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APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
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-1847-16T3

MANUEL H. ESTEVES,

Plaintiff-Appellant,

v.

CECILIA CABACA,

Defendant-Respondent.

Argued April 16, 2018 – Decided May 11, 2018

Before Judges Messano and O'Connor.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Union
County, Docket No. FD-20-1754-13.

Jose B. Moreira argued the cause for
appellant (Moreira & Moreira, PC, attorneys;
Jose B. Moreira and Monique D. Moreira, on
the briefs).

Joseph A. Raia argued the cause for
respondent (Law Offices of Joseph A. Raia,
attorneys; Joseph A. Raia, of counsel; Ian
M. Eastwick, on the brief).

PER CURIAM

Plaintiff Manuel H. Esteves appeals from a Family Part
order denying his request for a judgment compelling defendant

Cecilia Cabaca to reimburse him for money he claims he loaned to her, and related relief. We affirm.

I

In plaintiff's complaint, he alleged the parties cohabited for a period, during which they entered into an oral contract. The terms of that contract were if plaintiff paid off the mortgage against defendant's home, she would either convey an interest in her home to him or execute a mortgage in his favor. He claims he paid off the mortgage, but defendant failed to either place his name on the deed or execute a mortgage evidencing her debt to him. In his complaint, he sought various remedies for breach of contract.

Plaintiff also alleged defendant breached a contract "as to personal property" because she withdrew money from their joint account to purchase a car. In addition to claiming she breached such contract, he asserted a claim for conversion. He sought the return of the money she withdrew from their joint account and related relief.

The salient evidence that emerged during the trial was as follows. Plaintiff, who was the only witness, testified he moved into defendant's home in late 2011 or early 2012 and moved out in May 2015. During their cohabitation the parties opened

up a joint account into which he placed his salary and other income.¹

At some point during their cohabitation, plaintiff paid off the mortgage balance on defendant's home; the balance was \$73,892.46. Further, specific sums were withdrawn from the parties' joint account to pay for the following: \$4,420 to replace the windows on defendant's home; \$566 for a new dryer; \$600 per month to pay for defendant's health insurance premiums, and an unidentified lump sum to pay defendant's dental bill. Plaintiff also testified defendant withdrew \$20,000 from their joint account to purchase a car.

Plaintiff admitted defendant also deposited money into the joint account, although he did not know how much she deposited. Thus, it is not known how much of the money withdrawn from the joint account to pay for the aforementioned expenses belonged to defendant. Plaintiff also conceded that while he lived in defendant's home, although he bought groceries for the household, he did not pay any rent. In addition, defendant provided homemaking services for him, such as doing his laundry and cooking meals for him approximately six days a week.

¹ In addition to his job as a "laborer," plaintiff owned rental properties from which he derived income.

Significantly, plaintiff never testified the parties entered into a contract, let alone defendant agreed to place plaintiff's name on the deed to her house or execute a mortgage in plaintiff's favor in the event he paid off the mortgage against her house. According to him, defendant merely stated she would pay plaintiff back for the mortgage, the windows, the dryer, and her dental treatment.

The trial court found that plaintiff's testimony was not credible. It also determined that, during the trial, plaintiff attempted to show he and defendant entered into a palimony agreement. Finding there was no evidence the parties entered into an agreement that fulfilled the requirements necessary to prove the existence of a palimony agreement, see N.J.S.A. 25:1-5(h)², the court dismissed the complaint.

² N.J.S.A. 25:1-5(h) provides:

No action shall be brought upon any of the following agreements or promises, unless the agreement or promise, upon which such action shall be brought or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or by some other person thereunto by him lawfully authorized:

. . . .

(h) A promise by one party to a non-marital personal relationship to provide support or other consideration for the other party,

In our view, there is no evidence the parties entered or attempted to enter into an agreement of any nature and, therefore, it was unnecessary for the trial court to have engaged in an analysis to determine whether a palimony agreement existed. However, for reasons different from those stated by the trial court, we affirm the order under review.

It is axiomatic a reviewing court is bound by a trial court's credibility determinations. See Gnall v. Gnall, 222 N.J. 414, 428 (2015). An appellate court "defer[s] to the credibility determinations made by the trial court because the trial judge 'hears the case, sees and observes the witnesses, and hears them testify,' affording it 'a better perspective than a reviewing court in evaluating the veracity of a witness.'" Ibid. (quoting Cesare v. Cesare, 154 N.J. 394, 412 (1998)).

Here, because the trial court did not find plaintiff credible, any testimony he provided about the existence of an agreement is not competent. But even if plaintiff's testimony were credible, there is no evidence the parties entered into a contract.

either during the course of such relationship or after its termination. For the purposes of this subsection, no such written promise is binding unless it was made with the independent advice of counsel for both parties.

An oral contract requires a meeting of the minds, offer and acceptance, consideration, and sufficiently defined terms. See Weichert Co. Realtors v. Ryan, 128 N.J. 427, 435 (1992).

Plaintiff merely noted defendant stated she would pay him back for making the subject expenditures. Importantly, there was no evidence of when and in what context defendant made such promise, evidence that is crucial for determining if there was consideration for defendant's promise. For example, if after plaintiff paid for these items, defendant stated she would pay plaintiff back, such statement would be a gratuitous, unenforceable promise. Defendant's promise would have constituted past consideration, which cannot form the basis of a contractual obligation. See Broad St. Nat'l Bank of Trenton v. Collier, 112 N.J.L. 41, 45 (Sup. Ct. 1933) (observing "something which has been given before the promise was made, and, therefore, without reference to it, cannot, properly speaking, be legal consideration.").

In order for there to have been an enforceable contract in this matter, defendant would have needed to have agreed to reimburse plaintiff before he made the subject expenditures on her behalf. There is no evidence she did so. For plaintiff to claim without more that defendant promised to pay him back is not sufficient to establish such promise constituted a binding

contract. Thus, even if plaintiff were credible, his testimony was insufficient to establish the existence of a contract. As it is, because his testimony was not credible, there is no evidence defendant made a promise to reimburse plaintiff for the subject expenditures.

We considered plaintiff's remaining arguments, and determined they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION