SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4534-19

JOHN SCHUSTER and
MARILYN SCHUSTER,

Plaintiffs-Respondents,

v.

PRESNELL BUILDING
GROUP, LLC, and TAYLOR
PRESNELL, as a member of
PRESNELL BUILDING
GROUP, LLC,

Defendants-Respondents,

and

TAYLOR PRESNELL,
individually,

Defendant-Appellant.

Submitted February 3, 2022 – Decided May 13, 2022

Before Judges Mawla and Mitterhoff.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Docket No. L-0232-17.

Kamensky Cohen & Riechelson, attorneys for appellant (Mark D. Laderman, on the brief).

Lindabury, McCormick, Estabrook & Cooper, PC, attorneys for respondent (John J. Delaney, Jr., of counsel; Blake C. Width, on the brief).

PER CURIAM

Defendant Taylor Presnell appeals from a July 10, 2020 order denying his motion to vacate a September 14, 2018 order confirming an arbitration award as a judgment pursuant to Rule 4:21A-6(b)(3). We affirm.

We discern the following facts from the record. On or about April 25, 2015, plaintiffs entered into an oral agreement and payment schedule with Presnell Building Group (PBG) to remodel and renovate plaintiffs' home in Stockton, New Jersey for $557,160. Defendant is the managing member of PBG. Plaintiffs, growing concern over the quality of the work, delays, and cost, sent a December 14, 2016, demand letter to defendants seeking $100,000 to avoid litigation. Defendants did not settle.

On January 20, 2017, plaintiffs filed a complaint against defendants alleging: 1) breach of contract; 2) unjust enrichment; 3) breach of the implied covenant of good faith and fair dealing; 4) breach of express warranty; 5) violation of the Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 to -227; 6) fraud;

7) breach of implied promise and warranty of reasonable workmanship; and 8) veil piercing. Counts five and eight specifically requested judgment against defendant as an individual.

On July 25, 2018, after discovery concluded, the parties participated in mandatory, non-binding arbitration pursuant to Rule 4:21A-1. Defendants were represented by counsel at the arbitration. After the hearing, the arbitrator issued the following award:

> [Plaintiffs] sue to recover treble damages under the [CFA], as well as for breach of contract, unjust enrichment and . . . related claims. [Plaintiffs] did not appear. Their claim for treble damages is for the difference between what [plaintiffs] claim was the oral quote for the job and what they in fact paid.
>
> [Defendant] testified that the oral quote agreed on was $931,200[] and he admitted . . . to being paid $963,100.90. The difference is $31,900.90. [Plaintiffs] claim that the agreed quote was $557,160 in their complaint[] but did not appear [and] hence did not testify. They also claim that they paid $878,782, but [defendant] admitted to being paid $963,100.90.
>
> The absence of a written contract constitutes a violation of the CFA. [Plaintiffs'] are entitled to $95,702.70 [plus] attorney's fees.

The arbitration award was captioned Schuster v. Presnell Building.

On August 29, 2018, plaintiffs moved to confirm the arbitration award as a judgment pursuant to Rule 4:21A-6(b)(3). At that point, more than thirty days

had passed since the date of arbitration and defendants had not filed a demand for a trial de novo.[1] On September 12, 2018, defendants' counsel advised plaintiffs via email that they would not file an opposition to the motion and that defendants hoped to settle the matter.

On September 14, 2018, the court entered an order confirming the arbitration award and entry of judgment against defendants. On February 22, 2019, the judgment against defendants was domesticated and recorded in Bucks County, Pennsylvania, where defendants were domiciled.

Defendant allegedly first discovered the personal judgment against him in the summer of 2019 when he tried to sell his house. On June 17, 2020, defendant filed a motion to vacate the judgment. On July 10, 2020, the judge issued an order and oral opinion denying the motion. The judge noted that defendants failed to demand a trial de novo, the confirmation motion reflected that the judgment was against both defendant and PBG, defendant's former attorney did not object to the motion, and the judgment was entered almost two years before any objection was raised. The judge noted this case "really derives from

[1] See R. 4:21A-6(b)(1) (An order dismissing the action after the filing of the arbitrator's award shall be entered unless, "within [thirty] days after filing of the arbitration award, a party hereto files with the civil division manager and serves on all other parties a notice of rejection of the award and a demand for a trial de novo and pays a trial de novo fee as set forth in paragraph (c) of this rule.").

[defendant's] dissatisfaction with how his lawyer handled this case, not necessarily this judgment." The judge further found defendant waited too long to file the motion after he learned about the judgment against him personally.

On appeal, defendant presents the following arguments for our consideration:

> POINT I
>
> THE COURT ERRED IN UPHOLDING THE JUDGMENT AGAINST [DEFENDANT] WHICH SHOULD BE VACATED PURSUANT TO [RULE] 4:50.
>
> > A. The [C]ourt [B]elow [A]bused its [D]iscretion in not [V]acating the [J]udgment [A]gainst [Defendant], [I]ndividually.

This court reviews a trial court's denial of a Rule 4:50-1 motion with substantial deference and will not reverse it "unless it represents a clear abuse of discretion." Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994). "[A]n abuse of discretion occurs when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Deutsche Bank Tr. Co. Ams. v. Angeles, 428 N.J. Super. 315, 319 (App. Div. 2012) (alteration in original) (quoting U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467-68 (2012)).

Rule 4:50-1 authorizes a court to relieve a party or the party's legal representative from a final judgment or order for the following pertinent reasons: "(d) the judgment or order is void; . . . or (f) any other reason justifying relief from the operation of the judgment or order." "The rule 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.'" Guillaume, 209 N.J. at 467 (quoting Mancini v. EDS ex rel. N.J. Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330, 334 (1993)).

We find defendant's argument that the judgment is void against him individually has no merit. "The 'Home Improvement Practices' regulations set forth a variety of acts or omissions that, by definition, 'shall be unlawful,' N.J.A.C. 13:45A-16.2(a), and that therefore constitute violations of the CFA." Allen v. V & A Bros., Inc., 208 N.J. 114, 129 (2011). One of those regulations state: "All home improvement contracts for a purchase price in excess of $500[] . . . shall be in writing." N.J.A.C. 13:45A-16.2(a)(12). "[T]here can be no doubt that the CFA broadly contemplates imposition of individual liability." Allen, 208 N.J. at 130. In fact, "individuals may be independently liable for violations of the CFA, notwithstanding the fact that they were acting through a corporation at the time." Id. at 131. The arbitration award clearly stated, "[t]he absence of

a written contract constitutes a violation of the CFA." Defendants' violation of the CFA thereby exposed defendant to individual liability. See ibid.

We also reject defendant's argument that he is entitled to relief pursuant to Rule 4:50-1(f). "[R]elief under Rule 4:50-1(f) is available only when 'truly exceptional circumstances are present.'" Little, 135 N.J. at 286 (quoting Baumann v. Marinaro, 95 N.J. 380, 395 (1984)). In determining whether there are exceptional circumstances to warrant relief, the court considers the following factors: "(1) the extent of the delay [in making the application]; (2) the underlying reason or cause; (3) the fault or blamelessness of the litigant; and (4) the prejudice that would accrue to the other party." Jansson v. Fairleigh Dickinson Univ., 198 N.J. Super. 190, 195 (App. Div. 1985).

It is clear from the record that defendant knew of the arbitration award and believed, mistakenly, that the matter could be resolved post-arbitration. Defendant deliberately chose not to file a demand for a trial de novo or oppose plaintiffs' motion to confirm the arbitration award.

We also agree that defendant's motion to vacate was untimely. Pursuant to Rule 4:50-2, motions made under Rule 4:50-1(d) or Rule 4:50-1(f) "shall be made within a reasonable time." Whether a motion is filed within a reasonable time is "based upon the totality of the circumstances[.]" Romero v. Gold Star

Distrib., LLC, 468 N.J. Super. 274, 296 (App. Div. 2021). Defendant arguably knew about the judgment against him for roughly two years prior to filing his motion to vacate. Even assuming defendant had no knowledge of the judgment against him after the court confirmed the arbitration award, defendant admitted he found out about the judgment in the summer of 2019 when he tried to sell his house. Defendant did not file his motion to vacate until roughly a year later. We agree with the motion judge that defendant "did not take the necessary steps as is required under [Rules] 4:50-1(f) and 4:50-2 in terms of the reasonable time to bring this motion." We discern no abuse of discretion requiring reversal.

Affirmed.