SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2396-21

SECAUCUS INVESTORS, LLC, and ATC HEALTH CARE GROWERS, LLC,

Plaintiffs-Respondents,

v.

HARMONY FOUNDATION OF NEW JERSEY, INC., JESHAYAHU BRODCHANDEL, HARMONY HOLDINGS OF NEW JERSEY, LLC, UNITED STATES DIVISION OF THE INTERNATIONAL FOUNDATION HARMONY, and MARINA KARAVAS,

Defendants-Appellants,

and

YEHUDA MEER, MEER CHILDREN IRREVOCABLE TRUST, and ROBERT MORONI,

Defendants-Respondents.

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Submitted January 31, 2024 – Decided May 29, 2024

Before Judges Vernoia and Gummer.

On appeal from the Superior Court of New Jersey, Chancery Division, Bergen County, Docket No. C-000275-21.

Lowenstein Sandler LLP, Sydney Kaplan (Lowenstein Sandler LLP) of the New York bar, admitted pro hac vice, and Jason Cyrulnik (Cyrulnik Fattaruso LLP) of the New York bar, admitted pro hac vice, attorneys for appellants (Christopher S. Porrino, Peter Matthew Slocum, Sydney Kaplan and Jason Cyrulnik, of counsel and on the briefs).

Trif & Modugno LLC, attorneys for respondents Secaucus Investors, LLC, and ATC Health Care Growers, LLC (Louis Anthony Modugno and Kevin S. Brotspies, of counsel and on the brief).

Chiesa Shahinian & Giantomasi PC, attorneys for respondent Yehuda Meer and the Meer Children Irrevocable Trust (Ronald Lawrence Israel, of counsel and on the brief).

PER CURIAM

In this dispute about a for-profit conversion of a cannabis company, Harmony Foundation of New Jersey, Inc., Jeshayahu Brodchandel, Harmony Holdings of New Jersey, LLC, United States Division of the International Foundation Harmony (International Harmony), and Marina Karavas (collectively, the Harmony defendants) appealed from an order confirming an

arbitration award and denying their motion to vacate the award. Plaintiffs Secaucus Investors, LLC and ATC Health Care Growers, LLC (ATC Growers) moved to dismiss the appeal, contending the recent sale of Harmony Foundation's assets rendered the appeal moot. We grant in part the motion to dismiss, concluding the sale rendered moot the part of the appeal challenging the court's confirmation of the arbitrator's award determining the equity interests in Harmony Holdings. We deny the motion as to the remaining aspects of the order and affirm those aspects of the order.

I.

We limit our summary of the facts and procedural history to what is pertinent to the motion and the appeal.

In 2020, Secaucus filed in the Superior Court a verified complaint, naming Brodchandel, Harmony Foundation, Yehuda Meer, and Juniper Green, LLC as defendants. According to Secaucus, it had been the source of funding, through a line of credit security agreement (Security Agreement) and an associated line of credit promissory note (Promissory Note) between Harmony Foundation and International Harmony collectively as "Debtor" and Secaucus as "Lender," that enabled Brodchandel and Meer "to start an operating dispensary of medicinal marijuana" – Harmony Foundation – "with the goal of eventually converting

[Harmony Foundation's] business operations to a for-profit structure . . . ." Secaucus identified Brodchandel as the chief executive officer and a member of the board of directors of Harmony Foundation and an original investor in and former member of Secaucus and Meer as the director of operations and a member of the board of directors of Harmony Foundation and an original investor in and a manager of Secaucus.

Secaucus alleged Brodchandel and Meer had caused Harmony Foundation to seek approval of the Department of Health (DOH) to convert Harmony Foundation's operations into a for-profit entity, subsequently named "Harmony Holdings of New Jersey, LLC," while "squeezing" Secaucus out of its contractual right to become an owner of the to-be formed for-profit entity. Secaucus pleaded in the counts of its complaint that: (1) by the proposed for-profit conversion, Harmony Foundation had committed an anticipatory repudiation of the Security Agreement; (2) Harmony Foundation had breached the Security Agreement by using cash belonging to Secaucus to make a loan to another entity; (3) Harmony Foundation had violated the implied covenant of good faith and fair dealing; (4) Brodchandel and Meer had breached their fiduciary duties, as former or current members, to Secaucus; (5) Brodchandel had aided and abetted Meer's breach of fiduciary duty; and (6) Brodchandel and

Meer had engaged in a conspiracy regarding the proposed conversion and a conspiracy with Juniper Green to engage in a "phony transaction . . . designed to make it appear that . . . Meer had sold his membership interests in Secaucus." Secaucus also sought a judgment declaring void Meer's transfer of ownership interests in Secaucus to Juniper Green, claiming he had violated the terms of Secaucus's operating agreement by engaging in that transfer.

Harmony Foundation and Brodchandel moved to compel arbitration. They also filed a notice of arbitration with the American Arbitration Association, naming Secaucus as the respondent. The court granted their motion to compel arbitration.

In the statement of case accompanying their arbitration demand, Harmony Foundation and Brodchandel pleaded four counts based on the Promissory Note and the Security Agreement, which, they alleged, secured the Promissory Note. They described Harmony Holdings as a "shell entity" formed by Harmony Foundation, which "would not have any assets unless and until the conversion application was eventually consummated." They based the arbitrator's jurisdiction on arbitration provisions contained in the Promissory Note, the Security Agreement and Secaucus's operating agreement.

The statement of claim contains four causes of action: one expressly brought by "Harmony [Foundation] & Brodchandel," two brought only by Harmony Foundation, and one brought only by Brodchandel. In count one, Harmony Foundation and Brodchandel sought a declaration that the breaches Secaucus had alleged in its Superior Court complaint "do not exist" and a declaration that:

> under the plain language of the contracts, (1) Secaucus is [Harmony Foundation's] lender only, and has no ownership rights in the nonprofit company or any of its successors; (2) Harmony [Foundation] is entitled to pay off the Secaucus line of credit at any time without premium or penalty, thereby ending the Secaucus-Harmony [Foundation] relationship; and (3) Harmony [Foundation] is entitled to seek and obtain financing from a third-party lender(s), the proceeds of which new loan(s) may be used to pay off the Secaucus debt.

In count two, Harmony Foundation alleged Secaucus had breached the Promissory Note by failing to honor Harmony Foundation's request for a $2,000,000 extension under a revolving line of credit. In count three, Harmony Foundation asserted Secaucus's refusal to honor the extension request was a breach of the implied covenant of good faith and fair dealing that was part of the Promissory Note. Harmony Foundation sought monetary damages from Secaucus for its alleged breach of the Promissory Note and the implied covenant. In count four, Brodchandel referenced Secaucus's allegation in its Superior

Court complaint that Brodchandel had breached the duties he owed Secaucus under its operating agreement and claimed Brodchandel, as a former manager and member of Secaucus, was entitled to an award of attorneys' fees and expenses pursuant to Secaucus's operating agreement if he prevailed in his defense of that claim.

Secaucus filed an answer to the statement of case with counterclaims and a third-party claim against Meer and the Meer Children Irrevocable Trust (Meer Trust) (collectively, the Meer defendants) as well as Harmony Holdings and International Harmony. According to Secaucus, Meer was a member of Secaucus through his mother, Vivian Meer, who later transferred her interest in Secaucus to the Meer Trust and Meer allegedly caused the Meer Trust to assign its interests to Juniper Green, in violation of Secaucus's operating agreement. Secaucus described International Harmony as one of the initial "Alternative Treatment Centers," recipients of a DOH letter of intent to issue a license for the provision of medical marijuana to patients.

Secaucus and its wholly owned subsidiary, ATC Growers, filed an amended answer, adding third-party claims against Karavas and Robert Moroni. According to plaintiffs, ATC Growers signed a contract with Harmony Foundation to provide construction and growing management services (the

Growing Management Agreement). Plaintiffs alleged Karavas was one of the people who originally controlled International Harmony and that International Harmony had transferred its assets and liabilities to Harmony Foundation. Plaintiffs describe Moroni as an improperly appointed member of Harmony Foundation's board of directors. They allege Harmony Foundation and Brodchandel created Harmony Holdings as a new subsidiary, in violation of the Security Agreement, and that on September 29, 2020, DOH had conditionally approved a June 2, 2020 proposal by Harmony Foundation to transfer its Alternative Treatment Center permit to Harmony Holdings. Plaintiffs admitted the parties' dispute was subject to arbitration, citing the Promissory Note, the Security Agreement, and Secaucus's operating agreement, plus the Growing Management Agreement.

Plaintiffs alleged that pursuant to a letter of intent executed by Karavas and others, Secaucus was established "to act as the Investor . . . and provide capital to Harmony [Foundation] in return for the 55% interest in the [medical marijuana distillery]." Secaucus again alleged that its rights "could be trampled" if the proposed conversion and transfer of Harmony Foundation's assets to Harmony Holdings were completed.

Plaintiffs pleaded several causes of action. In count I, they alleged Harmony Foundation had breached the Security Agreement and Promissory Note. In count II, they claimed Brodchandel and Meer owed duties to Secaucus pursuant to its operating agreement and that they had breached those duties. In count III, they asserted Brodchandel had aided and abetted Meer's breach of his duties to Secaucus. In count IV, plaintiffs named Karavas but alleged only Brodchandel and Meer had conspired to damage Secaucus based on Harmony Foundation's conversion and the purported transfer of the Meer Trust's membership interest in Secaucus to Juniper. In count V, plaintiffs sought a judgment declaring the Meer Trust's transfer of its membership interest in Secaucus void. In count VI, plaintiff sought a judgment declaring void an amendment to the Security Agreement and Promissory Note. In count VII, plaintiff accused Brodchandel of engaging in fraud based on his representation that Harmony Foundation would ensure Secaucus "received its opportunity to convert its existing debt into equity in a to be formed for-profit entity." In count VIII, they sought a judgment declaring Secaucus was entitled to all of the equity in Harmony Holdings. In count IX, they sought a judgment declaring Harmony Foundation must reconstitute its board of directors. In counts X and XI, plaintiffs requested various injunctive relief.

After conducting a multi-day hearing, the arbitrator issued a final "reasoned award" on October 15, 2021. He denied each of the parties' claims, including Secaucus' claim for 100% ownership of Harmony Holdings. However, the arbitrator made a determination of the equity interests in Harmony Holdings, finding Secaucus was entitled to a 55% equity interest in Harmony Holdings, with Harmony Foundation entitled to the remaining 45%. The arbitrator concluded: "Having both parties participate in the economic rewards of an enterprise to which each has substantially contributed, and made possible by recent legislative enactments, best effectuates their true intention and achieves the fairest, most equitable result, especially given the equity split agreed upon at the outset."

On November 10, 2021, plaintiffs filed in the Superior Court a verified complaint, naming as defendants the Harmony defendants, Moroni, and the Meer defendants, seeking confirmation of the arbitration award pursuant to N.J.S.A. 2A:23B-22. The Harmony defendants moved to vacate the award.

After hearing argument, the court placed on the record on February 18, 2022, its decision confirming the arbitration award and denying the motion to vacate the award. On February 22, 2022, the court entered a judgment and order memorializing that decision, providing, among other things, that "[s]ubject to

regulatory approval," Secaucus was awarded a 55% interest in Harmony Holdings and Harmony Foundation was awarded a 45% interest. On April 11, 2022, the court entered an order denying plaintiffs' motion for an award of fees and costs pursuant to N.J.S.A. 2A:23B-25(b) and (c).

The Harmony defendants filed a notice of appeal and an amended notice of appeal. The Meer defendants filed a case information statement (CIS), stating they were "adopt[ing] and join[ing] in" the statement of facts and procedural history set forth in the Harmony defendants' CIS and were taking the position that the court had "properly confirmed" the arbitrator's denial of plaintiffs' claims against the Meer defendants but had "improperly confirmed" the claims against the Harmony defendants. The Meer defendants, however, did not file a notice or cross-notice of appeal. Moroni filed a CIS but did not otherwise participate in the appeal.

On appeal, the Harmony defendants argued the arbitration award had to be vacated because it exceeded the arbitrator's powers in that it improperly enforced a purportedly non-arbitrable, illegal agreement about equity interests that violated New Jersey's nonprofit statutes, DOH prohibitions, and public policy and was not submitted as a basis for the arbitration; was procured by undue means contrary to N.J.S.A. 2A:23B-23(a)(1), in that the arbitrator

mistakenly enforced the purportedly illegal agreement about equity interests; and the findings under Secaucus's operating agreement were tainted by the findings about Secaucus's equity interest. The focus of their appeal was on the award of a 55% equity interest in Harmony Holdings to Secaucus.

After the Harmony defendants initiated this appeal, the trial court consolidated this case with other lawsuits that had been filed and appointed a special fiscal agent (SFA), granting him "the power to advise the court as to the status of Harmony [Foundation] as well as preserving corporate assets, monitoring operations and making recommendations to the court." Based on the recommendations of the SFA, the court subsequently appointed someone to serve as Custodian of Harmony Foundation pursuant to N.J.S.A. 15A:12-12 and 14-2, granting him "authority to exercise all the powers of the corporation and its officers to manage the affairs of Harmony [Foundation] in the best interest of the corporation . . . ."[1] On the Custodian's motion, the court granted the Custodian, among other things, the authority "pursuant to N.J.S.A. 15A:12-12(a) to conduct a sale process of [Harmony Foundation's] Business, including the

[1] Subsequent documents refer to the Custodian as the court-appointed custodian for both Harmony Foundation and Harmony Holdings.

Sale Interests and Assets," which included Harmony Foundation's "membership interests" in Harmony Holdings.

On July 24, 2023, the Custodian filed a notice designating Illicit Cannabis New Jersey LLC (Illicit) as the successful bidder. On October 12, 2023, Illicit as "Purchaser," Harmony Foundation as "Seller," and Harmony Holdings as "Company" entered into a Membership Interest Purchase Agreement (MIPA). In the MIPA, Harmony Foundation represented it owned "all of the issued and outstanding limited liability company interests and other ownership, equity or profit interests" of Harmony Holdings. Pursuant to the MIPA, subject to the approval of the court and the Cannabis Regulatory Commission (CRC), Harmony Foundation was selling all of the interests in Harmony Holdings to Illicit. In section 10.17 of the MIPA, Harmony Foundation released Illicit from claims "arising out of, relating to, or resulting from [Harmony Foundation] and [Harmony Holdings] and/or their respective businesses or operations." That section of the MIPA also provided: "Nothing herein shall be deemed to release any claim that . . . Brodchandel and . . . Meer may have against Secaucus."

A Forbearance and Subordination Agreement dated October 10, 2023 (the Forbearance Agreement), between Secaucus, Secaucus ATC Realty, LLC (ATC

Realty),[2] and the Custodian acting on behalf of Harmony Foundation and Harmony Holdings contained the following provision:

> Effective upon the Closing on [Illicit's purchase of Harmony Foundation's membership interest in Harmony Holdings pursuant to the MIPA], Secaucus . . . releases and discharges Harmony [Foundation], Harmony Holdings, and the Custodian from any and all claims and causes of action, whether known or unknown, of any nature or type that Secaucus . . . has or may have against Harmony [Foundation], Harmony Holdings, and the Custodian, except for the Deficiency Claim[3] and Secaucus Investors' rights and claims arising under this Agreement.

The parties to the Forbearance Agreement acknowledged that "certain parties" to this appeal "have argued that, if the [j]udgment [confirming the arbitrator's award] is affirmed on [a]ppeal, [Harmony Foundation's] obligations to Secaucus Investors under the [Security Agreement and Promissory Note] convert to and will be included in Secaucus Investors' 55% equity in Harmony Holdings" and indicating they were "preserving the rights" of Brodchandel and Meer "to assert" that argument.

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[2] ATC Realty was a party in one of the related, consolidated matters. According to the Forbearance Agreement, ATC Realty and Harmony Foundation executed a sublease agreement in 2013 in which Harmony Foundation agreed to assume ATC Realty's obligation under a certain lease agreement.

[3] The "Deficiency Claim" relates to a claim not at issue in this appeal.

The Custodian moved for entry of an order, in which the court, among other things, approved the transfer of Harmony Foundation's assets to Harmony Holdings, the transfer and sale of membership interests in Harmony Holdings to Illicit, and the Forbearance Agreement. After conducting a hearing regarding the proposed sale, the court entered an order on October 27, 2023, granting the Custodian's motion and approving the Forbearance Agreement and the sale and transfer of Harmony Foundation's membership interests in Harmony Holdings to Illicit, subject to CRC approval. In a February 26, 2024 email to counsel for the Harmony defendants and counsel for the Meer defendants, counsel for the Custodian confirmed the CRC had approved the sale to Illicit on February 15, 2023, and the Custodian had closed on the sale with Illicit on February 22, 2024 – facts no party disputes.

On March 18, 2024, plaintiffs moved to dismiss this appeal, contending it was moot because (1) Harmony Foundation and plaintiffs had "settled and dismissed all their respective claims in the [a]ppeal" and (2) Secaucus "will never be entitled to any equity in Harmony Holdings because the Receiver sold 100% of [Harmony Foundation's] interest in Harmony Holdings to Illicit after

the court entered the Sale Order and the CRC approved the transaction." Brodchandel, Karavas, and the Meer defendants[4] opposed the motion.

II.

We address first plaintiffs' motion to dismiss. "[C]ourts of this state do not resolve issues that have become moot due to the passage of time or intervening events." State v. Davilla, 443 N.J. Super. 577, 584 (App. Div. 2016) (quoting City of Camden v. Whitman, 325 N.J. Super. 236, 243 (App. Div. 1999)); see also De Vesa v. Dorsey, 134 N.J. 420, 428 (1993) (Pollock, J., concurring) ("our courts normally will not entertain cases when a controversy no longer exists"). "An issue is moot when the 'decision sought in a matter, when rendered, can have no practical effect on the existing controversy.'" Int'l Bhd. of Elec. Workers Loc. 400 v. Borough of Tinton Falls, 468 N.J. Super. 214, 224 (App. Div. 2021) (quoting Redd v. Bownman, 223 N.J. 87, 104 (2015)).

The focus of this appeal – the award of a 55% equity interest in Harmony Holdings to Secaucus – clearly has been rendered moot by the subsequent court- and CRC-approved sale of and transfer of Harmony Foundation's membership interests in Harmony Holdings to Illicit. The arbitrator held Secaucus was

[4] Given that the Meer defendants never filed a notice or cross-notice of appeal, we are dubious of their asserted right to oppose the dismissal of the appeal.

entitled to a 55% equity interest in Harmony Holdings, and the court confirmed the arbitrator's award and awarded Secaucus a 55% interest in Harmony Holdings, "[s]ubject to regulatory approval." It is clear from the record that the transfer of 55% of Harmony Foundation's equity interest to Secaucus never happened – and no party contends that it did. And now the transfer of equity interest from Harmony Foundation to Secaucus can never happen. In the MIPA, Harmony Foundation represented it owned "all of the issued and outstanding limited liability company interests and other ownership, equity or profit interests" of Harmony Holdings. Pursuant to the MIPA and with the approval of the court and the CRC, Harmony Foundation sold and transferred all interests in Harmony Holdings to Illicit. It no longer has any equity interest to transfer to Secaucus.

Because of the sale and transfer to Illicit, Secaucus will never receive the 55% interest in Harmony Holdings awarded by the arbitrator that is the central point of this appeal. And in the release contained in the Forbearance Agreement, Secaucus gave up any right it may have had to challenge that sale and transfer. Thus, the issue of the arbitrator's award to Secaucus of a 55% equity interest in Harmony Holdings has been rendered moot. A decision on the appeal of that issue wouldn't change anything; Illicit would still own 100% of the equity

interest in Harmony Holdings. Accordingly, we grant the motion to dismiss that portion of the appeal challenging the court's order confirming the arbitrator's determination of the equity interests in Harmony Holdings.

Those opposing the motion to dismiss urge us to deny it because they believe denying the motion will result in a double recovery for Secaucus. However, there can be no double recovery with Illicit receiving all of the interest in Harmony Holdings as a result of the sale. They also urge us to deny the motion based on other unspecified, possible future events. But courts "do not render advisory decisions, for '[o]rdinarily, our interest in preserving judicial resources dictates that we not attempt to resolve legal issues in the abstract.'" Davilla, 443 N.J. Super. at 584-85 (quoting Zirger v. Gen. Accident Ins. Co., 144 N.J. 327, 330 (1996)). Nor do courts decide a case that has been rendered moot "by reason of developments subsequent to the filing of suit" based on "the perceived need to test the validity of the underlying claim of right in anticipation of future situations." Id. at 584 (quoting JUA Funding Corp. v. CNA Ins./Cont'l Cas. Co., 322 N.J. Super. 282, 288 (App. Div. 1999)).

Having decided in part the motion to dismiss, we now address whether anything else remains to be decided in this appeal. That question brings us back to the statement of case Harmony Foundation and Brodchandel submitted with

their notice of arbitration. In addition to challenging Secaucus's claim of ownership rights in Harmony Holdings, Harmony Holdings and Brodchandel made certain claims regarding the Promissory Note and Brodchandel's purported entitlement to indemnification and attorney's fees under Secaucus's operating agreement. While the Harmony defendants argued on appeal the arbitrator had exceeded his authority when he decided the parties' equity interests in Harmony Holdings, they did not challenge his authority to decide issues regarding the Promissory Note or operating agreement – nor could they given Harmony Foundation's and Brodchandel's reliance on the arbitration clauses of the Promissory Note and operating agreement to support the submission of their claims to binding arbitration.

In addition, the Harmony defendants on appeal did not make any arguments challenging the arbitrator's findings that they had failed to establish a breach-of-contract or breach-of-the-implied-covenant claim or other affirmative relief based on the Promissory Note and had failed to establish Brodchandel's entitlement to indemnification and attorney's fees under the operating agreement. The Harmony defendants referenced the Promissory Note to support their argument the arbitrator exceeded the scope of his authority in awarding Secaucus equity interest in Harmony Holdings but made no arguments

regarding the arbitrator's denial of their affirmative claims based on the Promissory Note. They also didn't mention Brodchandel's entitlement to indemnification or fees based on the operating agreement. To the contrary, they contended Brodchandel had "not been a party to, or bound by, the Secaucus [o]perating [a]greement for many years." By not addressing them on appeal, the Harmony defendants abandoned those claims. See Thomas Makuch, LLC v. Twp. of Jackson, 476 N.J. Super. 169, 183 (App. Div. 2023) ("Because plaintiff failed to address [certain] claims, we deem[ed] them to be abandoned and affirm[ed] the summary judgment order dismissing those claims."); N.J. Dep't of Env't Prot. v. Alloway Twp., 438 N.J. Super. 501, 505 n.2 (App. Div. 2015) (finding "[a]n issue that is not briefed is deemed waived upon appeal").

Finally, even if those claims had not been abandoned, in our de novo review, we see no error in the court's confirmation of the arbitrator's award as to those remaining claims. See Yarborough v. State Operated Sch. Dist. of Newark, 455 N.J. Super. 136, 139 (App. Div. 2018) (finding we review a decision to affirm or vacate an arbitration award de novo). "[I]n reviewing a motion [about] an arbitration decision, . . . we must be mindful of New Jersey's 'strong preference for judicial confirmation of arbitration awards.'" Sanjuan v.

Sch. Dist. of W. N.Y., 256 N.J. 369, 381 (2024) (quoting Middletown Twp. PBA Loc. 124 v. Township of Middletown, 193 N.J. 1, 10 (2007)).

"An arbitrator's award is not to be cast aside lightly. It is subject to being vacated only when it has been shown that a statutory basis justifies that action." Yarborough, 455 N.J. Super. at 139 (quoting Bound Brook Bd. of Educ. v. Ciripompa, 228 N.J. 4, 11 (2017)). An arbitration award may be vacated pursuant to N.J.S.A. 2A:23B-23 and 2A:24-8 if it was procured by corruption, fraud, or other undue means; the arbitrator was partial or corrupt; the hearing was conducted in a prejudicial manner; the arbitrator exceeded his or her powers; there was no agreement to arbitrate; or the arbitration was conducted without proper notice. See Sanjuan, 256 N.J. at 381. None of those statutory provisions applies to the remaining claims. To the extent the Harmony defendants argued the arbitrator exceeded his authority, the parties had not agreed to arbitrate, or the award was procured by undue means, they made those arguments about the now-mooted equity-interests aspect of the award, not about the remaining aspects of the award. Perceiving no basis to vacate the remaining aspects of the arbitrator's award, we affirm the trial court's order confirming them.

Dismissed as moot as to the aspect of the trial court's order confirming the arbitrator's determination of the equity interests in Harmony Holdings; affirmed as to the remaining aspects of the order.