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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0016-23

HELLENIC HOLDINGS
INTERNATIONAL LLC,

Plaintiff-Respondent,

v.

LIBERTY ENTERPRISES, LLC,
and FRANK SCULLION, j/s/a,

Defendants-Appellants,

and

TOM SCULLION,

Defendant.

Submitted June 4, 2024 – Decided June 17, 2024

Before Judges Enright and Whipple.

On appeal from the Superior Court of New Jersey,
Law Division, Camden County, Docket No. L-1482-
20.

Jacobs & Barbone, PA, attorneys for appellants
(David A. Castaldi, on the brief).

Kearney and Associates, PC, attorneys for respondent
(John B. Kearney, on the brief).

PER CURIAM

Defendant Liberty Enterprises, LLC, (Liberty) appeals from a June 21, 2023 order entering partial judgment in favor of plaintiff Hellenic Holdings International, LLC, (Hellenic) in the amount of \$73,484 and a July 21, 2023 order entering final judgment in favor of plaintiff in the amount of \$110,987. We affirm in part and remand in part.

George Markakis and Aikaterini Markakis¹ purchased a residence at 260 Cedar Avenue in Blackwood, New Jersey (the property), intending to renovate and resell it. George was the project manager for the renovation on behalf of Hellenic. George placed an ad on Craigslist to solicit requests for proposals from contractors, then held an open house at the property and met with contractors before selecting Frank Scullion and Liberty to perform the renovation. Negotiations commenced, and the parties signed a written contract dated June 10, 2019, between "[Hellenic] and Liberty Construction, LLC [sic]." Plaintiff's attorney drafted the contract.

¹ Because the members of the two families have the same last names, we reference them by their respective first names to avoid confusion. No disrespect is intended by this informality.

The contract included an original completion date of September 3, 2019, with a two-week grace period, and noted that time was of the essence. The contract set forth that Liberty was responsible for providing labor, as well as material lists, logistics, nails, screws, fasteners, caulking, and adhesive; Hellenic was responsible for the cost of materials. The contract also included a five-page description of the scope of the work for the renovation project, as well as a payment schedule for installments totaling \$47,500. "Under the contract, 11,000 [dollars] was due at signing. An additional 11,000 [dollars] was due upon completion of rough framing and rough electrical, except the trusses in the garage."

The relationship soured, and, on April 23, 2020, plaintiff filed suit against defendants and Tom Scullion, claiming breach of contract, negligence, fraud, and violation of section 8-2 of the New Jersey Consumer Fraud Act (NJCFA), N.J.S.A. 56:8-2. Defendants and Tom answered the complaint and counterclaimed, and Liberty later filed a third-party complaint against George, Aikaterini, and Hellenic.

Hellenic moved to dismiss the third-party complaint, which the court granted. Tom moved for summary judgment, which the court granted; the court dismissed plaintiff's complaint against Tom Scullion only.

The remaining claims by Hellenic against Liberty and Frank proceeded to a bench trial. The trial judge rendered his decision in favor of plaintiff after making detailed findings. Notably, on or about August 19, 2019, Frank called plaintiff and demanded \$2,484 for kitchen cabinets for the property, because Frank's son had picked them up. Plaintiff paid defendants the requested amount, but the kitchen cabinets were never delivered to the property.

The trial court found, contrary to plaintiff's claims and based upon communications between Frank and plaintiff's attorney, work at the property likely continued past November 22, 2019, but not on a regular basis. The judge found plaintiff's witness, Joseph Parker's testimony credible, as to what work defendants completed on the property by late 2019 or early 2020. Parker testified no work took place at the property for a period of about three months before he became involved in helping Hellenic to complete the renovation. According to Frank's testimony, plaintiff fired him from the project in March 2020.

On June 21, 2023, the court issued an order providing:

1. The contract in question here is reformed to provide that the correct name of the party is Liberty Enterprises[,] LLC, not Liberty Construction LLC, and the pleadings are likewise reformed to reflect that;

2. Defendant, Frank Scullion, is personally liable for his conduct;
3. Defendants have committed fraud upon . . . plaintiff by not turning over to plaintiff property that plaintiff paid defendant for valued at \$2[,]484 . . .;
4. Defendant violated the Prevention of Consumer Fraud Act, N.J.S.A. 56:8-1 [to -13], in that . . . defendants were in violation of the New Jersey Home Improvement Practices by requiring payment prior to completion (N.J.A.C. 13:45A-16.2(a)[(6)(v)]), by failing to complete work as contracted to ([N.J.A.C.] 13:45[A]-16.2[(a)(7)(ii)]), and as to the contents of the contract (N.J.A.C. 13:45A-16.2(a)[(12)]);
5. . . . [P]laintiff's ascertainable loss as a result of defendants' fraud and [NJCFRA] [v]iolations is determined to be \$24,484[] which amount is tripled to be \$73,452[]; and
6. Therefore, [j]udgment is entered in favor of plaintiff Hellenic . . . and against defendants Frank Scullion and Liberty . . . in the sum of \$73,484. . . [sic] plus counsel fees to be set by the [c]ourt plus the cost of suit to be taxed by the clerk.
7. Counsel fee application to be submitted within [fourteen] days. Response to be submitted within [ten] days thereafter.

Following a contested hearing on attorney's fees and costs on July 21, 2023, the trial court awarded plaintiff counsel fees and costs in the amount of

\$37,535, increasing the total judgment amount to \$110,987. This appeal timely followed.

We review matters of law de novo. Manalapan Realty L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) ("A trial court's interpretations of the law and the legal consequences that flow from the established facts are not entitled to any special deference."). Judicial findings of fact, on the other hand, are binding on appeal when supported by "adequate, substantial[,] and credible evidence" on the record. Rova Farms Resort, Inc. v. Invs. Ins. Co. of America, 65 N.J. 474, 484 (1974). We should "give deference to those findings of the trial judge which are substantially influenced by his opportunity to hear and see the witnesses and to have the feel of the case, which a reviewing court cannot enjoy." State v. Nunez-Valdez, 200 N.J. 129, 141 (2009) (quoting State v. Elders, 192 N.J. 224, 244 (2007)).

Defendants argue the trial court improperly decided the cause of action in plaintiff's favor under the NJCFA because defendants did not commit an unlawful act under the NJCFA, and plaintiffs did not suffer an ascertainable loss that could be causally related to an unlawful act on the part of defendants.

The judge's decision asserted, "Here . . . there[is] no question that there is, at a minimum, a technical violation of the [NJCFA]." The court stated

N.J.A.C. 13:45A-16.2 requires, among other things, "any home improvement contract over \$500 [includes], one, the full legal name and business address of the builder, description of the work to be performed, the registration number of the contractor, and the . . . dates when the work is to be performed." Since the contract did not include defendants' contractor registration number, the trial court found a regulatory violation and, therefore, a violation of the NJCFA. The trial court also decided plaintiff established, by clear and convincing evidence, both consumer fraud and common law fraud with respect to the \$2,484, as defendants demanded money to pay for kitchen cabinets, but plaintiff never received those cabinets.

Based on our review, the trial judge's factual findings are supported by adequate, substantial, and credible evidence in the record and should not be disturbed.

We review the trial court's conclusions of law de novo. The NJCFA provides:

The act, use[,] or employment by any person of any commercial practice that is unconscionable or abusive, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression[,] or omission, in connection with the sale or advertisement of any merchandise or real estate, or

with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived[,] or damaged thereby, is declared to be an unlawful practice

[N.J.S.A. 56:8-2.]

Under the NJCFA, a successful claim requires the plaintiff to prove three elements: "(1) unlawful conduct by defendant, (2) an ascertainable loss by plaintiff, and (3) a causal relationship between the unlawful conduct and the ascertainable loss." Manahawkin Convalescent v. O'Neill, 217 N.J. 99, 121 (2014). A plaintiff must demonstrate with a "reasonable degree of certainty," Cox v. Sears Roebuck & Co., 138 N.J. 2, 22 (1994), they suffered "a definite, certain[,] and measurable loss, rather than one that is merely theoretical," Bosland v. Warnock Dodge, Inc., 197 N.J. 543, 558 (2009) (citing Thiedemann v. Mercedes-Benz U.S., LLC, 183 N.J. 234, 248 (2005)). Finally, for the purposes of calculating the trebled damages awarded under the NJCFA, plaintiff must "prove that the unlawful consumer fraud caused [the ascertainable] loss." Cox, 138 N.J. at 23.

Defendants argue the trial court erred by finding a technical violation of the NJCFA based on their failure to include the "registration number of the contractor" in the contract, contrary to the requirements of N.J.A.C. 13:45A-16.2(a)(12). We agree this regulation does not include a requirement

that the contractor's registration number be included in the contract² and the statute that includes the registration number requirement is N.J.S.A. 56:8-151(a)(1),³ which was not referenced by the trial court in the oral opinion

² N.J.A.C. 13:45A-16.2(a)(12)(i) reads, in pertinent part:

Home improvement contract requirements—writing requirement: All home improvement contracts for a purchase price in excess of \$500[], and all changes in the terms and conditions thereof shall be in writing. Home improvement contracts which are required by this subsection to be in writing, and all changes in the terms and conditions thereof, shall be signed by all parties thereto, and shall clearly and accurately set forth in legible form and in understandable language all terms and conditions of the contract, including, but not limited to . . . [t]he legal name and business address of the seller, including the legal name and business address of the sales representative or agent who solicited or negotiated the contract for the seller.

³ N.J.S.A. 56:8-151(a)(1) provides in relevant part:

Every home improvement contract for a purchase price in excess of \$500, and all changes in the terms and conditions of the contract, shall be in writing. The contract shall be signed by all parties thereto . . . and shall clearly and accurately set forth in legible form and in understandable language all terms and conditions of the contract, including but not limited to . . . [t]he legal name, business address, and registration number of the contractor business, any contractor who will provide home improvement services, and the license number of the contractor licensed pursuant to

or the order of judgment. We also agree plaintiffs suffered no ascertainable loss as a result of the fact the contractor registration number was not in the contract.

The court's error on this issue was harmless. Whether the requirement to include the contractor's registration number in the contract for home improvement services comes from a regulation or a statute, the fact remains defendants did not include their registration number on the contract. More significantly, however, the trial court did not award damages, fees, or costs based solely on this purported violation. Instead, the court found defendant violated the NJCFA on other grounds that support the award of attorney's fees, costs, and treble damages. This minor error is not grounds for reversing the June 21 and July 21, 2023 orders.

Defendants further argue the trial court erred by listing in paragraph four of the June 21, 2023 order of partial judgment a violation of N.J.A.C. 13:45A-16.2(a)(7)(ii) as a basis for violating the NJCFA. They contend the regulation explicitly contemplates situations where the failure to complete the

[the Home Improvement and Home Elevation Contractor Licensing Act, N.J.S.A. 45:5AAA-1 to -22.]

work is not attributable to the contractor, and the court specifically found plaintiff failed to establish any delays were attributable to defendants.

In the oral opinion, the trial court correctly noted "the burden of proof . . . on delays has not been established." Based on the testimony at trial, "the [c]ourt [could not] determine whether [the delays were] . . . a result of the conduct of defendant or as a result of plaintiff's failure to obtain the necessary permits" or materials. It is thus unclear whether the delays in completing the work were "beyond the seller's control" as contemplated by N.J.A.C. 13:45A-16.2(a)(7)(ii).

Plaintiff did not prove defendant violated N.J.A.C. 13:45A-16.2(a)(7)(ii), so this cannot be a basis for violating the NJCFA. This error is harmless, however, because the trial court reasonably found defendants violated the NJCFA on other grounds that support the award of attorney's fees, costs, and treble damages; this error is not grounds for reversing the June 21 and July 21, 2023 orders.

Additionally, defendants argue the trial court erred in finding they had committed fraud and violated the NJCFA by demanding money from plaintiffs to purchase kitchen cabinets and then failing to deliver those cabinets to the property. They concede the factual findings of the trial court establish plaintiff

paid defendants for cabinets and did not receive those cabinets. According to defendants, those facts could support an equitable claim for unjust enrichment, but the factual findings of the trial court support neither a claim of common fraud nor a violation of the NJCFA, as there was no evidence Frank made a material misrepresentation.

In the court's oral opinion, the trial judge found by clear and convincing evidence fraud with respect to the \$2,484 for the contested kitchen cabinets. The judge found credible trial testimony that Frank sent a text or an email, saying, "we have the cabinets, I need the money now." The judge also found credible testimony that those cabinets were not delivered to the property. These factual findings are supported by credible evidence in the record and were not refuted by Frank's testimony.

A successful claim of common law fraud requires:

- 1) a material misrepresentation of a presently existing or past fact;
- 2) knowledge or belief by the defendant of its falsity;
- 3) an intention that the other person rely on it;
- 4) reasonable reliance thereon by the other person;
- and
- 5) resulting damages.

[Gennari v. Weichert Co. Realtors, 148 N.J. 582, 610 (1997).]

The trial court did not analyze the elements of a common law fraud claim, so the presence of common law fraud is not supported by the trial court's explicit findings. However, a finding of common law fraud is not necessary to find a violation of the NJCFA, and the damages awarded by the trial court are predicated on a NJCFA violation and not a finding of common law fraud.

The conclusion is proper that defendants violated the NJCFA and must be affirmed, even though it is based on technically incorrect legal reasoning. See Hayes v. Delamotte, 231 N.J. 373, 387 (2018) ("A trial court judgment that reaches the proper conclusion must be affirmed even if it is based on the wrong reasoning.").

Finally, it is apparent, upon our review of the record, the order of final judgment includes an incorrect total that does not account for defendant's improper receipt of the final installment payment of \$3,500 under the contract. The trial court decided the defendant "improperly received payment, the third and fourth 11,000 [dollar] payment[s], which is 22,000 [dollars], and the final. Those payments clearly [defendant] was not entitled to when demanded." Upon figuring the final judgment amount, however, the trial court referenced the "damages for which [they did] find proof are the two \$11,000 [dollar] payments totaling \$22,000 demanded by defendant when they were not due


and owing under the contract." The trial judge then added \$2,484 for the kitchen cabinets, for a total of \$24,484, which was then "trebled for a total judgment of \$73,452" in favor of Hellenic.

This total, however, does not include the final payment of \$3,500 also "demanded by defendant when . . . not due and owing under the contract." The true final judgment, therefore, should be \$22,000 plus \$3,500 plus \$2,484, for a sum of \$27,984, trebled for a total of \$83,952. The orders dated June 21 and July 21, 2023, are remanded to reflect this corrected calculation or for an explanation as to why it should not be included.

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

Affirmed in part and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION