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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2496-21**

CHANA RINGEL, and CR
LAKEWOOD, individually, and
derivatively on behalf of BCR
LAKEWOOD HOLDINGS, LLC,

Plaintiffs-Respondents,

and

RUSHMORE CAPITAL, LLC,

Plaintiff/Intervenor-
Respondent,

v.

BR LAKEWOOD, LLC and
BENJAMIN RINGEL,

Defendants-Appellants.

CHANA RINGEL, individually,
and derivatively on behalf of
BCR OAKRIDGE, LLC,

Plaintiffs-Respondents,

and

RUSHMORE CAPITAL, LLC,

Plaintiff/Intervenor-
Respondent,

v.

BENJAMIN RINGEL and SUNSET
HILL OAKRIDGE PLAZA, LLC,

Defendants-Appellants.

Submitted May 10, 2023 – Decided June 12, 2023

Before Judges Mayer and Enright.

On appeal from the Superior Court of New Jersey,
Chancery Division, Ocean County, Docket Nos.
C-00127-15 and C-000152-16.

Patterson Belknap Webb & Tyler LLP, attorneys for
appellants (Peter C. Harvey, on the briefs).

Giordano, Halleran & Ciesla, PC, and Koffsky
Schwalb, LLC, attorneys for respondents (Matthew N.
Fiorovanti and Efrem Schwalb, on the brief).

Troutman Pepper Hamilton Sanders, LLP, and
Avrohom C. Einhorn (Troutman Pepper Hamilton
Sanders, LLP) of the Pennsylvania bar, admitted pro
hac vice, on behalf of intervenor-respondent (Angelo
A. Stio III, of counsel and on the brief; Avrohom C.
Einhorn, on the brief).

PER CURIAM

Defendants BR Lakewood, LLC, Benjamin Ringel, and Sunset Hill Oakridge Plaza, LLC appeal from a March 11, 2022 order granting a motion to enforce litigant's rights filed on behalf of plaintiffs. Defendants also appeal from the award of counsel fees and costs to plaintiffs in that same order. We affirm.

We incorporate the facts from our prior decision. See Ringel v. BR Lakewood, LLC, No. A-0370-21 (App. Div. Oct. 22, 2022) (slip op. at 1-9) (first appeal). In the first appeal, we affirmed the trial court's February 4, 2022 order, declaring intervenor Rushmore Capital, LLC (Rushmore) the highest bidder in connection with the purchase of real property owned by the parties, known as the Pinewood Property. Id., slip op. at 9. Based on prior trial court orders, the parties were compelled to list the Pinewood Property for sale and eventually execute a contract of sale for the land. Ibid.

When defendants filed the first appeal, they did not request a stay of the trial court's orders compelling the sale of the Pinewood Property.

Because defendants had not signed a contract to sell the Pinewood Property, Rushmore filed a Rule 1:10-3 application in the trial court to enforce litigant's rights. Rushmore's enforcement motion was filed during the pendency

of the first appeal. In response to the motion, defendants asked the trial judge to stay the sale of the Pinewood Property, which the judge denied.

In a March 11, 2022 enforcement order, the judge directed defendants to sign and deliver to Rushmore all documents required for the sale of the Pinewood Property. In the event that Benjamin Ringel failed to sign the documents to effectuate the sale, the judge ordered the appointment of a special agent. Under the enforcement order, the special agent had the power of attorney to complete the sale of the Pinewood Property to Rushmore.

Additionally, if Benjamin Ringel failed to sign the transaction documents, the judge's enforcement order stated defendants were "subject to all attorneys' fees and costs incurred by the parties for all actions necessary to effect this [c]ourt's [o]rder or as a result of [d]efendants' failure to comply with this [o]rder." The judge further ordered defendants to pay the special agent "for all costs and fees associated with her performance."

The parties agreed to stay the sale of the Pinewood Property pending resolution of the first appeal. The judge signed a consent order staying the sale in April 2022.

With the first appeal still pending, defendants filed another appeal challenging the March 11, 2022 enforcement order (second appeal). In the

second appeal, defendants argue the judge "erred in ordering the sale and closing of the Pinewood Property while this court [was] considering" the first appeal. Defendants contend the trial court was divested of jurisdiction to enforce the February 4, 2022 order based on their appeal from that order. Defendants also challenge the judge's award of attorney's fees and costs to plaintiffs associated with the application for relief in aid of litigant's rights. We reject defendants' arguments.

We review an order enforcing litigant's rights for an abuse of discretion. Savage v. Twp. of Neptune, 472 N.J. Super. 291, 313 (App. Div. 2022); Wear v. Selective Ins. Co., 455 N.J. Super. 440, 458-59 (App. Div. 2018). An abuse of discretion arises when a court's decision was "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Wear, 455 N.J. Super. at 459 (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)). The trial court's factual findings "are binding on appeal when supported by adequate, substantial, credible evidence." Seidman v. Clifton Sav. Bank, SLA, 205 N.J. 150, 169 (2011) (quoting Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)).

We first address defendants' argument that the judge lacked jurisdiction to consider an application for relief in aid of litigant's rights because the

Appellate Division had "exclusive jurisdiction under Rule 2:9-1(a)" while the first appeal was pending. We disagree.

Under Rule 2:9-1(a), "[t]he supervision and control of the proceedings on appeal . . . shall be in the appellate court from the time the appeal is taken." However, the Rule also states that "the trial court shall have continuing jurisdiction to enforce judgments and orders pursuant to R[ule] 1:10 and as otherwise provided," even while a matter is pending appeal. Ibid. Under this Rule, the trial court may act to enforce its prior orders, including those on appeal, absent the entry of an order staying the litigation. See McNair v. McNair, 332 N.J. Super. 195, 199 (App. Div. 2000) ("The trial court . . . has continuing jurisdiction to enforce judgments and orders notwithstanding that they are being challenged on appeal.").

Here, the judge had authority to enforce his prior orders notwithstanding the pendency of the first appeal because there was no order staying the sale of the Pinewood Property as of March 11, 2022. In prior orders, the judge directed the parties "to fully cooperate with the sale of the Pinewood [Property], including signing all necessary documents." The judge's March 11, 2022 order simply enforced prior orders requiring defendants to execute and deliver documents for the sale of the Pinewood Property.

While defendants sought a stay of the orders compelling the sale of the Pinewood Property before the trial court, this court, and the New Jersey Supreme Court, all three courts denied stay relief. When the judge entered the March 11, 2022 order enforcing litigant's rights, there was no stay.¹ Thus, the judge had jurisdiction to decide the motion to enforce litigant's rights.

We also reject defendants' argument that the judge lacked the authority to appoint a special agent. Defendants argue that none of the judge's orders required them to sell the Pinewood Property by a specific date. Defendants' assertion ignores the fact that the judge ordered defendants to sign documents to complete the transaction no less than three times. The absence of a specific date for conveyance of the Pinewood Property did not invalidate the judge's appointment of a special agent based on defendants' repeated refusals to comply with prior court orders.

Rule 4:59-2(a) authorizes the court to appoint an agent to act on behalf of a party wherever a party "fails to comply" with a judgment or order "within the time specified" by the court. Although none of the orders specified a date certain for completion of the sale of the Pinewood Property, each of the judge's orders

¹ About a month after the March 11, 2022 enforcement order, the parties agreed to a stay of the sale of the Pinewood Property pending the outcome of the first appeal.

directed defendants to execute the required contract documents and defendants failed to do so.

Because defendants failed to take any steps to convey the Pinewood Property in the six-month time period from the date of the first order on August 25, 2021 through the date of the March 11, 2022 enforcement order, the judge compelled the transfer of title to Rushmore by appointing a special agent to complete the transaction. Defendants' repeated failures to comply with the court's order to execute documents for the sale of the Pinewood Property warranted appointment of a special agent to finalize the sale.

Additionally, under Rule 1:10-3, the judge had the authority to compel defendants' compliance with his prior orders. A trial court may enforce a "recalcitrant" party's compliance with a court order through a Rule 1:10-3 motion to enforce litigant's rights. See Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 392 (1995). Defendants claim the judge failed to find them "recalcitrant" under Rule 1:10-3. We disagree.

Defendants' repeated failures to comply with the judge's orders directing the sale of the Pinewood Property evidenced their recalcitrance. Absent stay relief, defendants were not entitled to flout multiple orders commanding them to sign the documents necessary for the sale of the Pinewood Property. We are

satisfied the judge properly exercised his authority to enforce defendants' compliance with the prior orders under Rule 1:10-3.

We next consider defendants' claim that the judge erred in awarding fees and costs associated with the relief granted in the March 11, 2022 enforcement order. Again, we disagree.

In New Jersey, a prevailing litigant can recover attorney's fees "if they are expressly provided for by statute, court rule, or contract." Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 440 (2001). The decision to award attorney's fees and costs associated with an enforcement motion "rests within the sound discretion of the trial court." Wear, 455 N.J. Super. at 459 (quoting Maudsley v. State, 357 N.J. Super. 560, 590 (App. Div. 2003)). Under the Court Rules, the appointment of a special agent may be ordered at "the cost of [a] defaulting party." R. 4:59-2(a); see also Barr v. Barr, 418 N.J. Super. 18, 46 (App. Div. 2011) ("An allowance for counsel fees is permitted to any party accorded relief following the filing of a motion in aid of litigant's rights.").

Here, there were two orders notifying defendants that they would be subject to the payment of counsel fees and costs for failure to comply with the prior court orders compelling the sale of the Pinewood Property. The February 4, 2022 order compelled payment of "attorney's fees and costs for all actions

necessary to effect this [c]ourt's order." The March 11, 2022 enforcement order also directed the payment of "all attorney['s] fees and costs incurred by all parties for all actions necessary" to comply with the provisions in that order. Additionally, Rule 4:59-2(a) authorizes the payment of costs associated with the appointment of a special agent against the defaulting party. We discern no abuse in the judge's imposition of counsel fees and costs against defendants related to the March 11, 2022 enforcement order.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION