SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3309-16T1

WHITE GLOVE HOSPITALITY, LLC,

Plaintiff-Respondent,

v.

STOCKTON UNIVERSITY,

Defendant,

and

D&M GALLOWAY HOLDINGS, LLC,

Defendant-Appellant.

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Submitted January 29, 2018 - Decided March 16, 2018

Before Judges Messano and Accurso.

On appeal from Superior Court of New Jersey, Chancery Division, Atlantic County, Docket No. C-000052-16.

Jacobs & Barbone, P.A., attorneys for appellant (Edwin J. Jacobs, Jr. and Daniel J. Solt, on the brief).

Mutchko Law Offices, attorneys for respondent (Gregory J. Mutchko, on the brief).

PER CURIAM

Defendant D&M Galloway Holdings, LLC appeals from the denial of its motion for sanctions against plaintiff White Glove Hospitality, LLC and its counsel pursuant to N.J.S.A. 2A:15-59.1 and R. 1:4-8. D&M apparently had a contract, awarded by competitive bid, with Stockton University for hotel accommodations for students, which ended in May 2016. The University apparently thereafter entered into a new lease with D&M, which was not awarded by competitive bid. We say "apparently," because D&M did not include either contract in its appendix, notwithstanding they form the basis of the underlying dispute and are at the heart of whether plaintiff's complaint was frivolous.

Following those events, plaintiff filed a verified complaint in Chancery against Stockton and D&M alleging the two colluded to undermine the competitive bidding process in violation of "the State College Contracts statute. N.J.S.A. 18A:64-52, et seq." White Glove sought a declaration that "the public bidding for defendant Stockton student housing accommodations was fundamentally flawed and void," as well as the setting aside of D&M's contract, the renewal of plaintiff's contract and damages, including costs and attorneys' fees. D&M responded with two safe harbor letters, advising plaintiff its complaint was frivolous because, among other reasons, "N.J.S.A.

18A:64-53(i) excepts transactions involving real estate or any interest therein, from the State College Contracts Law requirement of a competitive bid prior to award."

Plaintiff did not withdraw its complaint, and both Stockton and D&M filed motions to dismiss. We are aware those motions were eventually successful, after the judge required additional briefing and a second argument, but we cannot say why because D&M has not provided us the judge's reasons for the decision. All we have is the judge's decision denying the motion for sanctions, where he says:

> in the end I ruled for the defendant . . . . I don't think the . . . litigation . . . was baseless. The reality was that there had been a public bid which had been won by the plaintiff. When it was rebid, it was not done by public bid. And in fact, there were some issues regarding the termination of the contract early of the plaintiff.
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> Clearly it was a question to which, in fact, legally there was no specific answer, even when Stockton . . . responded to me, because I had asked them to find any other authority. They didn't have any authority.
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> And the state's position was, essentially, the state in the situation of university housing, could go one way or the other. There was nothing wrong with the public bid process, and there was nothing wrong with the non-public bid process. I was surprised about that, but I accepted it in the end.

We review an order granting or denying sanctions for frivolous litigation under an abuse of discretion standard. Masone v. Levine, 382 N.J. Super. 181, 193 (App. Div. 2005). Although we certainly do not condone counsel's failure to have thoroughly researched the law under which he sued before accusing the University and D&M of participating in a bidding process "staged and contrived to appear to be in compliance with law," and reject as disingenuous White Glove's argument that D&M was only joined as a necessary party pursuant to R. 4:28-1(a) and thus "had no right to insist on a dismissal," we simply do not have what we need to begin to understand the proceedings in the trial court. Said another way, we cannot determine whether we would agree with D&M that the underlying complaint was baseless without a clear understanding of what the parties argued and why the judge determined to grant the motion to dismiss.

D&M's decision to exclude from the record on appeal the points the parties argued on the motion to dismiss and the judge's reasons for ultimately granting it have deprived us of any ability to determine whether the judge abused his discretion in denying its motion for sanctions. Its decision to so truncate the record as to prohibit meaningful review leaves us no choice other than to dismiss the appeal. See Noren v.

Heartland Payment Sys., 448 N.J. Super. 486, 500 (App. Div. 2017) (dismissing a cross appeal because the cross-appellant's "selective inclusion of exhibits it considers relevant and exclusion of exhibits" relied upon by its adversary made review of the summary judgment motion "impossible").

Appeal dismissed.