SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0838-21

MARJAM SUPPLY CO., INC.,

Plaintiff-Respondent/
Cross-Appellant,

vs.

AMERICAN CONTRACTORS OF NEW JERSEY, LLC, and PORT IMP. SOUTH II URBAN RENEWAL, LLC,

Defendants,

and

JOSEPH R. PALLONETTI,

Defendant-Appellant/
Cross-Respondent.

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Submitted March 15, 2023 – Decided April 20, 2023

Before Judges Currier and Mayer.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-1359-19.

Pribish-Reiss, LLP, attorneys for appellant/cross-respondent (John J. Pribish, on the briefs).

Tesser & Cohen, attorneys for respondent/cross-appellant (Danielle E. Cohen, on the briefs).

PER CURIAM

Defendant Joseph R. Pallonetti appeals from an October 5, 2021 judgment.[1] Plaintiff Marjam Supply Co., Inc. (Marjam) cross-appeals from that same judgment limited to the dismissal of its claims against Pallonetti. We affirm on the appeal and cross-appeal.

Marjam, a building material supplier, sued defendant American Contractors of New Jersey, LLC (American) for non-payment of materials supplied under a signed credit agreement. Marjam subsequently filed an amended complaint to include a claim against American's owner, Pallonetti. Marjam claimed Pallonetti was liable for American's unpaid debt, alleging he signed a personal guaranty as part of American's credit agreement.

[1] Nothing in the judgment addressed attorney's fees, costs, or sanctions which are raised in Pallonetti's appeal. Because the trial judge's written decision declined to award attorney's fees and costs, or impose sanctions against Marjam, it appears Pallonetti appeals from the judge's written decision rather than the judgment.

The trial court referred the matter to non-binding arbitration. In July 2020, an arbitrator ruled against American and Pallonetti and awarded Marjam the sum of $1,774,514.71.

A month later, Marjam moved to confirm the arbitration award. Pallonetti filed a cross-motion to vacate the arbitrator's award and file a third-party complaint. In September 2020, while the motion and cross-motion were pending, Pallonetti's son discovered the original credit agreement in an off-site facility housing American's business records. In the original credit agreement, the personal guaranty provision was crossed out.

Based on finding the original credit agreement, and claiming Marjam's version of the document with a signed personal guaranty was a forgery, Pallonetti filed an order to show cause to set aside the arbitrator's award, stay confirmation of the award, and dismiss Marjam's amended complaint.

The judge signed the order to show cause and rescheduled the return date for the parties' pending motions. The judge heard oral argument on Pallonetti's order to show cause and the parties' motions in December 2020. In a December 22, 2020 order and written decision, the judge granted Pallonetti's motion to vacate the arbitration award, denied Marjam's motion to confirm that award, and

dissolved the order to show cause. As a result, the judge returned the matter to the calendar for trial.

After completing discovery, Pallonetti moved for summary judgment seeking dismissal of Marjam's claim that he was responsible for American's debt under a personal guaranty. Marjam filed a cross-motion for summary judgment. The judge denied both motions as untimely based on the July 2021 trial date.

At the virtual bench trial conducted on July 26, 2021, the judge heard testimony from Pallonetti, Joan Mayle, an administrative assistant employed by American, Khody Detwiler, a forensic document examiner retained by Pallonetti, and Gabriel Iosefson, Marjam's corporate credit manager.

Iosefson was Marjam's only trial witness. He testified he asked Steve Bodeker at American to provide a personal guaranty so Marjam could open a credit account on American's behalf. Iosefson explained he met with Bodeker and Pallonetti to discuss the personal guaranty. After this discussion, Iosefson stated he received a facsimile of the credit agreement with a personal guaranty signed by Pallonetti. Iosefson explained he had no reason to believe the faxed document was not a properly executed credit agreement and personal guaranty.

On cross-examination, Iosefson testified that he could not recall any specifics about the discussion with Bodeker and Pallonetti. Nor was Iosefson

able to recall if Pallonetti agreed to sign a personal guaranty. Iosefson told the judge that he found American's signed credit agreement and personal guaranty on his desk but he did not know who left the document for him. He admitted having no personal knowledge or information confirming that Pallonetti signed the personal guaranty. Nor did Iosefson know if the document was altered before he found it on his desk.

Pallonetti, Mayle, and Detwiler testified on Pallonetti's behalf. Detwiler opined Marjam's version of the credit agreement was not faxed to the company. Detwiler explained the document was a forgery, which "cut" Pallonetti's signature from the credit agreement and "pasted" that same signature in the personal guaranty portion of the credit agreement. Detwiler had no opinion who fabricated Pallonetti's signature on the personal guaranty.

Pallonetti testified that he signed the original credit agreement for American, marked as D-3 at trial.[2] He told the judge he did not sign P-4, the credit agreement and personal guaranty produced by Marjam at trial, never saw P-4 prior to receiving Marjam's amended complaint, and did not authorize anyone to sign or send P-4 to Marjam. Pallonetti testified he was unable to search his records for the original signed credit agreement when he received the

[2] Exhibit D-3 was the document found by Pallonetti's son in September 2020.

amended complaint because he was in Florida during the COVID-19 pandemic and unable to travel to New Jersey.

Mayle corroborated Pallonetti's trial testimony. She explained that she received a blank credit agreement from Marjam, provided the information to complete the application, crossed out the personal guaranty language in the credit agreement, witnessed Pallonetti sign the document without the personal guaranty language, and returned the document to Marjam by email. Mayle had no personal knowledge of P-4, never saw P-4, did not send P-4 to Marjam, and stated that, to her knowledge, no one else at American sent P-4 to Marjam. She further testified there was a policy in place that "Mr. Pallonetti never would sign a personal [guaranty]."

On October 6, 2021, the judge issued a written decision. She found only some of Iosefson's testimony credible. The judge explained Iosefson gave inconsistent testimony regarding the date that he received P-4 in relation to his meeting with Pallonetti and Bodeker regarding the personal guaranty. On the other hand, she found Pallonetti, Mayle, and Detwiler credible. Additionally, the judge explained Pallonetti's expert's opinions were unrebutted by any contrary expert testimony on Marjam's behalf.

Based on Detwiler's testimony, the judge noted "that P-4 [was] a fabrication commonly referred to as a 'cut and paste.'" She also agreed with the expert's conclusion "that there [was] no indication that P-4 was faxed since the document [did] not bear any indicia of faxing because it has no banner at the top . . . and the metadata show[ed] that it [was] an [eight] bit image." The judge further relied on Detwiler's unrebutted expert testimony "that if the document were faxed or sent via PDF after it was faxed it would be a [two] bit image." She also relied on Detwiler's explanation there were "specific details on P-4 establishing that there are remnants on the document of the prior version at P-3 (the original credit agreement) from which P-4 was created."

Based on the testimony, the judge found Pallonetti produced the original credit agreement in September 2020; the original credit agreement with the personal guaranty language crossed out was emailed by American's administrative assistant to Marjam on October 2, 2014; and P-4, as presented by Marjam in support of the claimed personal guaranty, was fabricated. The judge further found "that the clear and convincing evidence establishe[d] that P-4 [was] an inadmissible fabricated document and that [Marjam]'s offering of P-4 in connection with plaintiff's proofs against Pallonetti constitute[d] fraud on the court." Thus, she ruled "that P-4 and any testimony as to reliance of P-4 to

impose liability on Pallonetti [was] inadmissible based on the conclusion that [Marjam] ha[d] not sustained its burden of proof as to the validity of Pallonetti's signature on the [personal guaranty]." Without the personal guaranty, the judge found Marjam's claim against Pallonetti failed. Therefore, she entered judgment for Pallonetti and dismissed Marjam's claim against him.

Additionally, although Pallonetti never filed a motion seeking fees, costs, or sanctions, Pallonetti's trial brief included a point heading claiming "entitle[ment] to an award of attorney[']s fees incurred to defend Marjam's claim." In his trial brief, Pallonetti relied on Triffin v. Automatic Data Processing, Inc., 411 N.J. Super. 292, 313-314 (App. Div. 2010), arguing "Marjam should be ordered to pay [his] expenses, including attorney['s] fees, as a result of Marjam's prosecution of its claim based on fabricated evidence." Pallonetti submitted his trial brief to the judge four days before the scheduled trial.

During the trial, Pallonetti's attorney did not request attorney's fees, costs, or sanctions. The issue was never raised by the parties, even after the judge asked if there was "[a]nything further from either party with regard to the trial record?" Additionally, the parties agreed no further briefing was required for the judge to rule on the matter. When the judge asked if "there [was] anything

further that you want to request to submit to the [c]ourt?," Pallonetti's attorney responded, "nothing further."

Even though the issue of attorney's fees, costs, and sanctions was not raised during the trial or in a filed motion, the judge addressed the issue in her written decision. The judge "decline[d] to impose the sanction of dismissal or payment of Pallonetti's attorney[']s fees based upon the fraud presented to the court."[3] In rejecting any monetary award, the judge wrote:

> To the extent that Pallonetti include[d] an informal request for attorney[']s fees in the [t]rial [b]rief, the court declines to impose same . . . [based on] the lack of evidence before the court that any frivolous litigation letter was served on [Marjam] by Pallonetti pursuant to R. 1:4-8 giving [Marjam] notice that fees would be sought. Thus, . . . predicated on the trial record, the court finds that the equitable result in this case is that both parties bear their own attorney[']s fees and costs.

On appeal, Pallonetti argues the judge erred in failing to award him attorney's fees and costs or impose any other sanctions after the judge concluded Marjam committed a fraud on the court. On the cross-appeal, Marjam argues the judge erred in finding it committed a fraud on the court because Pallonetti failed to establish that someone affiliated with Marjam forged the signature on

[3] The judge found Marjam's "practical inability to recover payment from American despite the court finding that almost one million dollars is due and owing from the defunct business entity . . . is sanction enough in this case."

the personal guaranty. Alternatively, if the judge did not err in finding the document to be fraudulent, Marjam argues that the judge acted within her discretion in declining to award counsel fees or impose any other sanction.

I.

We begin with Marjam's cross-appeal. Our review of "the findings and conclusions of a trial court following a bench trial" is limited. Allstate Ins. Co. v. Northfield Med. Ctr., PC, 228 N.J. 596, 619 (2017). We do not "engage in an independent assessment of the evidence as if [we] were the court of first instance." In re Taylor, 158 N.J. 644, 656 (1999). Instead, we apply a deferential standard in reviewing factual findings and credibility determinations by a judge after a bench trial. Balducci v. Cige, 240 N.J. 574, 594-95 (2020). We "give deference to the trial court that heard the witnesses, sifted the competing evidence, and made reasoned conclusions." Griepenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015). A trial judge's factual findings will not be disturbed unless they are "so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Gnall v. Gnall, 222 N.J. 414, 428 (2015) (quoting Cesare v. Cesare, 154 N.J. 394, 412 (1998)). Accordingly, "findings by a trial court are binding on appeal when supported by adequate, substantial, credible evidence." Ibid.

Here, the trial judge rendered detailed findings of fact and credibility determinations after listening to the trial testimony and observing the demeanor of the witnesses. She found Pallonetti's witnesses credible regarding the signing of the original credit agreement without a personal guaranty. Because Marjam's sole witness lacked any information explaining how he came to possess the "cut and paste" version of the credit agreement, could not recall any details related to his discussion regarding the personal guaranty, and did not know if Pallonetti signed the personal guaranty or whether P-4 was altered in any manner, there was substantial, credible evidence in the record to support the judge's finding that Marjam failed to meet its burden of proving the validity of the personal guaranty. Without a valid and enforceable personal guaranty, the judge properly concluded Marjam could not prove Pallonetti's liability for payment of American's debt.

Having reviewed the record, and applying our deferential standard of review, we are satisfied Marjam failed to establish the enforceability of the personal guaranty. Therefore, the judge properly entered judgment for Pallonetti and dismissed Marjam's claims against him.

II.

We next consider Pallonetti's appeal. Pallonetti's November 19, 2021 notice of appeal simply listed the October 5, 2021 judgment without "specify[ing] what parts or paragraphs are being appealed." Because the judgment was entered in Pallonetti's favor, his notice of appeal should have indicated the provisions in the judgment that formed the bases of his appeal. See R. 2:5-1(e)(3)(i). While not identified in the notice of appeal, Pallonetti's case information statement asserted the judge erred in refusing to award him counsel fees, costs, and sanctions after "the [c]ourt found that [Marjam] committed, by clear and convincing evidence, a fraud on the [c]ourt." See Synnex Corp. v. ADT Security, 394 N.J. Super. 577, 588 (App. Div. 2007) (permitting consideration of issues identified in a case information statement). Additionally, Pallonetti's appellate brief cited page fourteen of the judge's written decision in support of his appellate contentions.

We note appeals are taken from orders and judgments, not a trial judge's statement of reasons or written decisions. See 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."); see also R. 2:2-3(a). Thus, we

could decline to reach the merits of Pallonetti's appeal on this basis. However, we elect to address the issue for the sake of completeness.

Our review of a trial court's ruling on an application for sanctions is limited. We only consider whether the court's disposition constituted an abuse of discretion. Gilbert v. Electro-Steam Generator Corp., 328 N.J. Super. 231, 236 (App. Div. 2000).

A trial court has the inherent authority, independent of the authority under Rule 1:4-8, to award attorney's fees for unreasonable litigation conduct. See e.g., Triffin, 394 N.J. Super. at 251 ("Separate and distinct from court rules and statutes, courts possess an inherent power to sanction an individual for committing a fraud on the court."). "Even assuming the existence of such inherent power, it must be exercised with restraint and discretion because of its potency." Dziubek v. Schumann, 275 N.J. Super. 428, 439 (App. Div. 1994). "[T]he imposition of such a sanction is generally not imposed under this power without a finding generally that the . . . conduct constituted or was tantamount to bad faith." Id. at 440.

Here, while the judge found Marjam's offering of P-4 as evidence "constitute[d] fraud on the court," she did not find Marjam's conduct constituted bad faith or vexatious litigation. In declining to impose sanctions or order

Marjam's payment of Pallonetti's attorney's fees and costs, the judge noted Pallonetti only made "an informal request for attorney[']s fees in the [t]rial [b]rief" and never filed a motion or provided any other "notice that fees would be sought."

Nor did Pallonetti specify the amount of fees and costs he sought to recover. Pallonetti never submitted any invoices delineating the legal services and expenses incurred after receiving the amended complaint. Nor did Pallonetti proffer any affidavit or certification identifying additional costs and fees that he anticipated incurring at trial.

Having reviewed the record, we are satisfied that the judge did not abuse her considerable discretion in declining to award counsel fees and costs or impose sanctions under these particular facts. The judge did not find that Marjam "interfere[d] with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense." Triffin v. Automatic Data Processing, Inc., 394 N.J. Super. 237, 251 (App. Div. 2007) (quoting Aoude v. Mobil Oil Corp., 892 F.2d 1115, 1118 (1st Cir. 1989)).

On this record, Pallonetti defended against Marjam's claim successfully, despite the fabricated personal guaranty. More importantly, the judge's ability

to adjudicate the matter was not impaired by Marjam's proffering of P-4. Additionally, fundamental principles of due process required some notice that Pallonetti would seek sanctions or an award of attorney's fees and costs against Marjam with details as to a specific amount. A statement requesting attorney's fees, costs, or sanctions in a trial brief fails to provide sufficient notice to an opposing party to respond appropriately.

Affirmed as to the appeal and cross-appeal.

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

CLERK OF THE APPELLATE DIVISION