SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0678-23

511 WILLOW AVENUE
CONDOMINUM ASSOCIATION,

Plaintiff-Respondent,

v.

MARTIN J. KIELY,

Defendant-Appellant.

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Argued November 14, 2024 – Decided January 3, 2025

Before Judges Mayer, Rose and DeAlmeida.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-0705-21.

John J. Clark, IV, argued the cause for appellant (Schumann Hanlon Margulies, LLC, attorneys; John J. Clark, IV, on the briefs).

Anthony C. Gunst, IV, argued the cause for respondent (Nissenbaum Law Group, LLC, attorneys; Anthony C. Gunst, IV, of counsel and on the brief; Matthews A. Florez, on the brief).

PER CURIAM

Defendant Martin J. Kiely appeals from a September 22, 2023 Law Division order denying his second attempt to vacate default judgment. Based on our review of the record and the applicable legal principles, we affirm.

I.

We summarize the pertinent facts and events from the motion record. For several decades, defendant owned two of four condominium units in a Hoboken building managed by plaintiff 511 Willow Avenue Condominium Association. The parties' dispute emanated from liens filed against defendant's units in 2017 for past due maintenance fees, late fees, interest, counsel fees, and special assessments. The parties, through counsel, attempted to resolve their dispute, but defendant failed to accept the Association's $59,056.25 settlement offer prior to its August 7, 2020 deadline. Accordingly, on October 16, 2020, the Association rescinded its offer in writing. The following month, the Association rejected defendant's belatedly signed agreement and returned his attorney's $59,056.25 trust account check.

On February 19, 2021, the Association filed a five-count complaint against defendant to recover the unpaid fees under the Condominium Act, N.J.S.A. 46:8B-1 to -38. Specifically, the Association's complaint asserted claims for: (1) breach of contract; (2) unjust enrichment; (3) quantum meruit;

(4) breach of the covenant of good faith and fair dealing; and (5) promissory estoppel. The Association sought $201,837.63 in damages; post-judgment interest and costs; and counsel fees and costs.

The Association forwarded a copy of the summons and complaint to defendant's then counsel via "federal express, regular email [sic], and email." Defense counsel did not respond. Unbeknownst to the Association's attorney, around that time defense counsel was the subject of attorney disciplinary proceedings, eventually disbarred, and apparently never informed defendant of the disciplinary action.

The Association unsuccessfully attempted personal service on defendant at several addresses in Highlands and one of the condominium units in Hoboken. A postal service search confirmed defendant received mail at two of the Highlands addresses.

Following its failed attempts to personally serve defendant, in April 2021, the Association moved for substituted service under Rule 4:4-4(b)(3). The first motion judge denied the application without prejudice, finding the Association

failed to provide proof of a "DMV check"[1] or attempted service by certified mail.

The Association thereafter corrected these deficiencies and made additional attempts at personal service before filing its second motion for substituted service. The same judge granted the Association's motion in September 2021.

On November 8, 2021, the Superior Court Clerk granted the Association's ensuing request to enter default under Rule 4:43-1 for defendant's failure to answer. The Association twice attempted to notice defendant of the default, via regular and certified mail, but both certified mailings were returned, "unclaimed." We glean from the record the regular mail notices were not returned. The Association also ran a military status inquiry, confirming defendant was not on active duty. See R. 1:5-7.

On March 18, 2022, the same judge granted the Association's motion for default judgment pursuant to Rule 4:43-2(b). The judge awarded $201,837.63 in compensatory damages, but denied without prejudice the Association's

[1] Effective 2003, the Department of Motor Vehicles became the Motor Vehicle Commission. Motor Vehicle Commission, New Jersey State Library, https://dspace.njstatelib.org/browse/datetext?scope=12d9ce68-5527-403a-b0d9-2936e27af69d&value=1908 (last visited Dec. 24, 2024).

application for interest and counsel fees for failure to provide the requisite proofs.

