

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-6147-11T2

VILLAGE OF RIDGEFIELD PARK,

Plaintiff-Respondent/
Cross-Appellant,

v.

ASHRAF SHAKER,

Defendant-Appellant/
Cross-Respondent.

Argued November 14, 2013 – Decided December 1, 2014

Before Judges Fuentes, Simonelli, and Fasciale.

On appeal from Superior Court of New Jersey,
Law Division, Bergen County, Municipal Appeal No.
MA-01-06-12.

Thomas A. Blumenthal argued the cause for
appellant/cross-respondent.

William R. Betesh argued the cause for
respondent/cross-appellant (Boggia & Boggia, LLC,
attorneys; Joseph W. Voytus, on the brief).

The opinion of the court was delivered by

FUENTES, P.J.A.D.

Defendant Ashraf Shaker appeals from an order entered by
the Law Division on July 25, 2012, upholding a judgment entered
against defendant by the Ridgefield Park Municipal Court
(municipal court) in the amount of \$177,000. To satisfy the

judgment, the Law Division ordered defendant to execute a deed to be held in escrow, conveying one of his properties to the Village of Ridgefield Park (Ridgefield Park or the municipality). The judgment would be satisfied from the proceeds of the sale of the property. The court also ordered the municipality to release to defendant any proceeds in excess of the amount of the judgment.

The municipality cross-appeals, arguing the trial court erred in denying its motion to dismiss based upon defendant's failure to comply with the requirements of Rule 4:74-2 and Rule 4:74-3(a), or otherwise show good cause to relax the rules' requirement to post the mandatory deposit or bond.

We reject the parties' arguments and affirm the judgment of the Law Division in its entirety.

I

The judgment entered by the municipal court relates to a summary enforcement action filed by Ridgefield Park on March 1, 2011, under the provisions of N.J.S.A. 2A:58-11. The municipality sought enforcement of penalties assessed against defendant under the State Uniform Construction Code Act, N.J.S.A. 52:27D-119 to -141 (UCC), in connection with four properties owned by defendant covering a time period from December 2007 to April 2009.

The municipality issued a total of fifteen violation notices to defendant involving four separate properties, consisting of one "Notice of Unsafe Structure" and fourteen "Notice[s] and Order[s] of Penalty." The first violation notice included in the record before us is dated December 14, 2007, and was based upon an inspection conducted the previous day on a property owned by defendant on Paulison Avenue. The "Notice of Unsafe Structure" informed defendant that the "[b]asement and first floor apartment noted as an unsafe structure - Must vacate immediately."

The notice ordered defendant to "[v]acate the above structure" by December 14, 2007, and warned defendant that "refusal to comply with this order" would result in future enforcement action and assessment of up to \$500 in penalties per week. The municipality cited N.J.S.A. 52:27D-132 and N.J.A.C. 5:23-2.32 as legal authority for the action taken. The municipality issued defendant four additional violation notices in connection with the Paulison Avenue property: (1) construction of a basement apartment without permits; (2) construction of an apartment on the first floor in space designated as commercial; (3) construction of an illegal basement apartment without a certificate of occupancy (CO); and (4) the final notice, dated September 29, 2008, shows defendant

failed to take the action required by the date indicated, resulting in an assessment of a \$2000 penalty, and additional \$500 fines accruing on a weekly basis beginning October 9, 2008, until the violations were abated.

Other notices involved properties owned by defendant on Park Street, Mount Vernon Street, and Teaneck Road. All of these "Order[s] of Penalty" also apprised defendant of his right to "request a hearing before the Construction Board of Appeals of the Village of Ridgefield Park, within 15 days of receipt of this order as provided by N.J.A.C. 5:23A-2.1."

On March 1, 2011, the municipality filed a summary enforcement action against defendant in the municipal court pursuant to N.J.S.A. 2A:58-11(b), seeking to collect the accrued penalties. As authorized under N.J.S.A. 2A:58-11(c), the municipal court held a hearing to consider testimony on any factual issue in dispute. At this hearing, defendant claimed the municipality was barred from seeking the maximum penalties accrued because it was bound by the terms of a settlement agreement the parties reached on February 17, 2010, limiting the monetary penalties to \$4000. According to defendant, his attorney at the time, Daniel P. McNerney, negotiated the settlement with municipal prosecutor Thomas Quirico and Construction Code Official Michael Landolfi.

The terms of the settlement were not placed on the record before the municipal court or memorialized in a consent order at the time this agreement was allegedly reached. However, at the time the municipality filed the summary enforcement action, the municipal court admitted into evidence a copy of a letter dated February 19, 2010, written by McNerney to the municipal prosecutor Quirico, outlining the terms of the agreement. Defendant submitted to the Law Division a copy of this letter, which outlined the following terms of the agreement:

1. [Defendant] will pay a \$4,000.00 fine as to the alleged Code Violations within [forty-five] days; The Code Violations will be paid through the Village of Ridgefield Park Municipal Court, and the pending Interlocutory Appeal now before Hon. Harry Carroll, J.S.C., will be withdrawn;¹
2. [Defendant's] pending lawsuit [against Ridgefield Park] will be voluntarily dismissed by the Law Offices of Donald Onorato, Esq.;
3. The Defendant will not be required to make any structural property changes/renovations; he is presently seeking a variance to 72 Park Street and the building is vacant; and he will proceed with a variance on 74 Mount Vernon Street within a reasonable time period; and
4. The Defendant will allow access to the Teaneck Road property.

¹ This refers to defendant's interlocutory appeal to the Law Division of the municipal court's decision to deny his motion for a change of venue.

Quirico argued that the letter did not express the terms of the agreement the parties had discussed. Moreover, he argued that the parties were not able to reach an agreement. According to Quirico, he and Construction Code Official Landolfi did not "sign off" on the letter because it did not reflect the terms the parties had discussed. Defense counsel argued that the municipality's acceptance of the \$4000 was dispositive evidence of its agreement to the terms reflected in the letter. Alternatively, defense counsel asked the municipal court to allow him to call Quirico as a witness in order to question him under oath and provide the municipal judge with a foundation to ascertain his credibility concerning his claim that no settlement was ever reached.

The municipal court denied defendant's application to call Quirico as a witness. The municipality nevertheless called Landolfi, who testified that he personally observed all but one of the violations. Landolfi also emphasized that defendant did not avail himself of his administrative remedies under N.J.A.C. 5:23A-2.1 to appeal assessment of the penalties to the Construction Board of Appeals.

On September 12, 2011, the municipal court judge issued a written decision in favor of Ridgefield Park. The municipal court found the letter authored by defense counsel purporting to

reflect the terms of the settlement agreement was not a "self-executing" contract. The municipal court also found defendant failed to produce competent evidence reflecting the municipality's consent to this alleged settlement. Characterizing the \$4000 defendant paid to the municipality in 2010 "as a payment into escrow pending a final agreement," the municipal court entered judgment against defendant under N.J.S.A. 2A:58-11(c) in the net amount of \$177,000.

II

Defendant filed an appeal to the Law Division,² arguing the municipal court erred in declining to enforce the settlement or alternatively in denying him the right to call the municipal prosecutor as a witness. The trial court rejected defendant's arguments, finding the municipal court properly entered judgment against defendant under N.J.S.A. 2A:58-11(c). The court specifically noted defendant did not avail himself of his right to appeal the Construction Code Official's penalties to the municipality's Construction Board of Appeals.

² Defendant also attempted to file an appeal before the municipality's Construction Board of Appeals. The Office of Regulatory Affairs informed the Board that it did not have jurisdiction to hear the appeal because the subject matter of defendant's application was then pending before the Law Division.

With respect to the settlement agreement, the Law Division found no competent evidence in the record establishing the existence of a binding settlement agreement precluding the municipality from prosecuting this enforcement action. As a matter of credibility, the judge noted that if a settlement had in fact been reached, the attorneys involved would have taken the time and effort to place the terms of the agreement on the record before the municipal court. Finally, the Law Division Judge also agreed with the municipal judge's decision to deny defendant's application to call the municipal prosecutor as a witness.

We agree with the Law Division. The Penalty Enforcement Law of 1999, N.J.S.A. 2A:58-11 to -12, empowers a court to decide a penalty enforcement case in a summary manner. The judge is required to "hear testimony on any factual issues, and if [the judge] finds that the violation occurred, shall impose a penalty as provided by the statute [establishing the civil penalty]." N.J.S.A. 2A:58-11(c). Judges are given "broad discretion" when determining whether evidence is relevant and whether to admit relevant evidence. Green v. N.J. Mfrs. Ins. Co., 160 N.J. 480, 492 (1999). See also N.J.R.E. 401, 403.

The trial court's holding denying defendant's claim that the matter was settled by the parties was well-supported by the

evidence in the record. We discern no legal basis to disturb it. See State v. Locurto, 157 N.J. 463, 470-71 (1999). The municipality's cross-appeal is rendered moot by the Law Division's ultimate decision.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION