STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: May 16, 2017)

MANAGEMENT CAPITAL, L.L.C.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. PB-2008-2364**
	:	
F.A.F., INC. and ARTHUR FIORENZANO,	:	
	:	
	:	
Defendants.	:	

DECISION

SILVERSTEIN, J. Before the Court are Defendant F.A.F., Inc.'s (F.A.F.) post-trial motions: a motion for a new trial pursuant to Super. R. Civ. P. 59(a); and, in the alternative, a motion to alter or amend the judgment pursuant to Super. R. Civ. P. 59(e) (collectively, the post-trial motions). Management Capital, L.L.C. (Management) objects to both motions. The Court exercises jurisdiction pursuant to G.L. 1956 §§ 8-2-13 and 8-2-14.

I

Facts and Travel

F.A.F.'s post-trial motions arise out of a decision that this Court rendered on January 17, 2017. See Mgmt. Capital, L.L.C. v. F.A.F., Inc., No. PB-2008-2364, 2017 WL 265064 (R.I. Super. Jan. 17, 2017) (Silverstein, J.). On January 17, 2017, this Court, sitting without a jury, decided three issues that were presented at trial: (1) whether Management established by clear and convincing evidence that there was a mutual mistake between the parties necessary to warrant contract reformation; (2) whether the term "funded debt"—as used in the common stock warrant made between the parties (the Warrant)—meant "all debt" or "long-term debt"; and (3)

whether F.A.F. anticipatorily repudiated the Warrant, which granted Management certain put and call rights.[1] The Court found in Management's favor on all three of those issues. Specifically, the Court reformed the Warrant to reflect what the evidence established as the true intent of the parties, held that the term "funded debt" meant "long-term debt," and concluded that F.A.F.—through a series of statements and actions that amounted to a positive and unconditional refusal to perform—anticipatorily repudiated the Warrant. Id. at *6, 7, 12. After concluding that "Management [] proved its damages with reasonable certainty," the Court found that Management was entitled to damages in the amount of $1,234,055, plus prejudgment interest. Id. at *13, 14.

Shortly after the Court rendered the aforementioned decision, Management moved to enter an order purporting to accurately reflect the Court's findings of fact and rulings of law in this case; however, F.A.F. strenuously objected to the form of the order. After accepting memoranda and hearing from both parties on that matter, this Court again found in Management's favor and entered an order and judgment on March 22, 2017 awarding Management $1,234,055, plus prejudgment interest and costs. The Court's entry of the order and judgment prompted the post-trial motions presently before the Court.

On March 31, 2017, F.A.F. timely filed the post-trial motions, which were accompanied by a memorandum over sixty pages in length. Management filed an objection as well as its own memorandum, after which F.A.F. filed a reply memorandum. On April 24, 2017, the Court heard from both parties. After considering the arguments set forth both on paper and in person, the Court now decides F.A.F.'s post-trial motions.

[1] For reference, the Warrant was a contract executed between Management and F.A.F. that gave Management "two options: it could buy shares in F.A.F. or it could put the Warrant." Mgmt. Capital, L.L.C., 2017 WL 265064, at *2.

II

Standard of Review

Pursuant to Super. R. Civ. P. 59(a), "[a] new trial may be granted to all or any of the parties and on all or part of the issues for error of law occurring at the trial or for any of the reasons for which new trials have heretofore been granted in the courts of this state." Moreover, "[o]n a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment." Id. Interpreting Rule 59(a) of our Rules of Civil Procedure, the Rhode Island Supreme Court has consistently held that: "a trial justice sitting without a jury may grant a new trial only

> '(1) if there is an error in the judgment that is manifest on the face of the record without further examination of matters of fact or evidence;[] or (2) if the trial justice is satisfied that newly discovered evidence has come forward which was not available at the first trial and is of sufficient importance to warrant a new trial.'" Manchester v. Pereira, 926 A.2d 1005, 1015 (R.I. 2007) (quoting Tillson v. Feingold, 490 A.2d 64, 66 (R.I. 1985)) (emphasis added).

Put another way, Super. R. Civ. P. 59(a) motions brought after a nonjury trial may only be granted if the trial court finds that it committed a manifest error of law based "on the face of the record" or upon the presentation of newly discovered evidence. See id.

Super. R. Civ. P. 59(e) motions to alter or amend a judgment are governed by the same standard. As our Supreme Court has explained, "[a] trial justice may review his or her own decision after a nonjury trial in a civil matter 'only if [he or she] found a manifest error of law in the judgment entered or if there was newly discovered evidence but unavailable at the original trial and sufficiently important to warrant a new trial.'" Bogosian v. Bederman, 823 A.2d 1117, 1119 (R.I. 2003) (determining whether "the trial justice erred in granting the Rule 59(e) motion")

(quoting Am. Fed'n of Teachers Local 2012 v. R.I. Bd. of Regents for Educ., 477 A.2d 104, 105-06 (R.I. 1984)); see also Greensleeves, Inc. v. Smiley, 68 A.3d 425, 434 (R.I. 2013) (stating that "a trial justice's ruling on a Rule 59(e) motion following a bench trial will be overturned only if he or she committed a 'manifest error of law in the judgment'") (quoting Am. Fed'n of Teachers Local 2012, 477 A.2d at 105). For purposes of Rules 59(a) and (e) of our Rules of Civil Procedure, "'a manifest error of law in a judgment would be one that is apparent, blatant, conspicuous, clearly evident, and easily discernible from a reading of the judgment document itself.'" Manchester, 926 A.2d at 1015 n.6 (quoting Am. Fed'n of Teachers Local 2012, 477 A.2d at 106); see also Bernier v. Lombardi, 793 A.2d 201, 202 (R.I. 2002). As our Supreme Court has succinctly stated, "[i]f the error is not obvious unless one reads the underlying decision . . . the error is not a manifest error . . . ." Am. Fed'n of Teachers Local 2012, 477 A.2d at 106.

III

Discussion

In moving for a new trial and, in the alternative, to alter or amend the judgment, F.A.F. argues that the Court made the following manifest errors of law in its January 17, 2017 decision: (a) "[F.A.F.] Did Not Repudiate Its Obligations Under The Warrant"; (b) "[Management] Did Not Treat [F.A.F.'s] Alleged Repudiation As A Breach"; (c) "Funded Debt As Used In The Warrant Means All Of [F.A.F.'s] Bank Debt"; (d) "[Management] Did Not Prove Its Damages With Reasonable Certainty"; (e) "Pre-Judgment Interest Should Not Accrue From October 13, 2008"; (f) "[t]he Warrant Should Not Be Reformed"; and (g) "Judgment Should Enter In Favor of [F.A.F.] On Its Counterclaims[.]" See Def. F.A.F., Inc.'s ("FAF") Mem. in Supp. of its Mot. for New Trial, Entry of New J. and/or Mot. to Alter/Amend J. at 1 (hereinafter F.A.F.'s Mem.).

F.A.F. urges this Court to consider the evidence presented at trial, make alternative findings of fact, and alter its conclusions of law with respect to the judgment entered on March 22, 2017.[2]

Management, in opposing F.A.F.'s post-trial motions, counters that the standard of review for F.A.F.'s post-trial motions does not allow the Court to delve into facts already decided and rehash arguments already made. Rather, according to Management, the standard of review articulated above—a standard which F.A.F. does not challenge, see F.A.F.'s Reply Mem. at 1-3—directs the Court to focus on the judgment entered, and nothing further. Management essentially argues that the singular focus of the Court when reviewing Super. R. Civ. P. 59(a) and 59(e) motions is whether there appears, from the judgment document alone, a manifest error of law.

As implied by the standard of review outlined supra, the Court agrees with Management that its review of F.A.F.'s post-trial motions is rather limited and, therefore, addresses each of F.A.F.'s arguments with the "manifest error of law" standard in mind. However, in determining whether it has committed a manifest error of law for purposes of Rule 59 of our Rules of Civil Procedure, the Court is not confined to the judgment document alone, as Management argues. Rather, as explained by our Supreme Court, this Court will search for manifest errors of law "on the face of the record without further examination of matters of fact or evidence[,]" Manchester, 926 A.2d at 1015—i.e., "from a reading of the judgment document itself[,]" id. at 1015 n.6, in conjunction with a "read[ing] [of] the underlying decision." Am. Fed'n of Teachers Local 2012, 477 A.2d at 106.

[2] Of note, F.A.F. does not present "'newly discovered evidence . . . which was not available at the first trial and is of sufficient importance to warrant a new trial[,]'" so the Court need not delve into case law on that front. Manchester, 926 A.2d at 1015 (quoting Tillson, 490 A.2d at 66).

First, F.A.F. argues that the Court made a manifest error of law in finding that F.A.F. repudiated its obligations under the Warrant. Generally, F.A.F. claims that "[n]one of the testimony or the exhibits cited by the Court supports" the factual findings that led the Court to conclude that F.A.F.—through the statements and actions of its CEO, CFO, and attorney—positively and unconditionally refused to perform. See F.A.F.'s Mem. at 3. F.A.F. asks this Court to apply what it calls the "demand more/offer less rule" and the "good faith interpretation rule" that would treat F.A.F.'s statements and actions as good faith negotiations and not actions amounting to an anticipatory repudiation, or breach of contract. In arguing that the Court should grant a new trial or alter the judgment on that basis, F.A.F. invites the Court to reopen the trial evidence and make new conclusions of fact and law. However, this is something the Court cannot—and should not—do under Rules 59(a) and 59(e) of our Rules of Civil Procedure. See Manchester, 926 A.2d at 1015. The Court explicitly found that F.A.F. repudiated the Warrant. See Mgmt. Capital, L.L.C., 2017 WL 265064, at *11 ("Through the combined statements and actions of its attorney, CFO, and CEO, F.A.F. positively and unconditionally made clear to Management that F.A.F. would not perform its obligations as provided by the Warrant."). The judgment entered in this case accurately reflects that finding. See J. at 2 (Mar. 22, 2017). Indeed, as Management points out, the Court rejected the argument that F.A.F. could characterize its statements and actions as mere good faith attempts at negotiation. See Mgmt. Capital, L.L.C., 2017 WL 265064, at *10. Accordingly, after reviewing the judgment document in conjunction with the underlying decision, this Court finds no manifest error of law with respect to its conclusion that F.A.F. repudiated the Warrant. See Manchester, 926 A.2d at 1015; Am. Fed'n of Teachers Local 2012, 477 A.2d at 106.

With respect to the second purported manifest error of law, F.A.F. argues that the Court adopted the holding articulated by the Second Circuit in Lucente v. Int'l Bus. Machs. Corp., 310 F.3d 243, 258 (2d Cir. 2002) as the controlling law of the case and then disregarded it in finding that Management properly preserved its post-repudiation rights. However, that contention is contrary to the plain language of the Court's decision. See Mgmt. Capital, L.L.C, 2017 WL 265064, at *11-12. After stating that F.A.F. pointed the Court to the Lucente decision for guidance, the Court then expressly distinguished it. Id. at *12 ("Thus, Management's dual attempts to exercise its right to purchase shares under the Warrant were meaningless and do not constitute an election of one option—treating the Warrant as valid—at the cost of another—suing for breach of contract. But see Lucente, 310 F.3d at 258."). That does not amount to an error "'that is apparent, blatant, conspicuous, clearly evident, and easily discernible from a reading of the judgment document itself.'" Manchester, 926 A.2d at 1015 n.6 (quoting Am. Fed'n of Teachers Local 2012, 477 A.2d at 106). Therefore, the Court cannot grant F.A.F. a new trial nor alter the March 22, 2017 judgment on the basis that the Court adopted then disregarded the holding in Lucente as controlling law.

Next, F.A.F. contends that the term "funded debt" means "all debt" and not "long-term debt" because the Court should have treated the Warrant Terms—a draft version of what eventually became the Warrant—as incorporated into the Warrant. Management counters that F.A.F.'s arguments on this point are a relitigation of arguments already raised at trial. On this point, the Court agrees with Management. In its decision, the Court considered, at length, the meaning of the term "funded debt" and concluded that the term was clear and unambiguous. Thus, because the term was clear and unambiguous, the Court did not consider any extrinsic evidence presented by the parties—other than noting that F.A.F.'s accountant generally

understood "funded debt" to mean long-term debt. See Mgmt. Capital, L.L.C., 2017 WL 265064, at *7-8. The judgment accurately reflects that conclusion. See J. at 2 (Mar. 22, 2017). Consequently, after reviewing the decision and the judgment here, the Court finds no manifest error of law necessary to grant a new trial or alter the judgment with respect to F.A.F.'s arguments on the definition of "funded debt." See Manchester, 926 A.2d at 1015; Am. Fed'n of Teachers Local 2012, 477 A.2d at 106.

For its fourth asserted manifest error of law, F.A.F. states that Management failed to prove its damages with reasonable certainty. However, a review of the decision shows that the Court found just the opposite. See Mgmt. Capital, L.L.C., 2017 WL 265064, at *13. The Court articulated that Management, as the party alleging breach of contract, bore the burden of proving damages with reasonable certainty. Id. at *12. Then, after citing testimony, the Court found that Management met that burden. Id. at *12-13. The judgment accurately reflects the Court's conclusion on that issue. See J. at 2 (Mar. 22, 2017). Therefore, the Court finds that it did not commit a manifest error of law with respect to Management's proof of damages.

F.A.F. also argues that the Court erred in finding that prejudgment interest accrues from October 13, 2008. According to F.A.F., it was logically inconsistent for the Court to find, on one hand, that Management could file its first complaint in March of 2008, which it later amended, but then claim, on the other hand, that their cause of action accrued seven months later in October of 2008. Essentially, F.A.F. maintains that the Court erred in finding that the cause of action accrued on October 13, 2008, when, as evidenced by Management's complaint-filing date, the injury had already occurred. On this point, F.A.F. is logically correct: a fair reading of the Court's decision leads one to the conclusion that Management's cause of action did not legally accrue until October 13, 2008, a date well after it filed its first complaint. See Mgmt. Capital,

L.L.C., 2017 WL 265064, at * 14. However, though the Court's conclusion on prejudgment interest may seem inconsistent, it also follows that if prejudgment interest is awarded for the loss of use of money, then a party should be awarded such interest from the date it would have actually received that money. As the Court found, that date was on October 13, 2008, not on the date that the first complaint was filed. See id. at *13-14.

Moreover, even assuming arguendo that the Court's determination as to prejudgment interest constituted a manifest error of law, the error was harmless. See Super. R. Civ. P. 59, 1995 Committee Notes ("In considering motions for a new trial on the ground of error at the trial, care must be taken to observe the provision of Rule 61 mandating the disregard of harmless error.").[3] Rule 61 of our Rules of Civil Procedure provides that an error is harmless unless it "affect[s] the substantial rights of the parties." Here, if the Court applied F.A.F.'s reasoning to prejudgment interest, F.A.F. would actually owe more money in interest than it presently does. Applying F.A.F.'s argument, the Court would have to backdate the time from which the cause of action accrued, harming F.A.F., not Management. Accordingly, even assuming that the Court committed a manifest error of law by setting the date from which prejudgment interest ran as October 13, 2008, the Court finds that such an error was harmless. On this basis, the Court does not find that F.A.F. should be granted either a new trial or an altered or amended judgment.

Moving to F.A.F.'s sixth asserted manifest error of law, F.A.F. claims that the Warrant should not have been reformed. In support of this contention, F.A.F. attempts to characterize testimony that the Court relied on as clearly erroneous. F.A.F. casts Armand Almeida, F.A.F.'s CFO at the time of the Warrant's drafting, as a mere conduit for negotiations over the Warrant

[3] As our Supreme Court has stated, though this Court is "'not bound by reporter's notes in applying [a] rule[,]' . . . such notes can certainly be instructive and are appropriate for consideration in [its] analysis of a rule." Cashman Equip. Corp. v. Cardi Corp., 139 A.3d 379, 384 n.4 (R.I. 2016) (quoting State v. Macaskill, 475 A.2d 1024, 1028 (R.I. 1984)).

language in 2003, and not, as the Court found, a principal negotiator. According to F.A.F., the Court's reference to him as a "principal negotiator" of the Warrant was factually erroneous and his testimony should have been disregarded as lacking credibility. However, this argument asks of something this Court cannot do on a Super. R. Civ. P. 59 motion—that is, examine "matters of fact or evidence" beyond "the face of the record." See Manchester, 926 A.2d at 1015. The Court concluded that Almeida's testimony was credible, which served as part of the basis for finding the mutual mistake in the drafting of Sections 3.1 and 13 of the Warrant. See Mgmt. Capital, L.L.C., 2017 WL 265064, at *4-7. Thus, after "read[ing] the underlying decision," Am. Fed'n of Teachers Local 2012, 477 A.2d at 106, and the judgment document, Manchester, 926 A.2d at 1015 n.6, the Court finds that it did not make a manifest error of law with respect to its conclusion that the typos in the Warrant were the product of a mutual mistake, which required judicial reformation of the Warrant to reflect the true intent of the parties.

Finally, F.A.F. avers that the Court should enter judgment in F.A.F.'s favor on its counterclaims. However, this too cannot be done at this stage. The facts found in the Court's January 17, 2017 decision do not support a finding in F.A.F.'s favor, and the judgment document expressly provides that F.A.F.'s counterclaims were dismissed. See J. at 2 (Mar. 22, 2017). Moreover, the implication of the Court's January 17, 2017 decision is clear: if the Court found in Management's favor on all three issues, then it did not find in F.A.F.'s favor on its counterclaims. Therefore, there is no manifest error of law on which this Court can find in F.A.F.'s favor on its counterclaims. See Manchester, 926 A.2d at 1015; Am. Fed'n of Teachers Local 2012, 477 A.2d at 106.

In sum, after considering F.A.F.'s seven reasons why this Court erred, the Court finds that there is no "'error in the judgment that is manifest on the face of the record without further

examination of matters of fact or evidence[.]'" Manchester, 926 A.2d at 1015 (quoting Tillson, 490 A.2d at 66). Therefore, the Court denies F.A.F.'s Super. R. Civ. P. 59(a) motion for a new trial. See id.

Furthermore, though the Court considered F.A.F.'s post-trial motions under the same standard of review, the Court separately states that no manifest error of law is apparent here to warrant an alteration or amendment to the judgment document under Super. R. Civ. P. 59(e). As belabored throughout this Decision, F.A.F. has not directed the Court to an error that was "'apparent, blatant, conspicuous, clearly evident, and easily discernible from a reading of the judgment document itself.'" Greensleeves, Inc., 68 A.3d at 434 (quoting Am. Fed'n of Teachers Local 2012, 477 A.2d at 106). The judgment document accurately reflects the findings of fact and conclusions of law the Court rendered in this case. Thus, the Court denies F.A.F.'s Super. R. Civ. P. 59(e) motion to alter or amend a judgment. See id.

IV

Conclusion

The Court appreciates the reasoned arguments that F.A.F.'s counsel has set forth at each juncture of this litigation, as well as the vigor with which counsel argued them. However, after considering the present Super. R. Civ. P. 59 motions in light of the well-settled applicable standards of review, the Court cannot reopen the box of trial evidence and rehear matters already decided. To borrow a phrase from the venerable Chief Justice Weisberger, "[t]he grounds for a motion for new trial are extremely limited . . . ." Finkelstein v. Finkelstein, 502 A.2d 350, 356 (R.I. 1985). Thus, a motion for a new trial following a nonjury trial is not a vehicle to relitigate the underlying case—it is a search for manifest error "on the face of the record." See Manchester, 926 A.2d at 1015. After reviewing "the face of the record without further

examination of matters of fact or evidence[,]" id., the Court concludes that a manifest error of law is not present in the January 17, 2017 decision and the March 22, 2017 judgment. Furthermore, the judgment document accurately reflects the Court's findings of fact and conclusions of law in this case. See Manchester, 926 A.2d at 1015. Accordingly, for that reason—in addition to those reasons hereinbefore stated—F.A.F.'s post-trial motions for a new trial and to alter or amend the judgment are denied. See Greensleeves, Inc., 68 A.3d at 434; Manchester, 926 A.2d at 1015; Am. Fed'n of Teachers Local 2012, 477 A.2d at 106. Prevailing counsel shall present an appropriate order consistent herewith which shall be settled after due notice to counsel of record.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

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CASE NO:	**PB-2008-2364**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**May 16, 2017**
JUSTICE/MAGISTRATE:	**Silverstein, J.**
ATTORNEYS:	
For Plaintiff:	**Joseph V. Cavanagh, Jr., Esq.**
For Defendant:	**Rajaram Suryanarayan, Esq.** **Robert D. Wieck, Esq.**