NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5576-12T4

FRANK COLUCCIO and
JOSEPHINE COLUCCIO,

Plaintiffs-Respondents,

v.

SEVAS BUILDERS, INC. and
JOHN SEVASTAKIS,

Defendants/Third-Party
Plaintiffs-Appellants,

v.

MICHAEL J. WRIGHT CONSTRUCTION
COMPANY, INC.,

Third-Party Defendant.

Argued March 24, 2015 – Decided August 27, 2015

Before Judges Messano and Ostrer.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Docket No. L-5641-06.

Harry Jay Levin argued the cause for appellants (Levin Cyphers, attorneys; Mr. Levin and Colleen Flynn Cyphers, on the brief).

John J. Lavin argued the cause for respondents (Blount & Lavin, P.C., attorneys; Mr. Lavin, on the brief).

Zirulnik, Sherlock & DeMille, attorneys, join in the brief of appellants.

PER CURIAM

Plaintiffs Frank and Josephine Coluccio[1] operated a private pre-school from their Toms River home. They contracted with defendant Sevas Builders, Inc. (Sevas), which was owned by defendant John Sevastakis (defendant, and collectively, defendants), to construct additions to the house and make other renovations. After disputes broke out, plaintiffs filed a complaint alleging breaches of contract and warranties, negligence, various violations of the Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 to -20, breach of the implied covenant of good faith and fair dealing, conversion, and practicing architecture without a license.

Defendants answered and filed a third-party complaint against framing subcontractor Michael J. Wright Construction Company, Inc. (Wright).[2] On cross-motions for summary judgment, the judge granted defendants partial summary judgment dismissing some counts of plaintiffs' complaint. He also granted plaintiffs partial summary judgment on liability regarding their

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[1] Sometimes during the course of this opinion we shall refer to plaintiffs by their first names. We intend no disrespect by this informality.

[2] A judgment of no cause of action was entered as to Wright after trial. Defendants have raised no issues as to that judgment, and Wright is not participating in this appeal.

CFA claims, but denied judgment "with respect to nexus [and] ascertainable loss."[3]

The parties reached a settlement that was ultimately set aside, and the matter was restored to the trial calendar.[4] Further motion practice before a second judge resulted in an order that denied plaintiffs' motion seeking judgment "as to ascertainable loss [] under the Consumer Fraud Act," specifying further that "all claims as to monetary damages must be tried[,]" but granted summary judgment "as to a finding of individual liability as to John S[]evastakis." Following a non-jury trial before a third judge, judgment was entered in favor of plaintiffs against defendants in the total amount of $761,527, comprised of: $165,956 in damages, which the judge trebled pursuant to the CFA, for a total of $497,868; a refund pursuant to N.J.S.A. 56:8-2.11 of $62,000 reflecting the contract amount; and $201,659 for the reasonable costs of suit, including $195,005 in counsel fees.

Defendants now appeal. They argue that plaintiffs failed to disclose that some of the renovations were for their "illegally operat[ed]" school, and therefore, plaintiffs were

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[3] A subsequent consent order clarified which counts of plaintiffs' complaint remained viable.

[4] We have not been supplied with sufficient information regarding the reasons why the settlement was set aside.

equitably estopped from any recovery under the CFA. Defendants also contend the judge's conclusion that their expert's proposed repairs would have been ineffective was not supported by the evidence, and that her award of counsel fees and costs was "unreasonable [and] unwarra[nt]ed."[5]

We have considered these arguments in light of the record and applicable legal standards. We affirm.

I.

"We review the trial court's determinations, premised on the testimony of witnesses and written evidence at a bench trial, in accordance with a deferential standard." D'Agostino v. Maldonado, 216 N.J. 168, 182 (2013).

> Final determinations made by the trial court sitting in a non-jury case are subject to a limited and well-established scope of review: "we do not disturb the factual findings and legal conclusions of the trial judge unless we are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice[.]"

[5] As contained in a fourth point heading, defendants argue that a nearly one-year delay between the end of trial and the judge's written decision and entry of judgment "negatively affected the court's ability to recall the facts and testimony, resulting in prejudice to [defendants]." Without condoning the significant delay, having carefully reviewed the record, including the judge's forty-four page written opinion, we find the argument lacks sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

> [Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011) (quoting In re Trust Created By Agreement Dated December 20, 1961, ex. rel. Johnson, 194 N.J. 276, 284 (2008) (internal quotation marks and citations omitted)).]

"'[W]e do not weigh the evidence, assess the credibility of witnesses, or make conclusions about the evidence.'" Mountain Hill, L.L.C. v. Twp. of Middletown, 399 N.J. Super. 486, 498 (App. Div. 2008) (quoting State v. Barone, 147 N.J. 599, 615 (1997)).

In general, the judge's factual "findings . . . should not be disturbed unless they are so wholly insupportable as to result in a denial of justice." Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 483-84 (1974) (quotation omitted). On the other hand, "[t]o the extent that the trial court's decision constitutes a legal determination, we review it de novo." D'Agostino, supra, 216 N.J. at 182 (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

II.

A.

We set forth the trial testimony only to the extent necessary to decide the issues presented on appeal, turning first to defendants' contention that plaintiffs were equitably estopped from asserting a violation of the CFA.

At the time of trial in 2012, plaintiffs had resided at their home in Toms River for approximately twenty-nine years. The home was built on a concrete slab, and plaintiffs had installed two minor additions over the years. Josephine testified that she had operated "a private Christian pre-school" at their home since 1983, and based upon speaking to a lawyer at that time, she did not believe the pre-school needed to be licensed. For years prior to hiring Sevas, plaintiffs used a converted garage space off of their kitchen as a school room.

Josephine first spoke to defendant in late 2002 or early 2003. In initial conversations, plaintiffs told him that they wanted "a simple addition. A dining room, a spa exercise room and a walk-in closet." No mention was made of a "school room." Josephine said that they also spoke of "a special roof to be designed to [her] specifications." Frank spoke to defendant about the need to have a crawl space under the addition to access the plumbing if it needed repairs.

The testimony diverged greatly regarding the hotly-contested issue of whether plaintiffs advised defendant of their desire to expand a portion of the home so that Josephine could

better serve her students and expand the business. Josephine in particular gave explicit testimony claiming to have discussed the issue with defendant in detail. She also claimed that defendant represented that he had obtained building permits for classroom projects and had completed them at other sites.

In his testimony, defendant acknowledged hearing Josephine refer to the planned addition off the kitchen as "the school room." But defendant saw no commercial fire extinguishers, illuminated exit signs, or anything else that made him think the existing house was used for non-residential purposes. He denied knowing about plaintiffs' business or making representations to plaintiffs that he had built classrooms in the past. The contract was signed in April 2003, and defendant claimed he was well into completing the work by September, when he first saw school buses and numbers of children arriving at the property.

In late October, Josephine received a call from the Division of Youth and Family Services which advised that she needed to comply with various regulations governing the school's operation, and that plaintiffs would need a variance to operate the school. They retained counsel and obtained the variance.

Somewhat entwined with this issue was the testimony at trial regarding preparation of the plans for the additions and other improvements, and the application for a municipal building permit. Defendant acknowledged drawing the plans himself. The

"class room" space was designated on the plans as a "great room." Defendant completed the building permit application and submitted it to the town.

Kenneth Anderson served as the building subcode official in 2003. He identified the permit application form, noting that Frank was identified as the principal contractor. The drawings that accompanied the application labeled four rooms as "great room, dining room, exercise room and walk-in closet," and Anderson understood "great room" to mean a "family room or living room." If any portion of those drawings had included a "schoolroom," Anderson stated that would have been "a definite red flag" causing additional questions and ultimately rejection of the application. In addition to the need for a design professional's involvement, a schoolroom would require attention to a host of other items including exits, fire alarms, and the loading capacity of the floor.

Pramod Pathak, the town's construction code official from 1987 to 2009, confirmed that Frank's name as the principal contractor meant Frank would be physically performing the work on the project. The municipality would nevertheless make any necessary contacts with defendant because he was listed as the "responsible person in charge of [the] work." Pathak explained the various inspections that his office would normally perform and that additional inspections would be needed if a nursery

school or daycare facility were being built. If the plans had indicated that a "schoolroom" were being built instead of a "great room," the municipality would have rejected the plans and required plaintiffs to first obtain zoning approval.

Plaintiffs never saw the permit application until years after it was submitted. During trial, the parties stipulated that defendant had signed Frank's name on the application without telling him, although defendant testified that he believed he had authority to do so.

In her written opinion, the trial judge found that plaintiffs and defendant were all "relatively poor witnesses." She determined that Josephine's testimony "often sounded rehearsed and strident" and, during cross-examination, "combative." Frank displayed "noticeable lapses" in his testimony, and he "contradicted himself on several occasions, albeit on issues of minor importance." Defendant "presented as a more polished witness" but also appeared "less than candid," particularly regarding plaintiffs' intended use of the addition and "his explanations for the way in which he filled out the permit application." The judge concluded that "[t]he parties' testimony ultimately failed to support either the plaintiffs' claims that [defendant] was provided with specific information about Josephine's business or [defendant's] claim that he was essentially 'duped' by the plaintiffs." In other respects,

however, the judge concluded the documentary evidence and other witnesses "persuasively supported critical aspects of [plaintiffs'] claims."

The judge found

> although [defendant] was aware that Josephine was operating a business out of the home, he was not aware of the precise number of children that were on the premises . . . nor was he ever told that Josephine required special permits, licenses or variances to operate her business, or that it was her intention to expand the business to the point where they would be needed.

The judge also found that it was only after "the relationship between the parties soured" and the school came under scrutiny that Josephine "fully explained the nature of her business to [defendant] and sought out his help in interceding with local officials."[6]

Regarding the permit application, the judge dismissed defendant's explanation for why he signed Frank's name to the document, stating "[t]he true reason for this misrepresentation is readily apparent." Relying on Pathak's testimony, the judge explained that defendant "represented to the Town that Frank . . . had prepared the plans for work on a building used exclusively as a single family residence [] and had assigned [defendant] to 'oversee the work.'" Had the plans designated

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[6] Defendant was an elected municipal official at the time.

the addition as a "school room," it would have constituted "mixed use" construction, in which case Frank could not have prepared the plans and additional inspections would have been required. Alternatively, if defendant had disclosed that he was the principal contractor, or identified the project as a mixed use, he could not have used his own drawings and most likely would have needed to engage an architect.

In an extended footnote in her opinion, the judge described and rejected defendants' argument that plaintiffs should be equitably estopped from pursuing a CFA claim because they failed to disclose they were operating an illegal day care center. The judge reasoned that even if he was unaware of that use, defendant "was unquestionably aware" through his experience that designating a room as a "school room" on the plans, as the parties had discussed and written in the contract documents, would have raised questions about the use and the need to hire a design professional.[7] Because he provided no credible explanation for using the label "great room" on the application for the construction permit, the court found defendant's "own complicity in making intentional misrepresentations to the Town [] preclude[d] him from seeking equitable relief."

[7] The contract and subsequent amended contract, prepared by defendant, specifically included defendants' agreement to "install linoleum in school room."

Defendants now reiterate their argument before us that plaintiffs should be equitably estopped from recovery under the CFA because their school was being operated without necessary licenses and without local zoning approval. We disagree.

The Court has repeatedly recognized that the "objective" of the CFA is "'to greatly expand protections for New Jersey consumers.'" D'Agostino, supra, 216 N.J. at 183 (quoting Bosland v. Warnock Dodge, Inc., 197 N.J. 543, 555 (2009)). In providing for a private cause of action under the CFA, the Legislature created an

> "efficient mechanism to: (1) compensate the victim for his or her actual loss; (2) punish the wrongdoer through the award of treble damages; and (3) attract competent counsel to counteract the 'community scourge' of fraud by providing an incentive for an attorney to take a case involving a minor loss to the individual."
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> [Id. at 183-84 (quoting Weinberg v. Sprint Corp., 173 N.J. 233, 249 (2002) (citation omitted)).]

CFA claims may be divided into three "categories": "claims involving affirmative acts, claims asserting knowing omissions, and claims based on regulatory violations." Bosland, supra, 197 N.J. at 556. To succeed on a CFA claim, a private plaintiff must prove unlawful conduct by a defendant, an ascertainable loss and a causal relationship between the two. D'Agostino, supra, 216 N.J. at 184 (citation omitted).

In this case, it is beyond dispute that the evidence supported the judge's finding of numerous regulatory violations by defendants. See, e.g., Perez v. Professionally Green, LLC, 215 N.J. 388, 400-01 (2013) (discussing regulatory violations under N.J.A.C. 13:45A-16.2(a)(12) involving home improvement contracts). For this reason alone, defendants' argument that had plaintiffs been fully forthcoming regarding their operation of a pre-school there would have been no violation of the CFA lacks sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E). We focus, therefore, solely on defendants' claim that plaintiffs should be equitably estopped from recovery under the CFA.

Application of equitable estoppel "requires 'a knowing and intentional misrepresentation by the party sought to be estopped under circumstances in which the misrepresentation would probably induce reliance, and reliance by the party seeking estoppel to his or her detriment.'" Bridgewater-Raritan Educ. Ass'n v. Board of Educ., 221 N.J. 349, 364 (2015) (quoting O'Malley v. Dep't of Energy, 109 N.J. 309, 317 (1987)). We have applied the doctrine of equitable estoppel in the context of a CFA claim.

For example, in Joe D'Egidio Landscaping, Inc. v. Apicella, 337 N.J. Super. 252 (App. Div. 2001), the plaintiff-landscaper and defendant-homeowner were related by marriage and discussed

at a family gathering the paving of the homeowner's driveway. Id. at 255. The landscaper prepared and presented a written estimate and contract to the homeowner before the work began, but the homeowner refused to sign the contract, claiming that he was insulted because he and the plaintiff were lifelong friends. Id. at 255-56. A dispute arose when the homeowner later refused to pay, leading to the plaintiff's complaint and a counterclaim by the defendant. Id. at 256.

One of the issues that arose was whether the plaintiff's failure to supply a written estimate, a regulatory violation, provided a basis for the defendant's recovery under the CFA. Ibid. We held that under the circumstances the homeowner was not entitled to the CFA's protection since "he was the one who insisted a written contract was unnecessary." Id. at 257. We concluded in affirming judgment for the plaintiff that the case was "an entirely appropriate one in which to invoke the equitable doctrine of estoppel." Id. at 258; see also Messeka Sheet Metal Co. v. Hodder, 368 N.J. Super. 116, 127-29 (App. Div. 2004) (reaffirming applicability of equitable estoppel to CFA claims, but holding it was inapplicable where there was no direct relationship between the plaintiff-subcontractor and the consumer-defendants).

In contrast, in Scibek v. Longette, 339 N.J. Super. 72, 76 (App. Div. 2001), we reversed dismissal of a CFA counterclaim

against an automobile repairperson who failed to give the defendant-consumer a written estimate and did not obtain written authorization to complete the repairs. We acknowledged that the defendant was aware of the CFA requirements because he also had been in the automobile repair business for many years. Id. at 77. Nevertheless, we distinguished D'Egidio Landscaping, stating there "the defendant actually beseeched the plaintiff to violate the Act's prescriptions," whereas in Scibek, "the record does not suggest that defendant did anything to cause plaintiff to violate the Act. While perhaps [the] defendant's conduct was less than exemplary, we perceive[d] no sound basis to deny him the benefit of the Act's protection." Id. at 84-85.

Neither party cited to our decision in Sprenger v. Trout, 375 N.J. Super. 120 (App. Div. 2005), which has some similarities to the facts of this case. There, the plaintiff sued the defendants alleging CFA regulatory violations regarding automotive customization and repair work. Id. at 125. The trial judge barred the defendants from introducing evidence that the plaintiff had "wrongfully or illegally obtained parts that were used in the customization of his vehicle." Id. at 134. The defendants argued that "if . . . stolen or unauthorized parts were brought by [the] plaintiff to [the] defendants' business, [the] plaintiff should not be able to assert a CFA cause of action against their . . . business which was enticed

to use those parts and thereby take advantage of the treble damages provision of the CFA." Id. at 135.

We noted that "[n]o New Jersey case has been cited or found that has applied the equitable doctrine of 'unclean hands' in a consumer fraud context." Id. at 136. More importantly for our purposes here, we said

> the allegation of unclean hands here does not refer to a wrong perpetrated by plaintiff against defendants but rather by plaintiff against his own employer. There is no suggestion of a connection between the origin of the parts and a violation of the CFA. Even if the parts were acquired by theft from plaintiff's employer, that conduct would not bar recovery under the CFA against defendants. It may provide a basis for a cause of action by plaintiff's employer against plaintiff based on the tort of conversion. If plaintiff's employer contends a crime has been committed, the employer could lodge a criminal complaint. However, those facts do not provide a basis to invalidate a CFA cause of action with respect to defendants' contractual relationship with plaintiff.
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> [Id. at 136-37 (emphasis added).]

We also concluded that equitable estoppel did not apply because

> it was not plaintiff's conduct that caused defendants to agree to continue to repair and customize the jeep. There was [] no detrimental reliance entitling defendants to the defense of equitable estoppel under these facts. The fact that plaintiff repeatedly brought more and more parts over the course of the repair and customization work may have induced defendants to continue the job but did not induce them to violate the CFA.

[Id. at 138.]

Here, the judge's findings that defendant misrepresented the nature of the work on the building permit certainly implies that defendant had some knowledge of the intended use of the "great room" additions. However, assuming arguendo plaintiffs failed to advise defendant that they had never secured a variance or the proper licenses for the pre-school, defendant's lack of knowledge in that regard did not "induce" him to commit the regulatory and other violations of the CFA found by the trial judge. Ibid. Defendant may have altered the proposal he made to plaintiffs had he known the full scope of the intended use, or, he may not have submitted a proposal at all, but plaintiffs did nothing "to cause [defendants] to violate the Act." Scibek, supra, 339 N.J. Super. at 85. Further, plaintiffs' violation of local zoning laws and licensing requirements were issues to be resolved between plaintiffs and the proper governmental agencies. There was no "connection" between plaintiffs' conduct and defendants' failure to comply, at the least, with the home improvement regulatory requirements. Sprenger, supra, 375 N.J. Super. at 136.

We find no basis to reverse the judgment on this ground.

B.

Plaintiffs called Frederick A. Porcello, P.E., P.P., as an expert witness. Porcello described in detail construction defects he identified, specifically citing code requirements with which defendants failed to comply. Given the extent and nature of the problems, Porcello concluded that the most cost-effective remedy was to totally demolish defendants' work and rebuild with a new design.

Not unexpectedly, defendants' expert Pravin Patel, P.E., P.P., concluded that total demolition was unnecessary. He described in detail a method of remediating problems with the foundations footings that would cost $14,000 to $15,000. He also described another method that would cost even less money. Asked about Porcello's recommendation of a complete demolition of the addition, Patel said "that's going too far. That's absurd." Patel did not, however, address other alleged construction defects and their correction costs.

In her written opinion, the judge specifically acknowledged that "some of these discrete defects could ultimately have been remediated" without demolition, but she concluded these defects were "subsumed within the more significant, consumer fraud related defects." These included not only the footings, but also problems with the roof and the complete lack of a crawl space under the addition. She concluded that "taken together, [these defects] render the addition incapable of remediation."

The judge accepted Porcello's testimony that "the most cost-effective and coherent method for addressing the core CFA related deficiencies in the addition is to demolish and replace it."

Defendants contend that the judge erred in awarding damages for the costs of complete demolition when the weight of the evidence supported a finding that a less costly repair of the foundation would have been effective. They argue that Porcello himself recognized that one of the repairs suggested by Patel could address the insufficient foundation footings that resulted from defendants' work. We find defendants' argument to be unpersuasive.

It is axiomatic that "[a] trial court is free to accept or reject the testimony of either side's expert, and need not adopt the opinion of either expert in its entirety." Brown v. Brown, 348 N.J. Super. 466, 478 (App. Div.), certif. denied, 174 N.J. 193 (2002). In this case, the judge rejected Patel's opinions primarily because they failed to address the entire costs associated with the myriad defects in construction. The judge understood, for example, that the options suggested by Patel would not result in a crawl space under the addition, something that was specified in the parties' contract. The judge pointed to other deficiencies that would remain uncorrected using Patel's proposed lower cost alternative to address the footings.

In short, the argument provides no basis to reverse the judgment.

III.

Defendants contend that the award of counsel fees and costs was excessive and determined without consideration of concededly late opposition that they filed. They argue that even if plaintiffs were entitled to an award under the CFA, the judge "rubber stamped" plaintiffs' request. We disagree.

We begin by noting that "[u]nder the CFA, a prevailing plaintiff is entitled to recover reasonable attorney fees, filing fees and costs of suit." Heyert v. Taddese, 431 N.J. Super. 388, 443 (App. Div. 2013) (citing N.J.S.A. 56:8-19; Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 21 (2004)). "Fee determinations by trial courts will be accorded substantial deference and disturbed only on the rarest of occasions and then only because of a clear abuse of discretion." Id. at 444 (citing Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 444 (2001)). "An abuse of discretion in the award of counsel fees may be demonstrated 'if the discretionary act was not premised upon consideration of all relevant factors, was based upon consideration of irrelevant or inappropriate factors, or amounts to a clear error in judgment.'" Ibid. (quoting Masone v. Levine, 382 N.J. Super. 181, 193 (App. Div. 2005)).

Plaintiffs filed an affidavit of services seeking $219,790 in fees, representing 957.38 hours of attorney time. Defendants' response asserted that plaintiffs had no valid CFA claim and further argued the merits of the request. Defense counsel sought "to be heard" on the fee application, and the judge ultimately set a date for oral argument.

During that argument, defendants' counsel stated that he saw "absolutely no reason to question the validity" of plaintiffs' counsel's hourly rate, and he did not "have any fundamental dispute with . . . the words he has in [certification of services] or the amount of time that was spent."

Apparently, in the afternoon after argument, defendants served what the judge described in her written opinion as approximately one hundred pages of additional briefing, certification and attachments. In her written decision, the judge explained the circumstances and declined to consider this late filing. The judge also stated that she had "reviewed in detail" the billing submissions and took "no exception to the amount of work performed." She did, however, explain and include her reasons for excluding travel time and expert fees. She found the hourly rates charged to be consistent with hourly rates in the area. The judge calculated the award and included that amount in the judgment.

Initially, defendants take issue with the fact that the judge refused to consider their supplemental opposition. That argument lacks sufficient merit to warrant discussion, particularly since months passed between the filing of the original opposition, defendants' request for oral argument, notification of the date for argument and the actual argument. R. 2:11-3(e)(1)(E). We also reject defendants' more substantive arguments.

It is clear that the judge did not "rubber stamp" the fee request. As noted, defendants did not challenge the actual time spent by plaintiffs' counsel as reflected in the certification, nor the hourly rate. Contrary to defendants' contention, the judge did exclude attorney travel time and expert fees.

Defendants argue that plaintiffs were not entitled to any fees for time spent proving non-CFA claims and claims against the third-party defendant. But the judge concluded all the issues in the case were entwined with plaintiffs' CFA claims. As we recently said,

> When addressing statutorily authorized fee awards for "separate claims in a complaint [which] share a common core of facts with . . . or are based on related legal theories, the trial judge, when awarding fees, must focus on the significance of the overall relief obtained by [the] plaintiff in relation to the hours reasonably expended."

> [*EnviroFinance Group, LLC v. Envtl. Barrier Co.*, 440 *N.J. Super.* 325, 343 (App. Div. 2015) (quoting *Silva v. Autos of Amboy, Inc.*, 267 *N.J. Super.* 546, 551 (App. Div. 1993)).]

The judge did not abuse her discretion in this regard.

Defendants also argue that no award should have been made for time expended in negotiating and attempting to enforce the ultimately failed settlement. Here, too, we cannot conclude the judge mistakenly exercised her discretion.

Early in the litigation, plaintiffs successfully sought and were awarded partial summary judgment on liability. They successfully obtained summary judgment as to defendant's personal liability under the CFA. In other words, defendants knew that the only issues left in the case were whether plaintiffs suffered an ascertainable loss and, if so, what was the amount of damages. Plaintiffs' attempts to ultimately secure a judgment were opposed at every step, and we cannot conclude the judge mistakenly exercised her discretion in awarding fees in this regard.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION