

**NOT FOR PUBLICATION WITHOUT THE
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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-2906-21**

**JADE LANDSCAPING
SERVICES, LLC,**

Plaintiff-Respondent,

v.

**DR. ANI KALFAYAN and GOLD
CIRCLE INVESTMENT II, LLC,**

Defendants-Appellants.

Submitted February 8, 2023 – Decided April 5, 2023

Before Judges Currier and Mayer.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. DC-013909-21.

Asatrian Law Group, LLC, attorneys for appellants (Martin V. Asatrian, of counsel and on the brief).

Buchan Palo & Cardamone LLC, attorneys for respondent (Alychia L. Buchan, of counsel and on the brief).

PER CURIAM

In this contract action, plaintiff instituted suit when defendants failed to pay for snow removal services. Defendants did not answer the complaint and the court entered default. The court denied defendants' subsequent motion to vacate default. We affirm.

The parties executed a contract under which plaintiff agreed to provide "snow and ice management services" to commercial property owned by defendants. Defendants were both listed as parties responsible for payment. After plaintiff performed snow removal services following several snowstorms in late 2020 and early 2021, it billed defendants \$5,955.04. Although several demands were made for payment, defendants did not respond and did not pay the bill.

Plaintiff filed suit in October 2021 in the Law Division, Special Civil Part for \$8,000.79—comprising the outstanding bill, contractual penalties, and finance charges for past-due payments. Plaintiff also sought attorney's fees and costs as well as pre- and post-judgment interest.

Service was properly effectuated on defendants. When defendants did not answer the complaint, the court entered default on December 20, 2021.

In February 2022, plaintiff moved for entry of default judgment under Rule 4:43-2(a). Defendants responded by filing an answer to the complaint and

submitting a letter brief in opposition to the motion. Defendants argued the motion was moot because an answer had been filed and their attorney "ha[d] been trying to resolve and . . . settle th[e] case to avoid any further litigation." The court advised defendants that default had been entered, preventing the processing of the answer.

Plaintiff replied to defendants' opposition to the motion for default, asserting default had already been entered and defendants had not demonstrated good cause for vacatur. Nor had defendants presented any defense to excuse their failure to pay the bill for the performed services.

The court denied plaintiff's motion for default judgment because it was missing the required notices under Rules 6:3-3(c)(2) and (c)(3), and 1:5-7, and lacked the certification mandated under Rule 1:6-6.

One month later, on April 4, 2022, defendants moved to vacate default and file a late answer. In counsel's certification, he asserted

[b]oth parties engaged in efforts to resolve this matter in good faith. Defendants respectfully request[] that this fine [c]ourt provide [defendants] the opportunity to file an [a]nswer and litigate this matter on the merits and not have a genuine issue decided on a procedural defect such as filing an [a]nswer out of time.

Counsel stated there would be "a substantial windfall for . . . plaintiff[]" if the matter was not litigated on the merits.

Plaintiff opposed the motion, reiterating that defendants had not established good cause to set aside the default. Nor had defendant shown the existence of a meritorious defense.

On April 29, 2022, the court denied the motion to vacate default. The order stated:

Denied. Missing required notices as per [Rule] 6:3-3(c). Defendants have not submitted a meritorious defense, or any defense at all, nor excusable neglect. Attempting to work things out and then requesting a trial if the parties do not work out a settlement with no defense to the complaint does not meet the basis upon which this court can or should vacate the default judgment.

After defendants filed a notice of appeal, the trial judge supplemented his decision as permitted under then Rule 2:5-1(b). The judge explained

[t]he order incorrectly stated defendants' motion was a motion to vacate default judgment. The court was aware at the time defendants' motion was a motion to vacate default and that default judgment had not been entered. The court intended to deny defendants' motion for the reasons set forth in the April 29 . . . order as well as the reasons set forth in this letter knowing the motion was to vacate default.

The judge noted defendants did not deny receiving the summons and complaint and did not assert default was improperly entered. The judge further stated the motion was denied because defendants did not submit "any defense at

all to the complaint." And "[a]lthough attempting to work things out is laudable, attempting to resolve the case and then filing a motion to vacate default without presenting any defense to the complaint does not exhibit good cause to set aside default." Because there was no proffer of a defense, the judge stated "there is no point in setting aside an entry of default if the defendant[s] ha[ve] no meritorious defense."

On appeal, defendants contend the court erred in denying their motion to vacate default. We are unpersuaded.

"The decision whether to grant . . . a motion [to vacate default] is left to the sound discretion of the trial court, and will not be disturbed absent an abuse of discretion." Mancini v. EDS ex rel. N.J. Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330, 334 (1993) (citing Court Inv. Co. v. Perillo, 48 N.J. 334, 341 (1966)). An abuse of discretion occurs "when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" U.S. Bank Nat. Ass'n v. Guillaume, 209 N.J. 449, 467 (2012) (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)).

This matter is controlled by Rule 4:43-1 to -4. Rule 4:43-1 provides "[i]f a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules or court order, or if the

answer has been stricken with prejudice, the clerk shall enter a default on the docket as to such party." Following the entry of default, final judgment may be entered either by the clerk or by the court upon request to the clerk or notice of motion to the court. R. 4:43-2. If default judgment has not yet been entered and the defaulting party seeks to set aside the default, that party must include with the motion "either an answer to the complaint and Case Information Statement or a dispositive motion . . . and . . . the filing fee for an answer or dispositive motion" R. 4:43-3. The court may vacate the default "[f]or good cause shown." Ibid.; Guillaume, 209 N.J. at 466-68.

The trial court found defendants did not establish good cause for failing to file a timely answer or otherwise defend the action. Defense counsel stated in his certification supporting the motion to vacate default that the parties were "engaged in efforts to resolve this matter." Ongoing settlements attempts do not toll a party's responsibility to respond to the filing of a complaint against it. Defendants did not comply with Rule 4:6-1 and answer or otherwise defend against the action. They did not demonstrate good cause for not doing so.

Defendants' contention that the trial court applied the wrong standard in denying the vacatur motion is meritless. Although the April 29, 2022 order stated the court found no basis upon which to vacate the default judgment, the

judge later clarified in his June 6, 2022 amplification to this court that it was a misstatement. The judge stated he "was aware at the time defendants' motion was a motion to vacate default and that default judgment had not been entered." The judge found defendants did not "exhibit good cause to set aside default."

As stated, defendants have not demonstrated before the trial court or this court any grounds to find good cause for their failure to answer or defend the complaint. Even in their brief before this court, defendants only contend the trial court applied the wrong standard in deciding the motion to vacate default. They do not proffer any reasons to support good cause for their failure to answer the complaint. As a result, the trial court did not abuse its discretion in denying the motion to vacate default.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION