SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1201-21

ROBERT J. TRIFFIN,

Plaintiff-Appellant,

v.

THOMAS G. HUFFMAN,

Defendant-Respondent,

and

A. WOODS ROOFING, and
ANTHONY D. MOSLEY,
(IND & T/A) A. WOODS
ROOFING,

Defendants.

———————————————

Argued January 31, 2023 – Decided June 8, 2023

Before Judges Gummer and Messano.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. DC-004326-20.

Robert J. Triffin, appellant, argued the cause pro se.

Thomas G. Huffman, respondent, argued the cause pro se.

PER CURIAM

Plaintiff Robert J. Triffin appeals from a November 8, 2021 order in which Judge Bruce Buechler, after conducting a bench trial, dismissed with prejudice the complaint as to defendant Thomas G. Huffman. We affirm.

I.

We discern the facts from the record of the November 8, 2021 trial. Both parties appeared pro se and testified. Plaintiff also called as a witness Frank Di Giuseppe, owner and president of Frank's Check Cashing, Inc. (FCCI). FCCI is a "money service business" that cashes "checks, Western Union, debit cards, things like that."

In July 2019, Huffman hired A. Woods Roofing (Woods) to repair a fence that had been damaged by a fallen tree limb. On July 7, 2019, Huffman gave someone from Woods a check numbered 1527 from his Bank of America account in the amount of $425 as a deposit for the work to be performed. That afternoon, someone deposited the check electronically via a mobile check-deposit system. Huffman's bank, Bank of America, cleared the check and paid $425 from Huffman's account on July 8, 2019. The copy of the back of the check provided by Bank of America to Huffman shows a stamp with the

following information: "TD Mobile Deposit 7/7/2019 1:47:54 PM." "Electronic Endorsements" on the copy of the check provided by Bank of America to Huffman indicated the check had been electronically endorsed by TD Bank and Bank of America and that Bank of America had paid the check on July 8, 2019. Huffman testified his subsequent Bank of America statement showed $425 was paid on July 8, 2019.

Anthony Mosley, who was affiliated with Woods, took the same check to FCCI on July 25, 2019. FCCI cashed the check, charged "the going rate which was 2.21 percent," and gave Mosley $415.61. Within a week, FCCI's bank, Berkshire Bank, dishonored the check, charged FCCI a $30 processing fee and returned the check "as a do not . . . redeposit." Berkshire Bank advised FCCI in writing the check was a "DUPLICATE" and that the "RETURN REASON" was "DUPLICATE PRESENTMENT." "Do Not Redeposit" was stamped on the front of the copy of the check returned to FCCI.

"Duplicate presentment" means the check already had been paid. According to Di Giuseppe, a duplicate presentment typically occurs when someone first deposits a check online or via electronic check cashing by, for example, taking a photograph of a check to deposit it electronically and then brings the check to FCCI to be cashed. Di Giuseppe conceded that when the

check was returned as a duplicate, he knew or assumed Mosley had first deposited the check "via phone or electronically."

After the check had been returned, Di Giuseppe contacted Mosley. Mosley did not deny he had presented a duplicate check and agreed to pay back FCCI but failed to do so. FCCI never contacted Huffman.

On February 7, 2020, plaintiff and FCCI entered into an "assignment agreement" in which plaintiff purchased FCCI's rights in connection with certain specified checks, including Huffman's check to Woods. In the agreement, FCCI "warrant[ed] that at the time it cashed the referenced checks[,] it had no notice that the referenced checks had been dishonored" and "had no notice of any defense . . . of any party to the payment of the referenced checks."

According to plaintiff, at the time Woods presented the check to FCCI, plaintiff had no notice of any "defects" in connection with the check. Plaintiff usually examines a check before purchasing the rights to it. He had no recollection of examining the copy of Huffman's check provided by FCCI before he entered into the assignment agreement. The copy of the check FCCI provided to plaintiff contained language stating the check was a "DUPLICATE" and the "RETURN REASON" was "DUPLICATE PRESENTMENT." The phrase "Do Not Redeposit" was stamped on the front of the check in big letters.

Plaintiff filed a complaint in which he asserted he had purchased all of FCCI's rights in what he described as "a dishonored check"; FCCI had cashed the check for Mosley and Woods when it had no knowledge of any defenses by any party regarding the check; FCCI thereby became a holder in due course of the check pursuant to N.J.S.A. 12A:3-302; and because of the assignment, plaintiff had "the legal status of a holder in due course." Plaintiff also claimed Huffman had an obligation to pay the amount of the check to anyone who had given "consideration" or "value" for the check if the check were dishonored, citing N.J.S.A. 12A:3-414 and -415, and that Huffman had been unjustly enriched. Plaintiff sought $1,008.89 in damages, which equaled the amount of the check, various fees, and interest.[1] Huffman filed an answer in which he asserted he had paid Woods and Woods had first electronically cashed his check and later cashed it a second time with FCCI.

At the November 8, 2021 trial, plaintiff argued that pursuant to N.J.S.A. 12A:3-308(b), Huffman had the burden of establishing a defense to plaintiff's purported right to payment by proving the check had been paid by Bank of

[1] In addition to Huffman, plaintiff named Mosley and Woods as defendants. At the beginning of the trial, plaintiff conceded he had not served Woods or Mosley with the complaint. Accordingly, the judge dismissed the complaint as to those parties with prejudice, as memorialized in the November 8, 2021 order. Plaintiff does not appeal from that aspect of the order.

America before FCCI presented it for payment. Plaintiff objected to the admission into evidence of the copies of the front and back of the check Huffman had received from his bank. Judge Buechler overruled that objection. At plaintiff's request, the judge admitted into evidence plaintiff's copy of the check he had received from FCCI.

After considering the evidence and closing arguments the parties had presented, Judge Buechler found Bank of America had paid Huffman's check to Woods on July 8, 2019, and that when Mosley presented the check to FCCI on July 25, 2019, "the check had already been cashed and paid in full." Citing N.J.R.E. 402, the judge rejected plaintiff's argument that 12 U.S.C. § 5003(b) prevented defendant from admitting into evidence copies of the check he had received from Bank of America because "12 U.S.C. § 5003(b) does not deal with those issues of New Jersey evidence law." Citing Triffin v. SHS Group, LLC, 466 N.J. Super. 460, 467 (App. Div. 2020), certif. denied., 252 N.J. 191 (2022), the judge found that any "additional payment obligation by Mr. Huffman" was "discharged" because "the check had in fact been paid" before Mosley presented it to FCCI. The judge also held plaintiff was not a holder in due course because when he acquired the check from FCCI, plaintiff "was clearly on notice that it

was a dishonored check."[2] On November 8, 2021, the judge issued an order dismissing the complaint with prejudice.

On appeal, plaintiff argues defendant did not establish through admissible evidence the check had been paid before Mosley submitted it to FCCI and that Huffman's copies of the check were inadmissible pursuant to 12 U.S.C. 5003(b)(1)-(2) and the Supremacy Clause of the United States Constitution. We disagree and, accordingly, affirm.

II.

We apply a deferential standard when reviewing factual findings made by a trial judge after a bench trial. Balducci v. Cige, 240 N.J. 574, 594-95 (2020). We "give deference to the trial court that heard the witnesses, sifted the competing evidence, and made reasoned conclusions." Griepenburg v. Township of Ocean, 220 N.J. 239, 254 (2015). We will accept a trial court's findings of fact unless the "findings are 'manifestly unsupported' by the 'reasonably credible evidence' in the record." Balducci, 240 N.J. at 595 (quoting Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011)). We review

[2] Plaintiff did not submit any briefing regarding the judge's determination that he was not a holder in due course. Accordingly, he waived that issue on appeal. See N.J. Dep't of Env't Prot. v. Alloway Twp., 438 N.J. Super. 501, 505 n.2 (App. Div. 2015) (finding an issue not briefed is deemed waived on appeal).

de novo a trial court's legal conclusions. T.L. v. Goldberg, 238 N.J. 218, 228 (2019).

Like his claim in SHS Group, 466 N.J. Super. at 467, plaintiff's claim in this case is based on N.J.S.A. 12A:3-414(b), which states: "[i]f an unaccepted draft is dishonored, the drawer is obliged to pay the draft according to its terms at the time it was issued . . . . The obligation is owed to a person entitled to enforce the draft . . . ." As he argued in SHS Group, 466 N.J. Super. at 467, plaintiff contends he is a "person entitled to enforce the draft" under N.J.S.A. 12A:3-414(b) because he is the assignee of the dishonored check at issue and, thus, is entitled to payment under N.J.S.A. 12A:3-308(b), "unless the defendant proves a defense or claim in recoupment." We held in SHS Group, 466 N.J. Super. at 467, "[p]revious payment of a draft is a defense to enforcement" of a check. Huffman asserts as a defense that he paid Woods $425 after someone electronically deposited his check on July 7, 2019, via a mobile check-deposit system and his bank, Bank of America, cleared the check and paid $425 from his account on July 8, 2019. The judge concluded Huffman had proven that defense at trial.

The judge based that finding on evidence similar to the evidence presented in SHS Group, which we held was sufficient to establish a previous-payment

defense. Id. at 469. Like Huffman, SHS Group asserted a previous-payment defense, specifically that the payee, like Woods, had electronically deposited a check, which SHS Group's bank paid "before the physical copy was presented for payment" to a check-cashing business. Id. at 463. The trial judge in SHS Group, like Judge Buechler, found the defendant was not liable to plaintiff because it had established a previous-payment defense. Ibid.

> As the trial judge found, a comparison of the copies of SHS check number 1483 provided by each party conclusively demonstrate that defendant successfully proved its previously paid defense. Defendant's copy shows the check was deposited into [the payee's] Wells Fargo account on December 2, 2015. It also shows that on the same day, the check was electronically [e]ndorsed twice, first by Wells Fargo as the bank of first deposit, then by Bank of America as the payor bank. Defendant's Bank of America account statement for the relevant period indicates $1,431 was deducted in January . . . .
>
> Plaintiff's copy, on the other hand, is marked duplicate, lists "DUPLICATE PRESENTMENT" as the reason for return, and is indorsed by [the payee]. It is also marked with [the check-cashing business's] dated stamp indicating the check was received on December 2, 2015.
>
> The presence of [the payee's] indorsement, as well as [the check-cashing business's] dated stamp on plaintiff's copy, prove the check was electronically deposited before it was cashed at the check-cashing business. [The payee] could not have indorsed, stamped, and relinquished the check, before she

> electronically deposited an unindorsed and unstamped version. The absence of the additional markings indicate the check must have been electronically deposited first. Further, the markings on plaintiff's copy identifying it as duplicate, compared to defendant's copy referencing the electronic indorsements and transfers by both banks, and defendant's bank statement showing $1,431 deducted from his account, clearly demonstrate the check was processed and paid as result of the electronic deposit.
>
> [Id. at 469.]

Here, a comparison of the copies of the check at issue provided by each party demonstrates, as Judge Buechler found, the check had been electronically deposited on July 7, 2019, paid on July 8, 2019, and presented to FCCI by Mosley on July 25, 2019. Thus, the judge correctly held Huffman was not liable to plaintiff because he had proven his previous-payment defense.

Plaintiff faults the judge for admitting into evidence the copies of the check submitted by defendant and for basing his decision, in part, on those copies. "We defer to a trial court's evidentiary ruling absent an abuse of discretion." State v. Garcia, 245 N.J. 412, 430 (2021). We do so because "the decision to admit or exclude evidence is one firmly entrusted to the trial court's discretion." State v. Prall, 231 N.J. 567, 580 (2018) (quoting Est. of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 383-84 (2010)). "Under that deferential standard, we review a trial court's evidentiary ruling only for a 'clear

error in judgment.'" State v. Medina, 242 N.J. 397, 412 (2020) (quoting State v. Scott, 229 N.J. 469, 479 (2017)). The trial court's ruling should not be disturbed unless it "was so wide of the mark that a manifest denial of justice resulted." State v. Brown, 170 N.J. 138, 147 (2001) (quoting State v. Marrero, 148 N.J. 469, 484 (1997)).

We perceive no abuse of discretion in Judge Buechler's decision to admit defendant's copies of the check into evidence and no error in his consideration of those copies. Triffin contends the trial judge violated his oath under N.J.S.A. 41:2A-6 to support the United States Constitution and the Supremacy Clause of the Constitution by admitting into evidence defendant's copies of the check. He bases that argument on 12 U.S.C. § 5003(b)(1) to (2), which addresses when a "substitute check shall be the legal equivalent of the original check" such that it can be used in "the same way you would use the original check." 12 U.S.C. § 5003 was enacted as part of the Check Clearing for the 21st Century Act, Pub. L. No. 108-100, 117 Stat. 1177 (2003). The purposes of that Act were to "facilitate check truncation by authorizing substitute checks," "foster innovation in the check collection system without mandating receipt of checks in electronic form," and "improve the overall efficiency of the Nation's payments system." 12 U.S.C. § 5001(b)(1) to (3). As Judge Buechler held, 12 U.S.C. § 5003

addresses "the negotiation of checks within the federal banking system," not the admission of evidence at trial.

In asking the judge to admit his copies of the check into evidence, Huffman was not seeking to negotiate his copies as the original check, engage in check truncation or in our "Nation's payments system," or otherwise use the copies as a "substitute check" for "the original check." He was submitting them as evidence of his previous-payment defense. Pursuant to N.J.R.E. 401, evidence is relevant if it has "a tendency in reason to prove or disprove any fact of consequence to the determination of the action." See also Rodriguez v. Wal-Mart Stores, Inc., 237 N.J. 36, 58 (2019) (evidence has probative value if it tends "to establish the proposition that it is offered to prove"). Based on that standard, the judge did not abuse his discretion in admitting and considering Huffman's copies of the check as evidence of his previous-payment defense.

Moreover, even without Huffman's copies of the check, the judge had sufficient evidence to conclude Huffman had proven his defense. He had plaintiff's copies of the check, which clearly indicate the check plaintiff had purchased from FCCI was a "DUPLICATE" that had been returned because it was a "DUPLICATE PRESENTMENT" and was not to be redeposited. The judge had Huffman's testimony, to which plaintiff did not object, about his

transaction with Woods and confirmation of the $425 payment from his Bank of America account on his account statement. And he had the testimony of Di Giuseppe, FCCI's owner and president, who admitted that when the check was returned as a duplicate, he knew or assumed Mosley had first deposited the check "via phone or electronically."

Affirmed.