

**NOT FOR PUBLICATION WITHOUT THE
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-1046-21**

ALMAHDYEEEN FOUNDATION,

Plaintiff-Appellant,

v.

SAID FADL,

Defendant-Respondent.

Submitted November 16, 2022 – Decided December 9, 2022

Before Judges Currier and Mayer.

On appeal from the Superior Court of New Jersey, Law
Division, Hudson County, Docket No. SC-001538-19.

Almahdyyeen Foundation, appellant (Tarek Saleh,
pursuant to R. 6:11, on the brief).

Said Fadl, respondent pro se.

PER CURIAM

Plaintiff Almahdyyeen Foundation appeals from an October 15, 2021
order of disposition after a bench trial in which the judge found no cause of

action for plaintiff's breach of contract claim against defendant Said Fadl (Fadl). In addition, plaintiff appeals from a November 9, 2021 order denying its motion for reconsideration. We affirm both orders.

Plaintiff is a non-profit organization operating in a Jersey City mosque. Tarek Saleh (Saleh) is a spiritual leader associated with plaintiff who filed a pro se appeal on plaintiff's behalf.

We recite the facts based on the trial testimony. The parties dispute the essential facts regarding construction work to be performed at the mosque. However, it is undisputed that Saleh made an arrangement with Fadl for construction of bathrooms in the basement of the mosque. Saleh paid Fadl the sum of \$3,000 as a deposit for the construction work. Saleh claimed the parties agreed to the sum of \$10,000 for the completed bathrooms.

According to Fadl, Saleh agreed to obtain architectural drawings and acquire the approvals necessary for Fadl to apply for construction permits. Fadl claimed Saleh asked Fadl to prepare the basement for the bathroom construction while they awaited the drawings and approvals. According to Fadl, the \$3,000 was payment for preliminary cleaning work in the basement and materials purchased in preparation for construction of the bathrooms.

Fadl testified that he hired two workers to assist him with preparation work for the bathrooms and performed other odd jobs at the mosque. According to Fadl, he and his workers removed garbage and recycling waste, demolished concrete to expose the basement's pipes, cleaned gutters, fixed a leak in the porch, completed grout work in an existing bathroom, purchased materials from the Home Depot, and delivered those materials to the mosque.

One of Fadl's workers, Sam Adam, testified that he worked in the basement of the mosque for a full day and Fadl paid him \$100 for his work digging up pipes, removing garbage, and clearing debris. Fadl's other worker, Joquim El Nasofan, testified he and Fadl drove in El Nasofan's van to the Home Depot to pick up construction materials, carried the materials from the van into the mosque, and inspected beams in the basement. According to El Nasofan, Fadl paid him \$270 for his work and the use of his van.

After finishing the preliminary work in the basement, Fadl testified that Saleh cancelled the project and asked Fadl to return the construction materials. Fadl returned the unused materials to the Home Depot. Fadl explained he offered to return some money to Saleh, but Saleh refused.

On the other hand, Saleh testified Fadl performed no work in the basement or anywhere else in the mosque. He claimed Fadl agreed to obtain the necessary

permits but failed to do so. Because Fadl failed to obtain the permits, Saleh demanded the return of the deposit money.

On December 11, 2019, Saleh, on behalf of plaintiff, filed a Special Civil Part complaint against Fadl to recover \$3,000. Fadl failed to appear at the first trial on January 3, 2020, and the court entered default judgment against him. The default judgment was vacated on June 5, 2020. Fadl appeared for the next scheduled trial date on July 16, 2021. However, the trial had to be rescheduled because Fadl required an interpreter. On the rescheduled trial date, July 30, Fadl failed to appear. Default judgment was entered but vacated by the judge on September 9, 2021.

On October 15, 2021 the judge conducted a one-day bench trial via Zoom. Saleh testified for plaintiff. Plaintiff also called as a testifying witness, Youseff Savit. However, Savit told the judge he had no personal knowledge regarding the parties' agreement for the work to be done by Fadl. Another plaintiff's witness, a person named Mark who never stated his name for the record, testified his only knowledge related to his effort to mediate the parties' dispute. During the Zoom trial, the judge allowed Saleh to take his computer into the basement and livestream video of the existing conditions. Saleh believed the video supported his assertion that Fadl performed no work at the mosque.

Defendant testified on his own behalf. He also called as trial witnesses the two men who worked with him to clean the basement in preparation for the bathroom construction.

At the conclusion of the testimony, the judge found plaintiff failed to prove the existence of a contract. Therefore, she concluded plaintiff had no cause of action for breach of contract and dismissed the complaint.

In rendering credibility findings, the judge did not "find defendant credible" because he was "reluctant" to answer her questions during the trial. She further found Fadl's "testimony did not make sense." The judge deemed Saleh "more credible because what he [said] ma[de] more sense and he answered [the judge's] questions more readily and reasonably overall."

However, while the judge concluded Saleh was "a better witness," she explained plaintiff still bore the burden of proving "there was a breach of contract and [plaintiff] should be entitled to . . . \$3000." The judge found "no contract to delineate . . . who would get the permit, who would do this, by when, none of that is in writing." Based on the trial proofs, the judge explained plaintiff failed to counter defendant's testimony "that there was work done in the basement to clean it out and . . . purchase . . . supplies, like wood . . . and so forth." Although defendant did not construct the bathrooms, the judge found

defendant performed work in the basement of the mosque and entered a no cause of action on plaintiff's breach of contract claim.

Plaintiff filed a motion for reconsideration, which the judge denied in a November 9, 2021 order. In a written statement included with the order, the judge found plaintiff "re-stated details of the [October 15, 2021] trial, but failed to identify evidence that ha[d] not already been considered by this [c]ourt."

Plaintiff appealed the October 15, 2021 order of disposition dismissing the case and the November 9, 2021 order denying reconsideration. On appeal, plaintiff argues the case should not have been dismissed because Saleh was found to be a more credible witness and the proofs demonstrated Fadl breached the contract. Because the proofs demonstrated Fadl performed no work and therefore breached the contract, plaintiff contends the judge should have granted its motion for reconsideration. Additionally, plaintiff claims the judge erred in vacating default judgment on September 9, 2021.¹ We disagree and affirm the orders on appeal.

¹ We note the September 9, 2021 order vacating default judgment is not included in plaintiff's notice of appeal. The only orders listed in plaintiff's notice of appeal and case information statement are the October 15, 2021 order and the November 9, 2021 order. Under Rule 2:5-1(f), "it is only the orders designated in the notice of appeal that are subject to the appeal process and review." Petersen v. Meggitt, 407 N.J. Super. 63, 68 n.2 (App. Div. 2009) (quoting W.H.

We defer to a trial court's findings of fact in a bench trial. Balducci v. Cige, 240 N.J. 574, 595 (2020). In a non-jury trial, we "give deference to the trial court that heard the witnesses, sifted the competing evidence, and made reasoned conclusions." Gripenburg v. Township of Ocean, 220 N.J. 239, 254 (2015). We will accept the trial court's findings of fact unless the "findings are 'manifestly unsupported' by the 'reasonably credible evidence' in the record." Balducci, 240 N.J. at 595 (quoting Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011)).

To establish a breach of contract claim, a plaintiff must prove the following by a preponderance of the evidence:

first, that the parties entered into a contract containing certain terms; second, that [the] plaintiff did what the contract required [the plaintiff] to do; third, that [the] defendant did not do what the contract required [the defendant] to do, defined as a breach of the contract; and fourth, that [the] defendant's breach, or failure to do what the contract required, caused a loss to the plaintiff.

[Globe Motor Co. v. Igdalev, 225 N.J. 469, 482 (2016) (citations and quotation marks omitted) (alterations in original omitted).]

Indus., Inc. v. Fundicao Balancins, Ltda., 397 N.J. Super. 455, 458 (App. Div. 2008)). Therefore, we decline to consider orders other those listed in plaintiff's notice of appeal.

A contract exists where there is "offer and acceptance, and [it] 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 West Caldwell v. Caldwell, 26 N.J. 9, 24–25 (1958)). "[I]f parties agree on essential terms and manifest an intention to be bound by those terms, they have created an enforceable contract." Flanzman v. Jenny Craig, Inc., 244 N.J. 119, 135 (2020) (quoting Weichert Co. Realtors, 128 N.J. at 435).

During the trial, the judge allowed Saleh to use his computer's webcam to livestream video of the mosque's basement. After viewing the livestreamed images, the judge remarked that the basement appeared "vacant, a little dirty because it's a basement. It has some debris but it's mostly cleaned out."

After hearing the testimony, the judge found plaintiff failed to meet its burden of proving a breach of contract. While the judge acknowledged it was difficult to discern from the video footage what construction, if any, was completed in the basement, she concluded plaintiff failed to prove the absence of any work by Fadl and his crew. She further determined the parties agreed that Fadl purchased materials for plaintiff and not all of the materials were returned to the Home Depot. Thus, there was some work performed and

materials purchased by Fadl on plaintiff's behalf. The judge also concluded there was no written agreement stating the parties' responsibilities to have formed an enforceable contract. In deferring to the judge's fact findings, we are satisfied the judge correctly concluded plaintiff failed to sustain its burden of proving a breach of contract.

We next consider plaintiff's argument that the judge erred in denying the reconsideration motion. We review the denial of a motion for reconsideration under Rule 4:49-2 for abuse of discretion. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021).

Reconsideration should only be granted when "the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis;" "the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence[;]" or "if a litigant wishes to bring new or additional information to the [c]ourt's attention which it could not have provided on the first application." Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)).

Here, plaintiff offered no new or additional information in its motion for reconsideration. As the judge aptly noted, plaintiff simply restated the trial testimony presented to the court on October 15, 2021. Because plaintiff failed

to identify evidence not previously considered or explain why the judge's reasoning was legally incorrect or irrational, the judge did not abuse her discretion in denying the reconsideration motion.

To the extent we have not addressed any arguments raised in the appeal, we conclude they are without sufficient merit to warrant further 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