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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1934-21**

CHRISTINA SEGURA,

Plaintiff-Appellant,

v.

IMRAN F. SHAH,

Defendant-Respondent.

Argued January 10, 2023 – Decided April 27, 2023

Before Judges Gilson and Gummer.

On appeal from the Superior Court of New Jersey, Law Division, Burlington County, Docket No. L-1114-20.

Alfred C. Constants III argued the cause for appellant (Constants Law Offices, LLC, attorneys; Alfred C. Constants III, on the briefs).

Kevin J. O'Connor argued the cause for respondent (Peckar & Abramson, PC, attorneys; Kevin J. O'Connor and Lauren Rayner Davis, on the brief).

PER CURIAM

Plaintiff Christina Segura appeals an order granting the summary-judgment motion of defendant Imran F. Shah, denying her cross-motion for summary judgment, and dismissing her complaint with prejudice. Because the motion judge misapplied the summary-judgment standard, we reverse the order granting defendant's motion and dismissing the complaint with prejudice. Because genuine issues of material fact exist, we affirm the denial of plaintiff's cross-motion.

I.

We discern the material facts from the summary-judgment record, viewing them in the light most favorable to plaintiff, who was the non-moving party in the motion granted by the court. See Richter v. Oakland Bd. of Educ., 246 N.J. 507, 515 (2021).

The parties began dating in June or July 2017. By October, they were talking about going into business together. She wanted to operate a boutique or décor store; he wanted a bar, telling her "all the money in the investment would be returned twice in about two years." Defendant represented to plaintiff he was a principle of a bar in Elizabeth, New Jersey and knew the bar business. Plaintiff was not "business savvy" and "knew nothing about . . . how to run a bar" but "trusted" defendant because "he certainly did." Defendant did not tell her he

had prior felony convictions or that those convictions would negatively impact his ability legally to run a bar business or even work as a bartender.

After dating for about six months, the parties executed a partnership agreement on December 4, 2017. Defendant's then attorney, Joseph Johnson, prepared the partnership agreement. The partnership agreement described the "Business Purpose" of the partnership:

The Partnership's primary business purpose is to engage in any or all lawful business activities for which partnerships may be organized under New York law, including, without limitation, the following activities: [t]o have all excess of sales, [e]xpenses, profits, and employment[.] The Partnership may also do all other lawful things to further its business purpose and conduct any other type of lawful business activities that the Partners may agree on from time to time.

The partnership agreement identified the parties' "[p]artner [m]anagement [r]oles": plaintiff's role was "[q]uite [sic] [i]nvestor [p]artner for [three] years," and defendant's role was "[o]perational [m]anager/[i]nvestor."

The parties agreed their "respective ownership interest" would be "in equal shares." The "Initial Capital" section of the partnership agreement required each party to "deposit an initial capital contribution by November 30, 2017[,] into the Partner's individual contribution account." Plaintiff was required to "initially contribute the following capital to the Partnership: Owner

of the Business. Actual Worth of Business \$350,000.00 including assets." Defendant was required to "initially contribute the following capital to the Partnership: Spent \$200,000.00. CHRISTINA SEGURA and invest \$150,000.00 in Slik Bar for [the] Partnership."

The agreement provided the partnership's net profits would be calculated by an accountant selected by defendant and distributed to the partners within ten business days of the last day of each month. It also provided that whether any partner would receive a salary and the amount of the salary would be "determined by [the] unanimous consent of [defendant]."

The partnership agreement contained a severability clause, stating "[i]f any provision of this [a]greement shall be held to be invalid or unenforceable for any reason, that provision shall be considered removed from this [a]greement; however, the remaining provisions shall continue to be valid"

When asked if the partnership agreement was the entire agreement between the parties, plaintiff testified "it was never the entire agreement" and explained:

To be honest, sir, I had no idea what I was signing and what was happening. [Defendant] was the one who always told me what was going on, how it was going to happen. And I believed him, without even realizing it or really even taking any of this into consideration or hire my own lawyer for that matter.

Slik Bar & Nightclub LLC (the LLC) was incorporated as a limited liability company in the State of New York on October 2, 2017. In the LLC's operating agreement, which was prepared by defendant's attorney, plaintiff was named as the sole member of the LLC with full ownership interest. Defendant was not named in the operating agreement.

On November 17, 2017, the LLC leased a building located at 77 Mill Street, Newburgh, New York. Defendant found and chose the location. Plaintiff executed the commercial lease agreement on behalf of the LLC. The initial lease term began December 1, 2017, and ended on November 30, 2022. The LLC was required to begin paying rent on February 1, 2018 "or upon the issuance of a temporary [State Liquor Authority] license, whichever occurs first"

According to Sukhvir Singh, who was the landlord's managing member and defendant's friend, the LLC quit the premises in December 2018 in default of its obligations under the lease. Defendant told Singh the LLC did not have the money to continue and gave him the keys to the building. Singh understood the business was "run and managed" by defendant. According to defendant, he worked for the business only as a bartender. According to plaintiff, defendant was the general manager and also worked as a bartender. Plaintiff asserted that, during his management of the business, defendant did not provide her with any

information regarding the business or its sales, profits, losses, or capital improvements.

On January 16, 2018, the New York State Liquor Authority received an application, listing the LLC as the applicant, for an alcoholic beverage control retail license. Plaintiff was identified as the LLC's principal and member, having full ownership of the LLC. The application indicated that no one other than "the applicant/principals" would "share on a percentage basis or in any way in the receipts, losses or deficiencies of the business to any extent whatsoever." The financial-disclosure section of the application contained a statement that "convicted felons" could not "invest in a retail license to traffic in alcoholic beverages" "Yes" was checked in answer to the question "[h]ave all investors been disclosed in this application?" The "total investment" indicated in the financial-disclosure section was \$10,000 coming from a money market fund at Navy Federal Credit Union. Plaintiff provided defendant with the information about the Navy Federal Credit Union fund.

Plaintiff testified defendant had prepared the application and that the signature on the application was not her signature. The "contact" person identified on the application was defendant's attorney, Joseph Johnson.

During plaintiff's deposition, she testified she had not disclosed the existence of the partnership agreement to the New York State Liquor Authority "because [defendant] told me not to" and conceded she knowingly had testified before the State Liquor Authority about facts she knew to be wrong. She explained:

I would tell [defendant] that my job would be on the line and I shouldn't do this, and [defendant] would be like, babe – because [defendant] even – [defendant] even prepped me the day we went to New York, what to say. We sat down in court. [Defendant] made sure I said exactly what [defendant] needed me to say.

On December 2, 2018, defendant sent plaintiff a text, asking her to find a buyer to buy him out. On December 20, 2018, plaintiff sent defendant a text, asking him if he was "still selling the business" because she "want[ed] out." He responded he had "been asking people to buy" She told him she "want[ed] out [of] the business and want[ed] [her] money" Plaintiff was completely surprised when she learned the bar was going to be closed because she understood they had agreed to sell it and defendant had told her he was going to find a buyer.

Plaintiff testified defendant had removed partnership property for his personal use and that he had obtained and kept over \$100,000 from her. Plaintiff called the New York State Liquor Authority in March 2019 and was advised the

LLC's liquor license was "in safekeeping by a man named Eduardo Mehita" Plaintiff did not know Mehita and had not done any business with him.

On or about June 24, 2020, plaintiff filed a complaint against defendant. She alleged, among other things, that defendant had failed to repay loans to her; had forged her signature and placed the liquor license into "[s]afe keeping" under the name of another entity at the same location; had lied to her; had made her buy the liquor license, couches, and other things; had taken her iPad; had been mentally and verbally abusive to her; had failed to provide any funds to the business; had taken partnership property and assets; and had never provided any of the capital accounts, distribution accounts, an accounting, or any business profits, losses, or earnings. Plaintiff pleaded causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, breach of fiduciary duty, and "misrepresentations." She demanded direct, actual, compensatory, consequential, and punitive damages, an accounting, and attorney's fees and costs. Defendant answered and counterclaimed, asserting plaintiff had failed to pay him wages for his work.

Defendant moved for summary judgment on September 8, 2021. Plaintiff cross-moved for discovery. The motion judge granted plaintiff's cross-motion and ordered depositions to be completed by November 19, 2021. The discovery

period ended November 30, 2021. Defendant was deposed on November 4, 2021. A week later, before the end of the discovery period, defendant moved for summary judgment.

Plaintiff opposed the motion and cross-moved for summary judgment. She supported her cross-motion with her certification, in which she testified she had been told the LLC's liquor license was in "safe keeping" under the name of another person and business entity; her signature was forged in connection with that transfer; during his management of the business, defendant had not provided her with any information about it, including no information about its sales, profits, or losses; defendant had removed partnership property for his own use; defendant had obtained and kept over \$100,000 from her; defendant had not told her he was a convicted felon; she did not know felony convictions would prohibit defendant from being a partner, manager, or bartender under New York law¹; and she would not have become involved in the bar business had defendant not been involved in running it. In her certification, plaintiff identified payments she had made to defendant, totaling approximately \$168,000. Plaintiff

¹ See N.Y. Alc. Bev. Cont. §§ 102(2) (prohibiting a licensee from knowingly employing in connection with the business in any capacity any person who has been convicted of a felony) and 126(1) (forbidding persons convicted of a felony to traffic in alcoholic beverages).

testified during her deposition that defendant had sold the contents of the bar and that she had seen screen shots of defendant's relative on a couch plaintiff had purchased.

At argument, plaintiff's counsel reminded the judge that at the time of the last conference, defendant had not produced interrogatory answers or documents in response to plaintiff's written discovery requests. Since then, plaintiff's counsel had deposed defendant, who testified about his two felony convictions. Plaintiff's counsel contended that newly-obtained testimony would support causes of action based on a breach of fiduciary duty and negligent misrepresentation. When asked by the judge if the partnership agreement was "solely for the purpose of operating the bar," defense counsel – despite the express language of the agreement that the "business purpose" of the agreement was "to engage in any or all lawful business activities for which partnerships may be organized under New York law" – incorrectly responded, "[a]ccording to the partnership agreement, apparently it was."

Relying on an unreported decision, defense counsel argued the partnership agreement was "an illegal contract" and faulted plaintiff for not pleading a cause of action based on defendant's failure to disclose his convictions. Plaintiff's counsel responded:

Well, the most important part is that he never disclosed the fact that he was a convicted felon. That's the real issue. So the real issue is that until November 4th I never could plead the -- I couldn't plead it. I never could plead that he was a convicted felon because I didn't know it until he told us that.

So there's nothing that I could put in the complaint, there's nothing that I could -- I would approach this case much differently right now.

After hearing argument, the motion judge granted defendant's motion and denied plaintiff's cross-motion based on his conclusion that the partnership agreement was unenforceable because it was contrary to public policy. The judge found the purpose of the partnership was to operate a bar and that the partnership agreement indicated plaintiff was "the managing member." The judge identified plaintiff's "illegal act" of "representing to the [l]iquor [c]ontrol [b]oard that she was the only person involved in the undertaking" as the "simple fact that controls on this motion." He found immaterial that defendant had "manipulate[d] her examination with the [b]oard" and irrelevant defendant's "concealment of [his] criminal record" Failing to reference the severability clause in the partnership agreement, the judge rejected the idea that he could do anything "short of invalidating the partnership," noting again "[t]he lie is what is the basis for my finding that this arrangement is . . . against public policy and I'm not going to countenance that kind of arrangement." In conclusion, the judge

stated he "sympathize[d] with the plaintiff to the extent she was led down the garden path. She made a mistake . . . but mistakes have consequences."

The judge issued an order memorializing his decision and dismissing plaintiff's complaint with prejudice. Defendant represented in his brief that he had conceded to the trial court that his counterclaim would fail "for the same reasons, and so the [c]ounterclaim was also dismissed."

On appeal, plaintiff argues the judge erred in granting defendant summary judgment because defendant's concealment of his criminal convictions constituted fraudulent representations entitling plaintiff to rescission of the partnership agreement and damages. In response, defendant contends the judge properly dismissed each of plaintiff's causes of action, the judge properly rejected her new theories of misrepresentation and rescission, which she had not pleaded, and his past convictions were immaterial. Defendant did not appeal the dismissal of his counterclaim.

II.

We review a trial court's summary-judgment decision de novo, applying the same standard used by trial courts. Samolyk v. Berthe, 251 N.J. 73, 78 (2022). "To decide whether a genuine issue of material fact exists, the trial court must 'draw[] all legitimate inferences from the facts in favor of the non-moving

party.'" Friedman v. Martinez, 242 N.J. 450, 472 (2020) (alteration in original) (quoting Globe Motor Co. v. Igdalev, 225 N.J. 469, 480 (2016)). "The court's function is not 'to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.'" Rios v. Meda Pharm., Inc., 247 N.J. 1, 13 (2021) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)).

"A dispute of material fact is 'genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.'" Gayles by Gayles v. Sky Zone Trampoline Park, 468 N.J. Super. 17, 22 (App. Div. 2021) (quoting Grande v. Saint Clare's Health Sys., 230 N.J. 1, 24 (2017)). To rule on summary judgment, a court must determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." DepoLink Ct. Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 333 (App. Div. 2013) (quoting Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A., 189 N.J. 436, 445-46 (2007)).

In granting defendant's summary-judgment motion, the judge made mistaken findings of fact, ignored factual assertions made by plaintiff, and failed to view facts in a light most favorable to plaintiff as the non-moving party. He found that the partnership's purpose "was operating a bar." However, the purpose of the partnership as expressly stated in the partnership agreement was "to engage in any or all lawful business activities for which partnerships may be organized under New York law." Contrary to the judge's finding, the partnership agreement on its face did not have an illegal purpose and, therefore, was not an illegal contract.

Plaintiff wanted to operate a boutique or décor store, a business which would have been lawful; defendant wanted to operate a bar. Plaintiff, who was not business savvy, trusted defendant, who was her boyfriend. She agreed to his choice of a bar business after he had represented to her that they could double the money invested in a bar business in two years, he was a principle in another bar business, and he had experience in and knew the bar business. She did not know – because he had not disclosed to her – he had felony convictions preventing him from holding a liquor license or even from working as a bartender in New York. Instead of viewing those facts in a light most favorable to plaintiff, the judge disregarded them.

The judge found "the partnership agreement indicates that plaintiff is the managing member." In fact, the partnership agreement, which was prepared by defendant's counsel, expressly gave defendant the role of "[o]perational [m]anager/[i]nvestor."² The judge did not mention and apparently gave no consideration to plaintiff's testimony that defendant's lawyer had prepared the LLC's operating agreement and the parties' partnership agreement – an agreement that required each of them to invest \$350,000 in the partnership and gave defendant sole authority in determining the partners' salaries and choosing an accountant to calculate the partnership's net profits, or to plaintiff's and Singh's testimony that defendant was not just a bartender, as he claimed, but managed the business.

² The judge may have made that mistaken finding of fact because inserted in the copy of the partnership agreement submitted by defendant in support of his summary-judgment motion was "EXHIBIT B" from the LLC's operating agreement, identifying plaintiff as the "[m]anager(s) of the [c]ompany." The copy of the partnership agreement in the record was an attached exhibit to the certification of defendant's counsel submitted in support of defendant's summary-judgment motion. Defense counsel certified it was a "true and accurate copy of the General Partnership Agreement, executed by [the parties]" A cursory review of the document demonstrates it was not an accurate copy of the partnership agreement. The seventh page of that document was "EXHIBIT B," which had page number fifteen at the bottom. The partnership agreement had no page numbers and made no reference to any exhibits. Instead, "EXHIBIT B" was part of the LLC's operating agreement, which had page numbers and references to exhibits, including "EXHIBIT A," which had page number 14 at the bottom.

The judge admittedly based his decision on a single fact: plaintiff's concession she had misrepresented facts, as she had been coached to do by defendant, in her testimony before the New York State Liquor Authority. In focusing solely on that fact and in disregarding defendant's influential role in her testimony, the judge ignored the undisputed fact that defendant's attorney was listed on the liquor-license application as the contact person and plaintiff's testimony that defendant had prepared the application and the signature on the application was not her signature. The judge placed all the blame for the purported illegality of the business and the "consequences" of the parties' actions on plaintiff. In so ruling, the trial judge applied the incorrect standard and cited no law that supported placing all the consequences on plaintiff. Nor is the ruling an accurate reflection of the facts viewed in a light most favorable to plaintiff. Accordingly, we reverse the grant of summary judgment to defendant.

Plaintiff also appeals the denial of her summary-judgment motion, arguing she was entitled to rescission based on defendant's misrepresentations regarding his felony convictions. Our de novo review of the record reveals genuine issues of material fact sufficient to defeat plaintiff's cross-motion. Moreover, plaintiff had not yet amended her complaint to include allegations based on defendant's testimony concerning his felony convictions – perhaps because defendant

moved for summary judgment only a week after giving that testimony and before the discovery end date, depriving plaintiff of an opportunity to move for leave to amend. We affirm the denial of plaintiff's cross-motion and remand the case for further proceedings.

Affirmed in part; reversed in part; and remanded. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION