SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1698-21

ALAN SHIEH,

Plaintiff-Appellant,

v.

SUNNY KIM and PRINCE PLAZA INC.,

Defendants-Respondents.

Submitted November 29, 2022 – Decided January 3, 2023

Before Judges Gummer and Paganelli.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-3686-21.

Alan Shieh, appellant pro se.

Gordon Rees Scully Mansukhani LLP, attorneys for respondents (Ronald A. Giller, of counsel; Sarah L. Tomkin and Jolene Sproviero, on the brief).

PER CURIAM

Plaintiff, Alan Shieh, appeals an order denying his motion for reconsideration and vacation of an October 4, 2021 order dismissing the complaint with prejudice under Rule 4:6-2(e). We affirm.

The parties have been involved in ongoing disputes concerning Shieh's condominium unit. In 2016, the Le Cross House Condominium Association Inc. (Association) filed a lawsuit against Shieh seeking to compel Shieh to remove a washer and dryer from his condominium unit. Shieh filed an answer and counterclaims alleging that the Association had violated its by-laws by not: (1) updating the budget yearly; (2) holding elections; (3) releasing audit reports; (4) adequately calculating the tenant contributions for assessments; (5) using laundry room and antenna roof income for common maintenance; and (6) holding meetings and keeping minutes of the meetings.

The 2016 matter concluded in a bench trial. The trial judge determined that: (1) a 2016 amendment to the by-laws, which reflected a resolution adopted on September 6, 2011, prohibiting washers and dryers, was properly adopted; (2) the Association had not held annual meetings; (3) the laundry room and antenna roof income had been used for common maintenance; (4) there was no evidence to support ordering an accounting of the Association's finances because the accounting books were available to owners on request

and because the Association updated its budget yearly, performed a complete accounting of its book and records, and submitted audit reports to owners; and (5) there was no basis in law or fact to support Shieh's contention that the Association's board of trustees had been illegally created because the Association gave each owner seven votes instead of two as required by the by-laws.

The trial judge entered a judgment ordering: (1) Shieh to remove the washer and dryer and pay the Association's attorney's fees and (2) the Association to "hold an annual meeting and elections for their board of trustees in accordance with their by-laws."

In 2021, Shieh filed a complaint against Sunny Kim, the Association's president at the time of the first lawsuit, and Prince Plaza, Inc. another unit owner. Shieh alleged: (1) Prince did not have ownership rights in the condominiums and could note vote (count A); (2) the board had been illegally created because each owner possessed seven votes instead of two (count B1); (3) no elections had been held for the board from 2009 until 2017 (count B2); (4) the rent on the lease agreement between the Association and the on-site laundry facility was not accurately reflected in the Association's accounting records (count C); (5) the 2016 amendment to the by-laws had been improperly

adopted and Kim's testimony in the prior action regarding the same was false (count D); (6) the Association was entitled to the antenna roof incomes (count E1); (7) owners had not received audit reports from 2016 to 2021 (count E2); (8) owners had not received board meeting minutes from 2016 to 2021 (count E3); (9) owners had not received annual budgets from 2013-2021 (count E4); (10) Shieh had been improperly charged attorney's fees by the Association (count F); and (11) Kim, as Prince's attorney, committed legal malpractice (count G). Defendants filed a motion to dismiss for "failure to state a claim upon which relief can be granted" in lieu of an answer. R. 4:6-2(e).

In the October 4, 2021, order, the trial judge determined that Shieh's 2021 complaint was a "recast" of the 2016 matter. The trial judge afforded Shieh a "generous" reading of the complaint. (citing Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989)). However, applying the preclusive doctrines of: entire controversy; res judicata; and collateral estoppel, the trial judge dismissed counts: B1, B2, C, D1, E1, E2, E3, and E4.

The entire controversy doctrine, codified in Rule 4:30A, provides: "Non-joinder of claims required to be joined by the entire controversy doctrine shall result in the preclusion of the omitted claims to the extent required by the entire controversy doctrine . . . ." The "doctrine 'embodies the principle that the

adjudication of a legal controversy should occur in one litigation in only one court; accordingly, all parties involved in a litigation should at the very least present in that proceeding all of their claims and defenses that are related to the underlying controversy.'" Highland Lakes Country Club & Cmty. Ass'n v. Nicastro, 201 N.J. 123, 125 (2009) (quoting Cogdell v. Hosp. Ctr. at Orange, 116 N.J. 7, 15 (1989)). Our Supreme Court has previously explained that the purposes of the entire controversy doctrine "are threefold: (1) the need for complete and final disposition through the avoidance of piecemeal decisions; (2) fairness to parties to the action and those with a material interest in the action; and (3) efficiency and the avoidance of waste and the reduction of delay." DiTrolio v. Antiles, 142 N.J. 253, 267 (1995) (citing Cogdell, 116 N.J. at 15).

Res judicata, like the entire controversy doctrine, serves the purpose of providing "finality and repose; prevention of needless litigation; avoidance of duplication; reduction of unnecessary burdens of time and expenses; elimination of conflicts, confusion and uncertainty; and basic fairness[.]" First Union Nat'l Bank v. Penn Salem Marina, Inc., 190 N.J. 342, 352 (2007) (alteration in original) (quoting Hackensack v. Winner, 82 N.J. 1, 32–33 (1980)). The principle "contemplates that when a controversy between parties is once fairly litigated and determined it is no longer open to relitigation." Lubliner v. Bd. of

Alcoholic Beverage Control of Paterson, 33 N.J. 428, 435 (1960). Application of res judicata "requires substantially similar or identical causes of action and issues, parties, and relief sought," as well as a final judgment. Culver v. Ins. Co. of N. Am., 115 N.J. 451, 460 (1989) (citing Eatough v. Bd. of Med. Exam'rs, 191 N.J. Super. 166, 173 (App. Div. 1983)). Thus, "where the second action is no more than a repetition of the first, the first lawsuit stands as a barrier to the second." Ibid.

The term "collateral estoppel" refers to the "branch of the broader law of res judicata which bars relitigation of any issue which was actually determined in a prior action, generally between the same parties, involving a different claim or cause of action." Sacharow v. Sacharow, 177 N.J. 62, 75–76 (2003) (quoting Woodrick v. Jack J. Burke Real Est., Inc., 306 N.J. Super. 61, 79 (1997)). In Culver, our Court explained that collateral estoppel also called "issue preclusion," has been defined as follows: "When an issue or fact or law is actually litigated and determined by a valid and final judgment, the determination is conclusive in a subsequent action between the parties whether on the same or a different claim." Culver, 115 N.J. at 470 (quoting Restatement (Second) of Judgments § 27 (Am. Law Inst. 1982)).

In applying these preclusive doctrines, the trial judge determined that the 2016 litigation barred "counts B1, B2, C, D1, E1, E2, E3, and E4 [in the 2021 complaint] because they rely upon the same facts and documents" previously adjudicated. Thereafter, the trial judge analyzed the remaining counts: A (alleging Prince did not have ownership rights in the condominiums and could not vote); F (alleging improper charges for attorney's fees); and G (legal malpractice against Kim for her representation of Prince).

In analyzing count A, the trial judge noted that "Shieh does not allege a specific claim against Prince . . . that is discernable to the court. Additionally, Shieh's claims against Kim, as the Board's president, are identical to his counterclaims asserted in the" 2016 action. "Yet, for a reason unknown to the court, Shieh failed to add Kim and Prince . . . as direct defendants." Therefore, the trial judge dismissed count A as to Prince because Shieh had failed to make any allegation against Prince. R. 4:6-2(e). Moreover, the trial judge dismissed count A as to Prince and Kim in accord with the preclusive doctrines because Shieh had failed to name them in their 2016 counterclaims.

In analyzing count F, the trial judge determined that "[t]here is nothing presented to the court to suggest that the attorneys' fee charges listed on the financial documents are from . . . defendants. Shieh has failed to suggest that

the . . . defendants had anything to with these charges." Therefore, the trial judge dismissed count F because Shieh had not alleged that Prince or Kim had any responsibility for the charged attorneys' fees.

Lastly, in count G, Shieh alleged that Kim committed legal malpractice as the attorney for Prince. The trial judge noted that Shieh had not alleged the existence of an attorney-client relationship between Shieh and Kim and, therefore, found the complaint "fails to state a legal malpractice claim" and dismissed the claim.

Shieh sought reconsideration of the order dismissing the complaint. Shieh argued that "the claims in the underlying action were not identical to the claims" in the 2016 lawsuit. Further, Shieh recited the allegations as to: the rental income of the laundry room and antenna roof, the annual audit reports, and the 2011 and 2016 washer/dryer resolutions. Moreover, Shieh mentioned, without explanation, not naming Kim in the 2016 lawsuit and repeated the allegations against the Association from the 2016 lawsuit. The trial judge denied the motion, finding Shieh had failed to meet the standard for reconsideration.

Shieh appeals the denial of reconsideration. "Reconsideration itself is 'a matter within the sound discretion of the [c]ourt, to be exercised in the interest

of justice.'" Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)).

> It is not appropriate merely because a litigant is dissatisfied with a decision of the court or wishes to reargue a motion, should be utilized only for those cases which fall into that narrow corridor which either 1) the court has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the court either did not consider, or failed to appreciate the significance of probative, competent evidence.
>
> [Ibid.]

"Alternatively, if a litigant wishes to bring new or additional information to the [c]ourt's attention which it could not have provided on the first application, the [c]ourt should, in the interest of justice (and in the exercise of sound discretion), consider the evidence." D'Atria, 242 N.J. Super. at 401.

> A motion seeking reconsideration of a prior order is governed by Rule 4:49-2, which requires the movant to explicitly identify the grounds for the motion to fit within that 'narrow corridor' in which reconsideration is appropriate: "The motion shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred."
>
> [Palombi, 414 N.J. Super. at 288 (quoting R. 4:49-2).]

Appellate courts "will not disturb a trial judge's reconsideration decision 'unless it represents a clear abuse of discretion.'" Kornbleuth v. Westover, 241

N.J. 289, 301 (2020) (quoting Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994)). "An abuse of discretion 'arises when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Id. at 302 (quoting Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015)).

Shieh avers that the trial judge erred in denying reconsideration referring to "Rule 1:20-5(d) (motion to dismiss); Title 18 § 1001 of the U.S. [C]ode regarding making false and fraudulent statements; the [C]ode of [J]udicial [C]onduct (Cannon 1, Rule 1.2; Rule 3.6 and Rule 3.7); Rule 4:49-2 and testimony and argument from the 2016 matter." However, Shieh's vague and bald references fail to provide any meaningful support for the specificity required under Rule 4:49-2 or as to how those references would place this matter into the narrow corridor of cases appropriate for reconsideration. Palombi, 414 N.J. Super. at 288. Therefore, Shieh fails to establish that the trial judge's denial of reconsideration "represents a clear abuse of discretion." Kornbleuth, 241 N.J. at 301 (quoting Little, 135 N.J. at 283).

Moreover, we discern nothing from the record that evidences the trial judge's abuse of discretion in denying reconsideration. The trial judge

considered the motion, opposition and reply and correctly applied the pertinent court rule and case law. Therefore, we find that Shieh failed to establish the trial judge abused her discretion in denying reconsideration.

Shieh's contentions regarding judicial conduct or other issues are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION