NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2208-20

JACLYN FLOR and ENGENUITY INFRASTRUCTURE, LLC,

Plaintiffs-Respondents,

v.

GREENBERG FARROW ARCHITECTUAL INCORPORATED, ESMAIL GHADRDAN, and KEITH JOHNSTON,

Defendants-Appellants.

____

Argued December 12, 2022 – Decided October 26, 2023

Before Gooden Brown, DeAlmeida and Mitterhoff.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Docket No. L-1021-17.

Matthew N. Fiorovanti argued the cause for appellants (Giordano, Halleran & Ciesla, attorneys; Matthew N. Fiorovanti, of counsel and on the briefs).

Daniel S. Furst (Sichenzia Ross Ference LLP) of the New York bar, admitted pro hac vice, argued the cause for respondents (Owen A. Kloter and Daniel S. Furst, attorneys; Owen A. Kloter and Daniel Scott Furst, on the brief).

The opinion of the court was delivered by

GOODEN BROWN, J.A.D.

In this contract dispute, defendant Greenberg Farrow Architectural Inc. (GF) challenges a jury verdict and various trial court rulings in favor of plaintiff Jaclyn Flor, culminating in the entry of a March 22, 2021, amended order of judgment. Following a six-day trial in October 2019, the jury found that Flor had an enforceable contract with GF, the terms of which created a company called ENGenuity Infrastructure, LLC (ENGenuity), in which Flor was the majority owner and GF was the minority owner. The jury awarded Flor and ENGenuity compensatory damages that included GF's payment of ENGenuity's operating expenses during the first two years of operation.

On appeal, in addition to challenging the compensatory damages award, GF contests the trial judge's April 4, 2019, pre-trial order denying GF's motion for summary judgment, and January 29, 2021, post-verdict order denying GF's motion for judgment notwithstanding the verdict (JNOV) or, alternatively, for a new trial. Additionally, GF disputes the judge's January 29, 2021, declaratory

judgment order directing GF's expulsion and dissociation from ENGenuity without compensation for its abandoned membership interest pursuant to N.J.S.A. 42:2C-45(a) and N.J.S.A. 42:2C-45(e)(1) and (3) of the Revised Uniform Limited Liability Company Act (RULLCA), N.J.S.A. 42:2C:-1 to 94. We affirm.

I.

We glean these facts from the trial record. In 2001, Flor began working as a civil engineer with T&M Associates (T&M), a New Jersey public sector engineering firm of about 350 employees and approximately $65 million in yearly revenue. Prior to that, Flor had worked in Florida designing beaches, jetties, and coastal structures for local governments. By 2011, Flor was vice-president and an equity shareholder of T&M based on her client relationships and leadership skills, which had allowed her to secure lucrative municipal contracts for T&M. She had negotiated and obtained the firm's largest contract – a 111-acre project in Jersey City that had generated $2.5 million for the firm. She was also designated the engineer for Sea Bright Borough, and in charge of contracts with Neptune Township, the City of Hoboken, Jersey City, Jersey City Redevelopment Agency, Hudson County, and Hudson County Planning Board. In 2012 and each year thereafter, Flor generated "well over 2 million" in yearly

revenue for T&M. In 2016, the year she ended her employment with T&M, her revenue "was trending towards 3 million."

Flor testified that in the summer of 2015, she received an unexpected telephone call from Avery Coleman in GF's Human Relations Department asking if she was interested in working for the company as an engineer. Flor had no prior relationship with Coleman or GF and believed GF was interested in her because she had recently been named to the "40 under 40" list by New Jersey Business Magazine. Coleman explained to Flor that GF was a large private-sector engineering firm based in Atlanta, Georgia, that was looking for engineers to work in its recently opened office in Red Bank, New Jersey. Flor explained that her background was in the public sector, and she did not believe she would be a good fit for the company, but Coleman asked if she would meet with Keith Johnston, Chief Operating Officer and Managing Principal of GF, to discuss the possibility further. Johnston worked out of GF's Red Bank office. Flor agreed to meet and had lunch with Johnston in New Jersey a week later.

Johnston explained that GF had suffered a downturn following the 2007 market crash and was attempting to diversify its business to avoid that result in the future. To that end, GF was exploring creating a department devoted to public sector development projects and was interested in Flor for a position

within that department. Flor told Johnston she was not interested in a lateral move, which was what he seemed to be offering, and she had a noncompete agreement with T&M that would make any type of move difficult. In addition, she was "slated for the next generation of leadership" within T&M, and "was the sole provider" for her nine-year-old daughter. Given those factors, Flor was not willing to take the significant risk that a career change posed, particularly if the move offered no equity interest. In response, Johnston encouraged her to "think bigger" and imagine the positive impact she could have on various types of communities if she worked for a national firm like GF. The prospect intrigued Flor, so she continued discussions with Johnston through the fall of 2015.

In their discussions, Johnston encouraged Flor to visit the Atlanta office to meet other managing principals. Because Flor was unable to fly due to a temporary medical issue, in the winter of 2015, some of the managing principals traveled to Red Bank to meet her. Specifically, Flor met with Esmail Ghadrdan, GF's President and Chairman of the Board, John Nourzad, a managing principal at the Atlanta office, and Dave Barrons, a managing principal at the Chicago office. At the meeting, Flor educated them on the nature of public sector work in New Jersey and discussed her resume. Flor also told them that she was certain T&M would enforce the noncompete agreement if she were to resign her

position, and that the risks associated with leaving were too great for her to accept, particularly given her personal responsibilities. Ghadrdan encouraged her to consider the possibilities and to visit the Atlanta office when her medical condition resolved. He assured her that he and Johnston would continue to explore ways to address her concerns.

On May 2, 2016, Flor flew to Atlanta and met with Ghadrdan, Johnston, Nourzad, and another managing principal. At the meeting, Ghadrdan and Johnston presented two options. The first option was similar to the one Johnston had previously offered her, namely, a position "as an employee" of GF in a newly created public sector department. The second option offered her a 51% ownership and management interest in a new company that GF would financially back for two years in exchange for a 49% ownership interest in the company. Ghadrdan told Flor "they had started other companies" in the past and it typically took a new company about two years to "get on its financial feet and be able to survive on its own cash flow." So GF was willing to "guarantee" financial support and a yearly salary for Flor to run the company for a period of two years.

Flor was not interested in the first option and conveyed her disinterest to Johnston. On the other hand, Flor was "very excited" about the second option and believed that Ghadrdan and Johnston had considered her concerns about the

risks of leaving T&M and had formed a plan to address them. After Flor expressed her interest in the second option, Johnston agreed to "put together the terms and . . . send them over to [her]." As a result, on June 3, 2016, Johnston sent her an email entitled "preliminary offer." Ghadrdan, Nourzad, and Hughes Thompson, another managing principal, were copied on the email. Attached to the email was a letter signed by Johnston on GF letterhead that began: "We are very pleased to present the following opportunity to you on behalf of [GF]."

The letter continued:

> As discussed, we are prepared to offer you a majority owner partnership in a newly formed professional service Limited Liability Corporation (LLC) to be named later. The purpose of this letter is to formally offer this opportunity to you and outline the following basic parameters of this preliminary agreement:
>
> 1. You will be the Principal in a newly formed LLC with 51% majority ownership. [GF] will retain 49% minority ownership of this entity.
> 2. You will be paid an annual base salary of $175,000; this annual base salary will be guaranteed for 2 years from the date of employment.
> 3. You will be paid a monthly car allowance of $350.00, guaranteed for 24 months from the date of employment.
> 4. You will be entitled to [f]our (4) weeks annual vacation.

The next paragraph referred to an attached summary of GF's benefits package, indicating that "there may be some necessary 'tweaking' . . . as the partnership agreement proceeds." The next paragraph read:

> [GF], as part of this partnership, will provide the following initial business set-up services and continuing business support services with full cooperation of the LLC management:
>
> 1. GF will initiate the formation of the LLC and secure the domain name.
> 2. GF will engage the services of NJ legal counsel to assist in the formation of the partnership and associated agreements to be filed as a legal business entity.
> 3. GF will engage the services of NJ legal counsel to assist the LLC in gaining designation as a legal Women's Business Entity (WBE) at the state (any U.S. State or local municipal level as necessary) and federal level.
> 4. GF will provide business unit support to the LLC, including but not limited to human resource management, accounting, IT and marketing.
> 5. GF will provide professional office space (location to be determined) with associated technical equipment and software necessary for the LLC to operate as a professional consulting firm.
> 6. GF will provide the necessary professional liability insurance in accordance with local, state, and federal laws.

The next paragraph discussed Flor's noncompete agreement with T&M, and the final paragraph provided:

> We are very excited about the prospects of what we feel will be a long-term, prosperous relationship. Upon your acceptance of this preliminary offer by signature below, [GF] will engage legal counsel to commence the initial stages of the LLC formation. [GF] assumes an outside employment commencement date of July 11, 2016. We are flexible to move the start date as soon as possible at your discretion. It is acknowledged by both parties that this is a preliminary agreement and a final, formal partnership and/or operating agreement as outlined above will also commence upon acceptance.

The letter concluded with a space for Flor to sign if she accepted the offer.

Flor testified she was not comfortable signing the agreement without reading the other documents referenced therein, specifically, the formal partnership and operating agreement. In addition, she did not believe the language regarding her salary and funding of the LLC's operating expenses adequately conveyed a guarantee of payment. After she conveyed her concerns about the offer to Johnston, he told her to "just mark it up" and "send it back" to him. As a result, Flor and her attorney made changes to the offer and returned them to Johnston.

Johnston replied with another letter, also dated June 3, 2016, and entitled "Business Opportunity Offer Letter." Like the first letter, the second letter stated that GF was offering Flor "a majority owner partnership in a newly formed

[LLC]" that would be designated as a Woman-Owned Business Enterprise (WBE). The letter continued:

> The purpose of this letter is to formally offer this opportunity to you and outline the following basic principles of employment . . . with the understanding that certain, additional transactional documents will be executed by and between the parties under separate cover that address the items below:
>
> 1. You shall be the Principal in the WBE, LLC and at the time of formation own 51% of all membership units issued and outstanding with all voting rights attendant thereto and GF will be a Principal and own 49% of all membership units issued and outstanding with all voting and other rights attendant thereto.
> 2. You shall receive an annual salary . . . [of] $175,000.00 for a term of two (2) years starting within the earlier of thirty (30) days after acceptance of this offer of employment or July 11, 2016. The salary is guaranteed and unconditional and [an] irrevocable obligation of GF to pay you.
> 3. You shall receive a monthly car allowance of $350.00, for a guaranteed term of two (2) years starting within the earlier of thirty (30) days after acceptance of this offer of employment or July 11, 2016.
> 4. You shall receive four (4) weeks of paid vacation per annum.
> 5. Upon commencement of employment, GF shall pay you a signing bonus of $5000.00.

Like the first offer letter, the second letter also contained an attached benefits summary. However, in the second letter, the terms related to operating expenses were as follows:

> 1. GF shall, subject to your approval and consultation, engage New Jersey Legal counsel and/or other professionals to form the WBE, LLC so that it is certified under all applicable state and federal laws, rules, and regulations and secure a domain name and d/b/a/ at GF's sole expense. Such engagement shall occur within 10 days of your acceptance of this offer.
> 2. GF shall provide initial business unit support to the WBE, LLC, including but not limited to human resource management, payroll, accounting, IT and marketing and all related business administration matters that GF otherwise provides for its other employees.
> 3. GF shall provide initial professional office space (location to be determined) with associated technical equipment and software necessary for the WBE, LLC to operate as a professional consulting firm.
> 4. GF shall initially provide the necessary professional liability insurance in accordance with local, state, and federal laws and any RFQs or RFPs that the WBE, LLC and/or GF pursue.

The last two paragraphs of the second letter were similar to those in the first letter. They acknowledged Flor's noncompete agreement with T&M and stated that upon Flor signing the offer letter, GF would "engage legal counsel to commence the initial stages of the WBE, LLC formation," and Flor's

employment would begin on July 11, 2016. However, rather than describing the agreement as "preliminary" with a "final, formal partnership and/or operating agreement" to follow, the second letter ended with the following: "It is acknowledged by both parties that this offer of employment will be supplemented by the operative documents contemplated to achieve the obligations of GF and WBE, LLC for the successful partnership."

Flor testified that the second offer letter "incorporated the changes" she had requested. She stated the "shall" language in the second letter assured her that GF would honor its agreement to pay her salary and financially support the LLC for two years and that GF's removal of the language conditioning the agreement on the execution of other documents confirmed that the terms in the second letter were the only terms of the agreement. Flor testified that she had always made it clear to Ghadrdan and Johnston that she did not have funds to finance the new business and that she would need GF's financial support to make the company a success. She was confident that she had the skills and relationships to generate revenue and that after the initial start-up period, GF would realize a profit on its 49% interest.

Prior to accepting the offer, Flor resigned her position with T&M and negotiated a modification to her noncompete agreement that permitted her to

maintain contact as a subcontractor-subconsultant with Jersey City, Hoboken, Neptune, and Sea Bright. Through these contacts, she believed she could generate some revenue for the LLC in 2016. On June 10, 2016, Flor signed the second June 3 offer letter (the final offer) memorializing the parties' agreement. On June 30, 2016, the new company, that she named ENGenuity, was registered by GF. Once ENGenuity was formed, Johnston announced in a July 1, 2016, email, "It's official," and directed GF's IT team to create a business email for Flor as soon as possible so that she could communicate with clients.

Over the next two weeks, GF opened a business checking account for ENGenuity, but Flor was never provided access to the account. She testified that in the initial weeks, she was so busy obtaining licenses and completing other tasks that she did not think much about access to the account. Also, around the same time, Flor and Johnston looked at various office spaces with a broker Johnston had retained, and, at Flor's request, Johnston approved the hiring of a managing engineer, a supervising water and wastewater engineer, two civil engineers, a planner, a supervising traffic engineer, and an administrative assistant, all at salaries totaling $535,000 annually or $1,070,000 over two years. Johnston encouraged Flor to begin the hiring process and "to get the positions on the website as soon as possible."

On July 11, 2016, Flor officially began work for ENGenuity. Because the company had no office yet, she reported to GF's Red Bank office where Johnston worked. At that juncture, GF was complying with the terms of the agreement. Flor was "excited" that they were "looking at office space" and "advertising positions," and that they had "a website" and "a domain." Even when Flor retained M Studio to take over from GF's in-house departments in the creation of ENGenuity's website and marketing material for a contract price of $25,600, GF paid the required fifty percent initial deposit without objection.

On July 14, 2016, Flor secured a subcontracting-consulting agreement with T&M for a construction project in Hoboken, which would provide ENGenuity with work for the next two years. Flor was also attempting to secure a contract with Jersey City that would designate her as the municipality's engineer for the next three years. Johnston was pleased with her efforts and pledged GF's full support. Both Johnston and Nourzad considered the Jersey City contract a "top priority" and directed GF's marketing department to work with Flor on securing it.

In addition, on July 20, 2016, Johnston sent an email to all GF managing partners clarifying that ENGenuity was not "a 'subsidiary'" of GF but rather a "stand-alone company" with Flor as the managing partner and GF as a minority

partner. He said that "[t]he ultimate goal" was to obtain WBE status within the next few months, and because the "certification process [for WBE status was] very thorough and very detailed" it was "very important to correctly show that [Flor (a woman) was] managing th[e] LLC from day one" to "ensure that [they were] following the letter of the law." He concluded: "[Flor's] intent is to embody all that this certification brings with it as she embarks on this endeavor with our support."

On July 26, 2016, Flor notified Johnston and other GF employees that to perform work on the Hoboken contract, certain insurance policies had to be obtained. Flor explained that insurance was a necessary component of municipal work, and no work could be started for any municipality without it. By that point in time, GF had not secured insurance for ENGenuity, and had not paid any part of Flor's compensation. The next day, July 27, 2016, Johnston sent Flor an email entitled Letter of Intent (LOI) for ENGenuity. Flor testified that no GF employee, including Johnston, had ever mentioned a letter of intent, and she was not sure what it was.

Attached to the email was a five-page letter signed by Johnston that began:

> In furtherance of my letter to you dated June 3, 2016, this letter sets forth the proposed terms upon which you and [GF] will jointly form a new LLC ("the LLC"). The purpose of this letter is to confirm each of our intent so

> that formal agreements can be prepared. This letter is not intended to be binding upon either of us.

The next paragraph recited that Flor would be the manager of the company with a 51% membership interest and GF would have a 49% membership interest. It then added that the members would execute "an operating agreement detailing the governing terms of the LLC" and that the manager understood that she would "require the unanimous consent" of all members to perform a list of twenty-two enumerated actions, which included: approval of "any employment agreement, management agreement or other agreement made between the LLC and a Member"; issue distributions; issue a check in excess of $10,000; borrow funds in excess of $2,500; create liens against the LLC; and purchase or lease property valued at $5,000 or more.

Additionally, the proposed operating agreement would restrict the members' ability to sell their interest and would force a purchase in certain situations. For example, at the end of the two-year start-up period, GF could force Flor to purchase its 49% interest, and if GF terminated Flor's employment, it would purchase her interest. Further, the LOI "anticipate[d] that the LLC and GF would enter into a management agreement" for business related "administration services for the LLC" and "GF will charge the LLC a management fee for the [s]ervices to be paid on a monthly basis." The LOI also

stated that GF would provide the LLC a $100,000 loan, repayable over a five-year period, to provide the LLC with "initial working capital." The LLC would begin repayment on the loan one year after the operating agreement was executed.

Flor testified that she was "shocked" when she read the LOI. The first June 3 offer Johnston had sent had also referenced an operating agreement, but he had removed that provision at her request because she was not comfortable signing an offer that was conditioned upon another agreement she had not seen. The twenty-two items in the LOI that required unanimous consent of the members had not been part of either offer, and she had never discussed them with any GF representative. Flor felt that the terms of the LOI were "a power grab," and she conveyed her dissatisfaction to Johnston the following day. He told her that the managing principals and the Board of Directors had drafted the LOI, and he assured her that it was nonbinding, as indicated in the first paragraph. He told her to "just mark it up" and send it back to him. Flor "took a few weeks to mark it up" because she was focused on starting the company and Johnston had assured her that it was nonbinding and not a pressing matter.

In the interim, Flor received a proposed agreement from GF to retain Paycom for payroll services, payable by GF, and Flor was actively working with

Johnston to obtain office space and hire staff. Flor and Johnston had interviewed a few people for various positions and by late August, had offered a planner position to Brittany Ashman. On August 29, 2016, Flor sent Johnston her mark-up of the LOI. Although she believed that she and GF already had a complete agreement, she felt that she had no "other choice" but to respond because GF still had not paid her. Her proposed changes carved out six categories of decisions that she would retain control over, increased the amount of the checks she could issue on her own to $20,000, and modified the buy-out provisions to make them fair for both sides.

The following day, Johnston sent Flor a management fee agreement as outlined in the LOI that would have required her to repay GF $15,500 per employee, including herself, annually. These terms were not part of the parties' agreement as memorialized in the final offer, and Flor testified that she would not have signed the agreement if they had been. Despite her repeated requests, Flor still had not been paid, and she was now making "more forceful" attempts to receive her compensation. Eventually, on September 8, 2016, Flor received four paychecks for approximately $49,000. Then, to her surprise, at 4:55 p.m. the following day, Friday, September 9, 2016, Johnston sent Flor an email

saying that GF had decided "to not pursue" its 49% minority interest "with the potential WBE entity at this time."

In the email, Johnston wrote:

> The recent negotiations have taken the parties far apart from the original spirit and intent of the partnership. While we feel that we have made every effort to put forth a very generous offer and diligently pursue the intent of the partnership, the potential increased risk associated with your counter[-]offer concepts are not prudent pursuits for [GF].
>
> Your guaranteed salary offer as an employee of [GF] is still valid.

Flor was "shocked." She had "no indication that this was going to happen." She had to figure out how she was going to support her family, preserve her client relationships, and salvage her reputation. By this point, Flor had hired Ashman, who was scheduled to begin work that upcoming Monday. Putting her own concerns aside, Flor went to the Red Bank office Monday morning and confronted Johnston about the adverse impact of the termination on Ashman. After a "pretty forceful conversation" with Johnston, he agreed with Flor that Ashman needed to be protected from the fallout. As a result, GF offered to hire Ashman as an employee, and Ashman accepted the offer.

Later that day, Flor participated in a conference call with Johnston and Ghadrdan, during which Ghadrdan said he considered ENGenuity a "subsidiary"

of GF and wanted Flor and Johnston to work out their differences regarding the LOI or for Flor to become an employee of GF. Flor explained that early in their discussions, she had rejected the employee offer and was not interested in revisiting it. She felt she had no choice but to make ENGenuity successful, with or without GF's support, because she needed a salary to support her family and her prospects were limited by the noncompete agreement with T&M. Consequently, Flor continued negotiating the LOI with GF as directed by Ghadrdan while simultaneously pursuing contracts for ENGenuity. Flor included GF in her efforts to secure work for ENGenuity.

By then, Flor had won two bids – a $165,000 contract with Hoboken and a $20,000 contract with Jersey City – but she could not execute the contracts because GF still had not obtained insurance for ENGenuity. On September 15, 2016, Flor sent Johnston an email asking when the insurance would be paid. He replied that it would be paid when she agreed "to move forward with [their] LOI negotiation." He wrote further, "I'm not trying to be difficult here, but this is a big expense."

During their continued negotiations on the LOI, Johnston requested reports from Flor justifying her need for financial control over ENGenuity; providing "expense and revenue projections," including when GF "would break

even" from its investment in ENGenuity; specifying when the operating-expenses loan from GF would be paid in full; and articulating an updated business plan. Although Flor complied with all requests, GF was still not satisfied.

Through the fall of 2016, Flor continued to seek contracts for ENGenuity and included GF in her efforts. At the end of September 2016, she submitted a package for a Jersey City Redevelopment Authority project and, with Johnston's permission, included "several" resumes of GF employees to showcase GF employees in the public sector space. When GF still refused to pay ENGenuity's insurance premium so that Flor could execute the two pending contracts, Flor ultimately paid the premium, which totaled $18,000, as well as the other operating expenses with personal funds, totaling $77,000. After obtaining the insurance, Flor executed both contracts, generating revenue for ENGenuity.

On October 3, 2016, GF "terminated a second time." Thereafter, Flor never received any further communication from any GF employee. Nonetheless, Flor was determined to make ENGenuity a success. In November 2016, Flor signed a $25,000 yearly lease for office space and began hiring a few employees so that the company could perform the work of the few contracts she had

acquired. The company survived on cash flow alone, and the only pay she received was the $49,000 that GF had paid her in September 2016.

Although she could not obtain a small business loan because she was considered self-employed, Flor obtained a business credit card and, in September 2017, obtained a $150,000 line of credit. She paid herself $13,700 for her work that year. She also received WBE certification in 2017 and a small business enterprise certification. The following year, the company obtained federal certification as a woman-owned small-business. Between 2017 and 2018, Flor executed six additional contracts, and, in 2018, her income grew to $65,000.

With respect to ENGenuity's expenses, Flor testified that after GF terminated its relationship with the company, the operating expenses for 2016 through 2018, excluding her salary, were $52,000 in 2016, $220,000 in 2017, and $327,000 in 2018, for a total of $599,000. The expenses increased because she hired additional staff. Flor testified that after deducting the $49,000 she was paid by GF pursuant to the terms of the final offer, she was owed $305,000 for her salary, sign-on bonus, and car allowance, which GF never paid.

For the most part, GF's two witnesses – Ghadrdan and Johnston – did not dispute Flor's testimony, other than denying that they had reached a final

agreement to form an LLC. According to Ghadrdan, he considered the final offer as only providing a framework from which negotiations would begin. He claimed that those negotiations broke down in the fall of 2016 when they could not reach an agreement on two terms – the extent of GF's commitment to fund ENGenuity's operations and Flor's use of GF engineers to give them public sector experience. Ghadrdan claimed that Flor refused to use GF engineers in the new company and wanted GF to deposit $2 million into ENGenuity's checking account to cover its expenses. Believing that the requested amount was excessive, he ended negotiations with her and authorized withdrawal of the $150,000 that GF had previously deposited into ENGenuity's checking account.

Ghadrdan admitted that he had initially offered employment to Flor and when she refused that offer, he considered creating a new company as a WBE. He said that he was not familiar with the criteria for WBE certification, but he wanted to explore the possibility. He admitted that he had offered to guarantee Flor's salary for two years to provide her the assurance she needed to leave T&M and that he had agreed to financially support the new LLC. However, he believed that the support would come from GF's infrastructure, rather than being outsourced. Although GF had no experience in the public sector, he believed that 98% of the new company's work could be done by GF engineers, and GF

already had the IT, payroll, marketing, and human resources staff in place to support the new company. He acknowledged, however, that GF had paid outside vendors to provide services to ENGenuity before it ended its involvement with the company.

Johnston's testimony was consistent with Ghadrdan's. He confirmed that GF initially tried to recruit Flor as an employee, and when she rejected that offer, they explored creating a WBE company, in which GF would be a 49% owner and provide support for two years. He believed that the final offer was only a preliminary agreement and a first step in creating the business relationship. According to Johnston, GF regarded the potential business relationship as a "partnership" because it believed that it would share the work of the new company with Flor.

When questioned about the purpose of the LOI and the operating agreement, Johnston said he believed as a matter of practice that a LOI is the start of negotiations and that after it is drafted, an operating agreement is needed before a business entity can be formally created. He acknowledged that the first draft of the LOI was "one-sided" in GF's favor, but he believed that it was subject to negotiation with Flor. He said they did engage in extensive negotiations and

sent "three of four" drafts back and forth, but admitted that after Flor received the LOI, there was friction between them.

Johnston testified that during their negotiations, Flor insisted that GF provide financial support to the company to the tune of $2 million and that she be completely in charge of all decisions. According to Johnston, GF viewed Flor's request as unreasonable and unacceptable. GF wanted Flor to have some financial "skin in the game," but she was not interested in financially contributing to the company. Johnston recognized that to obtain WBE certification, the majority of the company's ownership interest had to be held by a woman. Thus, Flor had to have at least a 51% ownership interest. But GF was not comfortable with Flor's insistence that she make all decisions while also requiring GF to provide all the financial support.

Flor and ENGenuity ultimately filed an eight-count complaint against Greenberg Farrow, as well as Ghadrdan and Johnston, in their individual capacities. The complaint, which was later amended, asserted various causes of action as follows:

> Count One – Breach of Contract: GF breached an agreement with Flor to pay her salary, a car allowance and ENGenuity's operating expenses and insurance fees for two years;

> Count Two – Breach of the Implied Covenant of Good Faith and Fair Dealing: GF breached the implied covenant of good faith and fair dealing;
>
> Count Three – Fraudulent Inducement: Ghadrdan and Johnston fraudulently induced Flor to enter a business relationship they did not intend to honor;
>
> Count Four – Civil Conspiracy: Ghadrdan and Johnston conspired to fraudulently induce Flor to enter a business relationship they did not intend to honor;
>
> Count Five – Equitable Estoppel: GF was estopped from claiming an ownership interest in ENGenuity;
>
> Count Six - Declaratory Judgment: Declaratory judgment under the RULLCA dissociating GF from ENGenuity and declaring Flor sole owner;
>
> Count Seven – Unjust Enrichment: GF was unjustly enriched by its refusal to pay Flor's salary and ENGenuity's expenses while Flor continued operations of ENGenuity; and
>
> Count Eight – Unfair Competition: GF unfairly competed by refusing to release control of the engenuityinfrastructure.com domain name and website.

Following cross-motions for summary judgment, the judge dismissed counts four and eight. The judge also granted a directed verdict on count three at the close of plaintiffs' case, leaving counts one, two, five, six, and seven alleging claims against GF only for the jury's determination. The jury ultimately rejected GF's position and returned a verdict in plaintiffs' favor, finding that the

parties had an enforceable agreement, the terms of which were set forth in the final offer. The jury found that GF had breached: (1) the agreement to fund ENGenuity and pay Flor's salary, which entitled Flor to $904,000 in compensatory damages, consisting of $599,000 in operating expenses and $305,000 in salary; and (2) the implied covenant of good faith and fair dealing, which entitled Flor to $375,000 in compensatory damages.

GF moved for JNOV, or alternatively, for a new trial, and Flor moved for declaratory judgment under the RULLCA, dissociating GF from ENGenuity by expulsion, see N.J.S.A. 42:2C-45(a) and (e)(1) and (3). By orders and written decision dated January 29, 2021, the judge granted Flor's motion for declaratory relief and denied GF's motion for JNOV or a new trial. In denying GF's motion, the judge determined that the jury's finding was clearly supported by the evidence. However, the judge set aside the damages award on the breach of the covenant of good faith and fair dealing count, finding that it was duplicative of the compensatory damages award. On March 22, 2021, the judge entered an amended order of judgment setting forth the damages owed with interest, and this appeal followed.

II.

On appeal, GF argues that the judge erred by denying its motion for summary judgment on whether the parties had "entered into a binding and enforceable partnership agreement" that required it to fund the LLC's operating expenses. GF claims that "[a]t most," it had an enforceable employment contract that required it to pay Flor's salary only and had "reached a non-binding 'agreement to agree'" on a "contract that addressed their interests, rights and obligations as members of ENGenuity." To support its claim, GF points to the subsequent negotiations of the LOI and the operating agreement, which fell apart without reaching an agreement.

We review a trial court's decision on a summary judgment motion "de novo under the same standard as the trial court." Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016). That standard is well-settled.

> [I]f the evidence of record—the pleadings, depositions, answers to interrogatories, and affidavits—"together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact," then the trial court must deny the motion. On the other hand, when no genuine issue of material fact is at issue and the moving party is entitled to a judgment as a matter of law, summary judgment must be granted.
>
> [Steinberg v. Sahara Sam's Oasis, LLC, 226 N.J. 344, 366 (2016) (citations omitted) (quoting R. 4:46-2(c)).]

Whether a genuine issue of material fact exists depends on "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co., 142 N.J. 520, 523 (1995). "If there is no genuine issue of material fact, we must then 'decide whether the trial court correctly interpreted the law.'" DepoLink Ct. Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 333 (App. Div. 2013) (quoting Massachi v. AHL Servs., Inc., 396 N.J. Super. 486, 494 (App. Div. 2007)). "We review issues of law de novo and accord no deference to the trial judge's [legal] conclusions . . . ." MTK Food Servs., Inc. v. Sirius Am. Ins. Co., 455 N.J. Super. 307, 312 (App. Div. 2018).

Turning to the elements of the cause of action central to this appeal, "[t]o prevail on a breach of contract claim, a party must prove a valid contract between the parties, the opposing party's failure to perform a defined obligation under the contract, and the breach caused the claimant to sustain damages." EnviroFinance Group, LLC v. Enviro. Barrier Co., LLC, 440 N.J. Super. 325, 345 (App. Div. 2015) (citing Murphy v. Implicito, 392 N.J. Super. 245, 265 (App. Div. 2007)). "A contract arises from offer and acceptance," and an

enforceable contract is formed when the "parties agree on essential terms and manifest an intention to be bound by those terms." Weichert Co. Realtors v. Ryan, 128 N.J. 427, 435 (1992).

"An enforceable agreement requires mutual assent, a meeting of the minds based on a common understanding of the contract terms." Morgan v. Sanford Brown Inst., 225 N.J. 289, 308 (2016). The phrase "meeting of the minds" only properly means the agreement reached by the parties as expressed, not a secret or undisclosed intention which differs from that which is expressed in the contract. Leitner v. Braen, 51 N.J. Super. 31, 38 (App. Div. 1958). The parties must also receive some type of consideration for the agreement to be enforceable. Oscar v. Simeonidis, 352 N.J. Super. 476, 484 (App. Div. 2002). In colloquial terms, "both sides must 'get something' out of the exchange." Ibid. (quoting Continental Bank of Pa. v. Barclay Riding Academy, Inc., 93 N.J. 153, 170 (1983)).

Where the agreement is clearly written and leaves no room for interpretation, a court must enforce it according to its plain terms, even if one party claims to have had an intention different from that outwardly manifested in the agreement. Schor v. FMS Fin. Corp., 357 N.J. Super. 185, 191 (App. Div. 2002). However, where ambiguity exists and the terms of the agreement are

subject to interpretation as to its meaning, the parties may "introduce proof of extrinsic circumstances bearing on the alleged proper interpretation of the language used." Id. at 192.

"The construction of a written contract is usually a legal question for the court, but where there is uncertainty, ambiguity or the need for parol evidence in aid of interpretation, then the doubtful provision should be left to the jury." Id. at 193 (quoting Great Atlantic & Pacific Tea Co., Inc. v. Checchio, 335 N.J. Super. 495, 502 (App. Div. 2000)). See also Bosshard v. Hackensack Univ. Med. Ctr., 345 N.J. Super. 78, 92 (App. Div. 2001) ("The interpretation of the terms of a contract are decided by the court as a matter of law unless the meaning is both unclear and dependent on conflicting testimony.").

The parties' failure to reach an agreement on nonessential terms will not necessarily render an agreement unenforceable. Willingboro Mall, Ltd. v. 240/242 Franklin Ave., LLC, 421 N.J. Super. 445, 453 (App. Div. 2011). "So long as the basic essentials are sufficiently definite, any gap left by the parties should not frustrate their intention to be bound." Hagrish v. Olson, 254 N.J. Super. 133, 138 (App. Div. 1992) (quoting Berg Agency v. Sleepworld-Willingboro, Inc., 136 N.J. Super. 369, 377 (App. Div. 1975)). Indeed, "a

contract is no less a contract because some preferable clauses may be omitted either deliberately or by neglect." Berg Agency, 136 N.J. Super. at 377.

> [T]he absence of some provisions in a document does not necessarily negate its viability as a binding agreement.
>
> The key factor is not the absence of any contractual undertakings which may normally be included by contracting parties engaged in a similar transaction. It is rather the intent of the particular parties involved in the transaction at issue. And the presence or absence of essential contract provisions is but an element in the evidential panorama underlying a factual finding of intent and enforceability.
>
> [Ibid.]

Thus, an agreement will not be negated by the fact that the parties contemplated executing subsequent writings. Pascarella v. Bruck, 190 N.J. Super. 118, 124 (App. Div. 1983). See Restatement, Second, Contracts, § 27 "Manifestations of assent that are in themselves sufficient to conclude a contract will not be prevented from so operating by the fact that the parties also manifest an intention to prepare and adapt a written memorial . . ."; see also Lahue v. Pio Costa, 263 N.J. Super. 575, 596 (App. Div. 1993) ("Where the parties agree upon the essential terms of a settlement, so that the mechanics can be 'fleshed out' in a writing to be thereafter executed, the settlement will be enforced

notwithstanding the fact the writing does not materialize because a party later reneges.").

Where the purported contract is one creating an LLC, the RULLCA, N.J.S.A. 42:2C-1 to 94, provides the legal framework on formation and operation. See N.J.S.A. 42:2C-91(b) (instructing that the RULLCA governs any LLC formed on or after March 1, 2014). N.J.S.A. 42:2C-6 instructs that New Jersey law controls matters of internal affairs and liability for the LLC members. N.J.S.A. 42:2C-7 adds that principles of law and equity supplement the RULLCA. N.J.S.A. 42:2C-18(d) provides that an LLC is formed when a certificate of formation is filed, and N.J.S.A. 42:2C-11(i) prescribes that the RULLCA "is to be liberally construed to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements."

Here, in a written opinion filed on April 4, 2019, the judge denied GF's summary judgment motion on the ground that genuine issues of material fact existed as to whether the parties had an enforceable agreement, and, if so, the terms of that agreement. The judge explained that "a reasonable jury could find for either party concerning the existence of a valid contract and whether or not a 'meeting of the minds' to be bound has been proven which precludes th[e c]ourt

from granting summary judgment to either party." Reviewing the record de novo in accordance with the summary judgment standard, we agree with the judge's ruling.

Whether there was a meeting of the minds creating an enforceable contract was a matter of intent determined in large part by the credibility of the parties. "The cases are legion that caution against the use of summary judgment to decide a case that turns on the intent and credibility of the parties." McBarron v. Kipling Woods, L.L.C., 365 N.J. Super. 114, 117 (App. Div. 2004). We conclude that the evidence viewed in the light most favorable to plaintiffs established that material issues of fact existed regarding the parties' intentions to preclude granting summary judgment predicated on the enforceability of the contract. See Celanese Ltd. v. Essex County Improvement Authority, 404 N.J. Super. 514, 528 (App. Div. 2009) ("[I]n ruling on a summary judgment motion that involves the interpretation of a contract, a court must necessarily determine whether there is any genuine issue of material fact regarding the parties' intentions.").

III.

GF also argues the judge erred by denying its motion for JNOV, or alternatively, for a new trial, on plaintiffs' claim that it had breached an

agreement to pay ENGenuity's operating expenses for two years. GF reiterates that the parties never reached a final agreement on a partnership and that the agreement they had was limited to a promise to pay Flor's compensation, not the operating expenses of an LLC. In addition, GF contends the judge erred by denying its request for remittitur of the $599,000 in compensatory damages. It claims that the compensatory damages award put Flor in a far better position than she would have been in had there been no breach because it required GF to fund ENGenuity's operating expenses but did not allow GF to retain its 49% interest in the company. GF claims that the damages award was actually a specific performance award and thus, "there must be mutual performance by ENGenuity through the delivery of 49% of the membership interests of the company."

"When considering a motion for JNOV or a new trial, '[t]he trial judge shall grant the motion if, having given due regard to the opportunity of the jury to pass upon the credibility of the witnesses, it clearly and convincingly appears that there was a miscarriage of justice under the law.'" Barber v. ShopRite of Englewood & Assocs., 406 N.J. Super. 32, 51 (App. Div. 2009) (quoting R. 4:49-1(a)). Still, "[a] jury verdict is entitled to considerable deference," Risko v. Thompson Muller Automotive Group, Inc., 206 N.J. 506, 521 (2011), and "the

court must accept as true all the evidence which supports the position of the party defending against the motion and must accord [that party] the benefit of all legitimate inferences which can be deduced therefrom." Brill, 142 N.J. at 535.

"[A] 'miscarriage of justice' can arise when there is a 'manifest lack of inherently credible evidence to support the finding,' when there has been an 'obvious overlooking or under-valuation of crucial evidence,' or when the case culminates in 'a clearly unjust result.'" Hayes v. Delamotte, 231 N.J. 373, 386 (2018) (quoting Risko, 206 N.J. at 521-22). "The same standard governs our review of the trial court's determination of a motion for JNOV or a new trial," namely, whether there has been a miscarriage of justice under the law. Barber, 406 N.J. Super. at 52 (citing Dolson v. Anastasia, 55 N.J. 2, 7 (1969)).

"A jury's verdict, including an award of damages, is cloaked with a 'presumption of correctness.'" Cuevas v. Wentworth Grp., 226 N.J. 480, 501 (2016) (quoting Baxter v. Fairmont Food Co., 74 N.J. 588, 598 (1977)). "The presumption of correctness that attaches to a damages award is not overcome unless a defendant can establish, 'clearly and convincingly,' that the award is 'a miscarriage of justice.'" Ibid. (quoting Baxter, 74 N.J. at 596). Stated differently,

> [t]hat judgment should not be disturbed absent the trial court's conclusion, after evaluating and weighing the evidence, that maintenance of the judgment would result in a manifest denial of justice. [Baxter, 74 N.J. at 597-98]. The goal is not for the judge to substitute his or her judgment for that of the jury, but to correct the jury's clear error or mistake. Ibid. Thus, to qualify for remittitur the jury's award must shock the judicial conscience. Id. at 596.
>
> [McRae v. St. Michael's Medical Center, 349 N.J. Super. 583, 597 (App. Div. 2002).]

"The standard for reviewing a damages award that is claimed to be excessive is the same for trial and appellate courts, with one exception—an appellate court must pay some deference to a trial judge's 'feel of the case.'" Cuevas, 226 N.J. at 501 (citations omitted).

"Under contract law, a party who breaches a contract is liable for all of the natural and probable consequences of the breach of that contract." Totaro, Duffy, Cannova & Co. v. Lane, Middleton & Co., 191 N.J. 1, 13 (2007) (quoting Pickett v. Lloyd's, 131 N.J. 457, 474 (1993)). Generally, there are three types of damages for breach of contract: restitution; compensatory damages; and specific performance. Id. at 12. "Restitution returns the innocent party to the condition he or she occupied before the contract was executed." Ibid. Compensatory damages give the injured the party the benefit of the bargain by restoring the party to "as good a position as . . . if performance had been

rendered." Ibid. (quoting Donovan v. Bachstadt, 91 N.J. 434, 444 (1982)). Specific performance mandates a specific action that makes the non-breaching party whole by requiring the breaching party to fulfill his or her obligation under the agreement. Id. at 13.

In the statement of reasons accompanying the January 29, 2021, order denying GF's motion for JNOV or a new trial, the judge found that "[GF] failed to satisfy the high burden required to set aside [p]laintiffs' breach of contract claim" because the evidence supported the verdict and no miscarriage of justice resulted. According to the judge, the jury's finding that the final offer constituted "a valid and enforceable employment contract, which was breached by [GF] resulting in damages to . . . plaintiffs" was "a reasonable conclusion based upon the evidentiary record." The judge underscored that "all [the] required elements of a contract . . . , including meeting of the minds, offer and acceptance, consideration and certainty were proven by a preponderance of the credible evidence."

The judge explained:

> When examining the evidentiary record in the light most favorable to the [p]laintiffs, reasonable minds could easily conclude [the final offer] became a valid and enforceable employment contract upon execution by Flor. [The final offer] contained all the required elements of a contract. The document, which

> was drafted by [GF], states it is an "offer of employment" and outlines the basic principles of employment with additional documents to follow. The document confirmed that the employment offer . . . would be accepted by "[Flor's] acceptance of this offer by signature below." Following execution, [GF] would then engage local counsel to finalize the details of the WBE, LLC—which did occur in this matter. Consistent with the clear and unambiguous terms of the document, reasonable minds could easily determine that the negotiated agreement executed by both parties satisfied all requirements of a contract under New Jersey law. The additional documents proposed by [the final offer] were intended to supplement the basic terms of employment set forth in the enumerated paragraphs of the agreement.
>
> [(Emphasis omitted).]

The judge also considered the credibility of the witnesses, commenting that "the witness testimony further confirmed the existence of a contract between the parties." The judge noted that "Flor made an excellent witness during the trial. [She] was well educated and well spoken. She appeared[] honest, candid and sincere throughout her testimony, including cross-examination." In contrast, the judge described the GF witnesses as "mechanical, scripted, and orchestrated. [They] were uncomfortable, hesitant, and reluctant to answer questions during cross-examination—factors that were all properly . . . considered by the jury when determining credibility of the witnesses that testified."

In recounting the testimony, the judge explained:

> [Flor] detailed her initial concern and hesitation leaving her former employer due to the uncertainty associated with starting a new business. Following extensive negotiations with . . . [GF], she executed [the final offer], which she believed was an employment contract and began the necessary steps to transform ENGenuity into a fully functioning engineering firm. The steps included but were not limited to searching for office space, securing licenses and certifications from the State of New Jersey, and searching for subcontracting work to bring revenue to the new venture.
>
> She testified [GF] initially complied with the terms of [the final offer] . . . . Nevertheless, she described with detail the gradual deterioration of the relationship after [GF] recognized that it could not control ENGenuity, which lead to [GF] abandoning the new company in October 2016.

The judge pointed out that even the testimony of GF's witnesses supported the jury's unanimous finding that the final offer was a contract. According to the judge,

> Each [witness] reluctantly testified [the final offer] set forth the basic responsibilities and obligations of the parties for the employment relationship. . . . Johnston acknowledged there was nothing in [the final offer] conditioning Flor's employment relationship upon the execution of a [LOI], operating agreement, management agreement and/or any other document. Rather, Flor's execution of [the final offer] triggered guaranteed, unconditional, and irrevocable obligations for [GF].

The judge concluded that the evidence viewed in the light most favorable to plaintiffs "demonstrated a meeting of the minds" and "sufficient evidence of consideration, specifically the financial benefits that would flow to each party through the operation of ENGenuity."

The judge further determined that although the final offer "identified 'additional transactional documents' would be executed, those documents would supplement the basic principles of employment confirmed in [the final offer]." Indeed, according to the judge, the final offer "suggested that the additional documents would 'tweak' the employment relationship and benefits offered to Flor" and there was "nothing in the agreement indicating that the supplemental documents would propose an entirely different employment relationship from what was agreed upon by the parties through the execution of [the final offer]."

Critically, the judge pointed out that "[t]he conduct of [GF], through its authorized agents and employees, further support[ed] the jury's conclusion." The judge explained:

> After [the final offer] was executed, Flor, . . . Ghadrdan and . . . Johnston testified that Flor was paid her salary and provided other benefits under the terms of [the final offer] for several months. [GF] also began taking the necessary steps to support ENGenuity consistent with the obligations in [the final offer]. The jury was instructed that evidence may be either direct or circumstantial and [GF's] conduct during the summer

> of 2016 provide[d] circumstantial evidence of the existence of a contract, which undeniably was breached by [GF] in October 2016.

As to the jury's damages award, the judge found that the award did not shock the conscience or amount to a miscarriage of justice. Instead, according to the judge, the award reflected a finding that the jury accepted Flor's testimony and rejected GF's position, which it was free to do. The judge also noted that the award was consistent with the proofs presented to the jury as evidenced by the jury's return of "the exact amount" of damages sought by plaintiffs.

We agree with the judge's ruling and reasoning. The case rested primarily on credibility. The jury found Flor credible and accepted her explanation of the meaning of the final offer. Her explanation was consistent with the plain terms of the agreement as well as the parties' negotiations and initial post-contract conduct, and largely uncontested by GF's witnesses, but for the disagreement regarding the enforceability of the contract. Generally, "the subsequent conduct of the parties in the performance of the agreement may serve to reveal their original understanding." Michaels v. Brookchester, Inc., 26 N.J. 379, 388 (1958). GF's post-contract conduct was certainly consistent with the plain terms of the final offer.

Although the final offer referenced other documents that the parties anticipated executing, those documents were described as supplemental, and nothing in the offer suggested that they would materially change the terms of the agreement. Contrary to GF's contention, the reference to documents the parties would later execute does not defeat plaintiffs' claim because contract formation is based on agreement of the key terms, Weichert Co. Realtors, 128 N.J. at 435, and the fact that the parties contemplated executing subsequent writings does not negate the agreement, Pascarella, 190 N.J. Super. at 124.

GF also claims the parties never executed a formal partnership agreement, which it contends was a necessary condition precedent to its participation in the LLC. However, nothing in the RULLCA required the parties to execute a formal partnership agreement to create an LLC. Rather, the RULLCA provides that an LLC is formed when the certificate of formation is filed. N.J.S.A. 42:2C-18(d). The RULLCA allows for self-governance by way of an operating agreement but does not require members to execute one to form an LLC. See N.J.S.A. 42:2C-37 (discussing management of an LLC and providing default rules in the absence of an operating agreement); see also IE Test, LLC v. Carroll, 226 N.J. 166, 177-78 (2016) (explaining that the Limited Liability Company Act, N.J.S.A. 42:2B-1 to 70, which was repealed and replaced by the RULLCA, L. 2012, c. 50 (eff.

Mar. 18, 2013), similarly provided default rules for the governance of an LLC in the absence of an operating agreement). Here, GF never disputed that it filed a certificate of formation creating ENGenuity, and nothing in the RULLCA required a more formal partnership agreement or an operating agreement to create an enforceable contract.

We also reject GF's argument that the award was a specific performance award because it required GF to fund ENGenuity's operating expenses in accordance with the agreement while also expelling GF as a member of ENGenuity, thus awarding Flor 100% of ENGenuity, despite the fact that she had not invested any funds in the company. The judge – not the jury – dissociated GF and named Flor sole owner of ENGenuity based on GF's abandonment and wrongful conduct. Flor sought compensatory damages based on the expenses she had incurred saving the company during the two-year period that GF had promised to support the company then refused to do so. The jury's damages award was the direct result of GF's breach, was supported by the evidence, and was appropriate under the law of compensatory damages. See Totaro, Duffy, Cannova & Co., 191 N.J. at 13 (explaining that a breaching party is liable "for all of the natural and probable consequences of the breach").

IV.

Lastly, GF contends the judge erred in granting plaintiffs' post-verdict motion directing the dissociation and expulsion of GF from ENGenuity pursuant to N.J.S.A. 42:2C-46(a) and (e)(1) and (3) of the RULLCA without payment of compensation for its membership interest. We disagree.

RULLCA's Article 6 governing dissociation is comprised of three sections, namely, N.J.S.A. 42:2C-45, 46 and 47. N.J.S.A. 42:2C-45 addresses a member's power to dissociate, rightfully or wrongfully, and provides:

> a. A person[1] has the power to dissociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will under section 46 of this act.
>
> b. A person's dissociation from a limited liability company is wrongful only if the dissociation:
>
> > (1) is in breach of an express provision of the operating agreement; or
> >
> > (2) occurs before the termination of the company and:
> >
> > > (a) the person is expelled as a member by

[1] The statute refers to a "person" as a member. N.J.S.A. 42:2C-45. N.J.S.A. 42:2C-2 defines "person" as "an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity."

judicial order under subsection e. of section 46 of this act;

(b) the person is dissociated under paragraph (1) of subsection g. of section 46 of this act, by becoming a debtor in bankruptcy; or

(c) in the case of a person that is not a trust other than a business trust, an estate, or an individual, the person is expelled or otherwise dissociated as a member because it willfully dissolved or terminated; or

(3) in the case of a company for a definite term or particular undertaking, by withdrawing as a member by express will under section 46 of this act before the expiration of the term or the completion of the undertaking.

c. A person that wrongfully dissociates as a member is liable to the limited liability company and, subject to section 67 of this act, to the other members for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or other liability of the member to the company or the other members.

N.J.S.A. 42:2C-46 delineates various "[e]vents causing dissociation." In this case, although plaintiffs had only pled N.J.S.A. 42:2C-46(e) in their amended complaint, in their motion, plaintiffs claimed that three grounds

applied to dissociate GF from ENGenuity, namely, (1) N.J.S.A. 42:2C-46(a); (2) N.J.S.A. 42:2C-46(e)(1); and (3) N.J.S.A. 42:2C-46(e)(3). Those subsections provide:

> A person is dissociated as a member from a limited liability company when:
>
> a. The company has notice of the person's express will to withdraw as a member, but, if the person specified a withdrawal date later than the date the company had notice, on that later date;
>
> . . . .
>
> e. On application by the company, the person is expelled as a member by judicial order because the person:
>
> (1) has engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the company's activities;
>
> . . . .
>
> or
>
> (3) has engaged, or is engaging, in conduct relating to the company's activities which makes it not reasonably practicable to carry on the activities with the person as a member . . . .

"LLC members seeking to expel a fellow member under . . . N.J.S.A. 42:2C-46(e)(3) . . . are required to clear a high bar." IE Test, LLC v. Carroll,

226 N.J. 166, 183 (2016). N.J.S.A. 42:2C-46(e)(3) does not "authorize[] a court to disassociate an LLC member merely because there is a conflict." Ibid. Instead,

> [i]n that inquiry, a trial court should consider the following factors, among others that may be relevant to a particular case: (1) the nature of the LLC member's conduct relating to the LLC's business; (2) whether, with the LLC member remaining a member, the entity may be managed so as to promote the purposes for which it was formed; (3) whether the dispute among the LLC members precludes them from working with one another to pursue the LLC's goals; (4) whether there is a deadlock among the members; (5) whether, despite that deadlock, members can make decisions on the management of the company, pursuant to the operating agreement or in accordance with applicable statutory provisions; (6) whether, due to the LLC's financial position, there is still a business to operate; and (7) whether continuing the LLC, with the LLC member remaining a member, is financially feasible.
>
> [Ibid.]

N.J.S.A. 42:2C-47 addresses the effect of dissociation. Subsection (a) of N.J.S.A. 42:2C-47 states that when a member is dissociated, the member's "right to participate . . . in the management and conduct of the company's activities terminates," the member's fiduciary duties end, and "any transferable interest owned by the [member] immediately before dissociation . . . is owned . . . solely as a transferee." N.J.S.A. 42:2C-47(a)(1), (2), and (3). Subsection (b) provides

that dissociation "does not of itself discharge the [member] from any debt, obligation, or other liability to the company or the other members which the [dissociated member] incurred while a member." N.J.S.A. 42:2C-47(b).

Subsection (c) provides that when a court "expels a member from a company" pursuant to N.J.S.A. 42:2C-46(e), the court "may order the sale of the" expelled member's interests

> to either the company or to any other persons who are parties to the action if the court determines, in its discretion, that such an order is required by any other law, rule or regulation, or that such an order would be fair and equitable to all parties under all of the circumstances of the case.
>
> [N.J.S.A. 42:2C-47(c).]

In the January 29, 2021, order and statement of reasons, the judge found plaintiffs satisfied their burden of proof and declared GF expelled and dissociated from ENGenuity without payment of compensation for its underlying membership interest because GF: (1) voluntarily withdrew from ENGenuity by abandoning its interest in the company, N.J.S.A. 42:2C-46(a); and (2) engaged in wrongful conduct that adversely affected ENGenuity's activities, N.J.S.A. 42:2C-46(e)(1), and made it not reasonably practicable to carry on the company's business with GF as a member, N.J.S.A. 42:2C-46(e)(3).

First, the judge made findings under N.J.S.A. 42:2C-46(a) as follows:

> Contrary to any argument offered by [GF], this [c]ourt finds [GF] withdrew from ENGenuity on October 3, 2016, which was confirmed in the testimony of . . . Johnston. On that date, [GF] ceased providing any contribution to ENGenuity. GF submitted oral and written notification terminating its membership interest and any relationship with the new business. The evidentiary record established [that] on that date, [GF] abandoned its minority interest in ENGenuity and left the new business solely in Flor's hands to salvage without any aid or assistance. This [c]ourt rejects any suggestion that a minority member may abandon its interest, obligations, and responsibilities by voluntarily withdrawing from an LLC and subsequently claim an ownership interest in a business that has been ignored for four years. [GF] has not contributed anything to ENGenuity since withdrawing from the business. The express words and conduct of [GF] demonstrate the voluntar[y] disassociation from ENGenuity on October 3, 2016 and justify the declaratory relief sought by . . . [p]laintiffs.

Next, the judge addressed N.J.S.A. 42:2C-46(e), stating:

> Additionally, the record demonstrates [GF] engaged in pre-termination wrongful conduct. Under the clear and unambiguous terms of [the final offer], which both the jury and this [c]ourt found was an enforceable contract, [GF] engaged in pre-termination activities that frustrated the purposes of the LLC. Pursuant to the negotiated terms of the contract, [GF], the minority member, agreed to fund enumerated operating expenses for [p]laintiffs, including salary, benefits, retaining legal counsel, human resources, accounting, and other day-to-day expenses. Shortly after [the final offer's] execution, [GF] forwarded Flor a series of documents attempting to usurp control of ENGenuity from Flor and place control with [GF]. The

improper attempt to seize control of day-to-day operations is most clearly demonstrated in the [LOI], setting forth twenty-two categories of decision making that were being transferred from Flor to [GF]. The enumerated items were never discussed by the parties during the negotiations preceding the execution of [the final offer]. Moreover, Flor['s] and . . . Johnston['s] testimony confirmed the execution of the [LOI] would have essentially shifted control from the majority member to the minority member.

. . . . While [the final offer] suggested that "additional transactional documents" would be executed that supplemented the terms of [the final offer] and "tweaked" Flor's benefits, the contract never suggested the additional documents would flip the roles and ownership interests of the parties.

. . . . [GF] abandoned ENGenuity and left the business to Flor. The pre-termination conduct of improperly and unsuccessfully attempt[ing] a coup to seize control from the majority member amounts to pre-termination wrongful conduct warranting expulsion.

The judge added:

[GF's] post-termination conduct materially and adversely affected ENGenuity's business operations. Since October 3, 2016, [GF] has offered nothing to the LLC. Flor described at length ENGenuity's struggles caused by [GF's] conduct. Despite the clear contractual obligations in [the final offer] concerning the unconditional and guaranteed financial contributions, [GF] walked away from the . . . company leaving it on the brink of financial ruin and Flor teetering on personal bankruptcy. Flor described utilizing her personal savings to keep the company afloat, something

> never contemplated when [GF] lured her away from the comfort of her former employer.
>
> . . . . This willful refusal to comply with the obligations to the LLC and the majority member demonstrates wrongful conduct harming ENGenuity's business further supporting expulsion.

The judge rejected GF's claim against expulsion under N.J.S.A. 42:2C-46(a) on the ground that it was not pled in the amended complaint. In support, the judge relied on "the clear and unambiguous testimony" of Ghadrdan and Johnston admitting that GF "terminated its relationship and any interest in ENGenuity on October 3, 2016." The judge noted that given "the testimony of two senior officers of [GF] confirm[ing] that it [had] walked away from ENGenuity in October 2016 and ha[d] ignored the new business in which it claim[ed] an economic interest" since then, "[r]egardless of which statutory section [was] reviewed," whether N.J.S.A. 42:2C-46(a) or N.J.S.A. 42:2C-46(e), expulsion was warranted.

Likewise, the judge rejected GF's claim that it did not willfully engage in wrongful conduct because it did not believe it had an enforceable contract with Flor. The judge dismissed this position as inconsistent with the jury's finding, which finding was clearly supported by the evidence. The judge also rejected GF's contention that "it [was] entitled to financial reimbursement for its

economic ownership interest in ENGenuity" as "inconsistent with New Jersey law." Similarly, the judge was "unpersuaded" by GF's argument "that it would be inequitable for [GF] not to receive any compensation," finding "[GF's] conduct preclude[d] any requested relief." The judge concluded GF "engaged in both pre-termination and post-termination [conduct]" warranting expulsion and "thereby negat[ed] any equitable claim for reimbursement/payment of the fair market value of the LLC."

We agree with the judge's ruling. On appeal, GF contends the judge erred in: (1) finding that GF voluntarily abandoned its interest in ENGenuity when GF was unaware it had any interest since it did not believe it had an enforceable contract with Flor; (2) considering plaintiffs' claim for relief under N.J.S.A. 42:2C-46(a) when plaintiffs did not plead that subsection in their complaint, leaving GF without notice and resulting in GF being "severely prejudiced in its ability to defend against such unasserted claim"; and (3) awarding GF no compensation for its membership interest in ENGenuity.

First, despite GF's disagreement with the verdict, the jury found that GF and Flor had an enforceable contract that required GF to support ENGenuity for two years, and the undisputed facts established that GF voluntarily withdrew by abandoning ENGenuity a few months after its creation. Thus, the judge did not

err in finding that GF's abandonment of ENGenuity formed a basis for dissociation under N.J.S.A. 42:2C-46(a). To support its claim that there is no legal support for the judge's abandonment finding, GF underscores that subsection (a) uses the term "withdraw," not "abandon." However, the judge used the term "abandoned" interchangeably with "withdraw," and "abandoned" clearly satisfies the "withdraw" requirement of N.J.S.A. 42:2C-46(a) under these circumstances. See Webster's II New College Dictionary (3rd ed.) (stating that "abandon" means "to withdraw one's support or help from, esp[ecially] despite a duty, allegiance, or responsibility"); IE Test, LLC, 226 N.J. at 180 (explaining that when interpreting a statute, "words and phrases shall be read and construed with their context, and shall, unless inconsistent with the manifest intent of the legislature or unless another or different meaning is expressly indicated, be given their generally accepted meaning, according to the approved usage of the language." (quoting N.J.S.A. 1:1-1)).

Second, plaintiffs' failure to specifically plead subsection (a) of N.J.S.A. 42:2C-46 in their complaint is of no moment because the complaint fairly apprised GF of the nature of the claim, and GF never objected to the undisputed evidence establishing its withdrawal. See Spring Motors Distributors, Inc. v. Ford Motor Co., 191 N.J. Super. 22, 29-30 (App. Div. 1983) ("Pleadings must

fairly apprise the adverse party of the claims and issues to be raised at trial."), , rev'd in part on other grounds, 98 N.J. 555 (1985). In any event, dissociation was warranted and sustainable on the basis of N.J.S.A. 42:2C-46(e) alone as pled in the amended complaint.

Finally, no law required a compensation award under the facts of this case, and it would have been inequitable to award compensation for an interest GF had abandoned shortly after forming the LLC. Contrary to GF's assertion, no provision of N.J.S.A. 42:2C-47 requires a court to award a dissociated member compensation when the member abandoned its interest and is expelled by court order for wrongful conduct. Subsection (c) provides a court "may" order a sale of the expelled member's interest, but only if, "in its discretion," the court determines that a sale "is required" by some legal authority or would be equitable to all parties. N.J.S.A. 42:2C-47(c).

Here, the judge's decision to deny GF compensation was predicated on his conclusion that it would be inequitable to award any compensation given GF's bad faith and wrongful conduct, which hampered the company's ability to conduct business. As our Supreme Court explained:

> [C]ourts exercising their equitable powers are charged with formulating fair and practical remedies appropriate to the specific dispute. Rutgers Cas. Ins. Co. v. LaCroix, 194 N.J. 515, 529 (2008) ("'In doing

> equity, [a] court has the power to adapt equitable remedies to the particular circumstances of each particular case.'" (quoting Mitchell v. Oksienik, 380 N.J. Super. 119, 130-31 (App. Div. 2005))); see also U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 476 (2012) ("In fashioning relief, the Chancery judge has broad discretionary power to adapt equitable remedies to the particular circumstances of a given case." (quoting Marioni v. Roxy Garments Delivery Co., Inc., 417 N.J. Super. 269, 275 (App. Div. 2010))). "While equitable discretion is not governed by fixed principles and definite rules, '[i]mplicit [in the exercise of equitable discretion] is conscientious judgment directed by law and reason and looking to a just result.'" In re Estate of Hope, 390 N.J. Super. 533, 541 (App. Div.) (quoting State v. Madan, 366 N.J. Super. 98, 109-10 (App. Div. 2004)) . . . .
>
> [Kaye v. Rosefielde, 223 N.J. 218, 231 (2015).]

We see no basis to interfere with the judge's decision to award GF no compensation for its membership interest in a company it abandoned just a few months after forming. There is no evidence in the record that ENGenuity had any value at that point, and any value it accumulated by the time of judgment was the result of Flor's hard work and personal investments. Thus, it would have been inequitable to award GF any compensation for value that Flor alone had created. Equally unavailing is GF's claim that it is inequitable to force it to reimburse Flor for operating expenses based on its contractual obligations while also denying it compensation. N.J.S.A. 42:2C-47(b) provides that dissociation

"does not of itself discharge the [member] from any debt, obligation, or other liability to the company or the other members which the [dissociated member] incurred while a member," and N.J.S.A. 42:2C-45(c) provides that a member who "wrongfully dissociates . . . is liable to" the company and other members "for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or other liability of the member to the company or the other members." The jury's compensatory damages award qualified as a debt, obligation, or liability to the company under N.J.S.A. 42:2C-47(b), and N.J.S.A. 42:2C-45(c) plainly provides that a member dissociated for wrongful conduct is liable for damages that result from the dissociation. Thus, GF's argument is not only unsupported by the facts, it is contrary to N.J.S.A. 42:2C-47(b) and N.J.S.A. 42:2C-45(c).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION