SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2691-20
A-2697-20

VIRENDRA PATEL, individually and on behalf of S&P DONUTS, LLC, S&P LANGHORNE, LLC, S&P NESHAMINY, LLC, S&P MAPLE, LLC, S&P FAIRLESS HILLS, LLC, S&P PENNDEL, LLC, S&P MARLTON, LLC, S&P RACETRACK, LLC, S&P MT. LAUREL, LLC, S&P TIMBERLINE, LLC, S&P MEDFORD, LLC, and S&P TABERNACLE, LLC,

Plaintiffs-Respondents,

v.

SUNIL SHAH, NIMESH SHAH, MUKESH PARIKH, and SUNIL J. SHAH, CPA, P.C.,

Defendants-Appellants.

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VIRENDRA PATEL,

Plaintiff-Respondent,

v.

HJS FUNDING, LLC,

Defendant-Appellant.

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Argued October 10, 2023 – Decided October 24, 2023

Before Judges Sabatino, Marczyk and Chase.

On appeal from the Superior Court of New Jersey, Chancery Division, Mercer County, Docket Nos. C-000145-08 and C-000029-09.

Steve M. Kalebic argued the cause for Sunil Shah, Nimesh Shah, Mukesh Parikh, and Sunil J. Shah, CPA, P.C., appellants in A-2691-20 and respondents in A-2697-20 (Law Offices of Steve M. Kalebic, PC, attorneys; Geoffrey J. Hill, on the briefs).

Jennifer B. Barr argued the cause for appellant HJS Funding, LLC in A-2697-20 (Cooper Levenson, P.A., attorneys; Jennifer B. Barr, on the briefs).

Victoria J. Airgood (Hill Wallack, LLP) argued the cause for respondent Virendra Patel (Law Office of Anne C. Singer, LLC, attorneys; Anne C. Singer, on the briefs).[1]

PER CURIAM

This marathon business case was the subject of a lengthy non-jury trial twelve years ago in 2011. In essence, the trial judge, serving as the finder of

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[1] We regret to note that attorneys Hill and Singer both passed away while the present appeal was pending.

fact, determined that defendants breached their fiduciary duties to plaintiff Virendra Patel in connection with their business ventures in operating, through several limited liability companies (LLCs), nearly a dozen Dunkin' Donuts franchises.

Patel was a business partner of defendants Sunil Shah, Nimesh Shah and Mukesh Parikh (collectively, the Shahs) in the LLCs, each with the designation S&P. To construct the donut stores, the partners borrowed money from defendant HJS Funding, LLC (HJS), an entity which was owned by Sunil Shah and Nimesh's father, Jashvant Shah, and managed by Sunil Shah. In turn, HJS required the execution of promissory notes and personal guaranties.

In 2006, Patel executed nine promissory notes and personal guaranties to reflect existing HJS loans totaling over $5 million (the 2006 loan). In 2007, Patel executed a promissory note in favor of HJS for $1.59 million (the 2007 loan), reflecting the balance due HJS under the 2006 loan after several of the S&Ps had been sold, in part, to satisfy the debt owed HJS.

Patel filed separate actions against the Shahs and HJS (the Shah action being a derivative action), which were consolidated in the trial court. He sought damages on various grounds, including breach of contract, breach of fiduciary duty, fraud, and fraudulent inducement.

After a bench trial, the court awarded Patel, on behalf of the S&Ps, damages on some of the claims and denied relief on others. Specifically, the S&Ps were awarded approximately $3 million, to be paid by the Shah defendants, while HJS was permitted to recover $1,167,332 from Patel. The court rescinded Patel's personal guaranty on the 2006 loan. In addition, it awarded Patel about $750,000 in counsel fees and costs, and HJS contract-based counsel fees of about $58,000.

Defendants appealed the trial court's determinations of liability and its monetary dispositions, which this court affirmed six years ago in an opinion dated March 14, 2017. Patel v. Shah, Nos. A-1650-14, A-1670-17 (App. Div. Mar. 14, 2017). In our opinion, we substantially adopted the trial court's reasoning. Slip op. at 13. Certification was denied. Patel v. Shah, 230 N.J. 557 (2017). In the meantime, the remaining unsold franchises were sold.

We need not recite additional details here. Instead, we incorporate by reference the background set forth in our 2017 opinion.

This case now returns following several post-judgment proceedings conducted by the trial court to distribute the proceeds gained from selling the stores. As a result of those proceedings, which included evidentiary hearings with some witness testimony, the court entered a final order distributing the proceeds and awarding interest. The court also awarded Patel additional counsel fees. The court issued a series of detailed written and oral decisions explaining the reasons for its post-judgment determinations.

The Shah defendants and HJS appeal various aspects of the court's post-judgment rulings. The appeals have been consolidated.

Defendants again criticize the trial court's rulings in several respects. Specifically, the Shah defendants contend the court (1) should have ordered Patel to repay $178,909.45 he allegedly owed the company, or have awarded the Shahs a like-kind distribution of that sum; and (2) should have granted a $863,593.77 refund to the Shahs for payments they made to unsecured creditors. HJS, meanwhile, argues the court erred in (3) directing HJS to pay "claw back" excessive interest to Patel; (4) incorrectly using a 365-day year rather than a 360-day year in calculating interest, an error which comprises approximately $30,000; (5) declining to have the final dissolution reflect an assignment and satisfaction of the Shahs' debt to HJS; and (6) denying HJS counsel fees.

We have fully considered these arguments, applying the appropriate standards of review. In particular, we are mindful that in reviewing non-jury determinations by the trial court, particularly those involving, as here, the assessment of credibility at both the original trial and the post-trial hearings, we are to affirm those determinations unless it is demonstrated they lack substantial support in the evidence or are legally incorrect. An appellate court shall "not disturb the factual findings and legal conclusions of the trial judge unless [it is] 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, 205 N.J. 150, 169 (2011) (quoting In re Tr. Created by Agreement Dated Dec. 20, 1961, 194 N.J. 276, 284 (2008)). The court's findings of fact in a non-jury setting are "binding on appeal when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998); see also Brunson v. Affinity Fed. Credit Union, 199 N.J. 381, 397 (2009).

In addition, we are also mindful of the wide equitable discretion afforded to judges presiding over Chancery matters such as the present case. "In fashioning relief, [a] Chancery judge has broad discretionary power to adapt equitable remedies to the particular circumstances of a given case." Marioni v. Roxy Garments Delivery Co., Inc., 417 N.J. Super. 269, 275 (App. Div. 2010) (citing Salorio v. Glaser, 93 N.J. 447, 469 (1983)); Mitchell v. Oksienik, 380 N.J. Super. 119, 130-31 (App. Div. 2005).

Viewing the issues raised before us through these prisms of appellate review, we affirm the trial court's post-judgment rulings in their entirety, substantially for the sound reasons articulated by Assignment Judge Mary C.

Jacobson, who presided over both the 2011 trial and the ensuing post-judgment proceedings. We offer only limited comments about the discrete issues.

With regard to the Shah appellants, the trial court had ample support in the record to treat the payment to Patel as a distribution from the LLC rather than a loan. In particular, the use of the abbreviation "Dist." on several of the checks, as well as the failure of the parties to create any document that would indicate that they were loans, support the conclusion that the payments were distributions. The Shahs cite an expert accountant's opinion that the payments were "informal loans," and that the other shareholders should be made whole either by repayment or "proportionate expenditures to the other partners." However, a trial court is free to accept or reject an expert opinion. Brown v. Brown, 348 N.J. Super. 466, 478 (App. Div. 2002). Moreover, the court found that the expert failed to consider the unequal bargaining power between the Shahs and Patel, which favored the former.

The Shahs argue in the alternative that if this court does not require the repayment of the $178,909.45 distributions by Patel, it should permit a similar proportionate distribution of $218,667 from the S&Ps to them as 55% owners. The trial court did not abuse its equitable discretion in not awarding the Shahs such a commensurate distribution. To award the Shahs a proportionate distribution would have reduced the amount of the S&Ps' available assets. It also would have rewarded the Shahs, despite the court's determination that they breached the fiduciary duty they owed Patel. Further, the Shahs do not challenge the court's finding that Patel was being paid an unusually low salary as manager during the time the payments were made. In light of these findings, the court had substantial evidence in the record to support its determination not to award the Shahs a commensurate distribution.

The Shahs' claim that the trial court erred in not reimbursing them the $863,595.77 they paid unsecured creditors is likewise unavailing. That sum was essentially awarded as damages for the Shahs' breaches of fiduciary duty to Patel in paying the unsecured creditors prior to secured creditors, thereby exposing Patel's personal guaranty to collection. We upheld that decision in the first appeal, Patel, slip op. at 13, and it is the law of the case. L.T. v. F.M., 438 N.J. Super. 76, 88 (App. Div. 2014).

The Shahs argued to the trial court in the post-judgment proceedings that the payments were merely a matter of "timing" because the secured debts were ultimately paid and Patel was never liable on his guaranty. However, as that decision, and the court's post-appeal decision make clear, the court awarded the $863,595.77 as damages for the Shahs' breach of fiduciary duty, not as part of the post-judgment accounting of the assets, or a mere matter of "timing." In its original decision, the court emphasized the Shahs' "rampant self-dealing" and "breach of fiduciary duty." Specifically, the court stated that, "[b]y choosing not to further reduce the secured debt to HJS [but] to instead repay Shah-related unsecured loans, the Shahs increased the risk that the S&P collateral would be lost." In addition, according to the court, the Shahs failed to show that Patel had been consulted or specifically informed of "this distribution scheme before it took place." As a result, the court awarded the $863,595.77 as damages for the tort of breach of fiduciary duty. The court's reasoning remains sound and amply supported by the original and post-judgment record.

With respect to HJS, the trial court soundly exercised its equitable discretion in limiting the interest that HJS could collect on the loans to simple interest, as set forth in the formula for post-judgment interest in Rule 4:42-11, rather than the contractual interest rate of nine percent. Given its overall findings concerning the equities involved, the court did not misapply its discretion in disallowing HJS from collecting nine percent on all of the loans, including those that preceded the 2006 loan. Our 2017 opinion did not foreclose such an equitable adjustment by the court in the post-remand proceedings.

We likewise discern no abuse of discretion or legal error in utilizing a 365-day year for computing interest rather than the 360-day year set forth in the promissory note. The relatively modest difference in interest resulting from that calendar-related choice was not inequitable.

Further, we adopt the trial court's determination that the $1.1 million paid to HJS was used as security for a stay pending appeal and was not an assignment of funds to HJS. There was insufficient evidence presented in the record to substantiate HJS's contrary argument.

"A valid assignment must contain clear evidence of the intent to transfer the person's rights, and 'the subject matter of the assignment must be described with'" sufficient particularity. Berkowitz v. Haigood, 256 N.J. Super. 342, 346 (Law Div. 1992) (quoting 3 Williston on Contracts § 404 (3d ed. 1957)). Accord New Century Fin. Servs., Inc. v. Oughla, 437 N.J. Super. 299, 315 (App. Div. 2014). To be effective, the assignment must be clear and unequivocal, and the obligor must be given notice of the assignment. Berkowitz, 256 N.J. Super. at 346. Every assignment requires an acceptance. Packard-Bamberger & Co. v. Maloof, 89 N.J. Super. 128, 130 (App. Div. 1965). The purported assignment advocated by HJS was neither clear, nor unequivocal, nor described with sufficient particularity. There was no documentation of an assignment describing it as such. Therefore, the trial court did not err in rejecting HJS's claim of an assignment.

Lastly, HJS is not entitled to any additional contractual counsel fees because it did not prevail in the post-judgment proceedings or in the present appeal.

We close with a general observation. Even if, for the sake of discussion, we were to conclude that all or some of the discrete rulings cited by appellants were legally erroneous, that does not mean that the trial judge would have reached the same determinations on other issues in her role as a court of equity. It is apparent the judge calibrated her rulings to achieve what she deemed to be a fair and equitable overall result given defendants' self-dealing and mistreatment of plaintiff.

The judge, who is now retired, had the proverbial "feel of the case." See State v. Nuñez-Valdez, 200 N.J. 129, 141 (2009) (Deference is owed to "those findings of the trial judge which are substantially influenced by his opportunity to hear and see the witnesses and to have the feel of the case, which a reviewing court cannot enjoy.") (quoting State v. Johnson, 42 N.J. 146, 161 (1964)). The judge clearly considered the overall balance of equities in both the original trial and the post-judgment proceedings. Any adjustments to the net outcome that might have been generated through this second appeal, even if they had merit, would potentially upset the equitable balance. We discern no need to remand this case again for any adjustments to the final order or further proceedings before a successor judge.

Affirmed.