SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2275-22

STEVEN LANG, individually, and derivatively on behalf of CDP CLINTON L.L.C.,

Plaintiff-Appellant,

v.

CLINTON DEVELOPMENT PARTNERS, L.L.C., WALTER N. WILSON, and STEVEN W. WILSON,

Defendants-Respondents.

____

Submitted February 26, 2024 – Decided June 5, 2024

Before Judges Gilson and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law Division, Hunterdon County, Docket No. L-0320-19.

Yifat V. Schnur, LLC, attorneys for appellant (Yifat Vered Schnur, on the brief).

Respondents have not filed a brief.

PER CURIAM

Plaintiff Steven Lang and defendant Walter Wilson formed CDP Clinton, LLC (CDP Clinton) to purchase, develop, and resell a property in Clinton Township. To govern CDP Clinton, Lang and Wilson executed an operating agreement for the company (the Operating Agreement), under which Lang would contribute most of the money to acquire the property and Wilson would manage the acquisition, development, and resale of the property.

Wilson acquired the property but did not put title in CDP Clinton. Instead, he put title to the property in defendant Clinton Development Partners, LLC (Clinton Partners), a company Wilson and his son owned. After several years, Lang learned what Wilson had done and sued him. A jury found that Wilson had breached the Operating Agreement, engaged in fraud, and breached his fiduciary duty to Lang and CDP Clinton. The jury then awarded Lang over $637,000 in compensatory damages.

Following the jury verdict, the parties submitted a series of motions concerning how to mold the jury verdict and whether Lang was entitled to attorneys' fees. A central issue was whether Wilson should be dissociated from CDP Clinton or whether he could retain an interest and thereby profit from the property's sale. Ultimately, on February 17, 2023, the trial court entered a final

"Order of Disposition" that allowed Wilson to remain as a member of CDP Clinton but appointed Lang as the managing member.

Lang appeals from that final order, arguing that the trial court did not properly mold the jury verdict. We agree because the trial court failed to make findings on why Wilson should be allowed to retain a fifty percent interest in CDP Clinton after a jury found that he breached the Operating Agreement, breached his fiduciary duty, and committed fraud. Accordingly, we vacate the February 17, 2023 Order of Disposition and remand for a further hearing and entry of a new final judgment. In doing so, we point out that defendants have waived all arguments concerning the jury's verdict and award because defendants did not appeal or cross-appeal. Indeed, defendants did not even submit a brief in opposition to Lang's appeal.

I.

We summarize the facts from the record, including the evidence presented at trial. Lang and Wilson agreed to purchase a tax sale certificate to real property located at 19 West Main Street in Clinton, New Jersey (the Property). The plan was to purchase the tax sale certificate, foreclose on the Property, and develop the Property for resale. Lang and Wilson memorialized their agreement in CDP Clinton's Operating Agreement, which they executed in January 2016.

In the Operating Agreement, Lang agreed to (1) contribute $220,000 to purchase the tax sale certificate; and (2) contribute an additional $130,000 "as required" after the tax sale certificate had been acquired. Lang's contributions were personally guaranteed by Wilson, and that guarantee included paying interest on Lang's contributions at seven and a half percent per annum.

Wilson was to manage CDP Clinton, and he was appointed the "Manager" under the Operating Agreement. Wilson's duties were to "supervise the acquisition, foreclosure and municipal negotiations regarding potential development and/or re-development of the Property, with and upon the advice of the other Members." The Operating Agreement also stated:

> It is anticipated that Walter N. Wilson shall contribute such management and development consultation services as may be reasonably required during construction, and that he shall NOT be paid for such management and development consultation services, through the obtaining of development/re-development conditional approvals.

Wilson's only cash contribution to CDP Clinton was $5,000.

When the Property was sold, Lang and Wilson were each to be paid fifty percent of the net proceeds from the sale, after adjustments. In that regard, the Operating Agreement stated:

> [T]he Property may be sold and conveyed to a third[-]party purchaser, in which case [CDP Clinton] shall make payment in the following manner:
>
> 1. To each cash[-]contributing member, the amount of the initial capital contributions and subsequent capital contributions, less any capital account reimbursement (the balance in the member[']s capital account, if any).
>
> 2. Interest on the amount of any cash Capital Account, as accrued and if unpaid, at the simple rate of 7.5% per annum, from the date of payment through and including the date of repayment to the contributing Member or the date [CDP Clinton] acquires marketable title to the Property, whichever shall first occur.
>
> 3. Payment of all unpaid and outstanding hard and soft costs incurred by [CDP Clinton] relating to the particular Project then being sold.
>
> 4. Payment of closing costs relating to the sale of the Property, including real estate commissions, if any.
>
> 5. To the members in accordance with the percentage interests as stated below.
>
> . . . .
>
> Walter N. Wilson 50 per cent
> Steven Lang 50 per cent

Regarding dissolution or liquidation of CDP Clinton, the Operating Agreement stated that CDP Clinton "shall dissolve and commence winding up and liquidating upon the first to occur of " several listed events, including:

> The [dissociation] of a Member due to bankruptcy or any other even[t] that causes a member to cease to be a Member under the [New Jersey Revised Uniform Limited Liability Company Act (the RULLCA), N.J.S.A. 42:2C-1 to -94].
>
> . . . .
>
> . . . Any event that renders it impossible, unlawful or impracticable to carry on the business of [CDP Clinton].

The Operating Agreement also stated:

> Any Member who shall violate any of the terms, conditions and provision[s] of this Agreement shall keep and save harmless [CDP Clinton] and shall also indemnify the other Members from any and all claims, demands and actions of every kind and nature whatsoever which may arise out of or by reason of such violation.

In 2016, Lang made his initial capital contribution by paying $220,000. Wilson used those funds to purchase the tax sale certificate, but he did not put the certificate into CDP Clinton. Instead, Wilson put the tax sale certificate in the name of Clinton Partners, a company that Wilson and his son owned and a company in which Lang had no interest. Wilson then foreclosed on the Property, and title to the Property was conveyed to Clinton Partners.

In 2019, Lang discovered that CDP Clinton was not the owner of the Property. So, in July 2019, Lang, individually and derivatively on behalf of

CDP Clinton, sued Wilson, Clinton Partners, and Steven Wilson, Walter Wilson's son. The complaint asserted four causes of action: (1) fraud; (2) breach of fiduciary duty; (3) breach of contract; and (4) unjust enrichment. It also demanded that a constructive trust be imposed so that Lang could gain sole ownership of the Property.

Wilson and the other defendants filed an answer with separate defenses. Thereafter, the parties engaged in discovery and filed various motions.

On October 6, 2021, the trial court entered an order granting Lang partial summary judgment and ordering that title to the Property be transferred to and vested in CDP Clinton. Ten months later, in August 2022, defendants transferred title to the Property to CDP Clinton.

A jury trial on Lang's claims of breach of contract, breach of fiduciary duty, and fraud was held in August 2022. The jury heard testimony from Lang, Wilson, and the chief operating officer of the company that sold the tax sale certificate to Clinton Partners, and it considered various documents entered into evidence. Those documents included CDP Clinton's certificate of formation, the Operating Agreement, communications between Lang and Wilson, documents showing that Clinton Partners had identified the Property as an investment opportunity, and documents evidencing the transfer of the tax sale certificate.

After considering all the evidence, the jury rendered its decision and memorialized its verdict on a verdict sheet prepared by the court and counsel. The verdict sheet was also entered into evidence. The jury found that Wilson had breached the Operating Agreement "by failing to acquire the tax sale certificate and the underlying real property for CDP Clinton" and "by failing to fulfill his personal guarantee to Mr. Lang of payment of $220,000 plus interest at 7.5% per year from January 14, 2016." The jury also found that Wilson had committed fraud. In addition, the jury found that Wilson had breached his fiduciary duty to CDP Clinton and Lang by "misappropriat[ing] to his own solely owned company of the tax sale certificate and underlying real property that belonged to CDP Clinton[;]" making "misrepresentations, or fail[ing] to disclose to Mr. Lang, a fellow member of [CDP Clinton] the true facts concerning the failure to assign the tax sale certificate and convey the real property to CDP Clinton[;]" and "fail[ing] to pay the real estate taxes that have accrued on the real property since [Wilson's] company acquired it, resulting in a new tax lien and tax sale certificate for the real property."

In terms of compensatory damages, the jury found that Wilson should pay Lang (1) $220,000, plus 7.5% interest from January 2016 "until paid" for the breach of contract; (2) $367,500 for the fraud, consisting of (i) $317,000 for

"50% of [the] original value of [the] land" and (ii) $50,000 for "legal fees[;]" and (3) $50,000 of "back taxes accumulated" for the breach of fiduciary duty.

Following the jury verdict, the trial court held a series of conferences with counsel for the parties to craft the final judgment. Lang's counsel argued that because Wilson had breached the Operating Agreement by failing to put the tax sale certificate and the Property into CDP Clinton, he had never made his contribution to the company and should be compelled to forfeit his ownership interest in CDP Clinton. Therefore, Lang contended that he should be awarded complete ownership of CDP Clinton and the Property. In making that argument, Lang acknowledged that he could not take complete ownership of CDP Clinton and receive the entire monetary award made by the jury because to do so would result in duplicative damages. For example, Lang acknowledged that if he got complete ownership of CDP Clinton, he would not be entitled to the $220,000 plus interest the jury had awarded him for Wilson's breach of the Operating Agreement.

The parties also addressed several other issues related to the final judgment. One issue concerned whether certain individuals were members of CDP Clinton. While Wilson managed the company, he had added three members without Lang's consent or knowledge. Those persons were Steven

Wilson, Craig McNamara, and Jarrad Cavelli. Lang contended that because the Operating Agreement required his consent to add members and because Wilson never got his consent, Steven Wilson, McNamara, and Cavelli were not members. Wilson conceded that issue.

Another issue involved taxes on the Property. The evidence at trial established that Wilson had failed to pay taxes on the Property. Clinton Township, therefore, had deemed the Property abandoned and had sold a tax sale certificate for the Property to a third party. Lang, through CDP Clinton, had to separately litigate that matter and eventually paid $73,959.29 to redeem the taxes and retain ownership of the Property.

A third issue was Lang's attorneys' fees. Lang argued he was entitled to attorneys' fees under Article Seventeen of the Operating Agreement and the New Jersey court rules. Lang also asserted that the jury's award of $50,000 in attorneys' fees was only a partial award for some of the fees and that the court should separately consider the additional fees Lang had incurred and award him all his attorneys' fees.

On December 2, 2022, the trial court made several rulings on the record concerning how it intended to mold the jury verdict into a final judgment. The court found that the jury's determinations of fraud, breach of contract, and breach of fiduciary duty were "amply supported by evidence in the record." Nevertheless, the trial court rejected Lang's request that Wilson be deemed to have forfeited his membership in CDP Clinton. The court reasoned that although it took several years and a court order, title to the Property was eventually vested in CDP Clinton and, therefore, Wilson's contribution had been made.

The court accepted Lang's argument that Steven Wilson, McNamara, and Cavelli were not members of CDP Clinton because Lang had never consented to those three individuals becoming members. In making that determination, the court noted that the parties had agreed that those three individuals were not members of CDP Clinton.

Next, the trial court declined to grant the $220,000 awarded by the jury for the breach of contract, reasoning that to do so would constitute a double recovery because CDP Clinton now had title to the Property. Following the same logic, the court declined to award the $317,500 the jury had awarded for fraud, reasoning that to do so would also constitute a double recovery for Lang. The court stated that it would award damages in the amount of the taxes Wilson had failed to pay, plus interest and penalties, finding that award was supported by the jury's verdict.

Addressing legal fees, the court stated that it would grant Lang's application for attorneys' fees and costs and directed Lang's counsel to submit a certification of fees incurred. In making that ruling, the court stated that it would not award the $50,000 in attorneys' fees that the jury had awarded.

It does not appear that the trial court memorialized the rulings it made on the record on December 2, 2022 into a written order. Instead, on January 13, 2023, Lang moved to modify the rulings the trial court had announced. The trial court then heard arguments on that motion on February 14, 2023. Two days later, on February 16, 2023, the court explained on the record its decisions, but noted that the court was still evaluating what amount of fees to award to Lang.

On February 17, 2023, the trial court entered a written final "Order of Disposition." In that order, the court: (1) removed Wilson as the managing member of CDP Clinton and appointed Lang as the new managing member; (2) granted Lang a lien securing the judgment against Wilson by allowing him to place a mortgage on the Property, but did not identify the amount of the mortgage; (3) required Wilson to pay all outstanding taxes on the Property, together with interest and penalties, within fifteen days; (4) awarded Lang $134,660.11 in attorneys' fees and costs and directed Wilson to pay those fees and costs within thirty days; and (5) directed that if Wilson "does not or cannot pay any amount determined to be owed and payable pursuant to" the Order of Disposition, Wilson's obligation was to be secured by a lien and mortgage on the Property.

The court attached a short "addendum" to the order. In the addendum, the court stated that it was "satisfied" that it was "not bound by the literal language of the Operating Agreement for [CDP Clinton] or by the literal language of the [RULLCA]." The court also provided additional reasons for the award of attorneys' fees and costs.

Lang now appeals from the February 17, 2023 final Order of Disposition. Neither Wilson nor any other defendant has appealed from the final order, or any other order previously made by the trial court.

II.

On appeal, Lang argues that the final Order of Disposition improperly disregarded the jury verdict. Lang's main contention is that the trial court either had to accept his equitable argument that Wilson should be removed as a member of CDP Clinton or award Lang all the damages given by the jury. Additionally, Lang argues there were two other errors in the Order of Disposition: (1) it did not expressly remove Steven Wilson, McNamara, and Cavelli as members of CDP Clinton; and (2) it did not include all attorneys' fees

Lang was entitled to receive. Finally, Lang asserts that the trial court erred in answering a jury question concerning Wilson's breach of fiduciary duty, but Lang does not state what harm, if any, that alleged error caused.

A. The Trial Court's Final Order of Disposition.

"A jury's verdict, including an award of damages, is cloaked with a 'presumption of correctness.'" Cuevas v. Wentworth Grp., 226 N.J. 480, 501 (2016) (quoting Baxter v. Fairmont Food Co., 74 N.J. 588, 598 (1977)). "[S]ubstantial deference . . . must be accorded [to] a damages award rendered by a jury." Graphnet, Inc. v. Retarus, Inc., 250 N.J. 24, 37 (2022) (alterations and omission in original) (quoting Orientale v. Jennings, 239 N.J. 569, 589 (2019)).

"[T]he molding of a monetary jury award is appropriate when done to conform with and reflect allocation of liability." Wadeer v. N.J. Mfrs. Ins. Co., 220 N.J. 591, 611 (2015). Molding a verdict is "most appropriate when it pertains to form rather than substance." Kassick v. Milwaukee Elec. Tool Corp., 120 N.J. 130, 135 (1990). Although a jury verdict "may be 'molded in consonance with the plainly manifested intention of the jury,'" this is "best performed in the presence of the jurors and with their consent." Ibid. (quoting Turon v. J. & L. Constr. Co., 8 N.J. 543, 552 (1952)).

Nevertheless, a jury award may be adjusted by the trial court under certain limited circumstances. Accordingly, a trial court may use remittitur or additur to adjust a jury verdict beyond what is allowed by molding. In that regard, the New Jersey Supreme Court has explained:

> [I]n those rare instances when a trial judge determines that a damages award is either so grossly excessive or grossly inadequate that the grant of a new damages trial is justified, the judge has the option of setting a remittitur or an additur at an amount that a reasonable jury would award given the evidence in the case. . . . If both parties accept the remittitur or additur, then the case is settled; if not, a new trial on damages must proceed before a jury.
>
> [Orientale, 239 N.J. at 575.]

To warrant remittitur or additur, a jury award must "shock[] the judicial conscience." Id. at 595 (quoting Cuevas, 226 N.J. at 485).

Moreover, "[i]t is fundamental that no matter under what theories liability may be established, there cannot be any duplication of damages." Ptaszynski v. Atl. Health Sys., Inc., 440 N.J. Super. 24, 39-40 (App. Div. 2015) (quoting P. v. Portadin, 179 N.J. Super. 465, 472 (App. Div. 1981)). "The common law prohibits a double recovery for the same injury." Id. at 40. If a jury awards double recovery, the normal remedy is a new trial on damages. See ibid.

Applying these principles, we hold that the final Order of Disposition failed to adequately mold the jury verdict. Initially, we note that Lang could have made an election of his remedies by taking the jury's monetary verdict. Had Lang just accepted the jury verdict, he would be entitled to a final judgment awarding him (1) $220,000, plus 7.5% interest, for Wilson's breach of the Operating Agreement; (2) $317,500, plus pre- and post-judgment interest, for Wilson's fraud; (3) $134,660.11 in fees and costs, plus post-judgment interest; and (4) $73,959.29 for taxes paid on the Property, plus any additional taxes Lang had paid until entry of the Order of Disposition, plus post-judgment interest, for Wilson's breaches of his fiduciary duty.

Under that election, however, Lang would have had to adjust his interest in CDP Clinton and the Property. In that regard, the trial court correctly reasoned that because the Property was now owned by CDP Clinton, Lang would receive a double recovery if he was given the jury awards for the breach of the Operating Agreement ($220,000, plus 7.5% interest) and the fraud ($317,000). We do not include the $50,000 for attorneys' fees because the court properly addressed those fees separately.

In his post-verdict submissions to the trial court, however, Lang made it clear that he was not seeking to simply have a final judgment awarding the damages found by the jury. Instead, Lang pointed out that he had legal claims for Wilson's breaches and, separately, equitable claims concerning an elimination or adjustment of Wilson's interest in CDP Clinton. The jury addressed Lang's legal claims of the breach of the Operating Agreement, breaches of fiduciary duty, and fraud. Lang had also asserted equitable claims under which he sought to dissociate Wilson from CDP Clinton and remove Wilson's ownership interest in the Property. The trial court failed to adequately analyze Lang's equitable claims and make findings of fact and conclusions of law on those equitable claims. See IE Test, LLC v. Carroll, 226 N.J. 166, 183 (2016) (explaining that a trial court must consider several factors in evaluating whether a member of a limited liability company should be expelled from the limited liability company).

Indeed, the jury's verdict required the trial court to consider an equitable remedy not addressed by the jury. Because the jury found that Wilson had breached the Operating Agreement, breached his fiduciary duty to both Lang and CDP Clinton, and engaged in fraud, the trial court needed to address whether Wilson could remain a member of CDP Clinton. Additionally, if Wilson was allowed to remain a member, the court needed to determine how his membership interest should be adjusted. We hold that the trial court failed to make adequate findings on those equitable issues.

The Operating Agreement is clear in stating that Wilson's contributions to CDP Clinton were his responsibilities to acquire the tax sale certificate to the Property, foreclose on and obtain title to the Property, and develop the Property. The jury found that Wilson breached the Operating Agreement by acquiring the tax sale certificate and title to the Property for Clinton Partners rather than CDP Clinton. The trial court's pre-trial order directing that title to the Property be given to CDP Clinton did not adequately address the subsequent jury finding that Wilson breached the Operating Agreement.

Article Seventeen of the Operating Agreement states that if Wilson violated the agreement, he would be required to indemnify Lang "from any and all claims, demands and actions of every kind and nature whatsoever which may arise out of or by reason of such violation." Moreover, Article Eleven of the Operating Agreement states that CDP Clinton "shall dissolve" and be liquidated if, among other reasons, (1) a member is dissociated due to "any . . . even[t] that causes a member to cease to be a Member under the" RULLCA; or (2) there is an event "that renders it impossible, unlawful or impracticable to carry on the business of" CDP Clinton.

In issuing the final Order of Disposition, the trial court did not make adequate findings concerning the jury's verdict and how the verdict impacted Wilson's membership in CDP Clinton. First, the trial court did not adequately address whether the jury verdict should result in Wilson's dissociation from CDP Clinton. The trial court did not make adequate findings on whether the jury's findings that Wilson had committed fraud and breached his fiduciary duty to both Lang and CDP Clinton rendered it "impossible, unlawful or impracticable to carry on the business" of CDP Clinton.

Moreover, the trial court did not adequately address and make findings on whether Wilson should be dissociated as a member under the RULLCA. The RULLCA provides that a person is to be dissociated from a limited liability company if:

> On application by the company, the person is expelled as a member by judicial order because the person:
>
> > (1) has engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the company's activities;
> >
> > (2) has willfully or persistently committed, or is willfully and persistently committing, a material breach of the operating agreement or the person's duties or obligations under [N.J.S.A. 42:2C-39]; or

> (3) has engaged, or is engaging, in conduct relating to the company's activities which makes it not reasonably practicable to carry on the activities with the person as a member.
>
> [N.J.S.A. 42:2C-46(e).]

N.J.S.A. 42:2C-39 explains the standards of conduct, including the fiduciary duty of loyalty, for members.

The jury found that Wilson had breached the Operating Agreement, committed fraud, and breached his fiduciary duty to Lang and CDP Clinton. However, the trial court did not make any findings in its Order of Disposition on whether that verdict required Wilson to be dissociated from CDP Clinton under the RULLCA, despite Lang's counsel indicating that Lang was making an application to the court for Wilson's dissociation on those grounds under N.J.S.A. 42:2C-46.

If, on remand, the trial court rules that Wilson should be dissociated from CDP Clinton, the court will also have to decide what, if any, payment Wilson should receive for his membership interest in CDP Clinton. Normally, when a member is dissociated from a limited liability company, the member is entitled to the value of his or her membership at the time of dissociation. <u>See</u> N.J.S.A. 42:2C-47(c) (explaining that a "court that expels a member from a company pursuant to [N.J.S.A. 42:2C-46(e)] may order the sale of the interests held by such person immediately before dissociation"). Accordingly, if the trial court determines that Wilson should be dissociated, the court will also need to determine (1) when that dissociation should be deemed effective; and (2) the value of Wilson's interests was at that time. For example, the trial court could find that Wilson's breaches of the Operating Agreement meant that he should have been dissociated from CDP Clinton in 2016, when he purchased the tax sale certificate and conveyed titled to the Property to Clinton Partners. If so, the court would have to determine the value of the Property at that time and award Wilson fifty percent of that amount, less the adjustments called for in Article Five of the Operating Agreement.

Alternatively, if, on remand, the trial court finds that Wilson should remain a member of CDP Clinton, Wilson's interest in and right to any profit from the Property will need to be adjusted. Lang correctly points out that by making him the managing member, he is now responsible for the management, development, and resale of the Property. Those responsibilities were to be Wilson's contributions to CDP Clinton. Consequently, if Lang is taking on those responsibilities and Wilson is relieved of those responsibilities, Wilson's right to a percentage of the profit from the resale of the Property will need to be adjusted. Moreover, if the trial court does not dissociate Wilson, it should also consider whether Lang should be compensated for his duties as manager through readjustment of his interest in CDP Clinton. See N.J.S.A. 42:2C-48(b) (providing that if a court orders appointment of a custodian or provisional manager for a limited liability company as an alternative to dissolution, the court "shall allow reasonable compensation to any custodian or provisional manager for his or her services and reimbursement or direct payment of all his or her reasonable costs and expenses, which amounts shall be paid by the limited liability company").[1] Consequently, at the hearing on the remand, the trial court needs to make findings of fact concerning those readjustments.

We point out that there are several additional errors in the final Order of Disposition that also require a remand. The order did not include a provision expressly removing Steven Wilson, McNamara, and Cavelli as members of CDP Clinton. The trial court found that those removals were appropriate, and Wilson, in fact, agreed to those removals. Thus, there appears to have been an oversight,

[1] While the Operating Agreement stated that Wilson would not be paid for his management services because that was his contribution, because Lang has taken on the management, the court should consider whether Lang is entitled to compensation for those new duties.

and we direct that the final judgment include a provision removing those three individuals as members of CDP Clinton.

Second, the final Order of Disposition did not set forth the specific amounts of the taxes Wilson was to pay. Nor did the Order of Disposition set forth the specific amount of the lien and mortgage Lang could place on the Property to secure what Wilson owed him for the breach of the Operating Agreement, breach of fiduciary duty, and fraud.

B. The Award of Attorneys' Fees and Costs.

Attorneys' fees will be awarded if they are authorized by a contract, a statute, or court rule. Empower Our Neighborhoods v. Guadagno, 453 N.J. Super. 565, 579 (App. Div. 2018). In this case, the trial court found that Lang was entitled to attorneys' fees under Article Seventeen of the Operating Agreement. That article provided that if Wilson breached the Operating Agreement, he would be responsible to indemnify Lang for "all claims . . . of every kind and nature" arising out of that breach. We agree with the trial court that the Operating Agreement entitled Lang to a reasonable award of attorneys' fees.

The amount of an attorneys' fees award "rests within the sound discretion" of the trial court, and we review the award for an abuse of discretion. Ibid.

"[F]ee determinations by trial courts will be disturbed only on the rarest of occasions, and then only because of a clear abuse of discretion." Ibid. (alteration in original) (quoting Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 444 (2001)).

When attorneys' fees are authorized by a contract, the same reasonableness test used in awarding attorneys' fees is applied. See Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 386 (2009); see also N. Bergen Rex Transp., Inc. v. Trailer Leasing Co., 158 N.J. 561, 569 (1999). "The starting point in awarding attorneys' fees is the determination of the 'lodestar,' which equals the 'number of hours reasonably expended multiplied by a reasonable hourly rate.'" Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 21 (2004) (quoting Rendine v. Pantzer, 141 N.J. 292, 335 (1995)). "[T]he trial court should satisfy itself that the assigned hourly rates are fair, realistic, and accurate, or should make appropriate adjustments." Rendine, 141 N.J. at 337. In assessing the request, the court should consider the factors laid out in RPC 1.5(a). A party seeking attorneys' fees is required to submit an affidavit of services addressing the RPC 1.5(a) factors. R. 4:42-9(b).

After ruling that Lang was entitled to attorneys' fees, the trial court considered several different submissions from Lang's attorneys. The court noted that several of those submissions did not comply with the court rules and did not provide the detail necessary for the court to fully assess the reasonableness of the fees. Ultimately, after reviewing the submissions from Lang's attorneys, the opposition from Wilson, and the factors under RPC 1.5(a), the trial court awarded Lang $134,660.11 in attorneys' fees and costs.

Having reviewed the record concerning the attorneys' fees, we discern no abuse of discretion and affirm the award. We reject Lang's arguments that the award did not include all reasonable fees and that the trial court abused its discretion in not awarding more fees. We add, however, that on remand Lang will be entitled to additional reasonable attorneys' fees and costs incurred on the remand.

C. The Trial Court's Answer to the Jury's Question Concerning Whether Wilson Breached His Fiduciary Duty.

Finally, Lang argues that the trial judge incorrectly responded to a jury question concerning whether there was a timeframe in which Wilson was to comply with the October 6, 2021 order requiring him to transfer the Property to CDP Clinton. The trial judge responded to that question by telling the jury, "there is no language in the order setting forth a timeframe within which title was to be vested in CDP Clinton, LLC."

Lang argues that the trial court's response was incorrect. Lang does not, however, identify what additional damages he would have been entitled to had the jury found a breach of fiduciary duty by Wilson on the basis that he responded tardily to the court's order. The jury found three other actions or inactions by Wilson constituted breaches of his fiduciary duty and awarded $50,000 in "back taxes accumulated." Lang argues that he suffered damages due to the delay in moving the title because additional taxes were not paid on the Property, and he had to litigate a separate tax sale certificate and foreclosure action. We have already ruled, however, that, based on other verdicts by the jury, Lang can recover the additional taxes he paid. Accordingly, there is no other relief that Lang would be entitled to receive, and we discern no error requiring a further hearing or trial on whether Wilson breached his fiduciary duty based on the delay in conveying title to CDP Clinton.

III.

In summary, we vacate the February 17, 2023 final Order of Disposition because it was not supported by adequate findings of fact and conclusions of law. We remand for further proceedings and the entry of a new final judgment. We affirm the trial court's award of attorneys' fees to Lang and direct that the award, with post-judgment interest, be incorporated in the new final judgment.

The final judgment shall state that Steven Wilson, McNamara, and Cavelli are removed as members of CDP Clinton. Finally, we point out that on remand, neither Wilson nor any other defendant will be permitted to make any arguments concerning the jury verdict or any rulings made by the trial court up to and through the issuance of the February 17, 2023 final Order of Disposition. Wilson and the other defendants did not appeal from those orders or rulings, and they cannot now challenge any of those orders or rulings on remand.

Affirmed in part, reversed in part, and remanded consistent with this 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