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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0568-20

RRML CAPITAL
RESOURCES, LLC,

Plaintiff-Respondent,

v.

MOUNT MORIAH AME
CHURCH, INC., and FIRST
EPISCOPAL DISTRICT
AFRICAN METHODIST
EPISCOPAL CHURCH,

Defendants-Appellants.

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Argued November 30, 2021 – Decided April 29, 2022

Before Judges Currier and DeAlmeida.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-6071-19.

Andrew R. Turner argued the cause for appellants (Turner Law Firm, LLC, attorneys; Andrew R. Turner, of counsel and on the briefs).

Brian G. Hannon argued the cause for respondent (Norgaard, O'Boyle & Hannon, attorneys; Brian G. Hannon, on the brief).

PER CURIAM

Defendants Mount Moriah AME Church, Inc. (Mount Moriah) and First Episcopal District African Methodist Episcopal Church (First Episcopal) appeal from two orders of the Law Division: (1) the September 11, 2020 order granting summary judgment to plaintiff RRML Capital Resources, LLC (RRML) in this breach of contract suit; and (2) the October 21, 2020 order denying defendants' motion for reconsideration. We affirm.

I.

The following facts are established in the summary judgment record. RRML is a loan broker that assists clients with obtaining commercial financial agreements. Mount Moriah is a non-profit, religious organization that was seeking a $12 million construction loan. First Episcopal is a conference of religious congregations.

On January 31, 2015, Mount Moriah executed a contract with RRML in which it agreed to pay a fee of 4.875% of the amount of any loan secured for it by RRML. Mount Moriah agreed that the fee "shall immediately become due and payable in full to RRML upon [Mount Moriah's] acceptance and execution

of a written [l]oan [c]ommitment and/or [l]etter of [i]ntent or similar proposal" from the lender. First Episcopal guaranteed Mount Moriah's financial obligations under the agreement.

Defendants subsequently completed a loan application that RRML submitted to potential lenders while attempting to secure a loan for Mount Moriah. The application stated that Mount Moriah was not "a party to an outstanding judgment or any pending or threatened lawsuit or adverse claim."

On March 2, 2015, RRML secured a letter of interest from Crown Bank for a $12 million loan to Mount Moriah. A week later, Mount Moriah executed the letter of interest, which set forth the terms of the loan. Pursuant to the parties' agreement, RRML is entitled to a $585,000 fee for securing the Crown Bank letter of interest. RRML subsequently learned that Mount Moriah had been a defendant in a foreclosure action for three years. Based on Mount Moriah's involvement in the foreclosure and its failure to disclose that involvement on its loan application, Crown Bank rescinded the term sheet.

Despite this setback, RRML continued to work with Mount Moriah to obtain a loan. RRML secured two additional letters of interest from lenders, each for a $12 million loan. Each of those letters of interest entitled RRML to a $585,000 fee under its agreement with Mount Moriah.

Mount Moriah acknowledged its indebtedness to RRML for obtaining the March 2, 2015 letter of interest. In April 2017, Mount Moriah sent a letter to RRML stating that "this is our official notice of an approved remittance of . . . USD 50,000.00 . . . to be credited towards the outstanding balance of RRML's fee under the duly executed contract between our companies." The letter indicated that Mount Moriah would make $10,000 monthly payments toward the fee. Mount Moriah defaulted on the monthly payments in June 2018, restarted payments in November 2018, and again defaulted on the payments in June 2019. In total, Mount Moriah paid RRML $280,000 toward the fee. RRML's written demands for payment of the remaining $305,000 went unanswered.

RRML filed a complaint in the Law Division against Mount Moriah alleging breach of contract, unjust enrichment, and breach of the covenant of good faith and fair dealing for failing to pay the remainder of the fee. RRML also named First Episcopal as a defendant, alleging guarantor liability.

On March 30, 2020, about a month before the close of discovery, defendants' counsel moved for leave to withdraw. On April 14, 2020, the court granted the motion, giving defendants thirty days to obtain new counsel. Sometime in mid-June 2020, defendants retained Frank A. Blandino as its new counsel. Blandino, however, did not file a notice of appearance with the court.

On July 24, 2020, RRML moved for summary judgment. The motion was returnable on August 28, 2020. Once notified of defendants' retention of Blandino, RRML agreed to his request for a two-week adjournment of the return date of the motion to September 11, 2020. Defendants, however, did not file opposition to the motion prior to the return date.

On September 11, 2020, the trial court entered an order granting summary judgment to RRML on each count of the complaint. At that time, the court did not issue findings of fact or conclusions of law. The order states that the motion was unopposed and awards RRML $305,000 in damages, plus interest, costs, and "reasonable attorney's fees." The order does not specify the amount of attorney's fees awarded to RRML.

Also on September 11, 2020, Blandino filed a notice of appearance on behalf of defendants and faxed to the court a letter dated August 26, 2020. The letter noted RRML's consent to adjourn the return date of its motion to September 11, 2020 and requests an additional forty-five-day adjournment without RRML's consent. There is no evidence in the record that the letter was faxed to the court or filed electronically on August 26, 2020 or at any time prior to September 11, 2020. RRML's counsel denies having received a copy of the letter prior to September 11, 2020.

On September 16, 2020, Blandino filed a letter with the court in which he stated, "I reiterate my August 26, 2020 request (copy attached) for a forty-five (45) day adjournment of [p]laintiff's motion, so I may properly defend same." In the September 16, 2020 letter, Blandino stated that when he verbally confirmed RRML's agreement to a two-week adjournment of the motion with the judge's law clerk he "also requested the forty-five (45) day adjournment to provide sufficient time to review the client[s'] file and prepare a proper defense to [p]laintiff's motion." Blandino continued:

> I submitted my August 26, 2020 initial request via facsimile as I was on vacation in West Virginia with minimal to no [I]nternet access. Upon my return from vacation, I received news of the death of a family member on Friday morning, August 28, 2020 . . . . After my bereavement period and not receiving a response to my August 26, 2020 request for a forty-five (45) day adjournment, I re-submitted my August 26, letter (marked 2nd Request) via the NJCourts e-filing system on September 11, 2020.

On September 30, 2020, defendants moved for reconsideration of the September 11, 2020 order and restoration of the matter to the trial calendar. In support of the motion, Blandino submitted a certification repeating the substance of his September 16, 2020 letter. The motion was also supported by an affidavit of H. William Rutherford, III, in which he opines that the March 2, 2015 letter of interest was fraudulently issued by a principal of RRML or his agents in order

to falsely secure RRML's fee under the agreement. During discovery, defendants did not identify Rutherford as a person with knowledge of facts relevant to RRML's claims or as an expert on whom they intended to rely. Defendants made additional arguments, including that a letter of interest was insufficient to entitle RRML to a fee under the agreement and that RRML was not licensed in New York State, where Mount Moriah is located, to provide the services contemplated by the agreement. RRML opposed the motion.

On October 21, 2020, the trial court issued an oral opinion. The court first made findings of fact and conclusions of law with respect to the September 11, 2020 order granting summary judgment. The court found the parties entered into a contract, RRML fulfilled its obligations under the agreement, and Mount Moriah acknowledged that it owed RRML a $585,000 fee, but breached the contract by failing to pay the full amount due. In addition, the court concluded that First Episcopal, as guarantor of Mount Moriah's obligations, is responsible for Mount Moriah's $305,000 debt to RRML.

With respect to defendants' motion for reconsideration, the court concluded that it did not act in a palpably incorrect manner by not adjourning the return date of RRML's motion an additional forty-five days. The court found

that Blandino produced no evidence that he faxed the August 26, 2020 letter requesting the additional adjournment to the court prior to September 11, 2020.

In addition, the court held that even if the letter had been faxed to the court on August 26, 2020, it should have been evident to Blandino that the court had not granted the additional adjournment. Defendants produced no evidence Blandino took any steps to confirm that the additional adjournment, to which RRML had not consented, had been granted until September 11, 2020, the date to which the motion had been adjourned with consent. The court concluded it was inappropriate for defendants to request an adjournment of a motion on its return date, particularly given that the motion, which was originally filed in July 2020, had already been adjourned to September at defendants' request.

Finally, the court concluded defendants' motion was substantively deficient. The court found that defendants were precluded from relying on both the Rutherford affidavit and the theory that the March 2, 2015 letter of interest was fraudulent, even if both had been presented in opposition to RRML's summary judgment motion in a timely fashion. As the court explained,

> Mr. Rutherford is a nonparty to this litigation whose name was never disclosed to the plaintiff and who plaintiff never had an opportunity to ask for an expert report or depose or anything of that nature and whose expertise or knowledge have never even been verified.

> . . . .
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> Through Mr. Rutherford's certification the defendants claim for the very first time, and this is very significant to this [c]ourt, this is on a motion for reconsideration, the defendants are claiming for the first time that RRML fraudulently prepared documents to the defendants in an attempt to earn a fee and one was not actually earned.
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> [T]his theory is unsupported by evidence and has never been raised by the defendants since it [sic] filed its [sic] answer in this case. There is nothing in the record to support this . . . claim . . . .
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> . . . .
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> Now, [fourteen] months after the commencement of this action, and five months after the end of . . . discovery . . . the defendants for the first time through an unknown and undisclosed witness whose qualifications really are not known at all, question the authenticity with no evidence of any kind of the March 2nd, 2015 letter[] of interest.

The court also found that if it had considered the Rutherford affidavit, it still would have granted summary judgment to RRML. The court held that "the certification ignores important facts[,]" including

> [i]n connection with the [letter of interest] the defendants were required to make payment to Crown Bank in the amount of $40,500 . . . . This [c]ourt has seen a copy of this payment because it was attached to [a] certification . . . . This . . . check was made out to Crown Bank.

> Nowhere in the defendants['] papers do they argue that the payment was fraudulently kept by the plaintiff or that the check was not received by Crown Bank.
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> . . . .
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> Furthermore, the certification of Mr. Rutherford and the arguments raised by defendants ignore that the [letter of interest] issued on March 2nd, 2015, was not the only letter of interest that the plaintiff acquired for the defendants. . . . [T]he plaintiff worked with the defendants and continued [its] efforts to obtain three letters of interest for the defendants . . . .
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> The[] two additional letters of interest have never been disputed by the defendants.
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> . . . .
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> [U]pon the issuance of each letter of interest the plaintiff was due its fee and the defendants do not argue against that.

The court found no other grounds on which to reconsider its prior order. An October 21, 2020 order memorializes the court's decision.

This appeal follows. Defendants argue that genuine issues of material fact preclude entry of summary judgment and the court abused its discretion when it denied their motion for reconsideration.

II.

We begin with the September 11, 2020 order granting summary judgment.[1] We review the trial court's decision granting summary judgment de novo, using "the same standard that governs trial courts in reviewing summary judgment orders." Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div. 1998). Rule 4:46-2(c) provides that a court should grant summary judgment when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is

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[1] In order to be considered final and appealable as of right, an order must resolve all issues as to all parties. R. 2:2-3(a)(1); Janicky v. Point Bay Fuel, Inc., 396 N.J. Super. 545, 549-50 (App. Div. 2007). In addition to granting summary judgment, the September 11, 2020 order awards RRML reasonable attorney's fees without setting the amount of those fees. "An order is interlocutory, and not final, if it does not dispose of counsel fees issues." N.J. Mfrs. Ins. Co. v. Prestige Health Grp., LLC, 406 N.J. Super. 354, 358 (App. Div. 2009). There is no indication in the record that prior to the filing of defendants' notice of appeal, the trial court resolved RRML's demand for attorney's fees, which is based on a provision in the parties' agreement. Where a notice of appeal has been filed before final resolution of an application for attorney's fees, the party seeking fees is "obliged to move either for dismissal of the appeal, or, in the alternative, for a temporary remand to the Law Division, pursuant to Rule 2:9-1(a), to have the undecided issues resolved." Shimm v. Toys From The Attic, Inc., 375 N.J. Super. 300, 304 (App. Div. 2005) (citation omitted). Although defendants' appeal may be dismissed as interlocutory, we exercise our discretion to grant leave to appeal from the September 12, 2020 and October 21, 2020 orders as within time.

entitled to a judgment or order as a matter of law." "Thus, the movant must show that there does not exist a 'genuine issue' as to a material fact and not simply one 'of an insubstantial nature'; a non-movant will be unsuccessful 'merely by pointing to any fact in dispute.'" Prudential, 307 N.J. Super. at 167 (quoting Brill v. Guardian Life Ins. Co., 142 N.J. 520, 529-30 (1995)). Our review is "based on our consideration of the evidence in the light most favorable to the parties opposing summary judgment." Brill, 142 N.J. at 523-24.

We have carefully reviewed the record and find no basis on which to reverse the September 11, 2020 order. RRML's summary judgment motion was unopposed. The motion record contains ample proof that RRML and Mount Moriah entered into a contract and that RRML fulfilled its obligation under the agreement by obtaining three letters of interest from lenders for loans in the amount sought by Mount Moriah. In addition, the moving papers contained proof that Mount Moriah acknowledged it owed RRML $585,000, but made only $280,000 in payments. First Episcopal's status as a guarantor of Mount Moriah's contractual obligations to RRML is plainly established in the record. All of the facts critical to RRML's claims were established by credible uncontested proof on the record before the court on the return date of RRML's motion.

It was not error for the trial court to consider RRML's summary judgment motion to be unopposed. As discussed in detail above, Blandino obtained RRML's consent for an adjournment of the return date of the summary judgment motion to September 11, 2020. Although he claims to have faxed the court a letter requesting an additional forty-five-day adjournment without RRML's consent, Blandino produced no evidence proving that claim. Even if we accept as true Blandino's representation that he faxed the letter to the trial court on August 26, 2020, the record contains no evidence that he made any attempt to confirm with the court that it had granted the additional adjournment request until September 11, 2020, the return date of the motion. It was reasonable for the trial court to conclude that counsel may not wait until the return date of a motion to determine whether the court has granted an adjournment request made without consent of the moving party.[2]

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[2] We note that Blandino's certification does not explain in detail his inability to file the August 26, 2020 letter through the mandatory electronic filing system. While on vacation, he apparently had sufficient access to a computer or his office staff to draft a letter on his letterhead and to print the letter so it could be faxed. Nor does Blandino explain why he or his staff did not upload the letter to the electronic filing system upon his return to New Jersey. We also note that Blandino does not certify that he faxed a copy of the August 26, 2020 letter to opposing counsel. RRML's counsel denies receipt of the letter prior to September 11, 2020.

Blandino certified that upon his return to New Jersey, he was notified of the death of a family member. While we are sensitive to the consequences of a family member's death, we note that Blandino does not identify his familial relationship to the deceased and the obituary attached to the motion papers does not mention Blandino as a family member. Nor does Blandino certify that he was unable to go to his office or check the court's electronic filing system to determine whether his additional adjournment request had been granted during the period between his return to New Jersey and the September 11, 2020 return date of the motion.[3] Given that it had not received opposition from defendants or granted a further adjournment of the motion, it was within the trial court's discretion to decide the motion as unopposed.

We also find no basis in the record to reverse the October 21, 2020 order denying defendants' motion for reconsideration. The trial court analyzed defendants' motion under Rule 4:49-2, which is applicable to final judgments. However, as we noted above, the September 11, 2020 order is interlocutory because it does not resolve RRML's demand for attorney's fees. In our review,

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[3] While Blandino's certification states that he was in West Virginia on vacation when he sought the additional adjournment of the motion, defendants' brief states that Blandino was out of state attending a funeral at that time. The obituary submitted with the motion indicates that funeral services for the departed person were held on September 1, 2020, in Chester, New Jersey.

we apply the standard applicable to a motion for reconsideration of an interlocutory order.

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." Johnson v. Cyklop Strapping Corp., 220 N.J. Super. 250, 257 (App. Div. 1987). As Judge Pressler explained, "the strict and exacting standards of R[ule] 4:50" do "not apply to interlocutory orders entered prior to final disposition." Ibid. Nor do the limitations of Rule 4:49-2 apply to requests for relief from interlocutory orders. Sullivan v. Coverings & Installation, Inc., 403 N.J. Super. 86, 96-97 (App. Div. 2008). See also Del Vecchio v. Hemberger, 388 N.J. Super. 179, 188-89 (App. Div. 2006); Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990). We review the denial of a motion for reconsideration of an interlocutory order for an abuse of discretion. Johnson, 220 N.J. Super. at 263-64.

The trial court properly exercised its discretion when it rejected defendants' attempt to rely on the opinion expressed in the Rutherford affidavit as a basis for reconsideration. During discovery, defendants did not identify Rutherford as a person with knowledge of facts relevant to RRML's claims or as

an expert on which they intended to rely. In addition, prior to the motion for reconsideration, defendants had not raised the claim that the March 5, 2015 letter of interest was fraudulent. RRML had no opportunity to depose Rutherford, demand an expert report explaining his opinion, or to seek discovery from Crown Bank with respect to its practices and the authenticity of the letter of interest. Rutherford's certification also does not address the validity of the two additional letters of interest obtained by RRML on behalf of Mount Moriah, which the trial court found also entitled RRML to a fee under the agreement.

Rutherford also certified that a principal of RRML was aware that Mount Moriah was the defendant in a foreclosure action prior to execution of the agreement. Even if true, this allegation is immaterial. Rutherford does not explain why Mount Moriah signed a loan application affirmatively representing that it was not a party in a pending legal action. In addition, while the undisclosed existence of the foreclosure action resulted in the withdrawal of the March 2, 2015 letter of interest, RRML secured two additional letters of interest after disclosure of the foreclosure proceedings.

We are not persuaded by defendants' argument that the trial court erred when it implicitly rejected its arguments that a letter of interest is insufficient to entitle RRML to a fee and that RRML is not properly licensed by New York

State to provide the services contemplated by the agreement. These arguments were raised for the first time in the motion for reconsideration, were not explored during discovery, and could have been raised in opposition to the motion for summary judgment, had defendants' counsel opposed the motion in the time allowed by court rules prior to the September 11, 2020 return date.

To the extent we have not specifically addressed any of defendants' remaining contentions, we conclude they 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