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parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0280-15T2

MICHAEL J. MORTORANO,

Plaintiff-Respondent,

v.

TODD SIEGMEISTER,

Defendant-Appellant,

and

RICHARD ALBA,

Defendant-Respondent.

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Argued October 24, 2017 — Decided November 20, 2017

Before Judges Leone and Mawla.

On appeal from Superior Court of New Jersey,  
Law Division, Passaic County, Docket No. L-  
3737-13.

Todd Siegmeister, appellant, argued the cause  
pro se.

Michael J. Mortorano, respondent, argued the  
cause pro se.

Respondent Richard Alba has not filed a brief.

PER CURIAM

Defendant Todd Siegmeister appeals from an August 21, 2015 judgment entered against him in favor of plaintiff Michael J. Mortorano for breach of contract following a bench trial. We affirm.

I.

The following facts are taken from the record. Plaintiff was involved in the logistics business for forty years, selling goods abroad, including in Africa. In 2010, he was approached by defendant Richard Alba to procure \$30,000 worth of cellular telephones to sell in Ghana. Plaintiff and Alba entered into an agreement whereby plaintiff would obtain the telephones, ship them to Alba's Ghanaian contact Cozi Alovor<sup>1</sup>, who would in turn sell the telephones, and plaintiff would thereafter be paid. Alovor was tasked with selling the telephones because he was licensed to do business in Ghana. The testimony at trial established that only a Ghanaian resident could conduct business in Ghana.

After plaintiff obtained the telephones, he received an email from Alba dated November 2, 2010, stating "send the phones."<sup>2</sup>

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<sup>1</sup> The spelling of Alovor's name varies in the record. We utilize the spelling used by the trial judge.

<sup>2</sup> We have not been provided the trial evidence. We derive the contents of the evidence from the trial court's recitation of it.

Plaintiff prepared an invoice and sent it to Alba on November 24, 2010. Alba responded with an email on November 29, 2010, enclosing plaintiff's invoice, which Alba had signed, stating "Here is the signed invoice for the cell phones."

At trial, plaintiff also produced an invoice from "Sunday's Seconds," which had sold him the telephones he intended to ship to Alover. When plaintiff received the telephones from Sunday's Seconds, he forwarded them to the shipper for inspection. Plaintiff adduced an air bill of lading, proving the shipment was sent to Ghana in December 2010, and for plaintiff's payment of the shipping costs.

Plaintiff was not paid. Beginning in February 2011, an email exchange between plaintiff and Alba ensued regarding plaintiff's payment for providing the telephones. In one email, Alba represented "When [Alover] sells the phones, I will give you the money."

The email exchange continued through March 2011. In one exchange Alba referenced Siegmeister was having difficulty obtaining payment for a separate gold transaction in Africa that had gone awry. Plaintiff's response was "I can't stay calm. I don't like liens on my house and all of this pressure for phones and money that everyone owes me."

Based on the invoice evidence and the email correspondence, the trial judge concluded plaintiff and Alba had contracted to sell telephones in Ghana. The judge found plaintiff had procured the telephones, demonstrated his payment for them and the shipping, was asked by Alba to ship them, and an obligation to pay plaintiff was acknowledged through the subsequent emails between Alba and plaintiff.

Plaintiff adduced email correspondence dated April 2011, between him and Alba. In it, plaintiff stated: "It now appears that you have all the proof that [Siegmeister] had robbed from you the money and/or the cellphones from you." Alba responded: "As of an hour ago, someone is communicating on behalf of [Alovor] to resolve this matter. I can't blame [Siegmeister] yet." The trial judge concluded "That's the crucial words that really bring some color into this case, because that's the first time that you could really see that [] Siegmeister's name is related to these cell phones."

Plaintiff also adduced an email from May 2011, from Alba. These emails copied Siegmeister and another business associate, Tony D'Onofrio. The emails explained that funds were frozen in Ghana totaling \$150,000, which Alba, Siegmeister, and D'Onofrio were awaiting to be released by the Ghanaian court. These funds were related to a criminal prosecution instituted by Siegmeister

against Alovor. The trial judge found this correspondence further confirmed acknowledgment of the contract and the funds owed to plaintiff.

Plaintiff also adduced proof, by way of a corporate resolution dated January 2010, from Crown Financial Solutions (Crown Financial), naming Alba as a director of the corporation. The resolution pre-dated the contract for the cellular telephones and bore Siegmeister's signature as president of Crown Financial.

Based upon the totality of the evidence adduced, the trial judge concluded Alba and Siegmeister were business partners. The judge stated:

So Crown Financial [] was suing [] Alovor for the money that he took. And that's also confirmed in the emails where they're going back and forth about the fact that they're waiting to see what happens with the criminal action so that they can recoup their money and perhaps people can recover the monies that are owed to the various people that are mentioned in the emails.

The trial judge concluded:

[A]s I understand it from reading all of these emails, there could only be one conclusion that's credible based on all the testimony. Is that [plaintiff] gave the phones to Alba to sell. . . . [Alba] got [Alovor] and Crown Financial to sell the phones because of their contacts in Ghana. . . . [Alba] didn't have a license [to do business in Ghana]. . . . So Alba agreed with [plaintiff] to transport the cell phones to [Alovor], but [Alovor] really works for Crown Financial and [] Siegmeister.

The judge further concluded Siegmeister, Alba, and Alovor were all a part of Crown Financial and the telephones were "given to Crown Financial, [] Siegmeister, and/or [Alovor] all as one organization for sale."

The trial judge next reviewed a January 3, 2013 email from plaintiff to Alba and D'Onofrio recounting a conversation plaintiff had with Siegmeister. According to plaintiff, Siegmeister represented Alovor had been sentenced to prison for stealing money from the business venture and a civil litigation had been instituted against him in Ghana. Siegmeister also stated \$210,000 would be collected by March 2013 as a result of the civil litigation, from which plaintiff would receive \$30,000. The judge noted Siegmeister testified that he only promised to give plaintiff \$30,000, but he never had a contract to pay him \$30,000.

Alba's reply email disputed the sums Siegmeister would pay from the \$210,000 because Alba claimed he was owed \$378,000. In regards to plaintiff's \$30,000, Alba stated: "With regard to your 30k you are seeking for phones that you sent which never worked, you and [Siegmeister] are planning to make millions [] building hospitals and you're asking for [\$]30,000 for phones that never worked on an investment you made of [\$]5,000." The judge found Alba's email was further evidence that he contracted with plaintiff

to sell the telephones. The judge concluded "There's no question that [] Alba owes [plaintiff] the monies, based on everything that I've just stated earlier."

The trial judge also found that Siegmeister was the author of Alba's email to plaintiff. The judge noted she had viewed the email on plaintiff's telephone and it was clear the email had been forwarded to him from an email address that belonged to Siegmeister.

Additionally, the trial judge heard testimony about a meeting between plaintiff, Alba, and Siegmeister at a diner on January 7, 2013. Plaintiff adduced this testimony from Donald Alston, who plaintiff brought to the meeting as a witness. Alston testified that during the meeting Siegmeister acknowledged \$30,000 was owed to plaintiff. The judge credited Alston's testimony and the email from Siegmeister, and concluded Siegmeister's testimony denying the existence of a contract with plaintiff was not credible. The trial judge found "Siegmeister made an agreement with [plaintiff] to pay him \$30,000."

The trial judge entered a judgment against Siegmeister for \$30,000. The judge denied plaintiff punitive damages and found no evidence of fraud. Siegmeister now appeals from the judgment.

## II.

We begin with our standard of review. A trial court's findings "should not be disturbed unless '[] they are so wholly insupportable as to result in a denial of justice[.]'" Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 483-84 (1974) (quoting Greenfield v. Dusseault, 60 N.J. Super. 436, 444 (App. Div.), aff'd o.b., 33 N.J. 78 (1960)). When the trial court's findings are "supported by adequate, substantial and credible evidence," those findings should be upheld on appeal. Id. at 484 (citing N.J. Tpk. Auth. v. Sisselman, 106 N.J. Super. 358 (App. Div.), certif. denied, 54 N.J. 565 (1969)).

"[O]ur appellate function is a limited one: we do 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." Fagliarone v. N. Bergen, 78 N.J. Super. 154, 155 (App. Div.), certif. denied, 40 N.J. 221 (1963); see also Rova Farms, supra, 65 N.J. at 484. The function of this court is to determine whether there is "substantial evidence in support of the trial judge's findings and conclusions." Weiss v. I. Zapinsky, Inc., 65 N.J. Super. 351, 357 (App. Div. 1961).



Furthermore,

When the credibility of witnesses is an important factor, the trial court's conclusions must be given great weight and must be accepted by the appellate court unless clearly lacking in reasonable support. "[T]he trial court is better positioned [than we] to evaluate [a] . . . witness' credibility, qualifications, and the weight to be accorded her testimony."

[N.J. Div. of Youth & Family Servs. v. F.M., 375 N.J. Super. 235, 259 (App. Div. 2005) (quoting In re Guardianship of DMH, 161 N.J. 365, 382, (1999)) (citation omitted).]

Siegmeister asserts "there is good cause to set aside the August 21, 2015 order using both case law and Rule 4:50-1(a), (b), (c), (d) and (f)." By "case law," it is apparent from defendant's brief that he is relying upon our decision in Marder v. Realty Constr. Co., 84 N.J. Super. 313, 318-19 (App. Div.), aff'd, 43 N.J. 508 (1964), which addressed the standard applied to vacate default judgment.

Siegmeister's legal argument misconstrues the law. This is a direct appeal from the judgment entered after trial. Rule 4:50-1 addresses the grounds for collateral relief, not a direct appeal. Also, our holding in Marder, supra, 84 N.J. Super. at 318-19, addressed the basis on which to vacate a judgment entered in default, not after a full trial in which both parties participated. Because neither of these conditions exist here, the law Siegmeister

cites is inapplicable. Moreover, Siegmeister cannot contest the judgment on the grounds asserted under Rule 4:50-1, where those grounds were not asserted before the trial court.

Our Supreme Court has stated:

It is a well-settled principle that our appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available "unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest."

[Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) (quoting Reynolds Offset Co., Inc. v. Summer, 58 N.J. Super. 542, 548 (App. Div. 1959), certif. denied, 31 N.J. 554 (1960)).]

For these reasons, we decline to address these arguments.

Siegmeister next argues plaintiff did not prove the existence of a contract between them. Siegmeister asserts there was no written contract between them and one was required under the Uniform Commercial Code (UCC). Siegmeister argues even if there was a contract, plaintiff failed to perform under it by delivering the telephones to him. Siegmeister also argues he was unaware of the agreement to ship the telephones to Alover until after the goods had been shipped, and Alover was incarcerated.

These arguments lack merit. The trial court painstakingly reviewed the documentary and testimonial evidence. The objective evidence demonstrated Alba and Siegmeister were members of the

same corporation, Crown Financial, and Alovor represented them in Ghana. Plaintiff was instructed to procure and ship the telephones to Alovor. Alba, on behalf of Siegmeister and Crown Financial, acknowledged the shipment by endorsing the invoice furnished by plaintiff.

The trial judge found other evidence of the contract within the emails sent by Alba conceding an obligation to pay plaintiff. The judge rejected Siegmeister's testimony that he was unaware of the transaction by finding Siegmeister had acknowledged the debt in an email, and crediting the testimony of Alston. The judge concluded:

So I find that [] Siegmeister, he wasn't credible when he testified. We have a notion in the law which is called false in one, false in all.

. . . .

[A]fter reviewing this email and realizing that in fact, [] Siegmeister wrote the email, I don't find his testimony credible at all. And . . . that email, in conjunction with [] Alston's testimony that in fact, monies were owed [plaintiff], I do find that [] Siegmeister made an agreement with [plaintiff] to pay him the \$30,000.

The trial judge's credibility findings are supported by the record and we defer to them.

The trial judge also found the UCC applied, but did not serve as a defense because plaintiff and Siegmeister were considered

merchants, and the UCC does not mandate a written contract between merchants. We agree.

The UCC provides:

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within ten days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable.

. . . .

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted [ ].

[N.J.S.A. 12A:2-201.]

The evidence supports the trial judge's findings that the parties had a binding contract under the UCC. A contract was proven under N.J.S.A. 12A:2-201(1), because the invoices

acknowledged and signed by Alba on behalf of Crown Financial meet the definition of a writing under the UCC.

The evidence supports a finding under N.J.S.A. 12A:2-201(2) because the judge found both plaintiff and Siegmeister to be merchants. The judge also found that Siegmeister was aware of the contract because Siegmeister was scrivener of the email acknowledging the sums owed to plaintiff on account of receipt of the telephones. Also, the judge found Siegmeister did not object to the terms of the contract because he acknowledged the debt in the meeting at the diner, and pursued Alover for the funds to pay plaintiff his \$30,000.

Finally, the evidence also satisfies a finding under N.J.S.A. 12A:2-201(3)(c). Plaintiff established he procured the telephones, was instructed to ship them to Ghana by Alba, and Alover accepted them on behalf of Alba and Siegmeister.

For these reasons, we are satisfied the adequate, substantial, and credible evidence in the record supports the trial judge's findings. The weight of the credible evidence supports the entry of judgment in favor of plaintiff against Siegmeister.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION