SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1234-20

MILIND PATHARKAR,

Plaintiff-Respondent/
Cross-Appellant,

v.

ADVANCED SPINE AND
PAIN, LLC, d/b/a RELIEVUS,

Defendant-Appellant/
Cross-Respondent,

and

YOUNG J. LEE, M.D., jointly
severally and in the alternative,

Defendant-Respondent.

Argued October 31, 2022 – Decided February 22, 2023

Before Judges Currier, Enright and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Chancery Division, Atlantic County, Docket No. C-000031-19.

Robert T. Egan argued the cause for appellant/cross-respondent and respondent (Archer & Greiner, PC, attorneys; Robert T. Egan and Amy E. Pearl, on the briefs).

Edwin J. Jacobs, Jr. argued the cause for respondent/cross-appellant (Jacobs & Barbone, PA, attorneys; Edwin J. Jacobs, Jr., on the briefs).

PER CURIAM

In this matter regarding a dispute between two doctors and business partners regarding their medical practice—defendant Advanced Spine and Pain, LLC (ASP), we review the award to plaintiff, Milind Patharkar, M.D., after a bench trial, for his interest in the company and for profits owed to him. Defendants appealed from the award to plaintiff for profits. Because we find plaintiff was not entitled to profits, we reverse that portion of the judgment. Plaintiff cross-appealed the amount awarded him for his interest in the company. Since we conclude the court properly determined the amount due to plaintiff for his interest in the company, we affirm that provision of the judgment.

We derive our facts from the evidence presented during the bench trial that took place over twelve days in July and August 2020.

In 2008, defendant Young J. Lee, M.D., and Patharkar formed ASP as a limited liability company (LLC). There was no written operating agreement, but they agreed to equally share the work and the profits of the business.

When ASP expanded its practice in 2014 by purchasing the assets of another company, Lee and Patharkar executed the "Operating Agreement for Advanced Spine and Pain, LLC" (Operating Agreement) to secure a line of credit to help fund the purchase. Lee downloaded the Operating Agreement from the internet.

The partners signed the Operating Agreement without discussing it with an attorney or with each other. Although the Operating Agreement was executed in 2014, it was effective as of July 1, 2008. Lee and Patharkar were identified as the members of the LLC, each with a 50% company interest. Patharkar testified that he "skimmed" the Operating Agreement before he signed it but did not read it in detail.

On July 2, 2014, one day after the acquisition of the new company closed, Patharkar suffered a ruptured spleen requiring emergency surgery. Shortly thereafter, new medical issues led to further hospitalization and surgery. Additional medical complications prevented him from returning to work. On September 1, 2015, Patharkar suffered a stroke, "which took out [his] whole left side." He was never able to return to work.

Prior to July 2, 2014, and Patharkar's series of debilitating medical conditions, the two doctors received equal monthly draws and shared equally in the distribution of the net proceeds as each was a "Member" with a 50% share in the LLC.

Section 5.3 of the Operating Agreement provides that if "a Member becomes a Disabled Member, such Member shall be paid by the Company for three (3) months from the date [of disability] an amount equal to (I) the Draw, less (II) any benefits which are payable to the Member under the terms of any disability insurance policy." Between July and December of 2014, Patharkar received three payments from ASP constituting his draw, totaling $110,000. No further payments were made.

Under the Operating Agreement, a "Permanently Disabled Member" is defined as "a Member who is unable to perform his or her duties hereunder for twelve (12) months in any eighteen (18) month period." The parties do not dispute that Patharkar became a Permanently Disabled Member on July 2, 2015.

Patharkar collected $21,000 per month through May 2019 from two personal disability policies purchased by ASP. ASP collected $25,000 per month for twelve months on a disability policy insuring Patharkar. ASP also maintained buy-sell disability policies for both Lee and Patharkar, which were intended to fund the purchase of either's membership interest if they became permanently disabled. The policy insuring Patharkar provided for a lump sum benefit of $700,000 and Lee was named the "owner" and "loss payee" under the policy. To qualify for the benefit, the policy required a written buy-sell agreement and proof the buy-sell occurred.

Once Patharkar was deemed a Permanently Disabled Member, he became a "Selling Member" as defined under Section 6.3 of the Operating Agreement. This provision, which governs the "Buy-Out of Selling Members" states:

> In the event a Member becomes . . . a Permanently Disabled Member, . . . such Member <u>shall sell</u> to the Company, or, at the election of the Management Committee, to any or all of the remaining Members so long as any or all such Members consent, the Member's Company Interest ("Selling Member"). In the event the Member becomes a Selling Member, the entity or individuals purchasing the Selling Member's Company Interest shall pay to the Selling Member, or such Member's estate or legal representative, a purchase price determined in accordance with the following formula:
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> (a) <u>Valuation Date</u>. The phrase "Valuation Date" as used in this Agreement shall mean:
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> . . . .
>
> (ii) Insofar as it relates to a purchase of a Member's Company Interest due to the Member's becoming a Permanently Disabled Member, the last day of the calendar month preceding the month in which the Disability Date occurred;
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> . . . .

> (b) Purchase Price. In the event a Member becomes a Selling Member, the Purchase Price of the Member's Company Interest shall be an amount equal to the product of (I) the "adjusted accounts receivable" of the Company, multiplied by (II) the Company's accounts receivable collection rate average for the six (6) month period immediately preceding the Valuation Date (as determined by the Accountants). The Accountants shall "adjust" the accounts receivable attributed to services provided by the Selling Member based upon past experience with respect to the collectability of the accounts receivable and the estimated time that the accounts receivable will be collected. The Accountant shall estimate what percentage of the accounts receivable are collectable and shall discount the collectable receivables by the estimated period of time over which they will be received. If the actually[sic] amount of receivables collected overtime[sic] exceeds the adjusted accounts receivables determined by the Accountant, the Selling Member shall receive an amount equal to the difference between the actual collections and the adjusted accounts receivable determined by the Accountants.

Lee had an attorney prepare a "Separation and Membership Purchase Agreement" (2015 Purchase Agreement), which he personally delivered to Patharkar in October 2015 while he was in a rehabilitation facility recovering from his stroke. The 2015 Purchasing Agreement provided that ASP would pay Patharkar $942,000 for his membership interest in the company. Ronald Saltiel, ASP's chief operating officer, calculated the purchase price.

Patharkar could not remember if he looked at the 2015 Purchase Agreement. He testified that he and Lee did not discuss it and he never asked Lee how the purchase price was calculated. Patharkar said he was still hoping to return to work. He also believed ASP was worth more and his buy-out number should be larger. According to Lee, Patharkar said he would get back to Lee about the offer, but he never did.

Saltiel testified he calculated the amount due Patharkar under Section 6.3 of the Operating Agreement was approximately $1.6 million. He reduced that amount by $700,000 in anticipated proceeds from the buy-sell disability policy.

The 2015 Purchase Agreement stated that Patharkar and Lee each owned 50% of the outstanding membership interest in ASP. After the closing, Patharkar would cease to be a member of ASP; Lee would own 100% of the company. However, despite the contrary language in the agreement, Lee testified he believed he owned 100% of ASP as of July 2, 2015, the date Patharkar became permanently disabled under the Operating Agreement. He explained he intended the 2015 Purchase Agreement to reflect that Patharkar lost his 50% interest in the company on July 2, 2015, and that the agreement was to compensate him for that interest.

Lee testified he planned to give the proceeds of the buy-sell disability policy to Patharkar, so the buy-out offer was close to $1.7 million. He admitted the 2015 Purchase Agreement did not mention the disability policy, but said he told Patharkar of his intention "multiple times," and they had a verbal agreement regarding the policy. Patharkar did not recall any conversations with Lee about the policy or that Lee intended to give him the proceeds.

Lee and Saltiel met with Patharkar and his wife in February or March of 2016. Lee observed that Patharkar's left arm and hand were paralyzed, and he was drooling. Lee verbally offered Patharkar $2,000,000 to purchase his interest in ASP, which included $700,000 from the disability policy. Lee told Patharkar he planned to sell another doctor—Uplekh Purewal—a 50% interest in ASP once the transaction with Patharkar was complete. Patharkar was upset by the offer. He did not agree to the buy-out and said he intended to return to work. He did not contact Lee again about the offer.

In June 2016, Patharkar's attorney requested ASP's financial records and advised in a letter that Patharkar intended to "assum[e] a more active role in the business operations as his health status continue[d] to improve." Defendants' counsel responded that Patharkar was not entitled to all of the requested financial records because he was permanently disabled and obligated to sell his interest in the company. Counsel offered to provide financial records through 2014 and any "specific documents . . . material to [plaintiff's] rights and duties during the time he was a member of the Compan[y]." Counsel also noted Lee had made an offer to purchase Patharkar's interest in ASP and received no counterproposal. Although ASP requested a counterproposal, one was never received.

In early 2018, Lee sent Patharkar a letter regarding the "purchase and redemption by the Company of [Patharkar's] Company Interest." The letter stated that because Patharkar had not responded to Lee's attempts to redeem Patharkar's interest in ASP on "mutually agreeable terms," Lee was directing the company to purchase Patharkar's interest in accordance with Section 6.3 of the Operating Agreement. The letter referred to and attached a promissory note dated January 22, 2018, in the amount of $2,036,000. Lee testified that Saltiel used the formula in section 6.3 of the Operating Agreement to calculate the amount.

Lee explained the difference between the $942,000 offer and the $2,036,000 offer was partially due to his belief when the first offer was made that they would collect on the $700,000 buy-sell disability policy and give Patharkar the proceeds.

However, Saltiel testified he calculated a $2,736,000 buy-out figure based on accounts receivable and cash actually collected but he again reduced it for the $700,000 buy-out disability policy that Patharkar was "technically . . . entitled to." No one ever collected on the policy and the time to do so had expired. However, Saltiel thought Patharkar was responsible for failing to obtain the disability proceeds.

A "Contribution and Pledge Agreement" was executed by Lee, on behalf of ASP, and Purewal on February 9, 2018. The agreement stated that Purewal would execute a promissory note in the amount of $2.5 million dollars in exchange for a 50% membership interest in ASP. The same day, Lee and Purewal entered into a written agreement stating that if ASP had to pay Patharkar more than $2.5 million dollars for his interest in the company, Purewal would pay ASP the difference.

Patharkar filed a verified complaint against ASP and Lee in July 2019 alleging breach of contract and seeking specific performance under the Operating Agreement, and the compensation due him.

During the trial, Lee testified that he called and texted Patharkar multiple times to discuss the buy-out offers but Patharkar never replied or responded. Lee stated that Patharkar was obligated to sell his interest in ASP but refused to engage in negotiations to determine a price. Saltiel confirmed they had difficulty reaching Patharkar and although they met with him several times, he would not discuss a buy-out.

By March 2016, Lee said he realized there was a problem with negotiating a purchase and sale agreement for Patharkar's interest in the company. However, he did not consider filing a lawsuit because he was not "going to sue a guy, my partner, who just had a stroke." In addition, in February or March 2016, he was in contact with Patharkar and his attorney regarding a purchase price, so he thought negotiations were "moving along" and it was not necessary to institute a lawsuit.

Lee also described the long hours he put in to keep the business going after Patharkar became ill. He worked six days a week covering Patharkar's patients in various locations, in addition to care of his own patients, managing staff, growing the business, and ensuring the $3.5 million dollars in debt the company had incurred could be serviced. As of July 2020, the company employed sixteen doctors, twenty-two nurse practitioners and physician assistants, and 220 staff members at seventeen or eighteen locations. Lee testified that after July 1, 2014, Patharkar did not perform any of the professional and administrative services set forth in Paragraph 5.1 of the Operating Agreement.

Lee stated he owned 100% of ASP in February 2018 when he and Purewal executed the Pledge Agreement. However, he did not transfer the 50% interest to Purewal because he was waiting to resolve the purchase price with Patharkar. He said that after he executed the agreement with Purewal, ASP received a letter from Patharkar's attorneys and "that stopped pretty much everything from going forward."

Lee later contradicted his earlier testimony, stating Purewal was a 50% member of ASP in March 2018, when they both signed various financial agreements with the bank as members of ASP. He explained he owned 100% of the shares after Patharkar became disabled and then gave 50% of the shares to Purewal in February 2018. Although the sale to Purewal was never consummated, Lee claimed that Purewal was a member of ASP through the end of 2018 and then his interest reverted to ASP.

Patharkar conceded he never made a counteroffer to sell his interest. He described ASP as "blackball[ing]" him, explaining he tried to obtain financial information from ASP's accountant, but the accountant would not release it without permission from Lee. He said neither Lee nor Saltiel ever provided him with any calculations regarding the purchase of his interest in ASP. He did admit he rarely responded to Lee's communications.

Saltiel testified that Patharkar was copied on all company emails, invited to staff meetings and given all daily provider relation reports until September 2015. Once he became permanently disabled, he was not provided any financial information. Saltiel believed that after July 2, 2015, Patharkar was no longer a member of ASP and was only entitled to his buy-out. Saltiel said he advised Lee in 2015 that a lawsuit was an option, but Lee refused to take the action, and "was very insistent he was not going to do that" so Saltiel never raised the issue again.

Leroy Stokes—an insurance broker—testified he sold the buy-sell disability policy to ASP intended to fund Patharkar's buy-out if he became permanently disabled. After Patharkar became disabled, Stokes informed Lee and Saltiel the insurance company would require proof that a buy-out had taken place to collect on the policy. No additional medical evaluation was required because Patharkar's disability had already been established. As stated, Patharkar was collecting payments on a personal disability policy.

Stokes said Patharkar discussed with him the offers to buy his interest in ASP. Stokes stated Patharkar believed he was going to be able to return to work and he was "insulted by the number" being offered. According to Stokes "the driving factor [for Patharkar rejecting the offers] was that he wanted to come back to work" and Stokes was "not sure any number would have made a difference."

Gregory Cowhey testified as plaintiff's expert in financial analysis. He used three scenarios for calculating the purchase price for Patharkar's interest in ASP under Section 6.3(b) of the Operating Agreement. He set a purchase price range between $16,301,000 to $31,734,000.

On cross-examination, Cowhey stated that under his interpretation of Section 6.3(b), Patharkar was entitled to 100% of the estimated collectable accounts receivable and ASP would receive none. According to Cowhey, whether a Selling Member owned a 1% interest in the company or a 99% interest, they would be entitled to the same buy-out amount under Section 6.3(b). Therefore, in his opinion, if there were ten members, each with a 10% membership interest, and four decided to leave the company at the same time, the company would be required to pay, in total, 400% of its estimated collectable accounts receivable to buy them out.

Cowhey also provided calculations of ASP's profits for July 2, 2015 through March 20, 2020.[1] He concluded that 50% of the total amount, or $3,591,000 in Section 3 profits, was owed to Patharkar. Cowhey did not account for any salary paid to Lee in calculating the profit figures.

Nicole Lyons testified as defendants' expert in accounting, financial forensics, and valuation. She also calculated a purchase price for Patharkar's interest in ASP using three different scenarios. In Scenario 1, Lyons quantified collections through February 2020, on the accounts receivable balance that existed as of June 30, 2015, and estimated the amount that would be collected on the remaining balance. She explained the calculation reflected the "true-up" provision in Section 6.3(b) of the Operating Agreement, which states "If the actually[sic] amount of receivables collected overtime[sic] exceeds the adjusted accounts receivable determined by the Accountant, the Selling Member shall receive an amount equal to the difference between the actual collections and the adjusted accounts receivable determined by the Accountant." Lyons stated that $6,209,319 of the total net accounts receivable balance on June 20, 2015 of $16,286,375 was collectable. She then subtracted Patharkar's 50% membership interest from that amount and arrived at a buy-out purchase price of $3,104,660.

[1] Cowhey was aware that Patharkar's medical license had expired in 2018.

Under her remaining two scenarios, Lyons calculated purchase prices of $1,339,731 and $520,712.

In addressing the issue of profits, Lyons stated that ASP had not distributed all of the profits to Lee as calculated by Cowhey and she set forth the amounts that were distributed to Lee. She also testified that Cowhey's calculation of amounts owed to Patharkar under Section 3 of the Operating Agreement did not include any adjustment for the "draw or salary" paid to Lee for his services provided to ASP. She also stated that if ASP had paid Patharkar for his membership interest, it would have "reduced the amounts available for distributions to the members on a dollar for dollar basis."

The court issued its initial written decision and order on September 24, 2020. Both parties moved for reconsideration, which the court denied except to correct a typographical error. On December 15, 2020, the court issued a Revised Trial Decision and Final Judgment and a Supplemental Final Judgment Order. On December 18, 2020, the court issued a Revised Supplemental Final Judgment Order.[2]

The court found Lee was "partially credible," stating Lee was unreasonable in determining he automatically acquired Patharkar's 50%

[2] There were no substantive changes to the subsequent Final Judgment Orders.

membership interest on July 2, 2015. The court also found Lee was not credible in testifying that the $700,000 anticipated proceeds from the buy-sell disability policy were figured into the buy-out offers. Further, Lee's attempt to sell Patharkar's 50% interest to Purewal before reaching a buy-out agreement with Patharkar was not trustworthy.

The court found Saltiel was not credible concerning the assumption of full ownership of ASP and the inclusion of the buy-sell disability proceeds in the buy-out purchase agreement offers.

The court found the testimony of Patharkar and Stokes was credible, excepting Patharkar's belief that he would be able to return to practice medicine at ASP.

Although the court found Cowhey and Lyons were both credible, it concluded that Lyons "interpreted the Operating Agreement [using] a more reasonable methodology than the theory asserted by Mr. Cowhey."

The court determined that Lyons's calculation of the purchase price of $3,104,660 under her first scenario was "the most persuasive and derived in a manner that is in conformity with the plain . . . language" of the Operating Agreement. Conversely, Cowhey's calculations "did not adhere to the plain language of Section 6.3(b) or, at a minimum, deviated more from the plain language of the Operating Agreement than did the opinions and conclusions of Ms. Lyons." The court found Lyons's "[S]cenario 1 in which she set the value of $6,209,319 which was then divided by 50% for a figure of $3,104,660 to be the appropriate award under Section 6.3(b)."

The court rejected Patharkar's argument that he was entitled to the full value of ASP, not 50%. The judge acknowledged the Operating Agreement did not state whether the Section 6.3(b) calculation should be adjusted for the Selling Member's membership interest. However, the court noted, the Operating Agreement allowed the company to add more members and contemplated that multiple members could become Selling Members at the same time. The court disagreed with Cowhey's conclusion that a member with a 1% interest would be entitled to the same amount under Section 6.3(b) as one with a 99% interest in the company. The court found that Lee's and Patharkar's "past custom and conduct" demonstrated they intended to split the profits of the business equally, and if the court were to interpret the language of Section 6.3(b) as suggested by Patharkar, "it would have a disproportionate impact upon [ASP] and Dr. Lee."

The court then addressed Patharkar's entitlement to profits under Section 3 of the Operating Agreement. The court rejected defendants' argument that because Patharkar failed to provide medical services he was not entitled to profits. It reasoned that Section 6.3(b) of the Operating Agreement was intended "to be a mechanism to bring the parties together to reach a potential swift and equitable dissolution" and that Lee and ASP "unreasonably delayed addressing this buy-out and should not be rewarded with profits as a result of this unreasonable delay."

The court found that "Section 3 provides for the company's net profits to be distributed . . . to its Members" and there was "nothing within the Operating Agreement that indicates that a permanently disabled Member forfeits, relinquishes or waives his right to Section 3 payments." The court determined there was no limitation on member distributions under Section 3 until a member relinquished their rights to such distributions "as consideration for his buy-out under Section 6.3(b)." Thus, Patharkar was entitled to receive 50% of net profits "until a final payoff [was] achieved."

The court also found Patharkar was entitled to Section 3 distributions based on equitable principles. The judge stated that Lee "should have filed suit to compel the buy[-]out of Dr. Patharkar" and instead Patharkar "was forced to file suit in July 2019." The court concluded Lee and ASP "did not file suit because [Lee] was content with not paying Dr. Patharkar the purchase price for his 50% interest and continued to collect over $7,000,000 in Section 3 payments."

The court found "it was completely unprofessional and inequitable" to present buy-out offers to Patharkar without any supporting calculations of the amounts. The court similarly stated it was inequitable that Lee "did not reach a buy-out under Section 6.3(b) before entering into th[e] collateral agreement" with Purewal.

The court awarded Patharkar "Section 3 profit in the amount of $1,878,620," finding he was entitled to half of the profits from 2015 until 2018 when his license expired. The court used the profit figures established by Lyons. The court rejected defendants' arguments for offsets to this amount for Lee's draw, the $700,000 buy-sell disability policy, or for Section 6.3 payments.

The court further determined that Patharkar was not entitled to damages under Section 5.3 or 5.6 of the Operating Agreement. In addition, the court found Lee was not personally liable on any of the contract claims. The court concluded the evidence did not show that Lee "had any personal contractual obligations to Dr. Patharkar or that he breached any such obligations." Rather, "the evidence demonstrated that all of the contractual obligations owed to Dr. Patharkar belonged to [ASP] and not to Dr. Lee in his personal capacity."

On appeal, ASP challenges the trial court's award of profits to Patharkar. In his cross-appeal, Patharkar contests the amount of the award for the purchase of his interest in ASP and the trial court's failure to impose personal liability on Lee.

We begin by addressing whether Patharkar was entitled to profits. In awarding Patharkar $1,878,620 in profits, the trial court relied on Sections 3.2, 3.3 and 3.5 of the Operating Agreement.

Our review of the interpretation of a contract is de novo. Kieffer v. Best Buy, 205 N.J. 213, 222 (2011). "Courts enforce contracts 'based on the intent of the parties, the express terms of the contract, surrounding circumstances and the underlying purpose of the contract.'" Manahawkin Convalescent v. O'Neill, 217 N.J. 99, 118 (2014) (quoting Caruso v. Ravenswood Devs., Inc., 337 N.J. Super. 499, 506 (App. Div. 2001)). "The plain language of the contract is the cornerstone of the interpretive inquiry; 'when the intent of the parties is plain and the language is clear and unambiguous, a court must enforce the agreement as written, unless doing so would lead to an absurd result.'" Barila v. Bd. of Educ., 241 N.J. 595, 616 (2020) (quoting Quinn v. Quinn, 225 N.J. 34, 45 (2016)). "The judicial task is simply interpretative; it is not to rewrite a contract for the parties better than or different from the one they wrote for themselves."

Kieffer, 205 N.J. at 223. However, "[t]o the extent any ambiguity exists, . . . a court may discern the parties' intent from evidence bearing on the circumstances of the agreement's formation, and of the parties' behavior in carrying out its terms." EQR-LPC Urban Renewal N. Pier, LLC v. City of Jersey City, 452 N.J. Super. 309, 319 (App. Div. 2016) (citations omitted).

The Operating Agreement is silent regarding the division of profits to a Selling Member. ASP contends that Section 3 outlines compensation only for members who perform their duties under Section 5.1, and only Section 3.2 of the Operating Agreement is applicable to Patharkar's claim for profits. We agree.

Sections 3.3 and 3.5 are not applicable to these circumstances. Section 3.3 governs the "Distribution of Net Proceeds" to the Members. "Net Proceeds" is defined in the Operating Agreement as the cash available to the company after a sale of its assets and the payment of any costs and debts. There was no sale of company assets. Therefore, there were no net proceeds to distribute under Section 3.3.

Section 3.5 of the Operating Agreement governs "Allocation of Income from Operations." "Income from Operations" is defined as "all income and gain recognized by the Company for Federal income tax purposes, other than Income and Gain from Dispositions." Section 3.8 states that "[t]he Members are aware of the income tax consequences of the allocations made by this Section 3 and hereby agree to be bound by the provisions of this Section 3 in reporting their shares of Company income, gain, loss and deductions for Federal income tax purposes." It is apparent from the language of the Operating Agreement that Section 3.5 has no bearing on the distribution of profits but, rather refers to the allocation of income for federal tax purposes.

It is Section 3.2, then, that solely governs the "Distribution of Net Cash Flow." "Net Cash Flow" is defined as "the gross cash receipts from Company operations, without deduction for non-cash expenses, less all cash funds used to pay all other expenses, capital improvements or replacements, and debt payments, if any, and after adjustment for changes in Reserves." Section 3.2 provides two mechanisms for distributing Net Cash Flow <u>to the Members</u>—either through a monthly draw or a quarterly bonus.[3]

Patharkar was initially considered a "Disabled Member," defined under the Operating Agreement as "unable to perform his or her duties hereunder for

[3] Neither the parties nor the trial court addressed the quarterly bonus provisions under Section 3.2(c). No evidence was presented that ASP ever paid a quarterly bonus to either doctor and Patharkar does not contend he was entitled to a quarterly bonus.

more than a total of 90 days . . . within any period of 1 year." Under Section 5.3 of the Operating Agreement, Patharkar was entitled to his monthly draw for three months following the date of his disability. ASP distributed $110,000 to Patharkar as his draw from July through December of 2014. He does not challenge the trial court's determination that ASP complied with Section 5.3.

Patharkar also does not dispute he became a Permanently Disabled Member as of July 2, 2015. Section 3.2 does not reference any compensation to a Permanently Disabled Member. Instead, a Permanently Disabled Member is listed along with a Deceased Member, a Withdrawing Member, a Terminated Member[4] and a Bankrupt Member under Section 6.2 as Selling Members who must sell their interest to ASP or a remaining member.

The Operating Agreement has a logical progression regarding compensation. Under Section 5.1 of the Operating Agreement, "Members" must

> devote to the Company all of the time, attention and energy necessary to perform any and all duties assigned or delegated to him or her by the Company for the purpose of rendering medical services to the Company's patients and for engaging in the practice of medicine in a manner consistent with accepted standards of care and competence of the medical community
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> (b) Each Member's duties, which shall be substantially similar to the duties of the other Members of the

[4] A "Terminated Member" is a Member terminated by ASP for cause.

> Company, shall include, but not be limited to: covering office hours; meeting reasonable administrative responsibilities; keeping and maintaining (or causing to be maintained) appropriate medical records relating to all professional services rendered by him or her; preparing and attending to all reports, claims and correspondence necessary; and doing all things reasonable to maintain and improve his or her professional skills.
>
> (c) It is acknowledged and agreed that each Member shall provide medical services on behalf of the Company on a "full-time" basis, it being understood by the parties that all of the Members of the Company shall work a five (5) day work week. In this regard, each Member shall devote all of his or her professional time and efforts exclusively to and for the benefit of the Company and shall not, directly or indirectly, render professional, medical, managerial or directive services on behalf of any other Person, whether or not for compensation, without the prior written consent of the Company.

A member who performs their duties under Section 5.1 is entitled to the compensation framework established under Section 3.2. If a member becomes disabled and unable to perform their required duties, they are entitled to three months of draw payments under Section 5.3. If a member has not performed their duties and has not provided medical services on behalf of the company on a full-time basis for a year, they are considered Permanently Disabled. And they must sell their interest in the company as does a Deceased, Terminated, Withdrawing or Bankrupt Member.

The parties' past dealings and expressed intent demonstrated they intended to share ASP's profits and responsibilities equally. The Operating Agreement reflects that intention. Section 5.1 details with specificity the expectations and obligations for the members of the company. If a member complied with Section 5.1, they were entitled to compensation under Section 3.2. If a member could not perform their duties, they were required to sell their interest to the company or another member under Section 6.2.

The trial court agreed with Patharkar's argument that he was entitled to a share of the profits until the buy-out was resolved. That language does not appear in the Operating Agreement. As noted, a Permanently Disabled Member is included with Deceased, Terminated, Bankrupt and Withdrawing Members. Those categories of members are not included under Section 3, which only refers to compensation for "Member[s]."

Under the trial court's ruling, ASP would be required to pay profits to members who had died, left the company, or were terminated for cause—all of whom were no longer working for the company and not performing the required duties under Section 5.1.

Moreover, if the LLC were required to pay profits to all selling members, including those who left the company and those terminated for cause, those former members with an antagonistic relationship with the company could engage in protracted negotiations or no negotiation regarding their buy-out while still collecting profits. This was not an intention expressed either explicitly in the agreement or implicitly by the parties' actions.

The Operating Agreement did not require ASP to pay a permanently disabled member profits pending a resolution of the buy-out of the member's interest. Therefore, ASP did not breach the agreement in that regard. We vacate and reverse paragraph 3 of the December 18, 2020 Revised Supplemental Final Judgment Order and its award of profits to Patharkar.

The trial court also found Patharkar was entitled to profits based on equitable principles. Because we have concluded the contract did not permit the award of profits to Patharkar, such damages cannot be granted in equity.

"A Chancery judge has broad discretion 'to adapt equitable remedies to the particular circumstances of a given case.'" Tarta Luna Props., LLC v. Harvest Rest. Grp., LLC, 466 N.J. Super. 137, 153 (App. Div. 2021) (quoting Marioni v. Roxy Garments Delivery Co., 417 N.J. Super. 269, 275 (App. Div. 2010)). In reviewing a lower court's equitable remedy, an appellate court considers three components. Ibid.

> First, the facts the judge adopts in an equity case are entitled to deference "when supported by adequate,

> substantial[,] and credible evidence." Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974). Second, in drawing conclusions from those facts, the Chancery judge is required to apply accepted legal and equitable principles; no deference is afforded in this regard. Manalapan Realty, L.P. v. Twp. Comm. of Twp. of Manalapan, 140 N.J. 366, 378 (1995). And third, we will decline to intervene absent an abuse of discretion, or where the judge's conclusions prove inconsistent with h[is] own findings of fact. Marioni, 417 N.J. Super. at 275-76.
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> [Id. at 153-54 (first alteration in original).]

In concluding equitable relief was warranted, the trial court relied primarily on the delay in reaching an agreement on a purchase price—attributing the delay solely to defendants. It faulted defendants for presenting inadequate and unsupported purchase offers to Patharkar, failing to institute a lawsuit to compel the buy-out, and entering into an agreement with Purewal to purchase a 50% interest in the company before settling matters with Patharkar. These findings by the trial court are entitled to deference.

However, in finding Patharkar was equitably entitled to a distribution of 50% of ASP profits under Section 3 of the Operating Agreement, the trial court ignored "the settled precedent . . . that in the absence of fraud, accident, or mistake, a court of equity cannot change or abrogate the terms of a contract." Id. at 159 (quoting Dunkin' Donuts of Am., Inc. v. Middletown Donut Corp., 100 N.J. 166, 183 (1985)). There was no fraud or mistake established. Moreover, in fashioning its equitable remedy, the trial court did not consider that Patharkar breached the agreement by failing to perform his responsibilities under Section 5.1. Furthermore, Section 6.3 of the Operating Agreement requires a Permanently Disabled Member to sell his interest in the company, and the trial court placed no responsibility on Patharkar to initiate or consummate the sale.

Although a Chancery court has broad discretion in fashioning equitable remedies, awarding 50% of ASP's profits to Patharkar when he was not working is contrary to the Operating Agreement. The Operating Agreement contained a mechanism for providing compensation to Disabled and Permanently Disabled Members—Members not performing their required duties under Section 5.1. Patharkar did not avail himself of that process and for years would not even communicate with defendants. He was not entitled to an equitable award of the profits.

