2011 IL App (1st) 103073-U

No. 1-10-3073

SIXTH DIVISION
December 2, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SCOTT SCHNEIDERMAN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 09 L 6081
	)	
SETH M. HARRIS and SMH CONTRACTORS,	)	
LLC, an Illinois Limited Liability Company,	)	Honorable
	)	Barbara A. McDonald,
Defendants-Appellees.	)	Judge Presiding.

O R D E R

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice R. Gordon and Justice Garcia concurred in the judgment.

¶ 1 *HELD:* Where appellate record provided no basis to hold that trial court's finding in favor of defendants on allegation of fraud was against the manifest weight of the evidence, ruling is presumed correct, and affirmed.

¶ 2 Plaintiff, Scott Schneiderman, filed a two-count complaint against defendants, Seth M. Harris and SMH Contractors, LLC, alleging breach of promissory note (Count I) and fraud (Count II) after defendants failed to pay him amounts owed on a promissory note and issued a check to him on an account that had insufficient funds. After a bench trial, the circuit court entered judgment in favor of plaintiff as to Count I and ordered defendants to pay plaintiff $308,075.72. As to count II, the circuit court found in favor of defendants. Plaintiff appeals the judgment as to Count II and asks this court to reverse the trial court and either enter a judgment in his favor as to count II or remand to the circuit court for entry of judgment in his favor. For the reasons set forth below, we affirm.

¶ 3 On or about July 9, 2008, defendants signed a promissory note in favor of plaintiff in the principal amount of $150,000. Under the terms of the note, defendants promised to pay plaintiff $166,500.00, which included accrued interest, by November 6, 2008. The note also provided that defendants' failure to pay any amount of the indebtedness within five business days of November 6, 2008, would constitute a default and that prior to default, interest would accrue at an annual interest rate of 44%. In the event of any default, the entire principal and interest together with all other indebtedness, including the sums expended by plaintiff in connection with the default, would become immediately due and payable. The note also provided that while any default exists, interest on the unpaid principal balance under the note from time to time would accrue at a rate per annum equal to 50%.

¶ 4 On or about November 6, 2008, plaintiff made a demand upon defendants for payment on the note, but defendants failed to pay the amount owed, which at that time, was believed to be

$167,503.36. On November 6, 2008, defendants executed a second promissory note in plaintiff's favor in the amount of $166,500.00. Under the terms of this second note, defendants promised to pay plaintiff the principal amount of $193,140.00, together with all accrued and upaid interest by April 5, 2009. As with the first note, the second note provided that the failure of defendants to pay the amount owed within five days of the due date constituted a default and that prior to default, interest would accrue at an annual rate of 44%. In the event of default, the entire principal and interest, together with all other indebtedness would become immediately due and payable. The second note also provided that while any default exists, the sum of $200.00 per day would accrue and that defendants shall pay such upon demand.

¶ 5 Plaintiff alleges that on January 9, 2009, defendant Harris told him that he was able to make a partial pre-payment on the note in the amount of $33,351.31 and on that date, tendered a check to plaintiff in that amount drawn on an account at the State Bank of Countryside (Bank). Plaintiff contacted the Bank to inquire whether it would honor the check and was told that it would not because there were not sufficient funds in the account.

¶ 6 On May 22, 2009, plaintiff filed a two-count complaint against defendants alleging breach of the April 2009 promissory note (Count I) and fraud (Count II). In Count II, plaintiff alleged that defendants falsely represented to him that there were sufficient funds in the account at the Bank to pay the amount of the check even though they knew that there were not, in order to discourage him from pursuing his rights under the promissory note. In his answer, defendant Harris denied that he made a false representation to plaintiff regarding funds in the account, stating that he had no recollection of such conversation. In his complaint, plaintiff requested a

judgment in the amount of $211,559.88, plus $229.46 per day until paid, $33,251.31, the amount owed on the January 2009 check, and attorney's fees and court costs.

¶ 7 On July 7, 2010, plaintiff filed a motion for summary judgment, asserting that there was no genuine issue of material fact as to count II. On August 24, 2010, the trial court entered an order granting plaintiff's motion for summary judgment as to liability on count I only and denying the motion as to the remainder of his claims. The court also ordered that a bench trial be set for September 27, 2010. Following the bench trial, the circuit court entered a judgment in favor of plaintiff as to count I and ordered defendants to pay him $308,075.72. The court also entered judgment in favor of defendants as to count II. Plaintiff now appeals the trial court's judgment in defendants' favor as to Count II. No brief has been filed by defendants in response; therefore, we will consider the appeal pursuant to the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976).

¶ 8 When presented with a challenge to a trial court's findings of fact and decision made after a bench trial, we will not reverse unless the court's conclusion is against the manifest weight of the evidence. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 154 (2005). A decision is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence. *Id.* at 155. Here, however, the record before us contains neither (1) a transcript from the bench trial or a statement from the trial judge of the reasons for her decision, nor (2) a bystander's report or an agreed statement of facts filed pursuant to Supreme Court Rules 323(c) and (d). Ill. S.Ct.R. 323(c) and (d) (amended eff. December 13, 2005).

¶ 9 In order to support a claim of error on appeal, the appellant has the burden to present a sufficiently complete record. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). "From the very nature of an appeal, it is evident that the court of review must have before it the record to review in order to determine whether there was the error claimed by the appellant." *Id.* at 391. Where the issue on appeal relates to the conduct of a hearing or proceeding, this issue is not subject to review absent a report or record of the proceeding. *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001). Instead, absent a record, "it [is] presumed that the order entered by the trial court [is] in conformity with the law and had a sufficient factual basis." *Foutch*, 99 Ill. 2d at 392.

¶ 10 In this case, we are asked to review the propriety of the trial court's finding in favor of defendants on plaintiff's allegation of fraud. We know, through examination of the common-law record, that a bench trial was held, that testimony was taken, and documentary evidence was presented. However, we have no record of the evidence that was presented, nor do we know the basis for the trial court's decision. We know only that the court found in favor of defendants. We therefore have no basis for holding that the trial court's finding in defendants' favor was against the manifest weight of the evidence, and we presume the trial court's ruling was appropriate.

¶ 11 For the foregoing reasons, we affirm the circuit court.

¶ 12 Affirmed.