(NOTE: The status of this decision is **Unpublished**.)

NOT FOR PUBLICATION WITHOUT THE

APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO. A-0

BELL TOWER CONDOMINIUM ASSOCIATION,

Plaintiff-Respondent,

v.

PAT HAFFERT and TERRY DOWNEY,

Defendants-Appellants.

January 20, 2015

Argued December 9, 2014 –
Decided

Before Judges Fisher, Accurso and
Manahan.

On appeal from the Superior Court of New Jersey, Law Division, Cape May County, Docket No. L-493-10.

Kevin J. Kotch argued the cause for appellants (Obermayer Rebmann Maxwell & Hippel LLP, attorneys; Mr. Kotch, on the brief).

Sandford F. Schmidt argued the cause for respondent (Leodori & Voorhees, P.C., attorneys; Mr. Schmidt, on the brief).

PER CURIAM

Since 1982, defendants Pat Haffert and Terry Downey have owned the largest of five units in plaintiff Bell Tower Condominium Association located in Sea Isle City. The size of their unit entitles them to ownership of twenty-eight percent of the undivided common elements; the remaining four units are equal in size and collectively possess the remaining seventy-two percent of the undivided common elements. In this appeal of an order confirming an arbitration award resolving the parties' disputes, defendants argue, among other things, that the award was the product of "undue means," N.J.S.A. 2A:23B-23(a)(1), in that, in their view, the arbitrator erroneously defined the parties' voting rights. We disagree and affirm.

The parties' relationship deteriorated during discussions starting in 2008 and continuing into 2010 about repairs and upkeep. In an attempt to quell these and further disputes, the unit owners agreed to retain counsel to explain their mutual rights and obligations. The hostilities continued, however, and led to the scheduling of a meeting for May 30, 2010. Defendants took

the position that the other unit owners did not follow the by-laws in noticing and scheduling the meeting and, consequently, did not attend.

The other unit owners met in defendants' absence and elected a board, which adopted an $80,000 assessment. When defendants later refused to pay their share, the association filed suit. The association moved for summary judgment, and defendants moved for arbitration. The trial judge granted summary judgment, and defendants appealed. We reversed, concluding that the disputes should have been arbitrated. Bell Tower Condo. Ass'n v. Haffert, 423 N.J. Super. 507 (App. Div.), certif. denied, 210 N.J. 217 (2012). During the pendency of the appeal, the association adopted additional measures, including a second assessment of $40,000. All these issues were considered by the parties' agreed-upon arbitrator, a retired superior court judge.

By way of a written decision, the arbitrator found the by-laws created a one unit-one vote standard and determined that defendants' claim to a weightier vote – based on their ownership of a greater portion of the undivided common elements – was erroneous. As a result, the arbitrator found there was a quorum for the May 30, 2010 meeting – the by-laws required eighty percent of the membership for a quorum – notwithstanding defendants' failure to attend.

The arbitrator upheld the $80,000 assessment but concluded the later $40,000 assessment was invalid. Among other things, the arbitrator also directed defendants to pay $18,585 of the association's counsel fees but denied the remainder of the association's fee request.

The association moved in the trial court for confirmation and defendants cross-moved for vacation of the award. The trial judge granted the former, denied the latter, and awarded the association $49,035.11, which constituted: defendants' share of the $80,000 assessment; the attorneys' fees awarded by the arbitrator; and interest on both. The trial judge also determined that the association was entitled to attorneys' fees in seeking confirmation of the award. After extensive litigation on the fee controversy, the judge awarded $20,450 in fees to the association.

He also upwardly adjusted the amount of interest due in light of the additional passage of time, and entered judgment on March 7, 2014, in favor of the association and against defendants, in the total amount of $80,604.31.

Defendants appeal, arguing:

I. THE COURT SHOULD HAVE VACATED THE ARBITRATION AWARD AS IT WAS IN MANIFEST DISREGARD OF THE CONDOMINIUM ACT[1] WHICH WAS THE VERY SOURCE OF THE ARBITRATION, REWROTE THE PARTIES' OBLIGATIONS AND IT VIOLATED PUBLIC POLICY.

A. The Award Was Obtained Through "Undue Means" And Exceeded The Arbitrator's Powers As The By Laws And Condominium Act Require That The Votes Are Weighted By The Percentage Ownership Of The Undiv-ided Common Elements.

B. This Court Should Vacate The Arbitration Award As It Violates Public Policy.

II. THE COURT'S AWARD OF ATTORNEY'S FEES WAS IN ERROR BECAUSE, AMONG OTHER REASONS, IT INCLUDED THOUSANDS OF DOLLARS OF FEES UNRE-LATED TO THE

MOTION TO CONFIRM THE ARBITRA-TION AWARD.

A. The Lower Court Failed To Make The Necessary Findings.

B. The Award Should Not Have Included Fees Incurred In Conduct-ing The Associations' Other Busi-ness.

III. THE COURT ERRED IN REDUCING A SPECIAL ASSESSMENT TO JUDGMENT WHERE THE SPECIAL ASSESSMENT HAD NEVER BEEN PASSED BY THE CONDOMINIUM ASSOCIATION.

IV. THE COURT ERRED IN RETROACTIVELY APPLYING A HIGH INTEREST RATE TO THE ASSESSMENT.

In considering these issues, we start by recognizing the limitations imposed on courts in reviewing arbitration awards.

The New Jersey Arbitration Act (the Act), N.J.S.A. 2A:23B-1 to -32, grants arbitrators broad powers, N.J.S.A. 2A:23B-15, and "extends judicial support to the arbitration process subject only to limited review," Barcon Assocs., Inc. v. Tri-County Asphalt Corp., 86 N.J. 179, 187 (1981). Generally, arbitration awards are presumed valid. Del Piano v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 372 N.J. Super. 503, 510 (App. Div. 2004). In other words, "the scope of review of an arbitration award is narrow[,]" otherwise "the purpose of the arbitration contract, which is to

provide an effective, expedient, and fair resolution of disputes, would be severely undermined." Fawzy v. Fawzy, 199 N.J. 456, 470 (2009). Consequently, arbitration awards may be vacated only in a handful of instances.

Defendants principally rely on both the power of a court to set aside an arbitration award when "procured by . . . undue means," N.J.S.A. 2A:23B-23(a)(1), and the court's implicit power to set aside an award that violates "a clear mandate of public policy," Weiss v. Carpenter, Bennett & Morrissey, 143 N.J. 429, 443 (1996). In essence, defendants interpret these standards as permitting courts to set aside an award based on a "clearly mistaken view of fact or law."

The Act, however, does not expressly imbue our courts with the authority to correct an arbitrator's legal error. In Tretina Printing, Inc. v. Fitzpatrick & Assocs., Inc., 135 N.J. 349, 358 (1994), the Court discarded a standard, which permitted judicial intervention when the arbitrator makes a "clearly mistaken" decision of law that "appear[s] on the face of the award," that had been approved by a majority in Perini Corp. v. Greate Bay Hotel & Casino, Inc., 129 N.J. 479, 494 (1992), in favor of Chief Justice Wilentz's Perini concurrence, which emphasized that arbitration awards may be vacated only for fraud, corruption, or similar wrongdoing and can be corrected or modified only for "very specifically defined mistakes" of the type referred to in N.J.S.A. 2A:23B-24 (such as "evident mathematical miscalculation[s]"). See Perini, supra, 129 N.J. at 547-49 (concurring opinion). Defendants do not argue the claimed errors fall within the limited power to correct or modify set forth in N.J.S.A. 2A:23B-24, leaving only the question whether the arbitrator's defining of the parties' voting power was an error somehow fitting into N.J.S.A. 2A:23B-23(a)(1), which permits a court to vacate an award "procured by fraud, corruption or undue means,"[2] or which otherwise represents a ruling contrary to public policy.

The parties appear to share a misconception that we have, since Tretina, recognized that a court may, pursuant to N.J.S.A. 2A:23B-23(a)(1), vacate an award when the arbitrator has committed a legal error not "reasonably debatable." In support of this contention, defendants

refer to Cap City Products Co. v. Louriero, 332 N.J. Super. 499, 505 (App. Div. 2000). Their argument, however, constitutes a misreading of Cap City where we only referred to the "reasonably debatable" standard as an alternative basis for reversing an order that vacated an arbitration award. That is, we held that the argument in favor of vacating the award in Cap City asserted only "a possible mistake of law and under the clear standard adopted in Tretina, such a mistake provides no basis for" vacating the award, id. at 504, and only alternatively explained how the arbitrator's legal determination was reasonably debatable, concluding that "the closeness of the question represents a graphic illustration of the wisdom of the Tretina conclusion," id. at 505.

In addition, we stress that the theory in favor of a "reasonably debatable" standard is based on the "undue means" aspect of N.J.S.A. 2A:23B-23(a)(1), the meaning of which should be calibrated in light of that phrase's neighboring words, "fraud" and "corruption." See Shelton v. Restaurant.com, Inc., 214 N.J. 419, 440 (2013); Germann v. Matriss, 55 N.J. 193, 220 (1970). If "undue means" is to be given a connotation similar to its neighbors,[3] as we think it should, the concept urged by defendants – that courts may intervene when an arbitrator has made a good-faith legal error – must be rejected. This argument is simply inconsistent with Chief Justice Wilentz's concurring opinion in Perini, supra, 129 N.J. at 547-49, which the Court adopted in Tretina, supra, 135 N.J. at 358. For this reason alone, we reject defendants' attack on the arbitration award since there is no assertion, let alone evidence, that the arbitrator deliberately or consciously disregarded the proper legal standard.

Nevertheless, because the association seems to assume in responding to this appeal that a "reasonably debatable" standard applies, we will proceed to consider the sufficiency of defendants' claim that the arbitrator made an undebatable legal error. For much the same reason, we find no merit in defendants' alternative but similar argument – that the award violates a clear mandate of public policy – which has been recognized in the Court's post-Tretina

decisions, although the Court has recognized that this exception will have application only in rare circumstances. N.J. Tpk. Auth. v. Local 196, 190 N.J. 283, 294 (2007); Tretina Printing, Inc., supra, 135 N.J. at 364. After careful analysis of the record, we find no legal error or violation of public policy in the award rendered by the arbitrator by way of his comprehensive and erudite fifty-four-page opinion, which he later amplified with a seven-page opinion.

As the arbitrator recognized, although for many years the unit owners were able to agree on routine maintenance issues, when the subject turned in 2008 to the alleged need for significant capital expenditures, greater conflict arose. In 2009, "the unit owners agreed that the decks needed to be replaced, the back stairway/fire escape needed work and the sheds were in need of repairs." They also agreed that plans and specifications were needed to properly consider invited bids, but then "the ground . . . shifted."

The arbitrator found that there "appear[ed]" to be a consensus at a January 3, 2010 meeting that a special assessment was needed and the amount of $80,000 was discussed:

> That sum was expected to be more than enough to cover the probable expenditures for the decks since the most reliable bid was less than $45,000.00. Although the excess money was intended for the other work, it is not clear from either the minutes or the testimony how [] that cushion was arrived at. What we do know is that after that, the disagreements between [defendants] and the rest of the unit owners began to heat up over how to proceed with the project. That polarization that those disagreements generated was reflected in a fraction-alization of views not only with respect to the manner in which the work should be managed but also what the by-laws required in order to properly authorize it.

Defendants argued then, as they argue now, that because they possess a twenty-eight percent interest in the undivided common elements, and because the by-laws require eighty percent of the total unit votes in order to achieve a quorum, any attempt by the remaining unit owners to vote would not be adequate to achieve a quorum. In short, defendants argue that no quorum may be formed in their absence – a power not solely possessed by any other unit owner.

The arbitrator rejected defendants' claim to a weighted vote based on his interpretation of sections one and two of Article II of the association's by-laws. The first states, in relevant part, that "[e]ach unit shall be allotted one [] vote at any general membership meeting," and that "[e]xcept as otherwise provided, decisions and resolutions of the Association shall require approval by three-fifths of the votes represented at the meeting." The second section of Article II states, with respect to quorums, that "[e]xcept as otherwise provided in these [b]y-[l]aws, the presence in person or representation of eighty [] percent of the total votes available shall constitute a quorum." The arbitrator understood these provisions to mean that the percentage needed for a quorum referred to in the second section was defined by or harmonized with the first section, which assigns one vote to each unit. This is a more than reasonable interpretation of what the by-laws plainly state. In fact, the mathematics of the provisions makes more logical sense when each unit owner is assigned a single, equal vote; that is, in the association's view, the presence of four owners is required for a quorum (eighty percent) and the vote of any three owners (three-fifths of those present) is needed to adopt any measure.

Defendants, however, argue that this interpretation is at odds with the Condominium Act and, for that reason, either constitutes a legal error or departs from public policy. That is, defendants contend the voting rights set forth in Article II of the by-laws must be interpreted in light of N.J.S.A. 46:8B-3(l), which defines the word "majority" and the phrase "majority of the unit owners" as

> the owners of more than 50% of the aggregate in interest of the undivided ownership of the common elements as specified in the master deed. If a different percentage of unit owners is required to be determined under this act or under the master deed or bylaws for any purpose, such different percentage of owners shall mean the owners of an equal percentage of the aggregate in interest of the undivided ownership of the common elements as so specified.

Considering these statements were provided by the Legislature to clarify the meaning of "majority" or "majority of the unit owners," and because neither of these expressions is contained in Article II of the association's by-laws, we would conclude – if the issue were ours to determine in the first instance – that N.J.S.A. 46:8B-3(l) has no direct application to the parties' disputes. Even if we were to agree with the contention that the by-laws are to be interpreted in light of this statute's reference to weighted votes, however, we would conclude that the arbitrator's interpretations of the parties' voting rights was plausible.

In other words, the statute suggests only that a "majority" must mean more than half the owners when considering their ownership of the undivided common elements. The second section of Article II requires that a quorum cannot be formed without the presence of eighty percent of the unit owners. This is a far greater percentage than purportedly required by N.J.S.A. 46:8B-3(l) regardless of whether the unit owners' votes are weighted. And the first section of Article II requires an affirmative vote of three-fifths of "the votes represented at the meeting." Again, regardless of whether votes are weighted depending upon their ownership of the undivided common elements, this provision meets with the mandatory minimum standard of what constitutes a majority as set forth in N.J.S.A. 46:8B-3(l).

The arbitrator reached the same conclusion; indeed, we agree with his comments that the second sentence of N.J.S.A. 46:8B-3(l) does not "requir[e] a different result" but instead only "begs the question as to whether these by-laws require anything different." Had Article II simply referred to "majority" or "majority of the unit owners" instead of "three-fifths of the votes represented at the meeting" and "eighty [] percent of the total votes available," there might be greater substance to defendants' argument. But, by specifically providing percentages that exceed fifty percent, whether or not weighted, the by-laws conform to the requirements and policies of the Condominium Act. See Wendell A. Smith et al., New Jersey Condominium & Community Association Law 79 (Gann 2015). As a result, we conclude the award was not based on a legal error and is not inconsistent with the public policies embodied in the Condominium Act.

Moreover, even if we were called upon to decide this issue in the first instance rather than examine whether the arbitrator's decision was "reasonably debatable," we would come to the same conclusion because the interpretation of Article II offered by defendants is not only unsupported by any other provision of the by-laws, but also because defendants' interpretation would allow them alone to frustrate the business of the association by simply refusing to appear at any meeting. That is, according to defendants' strained interpretation of Article II, there can be no quorum without eighty percent of the weighted votes and, therefore, there can be no quorum without them. If the true intent of the by-laws was to provide these particular owners the extraordinary power to stymie all association action by simply refusing to appear for meetings, the by-laws would have been expected to state that expressly. Because nothing in the by-laws suggests the owners of that unit possess such imperious authority over the association, we find the arbitrator's interpretation of Article II not only more plausible than defendant's version but, in fact, clearly correct. The arbitrator did not "rewr[i]te" the by-laws "in manifest

disregard of the Condominium Act." The arbitrator, instead, chose not to adopt an erroneous interpretation that would grant defendants dominion over the association.

We find insufficient merit in defendants' remaining arguments to warrant further discussion in this opinion, R. 2:11-3(e)(1)(E), with one exception. In Point II, defendants argue the trial judge failed to make adequate findings in imposing attorneys' fees for the association's efforts during the confirmation proceedings. Certainly, the judge was empowered to make an award of fees, N.J.S.A. 2A:23B-25(c), but the judge was also required to make adequate findings about the quantum of the award of sufficient content and clarity as to permit the parties' understanding of his rationale and to promote our informed review of the determination. This he failed to do.

In his written decision, the trial judge first stated that "[t]he primary aim" of any fee award "is to approve a reasonable attorney's fee that is not excessive." The judge then expressed that he had "carefully evaluated both the hours expended and the hourly rate(s) advanced by the [p]laintiff's counsel in support of this fee application." Following this brief statement, the judge provided only the following for our consideration of his analysis:

> The first step is to determine whether the amount of time billed was reasonably expended by the applying party. The [c]ourt is satisfied that it was. The hours recited in counsel's [c]ertification [are] credible. The second step of the [c]ourt's calculation is to verify whether the hourly rates charged by [p]laintiff's counsel in this litigation are reasonable. The [c]ourt is satisfied that the assigned hourly rates are[,] under all the circumstance[s,] fair, realistic and accurate.

The judge then cited the various factors contained in RPC 1.5(a) to be considered in assessing the reasonableness of the fee, see Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 21-22 (2004), but he did not expressly apply any of those factors to circumstances presented. Instead, the judge only generally concluded that "[w]hen reviewing all of the factors to be considered this [c]ourt finds that the [p]laintiffs [sic] are entitled to an award of counsel fees, over and above that granted by [the arbitrator], in the aggregate sum of $20,450.14."

These naked conclusions are far from adequate. A trial judge "must state clearly its factual findings and correlate them with the relevant legal conclusions." Curtis v. Finneran, 83 N.J. 563, 570 (1980); see also Kas Oriental Rugs, Inc. v. Ellman, 407 N.J. Super. 538, 562-63 (App. Div.), certif. denied, 200 N.J. 476 (2009). We remand for factual findings in the nature required by Rule 1:7-4(a). The trial judge is to render these findings within thirty days of today's date.

That part of the trial court order confirming the arbitration award is affirmed. We remand only for findings of fact regarding the association's application for an award of counsel fees incurred in the confirmation proceedings. We retain jurisdiction.

1 N.J.S.A. 46:8B-1 to -38.

2We hasten to observe that defendants have not suggested their arguments fall within the "fraud" or "corruption" standards. There is no evidence to remotely hint that the arbitrator failed to act fairly, impartially and in the utmost good faith in resolving the parties' disputes.

3Dictionary definitions would translate "undue" as "not just, proper, or legal." Webster's II New College Dictionary (1999) at 1203. This dictionary definition might ostensibly suggest the authority to set aside an award that does not rest on proper legal determinations. But, again, the phrase "undue means" must be understood as bearing a similarity or kinship to "fraud" and "corruption" and, thus, in our view, warrants a more negative connotation than that suggested by a good faith legal error.
