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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

Patrick DeAlmeida
Presiding Judge

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June 12, 2014

Steven D'Agostino
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Re: Steven D'Agostino v. Township of Barnegat
Docket No. 010973-2013

Dear Mr. D'Agostino and Mr. Strohm:

This constitutes the court's opinion with respect to: (1) plaintiff's motion pursuant to R. 4:49-1 for a new trial, R. 4:49-2 to alter or amend the court's April 3, 2014 Judgment and R. 4:50-1 for relief from the court's April 3, 2014 Judgment; and (2) defendant's cross-motion pursuant to R. 1:4-8 for the imposition of sanctions against plaintiff for making a frivolous motion. For the reasons stated more fully below, both plaintiff's motion and defendant's cross-motion are denied.

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I. Findings of Fact and Procedural History

This letter opinion sets forth the court's findings of fact and conclusions of law based on the submissions of the parties on their motions. R. 1:6-2(f); R. 1:7-4.

Plaintiff Steven D'Agostino is the owner of real property in defendant Barnegat Township. The property is designated in the records of the municipality as Block 92.87, Lot 14 and is commonly known as 25 Nautilus Drive. A single-family home is situated on the property.

For tax year 2013, the municipal tax assessor set the assessment on the property as follows:

Land	$ 76,500
Improvements	$223,500
Total	$300,000

Plaintiff challenged the tax year 2013 assessment before the Ocean County Board of Taxation. On June 14, 2013, the county board issued a Judgment reducing the assessment as follows:

Land	$ 76,500
Improvements	$206,500
Total	$283,000

On July 15, 2013, plaintiff filed a Complaint in this court challenging the county board Judgment.

A trial was held on April 3, 2014. At trial, plaintiff did not present a real estate appraiser as an expert witness. He instead testified on his own behalf. Plaintiff has no training as a real estate appraiser, does not have a real estate agent or broker license, and has limited experience in purchasing and selling real property. He testified that he "built" a real estate broker's website and, as a result of this experience, gained valuable knowledge about the real estate industry.

In support of his claim that the assessment on his property exceeds its true market value as of the relevant valuation date, plaintiff relied on three sales of homes in Barnegat Township that he considered to be comparable to his property.

Plaintiff relied first on the sale of the residence at 27 Nautilus Drive, which is located next to the subject. The property sold on March 28, 2012. Plaintiff testified that the sales price was the result of arm's length negotiations. He based this testimony on conversations that he had with the seller, with whom he was familiar as his next door neighbor. Plaintiff provided no further proof with respect to the negotiations or circumstances preceding the sale of the property.

Plaintiff also relied on the sale of the residence at 42 Nautilus Drive. Plaintiff admitted that he knew nothing about this transaction other than what was reported on the multiple listing associated with the marketing of the property. Plaintiff could offer no testimony with respect to the accuracy of the information on the multiple listing. Nor did he have personal knowledge of any of the circumstances of the sale, the motivations of the seller and buyer, or the negotiations that resulted in the sales price.

Finally, plaintiff relied on the sale of the residence at 35 Pulaski Drive. Again, plaintiff acknowledged that he knew nothing about the transaction other than what was reported on the multiple listing associated with the marketing of the property. Plaintiff noted that the multiple listing stated that at the time of the sale the residence was in the possession of a relocation company. He could not explain the significance of that fact. He acknowledged that he did not have personal knowledge of any of the circumstances of the sale, the motivations of the seller and buyer, or the negotiations that resulted in the sales price.

Plaintiff offered adjustments to the sales prices of the comparable sales to account for differences between those properties and the subject residence. With respect to differences in the

amount of living space at the properties, plaintiff made adjustments based on $50 per square foot. This is consistent with the living space adjustment offered by the tax assessor during the county board proceedings. Plaintiff made several other adjustments, which he conceded were "kind of subjective." For example, plaintiff made a location adjustment that he described as follows: "I would think about $10,000 at least." Plaintiff did not inspect the interiors of any of the properties and provided no testimony based on personal knowledge of the amenities or condition of the residences. He offered no market data to support his adjustments.

Ultimately, plaintiff offered the opinion that his home had a true market value of $255,000 on the relevant valuation date. He provided no principled explanation for how he arrived at this figure. At best, the value offered by plaintiff was his lay opinion based on sales about which he had limited or no personal knowledge.

The municipality presented its tax assessor as its sole witness. Without objection from plaintiff, the court determined that she possessed sufficient training, experience and knowledge to serve as an expert real estate appraiser. The assessor both challenged the credibility of the comparable sales offered by plaintiff and offered three different sales of residences in the township she considered to be more credible evidence of the true market value of plaintiff's property.

The assessor first addressed plaintiff's comparable sales. With respect to the sale of the residence at 27 Nautilus, the assessor testified that her office conducted an investigation into the validity of the sales price as evidence of true market value. According to her testimony, which appeared to be based on notes in the records of the assessor, "[w]e spoke to the realtor, Mike, and he said it was a pre-foreclosure situation." In addition, she noted that the sellers of that residence took an $89,000 loss on the sale of the house when the sales price was compared to the

purchase price several years earlier. The assessor testified that it was her opinion that even in a declining real estate market, a residential property owner at this price range would not take an $89,000 loss unless compelled to sell by unusual motivations. As a result of these considerations, she did not view this sale to be an arm's length transaction.

With respect to the sale of the residence at 42 Nautilus Drive, the assessor produced a deed that indicated that the sellers are former spouses with different addresses. She viewed this as evidence that the sale was the result of a divorce, a factor that undercuts its credibility as an arm's length transaction. She also noted that the sellers took a $77,000 loss when the sales price is compared to the amount they paid when they purchased the home. As was the case with the prior comparable sale, the assessor considered the size of the loss to be evidence of an unusually motivated seller.

Finally, with respect to the sale of the residence at 35 Pulaski Drive, the assessor offered the opinion that a sale by a relocation company undermines the value of the transaction as evidence of true market value. According to the notes in the assessor's file, the sellers of that home worked at Fort Monmouth and were relocated by the federal government to Maryland. The assessor testified that in order to convince qualified people to move out of State, the federal government guarantees the sale of the house without a loss to the sellers. The assessor offered the opinion that the sellers may have received more than the reported sales price from their employer as part of the relocation compensation.

The assessor presented three comparable sales of homes in Barnegat Township which she considered credible evidence of the value of plaintiff's property. Those sales, which took place either in late 2011 or during 2012, were of homes that are the same model as plaintiff's home and were constructed by the same builder. With adjustments based on her expert opinion, the

assessor determined that the adjusted sales prices of those homes were $375,000, $337,000 and $330,000. All three of those adjusted sales prices exceed the assessment on the subject property.

After the close of proofs, the court gave a bench opinion in which it determined that plaintiff produced sufficient evidence to overcome the presumption of validity accorded to the county board Judgment. Pantasote Co. v. City of Passaic, 100 N.J. 408, 413 (1985); MSGW Real Estate Fund, LLC v. Borough of Mountain Lakes, 18 N.J. Tax 364, 373 (Tax 1998). As is required by precedent, this determination was made after giving plaintiff every positive inference from the evidence presented. Dolson v. Anastasia, 55 N.J. 2, 5 (1969). The court then turned to making a determination of the true market value of the subject property.

The court found all three of plaintiff's comparable sales to lack credibility as evidence of true value. With respect to the sale of the residence at 27 Nautilus Drive, the court found that the seller was unusually motivated to sell. This determination was based on a finding that the assessor's testimony concerning a pre-foreclosure sale and the loss suffered by the sellers was credible. The court also found that the sales of the homes at 42 Nautilus Drive and 35 Pulaski Drive lacked credibility as evidence of true value for the reasons stated by the assessor.

Importantly, the court found that even if it were to accept as credible the comparable sales offered by plaintiff, the adjustments that he offered to the sales prices were entirely lacking in credibility. The court noted that plaintiff is not an appraisal expert and that during his testimony he pointed to no market data to support his adjustments. Moreover, the court found that even if it were to accept plaintiff's adjusted sales prices for his comparable sales – $265,000, $284,000 and $257,000 – the court would not be convinced that the assessment on the property – $283,000 – is erroneous. The assessment falls within the range of the sales.

The court instead found that the three comparable sales offered by the municipality were credible evidence of the subject property's true value. This finding was based on the similarity of those properties to the subject, the expert testimony regarding the arm's length nature of the transactions and the expert testimony with respect to adjustments to the sales prices. The adjusted sales prices offered by the municipality's expert for those sales were $375,000, $337,000 and $330,000. The court adjusted those sales prices downward by 10% to account for their superior locations (the subject property is on a busy street while the comparable sales are not). The court reached adjusted sales prices of $337,500, $303,300 and $297,000, all above the assessment on the subject property. The court concluded, therefore, that Mr. D'Agostino, who has the burden of proof, failed to prove by a preponderance of the evidence that he is entitled to a reduction in the assessment on his property for tax year 2013.

On April 3, 2014, the court entered Judgment affirming the Judgment of the county board of taxation.

On April 23, 2014, plaintiff moved pursuant to R. 4:49-1 for a new trial, R. 4:49-2 to alter or amend the court's April 3, 2014 Judgment, and R. 4:50-1 for relief from the court's April 3, 2014 Judgment.

In his moving papers, plaintiff states that a few days after the trial he spoke by telephone with Michael Baum, the broker involved in the sale of 27 Nautilus Drive. As noted above, the tax assessor testified that she spoke with Mr. Baum regarding the sale and that he informed her that the home was in pre-foreclosure at the time of the sale.

The following is plaintiff's account of the telephone conversation he had with Mr. Baum:

> When I asked him if there was (sic) any financial problems or pre-foreclosures (sic) issues with this sale, he said he was not aware of any. And when I informed him that Ms. Kelleher had claimed that

> she had spoke (sic) to him and he supposedly had told her that, he denied ever speaking to Ms. Kelleher, or any one (sic) else in the Barnegat Tax office. He then wanted to know why I was asking, and I told him the reason. I then asked him if he would write a letter to that effect so I could submit it to the Court, but he refused to do so.

This obstacle, however, was anticipated by plaintiff. As he explained,

> Fortunately, from my own past experiences, I know that often regular people are afraid to get involved in court matters, so I had been secretly recording the conversation.

As evidence of his surreptitious recording, plaintiff included in his moving papers what he reports to be a compact disc recording and a self-produced written transcript of his conversation with Mr. Baum. These items are not authenticated in any fashion.

In light of concerns over the security of the court's computer system, the court has not listened to the compact disc. The transcript lacks any indicia of reliability. However, even if the court considers the transcript to be an accurate account of the conversation, plaintiff's moving papers mischaracterize Mr. Baum's statements. According to the transcript, Mr. Baum does not categorically deny having had a conversation with the tax assessor. He merely states that "I don't ever recall any such conversation" and "did I ever have a talk with the tax assessor, not to my recollection." As for the financial circumstances of the sellers' at the time of the sale of 27 Nautilus, Mr. Baum stated that he was not "aware of" any financial stresses "as far as I know" but "you know, going back 2 years, I can't recall everything on that" and "maybe it was for all I know, but as far as I know, it wasn't." When asked to put his statements in writing Mr. Baum declined, stating "Uh, to be honest with you, no I couldn't put that in a letter, because I don't recall it" and "whether or not they had financial difficulties or not, I couldn't tell you." These statements are hardly as definitive as portrayed by plaintiff in his moving papers.

In his moving papers, plaintiff also argues with respect to the sale at 27 Nautilus that "I understand that if a property goes into pre-foreclosure, a notice of lis pendens must be recorded by the County Clerk." Plaintiff cites no statutory or other legal authority for this proposition. According to plaintiff, he examined the records of the Ocean County Clerk online and found no "lis pendens" for this property.

Based on his conversation with Mr. Baum and the absence of a "lis pendens" with respect to 27 Nautilus Drive, plaintiff argues that the assessor offered perjured testimony which was "the sole basis for discrediting" this comparable sale. According to plaintiff, this warrants a new trial or the entry of a Judgment in plaintiff's favor.

Plaintiff also provides a hearsay account of a conversation he purportedly had with the selling agent for the home at 35 Pulaski Drive, another of plaintiff's comparable sales, which the assessor testified was sold by a relocation company. Noting in a footnote that he did not secretly record his conversation with the agent, plaintiff states that the agent stated that the home "sold for a little bit less because it was sold relatively fast, but pretty much that was about what the property was worth, because it needed some updating." According to plaintiff, this agent also stated that the sellers received nothing more from the federal government, the sellers' employer, for the sale than the selling price.

The remainder of plaintiff's moving papers contain several paragraphs of speculation regarding the financing of the municipality's comparable sales, about which plaintiff lacks personal knowledge, and loans given by car dealerships, the relevance of which is not apparent.

Plaintiff argues that in light of the matters raised in his moving papers the court should either order a new trial or "enter judgment for an assessed value that is substantially lower than the 2013 tax board's assessment of $283,000."

On May 12, 2014, the municipality opposed plaintiff's motion and cross-moved pursuant to R. 1:4-8 for the imposition of sanctions, arguing that plaintiff's motion was made solely for purposes of unnecessary delay and to increase the cost of litigation. Plaintiff subsequently opposed the municipality's cross-motion.

II. Conclusions of Law

1. Plaintiff's Motion for a New Trial, to Amend the April 3, 2014 Judgment, and for Relief from the April 3, 2014 Judgment.

The three court rules under which plaintiff moves set high standards that must be satisfied before relief can be granted.

According to R. 4:49-1,

> A new trial may be granted to all or any of the parties and as to all or part of the issues on motion made to the trial judge. On a motion for a new trial in an action tried without a jury, the trial judge may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions or law or make new findings and conclusions, and direct the entry of a new judgment. The trial judge shall grant the motion if . . . it clearly and convincingly appears that there was a miscarriage of justice under the law.

Rule 4:49-2 provides:

> Except as otherwise provided by R. 1:13-1 (clerical errors) a motion for rehearing or reconsideration seeking to alter or amend a judgment or order shall be served not later than 20 days after service of the judgment or order upon all parties by the party obtaining it. The motion shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred, and shall have annexed thereto a copy of the judgment or order sought to be reconsidered and a copy of the court's corresponding written opinion, if any.

Finally, Rule 4:50-1 sets forth the grounds on which a party may be relieved from operation of a final Judgment. The rule provides as follows:

> On motion, with briefs, and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment or order for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial under R. 4:49; (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) the judgment or order is void; (e) the judgment or order has been satisfied, released or discharged, or a prior judgment or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or order should have prospective application; or (f) any other reason justifying relief from the operation of the judgment or order.
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> [R. 4:50-1.]

Plaintiff's motion is based primarily on information he obtained after trial which he believes would result in a different outcome if introduced at a new trial. Legal precedents highlight the difficult burden plaintiff faces in his request for relief. A motion pursuant to R. 4:49-1 for a new trial based on new evidence shall be granted "when that evidence would probably alter the judgment and by due diligence could not have been discovered before the court announced its decision." Quick Chek Food Stores v. Township of Springfield, 83 N.J. 438, 445 (1980)(citing Nieves v. Baran, 164 N.J. Super. 86 (App. Div. 1978)). "These are also among the prerequisites to relief from a Judgment within one year under R. 4:50-1." Ibid. Under either rule, relief is appropriate only when "the evidence would probably have changed the result, that it was unobtainable by the exercise of due diligence for use at the trial, and that the evidence was not merely cumulative." Ibid. (citing State v. Speare, 86 N.J. Super. 565, 581-82 (App. Div. 1965), certif. denied, 45 N.J. 589 (1965)). "Moreover, 'newly discovered evidence' does not include an attempt to remedy a belated realization of the inaccuracy of an adversary's proofs."

DEG, LLC v. Township of Fairfield, 198 N.J. 242, 264 (2009)(quoting Posta v. Chung-Loy, 306 N.J. Super. 182, 206 (App. Div. 1997)).

Under all three rules, relief after entry of Judgment "is a matter within the sound discretion of the Court, to be exercised in the interest of justice." D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990); Housing Auth. v. Little, 135 N.J. 274 (1994); Quick Chek, supra, 83 N.J. 445-46; Regional Constr. Corp. v. Ray, 364 N.J. Super. 534 (App. Div. 2003). Under R. 4:49-2, relief should be granted "'only for those cases that fall into that narrow corridor in which either 1) the court has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the Court either did not consider, or failed to appreciate the significance of probative, competent evidence.'" Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996)(quoting D'Atria, supra, 242 N.J. Super. at 401-02).

Relief under R. 4:50-1 "is granted sparingly." F.B. v. A.L.G., 176 N.J. 201, 207 (2003). The "rule is a carefully crafted vehicle intended to underscore the need for repose while achieving a just result. It thus denominates with specificity the narrow band of triggering events that will warrant relief from judgment if justice is to be served." DEG, LLC, supra, 198 N.J. at 261.

The new evidence on which plaintiff relies is underwhelming. Plaintiff bases his motion primarily on a telephone conversation he purportedly had after trial with Mr. Baum, a broker involved in one of plaintiff's comparable sales. According to plaintiff's motion brief, Mr. Baum denied previously having had a conversation with the tax assessor about the sale and denied that the sellers were under financial stress when they agreed to a sales price. Plaintiff's "transcript" of the call tells a different story. In the transcript, Mr. Baum states that he does not recall having had a conversation with the assessor and that he does not recall the sellers having been under

financial stress at the time of the sale. However, when asked to sign a written statement to that effect, Mr. Baum declined, stating that he could not say with certainty whether he had had a conversation with the assessor and that the sellers might well have had financial concerns about which he was not aware. This is hardly definitive evidence that the tax assessor's testimony was inaccurate, let alone fraudulent, as plaintiff alleges.

Moreover, the court's credibility determination with respect to the sale of 27 Nautilus was not solely based on the assessor's testimony that the property was in pre-foreclosure at the time of the sale. The court also found the sale to lack credibility as evidence of value because the property owners took an $89,000 loss on the sale. The court accepted the expert tax assessor's testimony that it is unlikely that residential property owners in this price range would accept such a substantial loss if there were not unusually motivated to sell. Plaintiff's motion papers contain no evidence contradicting the loss, which was an independent basis for the court's determination that the sale was unreliable.

In addition, plaintiff does even attempt to explain why he could not have interviewed Mr. Baum prior to trial and called him as a witness. Mr. Baum, after all, was the broker for one of the comparable sales on which plaintiff relied. He knew full well that the reliability of that sale as evidence of true market value would be an issue to be determined by the court. A prudent taxpayer would have contacted the broker, who apparently was readily available to plaintiff by telephone, prior to trial to obtain evidence regarding the reliability of the sale. He could then have presented Mr. Baum as a witness. A party cannot wait until after he loses at trial to investigate the strength of his own evidence.

The motion record plainly does not support a conclusion that the April 3, 2014 Judgment should be vacated based on false testimony. As the Supreme Court explained,

> 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 reasons the failure to use diligence is in all the circumstances not a bar to relief.
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> [Shammas v. Shammas, 9 N.J. 321, 330 (1952).]

Accord Gilgallon v. Bond, 279 N.J. Super. 265 (App. Div. 1995).

Similarly, plaintiff's description of his conversation with a real estate agent associated with the sale of 35 Pulaski Drive is unconvincing support for his motion. Plaintiff's brief contains a hearsay summary of an out-of-court conversation. As evidence, such a summary is entirely lacking in indicia of trustworthiness. In addition, even if taken as true, the statements made by the agent support the court's determination that the sale was not credible evidence of value. According to the agent, the house sold for less than market value because the transaction was rushed and because the house "needed some updating." These observations support the court's conclusion that without expert testimony with respect to appropriate adjustments, the sale is not valuable as evidence. In addition, the agent purportedly stated that the sellers received no more than the sales price for the home from a government fund. She did not, however, state that she was aware of whether the sellers' employer provided additional compensation to the sellers to ensure that they did not lose money on the transaction to encourage them to relocate to Maryland.

Again, plaintiff does not explain why he could not have had a conversation with this agent prior to trial or presented her as a witness. The agent was involved in a comparable sale offered by plaintiff. Aware that the credibility of the sale would be an issue to be determined at trial, plaintiff should have interviewed the agent to determine the strength of his evidence before trial. In addition, if the agent had personal knowledge of valuable evidence regarding the sale plaintiff could have called her as a witness at trial.

Finally, plaintiff's arguments based on the absence of a "lis pendens" filing with respect to one sale warrants little discussion. Apparently, plaintiff is under the belief that a "lis pendens" must be filed by the County Clerk whenever a residence is in a pre-foreclosure situation. He provides no legal support for this proposition. Plaintiff argues that because his post-trial investigation uncovered no "lis pendens" on file with the Ocean County Clerk with respect to that property the sellers could not have been motivated to sell at a below market price because of a threatened foreclosure. This argument is nothing more than speculation, as plaintiff has no personal knowledge of the financial situation of the sellers or the stage at which any foreclosure or contemplated foreclosure may have been at the time of sale. In addition, the sale to which plaintiff refers is one which he introduced as evidence. He should have investigated the conditions of the sale prior to trial, not after.

Plaintiff's arguments concerning the financing of the sales on which the municipality relies are based on pure speculation. Plaintiff offered no testimony at trial that he had personal knowledge of the details of those sales. In his motion papers, plaintiff, in effect, guesses the terms of those sales, compares them to car dealership financing for unexplained reasons, and draws his own conclusions regarding the impact of his imagined financing terms on the sales prices for those homes. These arguments are entirely meritless.

There is no evidence in the motion record which clearly and convincingly establishes that the trial of this matter was a miscarriage of justice. Nor has plaintiff produced any evidence, not available prior to trial, which if introduced at a new trial would change the outcome. Plaintiff failed to investigate the strength of his own evidence prior to trial. He did not call the real estate broker and agent he believes to have relevant information regarding plaintiff's comparable sales. Plaintiff's post-trial investigation produced no convincing proof that the tax assessor provided false testimony at trial or that he is entitled to relief under any of the court rules allowing a party to challenge a Judgment entered after trial.

The remainder of plaintiff's arguments challenge the factual findings and legal conclusions of this court. Plaintiff is unhappy with the outcome of his trial. He has the right to file an appeal if he believes this court erred in reaching its decision. A post-trial motion for relief from a Judgment, however, is not a substitute for an appeal. In re: Estate of Schifftner, 385 N.J. Super. 37, 43 (App. Div. 2006); Wausau Ins. Co. v. Prudential Prop. & Cas. Ins. Co., 312 N.J. Super. 516, 519 (App. Div. 1998); DiPietro v. DiPietro, 193 N.J. Super. 533, 539 (App. Div. 1984).

2. Defendant's Cross-Motion for Sanctions Pursuant to R. 1:4-8.

Rule 1:4-8(a) provides:

> The signature of an attorney or pro se party constitutes a certificate that the signatory has read the pleading, written motion or other paper. By signing, filing or advocating a pleading, written motion, or other paper, an attorney or pro se party certifies that to the best of his or her knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> (1) the paper is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) the factual allegations have evidentiary support or, as to specifically identified allegations, they are either likely to have evidentiary support or they will be withdrawn or corrected if reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support . . . .

A party may seek the imposition of sanctions for violation of R. 1:4-8(a).

Having had an opportunity to judge plaintiff's credibility at trial and having reviewed the moving papers, the court is not convinced that plaintiff moved for relief for an improper purpose. The court finds that plaintiff sincerely believes that his motion is justified by the evidence that he uncovered after trial. Although mistaken, plaintiff presented a colorable argument that he is entitled to a new trial or relief from the court's April 3, 2014 Judgment. The court finds no basis for an award of sanctions.

In light of the above, the court denies plaintiff's motion for a new trial or for relief from the court's April 3, 2014 Judgment. In addition, the court denies defendant's cross-motion for sanctions. The court will enter an appropriate Order.

Very truly yours,

Patrick DeAlmeida, P.J.T.C.