SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0310-20

125 MONITOR HOLDINGS, LLC,

Intervenor/Plaintiff-Respondent,

v.

BOTANICAL REALTY ASSOCIATES, URBAN RENEWAL, LLC, JAR HOLDINGS URBAN RENEWAL, LLC, 125 MONITOR REALTY, LLC, LEIB PURETZ and ARON PURETZ,

Plaintiffs/Intervenor Defendants-Appellants,

v.

125 MONITOR STREET JC, LLC, MAYER DEUTSCH, STEVEN SCHWARTZ, MCKARKIEN IDF, LLC, and YOSEF BRIKMAN,

Defendants-Respondents,

and

YEHUDA DEUTSCH,
GREINER-MALTZ REAL ESTATE,
SOLOMON STRULOVIC,
PEYOM LHR SCOOPSA, and
BERKSHIRE ABSTRACT & TITLE
AGENCY,

Defendants.

Submitted November 29, 2022 – Decided March 21, 2023

Before Judges Messano, Gummer and Paganelli.

On appeal from the Superior Court of New Jersey, Chancery Division, Hudson County, Docket No. C-000092-19.

Ofeck & Heinze, LLP, attorneys for appellants (Mark F. Heinze, on the briefs).

DRLavoieLaw LLP and JSD Legal, LLC, attorneys for respondents (Daniel R. Lavoie, on the brief).

PER CURIAM

Plaintiffs Botanical Realty Associates Urban Renewal, LLC, JAR Holdings Urban Renewal LLC, 125 Monitor Realty, LLC, Leib Puretz, and Aron

Puretz[1] (collectively, plaintiffs) sought to set aside the March 2019 sale of property in Jersey City (the Property) by defendant Yosef Brikman to defendant 125 Monitor Street JC LLC (125 Monitor).[2] Plaintiffs once owned the Property, and Brikman held a mortgage as security for a $2 million loan he had made on behalf of Puretz in 2010. When Puretz defaulted, Brikman started foreclosure proceedings. After years of litigation, Brikman reached a settlement with plaintiffs in 2017.

Under the terms of the settlement, plaintiffs were to pay Brikman $3.2 million on or before December 31, 2017. As further security, plaintiffs were to execute a bargain-and-sale deed conveying the Property to Brikman, with the deed held in escrow as security pending payment. If plaintiffs failed to pay the full amount by the designated date, the agreement provided that the court would release the deed to Brikman, who "shall then sell" the Property "in a

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[1] All references in our opinion to "Puretz" are to Leib Puretz, as he controlled or directed the entity plaintiffs, at least in connection with the matters at issue in this case. Aron Puretz is Leib Puretz's son, and Aron denied any significant knowledge about the property at issue or the litigation.

[2] 125 Monitor Street JC LLC was a special-purpose entity owned by McKarkien Investment IDF LLC (inaccurately pled without the word "Investment" in its name). McKarkien was controlled by defendant Steven Schwartz and employed defendant Mayer Deutsch. Except as otherwise noted, we refer to these defendants as 125 Monitor throughout the opinion.

commercially reasonable manner with the intention to maximize the sale price for the [P]roperty." From the proceeds of the sale, Brikman was to receive $3.2 million, plus adjustments not to exceed $130 thousand, with the remainder of the proceeds paid over to plaintiffs.

Plaintiffs breached the agreement by neither paying the money to Brikman nor executing the deed, and Brikman sought relief from the court. In February 2018, plaintiffs delivered the deed to Brikman, who then endeavored to sell the Property. Those efforts included negotiations with Puretz to buy back the Property. Puretz, in turn, was in active negotiations with 125 Monitor Holdings, LLC (Holdings) during the foreclosure litigation and executed contracts to sell the Property to Holdings, in 2015, 2016 and 2017. However, contractual contingencies and other issues prevented consummation.[3] It was later revealed at trial that Puretz continued his attempts to sell the Property even after transferring title to Brikman in 2018, believing he was permitted to do so under the terms of the settlement agreement.

In July 2018, plaintiffs filed suit against Brikman (C-107-18) seeking a declaratory judgment that the foreclosure settlement agreement was "in full

[3] One thorny issue arose because of Jersey City's 2015 decision to designate another company as redeveloper of the Property, which was part of the Morris Canal Redevelopment Area.

force and effect," and that Brikman anticipatorily had breached the settlement agreement by not marketing the property "in a commercially reasonable manner," and had breached the implied covenant of "good faith and fair dealing." Plaintiffs sought specific performance, damages, or "the appointment of a receiver, referee or similar arm of the Court to effectuate" a sale of the Property in accordance with the settlement agreement. Brikman continued to market the Property, ultimately accepting 125 Monitor's offer for $5.5 million in cash with no contingencies. The sale closed in March 2019.

Plaintiffs then filed another complaint (C-92-19) in May 2019, and an amended complaint in August 2019, seeking a declaration that Brikman had no authority to sell the Property, and alleging fraud, fraudulent concealment, a violation of the Uniform Fraudulent Transfer Act (UFTA), N.J.S.A. 25:2-20 to -36,[4] civil conspiracy and unjust enrichment. Plaintiffs sought to void the sale

[4] The UFTA was amended and renamed as the Uniform Voidable Transactions Act effective August 10, 2021. See L. 2021, c. 92 § 1. This litigation was tried and decided prior to enactment of the amended statute. We therefore refer to the version then in existence.

of the Property, as well as compensatory and punitive damages, and counsel fees.[5]

The judge permitted Holdings to intervene as of right as a plaintiff in the litigation, and Holdings filed a complaint against plaintiffs, Brikman, and 125 Monitor, alleging: breach of contract; breach of the covenant of good faith and fair dealing; fraud; and tortious interference with prospective economic advantage. Holdings sought specific performance of its contract with plaintiffs and other relief. Additional pleadings asserting crossclaims and counterclaims were filed by the various parties, but they are irrelevant to the disposition of this appeal.

The Chancery judge, Jeffrey R. Jablonski, first tried the action filed as C-107-18, in which plaintiffs sought a declaration that Brikman had breached the settlement agreement by not having sold the Property in a commercially reasonable manner. The judge issued a written decision finding in plaintiffs'

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[5] The pleadings in C-92-19 also named other defendants who have not participated on appeal. They include: Greiner-Maltz Real Estate and Yehuda Deutsch, who marketed the property on behalf of Brikman; Berkshire Abstract & Title Agency, from whom 125 Monitor obtained title insurance; Peyom LHR Scoopsa, from whom 125 Monitor obtained a mortgage on the property; and Solomon Strulovic, a person with whom Brikman negotiated regarding the sale of the property. Either before trial in C-92-19, or after the close of all evidence, plaintiffs' claims against these defendants were dismissed.

favor. He found that Brikman had not sold the property in a commercially reasonable manner to maximize the purchase price but instead had sold the property quickly, to ensure that he received repayment of the monies previously loaned to plaintiffs.

However, the judge also determined "[n]o monetary damages w[ould] be awarded at th[at] point." He reasoned:

> Despite the conclusions made here, this controversy is not concluded, since a similar pressing issue exists: whether the sale [of the Property] on March 18, 2019, must be set aside following a factual determination of the bona fides of the transaction. This is a fundamental aspect of the pending lawsuit under docket number [C-]92-19. Since the resolution of that matter might trigger the return of the funds to the purchaser of the premises, until the liability of the parties is finally assessed, the proceeds of the transaction must be preserved.

The judge ordered that the proceeds from the sale remain in escrow until further order of the court and denied plaintiffs' request for attorney fees.

Trial ensued on C-92-19.[6] At the close of all evidence, the court granted in part and denied in part motions filed by plaintiffs and Holdings to dismiss

[6] In their amended notice of appeal, plaintiffs included two interlocutory orders that denied their motion to file a third amended complaint. In their brief, plaintiffs did not include any argument regarding the propriety of those orders. An issue not briefed is deemed waived on appeal. Drinker Biddle & Reath LLP

Brikman's counterclaims, such that all that remained were Brikman's claims against plaintiffs for declaratory judgment, tortious interference, and breach of the covenant of good faith and fair dealing, and Brikman's claims against Holdings for declaratory judgment and tortious interference. The court also granted in part and denied in part 125 Monitor's motion for judgment as to plaintiffs' claims, dismissing plaintiffs' civil conspiracy claim and the UFTA claim with respect to Schwartz.

Judge Jablonski issued a written decision that included a comprehensive review of the evidence with detailed credibility determinations. In essence, the judge found that plaintiffs' problems were of their own making, and their actions led Brikman to act as he did.

> [T]here are two critical points that were unaddressed by the Puretz parties both at trial and in summation, both of which are fatal to their causes of action: The first is any acknowledgment of the fact that it was the Puretz parties' default of the original obligations to Mr. Brikman that served as the catalyst for the creation of the settlement agreement that generated the scrutiny. The second is premised on the first: the Puretz parties' lack of accountability and explanation of their numerous and lengthy delays following the breach of that settlement agreement and the actions that took place during those many months. Omission of any attention provided to the self-created issues are critical

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v. N.J. Dep't of Law & Pub. Safety, 421 N.J. Super. 489, 496 n.5 (App. Div. 2011).

> to a credibility determination as to the overall reasonableness of the plaintiffs' position. In other words, if the Puretz parties had met their initial responsibilities created by their 2010 obligation on which they defaulted, and satisfied their obligations under the 2017 settlement agreement on which they also defaulted, this litigation would never have been started. At bottom, this trial seeks to divert scrutiny provided to the fact that the Puretz parties were the ultimate perpetrators of this controversy. At trial, they leveled substantial criticism against actions taken by parties who were aggrieved by the action, or inaction, of the plaintiffs[,] and who were forced to confront the adverse consequences of those defaults. The lack of attention to these actions and any consequence concession of this reality impairs any favorable determination to be provided to the plaintiffs. The record before this court is quite clear that the actions of the Puretz parties caused the responsive action by Mr. Brikman that directly led to the actions here.
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> Resolution of this matter rests in the "maxim that he who seeks equity must do equity." Natovitz v. Bay Head Realty Co., 142 N.J. Eq. 456, 463 (E. & A. 1948). This principle "simply obliges the party seeking equitable relief to do what is required by conscience and good faith." Ibid.

The August 24, 2020 order granted declaratory relief to Brikman and 125 Monitor. The court did not set aside the sale of the Property to 125 Monitor, and, in accordance with the settlement agreement, it ordered the release to Brikman of the $3.2 million, plus $130 thousand, held in escrow, with any

excess amounts being released to plaintiffs. All other claims and counterclaims were dismissed. Plaintiffs filed this appeal.

While the appeal was pending, however, plaintiffs and Brikman entered into a stipulation of settlement resolving all claims against each other in C-107-18, C-92-19, and this appeal. They agreed that plaintiffs could continue to prosecute this appeal, "except that any claims for damages against . . . Brikman [we]re deemed to be settled[,]" and Brikman agreed not to oppose plaintiff's appeal.

Before us, plaintiffs argue Judge Jablonski's factual findings were not supported by adequate, credible evidence and were clearly mistaken. They contend that 125 Monitor was "not a good faith purchaser," and Brikman's sale of the Property to 125 Monitor was "fraudulent." We have considered these arguments in light of the record and applicable legal principles. We affirm.

I.

In reviewing a judgment issued after a bench trial, we must "give deference to the trial court that heard the witnesses, sifted the competing evidence, and made reasoned conclusions." Griepenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015). "Reviewing appellate courts 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, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 483–84 (1974)).

"Appellate courts owe deference to the trial court's credibility determinations as well because it has 'a better perspective than a reviewing court in evaluating the veracity of a witness.'" C.R. v. M.T., 248 N.J. 428, 440 (2021) (quoting Gnall v. Gnall, 222 N.J. 414, 428 (2015)). However, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) (citing State v. Brown, 118 N.J. 595, 604 (1990)).

We apply these standards to the issues plaintiffs present on appeal.

II.

Plaintiffs argue the judge's factual findings are not entitled to any deference because they contradicted the findings he had made in the first trial. They note, for example, Judge Jablonski specifically found after the first trial that Brikman had not sold the property in a commercially reasonable manner; however, after the second trial, he "excused the sale," finding Brikman had sold

the Property to 125 Monitor as a "last resort" after "innumerable false starts over a period of years in which he was continually deprived of his investment."

However, to the extent there are inconsistencies between the judge's findings in the separate trials, they are easily squared. As the judge explained in his post-trial opinion, plaintiffs provided contradictory evidence in the two trials and failed to disclose certain evidence in the first trial that was adduced in the second trial, raising questions as to their credibility. Moreover, additional evidence was submitted at the second trial, including evidence adduced by 125 Monitor, which was not a party in the 2018 litigation, C-107-18. And that evidence supported the reasonableness of the sale price for the Property agreed on by Brikman and 125 Monitor.

Additionally, given that the 2018 litigation was ongoing and no final judgment had been entered, and given the different factual records in the two litigations, as well as the absence of evidence produced by 125 Monitor in the earlier litigation, Judge Jablonski acted well within his discretion to revise any and all factual findings, including the reasonableness of the sale price. See Lombardi v. Masso, 207 N.J. 517, 534, 536–39 (2011) (noting trial court's inherent power to revise its interlocutory rulings at any time before entry of final judgment).

Plaintiffs also argue that the judge's findings resulted in an abrogation of his responsibility to enforce the 2017 settlement agreement between plaintiffs and Brikman. Undoubtedly, the sum plaintiffs received from the sale was less than they thought the Property could fetch. However, Judge Jablonski found that over the many years of litigation, plaintiffs never proved that a sale could have been consummated at a greater price.

Specifically in this regard, the judge discussed the other "purported offers" to purchase the property, with prospective purchasers offering "alleged consideration" between $9 million and $104 million. He detailed the evidence regarding contingencies in the agreements plaintiffs signed had with Holdings that made consummation of the sales unlikely; rejected plaintiffs' expert's valuation of the Property; discussed the valuation placed on the Property by Jersey City and the designated redeveloper, both of which were consistent with the actual price 125 Monitor paid; and noted Puretz's continued desire to purchase the property back from Brikman. The judge found that plaintiffs had failed to satisfy their burden of proof on the issue of damages, and, therefore, contrary to plaintiffs' assertions, the judge enforced the settlement agreement as written.

All these findings are amply supported by the record evidence, and we agree with the judge's legal conclusions drawn from those findings.

III.

Plaintiffs argue 125 Monitor was not "a good faith purchaser" of the Property, and Brikman's transfer of the Property violated the UFTA.[7] We disagree with both contentions.

A.

In large part, plaintiffs' argument that 125 Monitor was not a good faith purchaser is premised on 125 Monitor's admitted knowledge of the 2017 settlement agreement. According to plaintiffs, with that knowledge, 125 Monitor was able to negotiate a price with Brikman well below the Property's true market value and deprived plaintiffs of the benefit they were entitled to under the settlement agreement.

Judge Jablonski took note of the well-established principle, that

> [w]here it is made to appear that one has acquired title to property and has paid a valuable consideration therefor, the purchaser is presumed to be a bona fide purchaser for value without notice until the contrary

[7] Although plaintiffs' settlement with Brikman moots any relief as to him, a successful claimant under the UFTA may, under certain circumstances, obtain "a money judgment against the transferee where the transfer cannot be undone." Banco Popular N. Am. v. Gandi, 184 N.J. 161, 176 (2005) (citing N.J.S.A. 25:2-30(a) and (b)).

> appears, and the burden of showing to the contrary rests upon the party alleging that title was acquired by the purchaser with notice of an outstanding equity or claim.
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> [Venetsky v. W. Essex Bldg. Supply Co., 28 N.J. Super. 178, 187 (App. Div. 1953) (citing Roll v. Rea, 50 N.J.L. 264 (Sup. Ct. 1888), aff'd 57 N.J.L. 647 (E. & A. 1895)).]

Accord Monsanto Emps. Fed. Credit Union v. Harbison, 209 N.J. Super. 539, 542 (App. Div. 1986); Wolek v. DiFeo, 60 N.J. Super. 324, 330 (App. Div. 1960). In his written decision, the judge fully and adequately explained his reasons for concluding that plaintiffs had failed to carry their burden.

Plaintiffs acknowledge in their brief that the 2017 settlement agreement did not establish any lien against the property in favor of plaintiffs and in no way clouded Brikman's title to the property. The court's decision to vacate plaintiffs' lis pendens during the 2018 litigation made that clear.

The judge credited the testimony of 125 Monitor's attorney, who had described the efforts he made to ensure that Puretz's contract with Holdings, which had resulted at one point in a filed notice of settlement, was "dead" before proceeding. Judge Jablonski rejected any claim that the attorney "somehow colluded and furthered a conspiracy to 'steal' the [P]roperty from the Puretz parties . . . ." In short, proof that 125 Monitor knew about the settlement

agreement did not serve to rebut the presumption that it was a bona fide purchaser.

The judge also found that 125 Monitor had paid valuable consideration in exchange for title to the Property, and the sale was an arms-length transaction for a fair and reasonable price. He found that 125 Monitor had "accept[ed] the premises in an 'as-is' condition free of any contingencies – a substantial business risk considering environmental problems and the attendant remediation costs, and the possible preclusion of any development" of the Property given the designated redeveloper's "lack of ownership." Judge Jablonski concluded that Brikman's sale of the property without contingencies was reasonable under the circumstances, particularly due to plaintiffs' inequitable conduct both before and after the settlement agreement.

We agree with the judge's analysis and his conclusion that 125 Monitor was a good-faith purchaser of the Property.

B.

Plaintiffs contend they proved Brikman's sale of the Property to 125 Monitor was fraudulent and, pursuant to the UFTA, the judge should have vacated the sale and accorded them further relief. We disagree.

"The purpose of the [UFTA] is to prevent a debtor from placing his or her property beyond a creditor's reach." Gilchinsky v. Nat'l Westminster Bank, 159 N.J. 463, 475 (1999) (citing In re Wintz Cos., 230 B.R. 848, 859 (8th Cir. 1999)). A court makes two inquiries in determining whether a transfer constitutes a fraudulent conveyance under N.J.S.A. 25:2-25: first, whether the debtor has put an asset that otherwise would have been available to the creditors beyond the reach of creditors as a result of the transfer; and second, "whether the debtor transferred [the] property with an intent to defraud, delay, or hinder the creditor." Gilchinsky, 159 N.J. at 475–76 (first citing In re Wolensky's Ltd. P'ship, 163 B.R. 615, 626–27 (Bankr. D.C. 1993); then quoting Klein v. Rossi, 251 F.Supp. 1, 2 (E.D. N.Y. 1966)). "Both inquiries involve fact-specific determinations that must be resolved on a case-by-case basis." Id. at 476. "The person seeking to set aside the conveyance bears the burden of proving actual intent." Ibid. And the standard of proof is clear and convincing evidence. Jecker v. Hidden Valley, Inc., 422 N.J. Super. 155, 164 (App. Div. 2011) (citing Barsotti v. Merced, 346 N.J. Super 504, 520 (App. Div. 2002)).[8]

[8] As noted earlier, the UFTA was amended after this case was tried. Currently, a creditor's burden of proof is a preponderance of the evidence. N.J.S.A. 25:2-25(b).

N.J.S.A. 25:2-26 enumerates "badges of fraud," that is, "circumstances that so frequently accompany fraudulent transfers that their presence gives rise to an inference of intent." Gilchinsky, 159 at 476 (citing Hassett v. Goetzmann, 10 F.Supp.2d 181, 188 (N.D.N.Y. 1998)). "In determining actual intent to defraud, courts should balance the factors enumerated in N.J.S.A. 25:2-26, as well as any other factors relevant to the transaction." Id. at 477. See also Firmani v. Firmani, 332 N.J. Super. 118, 121 (App. Div. 2000) (stating that N.J.S.A. 25:2-26 sets forth a "non-exhaustive list" of factors to be considered).

However, the very broad remedies in N.J.S.A. 25:2-29 available to a successful plaintiff under the UFTA are limited with respect to the transferee, in this case, 125 Monitor, by the provisions of N.J.S.A. 25:2-30. We explained the interplay between the two sections of the UFTA this way:

> N.J.S.A. 25:2-29 and N.J.S.A. 25:2-30 govern the rights and remedies of such a "creditor" against transferees of the "debtor." N.J.S.A. 25:2-29 sets forth the creditor's remedies, and allows the "avoidance" of a fraudulent transfer, as well as other remedies, against all transferees, subject, however, to the limitations set forth in N.J.S.A. 25:2-30. N.J.S.A. 25:2-30 is entitled "Defenses, liability and protection of transferee." That section prohibits the avoidance of a fraudulent transfer under N.J.S.A. 25:2-25a made by a debtor to a transferee who "took [the transferred asset] in good faith and for a reasonably equivalent value." N.J.S.A. 25:2-30a. N.J.S.A. 25:2-30b(1) and (2) provide that judgment may be entered only against a transferee who

> did not take in "good faith" and "for value." Stated another way, N.J.S.A. 25:2-30 provides a complete defense to a transferee who takes property transferred by a "debtor" in fraud of its "creditors" in "good faith" and "for value." However, the burden is on the transferee to demonstrate this affirmative defense.
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> [N.J. Dep't of Env't Prot. v. Caldeira, 338 N.J. Super. 203, 223–24 (App. Div. 2001) (alteration in original) (citations omitted), rev'd on other grounds, 171 N.J. 404 (2002).]

In dismissing the UFTA claim, Judge Jablonski found "the Puretz parties have not set forth any proof necessary to prove, clearly and convincingly[,] that the transfer was made with the nefarious purpose for which they accuse . . . Brikman." He further found that plaintiffs' allegations of Brikman's intention to abscond with the proceeds of the sale were "rooted only in speculation and conjecture." The judge stated that even if there were "indicia of wrongdoing or malfeasance on . . . Brikman's part," plaintiffs had failed to meet "the heightened burden" of proof under the UFTA.

Before us, plaintiffs contend, as they did before Judge Jablonski, that Brikman and 125 Monitor cloaked the sale of the Property in secrecy, and Brikman failed to notify the court or immediately pay over the amount due to plaintiffs under the settlement agreement. Plaintiffs claim "these were actions of those with a guilty state of mind." However, the record amply supports Judge

Jablonski's conclusions that these allegations were either speculative, or, alternatively, insufficiently clear and convincing proof of fraudulent intent. Moreover, as already noted, the judge found that 125 Monitor was a bona fide good-faith purchaser of the Property. We affirm the dismissal of plaintiffs' UFTA claim against 125 Monitor.

Affirmed.[9]

[9] We do not address 125 Monitor's argument that it is entitled to an award of attorney's fees and costs. Nothing in the record reflects that it made a motion for sanctions below, and it may not raise this argument for the first time in their responsive brief on appeal. Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973).