SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1402-21

SHANNON LAZROVITCH,

Plaintiff-Respondent,

v.

LRM REALTY ASSOCIATES, LLC, LRM CONCRETE ASSOCIATES, LLC, and CARL J. LIZZA,

Defendants-Respondents.

BRANDON ROSE,

Appellant.

Argued January 31, 2023 – Decided June 1, 2023

Before Judges Messano and Gummer.

On appeal from the Superior Court of New Jersey, Chancery Division, Morris County, Docket No. C-000081-20.

Martin R. Kafafian argued the cause for appellant (Beattie Padovano, LLC, attorneys; Martin R. Kafafian,

of counsel and on the briefs; Kimberley A. Brunner, on the briefs).

Donald E. Souders, Jr., argued the cause for respondent Shannon Lazrovitch (Florio Perrucci Steinhardt Cappelli Tipton & Taylor, LLC, attorneys; Donald E. Souders, Jr., of counsel and on the brief; Ruby Khallouf, on the brief).

PER CURIAM

Brandon Rose appeals a December 29, 2021 amended order denying his motion to intervene and granting plaintiff's motion for final judgment by default. Because no actual controversy existed between the parties, the trial court improperly exercised its jurisdiction in granting plaintiff's motion. Accordingly, we vacate the order and remand for proceedings consistent with this opinion.

I.

Defendants LRM Realty Associates, LLC and LRM Concrete Associates, LLC (collectively the LRM companies) are New York limited liability companies with their common principal place of business located in New Jersey. Proposed intervenor Brandon Rose contends he and defendant Carl J. Lizza, who is plaintiff's former husband, are members of the LRM companies, with each holding a twenty-percent membership interest; Frank Lizza is the managing member of the LRM companies, and John Lizza is a member, with each holding a twenty-percent membership interest; and Douglas Rose and William McEvoy

are members, with each holding a ten-percent membership interest. According to Brandon, he is the cousin of Carl, Frank, and John, who are brothers (collectively the Lizza brothers).[1]

On August 7, 2019, Brandon, together with Douglas Rose and William McEvoy, individually and derivatively on behalf of the LRM companies as "nominal defendants," filed a lawsuit in the Supreme Court of New York, naming as defendants the Lizza brothers and others (the New York litigation). Alleging breach of fiduciary duty, unjust enrichment, waste, and other causes of action, the plaintiffs in that lawsuit sought to enjoin an $11,000,000 sale of real estate owned by the LRM companies, to have declared void and unenforceable certain guaranty and indemnity agreements allegedly executed by the Lizza brothers purportedly on behalf of LRM companies, and to dissolve the LRM companies. According to the plaintiffs, the Lizza brothers intended to use the net proceeds of the sale to pay the debts of Intercounty Paving Associates, LLC (IPA), another company they operated and owned.

On August 12, 2019, the sale took place and the $7,789,030.68 in net proceeds were disbursed to a bank pursuant to the guaranty agreements

[1] We use first names for ease of reading given the shared last names.

purportedly executed on behalf of the LRM companies in partial satisfaction of the debt IPA owed to the bank.

Plaintiff Shannon Lazrovitch and Carl began living together in January 2012. In January 2015, they executed an antenuptial agreement. At that time, they resided in property located at 7 Beacon Hill Drive, Chester, New Jersey (the Chester property). In the antenuptial agreement, plaintiff acknowledged Carl owned the Chester property, disclaimed any interest in that property by reason of her anticipated marriage to Carl, and agreed to vacate the property on termination of the marriage. Carl agreed to pay plaintiff alimony until her death, remarriage, or cohabitation with another individual. They were married on January 31, 2015.

In 2020, plaintiff filed a complaint for divorce. On May 26, 2020, plaintiff and Carl entered into a marital settlement agreement (MSA). The MSA contained a mutual alimony waiver and provided that in consideration of the alimony waiver and the rescission of the antenuptial agreement, Carl had conveyed the Chester property to plaintiff by way of an April 14, 2020 deed, giving her sole ownership and possession of the property. According to the deed, the transfer was made for one dollar. Plaintiff agreed to pay the $440,000

mortgage encumbering the property. Plaintiff and Carl were divorced on June 30, 2020, by a final judgment of divorce, which incorporated the MSA.

In an August 16, 2020 letter, counsel for the plaintiffs in the New York litigation advised counsel for the LRM companies that because the LRM companies had paid more than their proportionate share of the IPA debt, the LRM companies were entitled under New York law to a contribution from Carl, who was a co-guarantor of the IPA debt. They claimed Carl's conveyance of the Chester property was fraudulent and demanded the LRM companies commence an action against plaintiff and Carl to vacate it. They threatened that if the LRM companies did not file that lawsuit by September 1, 2020, the plaintiffs in the New York litigation would "pursue all appropriate remedies available to them."

On September 1, 2020, plaintiff filed a verified complaint, seeking a judgment pursuant to the Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62, declaring Carl had "validly and properly" conveyed the Chester property to her pursuant to the MSA and judgment of divorce. She named as defendants Carl, the LRM companies, and fictitious corporate and individual defendants who "participated in the below events and occurrences and are liable for same." She claimed the conveyance of the Chester property "was a bargained-for exchange of consideration" and that Carl had transferred the Chester property to her in

exchange for her lifetime waiver of alimony. She referenced the pending New York litigation and the New York litigation plaintiffs' demand that the LRM companies file a lawsuit to set aside the Chester property transfer as a fraudulent conveyance. She asserted "[t]he LRM [c]ompanies' threat to commence litigation . . . seeking to set aside and otherwise vacate the allegedly fraudulent conveyance of the Chester [p]roperty . . . interferes with [plaintiff's] legal ownership, legal right and quiet enjoyment of the Chester [p]roperty." In addition to a declaration that the conveyance of the Chester property was not invalid, improper, or fraudulent, plaintiff sought a declaration that "[t]he LRM [c]ompanies and their individual Members are precluded from bringing an action to set aside, vacate or otherwise challenge the conveyance of the Chester [p]roperty . . . ."

On January 19, 2021, plaintiff filed requests to enter default pursuant to Rule 4:43-1 against Carl and the LRM companies. In support of those requests, plaintiff's counsel certified a summons and verified complaint had been served on Carl on September 15, 2020, and on the LRM companies at multiple locations and on multiple days in September and October 2020. He also certified that none of them had filed a responsive pleading.

Ten days later, Brandon moved to intervene and for leave to file a verified complaint in intervention, citing Rules 4:33-1 and -2. In his proposed complaint, Brandon sought to bring the action on behalf of the LRM companies as "nominal defendants" against Carl and the LRM companies. The purpose of the action was to set aside as fraudulent Carl's transfer of the Chester property to plaintiff, given that the current management of the LRM companies had failed to enforce the companies' rights against Carl or to challenge the transfer. Plaintiff opposed Brandon's motion.

On March 26, 2021, the court issued a notice that plaintiff's case would be dismissed for lack of prosecution on April 25, 2021, unless certain action was taken. On April 23, 2021, plaintiff moved for default judgment pursuant to Rule 4:43-2(b) against Carl and the LRM companies. Brandon opposed that motion.

On October 4, 2021, the trial court issued an order with an attached statement of reasons denying Brandon's motion to intervene and granting plaintiff's motion for default judgment. The court found Brandon had not met any of the four elements required for intervention as of right pursuant to Rule 4:33-1 because: (1) he had failed to prove he had an interest in the Chester property; (2) "resolution of the litigation would not . . . impede his right to protect his 20% interest in the [LRM] companies"; (3) he had no interest in

plaintiff's lawsuit; and (4) his motion was untimely given that the LRM companies had been served with the complaint more than three months previously. The court also found Brandon had not met the threshold for permissive intervention pursuant to Rule 4:33-2 due to the untimeliness of his motion. The court found plaintiff had met all of the requirements for default judgment and granted her motion.

In the order, the court held Carl had "validly and properly" conveyed the Chester property to plaintiff; the conveyance was not fraudulent; and plaintiff was the sole owner of the property. The court also "precluded" Carl, the LRM companies, "and their individual members . . . from bringing any further action to set aside, vacate or otherwise challenge the conveyance of the Chester property from Carl . . . to [plaintiff] as a fraudulent conveyance of real property." During argument before us, plaintiff's counsel conceded the court had erred by including in the order the LRM company's "individual members," whom plaintiff had not named as defendants and were not parties to the case.

On December 29, 2021, the court amended the order to give it a new effective date because "[d]ue to technical issues," the October 4, 2021 order had "failed to upload timely." This appeal followed.

II.

Because no justiciable controversy existed between the parties, the trial court did not have jurisdiction over plaintiff's declaratory-judgment action and plaintiff was not entitled to final judgment by default.

> A justiciable controversy exists when "one party definitively asserts legal rights and such rights are positively denied by the other party." Registrar & Transfer Co. v. Director, Division of Taxation, 157 N.J. Super. 532, 539 (Ch. Div. 1978), rev'd on other grounds, 166 N.J. Super. 75, 76 (App. Div. 1979). It is a controversy "in which a claim of right is asserted against one who has an interest in contesting it." Black's Law Dictionary 777 (5th ed. 1979). It is a real controversy, as opposed to one that is hypothetical or abstract.
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> [O'Shea v. N.J. Schs. Constr. Corp., 388 N.J. Super. 312, 317 (App. Div. 2006).]

See also Bisbing v. Bisbing, 468 N.J. Super. 112, 119 (App. Div. 2021) ("Our courts will adjudicate those matters where the 'litigant's concern with the subject matter evidenced a sufficient stake and real adverseness.'" (quoting Crescent Park Tenants Ass'n v. Realty Equities Corp., 58 N.J. 98, 107 (1971))).

By authorizing courts to make declarations about a party's rights, the Declaratory Judgment Act "provides all individuals . . . with a forum to present bona fide legal issues to the court for resolution." In re N.J. Firemen's Ass'n

Oblig., 230 N.J. 258, 275 (2017). But a court can exercise that authority only in cases in which an actual controversy exists between the parties.

> Although any such declaration by the court carries "the force and effect of a final judgment," N.J.S.A. 2A:16-59, the Judiciary is forbidden from "declar[ing the] rights or status of parties upon a state of facts which are future, contingent and uncertain." Lucky Calendar Co. v. Cohen, 20 N.J. 451, 454 (1956) (quoting Tanner v. Boynton Lumber Co., 98 N.J. Eq. 85, 89 (Ch. 1925)). The prohibition of advisory opinions prevents courts, "through avoidance of premature adjudication, from entangling themselves in abstract disagreements." Abbott Labs. v. Gardner, 387 U.S. 136, 148 (1967). It follows, then, that a declaratory judgment claim is ripe for adjudication only when there is an actual controversy, meaning that the facts present "concrete contested issues conclusively affecting" the parties' adverse interests. N.J. Turnpike Auth. v. Parsons, 3 N.J. 235, 241 (1949) (citation omitted).
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> [Ibid.]

See also Platkin v. Smith & Wesson Sales Co., 474 N.J. Super. 476, 496 (App. Div. 2023). Without an actual controversy, a court does not have jurisdiction to decide a declaratory-judgment action. See Parsons, 3 N.J. at 240 (finding "[t]he remedy [of declaratory judgment] . . . is circumscribed by the salutary qualification that the jurisdiction of the courts may not be invoked in the absence of an actual controversy"). An actual controversy means "a controversy between

the plaintiff and a defendant . . . having an interest in opposing his claim." Ibid. (quoting Borchard, Declaratory Judgments at 29 (2d ed. 1941)).

In this case, plaintiff sought a declaratory judgment that Carl's transfer of the Chester property was not invalid, improper, or fraudulent. Plaintiff did not sue "adversary parties in interest" on that issue. Bisbing, 468 N.J. Super. at 119 (quoting Parsons, 3 N.J. at 240). She sued Carl, who was the person who had conveyed the Chester property to her. Carl's interest in this case was not adverse to plaintiff's interest; it was aligned. And she sued the LRM companies, in which Carl and his brothers held a majority and controlling membership interest. In the complaint, plaintiff asserted the LRM companies' "threat to commence litigation" to set aside the conveyance of the Chester property interfered with her ownership of the property. In fact, LRM companies had not threatened to commence litigation. To the contrary, in response to their minority members' counsel's letter demanding the LRM companies take action, the LRM companies did nothing.

Not surprisingly, none of the defendants filed an answer to or in any way contested plaintiff's complaint. None of them were adverse to plaintiff, and none of them had an interest in contesting the case. Because none of the defendants were adverse to plaintiff, no judicial controversy existed and the trial court did

not have jurisdiction to decide the case. With no jurisdiction, the trial court erred in granting plaintiff's motion for final judgment by default. Instead of entering judgment in favor of plaintiff, the court should have dismissed the case. Our conclusion that the court lacked jurisdiction because no justiciable controversy existed renders moot Brandon's motion to intervene. We vacate the order, remand the case, and direct the trial court to enter an order dismissing the case without prejudice. In doing so, we take no position on the substantive merits of plaintiff's case or Brandon's motion to intervene.

Vacated and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.