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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0310-11T3

IBRAHIM FAYED,

Plaintiff-Appellant,

v.

SANDRA MELENDEZ,

Defendant,

and

MONTASSER HANNO,

Defendant-Respondent.

Argued May 31, 2012 – Decided August 7, 2013

Before Judges Fuentes, Harris, and Koblitz.

On appeal from Superior Court of New Jersey, Chancery Division, Hudson County, Docket No. C-0026-05.

Vincent S. Verdiramo argued the cause for appellant (Verdiramo & Verdiramo, P.A., attorneys; Brian P. Matousek, on the brief).

Donald B. Fraser, Jr., argued the cause for respondent (Perrotta, Fraser & Forrester, L.L.C., attorneys; Mr. Fraser, of counsel and on the brief).

PER CURIAM

This appeal involves a partnership dispute regarding the value of the partners' respective contributions to the partnership. The trial court's factual findings were supported by the record and therefore binding on this court. In the absence of legal error, we affirm.

I

Plaintiff Ibrahim Fayed and defendant Montasser Hanno entered into a partnership to acquire properties in Jersey City and Passaic. Each party contributed equally to the venture and owned 50 percent of the partnership's properties. The dispute at issue concerns a Jersey City property purchased by the partnership on June 30, 2003, for $281,101[1] and sold on August 3, 2005, for $750,000. The partnership's net profit from the sale was $390,571.58. The partners distributed to themselves $100,000, resulting in each partner receiving $50,000.

The remainder of the net proceeds, $290,571.58, was kept in trust. Unable to reach an amicable resolution as to how to distribute these funds, the matter ended up before the Chancery Division. Both parties presented testimony regarding their

[1] Defendant Sandra Melendez is Montasser Hanno's wife. It is undisputed that she was listed as the owner of the Jersey City property at the time of acquisition. Despite plaintiff's allegations against Melendez, as reflected in his complaint, her role in this controversy was merely to hold title to the property.

respective improvements and financial contributions to the acquisition of the property.

The matter was tried over a period of six non-sequential days, commencing on January 7, 2008, and ending on June 3, 2008. Four witnesses testified, Fayed, Hanno, Sylvia Vique, who identified herself as "a bookkeeper and kind of secretary" to Fayed, and Youssef Eldik, a carpenter and contractor.

After considering the testimony of these witnesses and the arguments of counsel, Judge Thomas P. Olivieri held in favor of defendant and awarded him the amount of $15,500 to compensate him, "under a concept of sweat equity," for the 31 weeks that he worked on the property, reasoning that:

> [D]efendant would have this court pay an amount or award an amount of $700 per week times the 31 weeks. I find that that is a bit high. I heard testimony in this matter that the others who worked on the property received approximately $500 per week, and I understand that Mr. Hanno's job there was supervisory, and perhaps there's an argument that he should be paid more, but I really didn't hear any expert testimony about what a supervisor would be paid, but I did hear testimony about there being paid workers there at approximately $500 per week.

Judge Olivieri also awarded defendant an additional $250,385.60,

> to compensate him for the monies paid to T & C Glass & Construction ($166,849); PowerMaster Electric/Giaimo ($17,341.60); Hercules Plumbing/AC ($39,500); RTM ($6700);

> Feld Architect ($800); Jersey City Building Dept. ($1897); dumpsters ($3250); two employees ($4525); Other Permit Costs ($6273); and Insurance ($3250), all of which expenses are allowed.

Judge Olivieri also agreed to award defendant, as a measure of damages, 12 percent simple interest accruing over a four-year period, on the funds defendant spent to defray the cost of construction. This amounted to $116,810.01. Judge Olivieri also awarded defendant $34,459.47 in mortgage payments.

With respect to plaintiff, Judge Olivieri awarded Fayed $37,241.71 for "construction outlays" and $17,374.00 in interest, noting:

> Mr. Fayed has indicated that he incurred construction costs of $37,241.74. Mr. Fayed essentially did not have any information regarding the name of the plumber or the electrician who did the work at the subject property, he just had no idea, and I can't necessarily figure that out -- excuse me, I can't necessarily blame Mr. Fayed for not knowing that, but I will allow those construction costs to Mr. Fayed of $37,241.74.
>
> In fact, Mr. Fayed said at his deposition that he spent -- he said less than $30,000, but you know, that was a very, very round number. I think there is enough evidence before the court to allow that. He will receive the same interest of 12 percent . . . .

The court found that plaintiff was owed an additional $99,000 for paying off a loan taken by defendant and secured by

a second mortgage on the property. Thus, in total, Judge Olivieri found that plaintiff's contributions to the property equaled $153,615.74, while defendant's contributions and improvements to the property amounted to $417,155.08. Offsetting the two, the court determined the monetary value of defendant's contributions and improvements exceeded plaintiff's by $263,539.34.

Accordingly defendant was entitled to the first $263,539.34 of the net proceeds of the sale ($390,571.58), leaving $127,032.24 to be divided equally by the parties, resulting in $63,516.12 to each. Because the parties had already distributed $100,000 of the sale proceeds, Judge Olivieri found that both parties were entitled to an additional $13,481.85 ($65,516.12 minus $50,000).

II.

Plaintiff's sole argument on appeal alleges that Judge Olivieri "gravely under evaluated" Fayed's contributions to the improvements made to the Jersey City property. Plaintiff asks this court to "make its own findings of fact" and "recalculate" the monies owed to plaintiff or, in the alternative, "remand for clarification." We reject plaintiff's request and affirm.

Absent extraordinary circumstances requiring the invocation of original jurisdiction, intermediate appellate courts do not

make factual findings. Instead, we are bound to defer to a trial judge's findings of fact that are supported by the competent evidence in the record. Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 483-84 (1974). We owe special deference to trial judge's findings that are "substantially influenced by his opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy." State v. Locurto, 157 N.J. 463, 471 (1999) (quoting State v. Johnson, 42 N.J. 146, 161-62 (1964)).

Here, Judge Olivieri's factual findings are well-supported by the record. His credibility determinations concerning the witnesses' testimony at trial are beyond our competence to question because they were based on his direct observations and general "feel of the case." Ibid. Under these circumstances, plaintiff has not cited any authority to allow us to substitute our judgment and overrule Judge Olivieri's well-reasoned conclusions. We thus affirm substantially for the reasons expressed by Judge Olivieri in his oral decision delivered from the bench on November 20, 2008.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION