NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3066-11T3

ALLIANCE LAUNDRY SYSTEMS, LLC,

Plaintiff-Respondent,

v.

BALDEV BHARAJ and PUSHPA BHARAJ,

Defendants-Appellants,

and

JOEY NEMETZ, LLC, d/b/a HOLLYWOOD LAUNDROMAT, JOEY NEMETZ a/k/a JOSEPH P. HEMETS and ABC COMPANY,

Defendants.

Argued January 29, 2013 - Decided April 19, 2013

Before Judges Messano and Kennedy.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-0424-11.

Baldev Bharaj, appellant, argued the cause pro se.

Glenn R. Reiser argued the cause for respondent (LoFaro & Reiser, L.L.P., attorneys; Mr. Reiser, on the brief).

PER CURIAM

Defendant Baldev Bharaj (Baldev) appeals from two orders entered by the Law Division. The first, dated July 7, 2011 (the July Order), granted plaintiff Alliance Laundry Systems, LLC, the right to replevin "during normal business hours" four "Speed Queen" washing machines from defendants, Joey Nemetz, LLC d/b/a Hollywood Laundromat and Nemetz personally (collectively, Nemetz), Baldev, and Pushpa Bharaj (Pushpa), upon two days' notice; and further provided that the "relief granted in th[e] order" was subject to further negotiations "between the parties with respect to purchasing the machines, which ha[d] to be communicated to the Court by . . . July 13, 2011."[1]

The second order named in the Notice of Appeal is dated August 5, 2011 (the August Order) and required Baldev and Pushpa to pay plaintiff, jointly and severally, $5000 in attorneys' fees. On February 8, 2012, after continuation of a settlement conference, a different Law Division judge entered an order dismissing the complaint without prejudice and costs, but with interest "if the settlement sum [was] not paid within [thirty]

[1] To avoid confusion, when necessary we use the first names of the Bharaj family. We intend no disrespect by this informality.

days of receipt and release." Baldev filed his notice of appeal on February 27, 2012.[2]

Plaintiff argues that the issues presented on appeal are moot, a contention we discuss briefly below. However, plaintiff does not argued that the appeal is untimely or the orders are not "final." See R. 2:2-3(a)(1). We overlook any procedural infirmities with the appeal and consider its merits. We affirm.

I.

Plaintiff filed an order to show cause and verified complaint on January 11, 2011. The gist of the complaint was that Nemetz had executed a promissory note and UCC security agreement with plaintiff to finance the purchase of four washing machines for use at the Hollywood Laundromat, located at 231 Hollywood Avenue, Hillside, commercial property owned by Baldev and Pushpa. The UCC financing statement was duly recorded by plaintiff on July 17, 2008. The verified complaint alleged that Nemetz owed more than $14,000 on the note, and Alliance had declared default and demanded possession of the machines in July 2009. The complaint also alleged that, within the week prior to its filing, Baldev, who had denied plaintiff the ability to enter the premises and seize the machines, informed plaintiff

[2] None of the other defendants, including Pushpa Bharaj, have participated in the appeal.

that he had seized the machines to satisfy "an alleged landlord's lien" and sold them to an unidentified third-party.

Only Baldev filed an answer to the complaint. He claimed the machines were still on the premises and were "available for pick up by . . . plaintiff . . . ." Baldev asserted, among other affirmative defenses, that Nemetz and plaintiff had entered into a subsequent agreement modifying the original note and security agreement. The answer asserted no counterclaim.

Within weeks, plaintiff filed a motion seeking to enforce a purported settlement agreement it had reached with Baldev. The motion was supported by a certification from plaintiff's "Portfolio Manager," Wayne J. Crosby. After detailing the events leading up to the filing of the verified complaint, the certification included email exchanges, one of which was Baldev's March 3, 2011 email in which he advised he was "willing and ready to coordinate removal of [plaintiff's] equipment[,]" and urged Crosby to "take the necessary steps to complete the removal." This was followed, however, by Baldev's March 7 email in which he claimed Nemetz had "defaulted on rent to the amount of approximately $17[,]000," and he asserted a "landlord's lien" under N.J.S.A. 2A:42-1.

In opposition to the motion, Baldev certified that Nemetz was evicted on December 15, 2010, by the Union County Sheriff.

Baldev sold the contents of the premises on March 15, 2011 "to recoup the losses." He denied any communication with plaintiff and noted none of the emails were from Pushpa.[3]

In a second certification, Baldev claimed plaintiff offered to sell him the machines when Nemetz was evicted. He further alleged that plaintiff and Nemetz had "rescinded the old contract and made a new contract . . . ." In a pro se brief accompanying the opposition, Baldev claimed his landlord's lien had "priority over any lien . . . including priority over the lien of secured creditors . . . ."

On May 13, 2011, the judge denied plaintiff's motion to enforce the purported settlement. The order required, however, that "the Bharaj defendants . . . disclose all information on the sale of the equipment . . . within ten days . . . ." The judge specifically concluded that he lacked sufficient information regarding plaintiff's alleged "renogotiat[ion of] the loan amount . . . ."

Plaintiff filed a certification from Melanie R. Constantino, its counsel, on May 31, 2011. It contained Baldev's email response to the judge's order to disclose -- an unsigned typed note to Constantino dated April 25. That

[3] The emails clearly demonstrate Baldev sent them to Crosby and at least one of the emails list both he and Pushpa as its authors.

indicated a sale of the machines took place on March 15, 2011, for $16,877, and the buyer was "Hollywood Laundromat LLC[,] . . . 706 Grove Ave., Edison . . . ." The current location of the collateral remained, "231 Hollywood Ave., Hillside . . . ."

Plaintiff filed another order to show cause on June 2, 2011, seeking temporary restraints on the sale or transfer of the four machines and a writ of replevin. The judge entered the order after conducting a hearing at which Baldev appeared pro se.

Constantino filed a certification on June 15 in which she alleged participation in a conference call with Nemetz, who claimed Baldev was operating the laundromat under the same trade name, i.e., Hollywood Laundromat, and using the machines in the business. Constantino attached a business entity search that revealed Hollywood Laundromat commenced business on December 24, 2010, and Baldev was listed as its principal at the same Edison address he previously provided.

Baldev filed opposition, claiming the collateral was not "reasonably identified" in the UCC security filing. He also alleged that plaintiff and Nemetz had entered into "a new contract" after the original default on the promissory note, and plaintiff sold Nemetz "[four] used machines," that plaintiff agreed to finance. Thereafter, Baldev evicted Nemetz for

failure to pay rent. Baldev also attached an agreement he and Nemetz allegedly signed on December 26, 2010, wherein Nemetz agreed to sell the machines to Bharaj, along with all other "abandoned property," for $20,000. There was also a check from Baldev made payable to Nemetz, in the amount of $2000, and endorsed as "full and final payment for Hollywood Laundromat."

Plaintiff filed Crosby's responsive certification. He acknowledged that Nemetz made several payments in July 2009, and nine additional payments between August 2009 and May 28, 2010, in "an effort to keep his account with [plaintiff] current." Crosby certified, however, that plaintiff and Nemetz "never made any alternative payment arrangements; to wit, no documents were ever signed or executed."

Plaintiff also filed a certification from Nemetz. He denied ever renegotiating his agreement with plaintiff. Nemetz further certified that he tried to sell the laundromat for three years, but Baldev and Pushpa demanded a $40,000 payment.[4] His business failed, and he was evicted in December 2010. Since that time, Nemetz had seen Baldev and other family members operating the laundromat using the same washing machines that were subject to the financing agreement.

[4] It is unclear what was the consideration for the payment demanded.

In a written opinion dated July 8, 2011, explaining his reasons for entering the July Order the day before, the judge concluded plaintiff had a perfected UCC security interest in the machines that was superior to any lien Baldev asserted as Nemetz's landlord. The judge delayed implementation while the parties attempted to negotiate further.

On July 8, Baldev filed a motion seeking a stay pending appeal. That was apparently denied.[5] We denied Baldev's motion for emergent relief seeking a stay on July 12, 2011.

On July 12, plaintiff moved for sanctions supported by a certification from its counsel. He attached an email sent to Baldev on July 8 demanding the motion for a stay be withdrawn, citing Rule 1:4-8, "the Court's inherent power to sanction litigants for committing fraud on the Court, and . . . N.J.S.A. 2A:15-59.1." Counsel attached a copy of his billing records to date.

On July 13, pursuant to the July Order, the judge entered a writ of replevin in plaintiff's favor. On July 19, plaintiff again sought emergent relief to gain access to the laundromat.[6] Baldev faxed opposition. He accused plaintiff's counsel of not

[5] The record contains no order in this regard.

[6] The transcript reveals the original motion judge was on vacation and a second judge heard plaintiff's application. We have not been supplied with plaintiff's supporting documents.

communicating and denied having received the writ of replevin. The judge entered an order, specifically finding that Baldev and Pushpa were operating the Hollywood Laundromat and had placed "signage on the front door claiming their summer hours to be 5[p.m.] to 8[p.m.] Monday thru Friday, and 8[a.m.] to 8[p.m.] on the weekends in an attempt to avoid enforcement of the . . . Writ of Replevin . . . ." We are advised by plaintiff that Bharaj "finally cooperated" on the afternoon of July 19, and the machines were repossessed.

The original motion judge granted plaintiff's motion for sanctions (the August Order) without explanation. Although plaintiff sought an award in excess of $18,000 in fees, the judge, as noted, awarded $5000.

At a settlement conference held on February 8, 2012, before a third Law Division judge, plaintiff dismissed the balance of any claims in the complaint having secured the machines in question.

II.

Before us, Baldev argues the judge erred in dismissing the complaint without a trial, and the award of sanctions was error. Neither argument lacks sufficient merit to warrant extensive

discussion in a written opinion. R. 2:11-3(e)(1)(E). We add the following.

Initially, we reject plaintiff's argument that the appeal is moot because the collateral was repossessed pursuant to the July Order, and no relief could be accorded by our review. As we discern from Baldev's brief, he challenges the original determination that plaintiff's UCC lien had priority over any claim he had as Nemetz's landlord. Whether the writ of replevin properly issued in light of this claim was an unresolved issue entitled to our review. See e.g., Mony Life Ins. Co. v. Paramus Parkway Bldg., Ltd., 364 N.J. Super. 92, 101 (App. Div. 2003) (rejecting respondent's claim of mootness where appellant had paid in full the mortgage note after the foreclosure judgment was entered). In our opinion, Baldev's failure to have asserted a counterclaim for the value of the machines is not a bar to such relief.

However, we fully agree with plaintiff that its perfected UCC lien trumped any claim Baldev had as Nemetz's landlord. See Hartwell v. Hartwell Co., 167 N.J. Super. 91, 100-01 (Ch. Div. 1979) ("[A] landlord's lien based upon N.J.S.A. 2A:42-1 is subordinate to a security interest perfected according to the Uniform Commercial Code."); and see N.J.S.A. 2A:44-165 (limiting application of the Loft Act, N.J.S.A. 2A:44-165 to -168, to the

rental of "space for manufacturing or other purposes"). Because the perfected UCC security interest had priority, plaintiff was entitled to a writ of replevin, which may be granted as temporary relief upon an appropriate showing at a summary proceeding. See N.J.S.A. 2B:50-2 (permitting such relief "[i]f the court, after notice and hearing, and based upon filed papers and testimony, if any, finds a probability of final judgment for the plaintiff").

The writ of replevin was not a final order. Although not named in Baldev's Notice of Appeal, the March 12, 2012 order dismissing the case without prejudice was reviewable. See Morris County v. 8 Court Street Ltd., 223 N.J. Super. 35, 38-39 (App. Div.) (noting a dismissal without prejudice under such circumstances is reviewable by right), certif. denied, 111 N.J. 572 (1988). We have chosen to review the merits of Baldev's arguments to accord finality to this dispute.

Lastly, we need not recite in any further detail the substantial evidence in the record supporting the judge's award of sanctions.[7] It would have been preferable for the judge to have provided explicit explanation for his award, see R. 1:7-4(a), however, implicit was a determination that Baldev's

[7] We do not believe either Rule 1:4-8 or N.J.S.A. 2A:15-59.1 applies in these circumstances.

conduct was demonstrably obfuscatory and contrary to express representations made in his filings and during court proceedings. After being granted time to negotiate with plaintiff following entry of the July Order, Baldev immediately sought a stay and appellate review. It is axiomatic that the court maintains its inherent authority to enforce its orders and sanction a litigant when appropriate and necessary. See R 1:10-3 (permitting the court to award counsel fees to any litigant "accorded relief" under the rule). Nor is Baldev's conduct excused by his decision to represent himself. See, e.g., Venner v. Allstate, 306 N.J. Super. 106, 110 (App. Div. 1997) (noting pro se litigant's obligation to comply with court rules); Parish v. Parish, 412 N.J. Super. 39, 54 (App. Div. 2010) (recognizing award of counsel fees "to curb [a litigant's] manipulation[]" of court proceedings).

Affirmed.