2014 IL App (1st) 132925-U
No. 1-13-2925
Order filed September 24, 2014

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

GEORGE G. KURITZA, M.D., RADIOLOGY ASSOCIATES, S.C., Plaintiff and Counterdefendant-Appellee, v. DIA-CHICAGO RIDGE MEDICAL DIAGNOSTIC IMAGING ASSOCIATES, LP, and CHICAGO RIDGE HOLDING CORP., Defendants and Counterplaintiffs-Appellants (D.I.A. Service Corp. d/b/a Medical Center Management, and Helikon Management, Inc., Defendants and Counterplaintiffs).	Appeal from the Circuit Court of Cook County. No. 2003 L 114853 cons. 2003 CH 19754 The Honorable Joan Powell, Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Pucinski and Justice Mason concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not error in refusing to grant defendants' motions for a directed verdict on its breach of contract counterclaim where record showed there was no breach. Nor did trial court err in refusing to strike expert's testimony where there was no indication that testimony was unreliable or speculative.

¶ 2 BACKGROUND

¶ 3 Plaintiff George G. Kuritza, M.D., Radiology Associates, S.C. (Kuritza), entered into a license-to-use agreement in 1997 with defendant DIA-Chicago Ridge Medical Diagnostic Imaging Associates, L.P. (DIA-Chicago Ridge) for use of medical equipment and real estate at 9830 South Ridgeland, Chicago Ridge, IL. The license agreement also allowed Kuritza to use "Chicago Ridge Radiology" and "DIA-Chicago Ridge Radiology" as assumed names for the purpose of doing business at the property. Kuritza agreed to stop using those names after the agreement terminated "including, but not limited to, their use as servicemark(s) or trade name(s)." Kuritza further agreed to pay DIA-Chicago Ridge a "use fee" each time he used the equipment.

¶ 4 Around the same time, Kuritza and defendant D.I.A. Service Corporation, doing business as Medical Center Management (DIA Service), entered into a management, billing, and collections agreement. DIA Service agreed to manage the premises under the license agreement, to bill insurance companies, and to pay Kuritza his share under the license agreement through a trust account.

¶ 5 The parties' relationship broke down in 2001, and two years later, Kuritza sued DIA Service, Helikon Management, Inc., DIA-Chicago Ridge, and Chicago Ridge Holding Corp. alleging breach of the license agreement and management agreement. DIA-Chicago Ridge filed counterclaims, alleging that Kuritza failed to pay proper "use fees" under the license agreement, and failed to cease using its trade names after the agreements terminated.

¶ 6 In 2012, a jury returned a verdict in favor of Kuritza on all claims, counterclaims, and affirmative defenses, awarding Kuritza $173,238.96. DIA-Chicago Ridge appeals.

¶ 7 ANALYSIS

¶ 8 DIA-Chicago Ridge alleges three errors: (i) the denial of its motion for a directed verdict on Kuritza's use of the trade names; (ii) the denial of its motion to strike the testimony of Kuritza's damages expert; and (iii) the denial of its motion for a directed verdict on Kuritza's breach of contract claim. Kuritza contends DIA-Chicago Ridge failed to file a proper report of the trial proceedings.

¶ 9 A report of the proceedings in the trial court must include all the evidence pertinent to the issues on appeal. Ill. S. Ct. R. 323(a) (eff. Dec. 13, 2005). A "court of review must have before it the record to review in order to determine whether there was the error claimed by the appellant." *Marzouki v. Najar-Marzouki*, 2014 IL App (1st) 132841, ¶ 19. If we are unable to review the claimed error due to an insufficient record, we will presume the trial court's order conforms to the law and has sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984).

¶ 10 DIA-Chicago Ridge provided 64 pages of transcript from the eight day trial. We will review each allegation of error to the extent we are able on the record before us.

¶ 11 Motion for judgment *n.o.v.* on Use of Trade Name

¶ 12 A motion for judgment notwithstanding the verdict "asserts that even when all of the evidence is considered in the light most favorable to the party opposing the motion, there is a total failure or lack of evidence to prove a necessary element of the opposing party's case." *Sharbono v. Hilborn*, 2014 IL App (3d) 120597, ¶ 23. Our review of such a motion is *de novo*. *Id*.

¶ 13 DIA-Chicago Ridge argues that the license agreement unambiguously requires Kuritza to cease use of its trade names after termination, and, because Kuritza admitted using them, the motion should have been granted. Dr. Kuritza testified that he used the trade names to file his tax

returns and registered them as assumed names with the Illinois Secretary of State, but did not use the names "commercially" or to "set up a clinic." Both agreements prohibit Kuritza from using the names "Chicago Ridge Radiology" and DIA-Chicago Ridge Radiology" "including, but not limited to, their use as servicemark(s) or trade name(s)."

¶ 14 The parties' agreements prohibit the use of DIA-Chicago Ridge's names only for commercial uses. We give unambiguous contract terms their plain meaning. *Dohrmann v. Swaney*, 2014 IL App (1st) 131524, ¶ 40. The phrase "including but not limited to" indicates that terms that follow are illustrative rather than exhaustive. See *People v. Gaytan*, 2013 IL App (4th) 120217, ¶ 40. Both a "service mark" and a "trade name" indicate commercial uses and differ in how they are used. Restatement (Third) of Unfair Competition, § 9 (2013) ("A trademark is a *** designation, that is distinctive of a person's goods or services and that is used in a manner that identifies those goods or services and distinguishes them from the goods or services of others. A service mark is a trademark that is used in connection with services."). But, the evidence showed Kuritza's use was unrelated to a commercial use. Accordingly, the trial court properly denied the motion for judgment *n.o.v*.

¶ 15 DIA-Chicago Ridge next argues that the trial court erred in allowing Kuritza to testify about his understanding of the name-use restrictions. While appellants objected to Kuritza's testimony at trial, they failed to raise the issue in their posttrial motion. Accordingly, the issue is forfeit. *Benford v. Everett Commons, LLC*, 2014 IL App (1st) 130314, ¶ 45.

¶ 16 Admissibility of Damages Expert's Testimony

¶ 17 DIA-Chicago Ridge argues that the trial court erred in denying its motion to strike the testimony of Kuritza's damages expert. We review the admissibility of expert testimony for an abuse of discretion. *Southwestern Illinois Development Authority v. Al-Muhajirum*, 348 Ill. App.

3d 398, 401 (2004). An abuse of discretion occurs where no reasonable person would agree with the trial court's position. *Brax v. Kennedy*, 363 Ill. App. 3d 343, 356 (2005).

¶ 18 The trial court should liberally allow an expert to determine what materials are reasonably relied on by those in his or her field. *Maercker Point Villas Condominium Ass'n v. Szymski*, 275 Ill.App.3d 481, 486 (1995). "It is the opponent's responsibility to then challenge the sufficiency or reliability of the basis for the expert's opinion during cross-examination, and the determination of the weight to be given the expert's opinion is left to the finder of fact." *Id*.

¶ 19 DIA-Chicago Ridge argues that Kuritza's damages expert's testimony should have been stricken because it was based on unsound methodology. Namely, the expert did not determine whether the parties collected fees from patients and insurance companies before calculating the amount Kuritza was owed. The limited record, however, does not show any evidence of unpaid or uncollected bills. Thus, while the damages expert did make certain assumptions in the calculations, no evidence indicates that those assumptions led to a miscalculation.

¶ 20 Accordingly, the trial court did not abuse its discretion in refusing to strike the expert's testimony.

¶ 21 Motion for Directed Verdict on Kuritza's Breach of Contract Claims

¶ 22 A motion for a directed verdict should be granted where the evidence overwhelmingly favors the movant so that no contrary verdict could ever stand. *Garest v. Booth*, 2014 IL App (1st) 121845, ¶ 39. We review a motion for directed verdict *de novo*. *Id*.

¶ 23 DIA-Chicago Ridge argues that, because the court should have struck the testimony of Kuritza's damages expert, it should have granted its motion for a directed verdict. Having found no abuse of discretion in refusing to strike the expert's testimony, we find no error in failing to grant DIA-Chicago Ridge's motion for a directed verdict.

¶ 24 Affirmed.