SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2172-21

IMER DEDJA,

Plaintiff-Respondent,

v.

LIKISSA PROPERTIES, LLC and DANDY RESTAURANT, LLC,

Defendants-Appellants.

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Submitted February 28, 2023 – Decided June 29, 2023

Before Judges Sumners and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Docket No. DC-008358-21.

Law Offices of Igor Sturm, attorneys for appellants (William C. MacMillan, on the brief).

Cohen Fineman, LLC, attorneys for respondent (Samuel B. Fineman, of counsel and on the brief).

PER CURIAM

In December 2020, Imer Dedja entered into a written contract with two parties: Likissa Properties, LLC, to purchase commercial real estate in Gloucester City (the property); and Dandy Restaurant, LLC, to purchase a restaurant business, a plenary retail consumption liquor license, furniture, fixtures, equipment, and the trade name "O'Donnell's 1923 Pub and Grill" (hereinafter the LLCs).[1] Likissa Hunde is the sole member and owner of the LLCs.

The purchase price was $400,000, of which the LLCs were financing $300,000. Dedja tendered a $15,000 deposit, which was held in escrow by John Sandone, the real estate broker and escrow agent for the parties. When the May 4, 2021 closing did not take place, Dedja sought return of his deposit by filing suit in the Special Civil Part. The LLCs filed a counterclaim, asserting breach of contract, as well as a claim for the deposit.

A bench trial was held in which Dedja, Sandone, Hunde, and Igor Strum, the LLCs' counsel, testified. Based on the parties' contract and the witnesses'

[1] The buyer and guarantor under the contract was initially Premtim Dedja. The buyer was later changed to Imer Dedja, Premtim's father.

testimony, the trial judge entered judgment, ordering release of the $15,000 escrow deposit to Dedja and assessing court costs against the LLCs.

The judge's ruling turned on two factors. First, he found there was no closing because "there was no meeting of the minds, notwithstanding the contract of sale" due to a contract provision giving Hunde the right to prevent Dedja from selling the liquor license. The contract's eleventh paragraph stated:

> One percent . . . of the membership interest of DEDJA, LLC[2] shall be granted to Likissa Hunde. The pledge contract shall specifically provide that the Operating Contract of DEDJA, LLC will require a one hundred percent . . . member approval for the sale or transfer to any third party, the liquor license owned by DEDJA, LLC, or transfer of any membership interest pledged under the pledge contract.

According to Sturm's testimony, the provision was to protect Hunde by preventing Dedja from selling the liquor license without his permission. Dedja acknowledged the provision but stated "I did not agree with [it]," because he

[2] Dedja, LLC appears to be entity under which Dedja was operating, but the contract of sale lists Imer Dedja as an individual buyer, not Dedja, LLC. Furthermore, as noted, on contract of sale, Premtim's name (which is printed) is crossed out and Imer's is handwritten in. However, the signature appears to be Premtim's.

was only financing the purchase of the property, and he mistakenly believed the liquor license was purchased with his $100,000 down payment.

Second, the judge determined Hunde breached the contract's requirement that the property's roof not leak when they closed. The judge believed Dedja's testimony that the ceiling was damaged due to a leaking roof Dedja saw when inspecting the property the day prior to closing. The judge did not believe Hunde's testimony that the roof had been repaired prior to the closing date and was no longer leaking. The judge held:

> Well, . . . we have Section 9B . . . [which states], "Roof shall be free of any leaks." . . . And at least from the [Dedja's] standpoint, . . . he's given testimony that the [c]ourt . . . considers credible. The [c]ourt evaluates the testimony according to the factors set forth in the model civil jury charge. The [c]ourt's sitting here as a trier of fact. So[,] I analyze the testimony and I found the testimony of [Dedja] to be credible with regard to the roof leaks. He goes into the place doing a final walk through. He sees it looks like the ceiling there over some booths near the bar or something is in bad shape. They go up; it looks like there's a roof leak. All right. So[,] he's having a problem with the roof leaks, he says.

Deeming the roof leak "a material dispute," the judge determined there was no closing because the contract was breached.

To establish a claim for breach of contract, a plaintiff must prove the existence of a contract with certain terms, the plaintiff's compliance with those

terms, the defendant's breach of one or more of them, and a loss to plaintiff caused by that breach. Goldfarb v. Solimine, 245 N.J. 326, 338-39 (2021) (citing Globe Motor Co. v. Igdalev, 225 N.J. 469, 482 (2016)). We review a trial judge's factual determinations, made after a bench trial, deferentially. D'Agostino v. Maldonado, 216 N.J. 168, 182 (2013). Those determinations are not disturbed unless "so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011) (quoting In re Tr. Created by Agreement Dated Dec. 20, 1961, ex rel. Johnson, 194 N.J. 276, 284 (2008)). We do not, however, owe any deference to the trial court's legal conclusions, which we review de novo. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

Before us, the LLCs argue Dedja anticipatorily breached the contract by not appearing at the closing, thereby entitling them to retain the deposit as liquidated damages per the contract's paragraph eighteen, subparagraph b. However, as Dedja correctly points out, because the argument was not raised before the trial judge, it should not be considered on appeal as it neither relates to the court's jurisdiction to hear the dispute nor substantially implicates the

public interest. See Zaman v. Felton, 219 N.J. 199, 226-27 (2014) (citation omitted).

That said, the anticipatory breach argument does not apply here. "An anticipatory breach is a definite and unconditional declaration by a party to an executory contract – through word or conduct – that he [or she] will not or cannot render the agreed upon performance." Ross Sys. v. Linden Dari-Delite, Inc., 35 N.J. 329, 340-41 (1961). "If the breach is material, i.e., goes to the essence of the contract, the non-breaching party may treat the contract as terminated and refuse to render continued performance." Id. at 341. "[A]nticipatory repudiation includes cases in which reasonable grounds support the obligee's belief that the obligor will breach the contract." Spring Creek Holding Co. v. Shinnihon U.S.A. Co., 399 N.J. Super. 158, 179 (App. Div. 2008) (quoting Danzig v. AEC Corp., 224 F.3d 1333, 1337 (Fed. Cir. 2000)).

As Dedja correctly maintains, it was impossible for him to have anticipatorily breached. An anticipatory breach can only occur against a non-breaching party, which was not the case here, based on the trial judge's finding that the LLCs— not Dedja—materially breached the contract by not repairing the roof leak.

As for the trial judge's finding that the LLCs materially breached the contract by not repairing the roof, the LLCs contend "[t]he trial record is devoid of any evidence that the roof was leaking as of the date of the scheduled [c]losing." They question the legitimacy of Dedja's claim that the roof leaked, considering his "only" evidence was his "lay testimony concerning a drop in the ceiling." They also assert the judge should have credited Hunde's testimony that the roof was repaired and leak-free.

We find no merit to these arguments. There is no basis in the record to upset the judge's credibility determination that the roof leaked, constituting a material breach of the contract by the LLCs. See Alves v. Rosenberg, 400 N.J. Super. 553, 566 (App. Div. 2008) (recognizing that credibility is for the factfinder to determine when the testimony provided is contradicted) (citing Ferdinand v. Agric. Ins. Co. of Watertown, N.Y., 22 N.J. 482, 494, 498 (1956)).

To the extent we have not specifically addressed any of the LLCs' arguments, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).[3]

[3] The LLCs do not challenge the trial judge's ruling that "there was no meeting of the minds, notwithstanding the contract of sale." Therefore, we do not address the ruling. See Oasis Therapeutic Life Ctrs., Inc. v. Wade, 457 N.J. Super. 218, 234 n.12 (App. Div. 2018) (declining to consider an issue not briefed by the parties).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION