NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1603-11T3

GARY LOCASSIO, Acting Director
New Jersey Division
on Civil Rights,

Plaintiff-Respondent,

v.

CITY COFFEE, INC.,

Defendant,

and

RONALD FORD, JR.,

Defendant-Appellant.

Submitted: December 19, 2012 - Decided: January 4, 2013

Before Judges Axelrad and Haas.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Docket No. L-3191-07.

Ronald Ford, Jr., appellant pro se.

Jeffrey S. Chiesa, Attorney General, attorney for respondent (Andrea M. Silkowitz, Assistant Attorney General, of counsel; James R. Michael, Deputy Attorney General, on the brief).

PER CURIAM

Defendant Ronald Ford, Jr. appeals from the October 21, 2011 order enforcing settlement of the complaint filed by the

New Jersey Division on Civil Rights (DCR), alleging he, as sole owner and manager of a coffee shop in Camden, and the operating corporate entity, defendant City Coffee, Inc. (City Coffee) (collectively referred to as defendants) engaged in a pattern and practice of subjecting female employees to sexual harassment. Ford contends there was not a meeting of the minds and he never signed a Final Consent Judgment (consent judgment). He further asserts error by the trial court in denying a stay to him and declining to place the retrial on the inactive list based on appellant's military duties. We are not persuaded by either of these arguments. We affirm substantially for the reasons articulated by Judge Robert G. Millenky in his comprehensive oral opinion following argument on the DCR's motion to enforce settlement, but remand for clarification of the specific terms of paragraph thirteen of the consent judgment and issuance of an amended order.

The facts of the case are straightforward and are not in dispute. On June 20, 2007, the DCR filed suit against defendants on behalf of several female employees asserting claims under the Law Against Discrimination (LAD). Following a trial in June 2010, the jury found defendants unlawfully sexually harassed one former employee but did not unlawfully harass others. In October 2010, DCR successfully moved for a new trial after it was learned that Ford may have paid certain witnesses who testified at trial on his behalf. Judge Millenky ordered a new trial on all issues, including the allegations that led to the jury verdict against defendants, and vacated the $7500 jury award.

In December 2010, defendants' trial counsel was permitted to withdraw as counsel, and new counsel entered an appearance on defendants' behalf. After several adjournments, the retrial was scheduled for June 6, 2011. On the eve of the trial, the parties began discussing settlement. The terms of the settlement were that defendants would pay $15,000 in cash to DCR to settle the claims. Defendants would also agree to pay an additional $60,000, which would be suspended and vacated at the end of two or three years,[1] provided defendants paid the initial amount; implemented certain policy changes, procedures, training and employee notices with respect to harassment and discrimination in the workplace; and committed no further LAD violations during that period. Following a conversation between counsel on June 3, 2011, during which they confirmed the terms of the settlement, defense counsel sent Judge Millenky a letter advising the case had been settled, the DCR was drafting the

[1] The certification of plaintiff's trial counsel, referenced two years; however, paragraph thirteen of the consent judgment referenced three years.

documents, and requesting the matter be "marked settled." The letter was copied to Ford.

Ford refused to execute the consent judgment that was sent to his attorney. Defense counsel raised a concern about paragraph twenty-one (providing that the sum due would not be dischargeable in bankruptcy), as well as the designation of the suspended amount as civil penalties. DCR filed a motion to enforce the settlement.

In opposition, Ford filed a certification stating he had personal knowledge of the facts in the settlement negotiations, "nothing was ever mentioned to [him] about the debt in this matter being designated a non-dischargeable bankruptcy debt," and "plaintiff never stated anything about the $60,000 was going to be designated a civil penalty." Ford further stated he was advised that the $60,000 "was compensation for attorney's fees and costs incurred by the State in this matter." He also certified when he and his attorney received the draft written settlement agreement, his "attorney advised [him] of the important collateral consequences of that designation of the matters [as] non-dischargeable and civil penalties[,]" and he was thus not willing to sign the document because it "incorporates material terms that [he has] not agreed to." Ford did not dispute any other provisions of the consent judgment.

At oral argument on October 21, 2011, defense counsel reinforced this position, advising the court that only two of the thirty-eight paragraphs in the proposed consent judgment were objectionable. Defense counsel stated that his clients' position was that the court could either enforce the settlement agreement without the two provisions or schedule the retrial.

After reciting the record before him, Judge Millenky found there was no factual dispute that an agreement was reached to settle the case based on the terms set forth in the proposed consent judgment with the exclusion of the two provisions cited by Ford, which had not been discussed by the parties. Accordingly, he granted DCR's motion to enforce the settlement but struck the two provisions Ford found objectionable, paragraphs thirteen and twenty-one ($60,000 classified as a "civil penalty" and deemed nondischargeable in bankruptcy), memorialized in an order of the same date.[2] This appeal ensued.

The crux of Ford's challenge to the settlement agreement on appeal is that his decision as to whether or not the $60,000

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[2] The order grants plaintiff's motion to enforce the settlement and enters the consent judgment "with the exceptions of paragraphs 13 and 21, which shall be stricken." Considering the nature of the oral argument and the judge's findings, it seems clear the judge's intention was to strike solely the clause in paragraph 13 that referenced the $60,000 balance of the settlement amount "compris[ing] civil penalties pursuant to <u>N.J.S.A.</u> 10:5-14.1a," and not the entire paragraph, which provided for the conditional payment.

suspended obligation could be discharged in bankruptcy was a material term of the agreement. Judge Millenky amply responded to Ford's concern. He excised from the draft consent judgment the boiler-plate provision inserted by the DCR with respect to non-dischargeability of the debt in bankruptcy, as it undisputedly was not a term discussed or agreed to by the parties. The judge also deleted the civil penalty provision. It is clear from the record that Ford was involved in the settlement negotiations and consented to all the other terms contained in the draft agreement, as represented by his attorney to Judge Millenky at oral argument. It is immaterial that Ford did not sign the consent judgment; he is bound as a matter of law by its terms as modified by the October 21, 2011 order, which will be clarified and amended on remand.

Ford's contentions with regard to his position in the army are irrelevant and without merit to the issue on appeal. As a Major in the Army Reserves, stationed locally, his duty assignments required him to attend military funerals and provide casualty assistance to families in New Jersey and Pennsylvania who have lost a service member. On March 28, 2011, Ford requested in writing to have the underlying matter placed on the inactive list because of his military assignments, submitting documentation of his assignments. By letter of April 8, 2011, Judge Millenky denied the request, advising of the May 9 trial date, subsequently adjourned, and informing Ford that if he "receives a military assignment that cannot be adjusted and that may compel his absence for several days, we can work around that."

Ford never asked for specific days off to accommodate his sporadic military commitments. He was present during the entire trial and apparently was able to operate his business in Camden before and after the trial. Moreover, Ford makes no claim that his attorney settled the case without reaching him because he was deployed and unable to be reached. In fact, Ford's own certification confirms he was involved in the settlement negotiations and had "personal knowledge of the facts." As such, Ford's military status had no impact on settlement of the DCR's discrimination complaint against him and his corporation, and is thus irrelevant to this appeal.

The October 21, 2011 order is affirmed. We remand solely for the court to clarify whether the time period for suspension and vacation of the $60,000 balance of the settlement amount is two or three years and to amend the order to clarify that only the reference to civil penalties in paragraph thirteen of the consent judgment has been stricken. We do not retain jurisdiction.

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

CLERK OF THE APPELLATE DIVISION