SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3918-16T2

LINETTE LEAH STEFFNE,

Plaintiff-Respondent,

v.

JOSHUA DANIEL BUEMI,

Defendant-Appellant.

Submitted February 26, 2018 – Decided March 19, 2018

Before Judges Sabatino and Rose.

On appeal from Superior Court of New Jersey, Law Division, Burlington County, Docket No. L-0763-16.

Kasuri Byck LLC, attorneys for appellant (Harrison Ross Byck, on the brief).

Craig, Annin & Baxter, LLP, attorneys for respondent (John C. Grady, of counsel and on the brief).

PER CURIAM

After a one-day bench trial in this contract dispute, the court entered a $6,655.15 judgment in favor of plaintiff Linette Steffne and dismissed the counterclaim of defendant Joshua Buemi. Defendant appeals the court's decision. We affirm.

During the relevant timeframe, Steffne was the mother-in-law of Buemi. Her daughter and Buemi eventually divorced. Buemi owned a house in Fayetteville, North Carolina which needed renovations. Steffne lives in North Carolina. She has experience with home construction and renovation, although she was not then licensed.

Through a series of text messages, Steffne and Buemi entered into an arrangement for her to perform renovations in the kitchen and other parts of Buemi's North Carolina house. There was no executed formal contract. However, the exchanged messages reflect the parties agreed that Steffne would do the work and obtain the necessary materials, many of which were paid for with Buemi's charge cards at home improvement stores. In addition, Steffne agreed to bill Buemi half of her customary labor charges.

After the work on the home was completed, Steffne sent Buemi an invoice for $6,655.15. That billed amount consisted of unpaid material costs of $2,180.15 and labor costs of $4,475 (half of Steffne's estimated labor charges of $8,950).

Buemi did not pay the bill. At the time he was in the midst of marital troubles. He also was then attempting to sell the house and hoping to use sale proceeds to pay the bill. He accepted the work and did not complain to Steffne about it, though

apparently he voiced some complaints to his then-wife, Steffne's daughter.

Steffne sued Buemi for the unpaid charges in the Special Civil Part. Buemi filed a counterclaim alleging that Steffne was in violation of the New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-1 to -204, because there never was a written home improvement contract. Buemi also claimed that under the Contractor's Registration Act ("CRA"), N.J.S.A. 56:8-136 to -160, which was a later amendment to the CFA, Steffne improperly acted as an unregistered contractor without a written contract.

Before trial, Judge John E. Harrington dismissed the CRA count on the counterclaim and precluded Buemi at trial from attempting to prove any "ascertainable loss." However, Judge Harrington denied summary judgment on plaintiff's breach of contract claims, finding in his written decision that the record was then unclear and raised fact and credibility questions as to whether a binding contract had been consummated.

The case was tried on a single day before Judge Martin A. Herman, with both parties represented by counsel. The judge heard testimony from the parties and from Steffne's daughter. He also considered the text messages and other exhibits, including photographs of the renovations.

During her testimony, Steffne detailed the work she had done on the renovations. She estimated she had expended about a week of labor on the kitchen, and generally explained how long each portion of the work took to complete.

In his oral decision at the end of the proofs, Judge Herman found that the parties had an enforceable contract. The judge focused on the fact that during the course of the project, Steffne presented to Buemi photographs of the work done. Buemi encouraged her to continue with the work, by sending her a text message stating, "I will still pay you for your time. Even if we don't divorce." In addition, after the work was completed and Steffne sent Buemi an invoice, Buemi responded with a text advising her that "I got [sic] and you'll get paid[.] I never said I wouldn't pay you[.]"

Judge Herman concluded that the text message exchanges were sufficient to establish a binding agreement between the parties for Buemi to pay Steffne for the work that was done. The judge also observed, alternatively, that Steffne was entitled to be paid under a theory of quantum meruit.

On appeal, Buemi contends the trial court erred in finding the existence of a binding agreement. He argues material terms are missing as to the project's scope, price, and completion date. He further argues that Steffne's claim for damages was not based

on evidence that was reasonably certain, and instead was speculative.

Our scope of review of the judge's findings in this nonjury case is limited. We must defer to the judge's factual determinations, so long as they are supported by substantial credible evidence in the record. Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 483-84 (1974). This court's "[a]ppellate review does not consist of weighing evidence anew and making independent factual findings; rather, [this court's] function is to determine whether there is adequate evidence to support the judgment rendered at trial." Cannuscio v. Claridge Hotel & Casino, 319 N.J. Super. 342, 347 (App. Div. 1999) (citing State v. Johnson, 42 N.J. 146, 161 (1964)). We only review de novo the court's legal conclusions. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). Applying these standards of review, and deferring to the trial judge's assessment of the credibility of the witnesses and strength of the proofs, we uphold his decision.

It is well settled that "[a] contract arises from offer and acceptance, and must be sufficiently definite 'that the performance to be rendered by each party can be ascertained with reasonable certainty.'" Weichert Co. Realtors v. Ryan, 128 N.J. 427, 435 (1992) (quoting Borough of W. Caldwell v. Borough of

Caldwell, 26 N.J. 9, 24-25 (1958)). To be enforceable, a contract must "agree on essential terms and manifest an intention to be bound by those terms . . . ." Ibid.

Although the parties' arrangements and mutual promises were communicated through text messages, we agree with the judge that these messages sufficed to create a binding contract, their mutual understandings were not abstract promises. Indeed, the construction work was actually performed.

We recognize that Steffne's proof of her labor charges could have been more precise. Nevertheless, we are unpersuaded to set aside the judge's determination that the charges for the renovations, which resulted in a net award of slightly above $6,000, were reasonable and adequately proven under the circumstances. The judge soundly approved the labor costs Steffne calculated and presented to Buemi after the work was done. Buemi acknowledged to her in writing that he would eventually pay her bill. As the judge observed, that was the bargain the parties agreed to, and the bargain the court enforced.

As Judge Herman alternatively observed, even if the parties' interactions were considered to fall short of creating an enforceable contract, Steffne would be entitled to recovery for the reasonable value of her work under a theory of quantum meruit. To recover under such a theory, a plaintiff must establish: (1)

the conferral of a benefit in good faith; (2) the acceptance of the benefit by the person to whom it is rendered; (3) a reasonable expectation of compensation; and (4) the reasonable value of the benefit. Starkey, Kelly, Blaney & White v. Estate of Nicolaysen, 172 N.J. 60, 68 (2002).

All of these elements were shown here. The testimony from Steffne, along with the photos depicting the finished product, adequately support the judge's findings. It would be unjust for Buemi to retain the reasonable value of the work without paying for it.

Accordingly, we affirm the judge's award of damages in favor of Steffne on her affirmative claims. The arguments presented by Buemi to overturn that award lack sufficient merit to warrant further discussion. R. 2:11-3(e)(1)(E).[1]

[1] In the last line of the final page of Buemi's brief, he asks that his counterclaim be reinstated. However, there is no argument presented in his brief about that point, and no citations to applicable provisions in the statutes and consumer fraud regulations. For instance, Buemi does not brief the question of whether the "family member" exemption of N.J.S.A. 56:8-140(b) and N.J.A.C. 13:45A-17.4(a)(2) for home improvement registration requirements extends further to the CFA's general requirement for written home improvement contracts for projects over $500. We need not reach this issue because defendant failed to brief it. Issues that are not briefed with supporting legal arguments are deemed waived. N.J. Dep't of Envtl. Prot. v. Alloway Twp., 438 N.J. Super. 501, 505 n.2 (App. Div. 2015); Drinker Biddle & Reath LLP v. N.J. Dep't of Law and Public Safety, 421 N.J. Super. 489, 496 n.5 (App. Div. 2011). Moreover, Buemi's notice of appeal and

Affirmed.

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case information statement did not specify Judge Harrington's pretrial order dismissing various aspects of the counterclaim.