In his cross-appeal, Patharkar argues the trial court erred by reducing the buy-out purchase price by 50% to reflect his percentage interest in ASP and in finding Lee was not personally liable for damages. Patharkar does not contest the court's determination to accept Lyons's calculations in reaching the final amount of the purchase number, just the 50% reduction.

Section 6.3(b) does not explicitly include a reduction to reflect a member's percentage interest in the company when calculating the purchase price of the member's interest. The provision states that the purchase price is "an amount equal to the product of (I) the 'adjusted accounts receivable' of the Company, multiplied by (II) the Company's accounts receivable collection rate average for the six (6) month period immediately preceding the Valuation Date." Although the phrase "adjusted accounts receivable" appears in quotes, the phrase is not defined in the Operating Agreement.

However, Section 6.3(b) continues, stating

> [t]he Accountant[] shall 'adjust' the accounts receivable <u>attributed to services provided by the Selling Member</u> based upon past experience with respect to the collectability of the accounts receivable and the estimated time that the accounts receivable will be collected. The Accountant shall estimate what percentage of the accounts receivable are collectable and shall discount the collectable receivables by the estimated period of time over which they will be received. If the actually[sic] amount of receivables collected overtime[sic] exceeds the adjusted accounts receivables determined by the Accountant, the Selling Member shall receive an amount equal to the difference between the actual collections and the adjusted accounts receivable determined by the Accountants.

[(emphasis added).]

The record does not reflect the parties' intent regarding the language in Section 6.3(b). The first sentence of Section 6.3(b) requires a calculation based on the accounts receivable of the "Company," but the second sentence allows for some adjustment based on the accounts receivable "attributed to services provided by the Selling Member." The inclusion of the second sentence suggests that some adjustment reflecting the member's interest in the company is warranted.

It was clear that Lee's and Patharkar's intent from the inception of ASP was to evenly divide the income from the business. Arguably then, the "accounts receivable attributed to services provided by" Patharkar would be 50% of the balance that existed on June 30, 2015. Lyons calculated amounts collected on the accounts receivable balance that existed as of June 30, 2015 and attributed 50% of that amount to the purchase price of Patharkar's interest. By focusing on amounts collected, Lyons's calculation reflected the "true-up" provision contained in the final sentence of Section 6.3(b). Therefore, the trial court's determination of the purchase price for Patharkar's interest is supported by the Operating Agreement's language. Furthermore, to accept Patharkar's interpretation of Section 6.3(b) leads to an absurd result as a member with a 1%

interest would be worth the same amount as a member with a 99% interest. See Barila, 241 N.J. at 616 (quoting Quinn, 225 N.J. at 45) ("[A] court must enforce [an] agreement as written, unless doing so would lead to an absurd result.").

We are satisfied the court did not err in awarding Patharkar $3,104,660 for specific performance under Section 6.3 of the Operating Agreement—representing 50% of the $6,209,319 full value of ASP.

Patharkar also contends the trial court improperly relieved Lee of personal liability. He asserts that N.J.S.A. 42:2C-67(a) "authorizes lawsuits by LLC members against one another," and the court incorrectly found the obligations under Sections 3 and 6.3 of the Operating Agreement were ASP's obligations, not Lee's. We disagree.

Under N.J.S.A. 42:2C-67, a member of an LLC "may maintain a direct action against another member, a manager, or the limited liability company to enforce the member's rights and otherwise protect the member's interests, including rights and interests under the operating agreement" as long as the member pleads "an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the [LLC]." Patharkar is correct he could sue Lee to enforce his rights under the Operating Agreement.

However, we have found that neither ASP nor Lee had any liability to Patharkar under Section 3 of the Operating Agreement. And even if liability existed, Section 3 obligates ASP, not Lee, to distribute the funds of the company. As the trial court noted

> Section 6.3 of the Operating Agreement indicates that the purchase obligation belongs to AS[]P unless the management committee decides that an individual member would assume the obligation. There was no evidence presented that the management committee met or considered this option. All proposed purchase agreements forwarded to Dr. Patharkar identified AS[]P alone as the purchaser.

Moreover, Section 5.13 of the Operating Agreement regarding "Liability of Members" states that "[e]xcept as specifically provided for in this Agreement, no Member shall be liable to the Company or to any other Member with respect to liabilities and obligations of the Company, or the liabilities and obligations of other Members." Therefore, Patharkar agreed, in executing the Operating Agreement, that Lee would have no personal liability to him with respect to the obligations of ASP. The trial court was correct to enter judgment solely against ASP.

We reverse and vacate paragraph three of the December 18, 2020 Judgment regarding the payment of profits to Patharkar. We affirm the remainder of the judgment.

Affirmed in part, reversed and vacated in part.

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

CLERK OF THE APPELLATE DIVISION