SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3301-21

10 MILLPOND DRIVE, LLC,

Plaintiff-Respondent,

v.

LAMSON AIRTUBES, LLC, and SCOTT BEGRAFT, individually,

Defendants-Appellants.

Argued September 13, 2023 – Decided September 21, 2023

Before Judges Gooden Brown and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Sussex County, Docket No. L-0491-19.

George T. Daggett argued the cause for appellants.

Thomas N. Gamarello argued the cause for respondent (Schenck, Price, Smith & King, LLP, attorneys; John E. Ursin, of counsel; Thomas N. Gamarello, of counsel and on the brief; Catherine Popso O'Hern, on the brief).

PER CURIAM

In this action involving the breach of a commercial lease, defendant Scott Begraft challenges the Law Division's May 26, 2022 judgment that awarded $25,065.40 to plaintiff 10 Millpond Drive, LLC, and dismissed his counterclaims. After considering the record against the applicable legal principles, we affirm in part, reverse in part, and remand for further proceedings consistent with our opinion.

I.

On May 25, 2006, Airtubes, Inc., Lamson Airtubes, LLC's, predecessor in interest, executed a lease agreement with One Main Street Sparta, LLC, plaintiff's predecessor in interest, to rent commercial property located at 10 Millpond Drive in Lafayette. As Airtubes, Inc.'s managing member and Chief Executive Officer (CEO), Begraft signed the lease agreement on the company's behalf. He also executed a personal guaranty, which rendered him personally responsible for the "prompt payment of all rent."

In April 2019, Lamson failed to pay its monthly rent in full. As a result, in July 2019, plaintiff sent a default notice. The parties thereafter executed a payment agreement, which allowed Lamson to remain in possession of the property for the duration of the lease term assuming it satisfied all of its past and future rental obligations. The parties also agreed to extend the lease term

through September 2019 in order to permit Lamson sufficient time to vacate the premises. Lamson paid the required August 2019 rent but defaulted on its September 2019 obligation, resulting in an outstanding balance of rent and late fees in the amount of $24,389.

Several days after Lamson missed its September payment, on September 13, 2019, plaintiff notified Begraft the Lafayette Township Fire Marshal inspected the building and found various materials "blocking doors and creating a hazardous condition." Plaintiff also stated, "[d]ue to the fire hazard, [it] ordered a container and will be removing the remaining garbage from outside and inside the unit immediately." Plaintiff further informed Begraft that because Lamson failed to timely pay rent in accordance with the parties' lease agreement and to respond to plaintiff's inquiries regarding Lamson's delinquency, it was "repossessing the space and . . . [pursuing] all remedies available . . . under the terms of [the] lease and personal guarant[y]." Begraft responded to plaintiff via text, informing plaintiff "[a]ll that stuff is getting scrap[p]ed."

Plaintiff immediately began clearing Lamson's equipment and materials from the unit, which required ninety hours of labor and which filled "three containers." Plaintiff also changed the building's locks, and offered to deliver

the containers to defendant, but Begraft failed to respond to plaintiff's inquiries. On September 17, 2019, Begraft, as Lamson's CEO, filed a Certificate of Dissolution and Termination on behalf of Lamson, which stated all of the company's "assets have been discarded and have been applied to creditors or distributed to its members."

As noted, plaintiff filed a complaint against Lamson and defendant seeking payment of the outstanding balance under the lease and expenses incurred to enforce the lease agreement.[1] Begraft filed counterclaims alleging plaintiff removed more than $100,000 "worth of personal and business objects and equipment" from the premises in violation of the parties' amended lease agreement, which permitted him to occupy the premises until September 30, 2019. Begraft further alleged plaintiff's actions constituted a "trespass, breach of agreement, and theft of the property belonging to [him]" and sought both compensatory and punitive damages.

Prior to trial, the court granted plaintiff's in limine application to bar Begraft from introducing documentary evidence at trial due to his "failure to respond to [p]laintiff's written discovery demands and failure to produce any

[1] Plaintiff later dismissed its claims against Lamson, and it has not participated in this appeal.

documentary evidence in support of his defenses or affirmative counterclaims" and denied his motion to reconsider, orders defendant does not challenge before us.

Karen Justin, plaintiff's property manager, testified as plaintiff's sole witness at trial. According to Justin, Lamson's total outstanding balance under the lease agreement was $25,065.40. This figure accounted for outstanding rent, damages to the property, and expenses incurred to empty the property, after deducting Lamson's security deposit. Prior to defendant presenting any evidence, plaintiff moved for a directed verdict and explained based on the court's pretrial ruling defendant was precluded from introducing "any documentary evidence." The court denied the motion as premature.

Begraft relied solely on his own testimony at trial. He testified he told plaintiff prior to its removal of the property that he intended to "sell off all the equipment that was left . . . in the shop, pay off the rental bill, [and] pay off all . . . debts," including Lamson's debts to other creditors. Similarly, he stated the parties had a "verbal agreement" by which he was "going to pay [plaintiff] what [Lamson] owed [by] selling [the] property."

Begraft also claimed the value of the materials and equipment in the building was between $250,000 and $450,000. He testified because "a

competitor [was] not going to pay top dollar when they know [he's] struggling," he offered the property for forty percent of its value, specifically, for between $104,000 and $110,000, and ultimately reached a verbal agreement to sell the materials and equipment for $104,000.

At the conclusion of Begraft's testimony, plaintiff renewed its motion for judgment under Rule 4:40-1 with respect to its claims, and defendant's counterclaims. The court granted plaintiff's motion and entered a disposition that provided judgment was "stipulated" in favor of plaintiff with respect to the claims asserted in its complaint and Begraft's counterclaims were dismissed with prejudice.

In dismissing defendant's counterclaims, the court concluded Begraft lacked standing. The court acknowledged he sought "to offset the amount of the judgment for rent by obtaining a . . . judgment for the value of the property" but rejected Begraft's argument he was the real party in interest, noting he did not contend he owned the property, and found the disposed of property belonged to Lamson. It therefore concluded Begraft lacked "standing for making a claim that Lamson lost its . . . property even if, without deciding, . . . the actions of the landlord were wrongful."

Further, the court determined Begraft failed to prove its damages claims in any event. Relying on Nixon v. Lawhon, 32 N.J. Super. 351, 355 (App. Div. 1954), the court acknowledged a factfinder may consider estimated values of commonplace items in certain circumstances but concluded Begraft did not describe the materials disposed of with sufficient particularity. The court specifically found "the testimony before the jury [was] inadequate in terms of describing what was in that premises," and "there needs to be a much better and more thorough and detailed description of the . . . property and how the value breaks down."

Begraft later moved for a new trial and contended the court erred in dismissing his counterclaims as he had standing to prosecute the counterclaims because: (1) the complaint implicated his financial interests, (2) plaintiff owed him damages as a matter of law, and (3) those damages amounted to at least $104,000, the amount for which he agreed to sell the disposed of property. Begraft noted he also sought punitive damages.

The court rejected his arguments and denied the motion. It again found Begraft was a real party in interest only as to the guaranty and "not in the losses of the corporation." It also determined there was no basis to award punitive damages because "there was no finding of . . . compensatory

damages." With respect to any claim of compensatory damages, the court acknowledged Begraft testified he had agreed to sell Lamson's equipment and materials to a competitor for $104,000, but again concluded his testimony was insufficient for a jury to discern the actual value of the disposed property.

On May 26, 2022, the court entered an order denying Begraft's application for a new trial. That same day, the court also entered an order of judgment granting plaintiff's motion for a directed verdict against Begraft for breach of his personal guaranty, awarding plaintiff $25,065.40 in damages, and dismissing his counterclaims with prejudice. This appeal followed.

II.

In his first point, Begraft contends the court erroneously determined he lacked standing to assert counterclaims arising out of plaintiff's disposal of the material and equipment at the property. He specifically argues he had standing because of his "financial stake in the outcome," as plaintiff sued him personally, he guaranteed the lease, and the court found him personally liable. Begraft further alleges, "[t]he Certification of Dissolution specifically stated that the assets were distributed to the members. [Defendant] was the only member. He had a right to sell those assets . . . ." Similarly, he maintains

"[t]he assets of Lamson were transferred to [defendant] for the purpose of paying debts," and defendant was "the beneficiary of the dissolution."

Plaintiff disagrees and urges us to affirm the court's order as it contends Begraft lacked standing because the record was devoid of "evidence that ownership of the subject property . . . ever transferred to [him]," and his personal guaranty "did not bestow upon [him] any authority to assert claims related to property owned by Lamson." We disagree and conclude Begraft's status as guarantor of the lease conferred standing to prosecute his counterclaims. We are satisfied the trial court record contained sufficient evidence to support Begraft's ownership interest.

We first address the relevant standard of review and relevant legal principles. Motions made under Rule 4:40-1 will be granted "only if, accepting as true all evidence supporting the party opposing the motion and according that party the benefit of all favorable inferences, reasonable minds could not differ." Edwards v. Walsh, 397 N.J. Super. 567, 571 (App. Div. 2007) (citing Dolson v. Anastasia, 55 N.J. 2, 5 (1969)). The court's function on such motions is "quite a mechanical one" as the "trial court is not concerned with the worth, nature or extent (beyond a scintilla) of the evidence, but only with its existence, viewed most favorably to the party opposing the motion."

Dolson, 55 N.J. at 5-6. We review legal issues, such as whether a party has standing, de novo. See, e.g., NAACP of Camden Cnty. E. v. Foulke Mgmt. Corp., 421 N.J. Super. 404, 444 (App. Div. 2011).

The threshold to prove standing is "fairly low." EnviroFinance Grp., LLC v. Envtl. Barrier Co., 440 N.J. Super. 325, 340 (App. Div. 2015) (quoting Reaves v. Egg Harbor Twp., 277 N.J. Super. 360, 366 (Ch. Div. 1994)). To establish standing, "[a] party need show only a 'substantial likelihood' that [they] will experience 'some harm' in the event of an unfavorable decision." Strulowitz v. Provident Life & Cas. Ins. Co., 357 N.J. Super. 454, 459 (App. Div. 2003) (quoting In re Adoption of Baby T., 160 N.J. 332, 340 (1999)). Stated differently, "a party must have a sufficient stake and real adverseness with respect to the subject matter of the litigation." Lopresti v. Wells Fargo Bank, N.A., 435 N.J. Super. 311, 318 (App. Div. 2014).

While "[a] financial interest in the outcome ordinarily is sufficient to confer standing[,]" it is not automatic. EnviroFinance Grp., LLC, 277 N.J. Super. at 366 (quoting Strulowitz, 357 N.J. Super. at 459). Moreover, a litigant usually does not have standing "to assert the rights of a third party." Ibid. (quoting Bondi v. Citigroup, Inc., 423 N.J. Super. 377, 436 (App. Div. 2011)). We have recognized status as a guarantor can confer standing in

certain circumstances. See Lopresti, 435 N.J. Super. at 319; but see DeAngelis v. Rose, 320 N.J. Super. 263, 266 (App. Div. 1999) ("We conclude that plaintiff's status as guarantor of his daughter's legal fees in her matrimonial dissolution does not confer upon him the right to sue her attorneys for legal malpractice, particularly where the daughter client makes no claim of malpractice herself.").

In Lopresti, the plaintiffs personally guaranteed a loan from the defendant bank to their business and secured the guaranty by a mortgage on their primary residence. 435 N.J. Super. at 313. After the business obtained refinancing from a second bank, that bank transferred the payoff amount on the business's initial loan, including a prepayment fee. Id. at 316-17. The plaintiffs then filed a complaint alleging the defendant bank "wrongly collected a prepayment penalty on a commercial loan to their business[.]" Id. at 313.

In its summary judgment motion, the defendant bank argued, in part, "that [the] plaintiffs lacked standing because they did not have a sufficient stake in the matter inasmuch as [the business] paid the prepayment fee through its refinancing arrangement with [the second bank]." Id. at 317. Although there was no default, and thus the plaintiffs' guaranty was not triggered, we

held their status as guarantors was sufficient to confer standing upon them. Id. at 319. As we explained, "although inchoate and contingent, [the] plaintiffs have a real and genuine financial interest in the transaction at hand by virtue of their unconditional personal guarantees of the original . . . loan and the later . . . refinance loan." Ibid.

Accepting as true all of Begraft's evidence, see Dolson, 55 N.J. at 2, we are satisfied the evidence was sufficient to confer standing upon him under Lopresti. As noted, defendant testified plaintiff's alleged actions directly interfered with his ability to perform his obligations under the guaranty. He specifically stated he intended to sell the property disposed of to pay the outstanding balance under the lease agreement. As guarantor, defendant therefore had "a real and genuine financial interest" in plaintiff's alleged wrongdoing. Ibid. Additionally, defendant adequately established "a substantial likelihood" that he would experience harm "in the event of an unfavorable decision[,]" Strulowitz, 357 N.J. Super. at 459, as, again, he alleged the plaintiff's wrongdoing deprived him of the means he relied upon to satisfy his obligations under the guaranty.

The Revised Uniform Limited Liability Company Act, N.J.S.A. 42:2C-1 to -94, addresses the dissolution and winding up of an LLC, as well as the

distribution of its assets. With respect to a dissolved LLC, the limited liability company is obligated to "wind up its activities, and the company continues after dissolution only for the purpose of winding up." N.J.S.A. 42:2C-49(a). Additionally, the LLC is obligated to "discharge the company's debts, obligations, or other liabilities, settle and close the company's activities, and marshal and distribute the assets of the company." N.J.S.A. 42:2C-49(b)(1). When winding up, the LLC shall also, among other tasks, "preserve the company activities and property as a going concern for a reasonable time," "transfer the company's property," and "perform other acts as necessary or appropriate to the winding up." N.J.S.A. 42:2C-49(b)(2).

Finally, an LLC "shall apply its assets to discharge its obligations to creditors, including members that are creditors." N.J.S.A. 42:2C-56(a). Once an LLC's assets are used to satisfy an LLC's debts, the surplus assets, if any, are to be first distributed "to each person owning a transferable interest that reflects contributions made by a member and not previously returned, an amount equal to the value of the unreturned contributions," and next "in equal shares among members and dissociated members." N.J.S.A. 42:2C-56(b)(1)(2).

In this case, Lamson filed a Certificate of Dissolution on September 17, 2019. Once Lamson dissolved, Begraft had a duty to wind up the business and satisfy Lamson's debts using the company's assets. As the sole member, however, Begraft also obtained a property interest in any surplus the sale of the company's assets created. The court therefore erred in holding that Begraft lacked standing because he was not a real party in interest as the disposed of property belonged to Lamson. Rather, Begraft was a party in interest because, even if the property belonged to Lamson, Begraft was obligated to discharge Lamson's obligations after winding up and he would be entitled to any surplus funds. Additionally, Begraft has standing as the managing member of the dissolved LLC because he is the only one who could assert the rights of the dissolved entity, properly wind up the business, and satisfy the company's debts.

In light of the "fairly low" threshold to establish standing, EnviroFinance Grp., LLC, 440 N.J. Super. at 340, we are satisfied defendant testified to facts sufficient to confer standing upon him as a guarantor and his interest in the materials and equipment.

III.

In his second point, Begraft contends the court erroneously determined he failed to prove the value of the material and equipment. On this point, Begraft maintains he sufficiently testified "[p]laintiff rented three dumpsters and three individuals worked for a total of [ninety] hours to clean out the premises," and agreed to sell the assets to a competitor for $104,000, which was not contradicted or challenged on cross-examination. Finally, he asserts he could not allege damages with greater specificity because the plaintiff removed all the property without inventorying it. According to Begraft, the aforementioned proofs were sufficient to warrant denial of plaintiff's motion for judgment.

In response, plaintiff argues Begraft "failed to produce any documentary evidence in discovery to support his claim for damages," including evidence of an agreement to sell Lamson's equipment. Similarly, it asserts defendant "failed to articulate the specifics of the equipment and/or materials" disposed of and "failed to proffer any basis for determining a reasonable estimate of its value." According to plaintiff, Begraft's vague testimony that the value of the property was $250,000 to $450,000, and unsubstantiated claim he agreed to sell the property for $104,000, was insufficient to establish his damages.

Additionally, plaintiff contends it "presented credible evidence and testimony from its office manager . . . that Lamson abandoned its equipment and materials at the leased premises." On this point, it maintains the abandonment "extinguishes any claim for damages on equipment and/or materials that [defendant] conceded were garbage and would be discarded." We agree with Begraft his proofs with respect to his damages, albeit slight, were sufficient to permit consideration by the jury.

"Generally, plaintiffs have the burden of proving damages." Caldwell v. Haynes, 136 N.J. 422, 436 (1994). In doing so, "[i]t is well-settled that the 'law abhors damages based on mere speculation.'" Mosley v. Femina Fashions, Inc., 356 N.J. Super. 118, 128 (App. Div. 2002) (quoting Caldwell, 136 N.J. at 422). "Proof of damages need not be done with exactitude," however, as it is "sufficient that the plaintiff prove damages with such certainty as the nature of the case may permit, laying a foundation which will enable the trier of the facts to make a fair and reasonable estimate." Lane v. Oil Delivery, Inc., 216 N.J. Super. 413, 420 (App. Div. 1987); see also Viviano v. CBS, Inc., 251 N.J. Super. 113, 129 (App. Div. 1991) ("Evidence which affords a basis for estimating damages with some reasonable degree of certainty is sufficient to support an award.").

Indeed, "[t]he rule relating to the uncertainty of damages applies to the uncertainty as to the fact of damage and not as to its amount, and where it is certain that damage has resulted, mere uncertainty as to the amount will not preclude the right of recovery." Desai v. Bd. of Adjustment of Town of Phillipsburg, 360 N.J. Super. 586, 595, (App. Div. 2003) (quoting Tessmar v. Grosner, 23 N.J. 193, 203 (1957)); see also Mosley, 356 N.J. Super. at 128 ("Where a wrong has been committed, and it is certain that damages have resulted, mere uncertainty as to the amount will not preclude recovery[;] courts will fashion a remedy even though the proof on damages is inexact.") (quoting Kozlowski v. Kozlowski, 80 N.J. 378, 388 (1979)).

"The measure of damages for personalty destroyed by a tortfeasor, when there is a market value, is the market value at the time of the loss." Lane, 216 N.J. Super. at 419. Where the market value cannot be ascertained, however, the measure of damages "is the actual or intrinsic value of the property to the owner, excluding sentimental or fanciful value." Ibid.

Here, granting defendant all legitimate and reasonable inferences, see Vitale, 447 N.J. Super. at 119-20, Begraft testified to facts sufficient to enable a jury "to make a fair and reasonable estimate" of his damages, Lane, 216 N.J. Super. at 420. As Begraft testified, and the court noted, the crux of defendant's

alleged injury was that plaintiff deprived him of the means necessary to satisfy his obligations under the guaranty. The jury could reasonably have estimated defendant's damages amounted to $104,000, the amount of the verbal sale agreement, which was greater than the outstanding balance on the lease he would be required to pay as guarantor.

Although we acknowledge the court's point that defendant failed to allege with sufficient particularity the market value of the materials, as he provided only a vague and imprecise estimate of $250,000 to $450,000, he also testified to the exact amount he agreed to sell the property—$104,000. Defendant therefore adequately alleged the market value of the property. See Lane, 216 N.J. Super. at 419. We also reject plaintiff's argument that defendant was precluded from recovery by his failure to specifically list and value the disposed of property. As noted, "mere uncertainty as to the amount [of damages] will not preclude the right of recovery," Desai, 360 N.J. Super. at 595, and defendant need only have alleged damages "with such certainty as the nature of the case" allowed, Lane, 216 N.J. at 420.

IV.

The court's order dismissing Begraft's counterclaims effectively dismissed his request for punitive damages, a decision we affirm, albeit for a

different reason than that expressed by the court. We also affirm the court's order to the extent it awarded plaintiff $25,065.40, the amount representing unpaid rent and late fees. Begraft does not dispute that portion of the court's order and we find it supported by substantial credible evidence in the record in any event.

As to Begraft's request for punitive damages, he failed to include any discussion as to the propriety of such relief, and although therefore his right to such damages be voluntarily waived, see Pressler & Verniero, Current N.J. Court Rules, cmt. 5 on R. 2:6-2 (2023) ("[A]n issue not briefed is deemed waived."); Telebright Corp. v. Dir., N.J. Div. of Taxation, 424 N.J. Super. 384, 393 (App. Div. 2012) (deeming a contention waived when the party failed to include any arguments supporting the contention in its brief), we have nevertheless conscientiously reviewed the record and conclude the court properly dismissed that claim as unsupported by the record.

The Punitive Damages Act, N.J.S.A. 2A:15-5.9 to -5.17 (the PDA), provides, in relevant part, punitive damages may be awarded:

> only if the plaintiff proves, by clear and convincing evidence, that the harm suffered was the result of the defendant's acts or omissions, and such acts or omissions were actuated by actual malice or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by those

> acts or omissions. This burden of proof may not be satisfied by proof of any degree of negligence including gross negligence.
>
> [N.J.S.A. 2A:15-5.12(a).]

Further, punitive damages are "a limited remedy and must be reserved for special circumstances" as they "are awarded as punishment or deterrence for particularly egregious conduct." Maudsley v. State, 357 N.J. Super. 560, 59-591 (App. Div. 2003). Egregious conduct is "an intentional wrongdoing in the sense of an 'evil-minded act' or an act accompanied by a wanton and willful disregard of the rights of another." Nappe v. Anschelewitz, Barr, Ansell & Bonello, 97 N.J. 37, 49 (1984). Having reviewed the record, we are satisfied Begraft failed to introduce evidence sufficient to warrant an award of punitive damages.

Finally, we do not address plaintiff's argument that defendant abandoned the property as the court did not make any findings on this issue. And, while we recognize certain evidence supported plaintiff's abandonment argument, including defendant's text message the property was "scrap[p]ed" and the Certificate of Dissolution's language that the company's assets had, in part, been discarded, defendant contested that he abandoned the property, and

maintained he intended to sell it and had a willing buyer during the term of the lease.

In light of our decision, the court on remand shall grant a new trial on defendant's counterclaims, and, depending on the result of that proceeding, determine what amount, if any, shall be used to offset the $25,065.40 judgment.

Affirmed in part, reversed in part, and remanded for proceedings consistent with the panel's 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