SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5372-14T2

SYCAMORE ENERGY-
ROCKAWAY RETAIL,
L.L.C.,

Plaintiffs-Appellants/
Cross-Respondents,

v.

A.J.'S FUEL, INC., DENNIS
PETERSON AND ANNA BARTON,

Defendants-Respondents/
Cross-Appellants.

Argued September 20, 2016 – Decided February 22, 2017

Before Judges Messano, Espinosa and Guadagno.

On appeal from the Superior Court of New Jersey, Chancery Division, Equity Part, Morris County, Docket No. C-15-14.

Judith D. Cassel argued the cause for appellants/cross-respondents (Hawke, McKeon & Sniscak, L.L.P., attorneys; Ms. Cassel, on the briefs).

Peter Petrou argued the cause for respondents/cross-appellants A.J.'s Fuel, Inc. and Dennis Peterson.

Gregg D. Trautmann argued the cause for respondent/cross-appellant Anna Barton

(Trautmann & Associates, L.L.C., attorneys;
Mr. Trautmann, on the brief).

PER CURIAM

Plaintiff Sycamore Energy—Rockaway Retail, Inc., filed a verified complaint against defendants A.J.'s Fuel, Inc. (A.J.'s), Dennis Peterson, and his sister, Anna Barton. Plaintiff alleged it purchased certain assets from Oil Guy, Inc. (Oil Guy), a heating oil supply business, pursuant to an asset purchase agreement (the agreement) executed by Barton, individually and as "owner" of Oil Guy. Pursuant to the agreement, Barton warranted that no other "individual or entity" had "rights, title or interests" in the purchased assets. The agreement also contained non-compete and non-disclosure provisions regarding the assets, including Oil Guy's customer list and accounts.

The complaint further alleged that subsequent to the purchase, Peterson claimed an ownership interest in Oil Guy and formed a competitor corporation, A.J.'s, that was using Oil Guy's customer list to interfere with plaintiff's business in violation of the agreement. Plaintiff's complaint alleged defendants breached the agreement, committed fraud and converted plaintiff's property, and Peterson had defamed plaintiff and tortiously interfered with its economic interests.

The judge initially entered an order to show cause with temporary restraints, but vacated the injunctive relief shortly

thereafter. On April 9, 2014, he ordered plaintiff to pay Barton all amounts due under the agreement which had been previously withheld (the pendente lite order). Defendants filed answers and discovery ensued.

When Barton moved to compel plaintiff's answers to interrogatories, plaintiff cross-moved to compel Barton, over objection, to produce further documentary discovery, including Oil Guy's tax returns, profit and expense statements and employee payroll records, and to amend its complaint to add Oil Guy as a party. Barton withdrew her discovery motion and, the judge denied plaintiff's request.

In his written statement of reasons in support of the September 4, 2014 order denying the amendment (the amendment order), the judge concluded plaintiff's cross-motion was procedurally deficient because it did not relate to the subject of Barton's motion. See R. 1:6-3(b) ("A cross-motion may be filed and served by the responding party . . . only if it relates to the subject matter of the original motion . . . ."). As to the merits of plaintiff's cross-motion, the judge concluded plaintiff "offer[ed] no defense as to why Oil Guy . . . should be a party."

Prior to her or Peterson's deposition, Barton moved for summary judgment. After considering oral argument, the judge entered an order (the October 2014 order), granting Barton summary

judgment as to the fraud and conversion counts, but denying the motion as to plaintiff's breach of contract claim. In January 2015, the judge granted summary judgment to Peterson and A.J.'s (the January 2015 order). In his written statement of reasons, the judge found plaintiff failed to prove any breach of contract because Peterson had no ownership interest in Oil Guy and was not a party to the agreement. He also determined plaintiff lacked sufficient evidence to withstand judgment as a matter of law on the remaining counts.

With trial now scheduled for March 31, 2015, Barton moved to bar plaintiff's expert from testifying, arguing his report contained only net opinions, and she sought to strike the complaint for alleged discovery violations. Plaintiff, meanwhile, served subpoenas on Oil Guy and Peterson. Both moved to quash.

In a series of orders entered on March 10, 2015 (the March 2015 orders), the judge quashed the subpoena served on Oil Guy and denied Barton's motion to "strike" the complaint. He denied Peterson's motion to quash, but limited his testimony to "the only remaining issue. Did . . . Barton breach her contract . . . [?]" The judge noted on the order that his prior "decision that Peterson is/was not an owner of Oil Guy is the law of the case." Although he denied the motion to bar plaintiff's expert at trial, the judge's order barred any testimony as to plaintiff's damages.

In his oral opinion placed on the record after completion of the subsequent bench trial, the judge found Barton had not breached the agreement. He entered final judgment of no cause of action in favor of Barton on April 13, 2015, and within days, both Barton and Peterson moved for counsel fees and costs pursuant to Rule 1:4-8 and the frivolous litigation statute, N.J.S.A. 2A:15-59.1(a). The judge denied Barton's request but entered an order awarding Peterson counsel fees and costs in the amount of $13,190 (the fee order).

Before us, plaintiff contends the judge erred by: ordering pendente lite payments to Barton; denying plaintiff's motion to amend the complaint; granting partial summary judgment on the fraud and conversion claims against Barton; quashing the trial subpoena served on Oil Guy; barring its expert's testimony on damages; barring other evidence at trial; and entering judgment in favor of Barton. As to Peterson, plaintiff argues the judge erred by: determining prior to the close of discovery that Peterson was not an owner of Oil Guy and applying the "law of the case" doctrine to that finding; granting Peterson summary judgment; and awarding sanctions.[1]

[1] Hereinafter, we shall refer to both Peterson and A.J.'s simply as "Peterson."

In addition to their opposition, defendants have filed cross-appeals. Barton argues the judge should have granted her request for fees and costs as sanctions for plaintiff's frivolous claims. Peterson contends the award the judge made was insufficient.

We have considered these arguments in light of the record and applicable legal standards. On plaintiff's appeal, we affirm in part and reverse in part. We find no merit whatsoever to defendants' cross-appeals and deny both.[2]

I.

A.

We first consider the issues related to Peterson. In opposing plaintiff's order to show cause, Peterson certified that plaintiff's corporate representative for purposes of this litigation, Louis Aponte, was his direct supervisor when both worked for North Jersey Oil prior to the formation of Oil Guy in 2009. Aponte was aware Peterson claimed ownership of Oil Guy. Because of his financial circumstances at the time, Peterson needed Barton's assistance in starting Oil Guy. Peterson claimed Oil Guy

[2] Symptomatic of the litigiousness of the parties, after all briefs were filed, plaintiff moved to strike portions of defendants' reply briefs, contending they included further argument in opposition to plaintiff's appeal and not in reply to plaintiff's opposition to the cross-appeal. Barton opposed the motion, and Peterson filed his own motion, seeking to strike portions of plaintiff's initial and reply briefs and appendices for including items not in the trial record. The motion panel reserved decision, leaving disposition to us. We now deny the motions.

operated out of his home and to the world "Oil Guy was Dennis Peterson." However, Aponte knew Barton was Peterson's silent partner in the business.

Peterson stated that when he returned home from vacation in August 2013, he discovered Barton and Aponte had already executed the agreement. When plaintiff sought to reclaim one of the oil trucks at Peterson's home, he objected, requiring police to respond. Although the truck was turned over, Peterson directed his attorney to send a letter to Barton and Aponte claiming they had "misappropriate[d]" his interests in Oil Guy. The letter is part of the record. In his later-filed answer to plaintiff's complaint, however, Peterson asserted no counterclaim against plaintiff or cross-claim against Barton.

The balance of Peterson's certification described the formation of A.J.'s with his wife after learning of Barton's sale of Oil Guy's assets, and he denied accessing Oil Guy's customer lists. Peterson claimed that he solicited customers for A.J.'s from personal knowledge and without misrepresentation. Since he was not party to the agreement, none of its terms applied to him.

Peterson's statement of undisputed material facts in support of summary judgment for the first time took several steps back from earlier statements regarding ownership of Oil Guy. It acknowledged Barton was the sole shareholder of Oil Guy, and

Peterson only received wages for his work at the company. Peterson also relied upon portions of Aponte's deposition testimony, in which Aponte admitted Peterson had no knowledge of the impending sale, was not involved in the negotiations and Aponte's dealings were solely with Barton. Additionally, Aponte stated he had no facts to support plaintiff's claim that Peterson accessed customer information after the sale of Oil Guy, or even had a copy of the customer list. Barton's deposition, filed in support of plaintiff's opposition to Peterson's summary judgment motion, made it quite clear that she alone owned Oil Guy and Peterson was only "a driver."

We have not been provided with a transcript of oral argument held on Peterson's summary judgment motion. However, the judge provided a written statement of reasons supporting the January 2015 order. As to plaintiff's breach of contract claim, the judge reasoned the undisputed material facts demonstrated Peterson was neither a party to the agreement nor aware of its existence prior to its execution. The judge dismissed the fraud count, concluding plaintiff's only allegation was that Barton misrepresented Peterson's claim of ownership, but plaintiff made no specific claim that Peterson made any material misrepresentations.

In dismissing the conversion claim against Peterson, the judge found plaintiff's sole evidence was Peterson's access to

customer lists and information before the agreement was consummated. The judge noted plaintiff was well aware of Peterson's involvement in the pre-sale activities of Oil Guy when it entered into the agreement with Barton.

The judge observed that plaintiff's defamation claim rested on a flyer Peterson circulated after forming A.J.'s, in which he told prospective customers that A.J.'s would provide "the same great prices and service as . . . when [Peterson] operated and ran Oil Guy . . . ." The judge reasoned there was nothing false about Peterson's statement, and therefore plaintiff's defamation claim must fail. Lastly, the judge reviewed Peterson's statements regarding soliciting business for A.J.'s, and reasoned, since Peterson was not a signatory to the agreement, he was not bound by its restrictive covenant. He granted summary judgment on the tortious interference claim.

Plaintiff contends the judge erred in granting Peterson summary judgment because discovery was not complete and material facts remained in dispute. Plaintiff also argues the judge erroneously concluded Peterson was not an owner of Oil Guy, despite the presence of material disputed facts, and then applied the "law of the case" doctrine to this finding. Both arguments are unavailing.

When reviewing the grant of summary judgment, we apply the "same standard as the motion judge." Globe Motor Co. v. Iqdalev, 225 N.J. 469, 479 (2016) (quoting Bhaqat v. Bhaqat, 217 N.J. 22, 38 (2014)).

> That standard mandates that summary judgment be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law."
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> [Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co., 224 N.J. 189, 199 (2016) (quoting R. 4:46-2(c)).]

"When no issue of fact exists, and only a question of law remains, [we] afford[] no special deference to the legal determinations of the trial court." Ibid. (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)). "[A] respondent to a summary judgment motion, who resists the motion on the grounds of incomplete discovery is obliged to specify the discovery that is still required." Alpert, Goldberg, Butler, Norton & Weiss, P.C. v. Quinn, 410 N.J. Super. 510, 538 (App. Div. 2009) (citing Trinity Church v. Lawson-Bell, 394 N.J. Super. 159, 166 (App. Div. 2007), certif. denied, 203 N.J. 93 (2010).

Plaintiff never deposed Peterson, despite repeated attempts and cancellations resulting from the inability of all counsel to clear schedules. Except for Peterson's own claims of ownership

interest, from which he later retreated, and Aponte's knowledge of Peterson's role in Oil Guy's daily operations, plaintiff presented no evidence that Peterson actually possessed an ownership interest in the company. There was no evidence to dispute Barton's claims of sole ownership, and, implicitly, Aponte believed her execution of the agreement alone sealed the deal. Based on the summary judgment record presented to the judge, see Ji v. Palmer, 333 N.J. Super. 451, 463-64 (App. Div. 2000) (our review is limited to the motion record before the judge), there were no disputed facts.

The judge first expressed his opinion on the subject of Peterson's ownership interests in Oil Guy during oral arguments on Barton's summary judgment motion. Barton had supplied the corporate documents for Oil Guy that clearly demonstrated Peterson had no ownership interest. We do not, however, review oral decisions but only orders entered by the court. See, e.g., Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001) ("[I]t is well-settled that appeals are taken from orders and judgments and not from opinions, oral decisions, informal written decisions, or reasons given for the ultimate conclusion."). Therefore, plaintiff's citation to the judge's musings during oral argument on Barton's motion, when Peterson's attorney was not even present, are irrelevant.

When the judge entered the March 2015 order limiting Peterson's trial testimony to the contract claim, his rationale was that the issue of Peterson's ownership of Oil Guy was already decided and the law of the case doctrine applied. We agree with plaintiff that the judge's citation to the doctrine was inapposite. See Lombardi v. Masso, 207 N.J. 517, 539 (2011) (holding the doctrine does not apply "where, . . . in trial court proceedings, the same judge is reconsidering his own interlocutory ruling"). However, plaintiff points to no facts that resurrect a material dispute on the issue of Peterson's ownership of Oil Guy.

We also reject plaintiff's argument that the judge erroneously granted summary judgment on its claims for fraud, conversion, defamation and tortious interference. Simply put, plaintiff's opposition to the motion lacked any competent evidence that raised material factual disputes. See R. 4:46-5(a) ("When a motion for summary judgment is made . . . , an adverse party may not rest upon the mere allegations or denials of the pleading, but must respond by affidavits meeting the requirements of R. 1:6-6 . . . , setting forth specific facts showing that there is a genuine issue for trial.") Plaintiff's response to Peterson's statement of undisputed material facts was deficient, see Rule 4:46-2(b), and broadly asserted discovery was incomplete.

We affirm the October 2014 order granting summary judgment to Peterson largely for the reasons expressed by the judge.

B.

After Barton's trial, Peterson moved for an award of $39,390 in counsel fees and costs. The motion record reveals that Peterson's attorney served a Rule 1:4-8 (the Rule) letter on plaintiff's counsel shortly after the judge entered the pendente lite order and denied plaintiff's request for injunctive relief. Plaintiff's counsel immediately responded, claiming the letter failed to comply with the Rule because it lacked specificity and provided "no basis" for the request to withdraw the complaint. Plaintiff's counsel also stated: "Your own client claims ownership rights [in Oil Guy] and provided certifications demonstrating that he is a de facto principal, owner, officer, and/or director, which will bind him to the terms of the [agreement]." Defense counsel answered by serving a copy of Peterson's brief in support of his pre-pleading motion to dismiss, which the judge had denied.

In his written statement of reasons supporting the fee order, without addressing whether Peterson complied with the Rule, the judge concluded an award was appropriate "only as to the summary judgment motion . . . [not] for the entire pendency of the action." The judge found "Peterson initiated a lot of the litigation with his initial letter to [p]laintiff that he owned [Oil Guy]." The

judge also found that "given what [p]laintiff knew at th[e] time th[e] [c]omplaint was filed, there was a potential cause of action against . . . Peterson" for all counts in the complaint.

However, the judge reasoned "there came a time . . . when [p]laintiff knew or should have known that it had no viable claim against [Peterson]." Reciting many of the reasons why he granted summary judgment, the judge concluded when "information was revealed to [p]laintiff through discovery, its [c]omplaint . . . should have been withdrawn." Nonetheless, the judge stated he was rejecting Peterson's request to impose sanctions under the Rule because "Peterson ha[d] not demonstrated that [p]laintiff, nor [p]laintiff's counsel should be sanctioned." Without specifying whether he was granting the relief as to plaintiff, its counsel or both, the judge awarded Peterson $13,190 as "sanctions."

"In reviewing the award of sanctions pursuant to [the] Rule . . . , we apply an abuse of discretion standard." United Hearts, L.L.C. v. Zahabian, 407 N.J. Super. 379, 390 (App. Div.) (citing Masone v. Levine, 382 N.J. Super. 181, 193 (App. Div. 2005)), certif. denied, 200 N.J. 367 (2009). The Rule "channeled the process by which applicants could initiate sanction applications" based on the "frivolous behavior" of litigants or counsel. Toll Bros., Inc. v. Twp. of W. Windsor, 190 N.J. 61, 71 (2007).

Frivolous litigation sanctions may be imposed under the statute against a party "if the judge finds at any time during the proceedings . . . that a complaint . . . of the nonprevailing person was frivolous." N.J.S.A. 2A:15-59.1(a)(1). To be "frivolous," the pleading must be "commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury[,]" or with knowledge that it "was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law." N.J.S.A. 2A:15-59.1(b)(1) and (2). "The term 'frivolous' as used in the statute must be given a restrictive interpretation." Belfer v. Merling, 322 N.J. Super. 124, 144 (App. Div.) (citing McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546, 561 (1993)), certif. denied, 162 N.J. 196 (1999). "[F]alse allegations of fact [will] not justify [an] award . . . unless they are made in bad faith, 'for the purpose of harassment, delay or malicious injury.'" McKeown-Brand, supra, 132 N.J. at 561 (quoting N.J.S.A. 2A:15-59.1b(1)). The burden of proving bad faith is on the party who seeks the fees and costs. Id. at 559.

We have held "[c]ontinued prosecution of a claim or defense may, based on facts coming to be known to the party after the filing of the initial pleading, be sanctionable as baseless or frivolous even if the initial assertion of the claim or defense

was not." United Hearts, supra, 407 N.J. Super. at 390 (quoting Iannone v. McHale, 245 N.J. Super. 17, 31 (App. Div. 1990)). "The 'requisite bad faith or knowledge of lack of well-groundedness may arise during the conduct of the litigation.'" Ibid. (citing Chernin v Mardan, Corp., 244 N.J. Super. 379 (Ch. Div. 1990)). However, "a pleading will not be considered frivolous for purposes of imposing sanctions under [the Rule] unless the pleading as a whole is frivolous." Id. at 394.

In this case, the judge specifically found plaintiff was justified in filing suit against Peterson based, in part, upon Peterson's own assertions of an ownership interest in Oil Guy. Indeed, the record reflects that Peterson's counsel fostered this belief, through correspondence sent to Barton and plaintiff before suit was even filed. The judge also found that plaintiff had a reasonable basis to include every count in the complaint, and he never found plaintiff pursued the claims in bad faith.

Rather, the judge determined plaintiff's lawsuit became frivolous after discovery and before summary judgment. However, the judge's written statement of reasons in support of the summary judgment order never suggested plaintiff's claims were "without [any reasonable] basis in law or equity . . . .'" In re Estate of Ehrlich, 427 N.J. Super. 64, 77 (App. Div. 2012) (quoting Buccinna v. Micheletti, 311 N.J. Super. 557, 562-63 (App. Div.),

certif. denied, 213 N.J. 46 (2013)). Indeed, in deciding the fee application, the judge specifically stated Peterson failed to demonstrate plaintiff or its counsel "should be sanctioned."

Under these circumstances, the award of fees to Peterson was a mistaken exercise of discretion. We reverse the fee order and vacate the award. This same reasoning compels the dismissal of Peterson's cross-appeal.

II.

A.

Turning to claims of pre-trial errors as to Barton, we agree with the judge that plaintiff's cross-motion to amend the complaint was not germane to the discovery motion Barton had filed. R. 1:6-3(b). From the record before us, it is difficult to discern what the judge meant when he also stated as to the cross-motion's merits, "plaintiff offers no defense as to why Oil Guy . . . should be a party."[3]

In any event, plaintiff never filed a motion thereafter to amend the complaint. Perhaps plaintiff believed the judge's decision on the "merits" foreclosed the opportunity. Had such a motion to amend actually been made, "Rule 4:9-1 requires that

[3] Apparently there was no oral argument and Barton's opposition is not in the record. The certification plaintiff's counsel filed in support of the cross-motion stated Barton refused to produce any Oil Guy documents because "the document requests should be directed to Oil Guy."

[such] motions . . . be granted liberally . . . in the court's sound discretion." Notte v. Merchs. Mut. Ins. Co., 185 N.J. 490, 501 (2006) (quoting Kernan v. One Wash. Park Urban Renewal Assocs., 154 N.J. 437, 456-57 (1998)). "That exercise of discretion requires a two-step process: whether the non-moving party will be prejudiced, and whether granting the amendment would nonetheless be futile." Ibid.

Because Oil Guy was a signatory to the agreement and plaintiff only purchased certain assets of Oil Guy but not its stock, there were sufficient reasons for plaintiff's request. However, the judge was fully familiar with letters plaintiff sent to Oil Guy customers on Oil Guy stationary immediately after the agreement closed. Those letters stated Oil Guy was now being managed by plaintiff, and the agreement itself permitted plaintiff to use the name "Oil Guy" for four years. It is difficult to conceive, therefore, how plaintiff intended to manage Oil Guy, use its name and sue it at the same time. Most importantly, it is undisputed that after consummation of the agreement, Oil Guy never functioned as a business. Therefore, plaintiff can point to no real prejudice that resulted from the amendment order. We therefore affirm the order.

Plaintiff argues it was error to grant partial summary judgment to Barton on the fraud and conversion counts. It contends

discovery was incomplete and "material facts remained in dispute." We disagree.

Barton's motion was supported by compelling, undisputed evidence that she was the sole owner of Oil Guy. Plaintiff's opposition argued the case was not ripe for summary judgment because Barton had not yet been deposed. However, plaintiff's responding statement of material facts made clear that its claims against Barton for fraud and conversion were really assertions against Peterson — his alleged improper use of Oil Guys' customer list and name — coupled with Barton's failure to advise plaintiff of Peterson's ownership interests. The judge's oral decision correctly analyzed the inherent inadequacy of plaintiff's position — Peterson had no ownership interest and plaintiff alleged no other misrepresentation or misappropriation of corporate assets by Barton herself. The judge properly granted partial summary judgment, and we affirm the October 2014 order.

B.

Moving to the issues raised regarding events immediately before and during trial, we consider plaintiff's objections to the March 2015 orders. We are somewhat hampered because the record does not include the motions and supporting documents filed by Barton or plaintiff. We only have the judge's written statement of reasons.

Plaintiff argues it was error to quash the subpoena served on Oil Guy seeking corporate documents and bank records. Barton opposed the request, claiming it sought the finances of a "non-party," which is, of course, ironic, since Barton earlier opposed the motion to amend the complaint to add Oil Guy as a defendant. However, the judge reasoned that plaintiff only sought the information to prove Peterson was an owner of Oil Guy, an issue already decided to the contrary.

Pursuant to Rule 1:9-2, a subpoena duces tecum served on a non-party may be quashed in the judge's discretion if "compliance would be unreasonable or oppressive . . . ." We assume plaintiff's subpoena issued under this rule because plaintiff cites the Rule in its brief. However, as Rule 1:9-2 itself makes clear, "subpoenas for pretrial production shall comply with the requirements of [Rule] 4:14-7(c)." And, "it is Rule 4:14-7(c) and not [Rule] 1:9-2 which applies to discovery production in civil cases." Pressler & Verniero, Current N.J. Court Rules, comment 1 on R. 1:9-2 (2017).

In any event, plaintiff fails to demonstrate the requested documents would have likely led to relevant evidence at trial. R. 4:10-2(a). In its appellate brief, plaintiff asserts the "documents . . . would have . . . provided insight into the financial relationship between [Peterson] and [Barton] . . . ."

Since Peterson was already out of the case, and the sole remaining issue was whether Barton breached the agreement, we agree with the judge that it was unlikely the subpoenaed documents would have led to relevant evidence. To the extent the judge erred by quashing the subpoena, the error was harmless.

Barton sought to bar plaintiff's experts from testifying at trial. The judge reviewed the reports of two experts, John Levey and Joseph Vassallo. The appellate record only contains the report of Vassallo, who testified at trial. Plaintiff argues Vassallo's report was anchored in certain facts, including the loss of 75% of Oil Guy customers after plaintiff consummated the agreement with Barton, and the sale of 74% less fuel oil. Vassallo stated it was his "strong belief . . . the confidentiality of the customer list has been breached."

The judge cited the extreme variation between the two reports on the quantification of damages, and noted Vassallo's "strong belief" was "not sufficient." The judge also reasoned Vassallo premised his estimate of damages upon speculation, including an assumed per customer usage figure that was unexplained.

Plaintiff argues the judge should have permitted Vassallo to testify as to damages. We disagree. The report was a classic net opinion. See, e.g., Townsend v. Pierre, 221 N.J. 36, 55 (2015). More importantly, to the extent it was error to prohibit Vassallo

from testifying about damages, the error was harmless. The critical page of Vassallo's report was admitted as evidence at trial, and he was permitted to testify about the loss of customers and the suspected compromise of Oil Guy's customer list. Additionally, the judge never reached the issue of damages because he found, as we explain below, that Barton had not breached the agreement.

Plaintiff challenges a series of evidentiary rulings made by the judge at trial barring proposed witnesses and the limitation he placed upon the scope of testimony from witnesses who actually testified. "Evidentiary decisions are reviewed under the abuse of discretion standard because, from its genesis, the decision to admit or exclude evidence is one firmly entrusted to the trial court's discretion." Estate of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 383-84 (2010). Errors in admitting or barring certain evidence will only compel reversal if they were "clearly capable of producing an unjust result." R. 2:10-2; Green v. N.J. Mfrs. Ins. Co., 160 N.J. 480, 502 (1999). Our review of the entire trial record convinces us that the judge did not mistakenly exercise his discretion. Moreover, the complained-of evidence rulings did not singly or collectively bring about an unjust result.

Finally, plaintiff contends it proved each element of its breach of contract claim against Barton. Plaintiff fails to identify with any specificity what legal error was committed by the judge, except to say the evidence permitted a judgment in its favor.

Plaintiff asserted at trial that Barton breached the agreement by either conveying the customer list to Peterson or else not taking appropriate steps to insure the confidentiality of the list. In rendering his oral decision, the judge correctly noted that after the closing, Barton had no control over Peterson's actions, and the evidence simply did not support a finding that Barton breached any of her representations or obligations under the agreement.

Our standard of review is limited.

> Final determinations made by the trial court sitting in a non-jury case are subject to a limited and well-established scope of review: "we do not disturb the factual findings and legal conclusions of the trial judge unless we are 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[.]"
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> [Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011) (quoting In re Trust Created By Agreement Dated December 20, 1961, ex. rel. Johnson, 194 N.J. 276, 284 (2008) (internal quotation omitted)).]

There is no basis to disturb the judge's conclusions. We affirm the final judgment entered in favor of Barton.

As a result of our decision, plaintiff's challenge to the pendente lite order is moot. Further, as already noted, we deny Barton's cross-appeal which lacks sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

We affirm all orders under review, except for the June 22, 2015 order granting Peterson counsel fees. We reverse and vacate that order. The cross-appeals are dismissed.