On August 3, 2022, defendant sent an email to members of the Association stating he had not been updated about the unpaid fee dispute since November 2020, when he requested the minutes of a meeting apparently held that month. Defendant claimed at this meeting, the parties "agreed to a full payment to bring [his] fees paid through 2021."

On August 8, 2022, the Association's president responded to defendant's email, stating: "If you wish to address full payment of all outstanding monies owed to the Association then you may begin with addressing the $201,837.63 judg[]ment recorded with the State of New Jersey. Arrears for 2021 and 2022 HOA [d]ues, late fees, and penalties also remain outstanding." That same day, defendant replied, "What judg[]ment???"

On August 17, 2022, defendant filed a self-represented motion to vacate the default judgment. Defendant sought relief under Rule 4:50-1(f), arguing it was a miscarriage of justice to allow a judgment of this sum to stand when he was unaware of the proceedings against him. In his certification, defendant explained the circumstances leading to the judgment. Defendant attached the proposed settlement agreement, resolving the parties' dispute for $59,056.25,

signed by defendant in November 2020, after the deadline to accept plaintiff's offer expired. Claiming he lived at XX Shore Drive, defendant was "curious why [he] was not served directly in this matter" and asserted "a simple e[]mail would have sufficed." Defendant further contended his motion was filed swiftly after discovering the judgment.

On September 9, 2022, the motion judge denied defendant's application. The memorializing order stated: "The opposed motion is hereby denied without prejudice subject to refiling pursuant to the moving papers and R[ule] 4:50-1 for failure to present a meritorious defense to the case."

Defendant thereafter retained counsel, who filed another motion to vacate the judgment under Rule 4:50-1(f) on June 21, 2023. In his certification in support of the motion, defendant claimed he delayed executing the proposed settlement agreement because "another issue" regarding his units' roofs developed during negotiations.

Defendant further claimed the Association's process server never attempted to serve him at his residence. Defendant asserted after his first motion to vacate the default judgment was denied, the death of a close family member left him distraught and unable to address the judgment for some months. Defendant then attempted to retain counsel in February 2023, but encountered

issues with two different firms before retaining his present counsel. Defendant's motion, filed by his newly retained counsel, included a proposed answer and counterclaim.

On September 22, 2023, another judge denied defendant's renewed motion to vacate default judgment. According to the statement of reasons at the bottom of the order, the judge noted "motions to vacate default judgment under R[ule] 4:50-1(d)-(f) shall be made within a reasonable amount of time." Citing Triffin v. Maryland Child Support Enforcement Administration, 436 N.J. Super. 621, 629 (Law Div. 2014), the judge recognized default judgments are not "disturbed unless 1) the neglect to answer was excusable under the circumstances and[] 2) the defendant has a meritorious defense either to liability or damages." The judge declined to find excusable neglect because defendant was properly served with the complaint, but failed to answer until nineteen months after the case commenced and six months after entry of default judgment.

On appeal, defendant raises various overlapping arguments. In his first point, defendant claims he asserted a meritorious challenge to plaintiff's damages allocation because the Association "previously acknowledged credits" to his account. He also briefly argues the first motion judge erroneously awarded counsel fees as the same judge denied the Association's fee application

in the March 18, 2022 order. In his second point, defendant contends the first motion judge erroneously concluded he was properly served with the Association's complaint. In his third point, defendant asserts the second motion judge failed to analyze his application pursuant to paragraph (f) of Rule 4:50-1.

II.

"The decision granting or denying an application to open a judgment will be left undisturbed unless it represents a clear abuse of discretion." Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994); see also U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012) (stating a trial court's determination under Rule 4:50-1 "warrants substantial deference[] and should not be reversed unless it results in a clear abuse of discretion"). 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.'" Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002) (quoting Achacoso-Sanchez v. I.N.S., 779 F.2d 1260, 1265 (7th Cir. 1985)).

