NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5630-10T1

JOHN MARINO, D.C.,

Plaintiff-Appellant,

v.

TWIN RIVERS PODIATRY, P.A., TWIN RIVERS PODIATRIC SURGERY CENTER, L.L.C., DR. JOHN RAFETTO, D.P.M. and DR. BRIAN STAHL, D.P.M.,

Defendants-Respondents.

Submitted March 14, 2012 - Decided May 18, 2012

Before Judges J. N. Harris and Koblitz.

On appeal from Superior Court of New Jersey, Law Division, Warren County, Docket No. L-610-08.

Law Office of Jeffrey Randolph, L.L.C., attorney for appellant (Jeffrey B. Randolph, on the brief).

Sills Cummis & Gross, P.C., attorneys for respondents (Anthony Argiropoulos, of counsel and on the brief).

PER CURIAM

Plaintiff John Marino, D.C., a chiropractic surgeon, appeals a June 28, 2011 order awarding $98,683.12 in counsel

fees[1] and a September 16, 2010 order granting summary judgment in favor of defendants, plaintiff's former partners Dr. John Rafetto, D.P.M. and Dr. Brian Stahl, D.P.M., as well as their professional association, Twin Rivers Podiatry, P.A. and Twin Rivers Podiatric Surgery Center, L.L.C. (Twin Rivers). Marino maintains that the motion judge erred in enforcing the parties' written Membership Units Buyout Agreement (Buyout Agreement). After reviewing the record in light of the contentions advanced on appeal, we affirm.

In the fall of 2005, Marino purchased a five percent membership interest in Twin Rivers for $500,000. On April 21, 2006, Marino signed an Amended and Restated Operating Agreement (Operating Agreement). This Operating Agreement provided that Marino's five percent stake in the company entitled him to 500 membership units. It also set forth the sale price of the units to members as $1000 multiplied by the number of units owned by the selling member plus or minus various credits.

Marino fared poorly in the business venture and on March 23, 2007, he entered into the Buyout Agreement. Pursuant to the Buyout Agreement, he sold 300 of his 500 membership units to

[1] Appellant raises no specific issues with regard to the counsel fees, except to imply that if we reverse the summary judgment decision the fees will necessarily be vacated as well.

Twin Rivers for $300,000; in exchange, he agreed to release defendants

> for anything which has happened until now, based upon [Marino's] involvements with, ownership in, and capacity as a member and/or Committee Member (if applicable) of the Company . . .
>
> . . . .
>
> It is the intent of [Marino] that this be a full and complete release of all such actions, causes of action, etc., including but not limited to such actions, causes of action etc. that are discovered after the date of this Agreement, existing on or prior to the date of this Agreement . . .
>
> [Buyout Agreement ¶ 6(a), (c).]

Marino also expressly acknowledged that defendants were not required to buy his remaining 200 membership units. The Buyout Agreement reflected that it was "the entire understanding and agreement between the parties" and that it "supersedes all prior negotiations, representations, understanding and agreements between the parties, whether oral or written, regarding the subject matter hereof." Buyout Agreement ¶ 7.

In considering plaintiff's appeal, we repeat and abide by certain fundamental principles applicable to summary judgment motions. The court must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a

rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995); see also R. 4:46-2(c). The court cannot resolve contested factual issues, but instead must determine whether any genuine factual disputes exist. Agurto v. Guhr, 381 N.J. Super. 519, 525 (App. Div. 2005). If there are materially disputed facts, the motion for summary judgment should be denied. Parks v. Rogers, 176 N.J. 491, 502 (2003); Brill, supra, 142 N.J. at 540. To grant the motion, the court must find that "the evidence 'is so one-sided that one party must prevail as a matter of law . . . .'" Brill, supra, 142 N.J. at 540 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252, 106 S. Ct. 2505, 2512, 91 L. Ed. 2d 202, 214 (1986)).

Our review of an order granting summary judgment must observe the same standards, which includes our obligation to view the record "in the light most favorable to the non-moving party." Estate of Hanges v. Met. Prop. & Cas. Ins. Co., 202 N.J. 369, 374 (2010). We accord no special deference to a trial judge's assessment of the documentary record, as the decision to grant or withhold summary judgment does not hinge upon a judge's determinations of the credibility of testimony rendered in court, but instead amounts to a ruling on a question of law. See Manalapan Realty, L.P. v. Manalapan Twp. Comm., 140 N.J.

366, 378 (1995) (noting that no "special deference" applies to a trial court's legal determinations).

Marino argues that he was fraudulently induced to buy into Twin Rivers and that after he purchased membership units, the defendants "acted against his minority interest[s] in the company by freezing him out of the corporate management as well as oppressing his interests as a shareholder." He asserts a right to relief under the Oppressed Minority Shareholder Act. N.J.S.A. 14A:12-7(1)(c).

Marino also alleges a verbal agreement in 2006 to purchase his entire interest in Twin Rivers for $500,000 with an initial purchase of 300 units for $300,000. He claims that defendants' "act of sneaking in broad release" language in the Buyout Agreement is another example of defendants' fraud and oppression.

As the motion judge noted in her oral opinion, the Buyout Agreement is clear and unambiguous on its face, supersedes all other prior agreements and resolves all allegations of prior wrongful conduct. Absent ambiguity, fraud or other compelling circumstances, the Buyout Agreement, when entered into freely, should be enforced as it is written. See Raroha v. Earle Fin. Corp., 47 N.J. 229, 234 (1966); DeCaro v. DeCaro, 13 N.J. 36, 42 (1953); see also Pascarella v. Bruck, 190 N.J. Super. 118, 124-

25 (App. Div), certif. denied, 94 N.J. 600 (1983). Marino does not claim that he was forced to sign the Buyout Agreement. We therefore agree with the motion judge that no issue of material fact has been demonstrated. Plaintiff is bound by the Buyout Agreement he signed.

Affirmed.