

**NOT FOR PUBLICATION WITHOUT THE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-2953-20**

AHMED ELDERBY,

Plaintiff-Appellant,

v.

**ALEX GERALDINO and
NEW JERSEY TEAMSTERS
FOOTBALL CLUB,**

Defendants-Respondents.

Argued April 4, 2022 – Decided April 13, 2022

Before Judges Fasciale and Firko.

On appeal from the Superior Court of New Jersey, Law
Division, Hudson County, Docket No. L-4148-19.

Hisham Hamed argued the cause for appellant.

Steven S. Glickman argued the cause for respondents.

PER CURIAM

Plaintiff appeals from a May 11, 2021 order issued after a bench trial entering a no cause of action dismissing the complaint against defendant New

Jersey Teamsters Football and defendant Alex Geraldino (collectively defendants). Judge Kimberly Espinales-Maloney conducted the trial and rendered a written opinion, on which we substantially agree. We affirm and add these brief remarks.

I.

Geraldino formed Teamsters in 2017, a semi-professional soccer team. Defendants hired plaintiff as an assistant coach in early 2018. Approximately one-and-a-half years later, defendants held a "Club Information Briefing" meeting with the staff. The accompanying presentation identified all staff members as volunteers. Plaintiff testified he indicated multiple times that he wanted to be compensated. Shortly after a game in June 2019, plaintiff was dismissed from his position.

The judge found plaintiff was "marginally credible," and that his testimony "largely lack[ed] collaboration in the proofs and at times [was] not reasonable." Plaintiff's counsel called two other witnesses who testified at the trial. The judge was unwilling to give one of them "significant weight" because the testimony was brief. The judge found Geraldino testified credibly and gave his testimony "significant weight" especially because his testimony was corroborated by "several [evidential] sources." The judge determined plaintiff

did not satisfy his burden on any of his claims against defendants and dismissed each with prejudice.

On appeal, plaintiff raises the following points for this court's consideration:

[POINT I]

THE TRIAL [JUDGE]'S FACTUAL FINDINGS AND LEGAL CONCLUSIONS ARE MANIFESTLY UNSUPPORTED AND/OR INCONSISTENT WITH ADEQUATE, SUBSTANTIAL AND CREDIBLE EVIDENCE AS TO OFFEND THE INTERESTS OF JUSTICE, AND MUST THEREFORE BE REVERSED AS A MATTER OF LAW[.]

A. The Trial [Judge] Erroneously Dismissed Plaintiff's Breach Of Contract Claim[.]

B. The Trial [Judge] Erroneously Dismissed Plaintiff's Unjust Enrichment Claim[.]

1. Contrary to the trial [judge]'s findings, there is a plethora of evidence that supports [p]laintiff's reasonable expectation that [d]efendants were going to compensate him for his coaching services, and that it would not be "unjust" to award [p]laintiff damages[.]

[2]. Various portions of the trial [judge]'s fact and credibility findings were not based upon credible evidence in the record[.]

C. The Trial [Judge] Erroneously Dismissed Plaintiff's Common[.]Law Fraud Claim[.]¹

Our standard of review is well-settled. In an appeal from a non-jury trial, we "give deference to the trial [judge] that heard the witnesses, sifted the competing evidence, and made reasoned conclusions." Gripenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015). We will "'not disturb the factual findings and legal conclusions of the trial judge' unless convinced that those findings 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, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)). Our "review of a cold record is no substitute for the trial [judge]'s opportunity to hear and see the witnesses who testified on the stand." Balducci v. Cige, 240 N.J. 574, 595 (2020).

II.

Plaintiff contends the judge erred in dismissing his three counts: (1) breach of contract, (2) unjust enrichment, and (3) common-law fraud. The judge properly dismissed these counts with prejudice. Plaintiff has not demonstrated

¹ To comport with our style conventions we have altered the capitalization and formatting of plaintiff's subheadings, but have omitted the alterations for readability.

that the judge's findings were manifestly unreasonable or unsupported by the record.

A.

We first address plaintiff's breach of contract claim. Plaintiff contends he and defendants had an oral contract, despite a lack of an agreement to specific wages or compensation. There is sufficient credible evidence in the record to support the judge's findings.

A plaintiff must satisfy four elements to establish a breach of contract claim: (1) "[t]he parties entered into a contract containing certain terms"; (2) the plaintiff "did what the contract required [him] to do"; (3) the "defendant[s] did not do what the contract required [them] to do," defined as a "breach of the contract"; and (4) the defendants' breach caused a loss to the plaintiff. Globe Motor Co. v. Igdalev, 225 N.J. 469, 482 (2016) (first, third, and fourth alterations in original) (quoting Model Jury Charge (Civil), 4.10A, "The Contract Claim—Generally" (approved May 1998)).

A contract exists where there is "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)). "[I]f parties agree on essential terms and manifest an intention to be bound by those terms, they have created an enforceable contract." Ibid. "Mutual assent requires that the parties have an understanding of the terms to which they have agreed." Atalese v. U.S. Legal Servs. Grp., L.P., 219 N.J. 430, 442 (2014).

The judge made reasoned findings that we decline to disturb. The judge found:

In this case it is clear that the parties did [not]² have a contract, oral or otherwise. Again, the fact that there is no written memorialization is not what is fatal to this claim. Rather, the evidence produced at trial demonstrate[s] clearly that there was no meeting of the minds as to essential terms. Even assuming that [defendants] told [plaintiff] [they were] going to pay him for coaching, there was no mutual assent as to how much he would be paid. Both parties testified that there was no agreed-upon hourly rate set. [Plaintiff] testified that they discussed an "average" rate for a coach[,] which [defendants] vehemently denied. To successfully litigate this type of claim, both parties must mutually assent to the terms of the agreement which requires that they both have an understanding of the terms to which they agreed. . . . The [c]ourt finds that based on the testimony and the proofs shown, plaintiff has not met [his] burden of proving by a preponderance of the evidence that an oral contract

² The judge's written decision contained a typo because "not" was omitted. The judge later writes in the opinion, "the court has found that there was no contract here."

existed between the parties based on the lack of mutual assent shown.

The judge determined the agreement lacked a meeting of the minds as to plaintiff's compensation. The parties agreed there was no set hourly rate. The judge, believing Geraldino over plaintiff's testimony, determined the parties never discussed an "average" rate for coaching, as plaintiff had contended. There was no contract, and the judge properly dismissed the breach of contract count.

B.

Plaintiff contends the judge erred in dismissing his unjust enrichment claim because it was reasonable for him to expect payment, and he argues the judge did not properly consider the W-9 Form. On the judge's credibility findings, plaintiff contends the judge erroneously valued Geraldino's testimony more than plaintiff's testimony.

Unjust enrichment claims apply in matters where the parties did not have a contract. See N.Y.-Conn. Dev. Corp. v. Blinds-To-Go (U.S.) Inc., 449 N.J. Super. 542, 556 (App. Div. 2017). To prove a claim for unjust enrichment, a plaintiff must "show both that [the] defendant received a benefit and that retention of that benefit without payment would be unjust." VRG Corp. v. GKN Realty Corp., 135 N.J. 549, 554 (1994). Thus, a plaintiff "must establish that

the services were performed with an expectation that the beneficiary would pay for them, and under circumstances that should have put the beneficiary on notice that the plaintiff expected to be paid." Weichert Co. Realtors, 128 N.J. at 438.

The judge determined the first element, if a benefit was conferred, was clearly satisfied because plaintiff coached Teamsters for over a year. However, the judge dismissed the unjust enrichment count after she found plaintiff did not have a "reasonable expectation" to be paid for his coaching, and that awarding damages would be unjust. The judge reasoned that while plaintiff was requested to submit a W-9 form, his expectation to be paid was unreasonable

given that he was only paid \$150 once for tryouts is not clear on this record. Moreover, [plaintiff] also gained a benefit by coaching for the Teamsters because he gained experienced coaching adults. When the court weighs all the proofs and surrounding circumstances, the court finds that plaintiff's expectation to be paid is not reasonable. When [plaintiff] was hired, none of the staff was being compensated.

Credible evidence supports these findings. Teamsters was a semi-professional soccer team that only had four sponsors. During plaintiff's tenure as an assistant coach, defendants did not pay any other staff or players. The judge properly dismissed the unjust enrichment claim as it was unreasonable for plaintiff to expect compensation given the record before us.

C.

And as to the fraud claim, plaintiff contends the trial judge failed to consider each element of his common-law fraud claim and only focused on the material misrepresentation portion.

There are five elements of common-law fraud: "(1) a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by the defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages." Gennari v. Weichert Co. Realtors, 148 N.J. 582, 610 (1997). Rule 4:5-8(a) requires allegations of fraud be pled with particularity. See State ex rel. Campagna v. Post Integrations, Inc., 451 N.J. Super. 276, 278 (App. Div. 2017); see also State, Dep't. of Treasury, Div. of Inv. ex rel. McCormac v. Qwest Commc'ns Int'l, Inc., 387 N.J. Super. 469, 485-86 (App. Div. 2006) (stating that a judge can dismiss a fraud claim if "the allegations do not set forth with specificity, nor do they constitute as pleaded, satisfaction of the elements of legal or equitable fraud" (quoting Levinson v. D'Alfonso & Stein, 320 N.J. Super. 312, 315 (App. Div. 1999))).

The judge concluded plaintiff did not meet this heightened standard because he failed to show defendants made material misrepresentations. The judge determined:

other than [plaintiff's] testimony that . . . Geraldino promised to pay him at some point once they had sponsors, the credible proofs point to the contrary. First and foremost, I found . . . Geraldino's testimony more credible Moreover, the staff meeting further supports the contention that the staff was not being paid and by [plaintiff's] own testimony, Coach Javier was not paid until May 2019. In addition, neither Mr. Santella nor the players were being paid either. Based on this record, the court cannot find that the evidence supports a finding that [p]laintiff has proven by clear and convincing evidence that [d]efendant[s] made the material misrepresentation of promising a salary for his coaching duties. Moreover, since the first element fails, [p]laintiff cannot recover under the claim of common law fraud since all five elements must be met to prevail.

This conclusion is clearly supported by the record. Plaintiff needed to prove each and every element, and the failure to prove there was a material misrepresentation was enough to dismiss the claim.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION