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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2736-16T2

CASINGS, INC.,

Plaintiff-Respondent,

v.

NEW JERSEY TRANSIT CORPORATION
and JOHN W. CLARK,

Defendants-Appellants,

and

NEW JERSEY TRANSIT CORPORATION,

Third-Party Plaintiff,

v.

HECTOR COREAS,

Third-Party Defendant-Respondent.

Submitted March 6, 2018 – Decided March 27, 2018

Before Judges Fisher and Fasciale.

On appeal from Superior Court of New Jersey,
Law Division, Union County, Docket No. L-3997-
14.

Gurbir S. Grewal, Attorney General, attorney
for appellants (Melissa H. Raksa, Assistant

Attorney General, of counsel; Robert J. McGuire, Deputy Attorney General, on the briefs).

Todd C. Rubenstein, attorney for respondents.

PER CURIAM

New Jersey Transit Corporation (NJT) and John W. Clark (Clark) (collectively defendants) appeal from a final judgment apportioning stipulated damages entered after a jury trial on liability. At the final charge conference, defendants provided contrasting requests for the ultimate outcome charge; and on post-verdict motions, argued that the ultimate outcome charge should not have been charged, and that any failure to so charge, was not reversible error. Defendants now contend that the failure to charge has prejudiced them. Invoking the doctrine of invited error, we affirm.

The underlying dispute involves property damage to two vehicles. Clark, who operated a NJT bus, collided with a tractor owned by Casings, Inc. (plaintiff). Before the liability trial, the parties agreed to the value of the property damage: the damage to the tractor totaled \$40,852.50, and the damage to the bus totaled \$6567.58. They then agreed to try the case on liability only, stipulating that the "[judge] shall assess damages, if any, of the respective parties and enter judgment based on allocation of fault by the factfinder." A plain reading of the stipulation

authorized the judge to allocate damages after the jury verdict on liability based on pure comparative negligence, obviating the ultimate outcome charge.

The parties tried the case on liability. At the final charge conference, defendants initially agreed that the ultimate outcome charge was unnecessary, but later explained that they preferred the charge. The judge considered the parties' stipulation in determining that the parties did not contemplate the ultimate outcome charge. The jury found plaintiff sixty-five percent responsible for the accident and defendants thirty-five percent responsible for the accident.

Plaintiff filed a post-verdict motion seeking judgment in conformance with the stipulation. Plaintiff sought judgment in the amount of \$14,298.38 (thirty-five percent of \$40,852.50) for the tractor damage, and \$4268.93 (sixty-five percent of \$6567.58) for the damage to the bus. Alternatively, plaintiff's counsel sought a new trial arguing that if the judge refused to enforce the stipulation, then the failure to give the ultimate outcome charge prejudiced plaintiff.


Defendants' counsel opposed plaintiff's motion making two primary points: the judge should enter a judgment of no cause of action in defendants' favor because the jury found plaintiff more than fifty-percent liable for the accident; and, like his pre-

verdict position at the charge conference, the judge did not err by declining to give the ultimate outcome charge.

The law is settled. "The doctrine of invited error operates to bar a disappointed litigant from arguing on appeal that an adverse decision below was the product of error, when that party urged the lower court to adopt the proposition now alleged to be error." Brett v. Great Am. Recreation, Inc., 144 N.J. 479, 503 (1996). At the charge conference, defendants' counsel waived the ultimate outcome charge, and further, argued against it on its post-verdict motion. "Some measure of reliance by the court is necessary for the invited-error doctrine to come into play." State v. Jenkins, 178 N.J. 347, 359 (2004). Relying on the parties' stipulation and representation by defendants' counsel that the charge was unwarranted, the judge did not give the jury the charge. Even if there is some ambiguity about the meaning of the stipulation, in response to plaintiff's post-verdict motion, defendants' counsel maintained that plaintiff's alternative request for a new trial was "not warranted based upon [the] failure to issue the [ultimate outcome] charge [to the jury]."

Affirmed.

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


CLERK OF THE APPELLATE DIVISION