SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1982-14T4

RACEWAY REALTY, LLC and
RACEWAY PETROLEUM, INC.,

Plaintiffs-Respondents/
Cross-Appellants,

v.

JOHN PAFTINOS, CHRISTINA
PAFTINOS, PETER PAFTINOS,
PETER CAMAMIS and 1501 NEW
JERSEY STATE HIGHWAY
ONE, LLC,

Defendants-Appellants/
Cross-Respondents.

Submitted March 30, 2017 – Decided August 15, 2017

Before Judges Lihotz, Hoffman and Whipple.

On appeal from Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-7896-10.

Paul J. Sica, attorney for appellants/cross-respondents.

Mauro, Savo, Camerino, Grant & Schalk, P.A., attorneys for respondents/cross-appellants (Michael P. O'Grodnick, on the brief).

PER CURIAM

Defendants John Paftinos, Christina Paftinos, Peter Paftinos, Peter Camamis, and 1501 New Jersey State Highway One, LLC, appeal from a series of Law Division orders: (1) a January 26, 2012 order entering default judgment in favor of plaintiffs Raceway Realty (Realty) and Raceway Petroleum, Inc. (Petroleum) and ordering conveyance of real property to Realty; (2) an April 4, 2012 order denying, in part, defendants' motion for reconsideration; (3) an August 21, 2014 order fixing the value of the transferred realty; (4) a November 17, 2014 order awarding counsel fees and costs to plaintiffs; and (5) a November 17, 2014 final judgment. Defendants raise numerous arguments attacking the final judgment, which extinguished their rights in the real property, as well as awarded counsel fees and costs to plaintiffs. Plaintiffs cross-appeal, asserting the trial judge erred in conducting a proof hearing on the value of the real property.

For the reasons discussed in our opinion, we affirm the final judgment fixing liability and foreclosing defendants' interest in the real property, which has been transferred to Realty. The challenges set forth in the cross-appeal are also rejected. However, we reverse the provision of the final judgment awarding counsel fees and costs to plaintiffs, concluding the application is flawed and the trial judge failed to state adequate findings

underpinning the award. On this issue, we remand for further proceedings.

I.

The center of this dispute is the parties' respective interests in real property located on Route 1 South in Edison (the Edison property). Defendants John and Christina Paftinos acquired the property in 1977, which they leased to plaintiff, Realty, sometime in 2002, pursuant to a written lease agreement. Subsequently, the parties executed a written rider to the lease, the terms of which superseded the prior agreement. The rider states Realty, as "Tenant," would use the property to operate a fuel filling station, which involved three islands with fuel dispensers, four underground fuel storage tanks, an office, and other improvements.

The rider also fixed the rights and obligations between the parties for the initial five-year term, and for five renewal terms, each of which was for five years. The rider fixed the monthly rent for each renewal term, increased by twelve percent for the second and third renewal terms, and by fifteen percent for the fourth and fifth renewal terms. At the conclusion of the lease, the rider extended the option to John and Christina as "Landlord" to purchase the underground storage tanks and piping systems for one dollar, or to require Realty to remove them at its expense.

Central to the issues on appeal is a provision at paragraph thirty-two, entitled "First Right of Refusal" (paragraph 32), which stated:

> If, at any time during the original Term of the Lease, or any extensions thereof, or any tenancy thereafter, the Landlord receives a bona-fide offer acceptable to Landlord to purchase the Demised Premises, then Landlord shall give Tenant notice, setting forth the name and address of the purchaser and the terms and price of the offer. Tenant shall have thereupon the right to purchase the Landlord's interest covered by such an offer, at the price and terms of such offer, provided that Tenant shall have exercised such option by giving landlord notice by Certified or Registered Mail, Return Receipt Requested, to that effect, within thirty (30) calend[a]r days after the Tenant's receipt of Landlord's notice of said offer to purchase, and upon such notice of the bona-fide offer on which the first refusal option has been exercised. It being understood and agreed by the parties hereto, however, that in the event that Tenant does not give notice of its intention to exercise such first refusal option to purchase within said period, this Lease, and all its terms and conditions, shall nevertheless remain in full force and effect and Landlord and any purchaser or purchasers of the Demised Premises shall be bound thereby.
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> The above notwithstanding, Landlord and Tenant agree that Tenant's First Right of Refusal shall not apply to any intra family transactions or to any transaction that involves companies affiliated with John and Christina Paftinos.

On June 2, 2003, John and Realty entered into a separate transaction. John executed a promissory note to secure a $75,000

loan from Realty, which was payable in full on July 2, 2003. The document stated if full repayment did not occur on that date, Realty would receive a credit, amounting to one-half the monthly rental cost for the property, applied to the rent due for July 2003. Further, if the loan was not repaid in full on July 31, 2003, Realty would receive a credit for all rent due from August 2003 through March 2004. At that point, credited amounts would constitute full repayment of John's loan.

On September 8, 2003, John and defendant Peter Paftinos executed commercial loan documents with New Millennium Bank (the Bank) to obtain $800,000. Loan repayment was by monthly installments over ten years. As security for the loan, the Bank required a first mortgage on the Edison property, then appraised for approximately $1.3 million, and an assignment of the lease with Realty. John and Christina executed a mortgage on the Edison property, assigned the lease and pledged the rents from Realty. Peter's personal guarantee afforded the Bank additional security.

The loan agreement prohibited the pledge of the Edison property as collateral for other loans, and prohibited the Bank from assigning the loan. The terms further required the loan would become due and payable in full, if the Edison property was "sold."

On February 28, 2005, John and Christina executed a $350,000 promissory note to Petroleum, a company affiliated with Realty.[1] The interest-free loan demanded payment in full by May 27, 2005. However, if unpaid on that date, Realty would be relieved of its monthly rental obligations from June 2005 through May 2010.

The same day, John and Christina agreed to reduce Realty's rent for the base term and first renewal period; thereafter with each renewal, rent would increase eight percent. On June 8, 2005, Petroleum informed John and Christina they failed to pay the $350,000 loan when due, and noted the stated credits would commence in lieu of Realty's rent payments.

On November 7, 2005, the Bank notified Realty that John and Christina defaulted on the loan so that all rental payments must be forwarded to the Bank pursuant to the assignment of the lease. On November 9, 2005, Realty informed the Bank no rent was due, pursuant to the terms of the rider. On October 15, 2007, Realty exercised its first five-year lease renewal, which began on June 15, 2008.

The Bank commenced foreclosure proceedings, aimed at securing Sherriff's sale of the Edison property to satisfy the debt, then

[1] According to the Law Division complaint, Raceway Petroleum owned and operated the business entity on the Edison property leased by Realty as tenant.

totaling $776,031.47. While the case was pending, the Bank sold John and Peter's loan to defendant Peter Camamis for $680,000.[2] Camamis continued the foreclosure action as the designated plaintiff.

John and Peter negotiated with Camamis. A March 3, 2010 agreement executed by John, Christina and Peter set forth the intent to transfer the Edison property to a limited liability company known as Paftinos Camamis LLC. The agreement identified Camamis as the managing member and stated he would own no less than 51% of the LLC. Defendant 1501 LLC (1501) was formed to hold title to the Edison property. Further, John and Christina agreed to repay Camamis by December 31, 2010, and if they failed to do so, consented to transfer their interest in 1501 to Camamis. On June 23, 2010, John and Christina transferred the property's title to 1501 for one dollar, which properly recorded the deed.

John and Peter executed a second agreement with Camamis on March 3, 2010. The agreement referenced John and Peter's June 28, 2007 guaranty of a $2,800,000 debt secured by two parcels of real estate other than the Edison property. The preamble of the agreement names two LLCs, owned by John and Peter, as mortgagors,

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[2] Nicholas Kambitsis, a principal in both Realty and Petroleum, testified the Bank inquired whether he wished to purchase John and Peter's note. He offered $500,000 or $550,000, which the Bank declined.

and the named mortgagee as BMR Funding. The body of the note directs repayment of the debt due to Camamis and suggests security for repayment was John and Peter's stock in the mortgagor LLCs.[3] Camamis then dismissed the foreclosure action.

Realty was directed to remit rental payments to 1501. Realty declined and instead sent all rent payments to its attorney, who placed it into an attorney trust account. 1501 filed a summary dispossession complaint to obtain the outstanding rent due. On October 29, 2010, Realty filed a fourteen-count Law Division complaint, alleging contract and tort claims, which included the alleged fraudulent transfer of the Edison property, in violation of paragraph 32 of the rider. The landlord-tenant action was transferred to the Law Division and consolidated with Realty's action.

The Law Division judge enjoined defendants from transferring the Edison property, pending further proceedings, and ordered certain expedited discovery. 1501, Peter, John, and Christina never responded to Realty's complaint and default was entered.

The procedures that followed are muddled. Defendants moved to vacate default. Realty cross-moved for final judgment and

[3] The record does not explain the nature or purpose of this debt. Further, there is no information explaining its relationship, if any, to the first agreement between Camamis, John and Peter.

sanctions. Two orders were filed on February 18, 2011: one stated Camamis and 1501's requests to vacate default were moot, as an answer on their behalf was filed; the second denied Realty's cross-motion for sanctions and for final judgment against defendants, but mandated discovery be produced within ten days.

An answer and counterclaim on behalf of all defendants was submitted, and plaintiffs filed an answer to the counterclaim. Additional motion practice resulted in orders similar to those entered in February, including an order awarding counsel fees to plaintiffs because defendants failed to comply with the ordered discovery. Apparently, defendants' answer and counterclaim were rejected by the clerk's office, based on the entry of default.

On notice to defendants, plaintiffs moved for default judgment.[4] John and Christina opposed the motion. Camamis and 1501 filed an untimely cross-motion to vacate default and to extend the discovery end date.

Following argument, final default judgment against Camamis and 1501 was entered on January 26, 2012. The Edison property was ordered transferred to Realty for $680,000, less the amount of the realty transfer tax. The Bank's mortgage, assigned to Camamis, was ordered discharged, and Camamis and 1501 were directed to

[4] The notice of motion mistakenly recites the return date as January 6, 2011, which should be January 6, 2012.

execute all necessary documents to facilitate the transfer. Finally, attorney's fees and costs of $82,141.95 were awarded to plaintiffs, to be deducted from the stated payment due Camamis. Two orders, dated February 3, 2012, denied Camamis' and 1501's motions to vacate default without prejudice.

A deed and related documents, transferring the Edison property from 1501, appear to have been executed on February 7, 2012. Camamis and 1501 subsequently moved for reconsideration of the final judgment, challenged the determined fair market value of the Edison property, and requested transfer be stayed. John and Christina joined in the motion. In an April 4, 2012 written opinion, the judge partially granted reconsideration, temporarily stayed the transfer, and ordered limited discovery and a proof hearing on the value of the Edison property. In an April 4, 2012 written opinion, reconsideration was granted, in part. Camamis and 1501's motion to reconsider that order was denied.

Motion practice continued and for reasons unclear from the record, the matter was assigned to a different judge. Ultimately, following a three-day proof hearing, an order was entered concluding the fair market value of the Edison property was $1,105,130.57, as of January 24, 2012. Cross-motions by the parties for fee awards for the proof hearing were denied. Plaintiffs were awarded fees for successfully opposing the motion

to vacate the default judgment, in the amount of $55,052. Final judgment was filed on November 17, 2014. The trial judge stayed transfer of the realty pending appeal.

II.

On appeal, defendants maintain the certification filed by plaintiffs' counsel to support entry of default judgment was inaccurate and misleading. Defendants state the recitation of paragraph 32 omitted language allowing transfers to "intra family transactions" or transfers to "companies affiliated with John and Christina Paftinos." Further, there was no mention of paragraph 30, which subordinates the lease "to all mortgages and other security interests which may now or hereafter affect this Lease or the Premises." Defendant identifies additional paragraphs in the certification, suggesting the transfer of title to 1501 was permitted as was the mortgage loan to the Bank. Also, defendants argue counsel's certification failed to acknowledge John and Christina could redeem title to the Edison property by paying Camamis before December 31, 2010. Characterizing the agreement with Camamis as a "forbearance agreement," they state the November 2010 injunction "froze the state of title" and prevented them from doing so. Finally, defendants suggest 1501 was an allowed affiliated company of Christina and John. We reject these

assertions and note we need not review any other factual challenges recited by Camamis and 1501. R. 2:11-3(e)(1)(E).

Although defendants' arguments limit focus to statements in counsel's certification, it is important to consider other documents attached, including documents regarding the transaction between Realty and John and Christina, the loan and mortgage documents between John and Christina and the Bank, their agreements with Camamis, and the deed transferring the Edison property to 1501.

The motion to enter default judgment was opposed by John and Christina, who emphasized their partial ownership of 1501. Approximately two days before the return date, Camamis and 1501 filed opposition and a cross-motion to vacate default, which the court declined to consider.

Other discovery regarding details of Camamis' assignment from the bank and the arrangement with John and Christina, and John and Peter, were ordered disclosed early in the litigation to clarify the nature of these transactions. However, defendants' conduct, later characterized as "egregious, willful and deliberate" violations of the judge's unambiguous orders for expedited discovery, limited the available record reviewed by the court. Camamis and 1501 cannot now protest material facts were not

considered, as they controlled this information, which they chose not to provide.

"On appellate review, the trial judge's determination 'will be left undisturbed unless it represents a clear abuse of discretion.'" DEG, LLC v. Twp. of Fairfield, 198 N.J. 242, 261 (2009) (quoting Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994)). "[A]n abuse of discretion results where the 'decision [was] made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" United States, ex rel U.S. Dept. of Agric. v. Scurry, 193 N.J. 492, 504 (2008) (quoting Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002)).

The interpretation of a contract "is a matter of law for the court subject to de novo review." Fastenberg v. Prudential Ins. Co., 309 N.J. Super. 415, 420 (App. Div. 1998). Contract terms must be given their "plain and ordinary" meaning. Nester v. O'Donnell, 301 N.J. Super. 198, 210 (App. Div. 1997).

In this case, the rider includes a single event as triggering paragraph 32: the proffer of "a bona-fide offer" to purchase the Edison property. A transfer, exempt from this trigger, is one to entities "affiliated with John and Christina." The terms of the agreement reflect the fundamental intent to allow and assure plaintiffs' business is secure by eliminating third parties, other

than Christina and John, to be granted an opportunity to purchase the property, without plaintiffs' right to match the offer.

Defendants' attempt to highlight discrete events rather than viewing the matter as a whole is rejected. John and Christina's transactions with Camamis, coupled with the transfer of the Edison property to 1501, eliminated plaintiffs' rights under paragraph 32 because on January 1, 2011, Camamis became the sole holder of 100% interest in 1501. On that date, John and Christina had no interest in 1501.

The judge's January 26, 2012 written opinion succinctly reflects consideration of information submitted to the court. We flatly reject Camamis and 1501's suggestion the trial judge entered the order without consideration of numerous documents evincing the various transactions. R. 2:11-3(e)(1)(E).

Further, the judge noted Camamis and 1501 did not provide discovery within ten days of the August 19, 2011 order, and thereafter never satisfied the condition precedent for leave to file their untimely answer. The judge found the procedural requirements of Rule 4:43-1 for entry of a default judgment were properly satisfied and the repeated failure to provide discovery prejudiced plaintiffs. He found John and Christina breached paragraph 32 by transferring the Edison property to 1501, whose majority shareholder was Camamis. Thereafter, John and

Christina's failure to satisfy Camamis' debt resulted in his 100% ownership of 1501. Viewing the entire record, we find no abuse of discretion in the entry of the default judgment.

We also find unavailing defendants' claim the default judgment effectively divested non-defaulting defendants, John and Christina, of ownership of the property. The record shows otherwise.

John and Christina pledged their interest to secure the Bank's debt then transferred legal title of the Edison property to 1501. John and Christina also made no effort to pay the debt to Camamis or to redeem the property. Thus, Camamis became the owner of 1501, which held title to the Edison realty. As noted, the transfer was a breach of the rider with Realty.

The arguments presented in Point II of the merits brief are directed to the transaction between Camamis and John and Christina, and Camamis with John and Peter. None of these matters were presented to the trial court and will not be addressed. Zaman v. Felton, 219 N.J. 199, 226-27 (2014) (citing Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)).

We also reject as meritless the argument stating John and Christina's deed to 1501 did not transfer ownership of the property to the corporate entity. "Ownership of real property is transferred by deed." Dautel Builders v. Borough of Franklin, 11

N.J. Tax 353, 357 (Tax Ct. 1990) (citing N.J.S.A. 46:3-13). "The transfer is complete upon execution and delivery of the deed by the grantor and acceptance of the deed by the grantee." Ibid. (citing In re Lillis' Estate, 123 N.J. Super. 280, 285 (App. Div. 1973)). There is no evidence to support the notion John and Christina "did not transfer full ownership to" 1501 as of January 1, 2011, when John and Christina automatically lost all beneficial interest in 1501, by operation of the March 3, 2010 agreements. We reject this claim as well as other factual assertions advanced challenging the determination of liability for breach of paragraph 32 of the rider. R. 2:11-3(e)(1)(E).

Next, defendants suggest default judgment must be set aside because the judge failed to fulfill his obligation under Rule 1:7-4. Again, the argument is premised on defendant's assertion the transfer of the Edison property by John and Christina was to an affiliated company and paragraph 32 was not breached. As we have stated, the intention of the unambiguous language of paragraph 32, was to preserve plaintiffs' interest in maintaining the realty on which its business was established by granting it the right to match any bona fide offer for sale. The transfer of the realty to 1501 gave Camamis an immediate 51% interest in the Edison property – a circumstance which flies in the face of the expressed intent of the rider. John and Christina's failure to perform gave

Camamis 100% ownership of the realty, which unquestionably breached paragraph 32.

We remain unpersuaded by the assertions discovery failures were the fault of prior counsel. The trial judge was extremely tolerant and gave Camamis and 1501 numerous opportunities to satisfy the discovery obligation, as recounted by the judge in his January 26, 2012 opinion. The discovery failures were the subject of several motions and orders, well documented in this record, which made plain defendants' failure to comply would result in the dismissal of their pleadings and defenses.

On April 4, 2012, Camamis' current counsel could not demonstrate compliance with the orders. Also, in denying reconsideration on June 22, 2012, the judge rejected Camamis' position he bore no responsibility by claiming he was unaware of the discovery failures. The judge stated: "Noticeably absent is any certification from [d]efendant Camamis that he was unaware that discovery was outstanding or the seriousness of the situation. In fact, Mr. Camamis was in court on multiple occasions during oral arguments and was addressed directly by the Court." These reasons supported the conclusion this case is "one of the rare situations" in which "the ultimate sanction of dismissal" was warranted.

"While a trial judge has wide discretion in deciding the appropriate sanction for a breach of discovery rules, the sanction must be just and reasonable." Mauro v. Owens-Corning Fiberglas Corp., 225 N.J. Super. 196, 206 (App. Div. 1988), aff'd, 116 N.J. 126 (1989). Certainly such relief should be used sparingly; yet "a party invites this extreme sanction by deliberately pursuing a course that thwarts persistent efforts to obtain the necessary facts." Abtrax Pharm., Inc. v. Elkins-Sinn, Inc., 139 N.J. 499, 515 (1995). The "full disclosure of all relevant evidence in compliance with the discovery rules" is a "bedrock principle," and when parties transgress it, they "should not assume that the right to an adjudication on the merits of its claims will survive so blatant an infraction." Id. at 521.

On this issue, we reject the contention the trial judge abused his discretion. We defer to the detailed factual findings by the trial judge, who repeatedly addressed the matter in motion practice, as they are supported by "adequate, substantial, and credible evidence" in the record.

Next, we reject as lacking merit the assertion the judgment was interlocutory. The judge properly considered whether to vacate the final default judgment against the standards of Rule 4:50-1. When a default judgment has been entered pursuant to Rule 4:43-2, Rule 4:50-1 "governs an applicant's motion for relief from default

when the case has proceeded to judgment." US Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 466 (2012). We review the trial court's determination for an abuse of discretion. Id. at 467. Once entered, relief from the judgment requires a defendant seeking to reopen a default judgment show excusable neglect; that is, "the neglect to answer was excusable under the circumstances and that he has a meritorious defense." Morales v. Santiago, 217 N.J. Super. 496, 501 (App. Div. 1987) (quoting Marder v. Realty Constr. Co., 84 N.J. Super. 313, 318 (App. Div. 1964), aff'd, 43 N.J. 508 (1964)). Following our review, we find no abuse of discretion. DEG, supra, 198 N.J. at 261.

The final issue for review on the appeal concerns the counsel fee award, entered in the final judgment of default. An award of counsel fees is a decision that rests within the sound discretion of the trial court. Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 444 (2001). "[F]ee determinations by trial courts will be disturbed only on the rarest of occasions, and then only because of a clear abuse of discretion." Ibid. (quoting Rendine v. Pantzer, 141 N.J. 292, 317 (1995)).

Long adhering to the so-called American Rule, that a prevailing party is not entitled to recovery of attorneys' fees, New Jersey generally disfavors the shifting of fees. N. Bergen Rex Transp., Inc. v. Trailer Leasing Co., 158 N.J. 561, 569 (1999).

Nonetheless, a prevailing party can recover attorneys' fees if expressly provided for by contract. Packard-Bamberger, supra, 167 N.J. at 440 (citing Dep't of Envtl. Prot. v. Ventron Corp., 94 N.J. 473, 504 (1983)); cf. Satellite Gateway Commc'ns, Inc. v. Musi Dining Car Co., 110 N.J. 280, 285 (1988) (noting although Rule 4:42-9(a) does not include contracts within its eight exceptions under which attorneys' fees may be awarded, fees may be awarded by contract).

The method for calculation of reasonable counsel fees in contract cases is the same as that used in other counsel fee cases, although there is no enhancement of the fee as there is under some fee-shifting statutes. Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 389 (2009). The requesting party must establish that legal work performed "was causally related to securing the relief obtained." Id. at 386 (quoting N. Bergen Rex Transp., supra, 158 N.J. at 570). A fee award will be "'justified if [the party's] efforts [were] a necessary and important factor in obtaining th[at] relief.'" Ibid. (quoting N. Bergen Rex Transp., supra, 158 N.J. at 570).

In calculating the amount of reasonable attorneys' fees, "an affidavit of services addressing the factors enumerated by RPC 1.5(a)" is required. R. 4:42-9(b). Courts then determine the "lodestar," defined as the "number of hours reasonably expended"

by the attorney, "multiplied by a reasonable hourly rate." Litton Indus., supra, 200 N.J. at 386 (citing Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 21 (2004)). "The court must not include excessive and unnecessary hours spent on the case in calculating the lodestar." Furst, supra, 182 N.J. at 22 (citing Rendine, supra, 141 N.J. at 335-36). The court is required to make findings on each element of the lodestar fee. Id. at 12. The fee awarded must be "reasonable," RPC 1.5(a), and reasonableness is a "calculation" to be made in "every case." Furst, supra, 182 N.J. at 21-22.

In this matter, the affidavit of counsel listed the total fees but did not itemize the specific services provided in connection with the request for default judgment or the matters for which fees were appropriate.[5] Defendants' challenge seeking to limit any fee award to necessary services provided in this action has merit.

More important, the trial judge failed to state his findings supporting the fee award. Not only must the judge identify the

[5] Michael O'Grodnick, counsel who appeared for plaintiffs at the hearings (the Mauro firm), submitted a certification of services dated December 15, 2011. He stated the firm's total fee as $39,093.95, plus $455 and an anticipated $1060 on the motion for final judgment of default. The fees listed for his predecessor, who commenced the action, (the O'Halloran firm) were $43,048, for a total request to $83,656.95. If $455 and $1060 are excluded, the total is $82,141.95, the amount awarded.

foundation for the award, i.e., what services are compensable, but the judge must also fix the lodestar and examine the amount of fees sought.

III.

Plaintiffs' cross-appeal asserts the judge erred in granting partial reconsideration and conducting a proof hearing to determine the value of the Edison property. The argument suggests when applying paragraph 32, the offer plaintiffs must accept or reject is the $680,000 paid to the Bank. We are not persuaded.

In granting partial reconsideration, the trial judge recognized paragraph 32 should not operate to give Realty a windfall; rather, it was to permit it to acquire the leasehold, based in the contractual definition itself, which set the price at a bona fide offer, implicating fair market value. Nevertheless, the evidential hearing allowed plaintiff to provide proof of a contrary expectation, which it did not meet.

A "bona fide" offer "has consistently been equated with good faith conduct, honesty and fair dealing." State v. Rowland, 183 N.J. Super. 558, 568 (Law Div. 1982) (citing Garford Trucking, Inc. v. Hoffman, 114 N.J.L. 522, 530 (Sup. Ct. 1935)), overruled on other grounds, State v. Hancock, 210 N.J. Super. 568, 569 (App. Div. 1985). "Fair market value" is "what a willing buyer and a willing seller would agree to, neither being under any compulsion

to act." Borough of Saddle River v. 66 East Allendale, LLC, 216 N.J. 115, 136 (2013) (quoting State v. Silver, 92 N.J. 507, 513 (1983)).

Here, the sum Camamis paid the Bank was a distressed amount to be relieved of the burden of the Edison property. See 125 Monitor St. LLC v. Jersey City, 21 N.J. Tax 232, 241-42 (Tax 2004) (price received by bank in hasty sale of foreclosed property "for what it could get" was "not a bona fide sale nor was it a true indication of the subject property's value"), aff'd, 23 N.J. Tax 9 (App. Div. 2005). Plaintiffs were not entitled to pay only a bargain price, but a hearing was required to determine the fair market value of the Edison property. Plaintiffs' argument to the contrary is summarily rejected.

We also reject the claim the trial judge abused his discretion in ordering a hearing, pursuant to Rule 4:43-2(b), to resolve "the amount of damages" or assess any other matter needed "to enter judgment or to carry it into effect." We also reject as meritless plaintiffs' contention a default equates to an admission of all assertions. The court remains responsible to determine whether the evidence supports the relief requested. See Heimbach v. Mueller, 229 N.J. Super. 17, 23-24 (App. Div. 1988) ("When a trial court exercises its discretion to require proof of liability as a prerequisite to entering judgment against a defendant who has

defaulted, what is required . . . is that the plaintiff adduce [a prima facie case.]"); Kolczycki v. City of East Orange, 317 N.J. Super. 505, 514-15 (App. Div. 1999).

Plaintiffs also attack the valuation analysis by the judge who conducted the three-day valuation hearing, as well as the date she fixed for valuation. The judge issued a written opinion analyzing the testimony presented by three appraisers. Plaintiffs' challenges to the judge's factual findings, which in part are based on credibility, are rejected.

Appellate review of a trial court's factual findings is limited. "Trial court findings are ordinarily not disturbed unless 'they are so wholly unsupportable as to result in a denial of justice.'" Meshinsky v. Nichols Yacht Sales, Inc., 110 N.J. 464, 475 (1988) (quoting Rova Farms Resort v. Inv. Ins. Co., 65 N.J. 474, 483-84 (1974)). "This is especially the case when those findings 'are substantially influenced by [the judge's] opportunity to hear and see the witnesses and to have the "feel" of the case, which a reviewing court cannot enjoy.'" Zaman, supra, 219 N.J. at 215-16 (quoting State v. Johnson, 42 N.J. 146, 161 (1964)).

"Expert testimony is generally required to determine the fair market value of real property, but the 'fact[-]finder is not bound to accept the testimony of an expert witness,' and 'may accept

some of the expert's testimony and reject the rest.'" Pansini Custom Design Assocs. v. City of Ocean City, 407 N.J. Super. 137, 143 (App. Div. 2009) (citations omitted). "Ultimately, the fact-finder, here the judge, must weigh and evaluate the experts' opinions, including their credibility, to fulfill the judge's responsibility in reaching a reasoned, just and factually supported conclusion." Id. at 144; accord City of At. City v. Ginnetti, 17 N.J. Tax 354, 361-62 (Tax 1998), aff'd o.b., 18 N.J. Tax 672 (App. Div. 2000).

In forming their opinions, experts must state "factual evidence," Buckelew v. Grossbard, 87 N.J. 512, 524 (1981), which may be "facts, data, or another expert's opinion, either perceived by or made known to the expert, at or before trial." Greenberg v. Pryszlak, 426 N.J. Super. 591, 607 (App. Div. 2012) (quoting Rosenberg v. Tavorath, 352 N.J. Super. 385, 401 (App. Div. 2002)). Further, experts may rely on their "knowledge, skill, experience, training, or education," N.J.R.E. 702, but they may not give a "net opinion," which is one unsupported by any factual evidence or data. Buckelew, supra, 87 N.J. at 524; Rosenberg, supra, 352 N.J. Super. at 401. The expert must give "the why and wherefore of his expert opinion, not just a mere conclusion." Greenberg, supra, 426 N.J. Super. at 607 (quoting Rosenberg, supra, 352 N.J. Super. at 401). "Mere guess or conjecture is not a substitute for

legal proof," and "speculation surrounded by expertise" is still just speculation. Pelose v. Green, 222 N.J. Super. 545, 550-51 (App. Div.), certif. denied, 111 N.J. 610 (1988).

Here, the hearing judge rejected plaintiffs' expert as lacking credibility, and found his evaluation had no probative value. She noted the expert gave no justification for adjustments applied to reduce the value of the Edison property, and stated the expert used aged comparable sales of Realty restricting use as a filling station. On the other hand, the judge found the expert presented by John and Christina "was more credible." The expert fully supported the more current comparable sales used to reach his opinion of value and explained adjustments made and why they were applicable, in light of the features of the Edison property. Accordingly, we reject plaintiffs' contention, and defer to the trial court's findings John and Christina's expert was "substantially more persuasive and credible." See Zaman, supra, 210 N.J. at 215-16.

The judge did not accept this expert's valuation wholesale. Rather, she made a discerning view of various aspects of the evaluation such as highest and best use, land value, and improvements as depreciated. We also conclude the judge properly stated the applicable legal principles guiding her conclusion. "Appellate courts have long recognized that the trial court must

be granted 'a wide discretion' in determining the admissibility of sales sought to be relied on as comparable." Ford Motor Co. v. Edison Township, 127 N.J. 290, 307 (1991). We will not interfere with her determination (quoting Cty. of Los Angeles v. Faus, 312 P.2d 680, 684 (1957)).

Finally, plaintiffs argue based on the default judgment, the realty was transferred to 1501 in June 2010; however, the hearing judge fixed the value of the Edison property as of the entry of final judgment on January 2012. Plaintiff believes failure to abide by the intention in the prior order resulted in an increased value of the property. The claim is unsupported. In fact, plaintiffs' expert testified the property's value had not changed significantly from the transfer date in June 2010 to January 2012. Testimony was not disputed there was stability in market prices during that period because of a high vacancy rate, which precluded the need to adjust prices of comparable sales during the same period for the passage of time. Therefore, if an error arose from the actual date fixed for valuation, it was harmless. R. 2:10-2.

IV.

In summary, we affirm the final judgment by default dated January 26, 2012, and the orders denying to set aside the default judgment, with the exception that we remand for further findings regarding the attorney fee award set forth in the January 26, 2012

final judgment by default. On this issue, we remand to the trial judge for further proceedings consistent with our opinion.

We affirm the order granting partial reconsideration ordering a proof hearing on the fair market value of the Edison property and the November 17, 2014 final judgment entered following that hearing, rejecting plaintiffs' challenges on cross-appeal. Any issues raised by any party not specifically addressed were found to lack sufficient merit to warrant discussion in our opinion. R. 2:11-3(e)(1)(E).

Affirmed in part and remanded in part.