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2011 IL App (3d) 100883-U

Order filed December 16, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

LILLIE STEPHAN,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellee,)	Will County, Illinois,
)	
v.)	Appeal No. 3-10-0883
)	Circuit No. 06-CH-1029
)	
EDWARD WATKINS,)	Honorable
)	Barbara N. Petrunaro,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE CARTER delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's holdings were not against the manifest weight of the evidence with regards to common law fraud, the Consumer Fraud and Deceptive Business Practices Act, and the award of attorney fees to plaintiff.

¶ 2 The circuit court of Will County found that defendant, Edward Watkins, had committed common law fraud and violated the Consumer Fraud and Deceptive Business Practices Act (Act). 815 ILCS 505/1 *et seq.* (West 2004). Pursuant to its findings, the court awarded plaintiff, Lillie Stephan, compensatory damages in the amount of \$46,419.53, punitive damages in the

amount of \$25,000, and attorney fees totaling \$78,156.25. Defendant appeals, arguing that the court's holdings were against the manifest weight of the evidence with regards to common law fraud, the Act, and its award of attorney fees. We affirm.

¶ 3

FACTS

¶ 4 Plaintiff filed a complaint in the circuit court of Will County following a transaction arranged by defendant which ended with plaintiff selling her house. The parties went to trial on plaintiff's allegations that defendant had engaged in common law fraud and violated the Act. Both plaintiff and defendant testified at trial.

¶ 5 Plaintiff stated that prior to her dealings with defendant, she had owned a house in the city of Joliet that had been appraised at \$100,000 and was in need of repairs. In an effort to acquire a \$50,000 loan that would allow her to make the necessary repairs, plaintiff contacted defendant through Dolphin Mortgage. She had received defendant's name from her cousin, who had used his services in the past.

¶ 6 Following the initial contact, defendant met plaintiff at her home. While at the house, defendant asked plaintiff to sign a number of documents. Plaintiff asked if she should read the documents before she signed them, and defendant told her "no because th[ey] didn't concern [her]." Thereafter, Syreeta Mackey, an individual whom plaintiff had never met, knocked on plaintiff's door. Defendant told plaintiff that Mackey was there to cosign the loan because plaintiff's credit was bad. Mackey signed the documents and left. Neither defendant nor Mackey informed plaintiff that she had actually begun the process of selling her home.

¶ 7 Defendant called plaintiff after their initial contact and asked her to come up to his office in Chicago. When plaintiff arrived, defendant told her that he did not feel like doing business

that day because he had gone to a Christmas party. Defendant gave plaintiff \$15 and told her to get a sandwich before she drove back to Joliet. A few weeks later, defendant again contacted plaintiff and told her to come up to his office in Chicago. When plaintiff entered defendant's office he was alone. Defendant asked plaintiff to sign more documents, none of which were signed in the presence of a notary public or anyone other than defendant. At no point did defendant inform plaintiff that she was selling her house, and plaintiff continued to believe that she was getting a \$50,000 loan.

¶ 8 Defendant produced a number of documents at trial to establish that plaintiff knowingly sold her house. While plaintiff did not deny that she signed some of the documents, she did state that some of the signatures were not hers. One of the documents stated that there was a contract sale price of \$90,000, and that the seller would receive \$58,539.03 in cash. Plaintiff maintained that she did not know that she was selling her house and that the only cash she received was \$14,500, which she took to be part of the loan she was receiving from defendant. In fact, plaintiff used some of the proceeds from that check to begin making repairs on her residence. In the end, defendant's work resulted in plaintiff selling her house to Mackey, a result that came as a surprise to plaintiff.

¶ 9 Defendant testified that at the time of the transaction with plaintiff, he was employed by Dolphin Mortgage as a loan originator. After taking plaintiff's information and running her credit report, he informed her that her credit was too bad to obtain financing. Therefore, in an effort to help her, he arranged for a sale and lease back transaction. He told plaintiff that Mackey, an individual with whom defendant had conducted real estate deals with in the past, would act as the third party purchaser for the sale and lease back transaction. Defendant took two hours to

explain everything to plaintiff in his office, including the fact that defendant would be receiving \$26,192 as a fee for his services. Defendant admitted that only he and plaintiff were in his office when she signed the documents, and that the notary's signature that appeared on the documents was placed outside the presence of defendant or plaintiff. Following the sale of plaintiff's house, defendant made 10 to 12 rent payments for plaintiff to Mackey. He claimed that the payments were coming straight out of his checking account each month and that he did not find out about the payments for a year. He also claimed that he was making the payments on behalf of plaintiff because Mackey's credit was about to "go crazy[.]"

¶ 10 After hearing the testimony of both parties, the trial court ruled in favor of plaintiff and awarded her \$71,419.53, which included \$46,419.53 in compensatory damages and \$25,000 in punitive damages. The court also granted leave to allow plaintiff to file a petition for attorney fees. After considering the briefs and arguments of counsel, as well as the affidavits and time records of plaintiff's attorneys, the trial court awarded plaintiff \$78,156.25 in attorney fees.

Defendant appeals.

¶ 11 ANALYSIS

¶ 12 Defendant first argues that the trial court's holding regarding common law fraud was against the manifest weight of the evidence in that plaintiff did not prove that: (1) a fiduciary relationship existed; (2) defendant made a false statement or misrepresentation of material fact; and (3) there was justifiable reliance.

¶ 13 In order to determine whether common law fraud exists, the trial court must find: (1) a false statement or omission of material fact; (2) knowledge or belief of the falsity by the party making it; (3) intention to induce the other party to act; (4) action by the other party in reliance

on the truth of the statements; and (5) damage to the other party resulting from such reliance. *Weidner v. Karlin*, 402 Ill. App. 3d 1084 (2010). When the alleged fraud is in the form of a false statement of material fact, it is not necessary to show the existence of a special or fiduciary relationship. *Id.* The elements of common law fraud must be proved by clear and convincing evidence and will only be overturned on appeal if the trial court's determination was against the manifest weight of the evidence. *Malooley v. Alice*, 251 Ill. App. 3d 51 (1993).

¶ 14 Initially, we note that defendant's argument regarding a fiduciary relationship is flawed in that the fraud in this case is based on false statements, not omissions of fact. Therefore, a fiduciary relationship did not have to be established. With regards to defendant's second contention that he did not make a false statement of material fact, we find that it was not against the manifest weight of the evidence to determine that defendant had made such a statement. Plaintiff testified that at one point, defendant told plaintiff that she did not need to read the documents that she was signing because they did not concern her. Evidence also established that defendant told plaintiff that Mackey was at her house to cosign the loan because plaintiff had bad credit. Both of these statements were false and related to material facts.

¶ 15 We also find that it was not against the manifest weight of the evidence to determine that there was justifiable reliance. Defendant held himself out as a loan originator, and plaintiff testified that she contacted defendant because he had helped her cousin with a loan. Thus, plaintiff reasonably relied on the fact that defendant was in the financial business. Further, plaintiff's reliance was shown by the fact that she used the money that defendant gave her to make repairs on her house. If plaintiff knew that she had sold her house, then there would have been no reason to put her limited resources towards repairing the residence. Therefore, we hold

that it was not against the manifest weight of the evidence for the trial court to find that the elements of fraud had been proven.

¶ 16 Defendant next contends that it was against the manifest weight of the evidence to conclude that he engaged in unfair or deceptive business practices in violation of section 2 of the Act. 815 ILCS 505/2 (West 2004). To prevail in a cause of action under the Act, a plaintiff must prove by a preponderance of the evidence: (1) a deceptive act or practice by the defendant; (2) the defendant's intent that the plaintiff rely on the deception; (3) the occurrence of the deception in the course of conduct involving trade or commerce; (4) actual damage to the plaintiff; and (5) the deception was the proximate cause of the damage. *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100 (2005).

¶ 17 Here, plaintiff met her burden of proof. Evidence established that defendant made false statements to plaintiff that were made with the intent to induce plaintiff to rely on the statements. For example, defendant told plaintiff that Mackey was a cosigner on plaintiff's loan, not the purchaser of plaintiff's house. It is also clear that the deception occurred in the course of conduct involving commerce. Lastly, evidence established actual damages to plaintiff in that she lost possession of her house and received only \$14,500 for a property valued around \$100,000, and these damages were proximately caused by defendant. Therefore, it was not against the manifest weight of the evidence for the trial court to find that defendant had violated the Act.

¶ 18 Finally, defendant argues that the trial court's award of attorney fees was against the manifest weight of the evidence. A reviewing court will not disturb a trial court's award of attorney fees unless it finds that the court abused its discretion. *City of McHenry v. Suvada*, 2011 IL App (2d) 100534. Illinois courts will not award attorney fees unless fees are specifically

authorized by statute or provided for by contract between the parties. *Grate v. Grzetich*, 373 Ill. App. 3d 228 (2007). Here, the Act specifically authorizes the imposition of attorney fees. 815 ILCS 505/10a(c) (West 2004). Further, attorney fees for both common law fraud and violations of the Act can be recovered where the two counts are indistinguishable from one another. See *Kleczek v. Jorgensen*, 328 Ill. App. 3d 1012 (2002).

¶ 19 In this case, we find that the common law fraud count and the count based on a violation of the Act were indistinguishable in that they involved the same conduct by defendant.

Therefore, the trial court did not abuse its discretion by awarding the full amount of attorney fees to plaintiff. Based on the indistinguishable nature of the counts, as well as the fact that the trial court was familiar with the issues and had the benefit of observing plaintiff's counsel throughout the proceedings, we cannot say that the trial court's award of attorney fees was an abuse of discretion.

¶ 20

CONCLUSION

¶ 21 The judgment of the circuit court of Will County is affirmed.

¶ 22 Affirmed.