(NOTE: The status of this decision is **Unpublished**.)

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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO. A-6019-12T1

KARL JONES,

Plaintiff-Appellant,

v.

BELWOOD AROMATICS, INC.,

and ERIC BELDNER,

Defendants-Respondents.

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November 26, 2014

Before Judges Yannotti, Fasciale and Hoffman.

On appeal from Superior Court of New Jersey, Law Division, Passaic County, Docket No. L-0504-11.

Kenneth C. Marano argued the cause for appellant.

Jeffrey L. Clutterbuck argued the cause for respondents.

PER CURIAM

Plaintiff Karl Jones appeals from a Law Division judgment entered on June 26, 2013, following a bench trial, in favor of defendants Belwood Aromatics, Inc. ("Belwood"), and Belwood's owner, Eric Beldner. After Beldner fired him, plaintiff brought suit to recover the value of an alleged equity interest in Belwood, pointing to Beldner's references to plaintiff as a partner, and to his offer of a share in the hypothetical sale of the business. The trial court issued a written opinion finding plaintiff's credibility had been significantly impeached by contradictions with affidavits submitted in a prior lawsuit. Based on evidence of tax fraud, the court also doubted Beldner's credibility, but ultimately credited Beldner over plaintiff. The court concluded plaintiff failed to establish a joint venture or partnership, and dismissed the case with prejudice. For the reasons that follow, we affirm.

I.

We discern the following facts from the trial record. Prior to forming Belwood, plaintiff and Beldner both worked for Intrarome Fragrance Flavor Corporation ("Intrarome"). Beldner suffers from a psychological disorder, and can be unstable and unpredictable. Beldner left Intrarome in 1996, under a cloud of unconfirmed allegations of side deals and embezzlement. After leaving Intrarome, he formed Belwood. While he initially worked as its sole employee, he later expanded the business and hired other employees, including A.B., C.S., and plaintiff.

A.B. was a salaried employee paid to develop a raw ingredient sales division for Belwood. C.S. worked for Belwood as a sales representative, paid on a commission basis. Beldner offered and promised equity shares in Belwood to both A.B. and C.S., and at one point they each had lawyers draw up

contracts, but Beldner convinced them not to follow through. At trial, C.S. explained that, due to Beldner's psychological disorder, she was unwilling to commit to the liability associated with an equity interest. Both A.B. and C.S. left Belwood due to distrust of Beldner. After leaving Belwood, C.S. formed her own competing business.

Plaintiff began consulting for Belwood on a part-time basis around 1998. Plaintiff's work included analyzing existing fragrances for reproduction, writing up formulas, and producing new batches of fragrances. Plaintiff was aware that this work violated the non-compete clause of his employment contract with Intrarome, and in 2004 Intrarome discovered plaintiff's sideline work and fired him. The day after his termination from Intrarome, plaintiff began working full time for Belwood.

As a result of his termination, plaintiff brought a claim against Intrarome, alleging, among other things, that he was terminated without cause. In that case plaintiff submitted several signed affidavits ("Intrarome Affidavits"). Plaintiff's testimony in the present case materially differed from those affidavits. Specifically, plaintiff averred that he had not violated the non-compete clause by working part time for Belwood, and that he was unable to find work, despite the fact that he was working full time for Belwood.

Plaintiff's terms of employment with Belwood were never formalized in a written document. Initially, Beldner paid plaintiff $9000 to $10,000 "under the table" every month, later increasing to $12,500 per month. Beldner also occasionally awarded bonuses to plaintiff. Plaintiff alleged that, at the time he left, his salary had been increased to $15,000 per month, with a regular bonus of $20,000 every two months, all paid "under the table."

Beldner, as an accountant, prepared plaintiff's income tax returns. If any taxes were owed, Belwood paid the tax on plaintiff's behalf. Evidence presented at trial showed that Beldner grossly underreported plaintiff's income. The record indicates that Belwood paid plaintiff almost $600,000 from 2005 to 2008, with plaintiff reporting income of less than $200,000 for that four-year period. Plaintiff admitted that he signed the tax documents prepared by Beldner every year, but added that he only "read as

much [of the returns] as [he] understood." Evidence also indicated that Beldner had grossly underreported both his own income and Belwood's income. As a result, the trial court reported both Beldner and plaintiff to the United States Attorney for the District of New Jersey and the Office of the New Jersey Attorney General.[1]

Plaintiff had input on Belwood's major business decisions, but conceded that Beldner retained the ultimate decision-making power. He reasoned that Beldner, as the supermajority shareholder, held the controlling authority, and could not be outvoted by the minority shareholders. He also admitted that Beldner was the "founder and owner of Belwood."

Beldner generally permitted plaintiff to do outside work, and he consulted for several of Belwood's competitors. Plaintiff informed Beldner of some of the outside jobs, but not others. C.S's post-Belwood business was among the competitors for whom plaintiff secretly worked. C.S. paid plaintiff a commission rate on the sales for the projects he worked on. After C.S. poached some of Belwood's business, Beldner forbade plaintiff from working for her. When confronted, plaintiff falsely assured Beldner that he was not working for C.S. Eventually, C.S. stopped giving plaintiff work when he held some newly developed formulas ransom, seeking to negotiate a higher commission.

Plaintiff's relationship with Beldner was turbulent. The two would argue, and plaintiff would leave the office. On one occasion, plaintiff threatened Beldner, stating he was going to blow up Belwood and shoot Beldner and his kids with a shotgun. After a cooling-off period, Beldner would reach out to plaintiff and entice him to return to work. Upon his return to work following a confrontation in early 2008, plaintiff surreptitiously taped a conversation between himself and Beldner ("2008 Recording"). The trial court admitted a portion of the transcript of the recording into the record.

In the 2008 Recording, plaintiff requested a retroactive raise to a monthly salary of $15,000, along with a guarantee of his future salary. Beldner argued that, due to variable volume of orders, growth, and reinvestment, he could not guarantee plaintiff's salary. However, Beldner assured plaintiff that

Belwood was expanding, that plaintiff would share in Belwood's growth, and that any extra cash taken out of Belwood would be split evenly between plaintiff and himself. Beldner repeatedly referred to plaintiff as a partner. At trial, Beldner explained that he frequently uses the word "partner" as a casual reference to his employees, suppliers, and customers, intending to invoke their general shared interest in Belwood's success, rather than a specific ownership interest. Although the transcript does not include the end of the conversation, the two eventually agreed:

> BELDNER: I guarantee you [fifteen thousand] a month.
>
> . . . .
>
> BELDNER: You . . . guarantee to me that if I have to go into my credit line to do it, you know, that you're going to be more lenient.
>
> PLAINTIFF: . . . [B]ut then when it comes back, I get it retroactive.
>
> BELDNER: Absolutely.
>
> . . . .
>
> BELDNER: And . . . you have my word that if I take a dime out of here other than what I take every month, it gets split with you [evenly].

Plaintiff also taped several conversations with Beldner in 2009 ("2009 Recordings"), and the trial court again admitted portions of the transcript of those conversations into the record. During one of those conversations, the two discussed:

> BELNDER: . . . You know, we have a choice. Do you want to build this thing or do you want to sell it? What do you want to do?
>
> PLAINTIFF: [I]t's not up to me.
>
> BELDNER: It is.
>
> PLAINTIFF: [No] it's not.
>
> BELDNER: Karl, if I sold the thing, I'd give you a third.
>
> PLAINTIFF: Okay
>
> . . . .
>
> PLAINTIFF: I want to build it.
>
> . . . .
>
> BELDNER: If we could hang in there another three to five years . . . we'll get [ten] million [dollars].
>
> . . . .

BELDNER: [Alpine wi]ll take it in a minute . . . [f]or five [million]. Which would mean two [million] for you, three [million] for me.

. . . .

BELDNER: Let's get it to [ten] million [dollars]. [Split] it . . . [three] and [seven], [four] and [six], whatever.

Plaintiff: All right.

Beldner also suggested expanding Belwood into a new building:

BELDNER: . . . I [have] to . . . find the building —

PLAINTIFF: Uh-huh.

BELDNER: — right? Of which you should take a peek[.] I'll put up the money for you — no. I want you invested.

PLAINTIFF: Uh-huh.

BELDNER: You know, I don't want to . . . be the only one[,] because I want to keep you. . . . [I]f [everything] comes in and you leave, I'm [ruined].

Despite this conversation, plaintiff never invested any money in Belwood.

In May of 2009, plaintiff and Beldner became involved in an altercation concerning plaintiff's son, who also worked for Belwood. Beldner threatened to retract the son's raise due to his insubordination. Plaintiff responded by picking up a beaker and throwing it at Beldner, who then escorted plaintiff out of the building. Plaintiff assumed he would return to work in a week, after cooling off, consistent with previous confrontations. When plaintiff attempted to return, an employee informed him that he was no longer welcome at Belwood.

At trial, Beldner presented circumstantial evidence that plaintiff may have deleted fragrance formulas from the Belwood's mass spectrometer. Additionally, plaintiff later contacted Belwood employees, stated he was forming a competing business that would poach all of Beldner's customers, and attempted to recruit them.

Both parties presented testimony from competing accounting experts. The trial court's written opinion found plaintiff's testimony suspect, as his credibility was substantially impeached by the false statements in the Intrarome Affidavits, as well as his filing of the fraudulent tax returns prepared by Beldner. Those returns similarly cast doubt upon Beldner's testimony, but the court ultimately credited him over plaintiff based on corroboration from A.B., C.S., and other Belwood employees, as well as consideration of Beldner's personality disorder. The court generally credited the testimony of the remaining witnesses, although it did not mention either expert. After carefully analyzing plaintiff's claims and the evidence of record, Judge Garry S. Rothstadt issued a cogent thirteen-page opinion, concluding that plaintiff failed to establish a joint venture or partnership. This appeal followed.

II.

On appeal, plaintiff challenges the trial court's credibility findings, and argues that the court erred by not crediting his expert's testimony and by concluding that plaintiff had no interest in Belwood as a partnership or joint venture.[2]

Determinations of credibility are reserved for the factfinder — in this case the trial judge. Ferdinand v. Agricultural Ins. Co. of Watertown, N.Y., 22 N.J. 482, 499 (1956); Metuchen Sav. Bank v. Pierini, 377 N.J. Super. 154, 161 (App. Div. 2005). Such determinations are "binding on appeal when supported by adequate, substantial and credible evidence." Metuchen, supra, 377 N.J. Super. at 161 (citation and internal quotation marks omitted). We only disturb the credibility determinations of the trial judge if "convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Ibid. (citation and internal quotation marks omitted).

Here, the trial court's credibility determinations are well supported. Plaintiff's credibility was severely undermined by evidence of his false affidavits and evidence of tax fraud. Although Beldner's credibility was also suspect, the court explained its decision to at least partially credit his testimony based upon corroboration provided by non-party witnesses, as well as evidence of Beldner's psychological disorder.

Moreover, the court's credibility determinations are largely moot, as, with the exception of the ultimate issue, the parties do not dispute most of the underlying facts. Plaintiff relies almost exclusively on the transcripts of the 2008 and 2009 Recordings, and Beldner does not dispute their authenticity. The parties generally agree as to: Beldner's statements to plaintiff; plaintiff's authority, powers, and responsibilities at Belwood; and the actual monetary compensation that Beldner paid plaintiff. They only disagree over the meaning and intent of statements exchanged between the parties.

As to plaintiff's expert, "[i]t is for the [factfinder] to determine the credibility, weight and probative value of the expert's testimony . . . ." Rubanick v. Witco Chem. Corp., 242 N.J. Super. 36, 48 (App. Div. 1990), modified, 125 N.J. 421 (1991). The factfinder is not bound by expert opinion, and experts "may not usurp the province of the [factfinder] to decide the ultimate issue . . . ." State v. Reeds,

197 N.J. 280, 285 (2009). Here, the judge properly elected not to accord any weight to plaintiff's expert, in view of the other evidence in the case, which refuted plaintiff's claim that he was a partner of Belwood.

Lastly, plaintiff argues that the trial court erred by concluding he failed to establish a joint venture or partnership. As previously discussed, we give deference to a trial court's factual findings, and will not disturb them if "'supported by adequate, substantial and [82] credible evidence.'" Toll Bros. v. Twp. of W. Windsor, 173 N.J. 502, 549 (2002) (quoting Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 484 (1974)). However, we review issues of law, including the application of the law to the underlying facts, de novo. State v. Hinton, 216 N.J. 211, 228 (2013); Estate of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 382-83 (2010).

"The burden of proving the existence of a partnership was upon plaintiff, who alleged it . . . ." Lohmann v. Lohmann, 50 N.J. Super. 37, 45 (App. Div. 1958), certif. denied, 31 N.J. 187 (1959). A partnership is "an association of two or more persons to carry on as co-owners a business for profit . . . ." N.J.S.A. 42:1A-2. "[A] joint venture is virtually identical to a partnership, [although] its objective as a business venture is more limited. Presten v. Sailer, 225 N.J. Super. 178, 191 (App. Div. 1988).

A partnership or joint venture need not be formalized in writing, and can be inferred from conduct. Id. at 191-93; Ruta v. Werner, 1 N.J. Super. 455, 460 (Ch. Div. 1948). The elements of an inferred partnership or joint venture "include agreement, sharing profits and losses, ownership and control of the partnership['s] property and business, community of power, rights upon dissolution and the conduct of the parties towards third persons, among others." Kozlowski v. Kozlowski, 164 N.J. Super. 162, 171 (Ch. Div. 1978), aff'd, 80 N.J. 378 (1979).

Here, plaintiff argues that: (1) through his labor, he contributed to Belwood; (2) Beldner paid plaintiff fifty percent of Belwood's profits; (3) Beldner offered plaintiff a share in Belwood's sale price; and (4) Beldner often referred to plaintiff as a partner.

As to plaintiff's contributions, the trial court found Beldner compensated plaintiff for his labor via salary and bonuses alone. Plaintiff convinced Beldner to guarantee his salary, with priority over Beldner's own salary and personal debt. This guarantee and priority over Beldner indicates that plaintiff sought to be an employee creditor with a definite, limited, and secured interest, rather than a partner exposed to risk and liability. Accordingly, the trial court did not err by concluding that plaintiff's labor did not constitute an uncompensated contribution to Belwood.

Plaintiff also failed to show that the bi-monthly bonuses were, in fact, profit sharing. While Beldner told plaintiff he would evenly split any money withdrawn from Belwood, Beldner ultimately paid plaintiff $20,000 every other month. By their uniformity and regularity, those payments are not consistent with profit sharing.

As to the hypothetical sale of Belwood, Beldner's verbal offers were insufficient to legally convey an equity interest. First, while Beldner offered plaintiff a share in the sale, the two never agreed on the material terms, namely the apportionment of the shares. Second, plaintiff failed to demonstrate consideration or reasonable reliance on Beldner's offer. As noted, plaintiff negotiated to exchange his labor for a guaranteed salary rather than a hypothetical share in the sale of Belwood.

Third, plaintiff did not reasonably believe Beldner's oral offer was sufficient to convey an equity interest in Belwood, and, moreover, plaintiff did not intend to be bound by the offer. Beldner made similar offers to A.B. and C.S., but they balked before signing written agreements, as they were concerned about liability exposure. According to C.S., plaintiff was aware that Beldner expected a written document formalizing the partnership, and that C.S. had declined to follow through on executing a written contract. Plaintiff similarly never signed a written contract with Beldner, and maintained a willful ignorance of Belwood's finances, indicating his own unwillingness to expose himself to liability. Plaintiff only recognizes and asserts the alleged partnership now that his share would be reduced to a cash sum.

Plaintiff, in effect, seeks to profit from the success of the venture, while avoiding all liability for its potential failure.

Fourth, Beldner's offer was an illusory promise, rather than an enforceable contract. An illusory promise is:

> An apparent promise, which according to its terms makes performance optional whatever may happen, or whatever course of conduct in other respects he may pursue, is in fact no promise, although often called an illusory promise.
>
> [Curtis Elevator Co. v. Hampshire House, Inc., 142 N.J. Super. 537, 542 (Law Div. 1976) (emphasis omitted) (citations omitted).]

Illusory promises are disfavored, and courts will attempt to infer reasonable contract terms. Ibid.

Here, plaintiff does not dispute Beldner held ultimate authority over the disposition of Belwood, and Beldner was under no obligation to sell Belwood. Moreover, Beldner qualified his offer, stating, "[I]f I sold the thing, I'd give you a third." We will not infer a requirement that Beldner must sell Belwood. Absent any definite obligation or reliance by plaintiff, Beldner's offer was an illusory promise, rather than an enforceable contract.

Beldner's references to plaintiff as a partner were similarly illusory. Plaintiff heard Beldner refer to A.B. and C.S. as partners, and yet neither retained an interest in Belwood after quitting. Plaintiff presented no evidence that either Beldner or plaintiff indicated to third parties that plaintiff had a share in Belwood. Moreover, neither A.B. nor C.S. believed plaintiff owned a share of Belwood.

The remaining elements of a partnership weigh against a finding that Belwood was a partnership or joint venture. The parties never reached a formal written agreement. Plaintiff lacked authority or control over Belwood. He did not contribute financially to Belwood, and he did not own or control Belwood's property. As noted previously, he never accepted any legal or economic liability for Belwood. Lastly, plaintiff repeatedly undermined Belwood by working for its competitors, even against Beldner's express prohibition, and by seeking to sabotage the company after his termination. Accordingly, we affirm the trial court's conclusion that plaintiff failed to establish a partnership or joint venture, and thus we affirm the dismissal of plaintiff's complaint.

Affirmed.

1 "When a court becomes aware that the parties appearing before it are, or may be, involved in illegal conduct, it has an ethical obligation to act." State v. V.D., 401 N.J. Super. 527, 537 (App. Div. 2008) (citing (Sheridan v. Sheridan, 247 N.J. Super. 552, 566 (Ch. Div. 1990)).

2 Plaintiff argues, as an aside, that the trial court erred by admitting testimony concerning the Intrarome Affidavits. He cites no authority in support of his argument, and did not raise this issue at trial. Moreover, the testimony is clearly admissible as prior inconsistent statements used to impeach plaintiff's credibility. N.J.R.E. 607. Any prejudice was not undue, as such prejudice was due to the impeachment value alone. State v. Bowens, 219 N.J. Super. 290, 297 (App. Div. 1987) ("Damaging evidence usually is very prejudicial but the question . . . is whether the risk of undue prejudice was too high." (emphasis in original)). We therefore find this argument to be without sufficient merit to warrant additional discussion. R. 2:11-3(e)(1)(E).
