NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0781-14T2

RICHARD ROSS,

Plaintiff-Appellant,

v.

PAUL LA REGINA and BODY
SHOP FITNESS, LLC,

Defendants-Respondents,

Submitted November 17, 2015 – Decided December 17, 2015

Before Judges Hoffman and Whipple.

On appeal from Superior Court of New Jersey, Chancery Division, Bergen County, Docket No. C-160-11.

Piro, Zinna, Cifelli, Paris & Genitempo, LLC, attorneys for appellant (Richard A. Grodeck, on the brief).

Cozzarelli & Cozzarelli, LLC, attorneys for respondents (Frank P. Cozzarelli, on the brief).

PER CURIAM

Plaintiff Richard Ross filed the instant action in the Chancery Division against defendants Paul La Regina and Body Shop Fitness, LLC (Company), seeking an order memorializing his respective ownership interest in the Company. Following a bench

trial, the judge entered a judgment declaring that plaintiff was a fifty-percent member of the Company.

Plaintiff now appeals from an August 27, 2014 Chancery Division order denying his motion for relief from the judgment. We affirm.

I.

We derive the salient facts from the trial record and the relevant post-judgment filings. In 2009, plaintiff and La Regina collaborated to purchase a gym in North Arlington. They created a limited liability company, Body Shop Fitness, LLC, to facilitate their purchase and operation of the gym.

The gym opened in April 2010. By this time, however, the relationship between plaintiff and La Regina had deteriorated. In June 2010, plaintiff attempted to buy out La Regina's interest in the Company, but negotiations failed. Thereafter, following a dispute between plaintiff and La Regina in September 2010, plaintiff permanently vacated the premises and La Regina assumed exclusive operation of the business.

On June 2, 2011, plaintiff filed a complaint against La Regina and the Company, seeking an order declaring that he was a fifty-percent member of the Company.[1] In addition to filing an

[1] When La Regina formed the Company, he designated himself as its sole member.

answer and counterclaim against plaintiff, defendants filed a third-party complaint against plaintiff's wife, Robin Ross. Both the counterclaim and the third-party complaint were ultimately dismissed with prejudice, with the parties stipulating that neither would seek fees and costs on the basis that the filings were "frivolous."

Shortly before trial, the gym was sold to Manuel Crujeiras for a total of $100,000 — $35,000 up front in cash and a $65,000 promissory note secured by the gym's furniture, equipment, and other assets. At trial, the parties did not dispute that, pursuant to this transaction, the entirety of the Company's interest in the gym was transferred to Crujeiras.

A bench trial commenced on May 14, 2012, and concluded on May 16, 2012. In a judgment entered on August 22, 2012, the judge declared that plaintiff was a fifty-percent member of the Company, and determined that plaintiff's financial interest in the Company was $159,609.71 (seventy-two percent), while La Regina's financial interest in the Company was $62,715 (twenty-eight percent). In lieu of entering a monetary judgment against La Regina, the judge ruled that all net proceeds from the sale of the gym to Crujeiras were to be divided seventy-two percent to plaintiff and twenty-eight percent to La Regina.

Six months after the trial concluded and judgment was entered, plaintiff filed a motion to enforce litigant's rights, pursuant to Rule 1:10-3, seeking to hold La Regina in "contempt" for allegedly failing to comply with the court's August 22, 2012 judgment. The motion also sought leave to take additional discovery, pursuant to Rule 4:24-3, "to permit plaintiff to develop evidence of fraud perpetrated by defendant, La Regina."

On March 28, 2013, the judge ruled that plaintiff was entitled to "reasonable fees and costs upon presentation of an affidavit of service."[2] The judge also granted plaintiff's motion to take additional discovery, pursuant to Rule 4:24-3, to determine the validity of plaintiff's claim that La Regina perpetrated a fraud upon plaintiff and the court by secretly retaining an undisclosed fifty-percent interest in the Company.

In post-trial discovery, plaintiff obtained a series of emails between various insurance representatives, suggesting that the Company still retained a fifty-percent interest in the gym. Specifically, one email stated, "The current LLC will continue to have [fifty-percent] ownership in the business. Please see attached information on [a new LLC created by Crujeiras] that will co-own the health club."

[2] On May 15, 2013, the court awarded plaintiff fees and costs of $2,015.

On August 6, 2014, plaintiff filed a motion for relief from the judgment, seeking a monetary judgment from La Regina in lieu of receiving proceeds from the gym's sale to Crujeiras. In support of the motion, plaintiff argued that the judgment — which only directed compensation to plaintiff via receipt of his respective share of the proceeds from the gym's sale to Crujeiras — was insufficient because Crujeiras did not purchase the entire interest in the gym.

Following argument at a hearing on August 27, 2014, the judge denied plaintiff's motion, stating:

> It seems to be undisputed that there was a representation during the trial . . . that [La Regina] had represented that the transaction to Mr. Crujeiras involved Mr. Crujeiras getting 100 percent of the assets of the business. There is some evidence that that's not accurate. There is some evidence, including e-mails, that in fact the [parties'] LLC would have [fifty-percent] ownership in the business of Crujeiras. And that's what these brokers comment on in this e-mail chain . . . .
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> But aside from that, there's no actual evidence that the LLC ever retained any interest in the business of Mr. Crujeiras . . . . [T]here's no actual evidence to support the suggestion in this e-mail that the current LLC . . . retained any interest or took any interest in either the business of Crujeiras or the assets of Crujeiras.

Plaintiff filed a notice of appeal, solely challenging the denial of his motion for relief from the judgment.

II.

Rule 4:50-1 provides, in pertinent part:

> On motion, with briefs, and upon such terms as are just, the court may relieve a party . . . from a final judgment or order for the following reasons:
>
> . . . .
>
> (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party[.]

Types of fraud sufficient to obtain relief pursuant to this rule include perjured statements or testimony. See State by Comm'r of Transp. v. Probasco, 114 N.J. Super. 546, 549 (App. Div. 1970). In particular:

> Perjured testimony that warrants disturbance of a final judgment must be shown by clear, convincing, and satisfactory evidence to have been, not false merely, but to have been willfully and purposely falsely given, and to have been material to the issue tried and not merely cumulative but probably to have controlled the result. Further, a party seeking to be relieved from the judgment must show that the fact of the falsity of the testimony could not have been discovered by reasonable diligence in time to offset it at the trial or that for other good reason the failure to use diligence is in all the circumstances not a bar to relief.
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> [Ibid. (emphasis omitted) (quoting Shammas v. Shammas, 9 N.J. 321, 330 (1952)), aff'd o.b., 58 N.J. 372 (1971).]

A trial court's denial of a motion for relief from judgment pursuant to Rule 4:50-1 "warrants substantial deference, and

should not be reversed unless it results in a clear abuse of discretion." U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). An abuse of discretion occurs when the trial court's decision is "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123–24 (2007) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J., 561, 571 (2002)).

Here, the judge concluded that plaintiff failed to establish fraud by clear and convincing evidence. The judge noted that, despite the extended period of post-trial discovery afforded to plaintiff, plaintiff produced "no other supporting evidence" that La Regina perpetuated a fraud on the court other than the emails from the Company's insurance representatives. As for the e-mails, the judge stated that "I [cannot] say that those e-mails prove by clear and convincing evidence that La Regina kept [fifty] percent — or took [fifty-percent] interest in Crujeiras's entity."

On appeal, plaintiff stresses the importance of La Regina's representation at trial that the conveyance to Crujeiras was for 100 percent of the interest in the gym. Plaintiff insists that this statement was materially false, thus impairing the trial court's ability to render a fair and equitable judgment.

Plaintiff also points to the difficulties he encountered in obtaining records from Crujeiras, suggesting that Crujeiras was conspiring with La Regina to direct cash profits from the gym straight to La Regina, contrary to the judgment issued by the judge following trial.

However, plaintiff does not provide any convincing argument indicating that the trial judge abused his discretion in denying the motion for relief from the judgment. Rather, plaintiff merely points to different times in the trial where the judge found La Regina's testimony to lack credibility.

Furthermore, we discern no independent reason to disturb the decision under review. Although the emails obtained in post-trial discovery seem to indicate that the Company may have retained a fifty-percent interest in the gym, the judge correctly concluded that these emails, standing alone, did not constitute clear and convincing evidence of fraud. The emails were exchanged between non-parties. Thus, even if the emails accurately reflected the insurance agents' understanding of the gym's ownership, there was no corroborating evidence produced during post-trial discovery which indicates that their understanding was an accurate representation of the gym's

ownership.[3] Following more than a year of post-trial discovery, no other evidence of fraud was obtained by plaintiff, despite the court allowing him to engage in extensive post-judgment discovery.

Affirmed.

[3] Although not cited by the trial court in its decision, we note that the record contains an affidavit dated March 11, 2013 from the buyer of the Company, Crujeiras, explaining that insurance coverage issues came up shortly before closing, and threatened to delay it. According to Crujeiras, "It was agreed that the current policy would remain in effect and therefore I would not have to buy new coverage or arrange for inspections." It would appear that the emails address an interim period of co-ownership so that the Company's policy would remain in effect and not delay settlement. This explanation provides helpful context for the emails exchanged among insurance representatives, and further supports the judge's conclusion that plaintiff failed to present clear and convincing evidence of fraud.