SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2437-21
A-2440-21
A-2442-21

SHAKEEL MOHAMMED,

Plaintiff-Appellant,

v.

BARBARA SUTTON and MICHAEL SUTTON,

Defendants-Respondents.

SHAKEEL MOHAMMED,

Plaintiff-Appellant,

v.

MICHAEL DISALVO,

Defendant-Respondent.

SHAKEEL MOHAMMED,

Plaintiff-Appellant,

v.

DARA SELEMENTI and
MICHAEL SELEMENTI,

Defendants-Respondents.

Argued September 12, 2023 – Decided September 27, 2023

Before Judges Smith and Perez Friscia.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Docket Nos. LT-000244-21, LT-000245-21, and LT-000253-21.

Tareef Chamaa argued the cause for appellant (Chamaa Law, LLC, attorneys; Tareef Chamaa, on the briefs).

Cara A. Parmigiani argued the cause for respondents.

PER CURIAM

Plaintiff Shakeel Mohammed appeals the trial court's March 25, 2022 Orders dismissing his complaints against his tenants, defendants Michael DiSalvo, Michael and Dara Selementi, and Michael and Barbara Sutton with prejudice. Plaintiff argues the court erred in finding the rent increase for defendants was unconscionable using the standard we established in Fromet Properties, Inc. v. Buel, 294 N.J. Super. 601 (App. Div. 1996). For the reasons that follow, we affirm.

I.

Plaintiff is the owner-landlord of three residential properties in Boonton. The three properties were comprised of two structures, an 1,810 square foot single family home with an attic and a basement, and a duplex-style building that housed two 900 square foot apartments, each containing two bedrooms, one bathroom, a living room, dining room, and a kitchen. Each of the apartments contained approximately 400 square feet of basement space with laundry facilities. DiSalvo and the Selementis' rent the apartments, and the Suttons rent the single-family home. The properties are located on a parcel within the same tax block and lot. Defendants' most recent leases were all month-to-month and were dated January 1, 2019 through December 31, 2020.

Plaintiff purchased the property, knowing that the three residential units were leased and occupied, in April 2020. On November 25, 2020, plaintiff served defendants with a notice to quit and demand for possession informing them their leases would terminate on December 31, 2020. On December 10, 2020, defendants sent plaintiff a letter containing the requirements of the Anti-Eviction Act[1] and rejecting the rent increase. In their letter, defendants proposed a lesser increase.

[1] N.J.S.A. 2A:18-61.1.

On February 8, 2021, plaintiff served another notice to quit and demand for possession to each defendant, advising them their leases would terminate on March 31, 2021. Plaintiff also served defendants with proposed new leases.

DiSalvo's new lease agreement contained a rent increase of $800 per month, from $900 to $1,700 per month. The Selementis' new lease proposed a rent increase of $500 per month, from $1,200 to $1,700 per month. The Suttons' new lease proposed a rent increase of $900 per month, from $1,000 to $1,900 per month.

Defendants refused to pay the increased rent, and plaintiff filed complaints against them, alleging, among other things: nonpayment of rent; failure to pay a reasonable rent increase; and failure to execute a written lease agreement. The trial court conducted a two-day trial on February 10-11, 2022.

At trial, plaintiff, his real estate broker and agent Abdul Waheed Albukari, and each defendant testified. Plaintiff stated his monthly rental revenue from the properties was $3,100 and his monthly expenses were $2,648.60, leaving him a net monthly profit of slightly more than $450. Plaintiff also testified the tenants performed landscaping and snow removal tasks, as well as other property maintenance. Plaintiff testified, without documentary evidence, his property

maintenance expenses included a refrigerator replacement and repair of a clogged sewer line.

Albukari, a licensed real estate broker and agent, was qualified as an expert in the sale and rental of residential properties. Albukari also served as the plaintiff's property manager and received ten percent of the rents as compensation. He testified that he fielded maintenance calls, but he did not serve as the maintenance manager. Albukari testified at length concerning comparable properties. Among other things, he testified that seven of the comparable apartment listings he referenced were occupied, and that their rents were all higher than what plaintiff proposed for one of the apartment units. He indicated that rents at some of the comparable apartments exceeded the rent he proposed for the single-family home.

Defendants testified concerning their respective lease status, the aging condition of their residences, and maintenance at the properties, which they performed themselves. Defendants further testified they were responsible for utilities, heating oil, landscaping, and parking costs.

The trial court dismissed each complaint, making findings. The court found plaintiff had purchased the properties without conducting a physical inspection of them. The court noted plaintiff's testimony regarding his monthly

rental income and property related expenses, but it found plaintiff did not provide any supporting documentation.

The court next considered the testimony of Albukari. It found Albukari's multi-faceted business relationship with the plaintiff as a realtor, property manager, and potential future buyer of the site, tainted his credibility as an expert witness. While Albukari testified at length regarding comparable rental units in the area, the court found he did not adjust for varying conditions. The court also found Albukari stood to gain an additional $220 per month if the proposed increase was approved.

The court analyzed the five Fromet factors. The court concluded the 89% increase for DiSalvo, 42% increase for the Selementis, and 90% increase for the Suttons, were all "significant increases." It noted there was "no documentation" regarding the landlord's expenses and profitability. The court concluded plaintiff would make a "striking" 480% profit, with no expenses, if the rent increase were implemented.

Considering factor three, comparable property data, the court rejected Albukari's testimony for two reasons. First, his financial ties with plaintiff. Second, his "failure to . . . compare apples to apples" during his testimony about comparable rental units. The court gave no weight to Albukari's testimony and

concluded there was "no competent comparative analysis presented." It also concluded plaintiff was entitled to a rent increase but failed to present a "competent comparative analysis" of rental properties.

Turning to factor four, relative bargaining position, the court analyzed the parties' bargaining power and noted plaintiff increased the proposed rent despite defendant's attempted negotiations through counsel. It cited extensive testimony at trial regarding plaintiff's plans to subdivide the property, demolish the single-family home, and build a new home in its place.

Finding no proposed improvements or justification for the increase, the court noted this was "the biggest rent increase [it had] ever seen" and concluded it "shocks the conscience of a reasonable person." On March 25, 2022, the court issued three orders dismissing the complaints with prejudice. Plaintiff appealed each dismissal. We granted defendants' motion to consolidate.

On appeal plaintiff argues the trial court erred when it: rejected plaintiff's comparable rent evidence; concluded plaintiff's proposed rent increase was unconscionable under Fromet; and failed to order a reasonable rent increase on the record before it.

II.

A.

We defer to a trial court's findings of fact in a bench trial. Balducci v. Cige, 240 N.J. 574, 595 (2020). In a non-jury trial, 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). Thus, "we do not disturb the factual findings and legal conclusions of the trial judge unless we are convinced that they are 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) (alteration in original) (quoting In re Tr. Created By Agreement Dated Dec. 20, 1961, 194 N.J. 276, 284 (2008)). "We must give deference to those findings of the trial judge which are substantially influenced by his or her opportunity to hear and see the witnesses and have the 'feel' of the case," as reviewing courts cannot. State ex rel. S.B., 333 N.J. Super. 236, 241 (App. Div. 2000) (quoting State v. Locurto, 157 N.J. 463, 471 (1999)). However, we exercise de novo review of the trial judge's legal conclusions. Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019).

B.

In Fromet, we established a framework for determining when a proposed residential rent increase is unconscionable, stating that trial courts should consider:

> (1) the amount of the proposed rent increase; (2) the landlord's expenses and profitability; (3) how the existing and proposed rents compare to rents charged at similar rental properties in the geographic area; (4) the relative bargaining position of the parties; and (5) based on the judge's general knowledge, whether the rent increase would 'shock the conscience of a reasonable person.' There may be other factors which, on a case-by-case basis, a court may consider, and therefore this enumeration shall not be deemed exhaustive.
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> [294 N.J. Super. at 614.]

Armed with this well-settled jurisprudence, we consider plaintiff's arguments.

III.

A.

We discern no error. The credible evidence in the record supports the court's findings of fact and conclusions of law. Put another way, we cannot conclude that the trial court's findings were "so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to

offend the interests of justice." Seidman, 205 N.J. at 169. We add the following brief comments.

The court engaged in a thorough analysis of the Fromet factors after considering the testimony and evidence provided. Although the court noted the increased percentages were not determinative, it found they were significant. It noted plaintiff would make a large profit, but found plaintiff offered no documentation to support his expense claims.

The court found plaintiff failed to provide competent rental comparisons because the rental list in evidence contained units which provided more, or better quality, amenities than those available to defendant. While the properties submitted are not required to be identical in every way to tenants' properties, similarity requires more than a shared geographic location. The record shows defendants' rental units needed repairs. Their lease terms required each tenant to effectuate repairs largely on their own. We take no issue with the trial court's finding that comparing defendants' residences to better appointed rental units without expert testimony accounting for and adjusting for significant differences in age, quality, and maintenance of the units was not "apples to apples."

In addition, citing its five-year tenure in the Special Civil Part, the trial court found the proposed increase was the largest it had seen. It concluded that,

in the absence of credible evidence to support it, the increase was "shocking." The court noted the Fromet factors are not exhaustive and conducted an analysis of additional facts in the record, including: the timing of plaintiff's introduction of the rent increases, which took place during the COVID-19 pandemic; plaintiff's demand for a higher proposed rent in response to defendants' attempt to negotiate; and plaintiff's lack of proofs regarding property improvements.

We conclude the court's findings and conclusions were supported by sufficient credible evidence in the record, and we affirm its March 25 orders dismissing plaintiff's complaints.

B.

We turn to plaintiff's judicial economy argument. Plaintiff next argues the court erred when it declined to examine the record and order a reasonable rent increase for each of the three properties. He contends we should, in the interest of judicial economy, "establish new law" and require courts to determine a reasonable amount when it finds a landlord is entitled to a rent increase, but the proposed increase is found unconscionable.

The trial court found plaintiff was entitled to some increase, but it did not decide the question of how much. After seven witnesses and nearly two days of testimony, the court addressed only the issues squarely before it. While

declining to comment on prospective rent increases not in evidence would have been prudent, the court's statement did not obligate it to go beyond the proofs. The record shows plaintiff did not present an alternative rent increase for the court to consider. We find the court's decision to not take up plaintiff's invitation to establish a rent on its own was a proper exercise of discretion on this record. The court had a feel of the case. There is nothing in our jurisprudence which compels a court, absent proper proofs, to impose a unilateral rent increase somewhere south of its unconscionable finding. After our review, we cannot conclude the court's choice to leave the parties to their own devices was unsupported.

We decline to exercise our well-established power to remand so that the trial court could fashion a reasonable rent, either on this record, or after the presentation of further proofs. See Triffin v. Automatic Data Processing, Inc., 411 N.J. Super. 292, 306 (App. Div. 2010); Tomaino v. Burman, 364 N.J. Super. 224, 233 (App. Div. 2003) (a trial court is required to comply with an appellate court's directives and must, on remand, 'obey the mandate of the appellate tribunal precisely as it is written,' even if it disagrees with the appellate court's decision); see also Giarusso v. Giarusso, 455 N.J. Super. 42, 54 (App. Div. 2018)

(directing the trial judge on remand to "make specific findings of fact and conclusions of law in compliance with R. 1:7-4").

To the extent we have not addressed any arguments by the parties, it is because they lack sufficient merit discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION