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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3757-20**

**IN THE MATTER OF THE
ESTATE OF HARRIET ROSS,
deceased.**

Submitted November 29, 2022 – Decided January 20, 2023

Before Judges Messano, Gummer and Paganelli.

On appeal from the Superior Court of New Jersey,
Chancery Division, Bergen County, Docket No.
P-000258-16.

Jeffrey Ross, appellant pro se.

Cullen and Dykman LLP, attorneys for respondent
(Paul N. Ambrose, Jr., of counsel and on the brief;
Steven Siegel and Daniel Eichhorn, on the brief).

PER CURIAM

In this estate dispute, Jeffrey Ross appeals from three orders dated: (1) April 16, 2021, granting Leslie Ross' motion to enforce the parties' second settlement agreement; (2) May 21, 2021, amending the April 16 order; and (3)

June 30, 2021, denying reconsideration and a stay. We affirm in part and remand in part.

I.

We are familiar with the parties' lengthy litigation history.¹ Harriet Ross, the decedent, died in December 2014 and her Last Will and Testament was admitted to probate. The will named her son, Jeffrey, executor. Jeffrey and his sister, Leslie, are the primary beneficiaries, and the will established a testamentary trust for each of them.

In July 2016, after a dispute arose over the administration of the estate, Leslie filed a verified complaint and an order to show cause (OTSC) to remove Jeffrey as executor and compel an informal accounting of the estate. The court ordered mediation, and the parties reached their first settlement agreement. Shortly thereafter, disputes arose over the terms of the first settlement agreement and the parties filed motions to enforce.

On April 20, 2018, the judge issued an order and written decision enforcing the first settlement agreement and resolving the parties' remaining disputes. The order, in pertinent part, provides:

ORDERED, that the written settlement agreement . . . prepared . . . at the conclusion of the

¹ In re Est. of Ross, No. A-5237-17 (App. Div. Apr. 3, 2019).

mediation session on June 28, 2017, and executed by the parties on the same date . . . is CONFIRMED and is a valid and enforceable settlement ending the instant litigation between the parties.

IT IS FURTHER ORDERED that the Settlement Agreement and the reasonable expectations of the parties are hereby enforceable as follows:

1. With reference to the current financial statements (J-1) prepared by Defendant and provided to all Parties . . . Plaintiff does not dispute the expenses and deductions set forth in Defendant's informal accounting dated May 31, 2017 and updated June 15, 2017.

. . . .

6. The estate has filed Form 1041 for federal and New Jersey income tax returns for the calendar year 2016. The estate will file Form 1041 for federal and New Jersey income tax returns for year 2017 no later than April 15, 2018, with extensions as reasonably required. The estate shall bear all income taxes it incurs until the time its assets are distributed to the parties, at which time the parties will bear any taxes personally.

. . . .

14. Plaintiff and Defendant shall execute and serve refunding bonds before the funding of their respective trusts.

Jeffrey filed a motion for reconsideration. On June 28, 2018, the judge issued an order and written opinion amending the April 20, 2018 order and granting in part and denying in part Jeffrey's motion for reconsideration. The June 28, 2018

order amended the value of the decedent's IRAs at the time of her death but maintained all other provisions of the April 20, 2018 order. On July 11, 2018, the judge issued an order and written opinion denying Jeffrey's motion for reconsideration. Jeffrey filed an appeal from the three orders.

On December 26, 2018, the judge entered an order providing:²

(9) The Parties shall execute Release and Refunding Bonds within [fourteen] days of funding their respective Trusts pursuant to Paragraph [fourteen] of the April 20, 2018 Order.

(10) The Estate shall file all remaining tax returns no later than April 14, 2019. Defendant shall be personally liable for any taxes that are found to be owed by the Estate following the filing of the tax returns, as the Estate should not be liable for any taxes as a result of the filing of the aforementioned returns.

In March 2019, Jeffrey provided Leslie with a Refunding Bond and Release (March 2019 RBR) in the amount of \$859,480.93. The March 2019 RBR, in pertinent part, provides that:

Now therefore, if any part or the whole of such devise made to the Trust shall at any time hereafter be needed to discharge any debt or debts together with administration expenses, in excess of the reserve held back by the Executor from the distribution to the Trust of the net residuary estate, the Obligors will return [forty percent] proportional part of the sum as may be

² We previously observed that "[a]pparently the . . . order was entered without seeking leave from us for a limited remand." In re Est. of Ross, slip op. at 7.

necessary for the payment of the said debts and administration expenses.

. . . .

The words "debt" or "debts" wherever used herein shall be deemed to include all taxes imposed upon or chargeable to the estate or owed by the deceased for calendar years through the end of the calendar year 2018, including but not limited to Federal, New Jersey or other State or Sovereignty inheritance, estate, death, transfer income taxes, together with interest, penalties, costs, expenses and counsel fees related to such taxes, if any.

On April 3, 2019, we affirmed the judge's April 20, June 28, and July 11, 2018 orders. In re Est. of Ross, No. A-5237-17.

On September 24, 2019, the judge reconsidered the order of December 26, 2018, and concluded:

The court did not determine whether Defendant was personally liable for any Estate taxes that were due after the Estate tax return was filed in April 2019. The parties both represented to the court that no Estate taxes would be due if the Estate was liquidated in 2018 and any income generated would flow to the trust, thus making the trusts liable for any taxes due. Since the court did not rule on whether Defendant would be personally liable for Estate taxes, that portion of ¶ 10 of the December 26 Order that holds Defendant is liable is vacated.

On February 24, 2020, the parties reached a second settlement agreement.

The terms of the settlement were detailed, placed fully on the record, and provided:

Plaintiff to receive \$79,013.20 in installments: 2020 - March 15 and December 10 \$10,000.00 per; 2021 - June 10 and December 10 - \$15,000.00 per; 2022 - June 10 - \$15,000.00 and December 10 - \$14,013.20 respectively; and

Plaintiff would not be entitled to interest or attorney's fees, unless there was a default - failure to make a payment within three business days - and then there would be a five percent interest charge on the \$79,013.20 retroactive to February 24, 2020, and attorneys' fees of \$10,000.00; and

Assignment of income from Harold's and Harriet's trust - if it is determined that defendant from Harriet's trust is receiving distribution of principal - the parties may be able to assign the principal as a default payment; and

Regarding the Harriet Trust - defendant to provide to his counsel letters of trusteeship, the financial institution account number financial advisor and the federal ID number; and

Defendant's counsel to hold the information in escrow pending a receipt of a letter from plaintiff that defendant passes away or is in default; and

The parties to execute release and refunding bonds in the form provided in March 2019 only as to the funds that were deposited into plaintiff's trust account not the \$79,013.20; and

Plaintiff would withdraw its application with prejudice subject to the settlement and file a stipulation of dismissal with prejudice; and

The settlement releases all claims or causes of action, whether known or unknown, that each party has against the other subject to performance of the settlement agreement.

Moreover, the judge explained to the parties:

I am going to issue an order that says the matter is settled. If the parties want a separate agreement, they are free to prepare a separate agreement. . . . [A]s far as I'm concerned, this transcript is the settlement. Okay? . . . [S]ometimes between the time things go on the record and the time they get to the piece of paper, they don't always reflect what's been placed on the record. What's been placed on the record are the terms of the settlement.

. . . .

But let me be crystal, crystal clear. If for some reason there are normal terms that they can't agree to for whatever reason -- what I call dotting of the Is and crossing of the Ts -- that doesn't mean that the settlement is not effective. This settlement as placed on the record is effective. Understand that.

Leslie was not present. However, her attorney represented that he had spoken with her, he had reviewed all the terms of the settlement with her, she had agreed with the terms, and he had authority to enter into the settlement agreement.

Jeffrey was present and represented by counsel. He acknowledged that: (1) he had discussed the settlement with counsel; (2) he had no further questions of counsel; (3) counsel had answered all of his questions; and (4) he was satisfied with counsel's services. Moreover, he indicated that he was not under any medication that would impair his ability to understand the terms of the settlement and he had no substantive questions of the court. He acknowledged that there was an agreement and he would honor the agreement.

The parties disputed the language of the proposed RBR, which Leslie never executed. Jeffrey made the first installment payment; however, he did not make the second payment. Further, Jeffrey did not provide his counsel the letters of trusteeship, the financial institution account number, the financial advisor, or the federal ID number regarding the Harriet Trust.

Leslie moved to enforce the terms of the second settlement agreement. Leslie averred that Jeffrey had failed to make the December 2020 payment and had failed to deliver the trust information to his counsel. Jeffrey filed a cross-motion arguing, among other issues, that Leslie had violated the settlement agreement because she had failed to execute the release and refunding bond in the form provided in March 2019. Leslie argued that the court had already determined that she was not responsible for the 2018 tax return, and, therefore,

the proposed release and refunding bond required revision. The judge noted our policy regarding settlements and determined: (1) "[i]f things are not as [Jeffrey] thought they were, that is insufficient to set aside the settlement, which was freely and voluntarily entered"; (2) "a dispute regarding the language of the release and refunding bond is insufficient to undo the settlement"; and (3) "the language of proposed release and refunding bond . . . is consistent with the settlement and prior decisions of the court."

The judge's April 16, 2021 order provides:

ORDERED that plaintiff's motion to enforce the settlement entered on the record on February 24, 2020 is hereby granted against defendant . . .

. . . .

ORDERED that the following relief is granted in favor of Plaintiff and against Defendants as follows:

. . . .

(5) That Defendant shall provide counsel for Plaintiff, within [fourteen] days of this Order, copies of the letter of trusteeship, the name of the financial institution, the account numbers, name and contact information of any financial adviser and federal ID number for the Harriet Ross Trust in which Defendant is a beneficiary;

At the bottom of the order, handwritten, the judge added:

Plaintiff and co[-]trustee shall sign the release and refunding bond in the form attached as Exhibit C to Mr.

Ambrose certification dated January 28, 2021 and deliver same to Mr. Ross within [fourteen] days.

On May 21, 2021, the judge entered an amended order that corrected a mathematical error in the April 2021 order. Moreover, the amended order repeated that "Plaintiff and Co-Trustee shall sign the Release and Refunding Bond in the form attached as Exhibit C to the certification . . . dated January 28, 2021[,] and deliver same to Mr. Ross within fourteen (14) days."

On July 30, 2021, the judge entered an order denying Jeffrey's motion for reconsideration and a stay of the May 2021 order. The judge denied reconsideration, finding that his decision was not "palpably incorrect or based on an irrational basis" and that Jeffrey's new issues "were previously considered by the court or should have been argued to the court at that time." The judge denied a stay, finding that Jeffrey "ha[d] not met his burden of demonstrating irreparable harm or that he has a likelihood of success on the merits." Jeffrey appeals the judge's orders of April 16, May 21, and July 30, 2021.

II.

"Settlement of litigation ranks high in our public policy." Nolan v. Lee Ho, 120 N.J. 465, 472 (1990) (quoting Jannarone v. W.T. Co., 65 N.J. Super. 472, 476 (App. Div. 1961)). The strong policy "is based upon 'the notion that the parties to a dispute are in the best position to determine how to resolve a

contested matter in a way which is least disadvantageous to everyone." Brundage v. Est. of Carambio, 195 N.J. 575, 601 (2008) (quoting Peskin v. Peskin, 271 N.J. Super. 261, 275 (App. Div. 1994)). "In furtherance of this policy, our courts 'strain to give effect to the terms of a settlement wherever possible.'" Ibid. (quoting Dep't of the Pub. Advoc. v. N.J. Bd. of Pub. Utils., 206 N.J. Super. 523, 528 (App. Div. 1985)). "[P]arties may orally, by informal memorandum, or by both agree upon all the essential terms of a contract and effectively bind themselves thereon, if that is their intention, even though they contemplate the execution later of a formal document to memorialize their undertaking." Comerata v. Chaumont, Inc., 52 N.J. Super. 299, 305 (App. Div. 1958). "Where the parties agree upon the essential terms of the 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." Lahue v. Pio Costa, 263 N.J. Super. 575, 596 (App. Div. 1993) (quoting Bistricher v. Bistricher, 231 N.J. Super. 143, 144-45 (Ch. Div. 1987)). "[S]preading the terms of the agreement upon the record, [is] a familiar practice." Pascarella v. Bruck, 190 N.J. Super. 118, 124 (App. Div. 1983).

"Generally, a settlement agreement is governed by principles of contract law." Brundage, 195 N.J. at 600-01 (quoting Thompson v. City of Atl. City, 190 N.J. 359, 379 (2007)). "An agreement to settle a lawsuit is a contract which, like all contracts, may be freely entered into and which a court, absent a demonstration of 'fraud or other compelling circumstances,' should honor and enforce as it does other contracts." Ibid. (quoting Pascarella, 190 N.J. Super. at 124-25). Moreover, "[i]t is not the function of the court to rewrite or revise an agreement when the intent of the parties is clear." Quinn v. Quinn, 225 N.J. 34, 45 (2016) (citing J.B. v. W.B., 215 N.J. 305, 326 (2013)). Therefore, "when the intent of the parties is plain and the language is clear and unambiguous, a court must enforce the agreement." Ibid. Our review of a motion judge's interpretation of a contract is de novo. Kas Oriental Rugs, Inc. v. Ellman, 394 N.J. Super. 278, 285 (App. Div. 2007). However, factual "[f]indings by the trial judge are considered binding on appeal when supported by adequate, substantial, and credible evidence." Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974) (citing N.J. Tpk. Auth. v. Sisselman, 106 N.J. Super. 358, 370 (App. Div. 1969)).

III.

On appeal, Jeffrey makes the following arguments. First, the April 16, 2021 order confirming the February 26, 2020 settlement agreement must be vacated because: (a) the judge ignored the requirement that Leslie execute the March 2019 RBR, and (b) Leslie failed to disclose her 2019 tax contest to the 2018 tax filings. Second, the May 21, 2021 order must be vacated because Leslie engaged in fraud: (a) in failing to disclose, during settlement negotiations and at the February 24, 2020 hearing, her 2019 tax contest to the 2018 tax filings, and (b) after the second settlement agreement when she provided three fraudulent RBRs. Third, the second settlement agreement and the May 21, 2021 order must be vacated because of the existence of deception, fraud, and unseemly and compelling circumstances in: (a) Leslie's failure to disclose her 2019 tax contest, and (b) Leslie's failure to execute the March 2019 RBR. Fourth, the July 30, 2021 order must be vacated because Jeffrey established the judge "erred" and evidence was "overlooked."³

³ Jeffrey also argues for the first time on appeal that: (1) "[Leslie] shall pay her share for the 2018 estate taxes [and] related expenses," and (2) "[Leslie] shall provide [Jeffrey] [and] the [certified public accountant] (CPA) with copies of all filed 2019 tax challenges against the 2018 estate tax returns for resolution by the executor's CPA, and then file amended trust tax returns [and] rescind tax challenges." However, we "decline to consider questions or issues not properly

Our initial focus is on whether there is a valid and enforceable settlement. In this respect, it is irrefutable that the parties settled their lawsuit on February 24, 2020. The parties agreed on all of the essential terms and bound themselves to them. See Comerata, 52 N.J. Super. at 305. The parties even recited the terms of their settlement agreement on the record. See Pascarella, 190 N.J. Super. at 124.

Jeffrey's argument that Leslie's failure to disclose her "2019 tax contest to the 2018 tax filings" should act to "vacate the May 21, 2021 order and the parties' settlement" is misplaced. The settlement "releases all claims or causes of action, whether known or unknown, that each party has against the other subject to performance of the settlement agreement." Leslie alleges that Jeffrey was "made aware of [her] position since May 2019 and [of] the reasons for filing" the tax contest.

Finding a valid and enforceable settlement agreement, we further find that the execution of the March 2019 RBR is an essential term thereof. The parties detailed and acknowledged the importance of the March 2019 RBR on the record on February 24, 2020:

presented to the trial court." Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) (citing Reynolds Offset Co. v. Summer, 58 N.J. Super. 542, 548 (App. Div. 1959)).

[Jeffrey's counsel:] A couple things we just wanted to clarify.

And then we also discussed and agreed that there would be a -- the parties would sign and exchange the releases and refunding bond in the form that's been presented to plaintiff's counsel. I believe in March of 2019. We have not received that, but that's the agreement; that we would sign and exchange that release and refunding bond. And that a stipulation of dismissal with prejudice would be filed subject to the terms of this settlement agreement.

. . . .

[Leslie's counsel:] The release and refunding bond is not inclusive to the [\$]79,013.20.

[Jeffrey's counsel:] Correct.

[Leslie's counsel:] It's including as to those funds that were deposited into her trust -- [Leslie's] trust account.

. . . .

[The Court:] Ok. Got it.

. . . .

[The Court:] Okay. The additional terms that [Jeffrey's counsel] placed on the record, those are satisfactory to you?

[Leslie's counsel:] Yes, your honor.

The March 2019 RBR required:

[I]f any part or the whole of such devise made to the Trust shall at any time hereafter be needed to discharge

any debt or debts together with administration expenses, in excess of the reserve held back by the Executor from the distribution to the Trust of the net residuary estate, the Obligors will return [forty percent] proportional part of the sum as may be necessary for the payment of the said debts and administration expenses.

. . . .

The words "debt" or "debts" wherever used herein shall be deemed to include all taxes imposed upon or chargeable to the estate or owed by the deceased for calendar years through the end of the calendar year 2018, including but not limited to Federal, New Jersey or other State or Sovereignty inheritance, estate, death, transfer income taxes, together with interest, penalties, costs, expenses and counsel fees related to such taxes, if any.

Therefore, the import of the March 2019 RBR is that it included Leslie's potential pro-rata repayment obligation of "all taxes imposed upon or chargeable to the estate or owed by the deceased for calendar year through the end of the calendar year 2018" The March 2019 RBR clarified that Jeffrey would not bear sole liability for any taxes imposed for the relevant period.

Leslie's contention that "the execution of the [r]elease and [r]efunding [b]ond was not a term of the [s]ettlement agreement itself but rather was just one of many actions by the parties that needed to occur in order to implement the [s]ettlement [a]greement" is undercut by the terms of the parties' settlement agreement and undervalues the content of the March 2019 RBR. The settlement

agreement did not merely provide for Leslie to execute a generic RBR. Instead, the March 2019 RBR was specifically detailed to address a potential obligation regarding the parties' liability for the repayment of taxes. Its specific execution was as essential as other aspects of the parties' settlement agreement. The judge erred when it indicated that the "[e]xecution of a release was a mere formality, not essential to formation of the contract of settlement." We find that Leslie's execution of the March 2019 RBR is an essential term of the settlement agreement and must be enforced. Quinn, 225 N.J. at 45.

However, the judge did not only conclude that executing an RBR was a mere "formality" or "not essential." In addition, the judge determined that Leslie could comply with the terms of the settlement by executing her form of an RBR because it was "consistent with the settlement and the prior decisions of this [c]ourt." Our review of the record fails to reveal "adequate, substantial and credible evidence" to support these conclusions. Rova Farms, 65 N.J. at 484. Moreover, the judge failed to support his conclusions with "facts and . . . conclusions of law." R. 1:7-4(a).

Leslie's proposed RBR provides:

[I]f any part or the whole of such devise made to the Trust shall at any time hereafter be needed to discharge any debt or debts together with administration expenses, pursuant to the informal accounting, dated

May 31, 2017 in excess of the distribution to the Trust of the net residuary estate, the Obligors shall return [forty percent] proportional part of the sum as may be necessary for the payment of the said debts and administration expenses.

. . . .

The words "debt" or "debts" wherever used herein shall be deemed to include all taxes imposed upon or chargeable to the estate or owed by the deceased for calendar years through the end of the calendar year 2017~~8~~, including but not limited to Federal, New Jersey ~~(except for 2018)~~ or other State or Sovereignty inheritance, estate, death, transfer income taxes, together with interest, penalties, costs, expenses and counsel fees related to such taxes, if any.

[(alterations in original).]

The judge failed to explain how Leslie's proposed RBR, which added a reference to the May 2017 informal accounting and changed the tax calendar year, was "consistent with the settlement" and the March 2019 RBR, an essential term of the settlement. "It is not the function of the court to rewrite or revise an agreement when the intent of the parties is clear." Quinn, 225 N.J. at 45 (citing J.B., 215 N.J. at 326). Therefore, "when the intent of the parties is plain and the language is clear and unambiguous, a court must enforce the agreement" Ibid.

Moreover, we have outlined the history of this matter to determine how Leslie's RBR is "consistent . . . with prior decisions of this court." Our review of the record does not reveal evidence of the consistency or an explanation of the consistency referenced by the judge. Certainly, prior orders required the execution of RBRs. Further, the December 2018 order imposed personal liability on Jeffrey for taxes, however, that part of the order was vacated in the September 2019 order because "the court [had not] rule[d] on whether [Jeffrey] would be personally liable for estate taxes." Therefore, we find no "prior court decision" requiring execution of an RBR as provided by Leslie, as opposed to the March 2019 RBR required by the parties' second settlement agreement.

Therefore, we affirm that portion of the April 2021 order as amended that concluded the parties entered into a valid and enforceable settlement agreement on February 24, 2020. We affirm the same aspects of the May 21, 2021 and June 30, 2021 orders. We remand for the judge to order Leslie to execute the March 2019 RBR and file that order with this court. Alternatively, the judge may file with this court written reasons explaining how Leslie's proposed RBR is materially consistent with unspecified "prior decisions of the court." The judge shall complete the remand within thirty days, and we retain jurisdiction only to review the results of our remand.

Jeffrey's other contentions are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed in part, remanded in part. We retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION