

No. 1-15-0535

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

ALMAZA CAB CO.,)	Appeal from the Circuit
)	Court of Cook County.
)	
Plaintiff-Appellee,)	
)	
)	
v.)	No. 2013 L 002240
)	
)	
CHICAGO MEDALLION MANAGEMENT)	
CORP.,)	Honorable
)	Patrick Sherlock,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Delort concurred in the judgment.

ORDER

Held: The judgment of the circuit court in favor of the plaintiff is affirmed, where the defendant failed to show that the court's findings that the defendant breached the parties' contract were against the manifest weight of the evidence.

¶ 1 The plaintiff, Almaza Cab Co., filed suit against the defendant, Chicago Medallion Management Corp. (CMMC), seeking, *inter alia*, damages and an adjudication of lien resulting

No. 1-15-0535

from CMMC's breach of a contract for the sale of the plaintiff's taxicab and medallion. CMMC counterclaimed, alleging that the plaintiff had repudiated the contract by refusing to accept a tender of payment in full. Following a bench trial, the circuit court entered judgment in favor of the plaintiff. CMMC now appeals, arguing that the court (1) erred, as a matter of law, in finding that the plaintiff's refusal to accept payment under the contract did not constitute an anticipatory repudiation under section 2-610 of the Uniform Commercial Code (UCC) (810 ILCS 5/2-610 (West 2010)); and (2) disregarded unrebutted testimony proving its compliance with the contract. For the reasons that follow, we affirm.

¶ 2 The plaintiff's owner and president, Mawaffak Ali, is a full-time taxicab driver and the owner of a taxicab and medallion number 6591. CMMC is in the business of purchasing the ownership rights to taxicab medallions and then transferring those rights to third-party buyers. The complaint alleged that, on September 1, 2011, the parties entered into a written "medallion sale and purchase agreement" (agreement) under which the plaintiff contracted to sell medallion number 6591 to CMMC for the price of \$280,000, along with a 2007 Dodge Caravan for an additional \$10,000. The contract was attached to the complaint and provided, in relevant part, as follows:

"8. Upon execution of this Agreement, Seller shall execute all documents necessary to effectuate the transfer to Buyer of all Seller's right, title, and interest in the Medallion.

* * *

10. Transfer of the Medallion is subject to the approval of the City of Chicago, Commissioner of Consumer Services***. In the event that the Commissioner denies approval of the Transfer through no fault of the Buyer, the

Earnest Money shall be returned to the Buyer and this Agreement shall be of no further force and effect.

11. Buyer and Seller shall use their best efforts to effectuate the Transfer of the Medallion. *Buyer shall present the completed Transfer Application to the Commissioner no later than twenty days after the Seller provides Buyer's attorney with the original Revenue Clearance from the City of Chicago Department of Revenue, or a date agreed to in writing by the parties.*

12. In the event that either party refuses to perform any act necessary to effectuate the transfer of the Medallion, or fails to perform the terms of this contract, said party shall be in default and shall be liable to the other party on (*sic*) the amount of Twenty Five Thousand (\$25,000) per medallion as liquidated damages ***. In the event[] Seller is in default, Seller hereby grants to Buyer the right to file a UCC-1 lien against the Medallion(s) for the amount of the liquidated damages." (Emphasis added.)

The contract further required that, upon approval of the transfer by the City of Chicago Commissioner of Consumer Services (Commissioner), a closing would be held "within five (5) business days" at an office of the consumer services department. Finally, the contract provided that time is of the essence.

¶ 3 The complaint alleged that, by November 4, 2011, the plaintiff had executed all of the necessary documents for the transfer and otherwise fully complied with its obligations under the agreement. In particular, the plaintiff had provided CMMC's counsel with the required "original revenue clearance," and was awaiting the Commissioner's approval of the transfer and the scheduling of a closing date. However, because CMMC failed to take steps to comply with

No. 1-15-0535

requirements imposed upon it by the Commissioner, the medallion transfer was not approved and the agreement was never consummated. Specifically, the plaintiff alleged that, upon information and belief, the Commissioner had made the transfer of the medallion contingent upon CMMC purchasing and equipping two handicap-accessible taxicabs to add to its fleet. To date, however, CMMC had neither complied with this contingency nor notified the plaintiff of any action in furtherance of it. Accordingly, the plaintiff sought \$25,000 in liquidated damages, plus reasonable attorney fees as allowed under the agreement. In a separate count, the plaintiff sought adjudication that a UCC-1 lien filed by CMMC against the medallion in March of 2012 was invalid and unenforceable.

¶ 4 In its amended counterclaim, CMMC did not dispute the terms of the agreement, but instead alleged the contract had been repudiated by the plaintiff. According to CMMC, the Commissioner's requirement that it purchase and equip the handicap vehicles led to a delay in the approval of the medallion transfer. Ali, upon learning of the delay, approached CMMC in November 2011, to cancel the contract. CMMC claimed that, at that point, it tendered the full \$290,000 payment to Ali under the contract. Ali refused to accept the payment, however, claiming he had another buyer for the medallion and would only accept a higher amount from CMMC. When CMMC refused to pay the higher amount, Ali stated that he would not complete the sale of the medallion under the agreement.

¶ 5 At trial, Ali testified that, on September 1, 2011, he met with CMMC's founder and chief executive officer, Sam Shtayner, and executed the contract at issue. Shtayner represented to Ali that the sale should be closed within approximately 4 weeks. On September 12, 2011, Ali met with CMMC's lawyer, Jennifer Davenport, and signed over title to his Dodge Caravan. Then, on November 4, 2011, he obtained the revenue clearance from the City of Chicago (City)

Department of Revenue as mandated under the contract, and his daughter, Latifa Ali, delivered it to Davenport that same day. The revenue clearance was introduced into evidence. Ali testified that he then waited to hear from Shtayner about the date for closing the sale. When he did not hear anything by mid-December, he called Shtayner, who stated that he was on vacation and would meet with Ali upon his return.

¶ 6 Ali testified that, in late December 2011, he met with Shtayner and Shtayner's son, and inquired about a closing date for the sale. According to Ali, Sam Shtayner said nothing about the deal being delayed or the Commissioner requiring CMMC to acquire wheelchair-accessible cabs before the sale could be completed. Rather, Shtayner told Ali he "[had] to wait *** we got this new mayor *** [and] he's making a lot of rules; I don't know what's going on." Shtayner then stated that, if he did not want to wait, he could take \$290,000 right then and "sign another contract" with Davenport. Ali testified that he declined this offer, because it was "behind the back of the City," and he "did not want to do that" because he was not represented by counsel. Ali denied ever telling Shtayner that he did not want to consummate the deal, or that he had offers from other cab companies to purchase the medallion.

¶ 7 Ali testified that, through January 2012, he continued receiving monthly payments from CMMC for the use of his cab under the management agreement.* However, no one from CMMC said anything further to him about closing or proceeding with the sale under the contract. Ali also testified that, when the renewal fee for the medallion became due, CMMC's manager refused to pay the fee. As Ali was concerned about incurring a fine or losing his medallion, he

* The record establishes that, on September 7, 2011, the plaintiff signed a separate agreement with CMMC, granting it authority to manage the medallion until the sale was closed. This management agreement, designated Exhibit 7, is absent from the record on appeal.

No. 1-15-0535

paid the fee himself. He then went to the City and demanded that his medallion, license plates and "hard card" be returned by CMMC. Ali received these items on January 27, 2012, although he testified he never regained possession of his Dodge Caravan.

¶ 8 On cross-examination, Ali stated that he was aware that, by December 2011, his medallion had increased in value. However, he denied having made a deal to sell it to a third party, stating "[o]nce I signed the contract, that's it."

¶ 9 Testifying as an adverse witness, Shtayner stated that, since its founding in 2004, CMMC has acquired approximately 200 taxicab medallions issued by the City. CMMC would then transfer the rights of ownership and possession of the medallions to third-party corporations. According to Shtayner, the agreement attached to the complaint accurately reflected the contract executed between the plaintiff and CMMC on September 1, 2011. He requested that Ali see Davenport to sign additional documents, and Ali complied, signing all documents required of him. Shtayner acknowledged that Ali was not represented by counsel when he executed the agreement on behalf of the plaintiff. By December 2011, CMMC had assigned the medallion rights under the contract to York Avenue Taxi.

¶ 10 Shtayner admitted that, by November 4, 2011, the plaintiff had obtained the required tax revenue clearance and delivered it either to himself or Davenport. Shtayner also acknowledged that, within 20 days of receipt of the tax revenue clearance, CMMC was required under the contract to file an application with the City for the transfer of the medallion. According to Shtayner, he assumed the completed application package had been submitted to the City; however, he did not have a copy of the application, as this would have been kept by Davenport. Shtayner was then asked about his deposition testimony of October 9, 2014, in which he denied ever submitting an application for the medallion transfer. He testified that, at that particular

No. 1-15-0535

moment, he believed an application had not been submitted and that he still did not know whether it was filed. However, he stated that he assumed it was filed.

¶ 11 Shtayner testified that, pursuant to the management agreement executed between the parties, CMMC took possession of the medallion, hard card, vehicle and plates. Shtayner admitted that the purchase agreement contains no provision requiring the plaintiff to accept the purchase money for the medallion prior to the closing.

¶ 12 Heidi Rivera Bhatti was employed by CMMC for seven years as office manager, registered agent and general manager. She acknowledged that, by the end of October 2011, Ali had completed everything he needed to do on behalf of the plaintiff under the contract except obtaining the tax revenue clearance. According to Bhatti, she submitted the transfer application to the Commissioner by the first or second week of October 2011. She stated that, once the tax revenue clearance came in on November 4, 2011, they were just "waiting for the City to give us a date." Bhatti testified that, during this time, Ali frequently came into the office inquiring when the sale would be completed. According to Bhatti, Ali was "ranting and raving all the time" because the price of the medallion was going up. At one point, Ali came out of a meeting with Shtayner saying he was "just going to take [the] medallion somewhere else and sell it." Bhatti testified that she made efforts to push the "City" for a closing date. She also testified that the delay in closing the sale was the fault of Ali, because he did not obtain his tax revenue clearance until November.

¶ 13 On cross-examination, Bhatti testified that she never gave Ali a copy of the transfer application. She testified that she could have requested it from "the attorney," but nobody asked for it. On re-direct, she testified that, once the transfer application is submitted, the City

No. 1-15-0535

typically sends a "blue form with a checklist" which is then stamped on the date of completion. However, according to Bhatti, they never received the blue form.

¶ 14 Shtayner's son, Felix, testified that he is head of operations at CMMC. He met with Ali in the Fall or winter of 2011, and Ali was eager to get the medallion transfer completed. However, according to Felix, Ali told him at that time that he had an offer from another buyer to purchase his medallion for \$300,000 or \$320,000. On cross-examination, Felix stated that, despite the fact that Ali was "impatient" to close the deal, he rejected CMMS's offer in December 2011 to expedite the \$290,000 payment without a "formal transfer."

¶ 15 Felix testified that transfer applications generally were prepared by Bhatti and signed by Shtayner, and copies would be stored in CMMS's files. The transfer application in this case consisted of a packet of documents. Felix testified that he believed he saw the transfer application for the plaintiff's medallion in a file, but he does not know where it is now. However, Felix stated that the document would have been produced to the plaintiff in preparation for trial. In response to an inquiry by the court, Felix testified that the Commissioner, despite being pressured by CMMS to provide a closing date for the medallion transfer, never communicated such a date.

¶ 16 Testifying on behalf of CMMS, Sam Shtayner stated that, when he met with Ali in November, Ali was demanding to close the medallion sale quickly because he needed money. Shtayner told Ali they were waiting for the City and nothing could be done. Shtayner offered to "expedite the sale" and then "do [the] transfer" at a later date. Specifically, he stated that he could have Davenport prepare necessary documentation and, within 48 hours, pay Ali the \$290,000 contract price. According to Shtayner, Ali refused this offer and demanded the return of his medallion, claiming that he had a better purchase offer from a third party. Shtayner

No. 1-15-0535

testified that he knew after the November meeting that Ali was not going to accept the \$290,000 payment for his medallion under the agreement. However, he also testified that he continued in his attempts, through Davenport, to push the deal through with the City.

¶ 17 On cross-examination, Shtayner testified that he was solely responsible for signing all of the transfer applications submitted by CMMC. However, he never saw a transfer application for the agreement in this case. He testified that, in the summer of 2011, he learned that there was a new City ordinance requiring the addition of handicap vehicles in certain circumstances. However, he admitted he did not inform Ali when they executed the agreement that the processing could be delayed as a result of this ordinance. He also admitted that there was no provision in the agreement for any such delay, stating it was "not part of" the agreement. Shtayner admitted he did not even submit an order for handicap-equipped vehicles until November 30, 2011.

¶ 18 Following arguments, the circuit court entered judgment for the plaintiff on the breach of contract claim, awarding it liquidated damages in the amount of \$25,000, and adjudicating CMMC's lien against the medallion a nullity. In making its ruling, the court noted that, based upon its evaluation of the testimony of the witnesses, CMMC never completed or submitted a transfer application for the medallion to the Commissioner as required under the agreement, thus breaching the agreement. The instant appeal followed.

¶ 19 CMMC first argues that the circuit court erred, as a matter of law, in finding that the plaintiff's admitted refusal to accept payment in full prior to closing did not constitute an anticipatory breach under section 2-610 of the UCC (810 ILCS 5/2-610 (West 2012)). According to CMMC, there was no dispute that, at some point in November or December 2011, Shtayner offered to pay Ali \$290,000 for his medallion "within 48 hours." However, Ali, in direct

No. 1-15-0535

repudiation of the agreement, refused to tender the medallion unless CMMC paid \$30,000 more than the original contract price. Therefore, CMMC was justified in resorting "to any remedy [available] for breach" as sanctioned under section 2-610, including placing a lien on the medallion.

¶ 20 Initially, we note that the parties disagree as to the standard of review on this issue. CMMC maintains that the proper standard of review is *de novo*, because the issue involves the proper application section 2-610 to undisputed facts. See *Price v. Philip Morris, Inc.*, 219 Ill. 2d 182, 236 (2005). The plaintiff disagrees, arguing that the circuit court's decision did not turn upon an interpretation of the UCC, but an assessment of credibility based upon the parties' conflicting accounts of the events surrounding the alleged breach. We agree with the plaintiff.

¶ 21 In resolving the question of which party breached the agreement in this case, the court did not undertake an analysis of the UCC or any other statute. Rather, the court stated that the decision was based simply upon the "testimony and [its] conclusions as to the veracity of the witnesses that have testified." In a civil case turning upon factual issues, we will not disturb the findings of the circuit court unless they are against the manifest weight of the evidence, or a contrary determination is clearly evident. *Samour v. Board of Election Commissioners*, 224 Ill. 2d 530, 542 (2007); *O'Leary v. America Online, Inc.*, 2014 IL App (5th) 130050 ¶ 7. Further, where the court's factual findings depend upon the credibility of witnesses, it is particularly important that a reviewing court defer to those findings unless they are against the manifest weight of the evidence. *Eychaner v. Gross*, 202 Ill. 2d 228, 251 (2002). As the record demonstrates that the disposition of this case involved solely a resolution of disputed testimony, we apply the "manifest weight" standard of review.

¶ 22 CMMC asserts that the court erred in finding that Ali's act of refusing its tender of the full contract price did not amount to a repudiation of the contract. This was not the basis for the court's decision. Rather, the court concluded that it was CMMC, not the plaintiff, that breached the agreement by failing to comply with its express terms. The record supports this conclusion.

¶ 23 The contract mandated that the parties "use their best efforts to effectuate" the transfer of the medallion and that the buyer present the completed transfer application to the Commissioner *no later than twenty days* after the seller provided the buyer's attorney with the original revenue clearance from the City. The failure or refusal of either party to comply with this term expressly placed that party in default.

¶ 24 It was undisputed that the plaintiff had fulfilled all of its obligations under the agreement, including presenting Davenport with the original revenue clearance, by November 4, 2011. This left CMMC with twenty days, or until November 24, 2011, to submit a completed transfer application to the Commissioner. However, as noted by the trial court, CMMC failed to provide credible evidence that a transfer application was ever filed or even existed. There was no copy of the completed packet itself or the even the application form. There was no receipt or other communication from the City suggesting such a form was filed. Shtayner testified that he had exclusive authority to sign the completed application, but acknowledged he had not seen it. Under the plain language of the contract, until this form was filed, there could be no approval of the medallion transfer by the Commissioner, nor any closing date set for the sale. By its failure to file the form, CMMC breached the agreement. Although Shtayner and Felix testified that, by either November or December of 2011, they believed the deal had been repudiated by Ali, the trial court was free to reject this account. See *O'Leary*, 2014 IL App (5th) 130050 ¶ 7. In fact, the testimony of these witnesses was questionable, in light of the fact that they also stated that

No. 1-15-0535

they were attempting to push the deal through with the City well after the plaintiff's alleged repudiation.

¶ 25 CMMC argues that the court impermissibly disregarded Bhatti's unrebutted and unimpeached testimony that she had submitted the transfer application to the Commissioner in October 2011. In support of its position, CMMC refers us to Shtayner's alleged deposition testimony that, on or about November 21, 2011, he was informed by the Commissioner that the transfer of the medallion would be delayed because of the new ordinance requiring CMMC to first acquire new handicap-equipped vehicles. According to CMMC, the Commissioner's involvement in this regard proves that the transfer application had been filed.

¶ 26 Initially, we point out that the record is devoid not only of Shtayner's deposition testimony, but any other evidence of a communication from the Commissioner regarding the delay claimed by CMMC. Accordingly, this court is unable to give any meaningful consideration to CMMC's assertion on this issue. It was CMMC's burden, as the appellant, to present us with a sufficiently complete record to support each claim of error, and any doubt arising from the incompleteness of the record must be resolved against it. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 27 Additionally, we do not agree that Bhatti's testimony was unimpeached and unrebutted. Although she claimed to be steadfastly communicating with the City by telephone or email in an effort to facilitate the closing, she was unable to produce a single transmission evidencing the filing of a transfer application. Bhatti also testified that she would ordinarily receive a "blue form" and checklist from the City upon its receipt of the application. However, again, no such form was ever produced by CMMC. In any event, it was the function of the circuit court to consider Bhatti's testimony, balance it against that presented by the plaintiff, and either accept or

No. 1-15-0535

reject her account. *Eychaner*, 202 Ill. 2d at 251. Based upon the record in this case, we are unable to conclude that the court's findings were against the manifest weight of the evidence.

¶ 28 For the foregoing reasons, we affirm the judgment of the circuit court in favor of the plaintiff.

¶ 29 Affirmed.