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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2573-20

EROL DEVLI,

Plaintiff-Respondent,

v.

NORMAN DAVID TASCI,

Defendant-Appellant.

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Argued November 28, 2022 – Decided December 8, 2022

Before Judges Mawla and Smith.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-0373-18.

Joshua A. Zielinski argued the cause for appellant (O'Toole Scrivo, LLC, attorneys; Joshua A. Zielinski, of counsel and on the briefs; Nicholas P. Whittaker, on the briefs).

Laurence B. Orloff argued the cause for respondent (Orloff, Lowenbach, Stifelman & Siegel, PA, attorneys; Laurence B. Orloff, of counsel and on the brief; Xiao Sun, on the brief).

PER CURIAM

Defendant Norman David Tasci appeals from an April 6, 2021 final judgment entered in favor of plaintiff Erol Devli following a bench trial, awarding plaintiff compensatory and punitive damages for breach of fiduciary duty and conversion. We affirm.

The parties are first cousins. Defendant's father, Nuran Tasci, was a close friend and trusted employee in plaintiff's company, Sasha's Handbags (Sasha). Plaintiff also had a nephew, Alan Aydin. In January 2011, defendant and Aydin approached plaintiff about starting a real estate venture whereby defendant would find properties to purchase, plaintiff would provide financing, and Aydin would renovate the properties in preparation for sale or rent. Plaintiff, defendant, and Aydin agreed when a property was sold, plaintiff would receive a return of his capital and the profits would be divided equally between the three partners. This agreement was not reduced to writing.

According to Aydin and plaintiff, the partners agreed losses would be shared equally. Defendant claimed there was no discussion about losses and plaintiff assumed the risk of any losses. The partners formed Mosaic Realty, LLC, which purchased and sold approximately seventy-five properties.

Plaintiff had a power of attorney over his mother's finances and part of his interest in joining the joint venture was to use her funds to offset losses she had

suffered from the stock market. As a result, plaintiff's mother financed many of the joint venture's properties.

Defendant claimed that pursuant to his accountants' advice he needed an equity interest in the properties acquired so he could channel joint venture funds through his personal account to transact the properties. Both of his accountants testified and denied ever advising defendant along those lines.

Defendant and Aydin owned David Alan Realty Management (DARM), which managed the properties owned by the joint venture, collected rents, and paid expenses. Defendant and his family members also owned part of Tasci Investments LLC, an entity that purchased properties, and Tasci, Inc. (Tasci entities). The Tasci entities managed the joint venture properties and owned several others, which defendant oversaw.

The partners formed EDA, LLC, and through this entity, plaintiff obtained a $2.5 million revolving credit line from a bank to finance the purchase of properties. EDA's operating agreement stated the partners assumed the risk of loss for any loans.

When the joint venture began, plaintiff agreed the start-up funds should be provided from Sasha and other entities he owned, and authorized Nuran[1] to transfer funds from Sasha to defendant. After Nuran made several transfers between April and June 2011, plaintiff emailed him in August instructing him not to transfer any more funds to the joint venture. However, Nuran made another transfer in September. In November 2011, in response to a query from Nuran about a request for funds from Aydin and defendant, plaintiff responded by email, "No, do not give any money from Sasha. I will see what I can do. NO money from Sasha or other entities." Nuran claimed plaintiff later verbally told him to give money to defendant.

At first, Mosaic earned a profit. Defendant formed a separate LLC for each property acquired and each had its own QuickBooks account recording profits and losses. Nuran oversaw paying the profits to the partners. His understanding of the partners' arrangement was they all would share equally in profits and losses.

Beginning in 2012, defendant wrote checks on the EDA account to a Tasci entity noted as a reimbursement for several properties acquired by EDA.

[1] We utilize Nuran's first name so as not to confuse him with the Tasci entities and defendant. We intend no disrespect.

Defendant testified he could not recall why he wrote certain reimbursement checks but claimed he might have put money into a property over and above the purchase price. In April 2013, funds were electronically transferred from a Mosaic account to defendant's personal account for a property, despite the fact defendant already received a reimbursement for the same property. Defendant could not account for the double reimbursement. Defendant received double reimbursement from another property and at trial blamed the discrepancy on a QuickBooks error. When the acquisition of another property failed, defendant instructed the attorney holding the deposit funds to reimburse him personally for the deposit.

Defendant claimed the funds in his personal account were the same as funds in EDA's account and plaintiff authorized him to "mingle" joint venture funds with his personal funds, take money from EDA and place it into his account, and then transfer it to where it was needed in the LLCs. Nuran continued transferring funds to defendant, notwithstanding plaintiff's instruction to stop.

Plaintiff became aware the joint venture was losing money. He had contributed $5 million to the venture and the bank had loaned it $2.5 million. In May and July 2013, Nuran prepared charts showing the purchase and sale of

various properties owned by the joint venture. He emailed plaintiff stating the profits should be divided evenly between the partners. Aydin noted Nuran mistakenly over reported the profits from one property by more than $54,000, when the actual number was approximately ten times less. However, Nuran did not send a corrected version of the chart to plaintiff.

In December 2013, defendant requested plaintiff reimburse him approximately $750,000 he claimed he contributed to the venture. The parties met to review the Mosaic and individual LLC accounts, and plaintiff realized defendant had fabricated the $750,000 claim. Plaintiff learned defendant had taken large sums of money that were unaccounted for, and substantial sums were missing from the LLC accounts. When plaintiff questioned defendant about the missing funds, defendant claimed a DARM employee had taken them. Plaintiff asked defendant if he had taken the money, and defendant replied, "If I owe you, I'll pay you back." In an email, defendant also told plaintiff, "I'm leaving the office, you can take my share."

In February 2014, plaintiff emailed defendant and Aydin charts depicting what was owed on the properties and showing the venture's losses should be allocated among the partners. Plaintiff claimed defendant received three times the amount he was entitled to from the joint ventures. In March and April 2014,

plaintiff emailed defendant about the missing money and asked: "[W]hat right did you have to take this $311,000 of my money and take it to your account without asking me? [H]ow can you do this?" Defendant responded, "it was just for a little while, don't worry."

In May 2014, plaintiff sued defendant's parents, who were both employees of Sasha. Defendant was originally named in the complaint, but the court determined the claims against him should be filed separately. The litigation involving defendant's parents settled and they agreed to pay damages to plaintiff. Notably, the settlement agreement carved out plaintiff's claims against defendant.

Beginning in May 2014, defendant ceased working in the joint venture. At this point, the partners owed $2 million to EDA and held thirty properties, which needed to be sold. Aydin testified there were no profit distributions to any of the partners after May 2014, because of the debt owed. In 2015, Aydin removed defendant from DARM, and in March 2016, the parties signed consent agreements to sell the remaining properties and pay off their debts.

Plaintiff retained a forensic accounting expert who reviewed the accounts of defendant, the Tasci entities, Sasha, EDA, DARM, the records of two other entities, as well as records from plaintiff and his mother, to determine their

contributions and the distributions paid to them. Because the venture's QuickBooks were inaccurate, the expert relied on bank statements and wire transfers. Altogether, the expert issued four reports addressing his findings and rebutting the findings of defendant's expert. He concluded plaintiff was owed approximately $1.5 million.

Defendant's expert also issued several reports. He relied upon the joint venture's QuickBooks records and tax returns, even though he testified the QuickBooks were unreliable and the returns should not have been used to determine ownership and profit sharing. He conceded he did not verify defendant's representations, and there were properties discussed in his report, which were not owned by the joint venture. Defendant's expert opined defendant owed $29,931.

Following fourteen days of testimony, Judge Mary F. Thurber issued two written opinions detailing her findings of fact and conclusions of law. She found, notwithstanding the absence of a written agreement, the evidence established the profits and losses of the joint venture were meant to be shared equally among the partners. The judge found defendant's testimony to the contrary lacked credibility and presented an "unrealistic" structure of the business.

The judge found each expert credible and straightforward, and parsed their testimony. She concluded the determinations drawn by plaintiff's expert were better supported by the evidence and defendant did not identify any contributions for which he was not credited. Further, she found defendant's expert mistakenly opined defendant made contributions to the joint venture when the funds originated from a joint funding source. Defendant's expert also relied on faulty evidence including QuickBooks, the tax returns, and defendant's unverified statements.

The judge found portions of defendant's testimony "evasive, unresponsive, and unconvincing." She concluded the properties he transacted after leaving the joint venture were for his personal benefit and rejected his expert's opinion explaining funds paid to defendant for those properties were part of his contribution to the joint venture.

The judge found the settlement of the prior lawsuit with Sasha expressly carved out the claims in this litigation. She noted defendant had incurred no liability in the other litigation and plaintiff accepted a compromised settlement to pursue his claims against defendant separately.

The judge found the evidence supported a finding there was a joint venture and rejected defendant's testimony his accountants counseled him to move joint

venture money, through his personal accounts as neither credible nor believable. Defendant practiced a "pattern of deception" by giving his expert misinformation, asking plaintiff for $750,000, and falsely claiming a DARM employee had stolen the money.

The trial judge concluded plaintiff proved defendant:

> as the managing co-venturer, had a fiduciary obligation to his co-venturers, and that he breached that obligation. In his position of management and control, [defendant] treated the venture's bank accounts as his own, knowing . . . [plaintiff] would not be monitoring or reviewing the day-to-day activities. He freely moved money in and out of venture accounts, into and through his personal accounts. . . . The net result of his actions is that he withdrew from the venture substantial sums that belonged to [plaintiff] . . . by abuse of his fiduciary position.

The trial judge granted plaintiff a judgment for compensatory damages totaling $1,328,057.98. She found plaintiff was also entitled to punitive damages because defendant "acted with wanton and willful disregard of the harm he would cause plaintiff . . . when he repeatedly misappropriated monies from the joint venture. It was both likely and apparent that substantial harm would result from the repeated unauthorized withdrawals of venture funds." She concluded defendant's misappropriation "constituted conversion." Further, defendant "attempt[ed] to conceal and obscure his conduct."

At the punitive damages phase of the trial, defendant claimed his net worth was $891,755, yet submitted financial statements to lenders between 2016 and 2019 certifying to a net worth between $9.5 million and $27 million. The evidence showed defendant obtained personal loans of $1.3 and $1.7 million in 2018 and owned seven investment properties in addition to several other properties co-owned with his parents.

Judge Thurber issued a thorough and detailed written opinion addressing the punitive damage claim under the Punitive Damages Act (PDA), N.J.S.A. 2A:15-5.9 to -5.17. Analyzing the N.J.S.A. 2A:15-5.12(c) factors, she repeated her findings defendant: Intentionally misappropriated funds from the venture; made unauthorized withdrawals; mismanaged the bank accounts, books and records; and "[w]hen facing inquiry, . . . lied, attempted to shift blame, and . . . 'ran away,' by announcing his withdrawal . . . ." Defendant's "conduct was repeated and constant" and "[h]e breached not only the fiduciary obligation imposed by law, but the obligations of family loyalty and fealty."

Defendant profited $1,328,057.98 from his misconduct and while he was "stealing this money from [plaintiff] and the joint venture, he and his family were acquiring . . . investment propert[ies] with some of the funds being traced directly from" the funds taken. Further, defendant "never voluntarily terminated

the misconduct" and the "stealing from [plaintiff] ended only when he got caught." He also misrepresented his financial condition in the exchange of discovery during the punitive phase. He "offered no credible explanation for the contradictions between his litigation financial position and [the] . . . numerous sworn statements to lenders." The judge concluded as follows:

> Applying the Baker[2] criteria, the court finds defendant's conduct ranks high on the reprehensibility scale, which the [United States] Supreme Court stressed in BMW[3] was perhaps the most important factor. . . . While the reprehensibility of [defendant's] action fall below that of violent actions or threats to persons' health or safety, they are above acts of omission or negligence, and they consisted of intentional, affirmative acts undertaken with the knowledge they were wrong, and committed repeatedly over several years. They were full of trickery and deceit. He took advantage of familial affection and trust . . . . He fabricated a reason to get himself named as a [ten percent] owner of each property, and used that status repeatedly to take money to which he was not entitled. His behavior continued even after he was caught, and his attitude and behavior during trial evidence no regret, . . . change of heart, [or] deterrence felt from the consequences to date.

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2 Baker v. Nat'l State Bank, 353 N.J. Super. 145, 154 (App. Div. 2002), aff'd, 161 N.J. 220 (1999).

3 BMW of N. Am., Inc. v. Gore, 517 U.S. 559 (1996).

The judge concluded punitive damages were appropriate not only to deter defendant from stealing from plaintiff, but "to deter similar conduct in the future." She awarded plaintiff $3,500,000 in punitive damages representing "an amount less than 2.5 times the compensatory award."

Defendant raises the following points on appeal:

> I. THE TRIAL COURT ERRED IN FINDING THAT PUNITIVE DAMAGES WERE WARRANTED.
>
> > A. The Punitive Damages Decision Should Be Reviewed De Novo.
> >
> > B. Defendant's Conduct Is Outside The Legislature's Purpose Of The [PDA].
> >
> > C. The Punitive Damage Award Violated N.J.S.A. 2A:15-5.12 And Defendant's Due Process Rights.
> >
> > > i. Deterrence is not a Concern Because the Parties' Relationship is Terminated.
> > >
> > > ii. Defendant Lacks Any Ability to Pay a Punitive Damages Award.
>
> II. THE COMPENSATORY DAMAGE AWARD WAS NOT BASED UPON THE EVIDENCE AND MUST BE VACATED.
>
> > A. The Compensatory Damages Award Included Funds From The Settled Sasha Litigation.

B. Plaintiff Cannot Recover Funds Owed to [His Mother].

C. Plaintiff's Expert Testimony Is Unreliable.

D. The Trial Court Erred In Not Ordering An Accounting.

III. THE TRIAL COURT ERRED IN FINDING THAT DEFENDANT BREACHED HIS FIDUCIARY DUTIES OR COMMITTED CONVERSION.

A. This Court Should Review Questions Of Law De Novo Giving No Deference To The Trial Court's Legal Conclusions.

B. Plaintiff Failed to Establish That Defendant Breached Any Fiduciary Duty As a "Joint Venturer."

C. Defendant Did Not Breach His Fiduciary Duty To Plaintiff.

i. Losses Were The Responsibility of the Party Financing the Property.

ii. The Parties Never Agreed to How Profits Would Be Distributed or Calculated.

D. Plaintiff Failed To Establish Damages.

E. Plaintiff Failed to Establish that Defendant Converted Property.

I.

We review a trial judge's findings and conclusions in a non-jury trial to see if they are supported by substantial evidence. Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011). "Deference is especially appropriate 'when the evidence is largely testimonial and involves questions of credibility.'" Cesare v. Cesare, 154 N.J. 394, 412 (1998) (quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997)). A trial judge's evidentiary decisions are also discretionary, and absent an abuse of discretion, are entitled to our deference. Ehrlich v. Sorokin, 451 N.J. Super. 119, 128 (App. Div. 2017).

We review questions of law de novo. See Toll Bros., Inc. v. Twp. of W. Windsor, 173 N.J. 502, 549 (2002). A punitive damage award is also reviewed de novo. Rusak v. Ryan Auto., LLC, 418 N.J. Super. 107, 118 (App. Div. 2011).

II.

Having thoroughly reviewed the record pursuant to these principles, we affirm substantially for the reasons expressed in Judge Thurber's thoughtful and well-written opinions. The arguments raised in Points II and III of defendant's brief, attacking the judge's findings related to the compensatory damages and breach of fiduciary duty, lack sufficient merit to warrant discussion in a written

opinion. R. 2:11-3(e)(1)(E). We add the following comments with respect to the arguments raised by defendant in Point I.

The PDA states punitive damages should be awarded to penalize and provide additional deterrence against a defendant to discourage similar conduct in the future. N.J.S.A. 2A:15-5.10. Punitive damages may be awarded if, by clear and convincing evidence, it is established the harm suffered was the result of a defendant's "wanton and willful disregard of persons who foreseeably might be harmed . . . ." N.J.S.A. 2A:15-5.12(a). "Wanton and willful disregard" is defined as "a deliberate act or omission with knowledge of a high degree of probability of harm to another and reckless indifference to the consequences of such act or omission." N.J.S.A. 2A:15-5.10. The court should consider: The likelihood that serious harm would arise from the defendant's conduct; the defendant's awareness of the likelihood of serious harm; the conduct of the defendant upon learning their conduct would likely cause harm; and the duration of the conduct or any concealment of it by the defendant. N.J.S.A. 2A:15-5.12(b)(1)-(4).

When deciding the punitive damage amount, the court should consider: The profitability of the misconduct; when the misconduct was terminated; and the financial condition of the defendant. N.J.S.A. 2A:15-5.12(c)(2)-(4). The

defendant's wealth can be assessed as of the time of judgment or when the wrongdoing occurred. Tarr v. Bob Ciasulli's Mack Auto Mall, Inc., 194 N.J. 212, 220 (2008). A punitive damage award may be up to five times the award of compensatory damages. N.J.S.A. 2A:15-5.14(b).

In deciding whether a punitive damage award violates due process, the court considers: The degree of reprehensibility of the defendant's behavior; the relationship between the harm suffered and the punitive damage award; and the difference between the punitive damage award and the civil penalties authorized in similar cases. Saffos v. Avaya, Inc., 419 N.J. Super. 244, 266 (App. Div. 2011). Additionally, the court must consider the procedural and due process requirements of the PDA. Baker, 161 N.J. at 229.

Having undertaken a de novo review of the punitive damages award, we conclude the judge committed no reversible error or mistake of law warranting our intervention. Defendant's conduct was willful, wanton, and evidenced deceit such that it met the measure of reprehensibility warranting a punitive damage award.

We reject defendant's assertion the judge did not explain the punitive damage calculation. The judge stated:

> The court's judgment after trial awarded compensatory damages of $1,328,057.98. Plaintiff

> calculated pre-judgment interest through September 30, 2021, as $154,940. Using the same interest rate (4.5%) from that date forward to April 7, 2021, the additional prejudgment interest would be $30,782. The compensatory award used to consider the ratio of punitive damages to compensatory damages, including prejudgment interest, is $1,513,780.
>
> Considering all the factors discussed here, the court has determined the appropriate punitive damages award is $3,500,000, an amount less than 2.5 times the compensatory award.

Defendant's assertion the award violated due process is likewise misplaced. Due process requires appellate review of the award for reasonableness. Herman v. Sunshine Chem. Specialties, Inc., 133 N.J. 329, 338 (1993). Our Supreme Court recently addressed this issue in Pritchett v. State, 248 N.J. 85, 112-13 (2021). The Court held that while BMW "introduced the consideration of ratios between compensatory and punitive damages . . . mathematical formulae alone cannot encapsulate the multiple facets of the Due Process Clause or address all of its concerns . . . ." Id. at 112 (citing BMW, 517 U.S. at 582). Thus, "courts must ensure that the measure of punishment is both reasonable and proportionate to the amount of harm to the plaintiff and to the general damages recovered." Ibid. (citing State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 425-26 (2003)). Punitive damage awards with a single-digit ratio, i.e., less than ten, generally do not violate due process. Id. at 112-13

(citing State Farm, 538 U.S. at 425).

Here, the punitive damage amount was well within the bounds of the single-digit ratio. Given defendant's conduct, the award amount did not violate due process. The balance of the arguments raised by defendant related to the punitive damage award lack merit and do not warrant further discussion. The award is amply supported by the evidence and the judge's findings on this issue, and the others raised on appeal were unassailable.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION