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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-3240-21

DANIEL BATTAGLIA,

Plaintiff-Respondent,

v.

CODY AVERSA,

Defendant-Appellant.

Submitted September 13, 2023 – Decided September 22, 2023

Before Judges Natali and Puglisi.

On appeal from the Superior Court of New Jersey, Law Division, Hunterdon County, Docket No. DC-001304-21.

Cody Aversa, appellant pro se.

Daniel Battaglia, respondent pro se.

PER CURIAM

Defendant Cody Aversa appeals a March 21, 2022 Special Civil Part judgment in the amount of $6,700 entered in favor of plaintiff Daniel Battaglia.

After considering the record against the applicable legal principles, we affirm.

I.

The $6,700 judgment at the core of this appeal represents the costs the court found plaintiff incurred to address chronic flooding issues in the basement of the home he purchased from defendant. That sale was memorialized in a real estate contract in which defendant agreed to purchase defendant's former residence in Milford for $197,000, a reduction from the original $209,000 contract price. Prior to closing, plaintiff conducted a home inspection that did not reveal anything "that would have led [plaintiff] to look further into a potential water issue."

The sales contract expressly stated plaintiff was purchasing the home "as is" and that plaintiff did not enter the contract based on "any representations . . . as to [the] character or quality of the [p]roperty." Defendant also provided plaintiff with a seller's disclosure statement which acknowledged he was "obligated to disclose . . . all known facts that materially and adversely affect the value of the property . . . and that [were] not readily observable" but also noted the information in the statement should not be considered a "warranty or guaranty of any kind." A separate section required plaintiff to acknowledge he did not rely upon any representations concerning the condition of the property

with the exception of information "disclosed above or stated within the sales contract."

Further, under Section 5 of the disclosure statement, entitled Land (Soils, Drainage and Boundaries), defendant expressly denied "know[ledge] of any past or present drainage or flood problems affecting the property or adjacent properties." Defendant also stated in Section 8, Structural Items, that he was unaware of "any past or present water leakage . . . in the home." Finally, under Section 9, Basements and Crawlspaces, defendant disclosed the presence of a basement sump pump, but denied that there had "ever been any water leakage, accumulation, dampness or mold within the basement or crawlspace."

Despite the home inspection and defendant's representations in his disclosure statement, after the closing the basement flooded on several occasions. In February 2021, plaintiff contacted defendant in an attempt to reach an amicable resolution regarding the flooding problem, but his attempts were unsuccessful.

Approximately a month later, plaintiff's then-counsel sent a letter informing defendant that the water issue in the basement was "a clearly defective condition" and his failure to disclose it constituted a breach of the sale agreement. In support, counsel noted the numerous flooding occurrences since

the closing and the fact plaintiff learned defendant painted the basement floor prior to the sale.

Plaintiff's counsel also stated he received confirmation from defendant's then-neighbors that "basement water issues" were "well known" and "common" in the neighborhood. The letter further advised defendant that plaintiff consulted with a "basement waterproofing professional" who stated correcting the problem required the installation of French drains at an estimated cost of approximately $9,000.

Unable to resolve their dispute, plaintiff filed a complaint, sounding in breach of contract, in which he alleged defendant hid the cause of the flooding, and specifically a "hydrostatic pressure issue . . . beneath the [basement] floor," prior to sale. He further claimed defendant's "cover up" affected his inspection of the basement and resulted in the necessary installation of the French drains. Plaintiff sought damages in the amount of $7,500. Defendant denied plaintiff's claims and stated he "never had a problem with water in the basement," and requested "production of all documents or papers referred to in plaintiff's complaint."

After plaintiff failed to produce the requested documentation, defendant filed a motion to compel, which the court granted. Both parties exchanged

discovery, which included disclosure statements dated 2013 and 2016 from previous owners of the property.

The seller's disclosure statement from 2013 provided under Section 9, entitled Basements and Crawlspaces, that the basement contained a sump pump and that there was "water during heavy rainfalls." Similarly, the seller's disclosure statement from 2016 revealed in a section entitled Attics, Basements, and Crawlspaces, the presence of a sump pump, and affirmed the seller's awareness of "water leakage, accumulation, or dampness within the basement," and explained further that the "sump pump was lowered in pit seemed to resolve water seepage basement never flooded [sic]."

On March 21, 2022, the matter proceeded to a one-day bench trial. Both parties appeared pro se and presented documentary and testimonial evidence. Plaintiff testified the basement first flooded only ten days after closing, and within the year before the installation of the French drains, a total of seven times: on August 4, 2020; November 30, 2020; December 25, 2020; March 1, 2021; March 25, 2021; August 23, 2021; and September 1, 2021. Plaintiff confirmed he conducted a home inspection prior to the purchase and contacted the inspector following the first flooding. Plaintiff also testified that following the first flood, "water had lifted [the] paint up off the floor," which he found significant because

in defendant's listing photographs, the basement floor appeared to be "freshly painted." He concluded the new paint indicated defendant attempted to obscure signs of past flooding.

Plaintiff stated his total out-of-pocket expenses to correct the flooding issue totaled between $6,700 and $6,800, as the installation of the drains cost $5,000 and there were additional expenses such as "extensions of down spouts, extensions of sump pump discharges . . . a new, much bigger, more efficient sump pump basin" and "paint [and] fixing things that were broken in the basement." Plaintiff also submitted the aforementioned sellers' disclosure statements for the court's consideration to illustrate that prior sellers were aware of the basement flooding, and as a result defendant was also on notice of the issue.

When the court inquired if plaintiff discussed the presence of the sump pump with his inspector, plaintiff testified the inspector relied "heavily" on the seller's disclosure statement and "considering he inspected the home on a very dry day in the middle of the summer, . . . there was no way for [the inspector] to be able to know that there was water in the basement." Finally, plaintiff testified that following the fourth flooding incident, he contacted defendant who denied any similar experiences during his ownership of the home.

Defendant testified and stated he "never had a problem with water in [the] basement as long as [he] owned the home." He maintained if he had experienced flooding problems, he "would have disclosed [them] and resolved [them]" prior to the sale. When the court inquired about the reasons defendant painted the floor, he responded that it was "merely a cosmetic update" to make his home "appear nicer for a resale." In response to questioning by the court about defendant's denial on his disclosure statement of any past or present water leakage, defendant conceded that he should have answered affirmatively and should have disclosed he was aware that at least one neighbor experienced water issues in their basement.

After considering the parties' testimonial and documentary evidence, the court entered judgment for plaintiff. In its oral opinion, the court first determined both parties were credible, finding plaintiff "straightforward" and defendant "truthful" and "candid" in his testimony. The court found plaintiff experienced flooding in the basement at least seven times since his purchase of the home in 2020. The court also determined to "correct the . . . problem" plaintiff was required to install a French drain system which contributed to a total of $6,700 in out-of-pocket expenses. It found plaintiff properly relied on defendant's disclosure statement, despite his own inspection, because the

"purpose of the seller disclosure statement" is for the buyer "to rely on the truthfulness of those statements."

The court concluded defendant was responsible for plaintiff's costs to remedy the flooding issue based on his failure to provide truthful and accurate information regarding his knowledge of prior water issues in the basement, as well as his failure to disclose his knowledge of his former neighbors' experiences with similar flooding issues. The court found the property had an apparent "propensity" for flooding, as evidenced by these numerous flooding incidents, which demonstrated a "real flood issue."

On April 11, 2022, defendant filed a motion for reconsideration which the court denied after considering the parties' oral arguments.[1] This appeal followed.

[1] In his notice of appeal, defendant lists only the March 21, 2022 order. Although he notes that his "motion for rehearing" was denied on his Civil Case Information Sheet, the record does not include a transcript of the court's oral decision in which it explained its reasoning for denying that application. Parties appearing pro se are required and expected to comply with our Rules, but we have consistently afforded a certain degree of leeway to pro se litigants. See Rubin v. Rubin, 188 N.J. Super. 155, 159 (App. Div. 1982). In that regard, we have considered defendant's arguments that the court erred in denying his reconsideration application and conclude they are without merit for the reasons expressed in our opinion.

II.

We begin with the appropriate standard of review. It is well-established that the findings of the trial judge following a bench trial are binding on appeal if they are supported by "adequate, substantial and credible evidence." Rova Farms Resort, Inc. v. Inv'rs Ins. Co. of Am., 65 N.J. 474, 484 (1974). However, we review a "trial court's interpretation of the law and the legal consequences that flow from established facts" de novo. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

Defendant first argues the court erred in finding him liable for plaintiff's damages because, as a seller, he was not legally required "to vouch for information [he] didn't experience." Defendant further contends even if he were legally required to disclose flooding experienced by prior owners, the prior sellers' statements are not "damning," because they simply indicated they experienced no further problems with water in the basement once the sump pump was lowered. Defendant also argues he is not liable for plaintiff's damages because any prior owners' disclosures regarding "leakage, accumulation or dampness in the basement," are not latent defects and defendant properly "disclosed the presence of a working sump pump: a piece of equipment that would only be present to address water in the basement."

In support of his arguments, defendant primarily relies on an unpublished decision of our court.[2] He argues that authority supports his contention that in rendering its decision, the court ignored the plain language of the parties' "as[]is" contract. According to defendant, that phrase, coupled with plaintiff's awareness of the basement's sump pump and inspection of the home, demonstrated plaintiff possessed "enough information to question the issue [of water]" in the basement prior to his purchase of the home.

Finally, defendant argues because the "disclosure form is not a warranty . . . it does not create liability." Even assuming it did, defendant claims the only relevant section of the disclosure form would be contained within Section 9, Basements and Crawlspaces, and because the court based its decision, in part, on other portions of defendant's disclosure form, its decision was not sufficiently supported by the record. We disagree with all of these arguments.

III.

A seller of real estate has a duty to disclose "on-site defective conditions if those conditions [are] known to [the seller] and unknown and not readily observable by the buyer." Strawn v. Canuso, 140 N.J. 43, 59 (1995), superseded

[2] Pursuant to Rule 1:36-3 an unpublished opinion is of no precedential value. We also note that after having reviewed and considered the decision, we find it factually distinguishable.

by statute on other grounds, New Residential Real Estate Off Site Conditions Disclosure Act, P.L.1995, c. 253 (quoting Weintraub v. Krobatsch, 64 N.J. 445, 454 (1974)). "[T]he nondisclosure must be significant." Correa v. Maggiore, 196 N.J. Super. 273, 281 (App. Div. 1984). A seller's duty to disclose does not apply to "[m]inor conditions which ordinary sellers and purchasers would reasonably disregard as of little or no materiality in the transaction . . . ." Weintraub, 64 N.J. at 455.

Even when selling property "as is," a seller may not deliberately conceal or fail to disclose a known latent condition material to the transaction. Id. at 453, 455-56. Generally, when the term "as is" is used in connection with the sale of real estate, it means the purchaser is "acquiring real property in its present state or condition." K. Woodmere Assocs., L.P. v. Menk Corp., 316 N.J. Super. 306, 316 (App. Div. 1998). "The term implies real property is taken with whatever faults it may possess, and that the [seller] is released of any obligation to reimburse purchaser for losses or damages resulting from the condition of the property conveyed." Id. at 317. However, the "as is" principle assumes the seller has satisfied its duty to disclose all known latent defects that are not readily observable by the purchaser. See Weintraub, 64 N.J. at 453, 455-56.

Defendant's disclosure statement did in fact require him to include any knowledge of past flooding in the home. The document also obligated defendant to disclose any knowledge of flooding issues with adjacent, or neighboring, properties. As a result, the court's determination that defendant's failure to include any history of flooding possibly deprived plaintiff of negotiating a better price, or choosing not to proceed with the sale, is supported by both parties' testimony at trial.

Further, we are satisfied, based on the record before us, that the propensity of the home's basement to flood was not an aspect of the home which would be readily identifiable by plaintiff upon inspection absent heavy rain at the time of the inspection, as plaintiff testified. Defendant admitted at trial he painted the basement floor, which whether purposeful or not, obscured any visible sign of water damage.

Although we acknowledge plaintiff purchased defendant's home "as is," defendant's disclosure, and the statements contained therein, were also part and parcel of the sale of the home. Indeed, the disclosure statement explicitly stated plaintiff acknowledged he would not rely upon any representations concerning the condition of the property "except as disclosed above or stated within the sales contract." Defendant's claim that only discrete portions of the disclosure

statement should have been considered by the court is not convincing, as the document clearly indicates the buyer is expected to rely upon representations within the entirety of the document. As defendant admitted in his testimony to misrepresenting the basement's flooding history, as well as his knowledge of an adjacent property's flooding issues, the court's judgment is amply supported by the record and unassailable. Rova Farms, 65 N.J. at 484.

IV.

Defendant next argues plaintiff failed to prove his damages related to the basement's flooding problem. Specifically, he contends the varied amounts offered by plaintiff in his complaint and at trial could "include any [do it yourself] fixes" prior to having "expensive French drains professionally installed." Defendant notes that the court did not identify why it awarded $6,700 or "what specific items" the amount was intended to reimburse. Further, he claims the court did not allow defendant an opportunity to "address the issue of damages." Finally, defendant argues plaintiff failed to address or deny defendant's reduction in the sale price of the home, to allow for plaintiff to achieve proper "financing to complete the sale." As best we can discern, because the reduction in the price exceeded the cost of the drain installation, defendant claims he should not be liable because it is only through his generosity that

"[p]laintiff even owns the house in question." Again, we disagree with these arguments.

"Generally, plaintiffs have the burden of proving damages." Caldwell v. Haynes, 136 N.J. 422, 436 (1994). In doing so, "[i]t is well-settled that the 'law abhors damages based on mere speculation.'" Mosley v. Femina Fashions, Inc., 356 N.J. Super. 118, 128 (App. Div. 2002) (quoting Caldwell, 136 N.J. at 442). "Proof of damages need not be done with exactitude," however, as it is "sufficient that the plaintiff prove damages with such certainty as the nature of the case may permit, laying a foundation which will enable the trier of the facts to make a fair and reasonable estimate." Lane v. Oil Delivery, Inc., 216 N.J. Super. 413, 420 (App. Div. 1987); see also Viviano v. CBS, Inc., 251 N.J. Super. 113, 129 (App. Div. 1991) ("Evidence which affords a basis for estimating damages with some reasonable degree of certainty is sufficient to support an award.").

Indeed, "[t]he rule relating to the uncertainty of damages applies to the uncertainty as to the fact of damage and not as to its amount, and where it is certain that damage has resulted, mere uncertainty as to the amount will not preclude the right of recovery." Desai v. Bd. of Adjustment of Town of Phillipsburg, 360 N.J. Super. 586, 595, (App. Div. 2003) (quoting Tessmar v.

Grosner, 23 N.J. 193, 203 (1957)); see also Mosley, 356 N.J. Super. at 128 ("Where a wrong has been committed, and it is certain that damages have resulted, mere uncertainty as to the amount will not preclude recovery[;] courts will fashion a remedy even though the proof on damages is inexact.") (quoting Kozlowski v. Kozlowski, 80 N.J. 378, 388 (1979)).

We are satisfied that the court's damages findings were grounded in the credible evidence adduced during the trial, as the court made specific determinations to support its award of damages in the amount of $6,700. Specifically, the court credited plaintiff's "credible" and "straightforward" testimony that he had spent a total of $6,700 to redress the water damage. Plaintiff testified that this amount included paint, repairs in the basement, "extensions of down spouts, extensions of sump pump discharges . . . a new, much bigger, more efficient sump pump basin," and $5,000 to install French drains.

Defendant presented no testimony or evidence contradicting plaintiff's calculation of damages during the trial; rather, defendant chose to focus his testimony on the reasons he claimed he was not liable. He was not prevented from disputing plaintiff's claimed damages. Before defendant's testimony, the court asked him: "what do you want to tell me?" When defendant finished

testifying, the court confirmed if there was "anything else [he] want[ed] to tell [the court]." Immediately before making its ruling, the court gave both parties an opportunity to add "anything further [they] want[ed] to say" and both plaintiff and defendant made brief statements in conclusion. As the factfinder, the court properly weighed the evidence before it to determine the appropriate award of damages. It found that plaintiff's testimony sufficiently supported an award of $6,700. Defendant's arguments essentially reduce to quarrels with the judge's fact-finding, which we are simply in no position to reject. Rova Farms, 65 N.J. at 484.

V.

Finally, defendant argues plaintiff failed "to identify a specific legal basis for his claims" and as a result defendant was denied a "meaningful chance to defend himself." Specifically, defendant contends the first time plaintiff articulates his claims against defendant as a breach of contract is in his answer brief for this appeal. Defendant further argues it was "unfair" that he was "punished" for supplying the court with evidence, namely the contract for sale and prior owner's disclosure, which it relied upon in ruling against him. Defendant next maintains the court failed to "explain[] why [p]laintiff was entitled to judgment," and therefore, plaintiff's claims should either be dismissed

with prejudice or defendant should be afforded a new trial "with the issues and evidence identified clearly in advance," to ensure defendant can properly prepare. Finally, defendant claims that the court "leading him to say he 'probably should have' disclosed what the prior owner told him" was "entrapment." After considering these arguments against the record and applicable law, we conclude they lack sufficient merit to warrant extended discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION