SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2882-21

STONEFIELD INVESTMENT FUND III, LLC, SF2 RE1, LLC, and MAPLE ROCK, LLC,

v.

Plaintiffs-Appellants,

v.

L AND J ENTERPRISES 1, LLC, and LANCE SCHONER,

Defendants-Respondents.

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Argued March 29, 2023 – Decided June 27, 2023

Before Judges Firko and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Ocean County, Docket No. L-1807-19.

Adam D. Greenberg argued the cause for appellants (Honig & Greenberg, LLC, attorneys; Adam D. Greenberg, of counsel and on the briefs).

Michael B. York argued the cause for respondents (Novins York Jacobus & Dooley, attorneys; Michael B. York, on the brief).

PER CURIAM

Plaintiffs Stonefield Investment Fund III, LLC, SF2 RE1, LLC, and Maple Rock, LLC (collectively plaintiffs) appeal from a May 23, 2022 order of dismissal entered against them and in favor of defendants L and J Enterprises 1, LLC and Lance Schoner (collectively defendants) following a bench trial. Plaintiffs' complaint alleged breach of contract violations of home improvement regulations, fraud, intentional and/or negligent misrepresentation, violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -227 (CFA), and unjust enrichment arising from defendants' alleged failure to refurbish properties plaintiffs purchased for resale. Plaintiffs contend defendants were paid and failed to perform the agreed upon work.

At the close of plaintiffs' case, the court dismissed the CFA claim, and at the close of all the evidence, dismissed the remaining allegations of the complaint. We are constrained to reverse and remand for further proceedings because the court did not adequately explain the reasons for its decisions and did not provide findings of fact and conclusions of law consistent with Rule 1:7-

4(a). We also direct the court to reconsider anew its dismissal of plaintiffs' CFA count and claims for the reasons that follow.[1]

I.

In April 2019, plaintiffs filed their complaint as stated, seeking compensatory, treble, punitive damages, and attorney's fees, from defendants. Plaintiffs alleged defendants "engaged in the advertisement and sale of merchandise within the meaning of the CFA, specifically home-improvement repairs" of residential properties. Plaintiffs alleged they entered into agreements with defendants for home improvement work to be performed on the following six residential properties:

- 106 Lawrence Drive in Lacey Township
- 284-286 Ellison Street in Paterson
- 25 Deer Run Drive North in Barnegat
- 110 Schooner Avenue in Barnegat
- 1410 Kay Street in Lacey Township
- 10 Forest Edge Court in Stafford Township

[1] Plaintiffs' merits brief and appendix reference factual information and documents that are not part of the record below in violation of Rule 2:5-4(a). We do not consider this information or the documents in reaching our decision on appeal.

Plaintiffs also alleged defendants violated the Contractors Registration Act, N.J.S.A. 56:8-136 to -152, regulations concerning home improvement practices, N.J.A.C. 13:45A-16.1 to -16.2, and regulations governing general advertising, N.J.A.C. 13:45A-9.1 to -9.8. Defendants moved to transfer venue from Camden to Ocean County, which was granted. In their answer, defendants denied the allegations of plaintiffs' complaint and asserted various affirmative defenses.

For reasons unexplained by the record, no depositions were taken, and the parties exchanged only limited paper discovery. No expert reports or testimony were presented by either party. The bench trial lasted just over one hour. Plaintiffs produced Michael Finkelstein as their sole witness at trial. Finkelstein, a licensed realtor, testified he is the manager of Stonefield Investment Fund III, LLC. Maple Rock, LLC is engaged in the business of fixing and flipping houses for resale.

Finkelstein's real estate management company, Holland, managed plaintiffs' real estate portfolio, which was comprised of 100 to 150 properties, totaling 1,500 units. He hired Schoner to complete the six home improvement projects that form the subject of the complaint. Finkelstein and Schoner worked on approximately fifty projects together in the past. Finkelstein testified

defendants stopped doing work and ultimately did not show up at all to work on the six projects. Based on promises to complete the work, Finkelstein made additional payments, but defendants failed to do the work.

A. 106 Lawrence Drive

According to Finkelstein, the parties did not enter into a written contract for the home improvement project at 106 Lawrence Drive, which is a single-family home. Finkelstein testified he made two payments to Schoner for this project, which was for a complete renovation—kitchen, bathroom, and HVAC unit. According to Finkelstein, defendants only "did very light demolition," and "[t]ook down some sheetrock," which Finkelstein valued at $5,000 at that point. Based on Schoner's representation that his funds were "running dry," Finkelstein provided a second payment of $16,666.67. Finkelstein claimed defendants failed to complete the job, and he had to hire another contractor to complete the project at a cost of $60,000. Finkelstein did not provide any documentary evidence to support the $60,000 cost.

Schoner, the only witness who testified on behalf of defendants, stated Finkelstein never told him that he was fired and never gave him an opportunity to fix any problems. Schoner testified he did hundreds of jobs for plaintiffs before without any issues, and plaintiffs "always had an opportunity to come

and inspect the work" as it progressed. According to Schoner, defendants generated invoices for each project.

B. 284-286 Ellison Street

Regarding this four-unit residential property, Finkelstein testified Schoner provided him with a $170,000 estimate to perform improvements for the property's apartments, basement, exterior, electricity, and plumbing. Finkelstein made two payments to Schoner, totaling $106,500, for what Finkelstein estimated was $10,000 worth of work. After the second payment was tendered, Finkelstein testified Schoner never returned to the job. Finkelstein added that Schoner demolished some sheetrock, started framing, and replaced two windows in the basement. Finkelstein claimed he hired another contractor to complete the renovation, which cost approximately $170,000, but did not provide any documentary evidence in support.

In contrast, Schoner claimed he completed the "majority" of the work pursuant to this contract, and the property had "other issues" that were outside the scope of the agreement, such as structural damage, "squatters" living at the house, and "constant theft" at the property. Schoner testified Finkelstein never complained about the work on this project and never notified him that he was fired and replaced by another contractor.

C. 25 Deer Run Drive North

Finkelstein testified that Schoner provided him with a $65,000 estimate to renovate this single-family property. The parties did not sign a written agreement. Finkelstein testified he paid defendants $21,666.66 for the renovation but no work was performed. Finkelstein claimed he had to hire someone else to complete the job but did not produce any evidence to substantiate his claim. For his part, Schoner testified that all the work was completed as listed on the invoice.

D. 110 Schooner Avenue

Finkelstein testified Schoner provided him with a $13,500 estimate for this single-family home. Based on the contract terms, Schoner was supposed to "install windows, doors, and fill a pool." Finkelstein paid Schoner $6,800 for the work to be performed for this project but testified that the work was not done. Finkelstein did not hire another contractor to finish the project.

In response, Schoner testified defendants completed all the work for this project and plaintiffs owe defendants $7,800. Defendants never asserted a counterclaim to recoup payment. Schoner claimed he "never took any money, and not just did anything." Further, Schoner testified Finkelstein had "somebody from his company represent him come and inspect what [defendants]

were doing." During these inspections, no one told Schoner that the work being performed was inadequate.

E. 1410 Kay Street

Finkelstein testified the parties entered into an oral agreement for defendants to install windows at this single-family residence. The parties agreed Finkelstein would pay $4,000 for the materials, and Schoner would submit a separate invoice for the labor after the windows were installed. Finkelstein testified he paid defendants $4,000 for the windows, which "never came."

F. 10 Forest Edge Court

The parties entered into a written contract to renovate this single-family home according to Finkelstein. He testified that he sold this property to a buyer contingent on certain repairs being made. After Schoner renovated the property and the buyers conducted a home inspection, they demanded a $5,000 credit due to "obvious things that should have been done as part of the original estimate."[2]

By way of a text message, Schoner confirmed that he would provide Finkelstein the $5,000 credit but never did so. As a result, Finkelstein filed a credit card dispute with American Express and was successful in reversing the

[2] At trial, Finkelstein did not submit any documents supporting his contention that the buyers of 10 Forest Edge Court demanded a $5,000 credit. Plaintiffs are not seeking any monies from defendants pertaining to this property.

charge. Schoner testified Finkelstein never requested the work be completed and never notified him that he was terminated or replaced by someone else. Schoner also stated he received dispute notifications from plaintiffs' credit card company and monies were not charged to plaintiffs, leaving him "out of luck," and his relationship with Finkelstein going "sideways." According to Schoner, he had a good relationship with Finkelstein and is unsure why their relationship deteriorated.

Plaintiffs' counsel attempted to cross-examine Schoner about alleged perjured affidavits he signed in connection with a money laundering scheme involving international drug distribution. The court allowed limited testimony on this issue and denied plaintiffs' counsel's proffer to move Schoner's alleged perjured affidavits into evidence.

Plaintiffs also moved thirteen documents into evidence related to defendants' home improvement work and claimed none of them complied with the requirements of the CFA. Defendants also argued plaintiffs did not proffer any evidence showing repairs to the properties made by other contractors. After plaintiffs rested at the close of their evidence, defendants moved to dismiss the entire complaint for failure to state a claim upon which relief could be granted. Defendants argued Finkelstein merely testified "that the jobs were [not]

completed" without any evidence that defendants "had to complete these jobs other than what they allege verbally," and plaintiffs presented no proof as to the cost to complete the work. In denying defendants' motion to dismiss, the court found that

> a rational trier of fact could conclude . . . that in fact, if he says what is true that he had a contractor do the work, he did [not] do the work. He hired someone else to complete the work, and he paid these people to complete the work that he should have done.

The court then separately addressed the dismissal of the CFA count. Plaintiffs' counsel argued the six projects were home renovations and "there's a number of things" that need to be done in these circumstances, such as including the home improvement contractor's license number on every document. Plaintiffs' counsel claimed plaintiffs were not seeking the cost to complete the work; instead, plaintiffs sought to recoup the monies it paid for work that wasn't done at all.

The court found the parties were involved in a "business" relationship, where Finkelstein is "flipping," "renovating," "selling," and "renting" homes and "not keeping or using any of it." In the court's view, plaintiffs are not the type of consumers the CFA "is intended to protect" because the court determined the CFA is only intended to protect "people, such as residential owners." Based on

Finkelstein's experience, the court noted he can "walk up to a property, see what needs to be done, and price it out." Thus, the court concluded "you don't have to put those things into a contract under these circumstances."

The court also stated it was unnecessary to include "a home renovation number" in any of the documents exchanged between the parties because the CFA is inapplicable between two commercial parties, which the court concluded was the relationship here, and a lot of the work was done on a "handshake." In addition, the court rejected plaintiffs' argument that defendants committed both consumer fraud and actual fraud because plaintiffs did not prove defendants intended to take plaintiffs' money and never intended to finish the renovations. Thus, the court dismissed the CFA count at the close of plaintiffs' evidence and continued with the trial relative to the other remaining counts.

Defendants produced Schoner as their sole witness. Schoner denied Finkelstein's allegations that defendants failed to complete the six home improvement projects but did not submit any proof in support of his testimony. Schoner testified the majority of the work was completed. He was questioned about the invoices, stolen materials, and plaintiffs' opportunity to inspect the work. According to Schoner, plaintiffs never gave defendants a chance to fix anything. On cross-examination, plaintiffs' counsel attempted to impeach

Schoner's credibility by pointing out he pled guilty to money laundering in federal court in June 2013.

At the conclusion of the trial, the court dismissed the remaining counts in plaintiffs' complaint with prejudice, finding they did not sustain their burden of proof by a preponderance of the credible evidence that defendants breached any contracts or owed them damages. The court noted Finkelstein is "very sophisticated, especially in light of the enterprises that he's involved in." As no "paper trail" was produced at trial, the court stated it was "left to guess who's telling the truth," but never made any credibility determinations as to any of these six projects. The court also found plaintiffs failed to present any expert testimony in support of their claims, and simply concluded "something went south." The order of dismissal was entered, and judgment was entered in favor of defendants.

II.

On appeal, plaintiffs argue that the court erred in dismissing the CFA allegations and misapplied the law governing CFA matters. Plaintiffs claim the court failed to make findings of fact and conclusions of law relative to the other causes of action alleged in the complaint and mistakenly relied on its own experience in construction matters in rendering its decision instead of the

evidence presented at trial. Plaintiffs contend the court improvidently limited their cross-examination of Schoner regarding his criminal history and conviction, and the matter should be remanded for an award of counsel fees under the CFA due to the dismissal of the CFA claims by a directed verdict. At oral argument before us defendants' counsel agreed to a remand for findings of fact and conclusions of law under Rule 1:7-4(a).

First, we address the court's dismissal of plaintiffs' CFA claim at the close of their evidence. We review a decision dismissing a claim under Rule 4:37-2(b) and Rule 4:40-1, applying the same standard as the trial court. Smith v. Millville Rescue Squad, 225 N.J. 373, 397 (2016)[3] (citations omitted). For both motions, we apply "the same evidential standard: if, accepting as true all the evidence which supports the position of the party defending against the motion and according [them] . . . the benefit of all inferences which can reasonably and legitimately be deduced therefrom, reasonable minds could differ, the motion

[3] It is unclear if the court granted defendants' motion to dismiss the CFA claim under Rule 4:37-2(b). Given our conclusion the CFA claim was improperly dismissed because the court failed to make the requisite Rule 1:7-4(a) findings and did not properly consider the CFA statute and case law, and defendants agree to a remand, it is unnecessary to separately consider whether the record before the court following plaintiffs' presentation of the evidence on the CFA claim supported an involuntary dismissal of the claim under Rule 4:37-2(b).

must be denied." Ibid. (internal quotations omitted) (quoting Verdicchio v. Ricca, 179 N.J. 1, 30 (2004)).

A motion made under either Rule "should only 'be granted where no rational juror [or factfinder] could conclude that the plaintiff marshaled sufficient evidence to satisfy each prima facie element of a cause of action.'" Ibid. (quoting Godfrey v. Princeton Theological Seminary, 196 N.J. 178, 197 (2008)).

As a preliminary matter, plaintiffs argue the court erred in dismissing their CFA claim; defendants' answer does not mention the CFA; and defendants have never disputed its applicability. Plaintiffs' reliance on R. Wilson Plumbing & Heating, Inc. v. Wademan, 246 N.J. Super. 615, 617 (App. Div. 1991) is misplaced because in that case, the trial court relied on a consumer fraud issue that was never "pleaded, raised at trial, or asserted in any other way." We disapproved of the trial court injecting the issue, which was raised for the first time, in its final decision and found that the plaintiff was denied "procedural due process." See ibid. In contrast, here, both parties' counsel agreed plaintiffs alleged a CFA violation—count four of their complaint—and it was a triable issue. Therefore, we conclude defendants were on notice of plaintiffs' CFA allegations, and plaintiffs have the burden to prove any violations and damages

emanating therefrom.

Plaintiffs next claim the court improperly found the CFA was inapplicable to their case, and its ruling that "an allegedly sophisticated property manager could not be a CFA plaintiff" departed from established case law. Plaintiffs assert there was "no complexity to the contracting process," contending Finkelstein met Schoner through a local realtor, and defendants provided estimates for various projects. Plaintiffs also point out that neither party sought legal advice regarding their dealings, and the contracts were "normal, everyday interactions between [a] contractor and customer," rendering the CFA applicable to the matter under review.

To sustain a cause of action under the CFA, "a plaintiff [must] prove three elements: '(1) unlawful conduct by defendant; (2) an ascertainable loss by plaintiff; and (3) a causal relationship between the unlawful conduct and the ascertainable loss.'" D'Agostino v. Maldonado, 216 N.J. 168, 184 (2013) (quoting Bosland v. Warnock Dodge, Inc., 197 N.J. 543, 557 (2009)).

An "unlawful practice" is defined as:

> The act, use or employment by any person of any commercial practice that is unconscionable or abusive, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment,

> suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby . . . .
>
> [N.J.S.A. 56:8-2.]

Alternatively, plaintiffs rely on our Supreme Court holding in All the Way Towing, LLC v. Bucks County International, Inc., 236 N.J. 431, 443 (2019) to support the proposition that the CFA is also applicable to commercial transactions if the court were to conclude the parties were engaged in such. We agree with plaintiffs that the Supreme Court made clear in All the Way Towing "that the CFA is applicable to commercial transactions." Ibid.

Our Supreme Court also emphasized that "context is important" in CFA cases. Ibid. "In business-to-business transactions it is the 'nature of the transaction' that will determine whether it can fit within the CFA's definition of 'merchandise.'" Id. at 447. To promote efficiency "in assessing the nature of a transaction in a business-to-business setting," the Supreme Court established the following four criteria to be considered in determining whether "the CFA will apply to the merchandise:"

> (1) the complexity of the transaction, taking into account any negotiation, bidding, or request for proposals process; (2) the identity and sophistication of the parties, which includes whether the parties received

> legal or expert assistance in the development or execution of the transaction; (3) the nature of the relationship between the parties and whether there was any relevant underlying understanding or prior transactions between the parties; and . . . (4) the public availability of the subject merchandise.
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> [Id. at 447-48.]

The court never engaged in this analysis and did not make findings of fact or conclusions of law as to whether the nature of the transaction between the parties satisfies the CFA definition of "merchandise" under All the Way Towing. On remand, we direct the court to also engage in this analysis and make findings of fact and conclusions of law anew.

Moreover, the court made no findings whatsoever relative to plaintiffs' claims that defendants did not comply with the Contractors Regulation Act, and regulations concerning home improvement contracts or general advertising. Rule 1:7-4(a) requires that in all actions tried without a jury, the court "shall, by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law."

"The purpose of the rule is to make sure that the court makes its own determination of the matter." In re Tr. Agreement Dated Dec. 20, 1961, ex rel. Johnson & Hoffman, Lienhard & Perry, 399 N.J. Super. 237, 254 (App. Div. 2006), aff'd, 194 N.J. 276 (2008). "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, 594-95 (App. Div. 2016) (alterations in original) (quoting Monte v. Monte, 212 N.J. Super. 557, 565 (App. Div. 1986)).

The court's decision must clearly demonstrate that the litigants have been heard and their arguments were considered. While a court need not author a lengthy written opinion, or deliver an hour-long oral ruling to meet this requirement in every case, it must always state what facts form the basis of its decision, and then weigh and evaluate those facts in light of the governing law "to reach whatever conclusion may logically flow from" those facts. Slutsky v. Slutsky, 451 N.J. Super. 332, 357 (App. Div. 2017).

Because justice requires no less, "[a]ll conclusions must be supported." Ibid. "[M]eaningful appellate review is inhibited unless the [court] sets forth the reasons for [its] . . . opinion." Strahan v. Strahan, 402 N.J. Super. 298, 310 (App. Div. 2008) (quoting Salch v. Salch, 240 N.J. Super. 441, 443 (App. Div. 1990)). Unfortunately, the court's decision in this case did not satisfy these requirements.

In sum, we: (1) reverse and remand to the court to reconsider its dismissal of plaintiffs' CFA count and claims anew in light of the guiding principles we have discussed; and (2) we reverse and remand as to the other issues pled in plaintiffs' complaint for the court to make appropriate findings of fact and conclusions of law under Rule 1:7-4(a). We express no opinion as to the outcome of the court's findings of fact or conclusions of law.

Finally, plaintiffs contend that the court limited their cross-examination of Schoner thereby resulting in prejudice to their case. N.J.R.E. 611(a) states:

> The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence to:
>
> > (1) make those procedures effective for determining the truth;
> >
> > (2) avoid wasting time; and
> >
> > (3) protect witnesses from harassment or undue embarrassment.

"[T]he scope of cross-examination is a matter within the trial judge's discretion and should ordinarily be restricted to the scope of the direct testimony, nevertheless, reasonable latitude should be permitted to assure its inclusion of relevant material, including matters relevant to showing the improbability of the direct evidence." Biunno, Weissbard & Zegas, N.J. Rules

of Evidence, 1991 Sup. Ct. Comm. Comment on N.J.R.E. 611 (2022-2023). Based upon our review of the record, we discern no error in the manner the court permitted cross-examination of Schoner. However, we leave it up to the court on remand to determine whether to re-open the record and permit additional cross-examination of Schoner, and we express no view as to how the court should decide this evidentiary issue. See Ibrahim v. Aziz, 402 N.J. Super. 205, 214 (App. Div. 2008) (reversing and remanding "so that the trial court c[ould] reevaluate th[e] record or in its discretion reopen the record for further evidence.")

Reversed and remanded for further proceedings consistent with our opinion. We do not retain jurisdiction.