homeowner" does not override the intent of the parties to execute a contract that permitted plaintiff to reasonable counsel fees if it prevailed in an action to collect monies for services performed under the contract. The fact that defendant was the owner of a commercial building did not change the circumstances and purpose of the contract.

Defendant also asserts the order awarding fees should be vacated because the court did not allow for oral argument, despite defendant's request. We note there was a lengthy discussion on March 4, 2021 regarding the affidavit of services and how the court wished the parties to proceed on the counsel fee issue. The record does not indicate there was further oral argument after the final submissions regarding counsel fees.

Although we acknowledge the court should have entertained additional oral argument, see Rule 1:6-2(d), we are also satisfied the failure to do so does not require a reversal of its order. In addressing the counsel fee application, the

trial court was thorough in its analysis of the RPC 1.5 factors, including the reasonableness of counsel's hourly rate and amount of time spent on the matter. We discern no abuse of discretion in the counsel fee award.

Affirmed.