Rule 4:50-1 is "designed to reconcile the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have authority to avoid an unjust result in any given case." Mancini v. EDS, 132 N.J. 330, 334 (1993) (quoting Baumann v. Marinaro, 95 N.J. 380, 392

(1984)). The rule establishes six alternative grounds for relief from a final judgment, whether obtained by default or after trial. Although courts generally "use Rule 4:50-1 sparingly, in exceptional situations," Hous. Auth. of Morristown, 135 N.J. at 289, "motions for relief from default judgments . . . are liberally viewed," Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 4:50-1 (2025).

Pertinent to defendant's claims on appeal, Rule 4:50-1 permits the court to vacate a final judgment for: "(a) mistake, inadvertence, surprise, or excusable neglect"; (d) "the judgment or order is void";[2] and (f) "any other reason justifying relief from the operation of the judgment or order." Equitable principles should guide the court's analysis regardless of the subsection. MTAG v. Tao Invs., LLC, 476 N.J. Super. 324, 333 (App. Div. 2023) (quoting F.B. v. A.L.G., 176 N.J. 201, 207 (2003)).

As to subsection (a), our Supreme Court has underscored "[i]t would create a rather anomalous situation if a judgment were to be vacated on the

[2] Although defendant mentions Rule 4:50-1(d) in his merits brief as a basis of his argument before us, he does not present any argument that the judgment is void. We therefore decline to address the issue. Mack-Cali Realty Corp. v. State, 466 N.J. Super. 402, 439 n.13, 439-40 (App. Div. 2021), aff'd o.b., 250 N.J. 550 (2022) (declining to address an argument on appeal limited to a single sentence and footnote).

ground of mistake, accident, surprise or excusable neglect, only to discover later that the defendant had no meritorious defense. The time of the courts, counsel[,] and litigants should not be taken up by such a futile proceeding." Guillaume, 209 N.J. at 469 (quoting Schulwitz v. Shuster, 27 N.J. Super. 554, 561 (App. Div. 1953)).

Relief under subsection (f) is available in "exceptional circumstances" and "only when the court is presented with a reason not included among any of the reasons subject to the one year limitation." Baumann, 95 N.J. at 395. The boundaries of Rule 4:50-1(f) "are as expansive as the need to achieve equity and justice." Palko v. Palko, 73 N.J. 395, 398 (1977) (quoting Court Inv. Co. v. Perillo, 48 N.J. 334, 341 (1966)). Thus, application of subsection (f) "must be resolved on its own particular facts," Baumann, 95 N.J. at 395, and "[n]o categorization can be made of the situations which would warrant redress under subsection (f)," Palko, 73 N.J. at 398. "In deciding if relief is warranted, a court may consider the movant's delay, the justification for its request, and potential prejudice to the responding party." BV001 REO Blocker, LLC v. 53 W. Somerset St. Props., LLC, 467 N.J. Super. 117, 126 (App. Div. 2021).

With these principles in view, we are satisfied the motion judge properly denied defendant's motion to vacate default judgment. Initially, defendant's

argument that the second motion judge failed to consider his argument under Rule 4:50-1(f) misses the mark. The first motion judge denied defendant's motion to vacate default judgment without prejudice to his assertion of a meritorious defense. Before the second motion judge, defendant maintained he had a valid defense because he performed work for the Association, which was not credited against the judgment entered. Defendant's setoff claim, however, did not absolve him as unit owner of the obligation to pay monthly assessments under the Condominium Act. See N.J.S.A. 46:8B-17 (requiring condominium owners to pay common expenses, which "shall be a lien against [the] unit").

Nor are we convinced defendant demonstrated exceptional circumstances warranting vacatur of the judgment under Rule 4:50-1(f). As the second motion judge recognized the loss of defendant's family member was "unfortunate" but "d[id] not justify . . . defendant's failure to answer as it occurred nineteen months after the case commenced on February 19, 2021, and six months after default judgment was entered" on March 18, 2022.

Because defendant has not overcome "the strong interest[] in finality of judgments and judicial efficiency," Guillaume, 209 N.J. at 467, we discern no basis to disturb the September 22, 2023 order. To the extent not addressed,

defendant's remaining contentions lack 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