

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

772.1

CA 24-01073

PRESENT: WHALEN, P.J., LINDLEY, MONTOUR, NOWAK, AND KEANE, JJ.

THOMAS HORNING, INDIVIDUALLY AND ON BEHALF
OF J.B. WISE BLOCK, LLC AND ITS MEMBERS DERIVATIVELY,
PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

THOMAS MILLAR, EASTERN MARKET DEVELOPMENT LLC,
VINA BONNER, DEFENDANTS-RESPONDENTS,
ET AL., DEFENDANT.

HANCOCK ESTABROOK, LLP, SYRACUSE (ALAN J. PIERCE OF COUNSEL), FOR
PLAINTIFF-APPELLANT.

BARCLAY DAMON, LLP, SYRACUSE (JON P. DEVENDORF OF COUNSEL), FOR
DEFENDANT-RESPONDENT EASTERN MARKET DEVELOPMENT LLC.

Appeal from a judgment of the Supreme Court, Jefferson County
(Gregory R. Gilbert, J.), entered January 2, 2024. The judgment,
inter alia, dismissed plaintiff's cause of action for a declaratory
judgment against defendants Thomas Millar and Eastern Market
Development LLC.

It is hereby ORDERED that the judgment so appealed from is
unanimously modified on the law by vacating the second decretal
paragraph dismissing the declaratory judgment cause of action against
defendant Eastern Market Development LLC and that part of the fifth
decretal paragraph dismissing the declaratory judgment cause of action
against defendant Thomas Millar, and by granting judgment in favor of
those defendants as follows:

It is ADJUDGED and DECLARED that defendants Thomas
Millar and Eastern Market Development LLC were valid members
of J.B. Wise Block, LLC under the operating agreement at the
time they voted to sell the property owned by J.B. Wise
Block, LLC and thus any action taken based upon their vote
was not void,

and as modified the judgment is affirmed without costs.

Memorandum: Plaintiff commenced this action alleging, inter
alia, that defendants Thomas Millar and Eastern Market Development LLC
(Eastern Market) (collectively, defendants) breached the operating
agreement of J.B. Wise Block, LLC (company) in several respects and
that one such breach made defendants' membership interest invalid at

the time they voted to sell the property owned by the company, thereby rendering void any action taken based upon their vote. Plaintiff now appeals from a judgment entered after a bench trial that, inter alia, dismissed the breach of contract and declaratory judgment causes of action against Eastern Market and dismissed the declaratory judgment cause of action against Millar.

Where, as here, the appeal follows a nonjury trial, "the Appellate Division has 'authority . . . as broad as that of the trial court . . . and . . . may render the judgment it finds warranted by the facts' " (*Sweetman v Suhr*, 159 AD3d 1614, 1615 [4th Dept 2018], *lv denied* 31 NY3d 913 [2018], quoting *Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492, 499 [1983]; see *Buchmann v State of New York*, 214 AD3d 1412, 1413 [4th Dept 2023]). "Nonetheless, the decision of the fact-finding court should not be disturbed upon appeal unless it is obvious that the court's conclusions could not be reached under any fair interpretation of the evidence" (*Unger v Ganci* [appeal No. 2], 200 AD3d 1604, 1605 [4th Dept 2021] [internal quotation marks omitted]; see *Thoreson v Penthouse Intl.*, 80 NY2d 490, 495 [1992], *rearg denied* 81 NY2d 835 [1993]; *Davis v Hinds*, 215 AD3d 1242, 1243 [4th Dept 2023]). Moreover, when conducting such a review, we must view the record "in the light most favorable to sustain the judgment" (*Farace v State of New York*, 266 AD2d 870, 871 [4th Dept 1999]; see *A&M Global Mgt. Corp. v Northtown Urology Assoc., P.C.*, 115 AD3d 1283, 1286 [4th Dept 2014]).

Upon conducting that review, we conclude that there is a fair interpretation of the evidence supporting Supreme Court's well-reasoned determinations. We note only that, contrary to plaintiff's contention that Millar breached the paragraph of the operating agreement requiring payment of the company's preexisting debts, we conclude, albeit for a reason different from that of the court, that plaintiff failed to prove that Millar breached that paragraph inasmuch as the evidence did not establish that the company had such debts prior to the effective date of the operating agreement. We have considered plaintiff's remaining specific contentions, and we conclude that they do not require a different result.

The court nonetheless erred in dismissing the cause of action seeking declaratory judgment against defendants rather than declaring the rights of the parties (see *Pless v Town of Royalton*, 185 AD2d 659, 660 [4th Dept 1992], *affd* 81 NY2d 1047 [1993]; *Hirsch v Lindor Realty Corp.*, 63 NY2d 878, 881 [1984]; *Jones v Town of Carroll*, 225 AD3d 1271, 1273 [4th Dept 2024], *lv dismissed* 42 NY3d 1045 [2024]). We therefore modify the judgment accordingly.