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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0085-21**

**GREEN FIELD CONSTRUCTION
GROUP, LLC,**

Plaintiff-Respondent,

v.

MARJAM SUPPLY COMPANY,

Defendant-Appellant.

Argued September 11, 2023 – Decided June 5, 2024

Before Judges DeAlmeida and Bishop-Thompson.

On appeal from the Superior Court of New Jersey,
Chancery Division, Monmouth County, Docket No. C-
000132-20.

Danielle E. Cohen and Steven Cohen argued the cause
for appellant (Tesser & Cohen, attorneys; Danielle E.
Cohen, on the briefs).

Gary E. Fox argued the cause for respondent (Fox &
Melofchik, LLC, attorneys; Gary E. Fox, on the brief).

PER CURIAM

Defendant Marjam Supply Company (Marjam) appeals from three orders of the Chancery Division: (1) a December 18, 2020 order discharging a construction lien claim Marjam filed against real property leased by plaintiff Green Field Construction Group, LLC (Green Field), and granting Green Field's motion for attorney's fees and costs pursuant to N.J.S.A. 2A:44A-15(a); (2) an August 31, 2021 order denying Marjam's motion for reconsideration of the portion of the December 18, 2020 order granting Green Field's motion for attorney's fees and costs; and (3) an April 7, 2022 order awarding Green Field \$10,551.50 in attorney's fees and costs. We affirm.

I.

Green Field was the construction manager for a 245-unit residential condominium construction project, "The Lofts at Pier Village," in Long Branch (the Project). The Project occupied an entire city block, including the parcel identified as 15 Morris Avenue, which was sometimes used as the address for the Project. Because there was insufficient space at the construction site to store materials and equipment for use in the construction of the Project, Green Field leased a vacant lot across the street from the Project for the delivery and storage of materials and equipment. The vacant lot, 36 Morris Avenue, is owned by an entity not related to the Project.

Green Field subcontracted with Hevy Contractors, LLC (Hevy) to perform various construction services for the Project. Hevy subcontracted some of the scope of its work to Marjam, a supplier of construction materials and equipment. Pursuant to its contract with Hevy, on various dates in 2019 and 2020, Marjam delivered to the vacant lot materials and equipment for use in the construction of the Project. According to Green Field, the materials and equipment later were moved from the vacant lot across the street to the site of the Project where they were used to construct the Project. Marjam alleges that some of the equipment was used at the vacant lot to hoist materials and to move materials from the vacant lot to the Project. None of the materials and equipment delivered by Marjam were used to construct any structure or improvement on the vacant lot. Marjam did not deliver any materials or equipment to the site of the Project.

On July 16, 2020, Marjam, pursuant to the Construction Lien Law (CLL), N.J.S.A. 2A:44A-1 to -38, filed with the Monmouth County Clerk a construction lien claim against the vacant lot in the amount of \$136,180.02. That is the amount Marjam claims it is owed by Hevy for non-payment for materials and equipment Marjam supplied for the Project. Marjam did not follow the statutory requirements for filing a construction lien claim arising from a contract for a residential construction project. See N.J.S.A. 2A:44A-21(b)(1) to (3). Instead,

Marjam followed the statutory procedure for filing a construction lien claim arising from a contract for a commercial construction project. Marjam took this approach because there was no residential construction project underway on the vacant lot, which appeared to Marjam to be in commercial use.

On October 6, 2020, Green Field, pursuant to its obligations under its lease, filed a complaint in the Chancery Division seeking an order: (1) discharging Marjam's lien claim; (2) declaring Marjam to have forfeited its claimed lien rights and its right to file subsequent lien claims up to the face amount in its discharged lien; and (3) awarding Green Field attorney's fees and costs. Green Field alleged that Marjam's construction lien claim was invalid because it was filed without Marjam having satisfied the statutory requirements applicable to lien claims arising from contracts for residential construction.

Green Field subsequently sought summary relief. Marjam opposed the motion. In support of its position, Marjam submitted invoices from its delivery of materials and equipment to Hevy that indicate that the items were to be delivered to "Pier Village" at 36 Morris Ave, the address of the vacant lot.

On December 18, 2020, the trial court issued an oral opinion granting Green Field's motion. The court found that The Lofts at Pier Village was a residential construction project within the meaning of the CLL and the project

to which Marjam delivered materials and equipment. The court examined the nature of the contract between Marjam and Hevy, and not the condition and use of the vacant lot, to determine if Marjam was on notice that it was providing materials and equipment for a residential construction project. The court concluded Marjam was, or should have been, on notice the materials and equipment it delivered to Hevy were for a residential construction project.

Thus, the court concluded, Marjam erred when it did not satisfy the statutory prerequisites set forth in N.J.S.A. 2A:44A-21(b)(1) to (3), for filing a construction lien claim arising from a contract for a residential construction project. The court found Marjam's failure to file a notice of unpaid balance and right to file lien (NUB) and a demand for arbitration, the two statutory prerequisites for filing a construction lien claim arising from a contract for construction of a residential project set forth in N.J.S.A. 2A:44A-21(b)(1) to (3), rendered Marjam's lien invalid. See N.J.S.A. 2A:44A-5(c) ("No liens shall attach nor shall a lien claim be filed . . . [f]or work, services, material or equipment furnished pursuant to a residential construction contract unless there is strict compliance with section[] . . . 21 of" the CLL.).

The court also found that Green Field was entitled to an award of attorney's fees and costs pursuant to N.J.S.A. 2A:44A-15(a). The court rejected

Marjam's argument that attorney's fees and costs are authorized only upon a finding of bad faith.

The trial court entered a December 18, 2020 order: (1) discharging Marjam's construction lien; (2) forfeiting Marjam's claimed lien rights and its rights to file subsequent liens claims to the extent of the face amount claimed in the discharged lien; and (3) granting Green Field's motion for attorney's fees and costs. The court granted Green Field leave to file a certification detailing its attorney's fees and costs within ten days.

On January 7, 2021, after Green Field submitted a certification of attorney's fees and costs, but before the court entered an order awarding an amount of attorney's fees and costs, Marjam moved for reconsideration of the portion of the December 18, 2020 order granting Green Field's motion for attorney's fees and costs. Relying on our holding in Kvaerner Process, Inc. v. Barham-McBride Joint Venture, 368 N.J. Super. 190 (App. Div. 2004), Marjam argued that N.J.S.A. 2A:44A-15(a) authorizes the award of attorney's fees and costs only upon a showing that a construction lien claim was filed in bad faith. Marjam contended that it cannot be found to have acted in bad faith because the vacant lot is a commercial property and it filed a timely, accurate construction

lien claim on that property in compliance with the statutory requirements for a claim arising from commercial construction.

Green Field opposed the motion, arguing that Marjam was on notice it was delivering materials and equipment for a residential construction project, noting that some of the Marjam invoices indicated that the materials were for "BLDG 9" of the "Pier Village" project and others noted the fifth or sixth floor of that building. Green Field also argued Marjam had an obligation to communicate with Hevy and investigate the nature of the Project prior to filing its lien claim.

On August 31, 2021, the trial court issued a written opinion denying Marjam's motion. The court held that the bad faith requirement established in Kvaerner applies only where a lien is discharged because it was filed "without basis," and not, as is the case here, where a lien is discharged because it was "not lodged for record in substantially the form or in the manner . . . not in accordance" with the CLL. 368 N.J. Super. at 203; see N.J.S.A. 2A:44A-15(a). Thus, the court concluded, it did not err when it granted Green Field's application for attorney's fees and costs. An August 31, 2021 order memorialized the trial court's decision.

This appeal followed. Marjam argues that the trial court erred when it dismissed its construction lien claim because: (1) the lien claim was filed

against the property where Marjam delivered its materials and equipment; and (2) Green Field produced no evidence that the materials and equipment were moved from the vacant lot for use in construction of the Project. Marjam also argued the trial court's award of fees and costs to Green Field was not authorized by N.J.S.A. 2A:44A-15(a) because the court did not find that Marjam acted in bad faith.

After Marjam filed its merits brief, Green Field moved to dismiss the appeal as interlocutory. It argued that the August 31, 2021 order was not final because the court had not awarded it a specific amount of attorney's fees and costs. Marjam opposed the motion, arguing that the order was final and, if we disagreed, requesting we grant leave to appeal as if within time.

On March 8, 2022, we issued an order concluding that the August 31, 2021 order was interlocutory. Rather than granting Green Field's motion to dismiss or Marjam's request for leave to appeal as if within time, we ordered a limited remand to permit the trial court to resolve any issues left open by the December 18, 2020 order.

On April 7, 2022, the trial court entered an order awarding Green Field attorney's fees and costs of \$10,551.50, the full amount it sought. The court did not issue a written or oral opinion.

Marjam thereafter filed an amended notice of appeal challenging the April 7, 2022 order along with the two orders it previously appealed.

II.

We defer to the judge's factual determinations that are supported by substantial credible evidence in the record. Rova Farms Resort, Inc. v. Inv'rs Ins. Co. of Am., 65 N.J. 474, 483-84 (1974). We review de novo the trial court's interpretation of the law and the legal consequences that flow from established facts. In re Liquidation of Integrity Ins. Co., 193 N.J. 86, 94 (2007) (quoting Toll Bros., Inc. v. Twp. of W. Windsor, 173 N.J. 502, 549 (2002)).

A. Discharge of Marjam's Construction Lien Claim.

The primary purpose of the CLL is to secure payment to subcontractors and others "who provide work, services, material, or equipment, pursuant to a written contract" relating to the construction or improvement of real property. NRG REMA, LLC v. Creative Env'tl. Sols. Corp., 454 N.J. Super. 578, 587 (App. Div. 2018) (quoting Craft v. Stevenson Lumber Yard, Inc., 179 N.J. 56, 68 (2004)). "The . . . statute protects a [sub]contractor's right to file a lien claim for the value of work it has performed," but for which it has not been paid. Thomas Group, Inc. v. Wharton Senior Citizen Housing, Inc., 163 N.J. 507, 509 (2000). "The lien shall attach to the interest of the owner . . . of the real property

development" for which a debt remains unpaid. N.J.S.A. 2A:44A-3(a). The "'owner of real property' means any person, including a tenant, with an interest in real property who personally or through an authorized agent enters into a contract for improvement of the real property." N.J.S.A. 2A:44A-2.

The CLL draws a distinction between liens arising from contracts for residential construction and liens arising from contracts for non-residential construction. The procedures for filing a construction lien claim are set forth in N.J.S.A. 2A:44A-6. However, "[i]n the case of a residential construction contract the lien claim shall also comply with . . . section 21" of the CLL. N.J.S.A. 2A:44A-6(c). "No liens shall attach nor shall a lien claim be filed . . . [f]or work, services, material or equipment furnished pursuant to a residential construction contract unless there is strict compliance with section[] . . . 21" of the CLL. N.J.S.A. 2A:44A-5(c).

Section 21 of the CLL provides that

[a]s a condition precedent to the filing of any lien arising under a residential construction contract, a lien claimant shall first file a [NUB] by lodging for record the [NUB] within [sixty] days following the last date that work, services, material or equipment were provided for which payment is claimed

[N.J.S.A. 2A:44A-21(b)(1).]

In addition,

[u]nless the parties have otherwise agreed in writing to an alternative dispute resolution mechanism, within [ten] days from the date the [NUB] is lodged for record, the lien claimant shall also serve a demand for arbitration and fulfill all the requirements and procedures of the American Arbitration Association to institute an expedited proceeding before a single arbitrator designated by the American Arbitration Association.

[N.J.S.A. 2A:44A-21(b)(3).]

N.J.S.A. 2A:44-21(b)(2) establishes the requirements for service of the NUB.

The required filings are intended to promote the prompt resolution of claims against residential property. The Legislature found that

separate provisions concerning residential construction will provide a system for balancing the competing interests of protecting consumers in the purchase of homes and the contract rights of contractors, suppliers and subcontractors to obtain payment for goods and services provided.

[N.J.S.A. 2A:44A-21(a).]

Among the interests considered by the Legislature were facilitating

the ability to sell and purchase residential housing [which] is essential to the preservation and enhancement of the economy of the State . . . the ability to have a stable marketplace in which families can acquire homes without undue delay and uncertainty and the corresponding need of lending institutions in the State . . . to conduct business in a stable environment and to lend money for the purchase or finance of home construction or renovations

[Ibid.]

"Residential construction' . . . means construction of or improvement to a dwelling, or any portion thereof, and any residential unit, or any portion thereof." N.J.S.A. 2A:44A-2. There is no dispute that the Project is residential construction. Nor is it disputed that Marjam failed to comply with N.J.S.A. 2A:44A-21(b)(1) to (3). It did not file the NUB or arbitration demand that are statutory prerequisites to filing a construction lien claim arising from a contract for residential construction.

Marjam argues that the trial court erred in applying N.J.S.A. 2A:44A-21(b)(1) to (3) to its lien claim because Marjam delivered its materials and equipment to the vacant lot, which was in commercial use. We disagree. The statutory prerequisites to file a notice and arbitration demand apply to cases arising from "a residential construction contract" N.J.S.A. 2A:44A-5(c); N.J.S.A. 2A:44A-6(c); N.J.S.A. 2A:44A-21(b)(1). It is the object of the contract that triggers the statutory prerequisite, not the nature of the parcel at which materials and equipment are delivered. Marjam's reliance on the commercial use of the vacant lot to follow to the statutory procedures for filing a construction lien claim relating to a commercial development was misplaced.

The statute provides that no claim shall attach "[f]or work, services, material or equipment furnished pursuant to a residential construction contract unless there is strict compliance with section[] . . . 21 of" the CLL. N.J.S.A. 2A:44A-5(c). Given Marjam's failure to comply with N.J.S.A. 2A:44A-21, the trial court's order discharging Marjan's construction lien claim was sound.

We are not persuaded by Marjam's argument that Green Field did not prove the materials and equipment Marjam delivered were moved from the lot and used for the Project. Green Field's use of the materials and equipment is not relevant to Marjam's statutory obligations. The statutory prerequisites apply for claims arising from a contract for residential development, whether or not Green Field ultimately used the materials and equipment to construct a residence.¹

B. The Award of Attorney's Fees and Costs.

The decision to award attorney's fees rests "within the sound discretion of the trial court." Maudsley v. State, 357 N.J. Super. 560, 590 (App. Div. 2003). "[F]ee determinations by trial courts will be disturbed only on the rarest of occasions, and then only because of a clear abuse of discretion." Packard-

¹ Notably, Hevy also filed a construction lien claim arising from the Project. It subsequently discharged its lien claim after Green Field moved to discharge the claim for failure to comply with the notice and arbitration demand requirements for claims arising from residential construction.

Bamberger & Co. v. Collier, 167 N.J. 427, 444 (2001) (quoting Rendine v. Pantzer, 141 N.J. 292, 317 (1995)). 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.'" Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002) (quoting Achacoso-Sanchez v. Immigration and Naturalization Serv., 779 F.2d 1260, 1265 (7th Cir. 1985)).

While New Jersey generally disfavors the shifting of attorney's fees, a prevailing party may recover attorney's fees if expressly provided by statute, court rule, or contract. Collier, 167 N.J. at 440 (citing North Bergen Rex Transp., Inc. v. Trailer Leasing Co., 158 N.J. 561, 569 (1999) and Dep't of Env'tl. Prot. v. Ventron Corp., 94 N.J. 473, 504 (1983)). Rule 4:42-9(a)(8) allows attorney's fees "[i]n all cases where attorney's fees are permitted by statute."

N.J.S.A. 2A:44A-15(a) provides in relevant part that

[i]f a lien claim is without basis, the amount of the lien claim is willfully overstated, or the lien claim is not lodged for record in substantially the form or in the manner . . . not in accordance with this act, the claimant shall forfeit all claimed lien rights and rights to file subsequent lien claims to the extent of the face amount claimed in the lien claim. The claimant shall also be liable for all court costs, and reasonable legal expenses, including, but not limited to, attorneys' fees, incurred by the owner . . . [or] . . . contractor . . . in defending or causing the discharge of the lien claim.

There is no express bad faith requirement in the statute. Marjam, however, argues that our holding in Kvaerner requires a finding of bad faith before attorney's fees and costs can be awarded pursuant to N.J.S.A. 2A:44A-15(a). We disagree.

In Kvaerner, a general contractor sought to discharge a construction lien claim because it was "willfully overstated" in the amount owed. 368 N.J. Super. at 193. The trial court discharged the lien because it lacked a reasonable basis, was overstated, and included expenses the claimant knew were invalid. Id. at 194-95. Noting "evidence of bad faith[,]" the trial court awarded attorney's fees pursuant to N.J.S.A. 2A:44A-15(a). Id. at 195.

On appeal, we vacated the discharge of the lien for reasons not relevant here and remanded for further proceedings. Id. at 203. We added:

[a]nd, the award of counsel fees must also be vacated pending the further consideration we have ordered. The determination which, if either, party is entitled to the fees and cost remedies established in N.J.S.A. 2A:44A-15, must abide the event. The question is primarily one of good faith or the absence thereof. It is clear from the terms of the statute that, in order for those remedies to be available, the court must find that either the lien claim or the challenge to it was "without basis."

[Ibid.]

Kvaerner is limited to the "without basis" and "willfully overstated" grounds for awarding attorney's fees and costs in N.J.S.A. 2A:44A-15(a).

Here, however, the trial court found an award of attorney's fees and costs was warranted because Marjam's lien claim was "not lodged for record in substantially the form or in the manner . . . in accordance with" the CLL, a separate provision of N.J.S.A. 2A:44A-15(a). "[A] willful overstatement connotes an intent to recover that to which the claimant knows he is not entitled; in other words, a claim made in bad faith." Legge Indus. v. Joseph Kushner Hebrew Acad./JKHA, 333 N.J. Super. 537, 561 (App. Div. 2000). The same is true for a lien filed without basis. A failure to lodge a claim in the form or manner required by the CLL, however, does not have a willful component. A showing of bad faith, therefore, is not required for an award of fees and costs under the "form or manner" provision of N.J.S.A. 2A:44A-15(a). Fees and costs may be awarded for Marjam's failure to follow the statutory prerequisites for filing a lien claim arising from a contract for residential construction.²

² In light of this conclusion, we need not tarry long in our review of the August 31, 2021 order denying Marjam's motion for reconsideration. Marjam's motion was based on the holding in Kvaerner, which does not impose a bad faith requirement in the circumstances present here. We note only that the trial court when deciding Marjam's motion treated the December 18, 2020 order as if it were a final order, applying the standards in Rule 4:49-2. The December 18,

C. The April 7, 2022 Order.

In calculating the amount of reasonable attorney's fees, "an affidavit of services addressing the factors enumerated by RPC 1.5(a)" is required. R. 4:42-9(b); Twp. of W. Orange v. 769 Assocs., LLC, 198 N.J. 529, 542 (2009). RPC 1.5(a) sets forth the factors to be considered:

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

2020 order, however, is interlocutory because it left unresolved the amount of attorney's fees and costs to be awarded to Green Field. Sprengr v. Trout, 375 N.J. Super. 120, 125 (App. Div. 2005). A trial court "has the inherent power, to be exercised in its sound discretion, to review, revise, reconsider and modify its interlocutory orders at any time prior to the entry of final judgment" without meeting the strictures of Rule 4:49-2. Johnson v. Cyklop Strapping Corp., 220 N.J. Super. 250, 257 (App. Div. 1987).

- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
- (8) whether the fee is fixed or contingent.

Courts determine the "lodestar," defined as the "number of hours reasonably expended" by the attorney, "multiplied by a reasonable hourly rate." Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 386 (2009) (citing Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 21 (2004)). "The court must not include excessive and unnecessary hours spent on the case in calculating the lodestar." Furst, 182 N.J. at 22 (citing Rendine, 141 N.J. at 335-36).

"The amount of attorney fees usually rests within the discretion of the trial judge, but the reasons for the exercising of that discretion should be clearly stated." Khoudary v. Salem Cty. Bd. of Soc. Servs., 281 N.J. Super. 571, 578 (App. Div. 1995) (citations omitted); see also R. 1:7-4(a) (requiring a court to "find the facts and state its conclusions of law thereon in all actions tried without a jury, on every motion decided by a written order that is appealable as of right, and also as required by R. 3:29"). "[T]he court must specifically review counsel's affidavit of services under R. 4:42-9, and make specific findings regarding the reasonableness of the legal services performed" F.S. v. L.D.,

362 N.J. Super. 161, 170 (App. Div. 2003). "Without such findings it is impossible for an appellate court to perform its function of deciding whether the determination below is supported by substantial credible proof on the whole record." Monte v. Monte, 212 N.J. Super. 557, 565 (App. Div. 1986).

The record contains no findings of fact or conclusions of law supporting the award of \$10,551.50 in attorney's fees and costs to Green Field. Marjam argues that the trial court erred because prior to preparing its filings in this matter, Green Field filed nearly identical papers seeking discharge of Hevy's constriction lien claim. According to Marjam, Green Field's filings in this matter were, in effect, the same as those filed against Hevy with only the claimant's name changed. Thus, Marjam argues the number of hours attributed to drafting the Marjam papers was excessive. Marjam also argues that some entries are not related to the papers that resulted in the discharge of the lien.

Rather than remanding this matter again for findings of fact and conclusions of law with respect to Green Field's fee application, we have carefully reviewed Green Field's submissions and find that the amount of attorney's fees and costs awarded by the trial court were reasonable and supported by the record.

Affirmed.

