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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2328-21**

**SOCIETY HILL AT UNIVERSITY  
HEIGHTS CONDOMINIUM  
ASSOCIATION, III, INC.,**

Plaintiff-Respondent,

v.

**LUCY SLOAN,**

Defendant-Appellant.

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Submitted April 18, 2023 – Decided May 17, 2023

Before Judges Rose and Perez Friscia.

On appeal from the Superior Court of New Jersey, Law  
Division, Essex County, Docket No. L-1435-19.

Schwartz Barkin & Mitchell, attorneys for appellant  
(Allen J. Barkin, on the brief).

Litvak & Trifiolis, PC, attorneys for respondent  
(Thomas W. Griffin, on the brief).

PER CURIAM

Defendant Lucy Sloan appeals from a February 23, 2022 Law Division judgment entered following a bench trial, which dismissed with prejudice Sloan's counterclaims against plaintiff Society Hill at University Heights Condominium Association III, Inc. (Society Hill). Sloan seeks reversal and remand for a new trial. More particularly, Sloan claims the trial court erred in dismissing her counterclaims for violation of the Condominium Act, N.J.S.A. 46:8B-1 to -38, breach of fiduciary duty, and negligence; and for failing to apply the doctrine of *res ipsa loquitur*. After our review of the record, the parties' arguments, and the applicable legal principles, we affirm the dismissal of Sloan's negligence claim, concluding the doctrine of *res ipsa loquitur* does not apply, and reverse and remand the dismissal of the claims under the Condominium Act and breach of fiduciary duty.

We limit our recitation of the procedural history and facts to the pertinent issues on appeal. The following testimony was adduced at trial.

Sloan is an owner of a condominium unit at Society Hill at University Heights, on Vaughan Drive in Newark, which she purchased in 2011. Society Hill is the condominium association responsible for maintaining the property pursuant to its bylaws. Sloan pays homeowners' association fees for maintenance of the surrounding property and related common elements. Sloan

ceased paying homeowners' association fees to Society Hill because of continued flooding issues and placed the fees into an escrow account each month.

Society Hill filed a complaint to collect the outstanding fees, and Sloan filed an answer and counterclaims. Society Hill's claims were dismissed with prejudice on December 20, 2019, leaving only the counterclaims for trial. The counterclaims pleaded were: (1) breach of contract, (2) negligence, (3) breach of the implied covenant of good faith and fair dealing, (4) breach of fiduciary duty and (5) breach of statutory duty to maintain common areas under the Condominium Act, N.J.S.A. 46:8B-14(a) to -18. Sloan sought compensatory damages and injunctive relief. Regarding equitable relief, Sloan sought an award "deem[ed] just and proper." Regarding the Condominium Act, Sloan alleged Society Hill "breached their statutory duty for failing to maintain the common area of the sidewalk and drainage directly outside [d]efendant's property." As to breach of fiduciary duty, Sloan alleged Society Hill "breached [its] duty to sue the developer . . . general contractor for construction defects . . . [and] to maintain the common elements outside of the [p]roperty."

At issue here is Society Hill's obligation to maintain and repair the common elements near Sloan's unit. Section 5.11(A) of Society Hill's bylaws

addresses the general duties owed in maintaining the common elements. The common elements provision is as follows:

A. General Duties. The operation, maintenance, renewal, replacement, insurance, care, and upkeep, of the Buildings in the Condominium, the Common Elements (except as specifically provided for otherwise), the community and recreational facilities and all other property, real or personal, of the Association. The responsibility for the operation, maintenance, renewal, replacement, insurance, care, and upkeep, of the Buildings in the Condominium, the Common Elements (except as specifically provided for otherwise) and any other property for which the Association is responsible shall become the responsibility of the Association immediately upon conveyance of title to the first unit in any building to an individual purchaser by the Sponsor.

Sloan's unit is comprised of two stories. The only entrance is located below the level of the sidewalk. It is necessary to descend several steps to enter the unit. Vaughan Drive is a horseshoe-shaped, curved walkway encircled by other condominium units. Near Sloan's unit, on Society Hill grounds, is a catch basin covered by a manhole. The basin is located at the corner of Vaughan Drive and West Market Street and is connected to the City of Newark drainage system. During heavy rainstorms, flooding recurred on the sidewalk and property surrounding Sloan's condominium unit. Sloan testified the conditions of the common elements caused water to leak into the unit because clogged storm

drains backed up and overflowed. Located near Sloan's unit is a retaining wall that starts on West Market Street and continues on a downhill slope to the sidewalk on Vaughan Drive. Due to the wall's location, the water runoff overflows from the manhole during heavy rainfall and is directed to Sloan's unit. The wall stops before Sloan's unit, worsening the downhill channeling of water toward her unit. Sloan testified, "[m]y first floor is below street level, so, the water com[es] from the common area on the street[,] com[es] down the stairs and it go[es] inside the door, through under the . . . door."

At trial, Sloan demonstrated seven separate flooding incidents occurred between the time she purchased the condominium in 2011 through August of 2018. Sloan attempted to introduce evidence of two additional floods from 2020 and 2021, but the trial court appropriately precluded the additional flooding evidence because it was not provided in discovery. Sloan maintained she was unable to obtain flood insurance due to the number of previous floods.

Sloan testified she requested Society Hill address the common areas to alleviate the flooding issues on numerous occasions. In seeking resolution, Sloan spoke to "[a]lmost every manager," noting management changed "many times," including "the [p]resident." Everyone assured Sloan "that they [were] going to fix it."

In August of 2018, Society Hill retained Boyd Persad, a contractor, to address the flooding situation. Persad performed an inspection of Society Hill's common elements because "the occupants in that Vaughan Drive area [claimed they] experienced some type of flooding." After an examination of the problem, Persad concluded "the problem still goes all the way . . . closer to the street. That's where the problem occurs. It backs up all the way from the street into . . . where [Sloan's] unit is." Persad installed sandbags, which were ineffective at preventing the flooding. At some point, cement blocks were placed in the area to prevent the flooding, which were also unsuccessful.

Addressing the issues he discovered with the drainage, Persad stated:

[W]e have a problem there from the city – on the city's main drains. My opinion they might be undersized, so, when a big storm happens the – there's nowhere for the water to run off from this property onto the street. So, at the corner of – that would be West Market Street and Vaughan Drive there's a huge catch basin. That thing pops up – the cover for it pops up because of the – the sheer amount – the force of the water going downhill on the main street, which is West Market Street, forces that drain up, and that's where I know which has always been a problem from day one.

Persad testified as a lay witness and was not qualified as an expert at trial.

Later in Persad's testimony, however, the following exchange occurred:

[SOCIETY HILL'S COUNSEL]: [W]hen you were asked to come out to the property and inspect the

property, did you ever find any problem with the water flow in drains that were located on the Society Hill property?

[PERSAD]: No . . . doing our periodic maintenance we would . . . send the cameras, and actually have the guys go down, and . . . we never had a problem. They functioned . . . very well.

After a two-day bench trial, the court reserved decision. On February 23, 2022, the trial court issued a written opinion, identifying the claims before it as follows: "The counterclaim by the condo owner Lucy Sloan, plaintiff on the counterclaim . . . alleging a breach of contract and negligence survived." No other counterclaims pleaded were identified to be addressed. The court then found Sloan failed to sustain her burden of proving all causes of action asserted in her counterclaims.

The trial court found the flooding occurred on seven occasions between August 27, 2011 and August 15, 2018, and Sloan sustained the following loss:

• 2011 for a loss of	\$3,500
• 2012 for a loss of	\$1,450
• 2013 for a loss of	\$8,138
• 7/3/2014 for a loss of	\$1,400
• 7/1/2015 for a loss of	\$9,526
• 8/7/2018 for a loss of	\$5,766
• 8/17/2018 for a loss of	\$18,385.96
Total	<u>\$48,166.96</u>

Accepting the amount of damages claimed, the trial court found damages were from "flooding incidents during unusually high rainfall where rainwater entered into [Sloan's] unit from [a] below grade front entrance to it."

The trial court focused on causation and held, "Whether the dispute be a contract or a negligence claim, [Sloan] on the counterclaim must prove the existence of duty, breach of that duty, proximate cause[,] and damages." The trial court held, "[Society Hill] indeed has the duty to maintain the common areas and in doing so not breaching any duty of care, but the mere fact that rainwater runs through the common areas into the [p]laintiff's unit is not, in and of itself, evidence of any act or failure to act on the part of [Society Hill]." In conclusion, the trial court found:

Neither negligence nor breach of contract may be presumed. The Plaintiff must present competent evidence of breach and proximate cause.

Such proof is absent here or at least insufficient to form the basis, without more, to sustain a cause of action for breach of contract, negligence, breach of the implied covenant of good faith and fair dealing, breach of any fiduciary duty or any statutory duty.

The written opinion is devoid of findings of fact and conclusions of law on the claims for violations of the Condominium Act and breach of fiduciary duty.



We begin with the established standard of review in an appeal from a bench trial. Ordinarily, "[t]he scope of [our] review of a trial court's fact-finding function is limited." Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011) (quoting Cesare v. Cesare, 154 N.J. 394, 411 (1998)). We review final determinations made by the trial court "premised on the testimony of witnesses and written evidence at a bench trial, in accordance with a deferential standard." D'Agostino v. Maldonado, 216 N.J. 168, 182 (2013). "We defer to the credibility determinations made by the trial court because the trial judge 'hears the case, sees and observes the witnesses, and hears them testify,' affording it 'a better perspective than a reviewing court in evaluating the veracity of a witness.'" Gnall v. Gnall, 222 N.J. 414, 428 (2015) (quoting Cesare, 154 N.J. at 412)). "Only when the trial court's conclusions are so clearly mistaken or wide of the mark' should we interfere to 'ensure that there is not a denial of justice.'" Id. (quoting N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008)). We review de novo the "trial court's interpretation of the law and the legal consequences that flow from established facts." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995); D'Agostino, 216 N.J. at 182.

"As a general rule, courts exercising their equitable powers are charged with formulating fair and practical remedies appropriate to the specific dispute." Kaye v. Rosefelde, 223 N.J. 218, 231 (2015); see also Rutgers Cas. Ins. Co. v. LaCroix, 194 N.J. 515, 529 (2008) ("In doing equity, [a] court has the power to adapt equitable remedies to the particular circumstances of each particular case." (alteration in original) (quoting Mitchell v. Oksienik, 380 N.J. Super. 119, 131 (App. Div. 2005))). "Equitable remedies 'are distinguished by their flexibility, their unlimited variety,' and 'their adaptability to circumstances.'" Marioni v. Roxy Garments Delivery Co., 417 N.J. Super. 269, 275 (App. Div. 2010) (quoting Salorio v. Glaser, 93 N.J. 447, 469 (1983)). "While equitable discretion is not governed by fixed principles and definite rules, '[i]mplicit [in the exercise of equitable discretion] is conscientious judgment directed by law and reason and looking to a just result.'" Kaye, 223 N.J. at 231 (alterations in original) (quoting In re Est. of Hope, 390 N.J. Super. 533, 541 (App. Div. 2007)). "[I]n all cases, equity follows the law." West Pleasant-CPGT, Inc. v. U.S. Home Corp., 243 N.J. 92, 108 (2020) (quoting Berg v. Christie, 225 N.J. 245, 280 (2016)).

A trial court is to provide findings of fact and conclusions of law as to each claim before the court, referencing as appropriate the evidence relied upon

and the credibility determinations made. We have "noted that 'an articulation of reasons is essential to the fair resolution of a case.'" Raspantini v. Arocho, 364 N.J. Super. 528, 532 (App. Div. 2003) (quoting Schwarz v. Schwarz, 328 N.J. Super. 275, 282 (App. Div. 2000)). Regarding the claims for violations of the Condominium Act and breach of fiduciary duty, "the trial court here has failed to make any findings upon which we might bestow our deference." Rolnick v. Rolnick, 290 N.J. Super. 35, 42 (App. Div. 1996).

We conclude the record supports the trial court's conclusion Sloan failed to prove her breach of contract and negligence claims, and the court appropriately addressed the claims for damages. For the sake of completeness, based on the record, we find as a matter of law the doctrine of res ipsa loquitur does not apply. "Res ipsa loquitur is an equitable doctrine that allows, in appropriate circumstances, a permissive inference of negligence to be drawn against a party who exercises exclusive control of an instrumentality that malfunctions and causes injury to another." McDaid v. Aztec W. Condo Ass'n, 234 N.J. 120, 135 (2018). As found by the trial court, Sloan did not establish the cause of the flooding, thus the required control was not demonstrated.

However, it is well-settled "[t]he court shall, by an opinion or memorandum decision, either written or oral, find the facts and state its

conclusions of law thereon in all actions tried without a jury . . . ." R. 1:7-4(a). "In a non[-]jury civil action, the role of the trial court at the conclusion of the trial is to find the facts and state conclusions of law," and the "[f]ailure to perform that duty 'constitutes a disservice to the litigants, the attorneys and the appellate court.'" Curtis v. Finneran, 83 N.J. 563, 569-70 (1980) (quoting Kenwood Assocs. v. Bd. of Adj. Englewood, 141 N.J. Super. 1, 4 (App. Div. 1976)). Indeed, a trial court's factfinding role "is fundamental to the fairness of the proceedings and serves as a necessary predicate to meaningful review . . . ." R.M. v. Supreme Court of New Jersey, 190 N.J. 1, 12 (2007). A trial court must make adequate findings of fact "so that the parties and the appellate court may be informed of the rationale underlying his [or her] conclusion[s]." Esposito v. Esposito, 158 N.J. Super. 285, 291 (App. Div. 1978). "[N]either the parties nor [the court] are well-served by an opinion devoid of analysis or citation to even a single case." Great Atl. & Pac. Tea Co., Inc. v. Checchio, 335 N.J. Super. 495, 498 (App. Div. 2000). "When a trial court issues reasons for its decision, it 'must state clearly [its] factual findings and correlate them with relevant legal conclusions, so that parties and the appellate courts [are] informed of the rationale underlying th[ose] conclusion[s].'" Avelino-Catabran v. Catabran, 445

N.J. Super. 574, 594 (App. Div. 2016) (quoting Monte v. Monte, 212 N.J. Super. 557, 565 (App. Div. 1986)).

Sloan argues the trial court failed to find Society Hill breached its duty to address and remediate conditions of the common elements, which caused flooding into Sloan's unit. Sloan maintains, under the bylaws, Society Hill had a duty to make "changes or repairs to the common areas." Specifically, the bylaws required Society Hill to fix the drainage issues on the common elements near her unit. Sloan avers Society Hill failed to "correct the condition that caused the repeated flooding" as required under the Condominium Act, N.J.S.A 46:8B-14 to -18, and breached its fiduciary duty.

As the trial court failed to make factual and credibility findings on the equitable claims for violations of the Condominium Act and breach of fiduciary duty, we are constrained to reverse and remand for the court's findings of fact and conclusions of law on these causes of action based on the evidence adduced at trial. We observe Society Hill's Condominium Act responsibilities are intertwined with its fiduciary duties. The following legal principles are to be addressed on remand.

Sloan's arguments that Society Hill has an obligation to maintain the common elements, under the Condominium Act and its fiduciary duty, are well

grounded in our jurisprudence. The authority of a condominium association "is found in the statute governing such associations, and the association's [bylaws]." Walker v. Briarwood Condo. Ass'n, 274 N.J. Super. 422, 426 (App. Div. 1994); see also N.J.S.A. 46:8B-13 ("The administration and management of the condominium and condominium property and the actions of the association shall be governed by bylaws . . . ."). "The most significant responsibility of an association is the management and maintenance of the common areas of the condominium complex." Thanasoulis v. Winston Towers 200 Ass'n, 110 N.J. 650, 656-57 (1988). The Court addressed an association's obligation and stated:

The Condominium Act also provides for the creation of a condominium association, and mandates that that association, "shall be responsible for the administration and management of the condominium and condominium property, including but not limited to the conduct of all activities of common interest to the unit owners." N.J.S.A. 46:8B-12. The association is charged with various duties, including the maintenance of the common elements . . . ."

[Fox v. Kings Grant Maint. Ass'n, 167 N.J. 208, 220 (2001).]

"The association . . . shall be responsible for the performance of the following duties . . . [t]he maintenance, repair, replacement, cleaning and sanitation of the common elements." N.J.S.A. 46:8B-14. A failure to comply with the bylaws

governing the common elements is grounds to seek "the recovery of damages, for injunctive relief, or for a combination thereof, maintainable by the association or by any other unit owner . . . ." N.J.S.A. 46:8B-16(b).

Additionally, "The governing body of a condominium association has a fiduciary obligation to the unit owners 'similar to that of a corporate board to its shareholders.'" Jennings v. Borough of Highlands, 418 N.J. Super. 405, 420 (App. Div. 2011) (quoting Kim v. Flagship Condo. Ass'n, 327 N.J. Super. 544, 550 (App. Div. 2000)). "That obligation includes the duty to preserve and protect the common elements and areas for the benefit of all its members." Kim, 327 N.J. Super. at 550. The fiduciary duty requires Society Hill:

[A]ct consistently with the Condominium Act and its own governing documents and that its actions be free of fraud, self-dealing, or unconscionability. Moreover, that fiduciary relationship requires that in dealing with unit owners, the association must act reasonably and in good faith. If a contested act of the association meets each of these tests the judiciary will not interfere.

[Kim, 327 N.J. Super. at 554 (quoting Billig v. Buckingham Towers Condo. Ass'n I, Inc., 287 N.J. Super. 551, 563 (App. Div. 1996)).]

We have recognized the duty of a condominium association to maintain common areas to prevent flooding, finding, "Once the Association came under a duty to maintain the detention basin as a common facility of the development,

it became equally obligated under the easement to make reasonable periodic inspections of the basin." Poblette v. Towne of Historic Smithville Cmty. Ass'n, Inc. a N.J. Corp. and Roseland Mgmt. Co., Inc., 355 N.J. Super. 55, 68 (App. Div. 2002).

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION