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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5728-09T1

VIVIAN YING and DAVID YING,

Plaintiffs-Respondents,

v.

FRANK LI,

Defendant-Appellant,

and

AMERICAN EAST CONSTRUCTION, INC.,

Defendant.

Submitted October 24, 2012 - Decided February 22, 2013

Before Judges Simonelli and Koblitz.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Docket No. L-2111-07.

Frank Li, appellant pro se.

Respondents have not filed a brief.

PER CURIAM

This case involves claims against defendants Frank Li (Li) and his company, American East Construction, Inc. (American), based on violations of the New Jersey Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 to -195, specifically the Contractors'

Registration Act (CRA), N.J.S.A. 56:8-136 to -152, and the Home Improvement Practices (HIP) regulations, N.J.A.C. 13:45A-16.1 to -16.2. Li appeals from the June 18, 2010 Law Division judgment entered against him individually in the amount of $73,500, plus $22,264.85 for counsel fees and costs. The judgment also dismissed Li's counterclaims.[1] We affirm.

Plaintiffs Vivian Ying and David Ying (collectively plaintiffs) decided to renovate their townhouse located in Old Bridge. They hired Li based on a Chinese language newspaper advertisement, which the interpreter read into the record as "American East Construction. Million dollar Insurance. Quality first. Specialize in deck, . . . basement renovation, . . . bathroom renovation, ceramic tile, wood floor, indoor exterior interior wall, paint and electricity . . . [and] new house addition[.]" Li met with plaintiffs and represented that he had the necessary license and a $1 million insurance policy. He also gave them a business card, which indicated that he was "fully insured."

[1] Li filed two counterclaims. The first counterclaim, filed by an attorney, alleged frivolous litigation, breach of contract, breach of the covenant of good faith and fair dealing, and unjust enrichment. The second counterclaim, filed by Li pro se, alleged fraud, breach of contract, breach of an oral agreement, breach of the covenant of good faith and fair dealing, and unjust enrichment.

On October 14, 2006, the parties entered into a contract for $9500, which covered the labor to renovate the second and third floor bathrooms and remodel other rooms on the third floor. Plaintiffs would separately purchase the materials. The contract required Li to complete the work in "about 20 days."

Li began the project on October 21, 2006. After approximately two weeks, plaintiffs complained to Li about the progress of the job and the quality of the work. By November 18, 2006, plaintiffs had paid Li $8995, but Li had not completed the work. Plaintiffs again complained to Li about the quality of the work, and demanded that Li complete the remaining work, which he never did complete.

Although the property and the parties were located in Middlesex County, on July 26, 2007, plaintiffs filed a complaint in Morris County. On May 4, 2010, the first day of trial, Li's attorney orally requested a transfer to Middlesex County. The trial judge denied the request. He found that Li had not filed a motion to transfer, the case was three years old, and the parties, expert witnesses, and two official Mandarin Chinese court interpreters were present and ready to proceed with the trial.[2]

[2] The parties agreed to a bench trial.

Plaintiffs presented David Matthews as an expert licensed building inspector. Li objected to the admission of Matthews's expert report, claiming it had been served after discovery ended in July 2008. The judge admitted the report, finding that plaintiffs had served it in August 2008, Li had ample time to respond to it or file a motion to bar it, and barring the report at the time of trial "would [cause] incredible prejudice" to plaintiffs.

Matthews testified about the nature and extent of Li's defective workmanship and violation of the New Jersey Uniform Construction Code,[3] the municipal code, and accepted industry standards, including Li's failure to obtain permits and required inspections. Matthews concluded as follows:

> [Li] . . . by way of the extraordinary number and significance of errors, omissions and shoddy workmanship clearly failed to perform [his] work to accepted industry standards of care and workmanship. [His] actions, including failure to obtain required construction permits and inspections, demonstrate a remarkable lack of basic knowledge and a flagrant disregard for compliance with applicable industry standards of practice and care. As a direct and proximate result of [Li's] negligence, [plaintiffs] are faced with substantial costs and inconvenience associated with correcting numerous construction defects and assuring compliance with State mandated building code regulations and standards.

[3] N.J.A.C. 5:23-1 to -12A.6.

Ultimately, Matthews opined that Li's work had to be removed and completely redone. In addition to Matthews's testimony, numerous photographs depicting Li's poor workmanship were admitted into evidence.

Plaintiffs also presented Alan Huang as an expert licensed home improvement contractor. Li objected to the admission of Huang's estimate of the cost of labor and materials needed to remove and redo Li's work, claiming he never received it. The judge admitted the estimate, finding that plaintiffs had served it in 2008.

Huang estimated that the labor to remove Li's work and properly complete it would cost $37,100, eighty percent of which was for actual labor costs. Huang also estimated that materials would cost $27,400, which included marble and ceramic tile, a Jacuzzi tub, a shower base unit, a shower tub pan, two shower doors, two toilet seats, sinks, vanity cabinets, faucets, mirrors, lights, exhaust fans, paint, hardwood floors, stairs, and railing. Huang admitted, however, that the Jacuzzi tub, toilets, vanities, mirrors, shower doors, and exhaust fans that were already installed could possibly be salvaged.

Li testified he was the president of American and physically performed the work American had contracted. He admitted he did not have the necessary licenses or insurance.

He did not dispute there were no permits obtained for the work, and did not challenge the testimony of plaintiffs' experts or the photographs admitted into evidence.

In a June 17, 2010 written opinion, the judge concluded that Li committed substantial "unlawful practices" under the CFA. The judge found that Li was not registered as a home improvement contractor; had no commercial general liability insurance and falsely advertised he had insurance; and performed the work without licenses and construction permits. The judge also determined that the contract failed to provide a beginning and end date of the project.

The judge concluded that Li's workmanship was "shoddy and completely inadequate[,]" and Li breached the contract as to workmanship. The judge also determined that the "participation theory" set forth in Saltiel v. GSI Consultants, Inc., 170 N.J. 297 (2002), and the holding in Kugler v. Koscot Interplanetary, Inc., 120 N.J. Super. 216, 257 (Ch. Div. 1972) applied to impose personal liability on Li. The judge found that Li was sufficiently involved in the commission of the CFA violations, "as it was he who was required to hold licenses and it was he who did the work on plaintiff[s]' house."

The judge discounted Huang's labor and materials estimates and determined that plaintiffs suffered an ascertainable loss in

the amount of $15,000 for labor and $9500 for materials to remove Li's defective work and properly complete the work, for total damages of $24,500. The judge trebled the amount pursuant to the CFA, then entered judgment in the amount of $73,500 against Li individually, and against American. The judge also reviewed plaintiffs' counsel's affidavit of services, which Li did not challenge, and entered judgment pursuant to N.J.S.A. 56:8-19 in the amount of $22,264.85 for plaintiffs' reasonable counsel fees and costs. This appeal followed.

On appeal, defendant raises the following contentions:

> I. THE TRIAL COURT COMMITTED HARMFUL ERROR WHEN IT HELD THAT IT COULD ELECT TO EXERCISE ITS DISCRETION TO HEAR THIS CASE OVER WHICH IT DID NOT HAVE JURISDICTION[.]
>
> II. THE TRIAL COURT COMMITTED HARMFUL ERROR WHEN IT ACCEPTED ALAN HUANG AS [A] QUALIFIED EXPERT WITNESS WHEN ALAN [HUANG] HAD VIOLATED [THE] CONTRACTOR'S REGISTRATION ACT AND CONSUMER FRAUD ACT[.]
>
> III. THE TRIAL COURT COMMITTED HARMFUL ERROR WHEN IT PERMITTED PLAINTIFFS' EXPERT WITNESSES TO TESTIFY DESPITE UNPRODUCED AND/OR UNTIMELY REPORTS[.]
>
> [IV.] THE TRIAL COURT COMMITTED PLAIN ERROR WHEN IT HELD THE PLAINTIFFS['] AND THEIR EXPERTS' [TESTIMONY] AS UNDISPUTED WHEN IT ONLY HEARD DEFENDANT[-]APPELLANT FRANK LI'S BRIEF TESTIMONY[.]

[V.] THE TRIAL COURT COMMITTED HARMFUL ERROR WHEN IT ACCEPTED THE YINGS' AND THEIR EXPERT MR. MATTHEWS' [TWENTY-EIGHT PIECES] OF QUESTIONABLE[-]EVIDENCE PICTURES AS [CREDIBLE EVIDENCE] TO MAKE ITS JUDGMENT[.]

VI. THE TRIAL COURT MADE HARMFUL ERROR WHEN IT ACCEPTED THE YINGS' FALSE [TESTIMONY] AS CREDIBLE [TESTIMONY] TO MAKE ITS JUDGMENT[.]

VII. THE TRIAL COURT COMMITTED HARMFUL ERROR WHEN IT ACCEPTED[]THE YINGS' EXPERT[] MATTHEWS' FALSE [TESTIMONY] AS CREDIBLE [TESTIMONY] TO MAKE ITS JUDGMENT.

VIII. THE TRIAL COURT COMMITTED PLAIN AND HARMFUL ERROR [W]HEN IT CALCULATED DAMAGES BASED ON THE YINGS' AND THEIR EXPERTS' FALSE EVIDENCE[] AND [TESTIMONY.]

[IX.] THE TRIAL COURT COMMITTED PLAIN AND HARMFUL ERROR WHEN IT HELD THAT DEFENDANT[-]APPELLANT FRANK LI WAS PERSONALLY LIABLE TO THE PLAINTIFFS IN THIS CONTRACT ACTION DESPITE THE PLAIN LANGUAGE OF THE APPLICABLE ACT[.]

[X.] THE TRIAL COURT COMMITTED PLAIN ERROR WHEN IT DISMISSED ALL OF DEFENDANTS' COUNTERCLAIMS AND DID NOT PROVIDE ANY CREDIT TO DEFENDANTS FOR THE WORK PERFORMED[.]

XI. THE TRIAL COURT COMMITTED PLAIN ERROR WHEN IT PERFORMED ITS OWN INVESTIGATION INTO THE OUTCOME OF A DEPARTMENT OF CONSUMER AFFAIRS

RULING THAT WAS NOT RAISED BY THE PLAINTIFFS AT TRIAL[.]

We have considered Li's contentions in light of the record and applicable law and conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We affirm substantially for the reason the judge expressed in his June 17, 2010 written opinion. However, we make the following comments.

Our review of a trial court's fact-finding in a non-jury case is limited. Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011). "'The general rule is that findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence. Deference is especially appropriate when the evidence is largely testimonial and involves questions of credibility.'" Ibid. (quoting Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). We "should 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." Ibid. (internal quotation omitted). However, we owe no deference to a trial court's interpretation of the law, and review issues of law de novo. State v. Parker, 212 N.J. 269, 278 (2012); Mountain Hill, L.L.C. v. Twp. Comm. of Middletown,

403 N.J. Super. 146, 193 (App. Div. 2008), certif. denied, 199 N.J. 129 (2009). We also review mixed questions of law and fact de novo. In re Malone, 381 N.J. Super. 344, 349 (App. Div. 2005).

"'The Legislature enacted the CFA in 1960 to address rampant consumer complaints about fraudulent practices in the marketplace and to deter such conduct by merchants.'" Murnane v. Finch Landscaping, LLC, 420 N.J. Super. 331, 336 (App. Div.) (quoting Thiedemann v. Mercedes-Benz U.S.A., LLC, 183 N.J. 234, 245 (2005)), certif. denied, 208 N.J. 600 (2011). In 1980, the Division of Consumer Affairs (DCA) adopted the HIP regulations to deal with home improvement contracts. Ibid. In 2004, the Legislature enacted the CRA as a supplement to the CFA. Id. at 336-37. "Any violation of the [CRA] is an 'unlawful act' under the CFA." Id. at 337.

A home improvement contractor must register with the DCA and cannot advertise that he is a contractor in this State unless registered. N.J.S.A. 56:8-138; N.J.A.C. 13:45A-17.3(a)(1) and (2). A home improvement contractor must also have commercial general liability insurance in a minimum amount of $500,000 per occurrence. N.J.S.A. 56:8-142a; N.J.A.C. 13:45A-17.12(a) and (b).

A home improvement contractor cannot "commence work until he is sure that all applicable state or local building construction permits have been issued as required under state laws or local ordinances." N.J.A.C. 13:45A-16.2(a)(10)(i). In addition, where required under state laws or local ordinances, a home improvement contractor must obtain a final inspection when the construction is completed and before final payment is due. N.J.A.C. 13:45A-16.2(a)(10)(ii).

A home improvement contract must contain the legal name, business address, and registration number of the contractor, and the dates or time period on or within which the work is to begin and be completed. N.J.S.A. 56:8-151; N.J.A.C. 13:45A-16.2(a)(12)(i) and (iv). A home improvement contractor must begin or complete the work on the date or within the time period specified in the contract, or give timely written notice of reasons beyond his control for any delay in performance, and when the work will begin or be completed. N.J.A.C. 13:45A-16.2(a)(7)(ii) and (iii).

The record in this case clearly established that Li violated all of the above-mentioned statutes and regulations, and thus, engaged in unlawful acts under the CFA. Li was not registered with the DCA; he unlawfully advertised he was a home improvement contractor in this State; he had no commercial

general liability insurance; he commenced the work without permits; he did not complete the work within the time period specified in the contract and gave no timely written notice of the reasons for the delay; and he did not obtain any inspections. In addition, the contract did not contain a registration number or the dates or time period on or within which the work was to begin and be completed.

We are also satisfied that the judge properly held Li personally liable under the participation theory. Li intentionally committed numerous unlawful acts under the CFA and numerous violations of the HIP regulations.

Affirmed.