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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO. A-6220-12T2

TONI CASTRO d/b/a NSA

MOLDING, L.L.C.,

Plaintiff-Respondent,

v.

ANGELO GIACCHI and

JOHN & SONS ANG L.L.C.,

Defendants-Appellants,

and

3234 KELLIS POND WEST, L.L.C.,

and COSTAS GEORGE KAMPER,

d/b/a AUGUST CONSTRUCTION CORP.,

Defendants.

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December 5, 2014

Submitted October 8, 2014 –  
Decided

Before Judges Fuentes and  
O'Connor.

On appeal from Superior Court of  
New Jersey, Law Division, Essex  
County, Docket No. L-10408-11.

Gilberto M. Garcia, attorney for  
appellants.

Philip Allan Borow, attorney for  
respondent.

PER CURIAM

In his amended complaint plaintiff Toni Castro d/b/a NSA Molding, L.L.C. alleged he entered into an oral contract with defendants Angelo Giacchi<sup>1</sup> and John & Sons Ang L.L.C. (ANG), to do carpentry work but defendants failed to honor his final bill.<sup>2</sup> During the trial, however, plaintiff claimed the contract was between only him and Giacchi. The trial court found plaintiff had contracted with both Giacchi and ANG and entered a judgment for \$30,324 against both defendants. Giacchi appeals, claiming he cannot be held liable to plaintiff for his bill. We agree and reverse.

The relevant evidence at trial was as follows. Plaintiff testified that, in 2007, he contacted Giacchi when he learned he needed carpentry work done in a new home he was constructing in Southampton, New York. After visiting the home and discussing the details of the job with Giacchi, plaintiff claims the two agreed he would do the work for \$57,607, and finalized the deal with a handshake. Plaintiff testified Giacchi never indicated he was acting on behalf of any one entity and thus concluded he had contracted with Giacchi only.

During the eight-week project plaintiff received two partial payments toward his bill that, although signed by Giacchi, were drawn from ANG's account. While plaintiff explained it was immaterial to him how his bill was honored as long as he was paid, when he completed all of his work on the project he sent his final bill to ANG, not Giacchi, evidencing his belief ANG was a party contractually responsible for his bill. The final bill was never paid.

Giacchi testified neither he nor ANG, a limited liability company in which he and his uncle were members, contracted with the plaintiff. Giacchi maintained plaintiff contracted with defendant 3234 Kellis Pond West L.L.C. (Kellis), the owner of the property and a limited liability company in which Giacchi was also a member. Giacchi admitted ANG paid for some of plaintiff's services but emphasized these payments were merely loans to Kellis. Finally, Giacchi testified plaintiff agreed to accept \$25,000 for his services.

The court found Giacchi failed to produce any credible evidence plaintiff had entered into a contract with any corporate entity, and thus rejected Giacchi's claim plaintiff had contracted with Kellis. But the trial court found that when plaintiff received the partial payments from ANG, he was aware ANG was also responsible for this debt; the trial court ultimately concluded the parties to the contract were plaintiff, Giacchi and ANG. Finding defendants owed

plaintiff a balance of \$30,324 for his services, the court entered a judgment for this amount against Giacchi and ANG.

## II

Neither party appeals the finding that plaintiff entered into a contract with ANG. Giacchi argues, however, that the judgment entered against him cannot stand as a matter of law because plaintiff failed to establish any basis for holding him personally liable for this corporate debt.

Appellate review of judgments entered in non-jury cases is limited. The appellate court does not "weigh the evidence, assess the credibility of witnesses, or make conclusions about the evidence." Mountain Hill, L.L.C. v. Twp. of Middletown, 399 N.J. Super. 486, 498 (2008) certif. denied, 199 N.J. 129 (2009) (quoting State v. Barone, 147 N.J. 599, 615 (1997)). Thus, a trial court's findings of fact on which a judgment is based cannot be disturbed when "supported by adequate, substantial and credible evidence." Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 484 (1974). However, to the extent the trial court's decision is a legal determination, it is reviewed de novo. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) ("A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.").

Giacchi contends the trial court inappropriately pierced the corporate veil, see Richard A. Pulaski Constr. Co. v. Air Frame Hangars, Inc., 195 N.J. 457, 472 (2008), and determined Giacchi was liable for ANG's debts under this doctrine. There is no evidence in the record before us that the court applied this doctrine to find Giacchi liable for this debt.

Alternatively, Giacchi argues that, as a member of a limited liability company, he cannot be held liable for ANG's debts under N.J.S.A. 42:2B-23.<sup>3</sup> This argument is persuasive. N.J.S.A. 42:2B-23 states:

Except as otherwise provided by this act, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the limited liability company; and no member, manager, employee or agent of a limited liability company shall be obligated personally for any such debt, obligation or liability of the limited liability company, or for any debt, obligation or liability of any other member, manager, employee or agent of the limited liability company, by reason of being a member, or acting as a manager, employee or agent of the limited liability company.

Whether acting as a member or agent of ANG, Giacchi cannot be held personally liable for any of ANG's debts or liabilities under any circumstances. At the time plaintiff entered into this transaction, he did not know or have a reasonable basis to believe Giacchi was acting as an agent for ANG. Ordinarily, an agent who fails to disclose he is entering into a contract on behalf of a principal is individually liable on the contract, unless the other party knows or had reason to know the agent was acting on behalf of a principal. See African Bio-Botanica, Inc. v. Leiner, 264 N.J. Super. 359, 363-64 (App. Div.) certif. denied 134 N.J. 480 (1993), (citing Looman Realty Corp. v. Broad Street Nat'l Bank of Trenton, 32 N.J. 461 (1960)). But N.J.S.A. 42:2B-23 shielded a member or agent of a limited liability company from all of its debts. The statute did not limit the circumstances under which a member or agent was immune from liability, including those where a member or agent of a limited liability company entered into a contract without disclosing the identity of its principal. Being clear and unambiguous, our sole function is to enforce the statute according to its terms. Sheeran v. Nationwide Mut. Ins. Co., 80 N.J. 548, 556 (1979) (quoting Caminetti v. United States, 242 U.S. 470, 485, 37 S. Ct. 192, 194, 61 L. Ed. 442, 452 (1917)). Accordingly, because Giacchi cannot be held personally liable on the contract under

[N.J.S.A. 42:2B-23](#), we reverse the decision of the trial court and vacate the judgment against him.

Reversed.

<sup>1</sup> Although in the pleadings this defendant is referred to as Angelo Giacchi, during the trial he was referred to as Angelo Durasi. We refer to him as Angelo Giacchi, the name used in the pleadings, including the judgment.

<sup>2</sup>

Plaintiff also alleged in his amended complaint that he entered into an oral contract with defendant 3234 Kellis Pond West L.L.C. to do carpentry work. The trial court dismissed plaintiff's claims against this defendant at the close of plaintiff's case pursuant to [Rule 4:37-2\(a\)](#).

<sup>3</sup> The parties entered into the contract at issue here in 2007. The Legislature repealed [N.J.S.A. 42:2B-23](#) on March 1, 2014, and adopted [N.J.S.A. 42:2C-30](#), effective March 18, 2013. The language in [N.J.S.A. 42:2C-30](#) closely tracks the language in [N.J.S.A. 42:2B-23](#).