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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3081-24**

**MICHAEL MCMAHON and
KRISTIN KIEFER,**

Plaintiffs-Appellants,

v.

**KARCHIK HOMES, KARCHIK
HOMES, LLC, KARCHIK
HOMES, LLC CONSTRUCTION,
INC., and RONALD A. KARCHIK,
a/k/a RONALD KARCHIK,
individually,**

Defendants-Respondents,

and

KARCHIK HOMES, LLC,

Third-Party Plaintiff,

v.

MJ LYONS CORPORATION,

Third-Party Defendant.

Argued November 12, 2025 – Decided January 16, 2026

Before Judges Gilson, Firko, and Vinci.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Ocean County, Docket No. L-1968-22.

John J. Novak argued the cause for appellants (The Law Offices of John J. Novak, PC, attorneys; Deborah A. Plaia, on the briefs).

Paul V. Fernicola argued the cause for respondents (Paul V. Fernicola & Associates, LLC, attorneys; Paul V. Fernicola, of counsel; Robert E. Moore, on the brief).

PER CURIAM

By leave granted in this dispute over a residential construction project, plaintiffs Michael McMahon and Kristin Kiefer appeal from an April 11, 2025 order granting defendants Karchik Homes, LLC (Karchik Homes) and Ronald A. Karchik's motion for a new trial pursuant to Rule 4:49-1. Following a six-day trial, a jury found in favor of plaintiffs on their claims for breach of contract, violations of the New Jersey Consumer Fraud Act (CFA), N.J.S.A. 58:8-1 to - 227, and common law fraud.

Defendants thereafter changed counsel and moved for a new trial arguing, among other things, the court improperly failed to excuse a juror who, after the jury was sworn, advised the court he previously learned of the underlying

dispute during a discussion several years earlier with a co-worker, and "the jury's award of damages . . . [was] not only excessive but also unsupported by the evidence." Because the record establishes the court improperly substituted its judgment for that of the jury in granting the motion, we reverse and remand for entry of judgment in accordance with the jury's verdict.

I.

Plaintiffs, who are married, own property in Waretown (the Property). On September 7, 2020, they entered into a contract with Karchik Homes for the construction of a home on the Property for \$649,900 (the Contract). The Contract provided construction was "to be completed on or about [six] months from start of construction, approx[imately] May, 15, 2020," and the home was to be built in accordance with plaintiffs' architectural plans.

From September 13, 2020, through July 5, 2021, plaintiffs paid defendants a total of \$401,000 in four installments as required by the Contract. On June 8, 2022, plaintiffs terminated the Contract, alleging poor workmanship, deviations from the Contract provisions and architectural plans, substantial delays, and misrepresentations as to the work performed and materials supplied. The next day, defendants filed a notice of unpaid balance and right to file a lien with the Ocean County Clerk asserting a construction lien in the amount of \$329,100.

On September 6, 2022, plaintiffs filed their complaint in this matter asserting causes of action for breach of contract, violations of the CFA, and common law fraud, among others. Defendants filed a counterclaim alleging causes of action for breach of contract, value of labor and materials, and failure to pay for additional work. Defendants caused two lis pendens to be recorded against the Property by the Ocean County Clerk on December 14, 2022, and March 8, 2023.

The court conducted a seven-day jury trial in February 2025. After the jury was sworn on February 10, plaintiffs called McMahon as their first witness. His testimony was not completed that day. When trial resumed on February 11, juror number one asked to speak with the court, and he was brought into the courtroom outside the presence of the other jurors. The court questioned the juror as follows:

THE COURT: [W]hat[is] the topic that you want to talk about?

JUROR NUMBER ONE: There[is] a chance that the plaintiff and I might have a mutual friend.

THE COURT: . . . And . . . when did you discover this?

JUROR NUMBER ONE: Late yesterday when I started hearing some of the evidence.

THE COURT: . . . And . . . who is the person?

JUROR NUMBER ONE: It was a co-worker.

THE COURT: A co-worker of yours who knows the plaintiff?

JUROR NUMBER ONE: I believe so. I[am] not sure. . . . [N]ow, I[have] been retired for two-and-a-half years . . . so, my co-worker told me about a friend that was a fishing friend of his . . . I[am] going back three[or] four years ago.

THE COURT: So, you recognized the name of the plaintiff?

JUROR NUMBER ONE: No. I did not know the names, that[is] why I[am] not sure.

THE COURT: . . . Now, what you know or may know about that, do you believe that in any way would affect your ability to be fair and impartial in this case?

JUROR NUMBER ONE: It would not affect my ability.

The court then asked counsel if there was "anything [they would] like to drill down on." Plaintiffs' counsel responded "it would be . . . important to know what type of knowledge was imparted." The court continued to question the juror:

THE COURT: Well . . . [w]hat type of knowledge would you have . . . [?]

JUROR NUMBER ONE: [M]y friend told me that his friend was a police officer that was having a home

demolished and he was building a new home. I do[not] know where it was . . . and all he said to me was that it was taking longer than he thought. . . . He did[not] go into any detail about the workmanship or [anything].

After the juror was excused from the courtroom, defendants' counsel advised the court defendants were "concerned that there[is] a taint because he[is] a friend of a friend and they discussed this matter before . . . trial, and [he would] prefer to go with six jurors." The court then brought the juror back into the courtroom and questioned him in greater detail, as follows:

THE COURT: Do you recollect when this conversation with your friend took place?

JUROR NUMBER ONE: . . . I[have] been retired for almost two years now, so I[am] going to say going back [in] 2020 sometime, middle of 2020.

THE COURT: [D]o you recollect the circumstances how this conversation came up?

JUROR NUMBER ONE: Just in, hey, what did you do this weekend[?] . . . You know, I saw my friend over the weekend and he[is] doing a house and he[has] been having little issues here and there.

THE COURT: Did he go into much detail about the issues themselves?

JUROR NUMBER ONE: The only thing that I recall is that it was just taking longer than he thought.

THE COURT: . . . Did he give you any sense that or express an opinion to you that that [his] friend [was] really getting screwed or anything like that?

JUROR NUMBER ONE: No.

. . . .

THE COURT: [W]as there any specific details of what was causing the delays or . . . he told [you] that the builder said this or that or anything like that?

JUROR NUMBER ONE: No, nothing I recall anything like that.

. . . .

THE COURT: Do you believe that you[will] be able to make your decision without regard to what your friend told you?

JUROR NUMBER ONE: I do.

THE COURT: And the fact that he was your friend and your friend's friend is the plaintiff, is that going to in any way affect your ability to be fair and impartial?

JUROR NUMBER ONE: Not at all.

. . . .

THE COURT: [W]hen[was] the last time you spoke to him?

JUROR NUMBER ONE: I saw my friend at a company Christmas party . . . [a]fter I retired . . . [this] [p]ast December.

. . . .

THE COURT: Did this topic come up during that?

JUROR NUMBER ONE: It did not.

THE COURT: . . . And you do[not] know the plaintiff directly, this is [the] only connection?

JUROR NUMBER ONE: I do not know him.

Defense counsel did not renew his request to excuse the juror or otherwise object after the voir dire was completed. The court found the juror was "honest enough to come out here and tell us about that, [the court thought it could] rely on him saying that he believes he can be fair and impartial and disregard anything he heard from his friend." The court determined "he ha[d] that ability and [was] not going to excuse him." The court asked counsel if there was "[a]nything [they would] like to add on the record." Defense counsel responded, "[n]othing."

When the trial resumed, plaintiffs testified extensively regarding their allegations that defendants breached the Contract and engaged in fraudulent conduct. For example, they testified defendants were required to use stainless steel siding nails and did not. They paid \$1,200 for fourteen boxes of stainless steel nails, but defendant only produced an invoice for seven boxes. Because

defendants did not use the proper stainless steel nails, the nails in the siding on the house were rusting.

They also contracted for a thirty-two-inch bathtub, but defendants improperly installed a thirty-inch bathtub. Plaintiffs paid \$3,200 for an upgraded front door, but defendants installed a standard door that cost \$1,900 and still charged them \$3,200 for the upgraded door. In addition, the Contract called for the installation of five roof top drains, but defendants installed only three.

The Contract also called for the installation of pilings under the exterior stairs and deck. Defendants, however, initially used poured concrete instead of pilings. After this error was identified, Karchik acknowledged the Contract called for pilings, and the pilings were installed. This resulted in additional delay.

McMahon testified that when plaintiffs terminated the Contract in June 2022, the house "was basically a roughed in box." He and his wife "took over the general contracting function[s]." He testified:

[They] had to hire all new sub[contractors]. [They] had to get painters, plumbers. [He] personally had to do a lot of the work . . . to finish all the electric. Stair railings, bathrooms, tile, . . . getting the kitchen put in, molding, doors, the elevator. [They] did everything. . . . [They] had full time jobs. It became

another full time job. . . . [They] had to take time off from work. [He] burned up all [his] saving of time to do it, but unfortunately that[is] what [they] had to do.

Plaintiffs collectively spent 1,526 hours on the project after they terminated the Contract and paid approximately \$34,746.65 more than the Contract price to complete the home as a result of defendants' alleged conduct. Plaintiffs also paid defendants \$10,000 as a "[d]own payment for the elevator" that was being installed by one of defendants' subcontractors, Accredited Elevator. Due to the dispute with defendants, plaintiffs were not able to use Accredited Elevator to do that work, and they never recovered the \$10,000 down payment.

In addition, plaintiffs obtained a construction loan for the project. When that loan "was set to expire" they were not able to "convert the . . . construction loan to a conventional loan" at a lower interest rate until the construction lien and lis pendens defendants recorded were released. As a result, they "had to pay a bunch of penalties . . . to keep th[e] rate extended until [they] could get it worked out." The penalties combined with the legal fees incurred to release the lien and lis pendens, totaled "a little over \$6,000."

II.

On February 20, 2025, after the close of the evidence, the court instructed the jury on the elements of liability and damages. With respect to an award of damages generally, the court instructed the jury consistent with Model Jury Charges (Civil), "General Provisions for Standard Charge – O. Damages," (approved. Nov. 1998), that:

The plaintiff[s] [have] the burden of establishing by a preponderance of the evidence each item of damage[s] which they claim. Similarly, . . . the defendant[s] ha[ve] the burden of proving damages if you should find that the plaintiffs breached the contract. . . . [E]ach party must prove that the damages were the natural and probable consequences of the other's wrongdoing. The . . . wrongdoing must be the proximate cause of the damages. Damages may not be based on conjecture or speculation. Now, each of the parties here claim monetary damages. They have to prove that. . . . And . . . they have to show that the damages were not speculative, but it was clear. And . . . they [have to] prove by a preponderance of the evidence that it directly flowed from the others' wrongdoing.

With respect to damages specifically applicable to the parties' breach of contract claims, the court instructed the jury based on Model Jury Charges (Civil), 8.45, "Breach of Contract," (rev. Dec. 2014), that:

A party who is awarded a verdict for breach of contract is entitled to compensatory damages for such losses as may fairly be considered . . . to have arisen naturally from the other's breach of contract. . . . Compensatory

damages for breach of contract are designed under the law to place the injured party in as good a monetary position as he or she would have enjoyed if the contract had been performed as promised. What that position is depends upon what the parties reasonably expected at the time they made the contract. . . . [N]either party is not liable for a loss that the parties did not have reason to foresee as a probable result of the breach. While . . . the loss must be a . . . reasonably certain consequence of the breach[,] [a]nd even though it has to be reasonably certain, the exact amount of the loss need not be certain.

With respect to damages specifically applicable to plaintiffs' CFA claim, the court instructed the jury based on Model Jury Charges (Civil), 4.43, "Consumer Fraud Act," (rev. Jan. 2025), that:

[P]laintiffs claim that they lost money or [were] otherwise damage[d] as a result of the defendant['s] conduct. . . . If you decide from the evidence in this case that the defendant violated the [CFA], you have then decided that the defendant committed an unlawful practice. If so, plaintiffs are allowed to receive an award of money for the plaintiffs' loss proximately caused by the defendant['s] action. Like I said, [they] still have to show that as a direct result, [they] lost money. . . . You[are] going to get a questionnaire that breaks down all the things you have to find. One of the things here is did they violate the [CFA] and what amount of money would reasonably compensate the plaintiffs, if you find that. You[are] only go[ing to] put in that amount. I do whatever tripling is required

or things of that nature. You do[not] need to do that math.¹

The jury unanimously found in favor of plaintiffs on all counts and against defendants on their breach of contract claim. They awarded plaintiffs \$100,000 for breach of contract, \$200,000 for violations of the CFA, and \$250,000 for common law fraud.

On March 13, 2025, defendants filed their motion for a new trial arguing: (1) they were unable to exercise their remaining peremptory challenges to prevent juror number one from sitting on the jury; (2) the CFA does not apply to defendants; (3) plaintiffs submitted no proof of damages in excess of the additional amount they paid to complete the home; and (4) plaintiffs failed to prove common law fraud.

On April 11, 2025, following oral argument, the court entered an order granting the motion supported by an oral opinion. The court had "no doubt this jury did not like . . . Karchik . . . And they had good reason not to like him, because frankly some of his testimony just did[not] add up." As to the damages awards, the court noted defendants "promised to give [plaintiffs] something [they] did not give them, but you have to prove a dollar difference between what

¹ The judge dismissed the CFA claim against Karchik individually before instructing the jury.

[they] got and what they were promised to get." The court had "no doubt that [the jury] thought [Karchik Homes] violated the [CFA] and that . . . what [defendants] had done translates into common law fraud" and "also that there was a breach of contract."

The court noted one issue addressed in the trial was "these pilings underneath the staircase" that had to be replaced. It continued, "[b]ut what are the damages from that? Maybe delay? I[will] grant you that. There[is] no question that there were contract damages of delay. It[is] not easy to put a dollar figure to a delay. How do you prove a dollar figure from a delay?"

The court was "surprised that the jury even found the \$100,000 . . . based on the proofs that came in, but they found it and there could have been a logical reason . . . because [Kiefer] talked about what they had to spend to finish the house." "But [the court] . . . allow[ed] that they found . . . the contract damages are [\$]100,000."

The court then wondered "[w]hat explains the difference between that [\$]100,000 and the [\$]200[,000] for [the CFA]?" The court stated "contract damages, frankly, are pretty close to subject to certainty with the proofs, unlike personal injury awards." "[W]hen it comes to contract damages, there has to be some logical proof. They just can[not] guess." The court concluded "there[is]

no logical reason that [it could] find that equates . . . the jury verdict in terms of the fraud and the contract damages."

The court was also "concerned by what effect . . . leaving this juror on there may have done to influence this, what appears on its face, to be an anomalous verdict." It "had no doubt that if this had come out first during the voir dire, he would have been gone. And maybe what this [c]ourt should have done in hindsight is to excuse him and continue with six jurors, but the [c]ourt did[not] do that."

On June 2, 2025, we granted plaintiffs' motion for leave to appeal and remanded the matter temporarily for the court "to issue a written statement of reasons setting forth with specificity its findings of fact and conclusions of law in accordance with Rule 1:7-4(a)." On June 11, the court issued the following findings:

there was adequate evidence in the record from which the jury could find a breach of contract and the resulting damages. There was no evidence which can explain the difference between the contract damages and the fraud damages. In the [c]ourt's mind, the amount of damages would be the same. In other words, the \$100,000 found to be the measure of contract damages would be the ascertainable loss flowing from the consumer fraud [damages] and the common law fraud. Also, the [c]ourt can perceive of no rational basis for the difference between the consumer fraud damages and the common law fraud damages. Cox v. Sears Roebuck & Co., 138

N.J. 2 (1994), requires that there be ascertainable loss flowing from the violation of the [CFA]. The evidence adduced at trial does not support the jury's award of significant additional damages for consumer fraud and common law fraud.

III.

On appeal, plaintiffs argue the court erred in granting a new trial because:

(1) there was no juror misconduct and defendants had the opportunity to question the juror; and (2) the court substituted its own determination for that of the jury.

Rule 4:49–1(a) provides that a trial judge shall grant a new trial 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." See Boryszewski v. Burke, 380 N.J. Super. 361, 391 (App. Div. 2005) ("Jury verdicts should be set aside in favor of new trials only with great reluctance, and only in clear cases of clear injustice"). "[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 v. Thompson Muller Auto. Grp., Inc., 206 N.J. 506, 521-22

(2011)). We review an order granting or denying a motion for a new trial for an abuse of discretion. State v. Fortin, 464 N.J. Super. 193, 216 (App. Div. 2020).

In evaluating a trial court's decision to grant or deny a new trial, the appellate court "must give 'due deference' to the trial court's 'feel of the case,'" however, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Id. at 386-87 (first quoting Risko, 206 N.J. at 522; and then quoting Manalapan Realty, LP v. Twp. Comm. of Twp. of Manalapan, 140 N.J. 366, 378 (1995)). "On a motion for a new trial, all evidence supporting the verdict must be accepted as true, and all reasonable inferences must be drawn in favor of upholding the verdict." Boryszewski, 380 N.J. Super. at 391. "[A] trial court should not interfere with a jury verdict unless the verdict is clearly against the weight of the evidence." Caldwell v. Haynes, 136 N.J. 422, 432 (1994). To overturn a jury verdict, "[t]he verdict must shock the judicial conscience." Ibid.

"A jury verdict is entitled to considerable deference and 'should not be overthrown except upon the basis of a carefully reasoned and factually supported (and articulated) determination, after canvassing the record and weighing the evidence, that the continued viability of the judgment would constitute a manifest denial of justice.'" Hayes, 231 N.J. at 385-86 (quoting

Risko, 206 N.J. at 521). "Our civil system of justice places trust in ordinary men and women of varying experiences and backgrounds, who serve as jurors, to render judgments concerning liability and damages." Johnson v. Scaccetti, 192 N.J. 256, 279 (2007).

Generally, "[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)). Therefore, a damages award "should not be disturbed unless it clearly and convincingly appears to the judge that the jury's award is plainly wrong, constitutes a manifest injustice, or is so disproportionate to the injury as to shock the judge's conscience." Anderson v. A.J. Friedman Supply Co., Inc., 416 N.J. Super. 46, 69 (App. Div. 2010) (citing Rendine v. Pantzer, 141 N.J. 292, 312 (1995)).

A.

We are persuaded the court improperly substituted its own judgment for that of the jury on the issue of damages. The court correctly instructed the jury using the appropriate Model Jury Charges for damages applicable to plaintiffs' causes of action for breach of contract, violations of CFA, and common law fraud. Based on those instructions, the jury awarded \$100,000 for breach of

contract, \$200,000 for violations of the CFA, and \$250,000 for common law fraud.

The court "[found] that there was adequate evidence in the record from which the jury could find a breach of contract and the resulting damages" of \$100,000. It granted the motion for a new trial, however, because in "the [c]ourt's mind, the amount of damages" for violations of the CFA and common law fraud "would be the same." It found "the \$100,000 found to be the measure of contract damages would be the ascertainable loss flowing from the consumer fraud and the common law fraud." Also, the court could "perceive of no rational basis for the difference between the consumer fraud damages and the common law fraud damages."

The court's belief that the jury's award of damages for violations of the CFA could not exceed the damages awarded for breach of contract is incorrect. While it is true that "in order to recover damages, a victim of [CFA] must prove an 'ascertainable loss,' N.J.S.A. 56:8-19, . . . that requirement has been broadly defined as embracing more than a monetary loss." Union Ink Co., Inc. v. AT&T Corp., 352 N.J. Super. 617, 646 (App. Div. 2002). "An ascertainable loss occurs when a consumer receives less than what was promised." Ibid. An ascertainable loss is "quantifiable or measurable," but the precise amount of damages need not

be known. Thiedemann v. Mercedes-Benz USA, LLC, 183 N.J. 234, 248 (2005). "An 'estimate of damages, calculated within a reasonable degree of certainty' will suffice to demonstrate an ascertainable loss." Id. at 249 (quoting Cox, 138 N.J. at 22-23).

Although damages awarded for a violation of the CFA may equal the amount of the ascertainable loss, they are not required to be the same. D'Agostino v. Maldonado, 216 N.J. 168, 192-93 (2013); Thiedemann, 183 N.J. at 249. "There is no calculation of 'damages sustained' unless the ascertainable loss requirement is first satisfied. . . . The two concepts indeed have separate functions in the analysis." D'Agostino, 216 N.J. at 192 (internal quotations omitted); see also Robey v. SPARC Group LLC, 256 N.J. 541, 556 (2024).

"Ascertainable loss" and "damages sustained" are not . . . unrelated to one another. When an unconscionable commercial practice has caused the plaintiff to lose money or other property, that loss can satisfy both the "ascertainable loss" element of the CFA claim and constitute "damages sustained" for purposes of the remedy imposed under the CFA.

[D'Agostino, 216 N.J. at 192-93.]

"In an ordinary breach-of-contract case, the function of damages is simply to make the injured party whole, and courts do not assess penalties against the breaching party." Cox, 138 N.J. at 21. Thus, in determining whether plaintiff

has established an ascertainable loss under the CFA, courts are "guided by but not bound to strict contract principles." Ibid.

In this case, the jury was not required to award the same damages for breach of contract and violations of the CFA. As the court acknowledged, the evidence presented supported the jury's \$100,000 award for breach of contract. For reasons known only to the jury, when assessing the damages caused by the violations of the CFA, they undoubtedly considered compensable harms different from and in addition to those they attributed to defendants' breach of contract. Those harms may have included, for example, the fact that plaintiffs did not receive the home they were promised, or that they had to invest over 1,500 hours of their own time and were forced to take time off from work as a result of defendants' conduct, or any other harms the jury attributed to violations of the CFA as opposed to breach of contract. Based on the evidence they heard, the jury awarded \$200,000 as compensation for the violations of the CFA. There is no basis to disturb the jury's damage award, which was based upon substantial credible evidence in the record.

Likewise, the jury was not required to limit its award for damages caused by common law fraud to "ascertainable loss" or any specific monetary loss. To establish common law fraud a plaintiff must prove: "(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). Again, in assessing the "resulting damages" caused by defendants' fraudulent conduct, the jury was permitted to consider all of the evidence of damages plaintiffs presented. There was no basis to disturb their award of \$250,000 for common law fraud based on the evidence presented in this case.

We conclude the court improperly granted defendants' motion for a new trial. The jury's verdict, including its award of damages, is entitled to "considerable deference" and "should not be overthrown" unless the "judgment would constitute a manifest denial of justice." Hayes, 231 N.J. at 385-86. Here, the jury's verdict was supported by sufficient evidence in the record and "is cloaked with a 'presumption of correctness.'" Cuevas, 226 N.J. at 501. It was a misapplication of discretion to disturb the jury's verdict based on the court's personal views, and incorrect legal determination, that the damages awarded for the three different causes of action should have been the same.

B.

We are also convinced it was improper to grant the motion for a new trial because juror number one remained on the jury. The test for determining whether a new trial will be granted because of juror misconduct or intrusion of irregular influences into jury deliberation is "whether such matters could have a tendency to influence the jury in arriving at its verdict in a manner inconsistent with the legal proofs and the court's charge." Barber v. ShopRite of Englewood & Assoc., Inc., 406 N.J. Super. 32, 54 (App. Div. 2009) (quoting Panko v. Flintkote Co., 7 N.J. 55, 61-62 (1951)).

"A new trial, however, is not necessary in every instance where it appears an individual juror has been exposed to outside influence." State v. R.D., 169 N.J. 551, 559 (2001). "[D]ue process does not require a new trial every time a juror has been placed in a potentially compromising situation. . . . [I]t is virtually impossible to shield jurors from every contact or influence that might theoretically affect their vote." Ibid. (alterations in original) (quoting Smith v. Phillips, 455 U.S. 209, 217 (1982)).

Here, the court questioned the juror extensively regarding his prior knowledge of the case based on a single conversation with his co-worker and determined there was no reason why he should have been excused. Defense

counsel was given the opportunity to question the juror and did not object to the court's decision not to excuse the juror after he was questioned.

Although the court did not mention this issue in its June 11, 2025 statement of findings, in its oral opinion granting the new trial motion, the court was "concerned by what effect . . . leaving this juror on there may have done to influence this . . . anomalous verdict." It also noted there was "no doubt that if this had come out first during voir dire, he would have been gone."

To the extent the court granted the new trial motion on this basis, it was a misuse of discretion. The court questioned the juror extensively and determined there was no reason to believe he could not serve fairly and impartially as a juror. There was no basis to conclude otherwise after the trial. The court's speculation, without any factual predicate, that leaving him on the jury "may have" influenced the verdict was insufficient to support a finding of juror misconduct sufficient to warrant overturning the jury's verdict.

We are unpersuaded by defendants' argument that they were deprived of the right to use peremptory challenges because this issue arose after the jury was sworn. The relevant inquiry is whether there is a basis to conclude the verdict could have been influenced by juror misconduct or the intrusion of irregular

influences into the deliberation process. Barber, 406 N.J. Super. at 54. There is no competent evidence in the record to support such a finding.

We decline defendants' request to affirm the April 11, 2025 order for reasons other than those expressed by the court. Defendants will be able to make those arguments, as appropriate, on direct appeal. The order granting defendants' motion for a new trial is reversed. We remand the matter for entry of judgment in accordance with the jury's verdict and an award of reasonable attorneys' fees and costs pursuant to the CFA.

Reversed, vacated, and remanded for proceedings in conformity 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.

M.C. Hanley

Clerk of the Appellate Division