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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2864-21**

AMIR ABDUL REHMAN,

Plaintiff-Appellant,

V.

AZAM MOHAMMED,  
FARHANA AZAM,

Defendants-Respondents,

and

ROBERT DELGROSSO,

Defendant.

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Submitted September 26, 2023 – Decided October 13, 2023

Before Judges Gilson and Berdote Byrne.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Bergen County, Docket No. C-  
000023-21.

Howard Law, LLP, attorneys for appellant (Thomas S.  
Howard, on the briefs).

Condon Paxos, PLLC, attorneys for respondents (Brian K. Condon, on the brief).

PER CURIAM

Plaintiff appeals from an order following a three-day trial in the Chancery Division wherein he sought to rescind settlement of a prior 2018 action between the parties. Because we find the trial court did not err in upholding the settlement, we affirm.

I.

Plaintiff Amir Abdul Rehman (Amir)<sup>1</sup> and defendants, Azam Mohammed (Azam) and Farhana Azam (Farhana), who are husband and wife, owned and operated a closely held corporation, Rockland Wholesale and Distributors (Rockland). Specifically, plaintiff owned 42% of Rockland and Farhana owned the other 58%; Azam handled the company's finances. Before this litigation, the parties had disputes concerning the ownership structure and operation of Rockland.

On May 14, 2018, plaintiff filed a five-count complaint in the Chancery Division captioned Amir Abdul Rehman v. Farhana Azam, Docket No. BER-C-134-18 (the First Action). Plaintiff alleged misconduct, malfeasance, and

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<sup>1</sup> Because of the similarity in several parties' names, we refer to all parties by their first name, intending no disrespect.

oppression by defendants for purportedly underreporting income, and sought dissolution of Rockland for (1) misconduct pursuant to the Business Corporation Act (BCA), N.J.S.A. 14A:12-7; (2) oppression pursuant to the same statute; (3) and breach of the duty of loyalty and covenants of good faith and fair dealing. Plaintiff also sought (4) indemnification; and (5) damages on behalf of Rockland.<sup>2</sup>

Defendants filed an answer, affirmative defenses, and counterclaims for oppression, breach of fiduciary duty, negligence, conversion, unjust enrichment, and indemnification. They stated, "for purposes of effectuating business decisions for Rockland, Farhan[a] and Azam as husband and wife acted in unison." Defendants contended they had loaned \$1.9 million to Rockland over the years and alleged plaintiff misappropriated these funds.

In addition to the First Action, the parties were also involved in a related action, which was docketed in the Chancery Division in Bergen County and captioned Mohammed Khurram v. Azam Mohammed, BER-C-135-18 (The Second Action), relating to an entity known as Alison's Trading Corp.

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<sup>2</sup> All claims against Delgrosso, defendants' attorney in the prior litigation, were dismissed by the trial court with prejudice. That portion of the order is not before us on appeal.

Discovery was conducted simultaneously in both actions. As part of their pleadings in the First Action, and to buttress their claims about the series of loans they made to Rockland, Farhana and Azam annexed "Exhibit A" to their answer, which was a series of checks drawn from the account of Azam and made payable to Rockland. Plaintiff hired an independent accounting firm to undertake a "comprehensive review of all of Rockland's financial records and tax filings." The documents revealed several of the checks, totaling \$710,000, were drawn from the checking accounts of Azam's sister-in-law, Nafesa, and his brother, Majid. The record establishes that neither Nafesa nor Majid were made parties to either action or the settlement agreement.

After two days of trial in the Second Action, the parties settled both actions and entered into a settlement agreement. Only the First Action is relevant to this appeal. The material terms of the settlement agreement provided Farhana and Azam would relinquish "any and all ownership" or interest in the company by Farhana "transferring the entirety of her interests" in Rockland to Amir. In exchange, Amir agreed to pay Farhana a total of \$1.7 million, paid by an initial downpayment of \$1 million, with the remaining \$700,000 paid in monthly installments over five years. The only representations and warranties contained in the settlement agreement were made by Farhana, who certified she

was the beneficial owner of the shares, which she owned free and clear of any liens or encumbrances.

The only indemnity provisions contained in the settlement agreement provided Amir would indemnify Farhana and Azam against liability leases, automobiles, and taxes. The agreement did not include a mutual indemnification provision whereby defendants agreed to indemnify plaintiff against future claims.

Before entering the settlement on the record, the trial court stated "[w]hile we were negotiating the settlement of 135-18 [the Second Action], we also were negotiating in connection with 134-18 [the First Action] and it is my understanding that this is the settlement in connection with that transaction . . . ." The trial court then put the essential material terms of settlement on the record.

The trial judge specifically asked counsel for both parties if he left any material terms out of the agreement, to which they responded in the negative. The court took testimony from plaintiff as to whether he understood the terms of the agreement. Plaintiff's counsel then engaged in further colloquy to ensure and satisfy the court plaintiff was freely agreeing to the court's recitation of the settlement agreement.

Defendants engaged in a similar colloquy with their own counsel and the trial court. At the conclusion, the trial court reiterated it found "the parties are fully informed with respect to the settlement of this action." A written settlement agreement reflecting the terms placed on the record was signed by the parties in July 2019.

In September 2019, Majid and Nafesa filed two separate lawsuits against plaintiff, Rockland, and Altaf Rehman (plaintiff's brother) in Rockland County, New York Supreme Court. Majid and Nafesa sought remuneration of the \$710,000 made payable to Rockland from their checking accounts. Although Majid's suit was dismissed, according to plaintiff, Nafesa's suit is still pending in the New York court.

In January 2021, plaintiff filed the complaint in the underlying matter seeking: 1) rescission of the settlement agreement; 2) reinstatement of the prior lawsuit; and 3) indemnification from Azam. Plaintiff alleged fraud, stating he would not have entered into the settlement agreement but for Azam's false deposition testimony given in the First Action prior to settlement. Plaintiff alleged Azam lied or deliberately concealed material facts when Azam testified he personally loaned all \$1.9 million to Rockland.

The trial court conducted a three-day trial during which it elicited testimony from plaintiff, Altaf, and Azam. Azam testified he stated he did not mention some loan funds came from his brother at his deposition because he felt personally responsible for repaying the debt. Azam explained he "guaranteed" the loans from his family to Rockland. Azam also testified on cross-examination concerning the extent of his guarantee. Despite plaintiff confronting Azam with evidence of his deposition testimony from the First Action, where he explained the loans were made "through him," on cross-examination Azam explained he meant "guaranteed" when he was deposed in the First Action.

On the second day of trial, defendants cross-examined Amir, and confronted him with his verified complaint from the First Action. Defendants questioned Amir regarding his knowledge of the origination of the underlying disputed loans, which had been independently reviewed by plaintiff's accounting firm. Amir admitted he received documents showing the funds had come from Azam's brother and sister-in-law.

At the conclusion of trial, the trial court issued a decision dismissing the case with prejudice. In dismissing this action, the trial court addressed the narrow issue before it. It found:

It is not this court's role to determine whether money was owed by Rockland Wholesale to Nafesa[,] Majid

or Azam. Rather, the issue before the court is whether the settlement in the prior litigation should be set aside or additional terms, such as an indemnity to Rockland Wholesale should be part of the settlement. This court is compelled to conclude that it should not set aside the settlement or modify the July 30 [Settlement] Agreement.

The trial court found the settlement agreement was placed on the record without any reference to loans made to Rockland by Nafesa and Majid, although all parties were aware of the loans. Additionally, the trial court found each party was present and subject to examination by competent counsel and the court. The court therefore rejected plaintiff's argument that he was induced by defendants' fraud into executing the settlement agreement and found plaintiff's competent counsel could have sought warranties regarding the loans and indemnification.

In rejecting plaintiff's arguments, the court stated:

Further, the [plaintiff's] allegations against Azam and Farhana in the [First Action] included claims for fraud and breach of fiduciary duty. To the extent plaintiff raised such claims, he was, at the very least, suspicious of the actions of Azam and Farhana. The documents provided at the trial show that the alleged loans were written on the accounts of Nafesa and/or Majid and such matters were at issue. In connection with the settlement, plaintiff could have obtained representations, warranties and/or indemnities regarding the loans written on the accounts of Nafesa and Majid but did not. Without such



representations/warranties, the court cannot rewrite the agreement for plaintiff.

The trial court explained it was not the court's function to make a better agreement for the parties than the one they made for themselves. Finally, the court noted plaintiff was not without a remedy given Azam's testimony regarding guaranteeing the loans could be used in the New York litigation with Nafesa and Majid. This appeal followed.

## II.

Our review of a trial court's fact-finding in a non-jury case is limited. Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011). "[F]indings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence. Deference is especially appropriate when the evidence is largely testimonial and involves questions of credibility." Ibid. (quoting Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). We "should 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, 205 N.J. at 169 (quoting Cesare, 154 N.J. at 411-12). The interpretation and construction of a contract, such as a settlement agreement, is

a matter of law for the trial court, subject to de novo review on appeal. Cumberland Farms, Inc. v. N.J. Dep't of Env't Prot., 447 N.J. Super. 423, 438 (App. Div. 2016); see also Kaur v. Assured Lending Corp., 405 N.J. Super. 468, 474 (App. Div. 2009) (reviewing the enforcement of a settlement agreement de novo).

### III.

Plaintiff argues the trial court erred by failing to rescind the settlement agreement because he presented the court with evidence of fraud, which the court failed to address, and contends the trial court "unjustly excused defendant's malfeasance."

Defendants argue there was no fraud, material omission, or misrepresentation because plaintiff was fully apprised of the facts and even disputed the origination of the loans in the First Action. Defendants highlight Exhibit A from their answer to the complaint in the First Action, which contained checks from Nafesa and Majid. Defendants also highlight paragraph forty-four of the complaint in the First Action and point out the source of some loans was a significant issue to be adjudicated in the First Action. Defendants posit the trial court correctly assessed the origin of the loans at issue could have been addressed in the settlement agreement because it was an issue known to

plaintiff since the inception of the First Action, and to the extent it was not, plaintiff should not be rewarded by the court's revision of the settlement agreement. We agree.

"A settlement agreement between parties to a lawsuit is a contract." Cumberland Farms, 447 N.J. Super. at 438 (quoting Nolan v. Lee Ho, 120 N.J. 465, 472 (1990)). Settlement agreements are governed by basic contract principles. J.B. v. W.B., 215 N.J. 305, 326 (2013). "Among those principles are that courts should discern and implement the intentions of the parties." Quinn v. Quinn, 225 N.J. 34, 45 (2016). Courts should not rewrite or revise an agreement when the intent of the parties is clear. Ibid. (citing J.B., 215 N.J. at 326). "Stated differently, the parties cannot expect a court to present to them a contract better than or different from the agreement they struck between themselves." Quinn, 225 N.J. at 45 (citing Kampf v. Franklin Life Ins. Co., 33 N.J. 36, 43 (1960)).

"Settlement of litigation ranks high in our public policy," Jannarone v. W.T. Co., 65 N.J. Super. 472, 476 (App. Div. 1961), and settlement agreements "will be honored 'absent a demonstration of fraud or other compelling circumstances,'" Nolan, 120 N.J. at 472 (quoting Pascarella v. Bruck, 190 N.J. Super. 118, 125 (App. Div. 1983)).

Although the trial court found Azam was "less than candid" during his deposition testimony, it did not find fraud. Contrary to plaintiff's argument, the trial court did consider fraud the central issue before it, as the issue had been raised by plaintiff in the First Action. The trial court found plaintiff was fully apprised of the potential fraudulent behavior, knew of Nafesa and Majid's involvement from the loan documents, and intended to litigate those issues in the First Action.

The trial court correctly noted "in connection with the settlement, plaintiff could have obtained representations, warranties and/or indemnities regarding the loans written on the accounts of Nafesa and Majid but did not. Without such representations/warranties, the court cannot rewrite the agreement for plaintiff." The court cited the explicit indemnity clause in the settlement agreement, that it provided a one-way unilateral indemnity—in favor of defendants, and specifically did not address plaintiff -- to find indemnity was an issue contemplated by the parties. The court ruled the onus was on plaintiff to seek the appropriate representations, warranties, and indemnification in the settlement agreement. It declined to rewrite the settlement agreement to include an indemnification provision where plaintiff did not add one.

Plaintiff has failed to demonstrate he was fraudulently induced to enter into the settlement agreement. Although defendant ambiguously represented he originated loans to Rockland and later clarified he meant he "guaranteed" them, plaintiff knew the loans at issue were drawn from checking accounts bearing Nafesa and Majid's names, and plaintiff was aware of the checks and third-party loans as issues relevant to the First Action. Plaintiff's verified complaint in the First Action stated, after hiring an independent accountant to conduct a thorough review of Rockland's finances, he discovered defendant "had his accountants mischaracterize the sources of loans and incorrectly report distributions and other payments to defendant Azam so that his personal tax liabilities would be improperly reduced." Plaintiff could have impleaded Nafesa and Majid as parties in the First Action or could have deposed them. Plaintiff had the opportunity to fully adjudicate the source of the loans in the First Action and voluntarily waived his right to do so when he entered into the settlement agreement, without seeking representations as to the source of the funds.

Plaintiff also could have sought indemnification from Azam. The parties, represented by counsel, did not agree to mutual indemnification. See County of Passaic v. Horizon Healthcare Servs., Inc., 474 N.J. Super. 498, 504 (App. Div. 2023) ("The parties here were represented by counsel at all relevant stages

of their negotiations and during the formation of the relevant contract documents . . . ."), certif. granted, 254 N.J. 69 (2023). The court correctly concluded it could not make a better agreement for the parties than the one they made for themselves.

Finally, as the trial court noted, plaintiff is not without a remedy. Plaintiff attempts to characterize the trial court's brief two-sentence reference to the New York litigation as an improper finding on a case not before the court. However, the court merely noted plaintiff may utilize Azam's sworn testimony, stating he "guaranteed" the loans made by his brother and sister-in-law, to implead Azam in the New York action.

Plaintiff's failures to implead Nafesa and Majid in the First Action, failure to seek representations in the settlement agreement regarding the source of the loans, and failure to seek an indemnification from defendants in the settlement agreement are fatal to his claims of fraud. The trial court correctly dismissed his complaint based on findings made at trial.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION