SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4528-18

JAN KONOPKA,

Plaintiff-Appellant,

v.

BROWN'S HEATING, COOLING, PLUMBING,

Defendant-Respondent,

and

RAYMOND DIETRICH,

Defendant.

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Submitted April 26, 2023 – Decided May 18, 2023

Before Judges Gooden Brown and DeAlmeida.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Docket No. DC-010496-17.

Jan Konopka, appellant pro se.

Respondent has not filed a brief.

PER CURIAM

In this one-sided appeal, plaintiff, a self-represented homeowner, appeals from a May 7, 2019 adverse judgment entered against him following a bench trial in the Special Civil Part that resulted in the dismissal of plaintiff's complaint against a contractor, Brown's Heating, Cooling & Plumbing[1] (Brown's) and its co-owner, Raymond Dietrich, collectively, defendants. A judgment was entered in favor of Brown's on their counterclaim. We affirm.

The dispute arose from a contract between the parties for the installation of a furnace in plaintiff's home. The May 4, 2015 contract signed by plaintiff provided that Brown's would supply the labor and materials for the installation of a Carrier gas furnace in plaintiff's home in accordance with the specifications detailed in the contract for a contract price of $19,080, after rebates. The contract stated that any alterations or deviations from the specifications involving extra costs would be executed only upon written orders and would become an extra charge above the estimate. Under the contract, one-third of the contract price was payable upon acceptance, one-third was payable upon

[1] Brown's was improperly pled as Brown's Heating, Cooling, Plumbing. Corporate filings indicate that Brown's is incorporated under the name Brown's Gas Appliance & Furnace Service, Inc., d/b/a Brown's Heating, Cooling and Plumbing.

commencement of the work, and one-third was payable upon completion. Plaintiff paid Brown's $6,995 upon the execution of the contract on May 12, 2015.

The job commenced on August 26, 2015. On September 9, 2015, Dietrich sent plaintiff an email terminating the contract. In the email, Dietrich explained that his employees were "refusing to go to [plaintiff's] home" because plaintiff had "unrealistic expectations," was "dictating the design of the system with no knowledge of how it will work," making requests that would "compromise how the system will work," "insult[ing the employees] daily," and had "turned a [four-]day job into what will end up to be [twelve to fifteen] days." Dietrich advised plaintiff to "look for a contractor that will finish the work" and stated that "[t]he furnace and coil" left at plaintiff's home were valued at approximately $7,000.

In a May 29, 2016 letter to Brown's, plaintiff demanded that all the equipment left at his home be removed and that his check be returned. Plaintiff accused Brown's of damaging his home, performing shoddy work, and "leaving . . . junk" at his home. Plaintiff also accused Brown's employees of theft and unprofessional behavior. Additionally, plaintiff complained that instead of delivering new equipment to his house in "unopened boxes" as agreed

upon, the items delivered were "without [a] box" and had been "used or tried in some other place." Plaintiff stated that "[his] construction [was] on . . . hold due to [Brown's] negligence."

On September 12, 2017, plaintiff filed a complaint against defendants, alleging defendants breached the contract, damaged his home by performing faulty work during the installation of the furnace, and failed to return his $6,995 deposit despite not completing the job. According to the complaint, among other things, defendants allegedly "ripp[ed] apart pipes already in the walls," "installed pipe[s] in the wrong direction," and "drilled holes in the wall." Defendants also allegedly "order[ed plaintiff] to cut beams . . . for no reason." Additionally, defendants allegedly used cheap materials and delivered what appeared to be a "used" instead of a new furnace "as promised." The complaint alleged that the used furnace left at plaintiff's home would be valued at about $2,000 brand new. The complaint also stated that because Dietrich did not respond to plaintiff's repeated calls to pick up the equipment, "[plaintiff] and [his] friend delivered all the[] stuff including the unit to [Brown's place of] business."

In the complaint, plaintiff sought $15,000 in damages for the deposit and the necessary repairs to his home caused by defendants' faulty work. In

response, Brown's filed a contesting answer and counterclaim[2] seeking $15,000 in damages for parts, permit fees, labor, and lost profits on the contract.

At the ensuing trial conducted on May 6 and 7, 2019,[3] plaintiff testified on his own behalf. Joseph Horvath, Brown's installation manager for plaintiff's project, testified for Brown's. Various exhibits, including the contract, Dietrich's September 9, 2015 email, and plaintiff's May 29, 2016 letter were admitted into evidence.

During his testimony, plaintiff recounted at length the allegations in his complaint. He also testified that he had thirty years of experience in construction but acknowledged that he had no certifications in HVAC

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[2] Initially, default was entered against defendants. The default was vacated as to Brown's on February 15, 2019, on Brown's motion. On April 8, 2019, plaintiff's motion to enter default judgment was denied as the motion to vacate default had previously been granted. Brown's answer and counterclaim were not provided in the record.

[3] The parties appeared on April 22, 2019 for a status conference. At the status conference, for the first time, plaintiff requested a jury trial. The judge advised plaintiff that he could dismiss the complaint without prejudice to allow plaintiff to refile the complaint with a request for a jury trial. However, plaintiff opted to proceed with a bench trial instead. Plaintiff also complained to the judge that he did not have enough "discovery time" despite the fact that the default had been vacated and an answer filed since February 15, 2019. To give plaintiff additional time for discovery, the judge scheduled the trial on May 6, 2019, instead of the following day as the judge had intended to do.

installation.[4] In contrast, Horvath, who had been employed by Brown's for twenty years, was licensed in HVAC installation and was qualified by the trial judge as an HVAC expert.

Horvath testified that when the job commenced on August 26, 2015,[5] the coil and the furnace were brought in boxes and unboxed at plaintiff's home. Horvath stated that the equipment "was specifically designed and brought brand-new for [plaintiff's] job." When plaintiff asked where the equipment came from, Horvath "showed [plaintiff] the boxes," "the cellophane" the equipment was wrapped in, and "the four pieces of cardboard that wrapped the corners."

Horvath discussed the job with plaintiff, who gave very specific instructions about how he wanted the installation performed. For example, plaintiff was "very adamant . . . that he wanted the furnace as tight to the ceiling

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[4] At the close of plaintiff's case, Brown's moved to dismiss the complaint. See R. 4:37-2(b). The judge reserved decision until the conclusion of the trial. But see Verdicchio v. Ricca, 179 N.J. 1, 42 (2004) (LaVecchia, J., dissenting) (criticizing the trial court for reserving judgment on a Rule 4:37-2(b) motion and stating "the court either should have granted or denied defendant's motion for judgment at the close of [the] plaintiffs' case").

[5] On cross-examination, Horvath acknowledged that they started the job without receiving the "commencement check" required under the contract. However, according to Horvath, it was their general practice to "start a four or five-day job without getting a commencement check." Although they later asked plaintiff for the check, plaintiff refused because the job did not meet "his expectations."

as possible and he wanted all the ductwork to be in the ceilings, if possible." Plaintiff also insisted that the "beams . . . be cut" so that "the ductwork" could be "put[] . . . through the beams." Despite Horvath repeatedly advising plaintiff that doing so could "compromise the airflow of the unit," plaintiff insisted "that he was in construction for many years and . . . knew more than [they] knew about how the system . . . could be installed."

According to Horvath, they tried to "appease" plaintiff by "do[ing] the job . . . the way he . . . want[ed] it [done]" while still ensuring that the system "would work." Horvath testified that although no change orders were executed, they tried to accommodate plaintiff's requests, some of which were outside the scope of the contract, the permit, and the municipal code. Ultimately, "[they] hit many roadblocks" due to plaintiff's unreasonable requests and erratic behavior. For example, Horvath explained that plaintiff "would praise [their] work by the end of the day and then the next morning . . . he[would] want it ripped down saying that [they] did[not] . . . put it together correctly."

After spending four days on the job with labor costs totaling $1,800 per day, and not making any significant progress over the four days, Horvath brought in Dietrich for assistance. Horvath acknowledged that once the contract was terminated, "[they] left the coil," "the furnace," and "the ductwork," much

of which was customized, at plaintiff's home for "[plaintiff's] use." Horvath testified that the approximate value of the furnace, coil, and ductwork was $1,875, $360, and $1,500, respectively, for a total of $3,735.

On May 7, 2019, at the conclusion of the trial, the judge dismissed plaintiff's complaint and entered judgment on Brown's counterclaim in the amount of $4,100, plus court costs. In an oral opinion, the judge noted that both parties stipulated to the May 4, 2015 contract, and that it was undisputed that "plaintiff [had] paid a total of $6,995" of the contract price. However, the judge determined that "[b]oth parties . . . canceled th[e] contract." The judge explained "there was an offer and an acceptance for th[e] project" and both parties "testified and provided written evidence that there was a mutual breakdown and cancellation of th[e] contract for multiple reasons." As such, the judge determined that plaintiff "completely failed to meet his burden of proof" to establish a breach of contract on defendants' part because plaintiff did not produce any "expert witnesses . . . to testify on his behalf" or submit any "expert report[s]."

Turning to Brown's counterclaim, the judge posited that "[t]he issue after mutual cancellation of the contract then becomes the value of the equipment and

other services." The judge explained that although the contract did not specify the "cost of the equipment" purchased for plaintiff's job,

> the equipment could not be used by [defendant] as the equipment was no longer new, was unwrapped, and furthermore, it was significantly installed and the ductwork that was left was customized and left for . . . plaintiff.
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> The [c]ourt notes that . . . plaintiff testified that he attempted to return some of th[e] equipment to [defendant] with a friend; however, that witness was not present and [defendant] testified credibly that th[e] equipment could not be used even if it was returned.
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> [Defendant] fully performed their portion of the contract that was bargained for. [Defendant] testified credibly that the value of the goods left was at least $3,735. The hourly rate for the company that was testified to by Horvath, which was credible, is $1,800 per day, and although not in the contract, that appears to be reasonable. The total labor totals $7,200 [for four days]. There was an additional $160 in [permit] fees. The total for all of the goods, labor, and fees . . . is $11,095.
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> . . . [S]o the total amount that would be due to [defendant] is $11,095, less the [$]6,995, which was paid to [defendant,] o[r] $4,100.[6]

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[6] Although default as to Dietrich was never vacated, the judge found that plaintiff made no allegation and produced no evidence to justify piercing "the corporate veil" and dismissed the complaint as to both defendants. See State, Dep't of Env't Prot. v. Ventron Corp., 94 N.J. 473, 500 (1983) (explaining

This appeal followed.

Appellate review of a judgment following a bench trial is limited. Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011). We afford a deferential standard of review to the factual findings of the trial court on appeal from a bench trial, particularly where "matters of credibility are involved." Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 483-84 (1974); see also Mountain Hill, L.L.C. v. Township of Middletown, 399 N.J. Super. 486, 498 (App. Div. 2008) (noting appellate courts "'do not weigh the evidence, assess the credibility of witnesses, or make conclusions about the evidence.'" (quoting State v. Barone, 147 N.J. 599, 615 (1997))). As such, the trial court's factual findings will not be disturbed unless they are "so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Rova Farms Resort, Inc., 65 N.J. at 484 (internal quotation mark omitted) (quoting Fagliarone v. Township of N. Bergen, 78 N.J. Super. 154, 155 (App. Div. 1963)). However, our review of a trial court's legal determinations is plenary. D'Agostino v. Maldonado, 216 N.J.

"courts will not pierce a corporate veil" in the absence of fraud or other injustice).

168, 182 (2013) (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

The dispositive issue in this case is whether either party proved a breach of contract. "To 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 Grp., LLC v. Env't Barrier Co., 440 N.J. Super. 325, 345 (App. Div. 2015). The burden of establishing a breach of contract rests with the party who asserts the breach, Nolan v. Control Data Corp., 243 N.J. Super. 420, 438 (App. Div. 1990), and the evidentiary standard is by a preponderance of the evidence, which requires a litigant to "'establish that a desired inference is more probable than not.'" Globe Motor Co. v. Igdalev, 225 N.J. 469, 482 (2016) (quoting Liberty Mut. Ins. Co. v. Land, 186 N.J. 163, 169 (2006)).

"When there is a breach of a material term of an agreement, the non-breaching party is relieved of its obligations under the agreement." Nolan ex rel. Nolan v. Lee Ho, 120 N.J. 465, 472 (1990). "If the breach is material, i.e., goes to the essence of the contract, the non-breaching party may treat the contract as terminated and refuse to render continued performance." Ross Sys.

v. Linden Dari-Delite, Inc., 35 N.J. 329, 341 (1961) (citing 6 Corbin on Contracts, § 1253 (1951)).

> To determine if a breach is material, we adopt the flexible criteria set forth in Section 241 of the Restatement (Second) of Contracts (1981) . . . . Thus, we must consider:
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> > (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected;
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> > (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived;
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> > (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture;
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> > (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances; [and]
> >
> > (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.
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> [Roach v. BM Motoring, LLC, 228 N.J. 163, 174-75 (2017) (second alteration in original) (footnote omitted) (quoting Restatement (Second) of Contracts § 241 (Am. Law Inst. 1981)).]

"[T]he covenant of good faith and fair dealing is contained in all contracts and mandates that 'neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.'" Seidenberg v. Summit Bank, 348 N.J. Super. 243, 253 (App. Div. 2002) (quoting Sons of Thunder, Inc. v. Borden, Inc., 148 N.J. 396, 420 (1997)). In a similar vein, "every contract contains an implied condition that each party will not unjustifiably hinder the other from performing," and "a contract is breached when one party's performance is hindered or rendered impossible by the other." 23 Williston on Contracts § 63:26 (4th ed. 2023); see also Wolf v. Marlton Corp., 57 N.J. Super. 278, 285 (App. Div. 1959) ("It is clear that where one party to a contract, by prevention or hindrance, makes it impossible for the other to carry out the terms thereof, the latter may regard the contract as breached and recover his damages thereunder from the first party." (citing Tanenbaum v. Francisco, 110 N.J.L. 599, 604-05 (E. & A. 1933))). Where "the cooperation of one party is an essential prerequisite to performance by the other, . . . there is not only a condition implied in fact qualifying the promise of the latter but also an implied promise by the former to give the necessary cooperation." Williston on Contracts, § 63:26. However, "there must be a

causal link between an alleged breach of contract hindering the other party's performance and the hindered party's claimed damages." Ibid.

Here, we disagree with the judge's legal conclusion that there was a mutual cancellation of the contract. If that had occurred, there could be no claim for breach of contract upon which Brown's recovery on the counterclaim was predicated. See Gillette v. Cashion, 21 N.J. Super. 511, 517 (App. Div. 1952) (holding that where a contract was rescinded by mutual assent and never revived, "an action for specific performance or damages based on such nonexistent agreement cannot be maintained").

Instead, the evidence supports the judge's finding of a breach of contract on the part of plaintiff based on plaintiff's breach of a material term of the contract—the implied promise to give the necessary cooperation. For the same reason, we are satisfied that the judge's determination that plaintiff failed to prove a breach of contract on Brown's part is supported by the credible evidence. Based on plaintiff's breach, Brown's was unable to perform and complete the installation. Brown's remaining unfulfilled obligations under the contract were thereby discharged, and Brown's was entitled to damages for plaintiff's breach. See Restatement (Second) of Contracts § 243 cmt. a (Am. Law Inst. 1981). The evidence also supports the judge's award of damages based on the causal link

between the breach of contract in hindering Brown's continued performance and Brown's claimed damages.

We reject plaintiff's contention that the trial was "unfair and prejudicial." Plaintiff complains that he did not have "enough discovery time to prepare . . . for the trial and subpoena the witnesses," and was repeatedly "interrupted" throughout the trial by the judge. We have carefully considered the record and find no evidence to support plaintiff's contentions. "Procedural rules are not abrogated or abridged by plaintiff's pro se status." Rosenblum v. Borough of Closter, 285 N.J. Super. 230, 241 (App. Div. 1995). "Litigants are free to represent themselves if they so choose, but in exercising that choice they must understand that they are required to follow accepted rules of procedure . . . to guarantee an orderly process." Tuckey v. Harleysville Ins. Co., 236 N.J. Super. 221, 224 (App. Div. 1989). While it is understandable why a judge's compliance with the law and the court rules to ensure an orderly process would cause a self-represented litigant to believe he was being treated unfairly, it is nonetheless unjustifiable.

Affirmed.