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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3933-12T2

JOSEPH P. VIRZI AND
SALLY VIRZI,

Plaintiffs-Appellants,

v.

AIR CARGO GLOBAL CORPORATION,
AND SOPHIE PERSITS,

Defendants-Respondents,

and

ACG SHIPPING WORLDWIDE,[1]

Defendant.

Argued May 14, 2014 – Decided June 6, 2014

Before Judges Fuentes, Simonelli and Haas.

On appeal from the Superior Court of New Jersey, Chancery Division, General Equity Part, Bergen County, Docket No. C-0072-12.

Cindy D. Salvo argued the cause for appellants (The Salvo Law Firm, P.C., attorneys; Ms. Salvo, on the briefs).

Patrice E. LeTourneau argued the cause for respondents (McCusker, Anselmi, Rosen &

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[1] A.C. Global incorrectly sued herein as ACG Shipping Worldwide.

Carvelli, P.C., attorneys; Paul F. Carvelli and Ms. LeTourneau, on the brief).

PER CURIAM

In this matter, plaintiff Joseph P. Virzi (plaintiff) and his wife, Sally Virzi, sought repayment of loans plaintiff allegedly made to defendant Air Cargo Global Corporation (Air Cargo). They appeal from the March 18, 2013 final judgment, which dismissed their amended complaint with prejudice following a bench trial. We reverse and remand for further proceedings.

We summarize the facts from the record. Air Cargo was engaged in shipping goods overseas by ocean and air freight. Defendant Sophie Persits (defendant) took over the business when her father, who owned it, became ill. In October 2009, defendant entered into an agreement to sell an eighty-five percent share in the business to plaintiff's step-nephew, Douglas Arena, for $1 million. Arena then took over the business and defendant continued working there.

Plaintiff gave Arena over $100,000 to invest in Air Cargo; however, Arena never invested plaintiff's money in the company and never paid defendant. Instead, he pilfered Air Cargo and absconded with nearly $300,000, leaving the company in dire financial condition.

Plaintiff wired $60,000 and $20,000 directly to Air Cargo's landlord. Plaintiff claimed the $80,000 was a loan to the

company that defendant promised to repay. Defendant admitted that: plaintiff was not an investor in Air Cargo; the $80,000 plaintiff paid to Air Cargo's landlord was for Air Cargo's rent; the $80,000 was a legitimate debt that Air Cargo owed to plaintiff; and Air Cargo would have repaid plaintiff if it had remained in business. Defendant also admitted that Air Cargo owed plaintiff at least $50,000, which was listed in the liability section of Air Cargo's corporate balance sheets as a "notes payable" to plaintiff. Air Cargo did not remain in business because defendant dissolved it in order to avoid creditors. Defendant formed A.C. Global, transferred Air Cargo's assets to that company, and conducted essentially the same type of business that Air Cargo conducted.

Despite defendant's admissions, the trial judge found that plaintiff made no loan to Air Cargo, and dismissed the complaint with prejudice. Having reached this conclusion, the judge did not address whether A.C. Global is liable to repay plaintiff under the rules of successor liability.

Our review of a trial court's fact-finding in a non-jury case is limited. Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011). "'The general rule is that findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence. Deference is especially

appropriate when the evidence is largely testimonial and involves questions of credibility.'" Ibid. (quoting Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). We "should not disturb the factual findings and legal conclusions of the trial judge unless [we are] convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Ibid. (internal quotation marks omitted). However, we owe no deference to a trial court's interpretation of the law, and review issues of law de novo. State v. Parker, 212 N.J. 269, 278 (2012); Mountain Hill, L.L.C. v. Twp. Comm. of Middletown, 403 N.J. Super. 146, 193 (App. Div. 2008), certif. denied, 199 N.J. 129 (2009). We also review mixed questions of law and fact de novo. In re Malone, 381 N.J. Super. 344, 349 (App. Div. 2005).

We conclude there is no competent evidence supporting the judge's finding that there was no loan. Rather, defendant's admissions, which the judge ignored, confirmed that plaintiff was not an investor; there was a $50,000 "notes payable" to plaintiff; the $80,000 plaintiff paid to Air Cargo's landlord was for Air Cargo's rent; and the $80,000 was a legitimate debt that Air Cargo owed to plaintiff and would have repaid had it remained in business. Because Air Cargo clearly benefitted from

the $80,000, the judge should have applied the doctrine of unjust enrichment.

We have held that

> [t]he doctrine of unjust enrichment rests on the equitable principle that a person shall not be allowed to enrich himself unjustly at the expense of another. A cause of action for unjust enrichment requires proof that defendant[s] received a benefit and that retention of that benefit without payment would be unjust. Unjust enrichment is not an independent theory of liability, but is the basis for a claim of quasi-contractual liability. We have recognized, however, that a claim for unjust enrichment may arise outside the usual quasi-contractual setting.
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> [Goldsmith v. Camden Cnty. Surrogate's Office, 408 N.J. Super. 376, 382 (App. Div.) (alteration in original) (citations and internal quotation marks omitted), certif. denied, 200 N.J. 502 (2009).]

We are satisfied that what occurred in this case fits squarely within the concept of unjust enrichment. Accordingly, we reverse and remand for the court to consider whether A.C. Global is liable to repay plaintiff under the rules of successor liability.

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