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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-3441-14T3

PAULO ESTEVES,  
TILE IMPORTERS AND  
DISTRIBUTORS, INC.,

Plaintiffs-Appellants,

v.

MARBLE UNLIMITED,  
EMERALD PROPERTIES,

Defendants-Respondents.

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Submitted November 2, 2016 – Decided February 13, 2018

Before Judges Fuentes and Carroll.

On appeal from Superior Court of New Jersey,  
Chancery Division, Monmouth County, Docket  
No. C-000045-14.

Fernando Iamurri, P.C., attorneys for  
appellants (Fernando Iamurri and Monica Villa,  
on the brief).

George D. McGill, attorney for respondent.

The opinion of the court was delivered by  
FUENTES, P.J.A.D.

Plaintiffs Paulo Esteves and Tile Importers and Distributors, Inc., and defendant Marble Unlimited Emerald Properties hold title as tenants in common to real property located in the Borough of Farmingdale in Monmouth County. The parties use the property as the principal location from which they operate their respective businesses. In July 2011, plaintiffs filed a complaint against defendant in the Chancery Division, General Equity Part, alleging defendant refused to share in the cost of maintaining the property, including refusing to pay its share of water charges, insurance premium, and other costs related to the property. Plaintiffs sought injunctive relief in the form of an order directing defendant to pay its share of these expenses and requiring defendant to remove certain items from plaintiffs' side of the property.

On October 2, 2012, Judge Thomas W. Cavanagh entered an Order of Settlement that memorialized, in twenty-two individually numbered paragraphs, the terms of the parties' "Agreement" that resolved this litigation. Paragraph 21 of Judge Cavanagh's order provided:

that any disputes arising under this Agreement shall be submitted to binding arbitration in Monmouth County, by an arbitrator chosen from the list maintained by the American Arbitration Association. In the event of any dispute hereunder, the party prevailing in such arbitration shall be entitled to recover,

in addition to all other remedies or damages,  
reasonable attorneys' fees incurred in such  
action[.]

The parties were not able to abide by the terms of the settlement agreement and the dispute was submitted to binding arbitration before Mario J. Suarez, Esq., an arbitrator with the American Arbitration Association, Commercial Arbitration Tribunal. In a written decision dated October 1, 2013, consisting of twenty-one individually numbered paragraphs, arbitrator Suarez found in favor of plaintiffs on various issues concerning the operational expenses, use, and maintenance of the property. Paragraph number 16 of arbitrator Suarez's award-decision stated:

The party prevailing in any action or proceeding to enforce this award shall be entitled to recover reasonable legal fees.

The administrative fees of the American Arbitration Association totaling \$1,425.00 and the compensation of the arbitrator totaling \$900.00 shall be borne by Respondent. Therefore, Respondent shall reimburse Claimant the sum of \$1,875.00, representing that portion of said fees in excess of the apportioned costs previously incurred by Claimant.

This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby, denied.

On March 20, 2014, plaintiffs filed a second complaint against defendant in the Chancery Division, General Equity Part, seeking

enforcement of the October 1, 2013 arbitration award, "and previous settlement, attorney's fees, [and] costs[.]"<sup>1</sup> The matter was tried on March 4 and March 10, 2015, before General Equity Judge Patricia Del Bueno Cleary as a bench trial. Paulo Esteves and Hakan Sagiroglu, the two principals in their respective businesses, were the only witnesses who testified.

Judge Del Bueno Cleary permitted the parties to testify at length about their interactions since the arbitration. The judge found plaintiffs' second complaint was predicated on the same allegations of misconduct by defendant that were raised in the first complaint filed in 2011. With respect to their ownership interest in the property, Judge Del Bueno Cleary found:

We have tenants in common. They bought [. . .] their [property] interest at different times, but they are now cotenants. And if a deed is silent as to the percentage of the individual ownership interest, there is a [rebuttable] presumption that the grantees share ownership equally under [Asante v. Abban, 237 N.J. Super. 495 (Law Div. 1989)].

In light of the parties' method of ownership and considering all of the evidence presented during the two-day trial, Judge Del

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<sup>1</sup> According to the procedural history recited in defendant's appellate brief, defendant filed an answer to plaintiffs' second complaint on June 26, 2014, and an amended answer and counterclaim on October 4, 2014. Plaintiff thereafter filed an answer to the counterclaim on October 10, 2014. However, defendant did not include copies of these pleadings as part of the appellate record.

Bueno Cleary concluded the case was an action seeking an "enforcement of a settlement and an enforcement of an arbitration award." The judge also found "insufficient proofs . . . to award monies to the defendant." She therefore dismissed defendant's counterclaim. Considering the parties' hostility and inability to coexist as co-owners of the property occupied by their respective businesses, Judge Del Bueno Cleary stated: "The remedy I see is that there should be partition." Ultimately, the judge dismissed plaintiffs' action and defendant's counterclaim with prejudice, and without cost to either party.

In this appeal, plaintiffs argue Judge Del Bueno Cleary erred when she "disregarded a memorialized agreement" between the parties regarding the use of the property. Although plaintiffs concede that defendant paid all of the monetary relief awarded by the arbitrator, they argue Judge Del Bueno Cleary erred when she concluded the arbitration award did not contain a provision "dictating ramifications of late payments" and in finding plaintiffs were not entitled to an award of counsel fees. We disagree and affirm.

When we review the findings and conclusions of a trial court following a bench trial, we are bound to consider the judge's unique opportunity to hear the witnesses, sift through the competing evidence, and make reasoned conclusions. Allstate Ins.

Co. v. Northfield Med. Ctr., P.C., 228 N.J. 596, 619 (2017). An appellate court should "not disturb the factual findings and legal conclusions of the trial judge" unless convinced that those findings and conclusions were "so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Ibid. (quoting Rova Farms Resort v. Investors Ins. Co., 65 N.J. 474, 483 (1974)).

Here, the record supports Judge Del Bueno Cleary's findings and conclusions. The October 2, 2012 settlement agreement comprehensively addressed all of the issues raised by plaintiff in the first complaint which carried the imprimatur of the court in the form of an order entered by Judge Cavanagh, and expressly obligated the parties to resolve any dispute arising from the Agreement by way of arbitration. The arbitration award also provided that "[t]he party prevailing in any action or proceeding to enforce this award shall be entitled to recover reasonable legal fees and charges." (Emphasis added.) Because neither party prevailed before Judge Del Bueno Cleary, neither party is entitled to an award of counsel fees.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION