SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1898-21

IN THE MATTER OF THE ESTATE OF THOMAS F. CLARKIN, deceased.

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Submitted May 30, 2023 – Decided June 13, 2023

Before Judges Gooden Brown and Mitterhoff.

On appeal from the Superior Court of New Jersey, Chancery Division, Hudson County, Docket No. 298606.

Kenneth C. Marano, attorney for appellant Joseph Clarkin.

Meyerson, Fox, Mancinelli & Conte, PA, attorneys for respondent Geraldine Clarkin-Larino (Sharon Rivenson Mark, Andrew P. Bolson, and Erik Topp, on the brief).

PER CURIAM

Appellant Joseph Clarkin appeals from an August 6, 2021 order, granting partial summary judgment in favor of respondent Geraldine Larino-Clarkin; a December 22, 2021 order, awarding respondent damages, attorneys' fees, and costs in the amount of $236,972.09; and a January 11, 2022 order, awarding

respondent an additional $19,924.59 in attorneys' fees and costs.[1] We affirm, substantially for the reasons articulated in Judge Jeffrey R. Jablonski's well-reasoned opinion.

This matter arises from appellant's alleged failure to comply with the terms of a settlement agreement reached pursuant to an estate litigation, which concluded more than a decade ago. We discern the following facts from the record.

Decedent Thomas Clarkin died on March 2, 2009, leaving a last will and testament dated March 13, 2006. Decedent was survived by respondent, his wife, and appellant, his biological son from a prior marriage; appellant is respondent's stepson and an heir under the terms of decedent's will. The primary

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[1] While appellant's notice of appeal, amended notice of appeal, and accompanying case information statement indicate challenges to orders dated April 26, 2021, May 7, 2021, and January 11, 2022, the substance of his appellate brief makes clear that his challenge actually relates to orders dated August 6, 2021, December 22, 2021, and January 11, 2022. Although "[t]he comment to the relevant court rule states that 'it is clear that it is only the judgment or orders or parts thereof designated in the notice of appeal which are subject to the appeal process and review,'" Campagna ex rel. Greco v. American Cyanamid Co., 337 N.J. Super. 530, 550 (App. Div. 2001) (quoting Pressler, Current N.J. Court Rules, comment 6 on R. 2:5-1(f)(3)(i) (2001)), we believe the better course of action is to address appellant's arguments on the merits. See Trust Co. of N.J. v. Sliwinski, 350 N.J. Super. 187, 192 (App. Div. 2002) ("[O]ur public policy [is] that, whenever possible, litigation should be resolved on the merits rather than on procedural violations.").

assets of decedent's estate were two businesses, Service Star Center, Inc. and T.F.C. Realty, Inc., which—together—held a gas station and automotive repair business, as well as the underlying real property.

Decedent married respondent on September 25, 2006, several months after the execution of his will. On June 4, 2007, decedent executed a power of attorney ("POA") in favor of respondent. In 2008, acting under color of the POA, respondent transferred all issued and outstanding shares of the holding corporations for decedent's businesses into a living trust in decedent's name, the contents of which were ultimately to be distributed to respondent.

After decedent died, a will contest followed; appellant filed suit on June 3, 2009, seeking to probate the will and to invalidate the 2008 living trust to the extent that it attempted to transfer any of decedent's assets to respondent. After extensive litigation and settlement negotiations, the parties—who were both represented by counsel—executed a settlement agreement on January 23, 2012, which was approved by court order of the same date. The settlement agreement, however, was not placed on the record at that time.

Pursuant to the terms of the settlement agreement, the parties agreed to file a consent order to admit the will into probate, subject to the following changes:

> Article 3 . . . will be deleted in its entirety and replaced with language to provide that the stock of [decedent's corporations] shall be liquidated either by asset sale or stock sale or combination thereof by the executor and the proceeds of which shall be distributed to [respondent] . . . and [appellant] . . . in equal shares.

The parties further agreed that Stanley Turtletaub, Esq. would be appointed as the sole executor of the estate and that appellant would renounce any rights to serve in such position under the will.[2] Pursuant to paragraph 4 of the settlement agreement, the executor was to list decedent's businesses for sale and the parties agreed to cooperate with the listing and sale of such businesses.[3]

In addition, the settlement agreement included two separate provisions dealing with the entitlement to attorneys' fees.[4] The first provision, contained in paragraph 3, outlined the rights and responsibilities of the parties as it related

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[2] Turtletaub was later replaced as executor by Stephen J. McCurrie, Esq.

[3] Both parties allege that the other interfered with the executor's efforts to sell the businesses.

[4] For completeness, we recognize an additional provision—included in paragraph 20—under which, the parties were required to submit the matter to "binding arbitration," and agreed "that the prevailing party shall be entitled to recovery of his/her attorneys' fees and costs . . . in connection with the arbitration from the other." The arbitrator was to "make a determination as to which party [was] the 'prevailing party.'" Here, the agreed-upon arbitration never reached finality; therefore, no "prevailing party" was identified, and no attorneys' fees are due under this paragraph.

to decedent's assets and addressed the entitlement of the prevailing party to recover attorneys' fees related to enforcement of the terms of the settlement agreement:

> Star Service Center, Inc. shall enter into a [m]anagement [a]greement . . . with [appellant], . . . under the terms of which [appellant] shall be responsible for and shall have full management authority over the operations of [decedent's businesses], including the authority to receive all income of Star Service Center, Inc. . . . As consideration for his services under the terms of the [m]anagement [a]greement, [appellant] shall be entitled to retain [one hundred percent] of the "[n]et [p]rofits" of Star Service Center, Inc., . . . through December 15, 2011. After December 15, 2011, [appellant] shall continue to retain the right to receive [one hundred percent] of the [n]et [p]rofits of the business of Star Service Center, Inc., less, however, a payment of $2,000 per month to [respondent] which shall be paid to her on the [fifteenth] day of each month commencing as of December 15, 2011 as a share of the [n]et [p]rofits of the business of Star Service Center, Inc., and which shall be paid to her from the first [] $2,000[] of [n]et [p]rofits earned by the [b]usiness[.] . . . Said payment of $2,000 per month thereafter shall be due and payable to [respondent] until such time as the stock, assets or business of either or both of [decedent's businesses] are sold to a third party, or the [m]anagement [a]greement has been terminated . . . , or the interest of [respondent] is purchased or bought out by [appellant], or vice versa . . . .
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> In the event that the monthly payment of $2,000[] due [to respondent] is not paid within ten [] days of its due date, [respondent] shall be entitled to receive in

> addition to the $2,000[] due for that month, a late payment penalty of $50[] per day retroactive to the [first] day of the month for which the payment was due and which late payment penalty shall continue to accrue until the monthly payment and all daily late penalties for that month have been paid. In the event that payment of any monthly payment of $2,000[] is late by more than forty-five [] days, [respondent] may, notwithstanding the provisions of [p]aragraph 18 below, bring an action at law against [appellant], Star Service Center, Inc. or both for recovery of any outstanding payments and late payment penalties and [appellant] expressly agrees that he shall be liable for all costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by [respondent] in connection with any such action.
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> [(emphasis added).]

The second provision, contained in paragraph 18, dealt with the entitlement of attorneys' fees related to litigation of the underlying estate action. This provision essentially puts forth the American Rule,[5] stating that "[e]ach party shall be responsible for his/her attorneys['] fees incurred in connection

[5] See N. Bergen Rex Transp. v. Trailer Leasing Co., 158 N.J. 561, 569 (1999) (New Jersey generally adheres "to the so-called 'American Rule,' meaning that 'the prevailing litigant is ordinarily not entitled to collect a reasonable attorneys' fee from the loser.'" (quoting Rendine v. Pantzer, 141 N.J. 292, 322 (1995))); but see Kellam Assocs., Inc. v. Angel Projects, LLC, 357 N.J. Super. 132, 138 (App. Div. 2003) ("While a contractually-based claim . . . does not fall within any of the designated exceptions [in Rule 4:42-9(a)], the rule does not preclude a party from agreeing by contract to pay attorneys' fees.").

with the litigation between the parties and their representation by their own separate counsel."

After initial compliance by the parties, conflict arose in January of 2014 when appellant allegedly failed to pay the agreed-upon $2,000 to respondent. In March 2014, and continuing until present, appellant resumed making the monthly payments at a reduced amount of $1,000 per month. Appellant attempted to justify his unilateral reduction by alleging that he was no longer able to make the entire agreed-upon payments due to the adverse impact on decedent's businesses caused by Superstorm Sandy in October 2012.[6]

Beginning in 2013, the stalled sale process of decedent's assets and appellant's unilateral reduction in monthly payments led the parties to arbitration, which was ultimately unsuccessful in resolving their dispute.[7] Appellant contends that respondent hindered the arbitration process both by

[6] Appellant alleges that he sought respondent's cooperation in resolving these issues, via communications sent to respondent's attorney, to no avail. In addition, appellant claims that he never received any objection to the reduced monthly payments from either respondent or respondent's attorney.

[7] In response to respondent's complaint in this matter, the judge ordered a second attempt at arbitration on September 30, 2018. This attempt was equally ineffective.

failing to attend arbitration sessions and by failing to respond to correspondents from appellant's attorney.

On June 19, 2018, respondent filed suit in the chancery division, seeking—among other things—enforcement of the terms of the settlement agreement. Respondent asserted that appellant owed her $135,100 in late fees; $90,000 for the missed monthly payments; and $84,684.34 in attorneys' fees and costs. Thereafter, appellant filed an answer containing several equitable affirmative defenses, including: waiver; unclean hands; laches; and legal and equitable estoppel. Appellant also contended that the requested attorneys' fees should be denied because the settlement agreement expressly restricted the recovery of such fees to specified events—i.e., an action brought in the law division seeking enforcement of paragraph 3.

By court order dated April 26, 2021,[8] the judge converted respondent's complaint and order to show cause into a motion for summary judgment, which appellant contested. On August 6, 2021, the judge entered partial judgment in

[8] This order also denied appellant's motion to approve the sale of real property owned by the estate to himself and stated that "[t]his court shall receive sealed bids for the purchase of the property on or before May 4, 2021. . . . The court shall, thereafter, consider the bids and inform the parties as to the successful purchaser."

favor of respondent, finding that appellant breached the terms of the settlement agreement between the parties. However, the judge denied judgment as to the issue of damages and scheduled a plenary hearing to address the entitlement to, and amount of, damages,[9] which was held on September 27 and 29, 2021.

On December 22, 2021, following hearings in which both parties and respondent's former and current attorneys testified,[10] the judge entered an order awarding respondent $236,972.09 in damages. The damage award was comprised of $90,000 for the missed monthly payments; $135,100 in late fees; $11,636 in attorneys' fees; and $236.09 in costs.

In a written opinion affixed to the December 22, 2021 order, Judge Jablonski painstakingly detailed the factual and procedural history of this matter and thoroughly discussed the reasoning underlying his determination. At the outset, the judge expressed his credibility assessments of the witness testimony heard at trial, stating:

> Overall, with some very minor exceptions, for which no import can be attributed, all of the witnesses who testified did so politely to the questioner and deferentially to this court. However, during their

[9] The judge found that a hearing was required to assess the damages aspect of respondent's claim "since it was not a part of the settlement discussions in 2012, nor was the settlement placed on the record."

[10] Respondent's former attorney was Leonard P. Kiczek, Esq. and her current attorney is Sharon Rivenson Mark, Esq.

> testimony[,] both parties displayed frequent inconsistencies in the presentation of the evidence combined with a lack of recollection on material terms of the negotiations and the resulting agreement that impacted adversely on their respective credibility.

In discussing the merits of the matter, Judge Jablonski first turned to respondent's alleged entitlement to damages for the missed monthly payments. As a threshold matter, the judge found that "the settlement terms, negotiated between the parties with the assistance of counsel, that were set forth in a signed consent agreement, [were] clear and unambiguous as to the responsibilities of each party under the agreement." Then, the judge determined that appellant failed to meet his obligations under the settlement agreement, "despite his clear and unambiguous responsibility to do so."

Having found appellant in breach of the settlement agreement, the judge then turned to the defenses raised by appellant, summarizing his arguments as follows:

> Despite meeting his initial obligations under the terms of the settlement, [appellant] ultimately reduced the payments to $1,000[], without permission nor consent. His justification for the sua sponte modification of the agreement was attributable, according to [appellant]'s testimony, to the reduction of income and profitability because of the expenses necessitated to be made following damage to the property after [Superstorm] Sandy and the involvement of the New Jersey

> Department of Environmental Protection that resulted in the elimination of the gasoline sales at the property.
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> [Appellant] attempts to avoid this responsibility by arguing that [respondent] tacitly waived her right to receive the full amount, or, alternatively, was guilty of laches . . . , despite his decision to reduce his financial obligation to her. Specifically, he noted in his testimony and in his argument that he attempted to comply with all of the court orders including subsequent efforts to seek an alternative disposition of the financial issues involved, but [respondent] refused to cooperate.

The judge ultimately found appellant's arguments "not persuasive." After outlining the legal standard for the affirmative defense of laches, Judge Jablonski reasoned:

> Despite [appellant]'s accusation that [respondent] failed to assert her right to enforce the agreement to the entire amount due and owing to her under the settlement agreement, uncontroverted evidence exists through the testimony of [respondent]'s former attorney that substantiates the efforts made to comply with the obligations under the agreement. Leonard Kiczek, Esq.[] testified at the trial and similarly certified that consistent contacts were made with [appellant]'s attorney beginning in February of 2013 seeking compliance with the settlement agreement. Although [appellant] accuses [respondent]'s prior counsel of lack of responsiveness to his requests to move the matter forward, documentation that has been submitted substantiates [respondent]'s position regarding the issues, renders her position more reasonable, and therefore, more credible.

> Letters admitted into evidence demonstrate that [respondent]'s counsel was very responsive to the requests made to him. Despite generalized statements made by [appellant] that there were no substantive responses to his requests, the numerous letters submitted to support [respondent]'s attorney's requests and response[s] are substantively more persuasive than [appellant]'s statements.
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> Responsive correspondence to [appellant]'s requests, and, occasionally, threats, were responded [to] by [respondent]'s counsel. The substance of those letters demonstrated a willingness to reach an amicable agreement rather than to perpetuate the litigation. On the other hand, despite threats to file any documentation to assert the rights under the settlement agreement by [appellant], [appellant] never followed through on those threats. At best, the evidence as to the lack of good faith is in equipoise. Consequently, [appellant] has not carried his burden to demonstrate that [respondent] is guilty of laches.

Therefore, because appellant failed to meet his obligation by "either fail[ing] to pay or underpa[ying] the required monthly sum," the judge entered judgment against him on that issue in the amount of $90,000.

Next, Judge Jablonski addressed appellant's alleged entitlement to late fees. Having already deemed appellant in breach of the settlement agreement and liable for the missed monthly payments, the judge also found him

responsible for the payment of the $50 per day penalty that, as of May 26, 2021, totaled $135,100;[11] judgment was entered against appellant in that amount.

Finally, following the testimony provided at trial, and after reviewing the submitted billing records, the judge found that "only a portion of [respondent]'s attorney[s'] fees are permitted to be recovered." In so finding, the judge reasoned that:

> It is clear to this court that the language included in paragraph 3 is limited to a specific circumstance and only one component of the obligations of the parties to this dispute. The required monthly sum, combined with the daily charge of $50[], along with the notation that this provision is separate from the general requirement [in paragraph 18] that the parties bear their own attorney[s'] fees, all serve to deter [appellant] from falling behind on this economic obligation to [respondent] under the agreement. [Paragraph 3] carves out a specific exception to the requirement for each party to be responsible for its own attorney[s'] fees. Further, this language requires that an action be brought in law seeking to enforce this provision.

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[11] In a footnote, the judge further stated:

> The record is silent as to whether the property in question has been sold as was originally envisioned by the settlement agreement. If the property has not been sold as of the date of this decision, the late fee shall be calculated on a continuing basis until the property is sold. If the property has been sold, the late fees generated under the breached agreement shall be increased at $50[] per day for the days between May 26, 2021, and the date of sale.

> Here, the action to compel enforcement of the settlement agreement was filed in the [c]hancery [division]. Although other forms of relief were included within that application, the procedural step required to be taken under the contract focused exclusively on a request for money damages. Therefore, this limited matter should have been brought in the law division. However, notwithstanding the procedural infirmity of this application, the substance of the application and the requested relief is too broad to permit the entirety of the recovery requested.
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> Specifically, since no action had been filed by [respondent]'s prior attorney as a necessary precondition of the recovery of attorney[s'] fees under paragraph 3, those attorney[s'] fees are not chargeable to [appellant]. Similarly, the majority of the fees and costs that have been charged by [respondent]'s attorneys for which reimbursement is sought . . . have been similarly attributable to other aspects of the litigation rather than the enforcement of the monthly payment obligation. Additionally, most of the entries lack any detail as to the substance of the work performed that deprives this court [of the ability] to analyze whether those actions taken were as part of the portion of the order to show cause in which [appellant] was sought to be compelled to pay attorney[s'] fees. Because [respondent] seeks to recover fees from [appellant], [respondent] bears the sole burden of demonstrating that all of the charged elements fall within that paragraph. She has failed to do so.

Therefore, the issue—as framed by Judge Jablonski—was "whether the tasks performed and for which compensation is sought are reasonabl[e] overall and

specifically in light of the litigation component for which entitlement is permitted (to wit, the recovery of the unpaid charges.)."

To that end, the judge first found that most of the entries in the amended certification of services lacked sufficient detail to allow a determination as to "whether the time expended and charges . . . sought to be imposed upon [appellant] [were] . . . dedicated to the enforcement of the paragraph 3 attorney[s'] fee entitlement," or were rather "charged for other components of the litigation for which the payment of attorney[s'] fees would be the responsibility of each party under paragraph 18." Due to the infirmity of the referenced charges, the judge denied recovery of attorneys' fees for those entries.[12]

However, the judge did find that charges related to time spent on May 2, 2018, June 14, 2018, and May 24, 2021 through September 19, 2021,[13] were directly connected to the enforcement application and were compensable. For

[12] The judge similarly found that the certification of services did not provide the predicate information necessary to ascertain whether the fees requested by [respondent]'s attorney's co-counsel were appropriate and reasonable. Therefore, the requested 9.20 hours included on the amended certification was denied without prejudice.

[13] The judge excluded charges for 1.10 hours spent on June 22, 2021, finding them excessive and unrelated to the paragraph 3 entitlement.

those charges, the judge permitted an attorneys' fee award at $400 per hour for 29.09 hours, totaling $11,636, plus $236.09 in costs that he found were directly related to the prosecution of this action.

The December 22, 2021 order further directed respondent's counsel to submit a revised certification of services to reflect time spent for trial, which were not included in the initial award. If deemed appropriate, the judge would enter a revised order as to the ultimate attorneys' fees to be recovered. Appellant was provided an opportunity to respond to the revised certification but ultimately failed to do so.

By order dated January 11, 2022, the judge awarded respondent an additional $19,924.59 in attorneys' fees and costs. This appeal followed.

On appeal, appellant raises the following arguments for our consideration:

> A. Whether His Honor, Jeffrey R. Jablonski, A.J.S.C.[,] Abused His Discretion and Erred by Granting Summary Judgment on August 6, 2021 and [by] Ordering a Plenary Hearing to Address Both the Entitlement to and Amount of Damages.
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> B. Whether the Court Erred by Concluding it Needed to Hold a Hearing on the Measure of Damages.

Rule 4:46-2(c) provides that a motion for summary judgment must 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." The court must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

"The court's function is not 'to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.'" Rios v. Meda Pharm., Inc., 247 N.J. 1, 13 (2021) (quoting Brill, 142 N.J. at 540). "To decide whether a genuine issue of material fact exists, the trial court must 'draw[] all legitimate inferences from the facts in favor of the non-moving party." Friedman v. Martinez, 242 N.J. 450, 472 (2020) (alteration in original) (quoting Globe Motor Co. v. Igdalev, 225 N.J. 469, 480 (2016)). We review the trial court's grant or denial of a motion for summary judgment de novo, applying the same standard used by the trial court. Stewart v. N.J. Tpk. Auth./Garden State Parkway, 249 N.J. 642, 655 (2022); Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021).

In the instant matter, it is undisputed that appellant breached the express terms of the parties' settlement agreement by either failing to pay or underpaying the agreed-upon monthly payments, "despite his clear and unambiguous responsibility to do so." However, appellant asserts that summary judgment was inappropriate due to the existence of a genuine issue of material fact—namely, the equitable defense of laches, which he raises in an attempt to avoid liability in this matter. In support of this defense, appellant points to the adverse impact of Superstorm Sandy on the businesses' profitability; respondent's alleged lack of cooperation in listing the business for sale and in arbitration; and respondent's over four-year delay in filing suit, despite her legal right—as granted by the settlement agreement—to bring an action to recover any outstanding payments forty-five days after the date in which they were due.

In general, "[l]aches will bar the prosecution of an equitable claim if the suitor had inexplicably, inexcusably[,] and unreasonably delayed pursuing a claim to the prejudice of another party." In re Estate of Thomas, 431 N.J. Super. 22, 30 (App. Div. 2013). The delaying party must have "had sufficient opportunity to assert the right in the proper forum and the prejudiced party acted in good faith believing that the right had been abandoned." Knorr v. Smeal, 178

N.J. 169, 181 (2003). Thus, "[t]he core equitable concern in applying laches is whether a party has been harmed by the delay." Ibid.

"More broadly, '[w]hether laches should be applied depends upon the facts of the particular case and is a matter within the sound discretion of the trial court.'" Mancini v. Twp. of Teaneck, 179 N.J. 425, 436 (2004) (alteration in original) (quoting Garrett v. General Motors Corp., 844 F.2d 559, 562 (8th Cir. 1988)). "The factors to be considered when determining whether to apply laches[,] include: length of the delay; reasons for the delay; and 'changing conditions of either or both parties during the delay.'" Cnty. of Morris v. Fauver, 153 N.J. 80, 105 (1998) (quoting Lavin v. Board of Educ., 90 N.J. 145, 152 (1982)).

Here, we discern no abuse of discretion in the judge's decision to disallow the application of laches and find that respondent did not "inexplicably, inexcusably[,] and unreasonably" delay in filing the instant action. Thomas, 431 N.J. at 30. Based on our review of the record, it cannot be said that Judge Jablonski's findings as to respondent's cooperation and responsiveness "were 'so manifestly unsupported by or inconsistent with the competent, relevant[,] and reasonably credible evidence as to offend the interests of justice.'" Griepenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015) (quoting Rova Farms Resort, Inc.

v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)). As the judge further noted, appellant submits nothing more than "generalized statements" to support his position, which is insufficient to satisfy his burden of proving an affirmative defense. See Cavanaugh v. Skil Corp., 164 N.J. 1, 4-5 (2000) ("Of course, '[w]hen an affirmative defense is raised [in a civil case], the defendant normally has the burden of proving it.'") (alterations in original) (quoting Roberts v. Rich Foods, Inc., 139 N.J. 365, 378 (1995)).

In addition, "causes of action brought at law are governed in the first instance by statutes of limitations that have been fixed by the Legislature to create defined and regularly applicable periods against which to determine timeliness." Fox v. Millman, 210 N.J. 401, 422 (2012). Only in "the rarest of circumstances and only [where there are] overwhelming equitable concerns" do courts allow the application of laches "to shorten an otherwise permissible period for initiation of litigation." Ibid. Here, N.J.S.A. 2A:14-1(a) is directly applicable to respondent's claim, setting a six-year statute of limitations for claims arising from recovery upon a contractual claim or liability. Since respondent filed suit approximately four and a half years after appellant's initial breach, we find the application of laches particularly inappropriate here.

Turning to appellant's second argument, we find that Judge Jablonski's decision to conduct a plenary hearing to address the issue of damages and his subsequent award of damages were both appropriate.[14] The judge first determined that he was required to hold a hearing on the entitlement to, and amount of, damages in this matter after finding that they were "not part of the settlement discussions in 2012, nor was the settlement placed on the record." In subsequently awarding damages, the judge was merely giving effect to the agreed-upon terms of the settlement agreement, "which a court, absent a demonstration of 'fraud or other compelling circumstances,' should honor and enforce as it does other contracts." Pascarella v. Bruck, 190 N.J. Super. 118, 124-25 (App. Div. 1983) (quoting Honeywell v. Bubb, 130 N.J. Super. 130, 136 (App. Div. 1974)).

To the extent we have not addressed appellant's additional arguments, we find that they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

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[14] Since appellant failed to object to the additional fee certification submitted by respondent's counsel despite having an opportunity to do so, we find that appellant is precluded from challenging the January 11, 2021 order on appeal. See Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) ("It is a well-settled principle that our appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available[.]").

Affirmed.

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

CLERK OF THE APPELLATE DIVISION