2015 IL App (4th) 150018-U

NO. 4-15-0018

FILED
November 17, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FRANK VALA and TAIMAX OF ILLINOIS, INC., Plaintiffs-Appellants, v. MARINE BANK, MARINE BANCORP, INC., MARK RICHARDSON, COYN RICHARDSON, and PHILLIP MATON, Defendants-Appellees, and WILLIAM VALA, Third Party Defendant-Appellant.	))))))))))	Appeal from Circuit Court of Sangamon County No. 10L218 Honorable Kenneth R. Deihl, Judge Presiding.

PRESIDING JUSTICE POPE delivered the judgment of the court.
Justices Knecht and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* Judgment for defendants is affirmed as plaintiffs and defendants both introduced otherwise inadmissible character evidence and plaintiffs failed to properly preserve other alleged evidentiary errors.

¶ 2 On May 16, 2014, the trial court filed a final judgment order, entering judgment on behalf of (1) defendants Marine Bank, Marine Bancorp, Inc., Mark Richardson, Coyn Richardson, and Phillip Maton on claims raised by plaintiffs Frank Vala and Taimax of Illinois, Inc. (Taimax) and (2) Marine Bank on its counterclaims against plaintiffs and third-party defendant William Vala. Plaintiffs appeal, arguing the court erred in allowing defendants to introduce evidence of Frank Vala's recreational gambling; the court abused its discretion in allowing defendants to read William Vala's discovery deposition into evidence; the court abused

its discretion by admitting a letter from the psychiatrist of one of plaintiffs' key witnesses; and the court failed to give plaintiffs' damage instruction. We affirm.

¶ 3 I. BACKGROUND

¶ 4 While the record in this case is lengthy, the issues on appeal are fairly narrow. Because the parties are familiar with the facts, our discussion of the background of this case is limited to what is necessary to understand our decision.

¶ 5 Plaintiffs' initial complaint, filed on September 29, 2010, alleged Marine Bank and its past and present officers made a number of misrepresentations to Frank Vala with regard to the sale of a hotel and its financing through the bank. On April 1, 2013, plaintiffs filed an amended complaint, alleging (1) common-law fraud (count I); (2) statutory fraud (count II); (3) breach of an assumed duty to disclose accurate information (count III); and (4) breach of fiduciary duty (count IV). Plaintiffs also filed equitable estoppel (count V) and rescission and restitution claims (count VI) against Marine Bank.

¶ 6 On January 6, 2014, defendants filed a motion *in limine* to exclude references to other loans made by defendants not at issue in this case. The motion asked the trial court to prohibit plaintiffs and the third-party defendant from referencing any actual or alleged wrongdoing concerning any Marine Bank transactions with or concerning any individuals or entities other than the plaintiffs or third-party defendant. The motion argued:

> "Faced with a complete lack of evidence to support their claims, Plaintiffs seek to introduce evidence that Marine Bank allegedly mishandled a variety of loans made to various third parties with the intent of deceiving some unnamed and unidentified bank examiners (the 'Bank Examiner Allegations'). See, *e.g.*,

Amended Complaint at ¶¶ 11, 39, 42, 43, 44, 45, 46, 51, 52. The transactions that underlie the Bank Examiner Allegations do not involve Plaintiffs or any individual or business entity associated with Plaintiffs. They do not involve the Hotel. They do not involve the previous owners of the Hotel or any previous loan made on the Hotel. They are unrelated, third party transactions that have no relation to the Plaintiffs, the Hotel or the Plaintiffs' cause of action.

Plaintiffs have spent years trying to establish a connection between, on the one hand, the loans made to them that are at issue in this case and, on the other hand, the loans that underlie the Bank Examiner Allegations. No such connection exists. The Plaintiffs' banking expert, Timothy Finn, agreed. He testified he 'saw no causal connection between the improper behavior alleged in those audit reports and the transactions that I was examining for Mr. Vala.' The audit reports Mr. Finn is referring to are reports drafted by auditors hired by Marine Bank after Marine Bank discovered some potentially improper behavior. Those auditors (as documented in their reports) did not find any connection to the Plaintiffs' loans. Thousands of pages of discovery and numerous depositions—some apparently taken for the sole purpose of trying to establish a link, any link, to the Bank Examiner Allegations—have failed to uncover a single connection. Frank Vala himself

testified that the Bank Examiner Allegations had no impact on the Plaintiffs' decision to enter into the Sales Contract and the Hotel Loan. Further demonstrating the lack of connection is the fact that the Plaintiffs do not seek any relief under any theory based on the Bank Examiner Allegations.

Plaintiffs seek to use the Bank Examiner Allegations to argue that Marine Bank's allegedly improper conduct in relation to the Bank Examiner Allegations is evidence that Marine Bank must have also acted improperly regarding the sale and financing of the Hotel. Under clear Illinois law, introduction of this evidence would be improper. Since there is no connection between the Bank Examiner Allegations and the Plaintiffs' loans, the Bank Examiner Allegations are inadmissible under Rules 404(b), 403, 402, and 401 of the Illinois Rules of Evidence."

¶ 7 On January 27, 2014, plaintiffs filed their own motion *in limine* to exclude any reference to Frank Vala's lawful recreational gambling. According to the motion, plaintiffs anticipated defendants would attempt to introduce evidence regarding his legal gambling activities and argue Vala saw the motel purchase as a gamble. Plaintiffs argued no evidence connected Vala's purchase of the motel with his legal, recreational gambling. According to plaintiffs, Vala's gambling was irrelevant and any probative value of the evidence was greatly outweighed by the prejudicial impact of the evidence. In addition, plaintiffs stated the evidence did not constitute proof of motive, opportunity, intent, preparation, plan, or knowledge.

¶ 8 That same day, plaintiffs filed responses and objections to defendants' motion *in limine* to exclude evidence regarding the bank examiner allegations. Plaintiffs had theorized "defendants allegedly were engaging in a pattern of behavior to hide bad loans Marine Bank had made from Bank Examiners and recoup its losses on these bad loans, including the motel, in other ways." Plaintiffs argued this evidence was relevant pursuant to Illinois Rule of Evidence 401 (eff. Jan. 1, 2011).

¶ 9 On February 3, 2014, defendants, except for Maton, filed their opposition to plaintiffs' motion *in limine* to exclude any reference to lawful recreational gambling by Frank Vala. According to the response:

> "Plaintiffs' motion misses both the limited nature of the evidence the Defendants seek to introduce and the purpose for which the Defendants seek to admit this limited evidence. If the Defendants sought to admit evidence of Frank Vala's gambling practices in order to show that Frank Vala is a gambler and that his purchase of the Motel was part of a pattern of conduct that included taking risks, Plaintiffs would be correct that the Court should not allow the admission of the gambling evidence. However, Defendants do not seek to admit evidence of Frank Vala's gambling practices. Rather, Defendants seek to admit some very limited evidence regarding discreet gambling losses to which Frank Vala has testified at deposition. In addition, Defendants do not seek to admit this limited evidence to prove that Frank Vala purchased the Motel as part of a pattern of conduct that includes

taking financial gambles. Rather, the Defendants seek to admit the limited evidence relating to gambling losses because it is relevant to the issue of materiality."

¶ 10 On February 4, 2014, the trial court heard arguments on the motions *in limine*. Defendants argued they previously had objected to the other loan evidence during the discovery phase of the case, but the court allowed discovery to continue. According to defendants, the issue now was whether this evidence should be admitted at trial. Defendants argued plaintiffs had made no connection between the other loans and the hotel transaction at issue here. Instead, the evidence produced during discovery showed the other loans had no impact on plaintiffs' decision to buy the hotel or on the alleged fraud. Defendants noted plaintiffs' own banking expert witness testified these other loans had no connection to the fraud on which he was asked to give an opinion. According to defendants, if evidence of these other loans was admitted, the case would no longer be about the alleged misrepresentations made to Frank Vala. Instead, the trial would get sidetracked about how Marine Bank made misrepresentations to bank examiners and other customers.

¶ 11 With regard to plaintiffs' motion *in limine* regarding Vala's gambling, plaintiffs' counsel argued the prejudice of allowing evidence of Frank Vala's recreational gambling would far outweigh the limited relevance the evidence might have. Plaintiffs argued defendants could establish the difference between the bank's alleged costs in the motel and the $1.75 million selling price was not a substantial amount to Frank Vala without introducing evidence of Vala's gambling.

¶ 12 Marine Bank argued it was not trying to introduce the gambling evidence to show Vala was a "big gambler." Instead, they wanted to show Vala's gambling losses of $327,184

were not significant to him. Marine Bank's attorney stated the bank was not going to talk about the other gambling evidence unless the trial court allowed plaintiffs to introduce evidence of the other loans and the bank examiner allegations. Counsel for Marine Bank explained:

> "[I]f the Court believes that character evidence of that sort can come into this case, then we are going to be seeking to introduce all of the evidence about Mr. Vala's gambling proclivities over the years in which he gambled, won and lost millions of dollars, because the hotel was a gamble. If the Court is taking the view that all this other irrelevant evidence comes in, we would be seeking to put that in.
>
> I don't think it would be proper. I think the proper thing is to keep the gambling evidence out and keep the other loan evidence out."

Counsel for Maton argued he believed the gambling evidence went to the reliance element of plaintiffs' fraud claim.

¶ 13 On February 6, 2014, the trial court entered a docket entry, denying defendants' motion to exclude evidence of the other loans and plaintiffs' motion to exclude evidence of Frank Vala's gambling activities. The court provided no reasoning for its decisions.

¶ 14 On February 20, 2014, days before the trial in this case, plaintiffs' counsel filed a motion to allow portions of Blair Fein's evidence deposition to be read to the jury in place of his live testimony. Fein, a senior vice president and loan officer for the bank, and Frank Vala negotiated the sale of the hotel at issue in this case. According to the motion, plaintiffs' counsel received a letter from Fein's doctor, Fareed Tabatabai, on February 18, 2014. The letter, which

was dated February 12, 2014, outlined the potential difficulties Fein might experience testifying in court—including difficulty focusing, concentrating, and processing information due to depression—and requested Fein not be required to testify at trial. In the letter, Dr. Tabatabai stated, "It is my opinion that the court environment would make accurate testimony quite difficult in this case." Defendants objected to the motion.

¶ 15 On February 20, 2014, a process server on behalf of Marine Bank attempted to serve a subpoena on Dr. Tabatabai but was unsuccessful because the doctor was out of the country until March 3, 2014.

¶ 16 On February 24, 2014, prior to jury selection, the trial court considered plaintiffs' motion to allow Fein's evidence deposition to be read in place of his live testimony. Defendants argued in part: "What the letter says is essentially that in the doctor's opinion it might be a problem for Mr. Fein to tell truthful testimony on the stand. Well, that's exactly the type of thing that should be done in front of a jury. The jury has to determine whether witnesses are telling the truth or not." Defense counsel also noted Fein was a central witness to plaintiffs' case and was the only witness plaintiffs point to who allegedly made certain representations on behalf of Marine Bank. The trial court denied plaintiffs' motion and ruled Fein would have to testify in person.

¶ 17 On February 26, 2014, defendants renewed their previous objection to the introduction of any evidence of other loans made by Marine Bank and the bank examiner allegations. The court granted defendants' request for a continuing objection regarding these matters. The court also granted plaintiffs a continuing objection with regard to evidence of Frank Vala's gambling.

¶ 18 On February 27, 2014, the parties gave their opening statements in this case. Plaintiffs' counsel started by giving some biographical information regarding Frank Vala, including his formation of his company, Community Care. Counsel also discussed how and why Frank Vala began his relationship with defendants Marine Bank and its owner, Coyn Richardson. Counsel stated: "Frank placed his banking business with Marine Bank on the basis of his trust and reliance on Marine Bank and Coyn Richardson." In addition, counsel extensively discussed Frank Vala's charitable activities.

¶ 19 Plaintiffs' counsel also talked about the growth of Marine Bank after Frank started banking there and the bank's "aggressive policy" of increasing its loan portfolio, which led to the bank issuing "quite a few" bad loans. According to counsel, one of these bad loans was made for the same hotel to its prior owner.

¶ 20 According to plaintiffs' counsel, Maton also made over $300,000 in unsecured loans to Darren Shipley and Randy McAffee. When these loans defaulted, Maton tried to hide the matter from bank examiners by using other bank income to show the loans were performing. This issue came to light in December 2004, when McAffee and Shipley pleaded guilty to bank fraud for defrauding other banks.

¶ 21 Plaintiffs' counsel stated two of the bank's loan officers detected what Maton was doing in 2001 or 2002 and reported the matter to the bank president. However, Maton remained employed by Marine Bank until December 2005, when a bank audit detected his actions.

¶ 22 Plaintiffs' counsel then turned his attention to a $1.45 million loan from Marine Bank to the Shri-Ohm Corporation on the same hotel. The Small Business Administration (SBA) had a second mortgage on the hotel for $1 million. Marine Bank later foreclosed on its loan.

¶ 23 George Embrey, an acquaintance of Frank Vala, then contacted both Blair Fein at Marine Bank and Frank Vala about Vala buying the hotel from the bank. The three men met in early August and in September 2002, and Fein told Vala the bank would sell the hotel to him for the bank's costs, $1.25 million. Fein provided Vala with a February 2000 appraisal for the hotel (Collier appraisal), which valued the property at over $3 million. Vala believed the bank was giving him a good deal because he was a good customer. Later, Fein called Vala and told him Maton said the price had to be $1.75 million because the bank had more expenses than initially believed. However, according to internal bank e-mails, the bank's expenses were less than $1.75 million.

¶ 24 Marine Bank contacted the SBA about paying off the SBA's $1 million second mortgage for $1,000. The SBA acquired an appraisal of the property (Taft appraisal), which was submitted on December 27, 2002 (after Vala agreed to purchase the property for $1.75 million), and valued the real property at $1.9 million. Marine Bank never provided this appraisal to Vala. According to plaintiffs' counsel, Frank Vala would testify he would have never purchased the property had he been shown the Taft appraisal.

¶ 25 During Marine Bank's opening statement, counsel stated Mark Richardson, the chairman of the board of the bank, met with both Maton and Coyn Richardson after learning Maton had misdirected bank funds. Maton resigned from the bank the same day. Marine Bank informed bank examiners it was going to have an outside forensic auditing firm review the bank's records. The forensic auditors found the bank's problems were limited to the $350,000 Shipley/McAffee loans made by Maton. Defense counsel stated:

> "The plaintiff is going to spend a large part of this case putting evidence in front of you about loans that had nothing to do

with the hotel, nothing to do with Mr. Vala, nothing to do with any of Mr. Vala's companies. And I submit to you that the evidence is going to show that the reason they are going to do that is because they have no actual evidence for their own claim ***."

¶ 26 Defense counsel also stated evidence would show Frank Vala did not rely on the Collier appraisal in purchasing the hotel. In addition, defense counsel noted plaintiffs' allegations against defendants had changed numerous times since the lawsuit was filed.

¶ 27 With regard to Vala's purchase of the hotel from Marine Bank and representations allegedly made by the bank, defense counsel stated:

"Now, one of the things that you are going to see in this case is that, when you really focus on what the whole case is about, the hotel, there are two people who are going to be able to testify about the primary facts, like exactly what was, what representations were made by the bank, exactly what was said to Mr. Vala. The two people are Mr. Vala and Blair Fein.

There are a lot of allegations in the Complaint, in the original complaint, that Mr. Richardson told Mr. Vala this and Mr. Maton told Mr. Vala that. Apparently those are all gone now for the various reasons that I told you the allegations have changed over three and a half years. And now it's all on Blair Fein.

Blair Fein was the main contact between the bank on the one hand and Mr. Vala on the other. So anything that you hear from them you are either going to hear from Mr. Vala himself,

> whose story has changed quite a few times, or from Mr. Fein, and there are, Mr. Fein does have some issues. He is under a number of medications. He [was] actually let go from the bank in 2006 because he stopped showing up for work because of a cocaine addiction."

Marine Bank's attorney also noted the bank was concerned about Frank Vala's high-stakes gambling. Maton's attorney stated this case is "about a gamble that Mr. Vala took in purchasing the motel" and "Mr. Vala is no stranger to gambling."

¶ 28 Plaintiffs called Blair Fein as a witness. Fein testified Maton told him Vala could purchase the hotel for $1.25 million. Fein relayed this information to Vala and Embrey. After Vala and Embrey agreed to buy the hotel, Maton told Fein the cost of the hotel was $1.75 million. Vala was mad, but he later agreed to buy the hotel for $1.75 million.

¶ 29 Fein asked Maton about the price increase. Maton said the bank's expenses were higher than expected. Dan Lanterman, an attorney for Marine Bank, told Fein the price went up because the bank had to pay off the SBA loan. Fein did not tell Vala about the SBA loan because he did not think Vala would buy the hotel if he knew about the SBA loan. Fein did not recall having a meeting with Lanterman where they determined the price would be $1.75 million. However, he testified it could have happened.

¶ 30 On cross-examination, Fein testified he was let go from Marine Bank in March 2006 because he had stopped coming to work due to depression. He was also using cocaine at the time. Fein testified he had been under the care of Dr. Tabatabai, a psychiatrist, for approximately nine years. Fein authorized Dr. Tabatabai to send a letter to the court on Fein's behalf. Fein saw the letter and agreed with the information it contained. Plaintiffs' counsel

objected to the introduction of the letter. However, the record does not reflect the basis for plaintiffs' objection, which was overruled.

¶ 31 Frank Vala testified about his background and charitable endeavors. According to Vala, Fein told him the hotel was worth more than $3 million. Vala testified he relied on the Collier appraisal valuing the hotel at over $3 million and Fein's statement the hotel was worth over $3 million when he purchased the property for $1.75 million. Vala testified he would not have closed on the property had he known the Taft appraisal valued the property at $1.9 million.

¶ 32 On cross-examination, Vala acknowledged he was concerned, prior to signing the contract to purchase the hotel from the bank, about the hotel's goodwill. He also acknowledged he knew the appraisal on which he relied was over two years old, and the hotel was appraised while operating as a branded facility, a Ramada Inn. Vala also testified he knew the value of commercial properties changes over time, determined in part by a property's goodwill. He also acknowledged he knew the value of the property would have decreased after the Collier appraisal, which was over two years old when he read it.

¶ 33 Vala testified he and Embrey speculated about what the hotel might be worth before signing the contract to purchase the hotel. Vala knew the hotel had been shut down, and they discussed whether customers would come back to the hotel. He and Embrey also discussed the cost to remodel the hotel. Vala was also concerned the hotel had been run by Indian businessmen. Vala testified Indians did not have a reputation for being good businessmen. Vala also testified in an evidence deposition the prior owners had left a stench in the hotel.

¶ 34 Prior to signing the purchase agreement with the bank in September 2002, Vala only did one inspection of the hotel, which was a walk through with Embrey, Fein, and another bank officer. At that time, he believed he would be purchasing the property for $1.25 million.

When he did the walk through of the hotel, the utilities were off. Vala, Embrey, and Fein only had flashlights with which to illuminate the building.

¶ 35 Vala also said he did not have any conversation with anyone from the bank as to what constituted their "cost" in the hotel. Vala testified he had never been in the hotel business before, did not consult with any attorneys before the purchase, did not seek the advice of his accountant, did not retain a hotel appraiser, and did not retain a building inspector or engineers to inspect the hotel. According to Vala, "I was not willing to spend those thousands of dollars for those inspectors and the months it would take to get the report.

¶ 36 According to Vala, even after finding multiple problems with the hotel in 2002, after signing the purchase agreement but before closing on the property, Vala still believed the hotel was worth $3.3 million. Vala acknowledged in February or March 2003, prior to closing on the hotel, he knew it was going to cost a lot more to get the hotel repaired than he originally thought. He had already borrowed $500,000 and had begun making improvements prior to closing. Vala acknowledged neither Coyn Richardson nor Maton directly told him the hotel was worth more than $3 million.

¶ 37 Defense counsel asked Vala if he considered $63,000 to be a material amount of money. (Vala's expert witness had testified the bank's actual costs were $63,000 less than its $1.75 million asking price for the hotel.) Vala answered it would depend on the situation. As to his personal income, Vala acknowledged he did not consider gambling losses of $327,184 in 2010 to be a substantial amount of money. However, Vala also testified he and his brother both had to take out second mortgages on their homes and cashed out individual retirement accounts around 2008 or 2009 when Marine Bank would not extend him additional credit. Vala

acknowledged he was gambling large amounts of money during this same period and lost hundreds of thousands of dollars.

¶ 38 During the trial, the trial court ruled it would allow defendants to introduce the portions of the deposition testimony of William Vala designated by defendants over plaintiffs' objection. It is unclear from the record the grounds for plaintiffs' objection prior to the court's ruling. The trial court stated it was bound by our supreme court's decision in *In re Estate of Rennick*, 181 Ill. 2d 395, 692 N.E.2d 1150 (1998). After the court had ruled, plaintiffs' counsel pointed out to the court the party whose deposition was admitted in *Rennick* had died. Counsel continued:

> "The Rule 212, subpart A, subpart 5, provides that a Discovery deposition may be used against other parties under certain conditions, one of which is the deponent is unable to attend or testify because of death or infirmity. William Vala is not unable to attend and testify because of death or infirmity.
>
> And, in addition, under the rule it has to be an admission against the party, and the testimony that we objected to by Mr. William Vala is simply not an admission against him. The only claim against him in this case is he is sued as a guarantor in the Third-Party Complaint."

The court noted it had considered the factors plaintiffs' counsel "just raised." The court went on to state the supreme court did not distinguish between deponents who were still living and those who were deceased.

¶ 39 On March 7, 2014, the jury found in favor of defendants on the common law fraud counts and awarded Marine Bank $3,188,698.49 on its counterclaim. On April 4, 2014, the trial court entered a docket entry stating it agreed with defendants' March 26, 2014, letter to the trial court, which stated in part: "We believe the evidence introduced at trial clearly supports a judgment in favor of Defendants on the remaining claims and defenses that were tried to the Court." On May 16, 2014, the court filed a final judgment order, which entered judgment on behalf of defendants on all of plaintiffs' counts and on behalf of Marine Bank with regard to its counterclaims against Frank Vala and Taimax and its third-party claim against William Vala.

¶ 40 This appeal followed.

¶ 41 II. ANALYSIS

¶ 42 On appeal, plaintiffs argue the trial court made three evidentiary errors and also erred in failing to provide the jury with plaintiffs' damage instruction. We will not reverse a trial court's evidentiary rulings unless the court abused its discretion. *Williams v. BNSF Ry. Co.*, 2015 IL App (1st) 121901-B, ¶ 43, 29 N.E.3d 1097. "A trial court abuses its discretion when its decision is fanciful, arbitrary, or unreasonable, or where no reasonable person would take the same view." *Id.* The fact this court might have ruled differently on an evidentiary issue is not grounds for finding the trial court abused its discretion. *Id.* Further, "[a]n error in the admission or exclusion of evidence will not constitute reversible error unless one party has been prejudiced or the proceedings have been materially affected." *Pister v. Matrix Services Industrial Contractors, Inc.*, 2013 IL App (4th) 120781, ¶ 56, 988 N.E.2d 123.

¶ 43 We note inappropriate evidence was admitted at trial, in both plaintiffs' and defendants' cases. We first address plaintiffs' argument the trial court should not have allowed evidence of Frank Vala's gambling. In their brief to this court, plaintiffs point out defendants

presented no evidence establishing a correlation between an individual's participation in recreational gambling and his willingness to take risks with regard to his business activities. Plaintiffs argue, "The fact that one may enjoy high-stakes gambling as entertainment does not give rise to the quantum leap that he would treat the decision to make a multimillion dollar investment in a business venture purely as a game of chance, without concern for the accuracy of the information provided to him by the people standing to profit from that investment." We agree. However, defendants argue evidence of Frank Vala's gambling was relevant because it was part of the reason why Marine Bank did not renew the hotel loan. We note, however, defendants advanced materiality as the basis for admission of the gambling evidence, not any perceived increase in risk as a result of Vala's gambling.

¶ 44 While an argument can be made this evidence was not entirely irrelevant, any relevance it had was far outweighed by its potential prejudicial effect. See *Id.* ¶ 55, 998 N.E.2d 123 (court may limit or exclude relevant evidence if the probative value is substantially outweighed by its prejudicial impact). Illinois Rule of Evidence 404(a) (eff. Jan. 1, 2011) states: "Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion ***." Plaintiffs cite *Powell v. Dean Foods Co.*, 2013 IL App (1st) 082513-B, ¶ 88, 7 N.E.3d 675, for the proposition that propensity evidence, even though it might have some relevance, is not allowed because it has a tendency to overpersuade a jury. In other words, the jury is likely to give this type of evidence more weight than it deserves.

¶ 45 However, while evidence of Frank Vala's gambling would normally be improper, both plaintiffs and defendants sought to introduce what would normally be considered inadmissible character evidence. Plaintiffs sought to introduce evidence of defendants' alleged

prior bad acts (the so-called "bank examiner allegations") to persuade the trier of fact defendants behaved badly toward plaintiffs in this case. Defendants sought to introduce evidence of Frank Vala's history of gambling to persuade the trier of fact Vala's purchase of this hotel was no different than a roll of the dice. Both defendants and plaintiffs filed motions *in limine* to keep the others' damaging evidence out of the trial. However, the trial court denied both motions.

¶ 46 As a result, both sides started this trial knowing the trial court would allow them to introduce inappropriate character evidence. Plaintiffs fired first in their opening statement, launching into Marine Bank's history of bad loans, misrepresentations to bank examiners, and misappropriation of the bank's fee income to make it appear bad loans were still fully performing. Defendants then, in their opening statements, responded with Vala's gambling habit. The bank's attorney introduced this information in the context of the bank's concern over Vala losing all his money and not being able to repay his loans. However, Maton's attorney stated this case is "about a gamble that Mr. Vala took in purchasing the motel" and "Mr. Vala is no stranger to gambling."

¶ 47 Both sides took the course of "mutually-assured destruction" and launched volleys attacking the other sides' character in their opening statements. The trial court allowed the parties to engage in a no-holds-barred grudge match. Both sides introduced normally improper evidence attacking the other side's character. If plaintiffs had prevailed at trial, defendants would likely be arguing the trial court abused its discretion in allowing evidence plaintiffs introduced attacking their character. Because the trial court allowed both sides to introduce what would normally be improper evidence, we will not find plaintiffs were prejudiced in this case when they engaged in the same type of inappropriate conduct.

¶ 48 We next address plaintiffs' argument the trial court erred in allowing portions of William Vala's discovery deposition to be read to the jury. Plaintiff first argues the deposition testimony should not have been read to the jury because William was not acting as Frank Vala's agent. However, Rule 212 states, in relevant part:

> "Discovery depositions taken under the provisions of this rule may be used only:
>
> ***
>
> (2) as an admission made by a party or by an officer or agent of a party in the same manner and to the same extent as any other admission made by that person[.]" Ill. S.Ct. R. 212(a)(2) (eff. Jan 1, 2011).

Whether William Vala was acting as an agent is irrelevant with regard to Rule 212 because William was a party to the action.

¶ 49 Plaintiffs argue large portions of William's deposition should not have been admitted because it constituted improper character evidence pursuant to Illinois Rules of Evidence 404(a) and (b) (eff. Jan. 1, 2011). According to plaintiffs, "William testified at length with regard to prior bad acts that Frank supposedly engaged in with the INB bank in 1992." However, as we held earlier, because the trial court allowed both sides to introduce what would normally be improper evidence, we will not find plaintiffs were prejudiced in this case when they engaged in the same type of inappropriate conduct.

¶ 50 Plaintiffs also argue the trial court should not have allowed William Vala's deposition testimony defendants made no misrepresentations to him. However, as defendants

point out, these admissions were admissible because William had asserted fraud and breach of fiduciary duty as affirmative defenses to Marine Bank's counterclaim against him.

¶ 51 An argument could be made the portions of William's deposition regarding Frank's relationship with INB were inadmissible hearsay pursuant to Illinois Rule of Evidence 801(d)(2) (eff. Jan. 1, 2011). This information seems irrelevant to any claim defendants had against William Vala. Rule 801(d)(2) states an admission by a party opponent is not hearsay if "the statement is offered *against a party and is *** the party's own statement*, in either an individual or a representative capacity." (Emphasis added.) Illinois Rule of Evidence 801(d)(2) (eff. Jan. 1, 2011). However, plaintiffs did not make this argument on appeal, so it is forfeited. Ill. S. Ct. R. 341(h)(7) (eff. Feb.6, 2013).

¶ 52 Finally, we address plaintiffs' argument the trial court erred in admitting the hearsay medical opinion of Blair Fein's psychiatrist, Dr. Tabatabai. Part of the doctor's opinion, which was contained in a letter the doctor wrote to plaintiffs' attorney, was "that the court environment would make accurate testimony quite difficult in this case" for Blair Fein. Plaintiffs used this letter when requesting the trial court allow Blair Fein's evidence deposition be read to the jury instead of requiring Fein's in-person testimony. Plaintiffs' request was denied, and Fein was required to testify in person.

¶ 53 When Fein testified at trial, defendants questioned him about the letter from his psychiatrist. Plaintiffs objected to this line of questioning at trial. However, the basis for their objection is not contained in the trial transcript. Plaintiffs also did not raise this issue in their posttrial motion. As a result, plaintiffs failed to properly preserve this objection. See *People v. Queen*, 56 Ill. 2d 560, 564, 310 N.E.2d 166, 168 (1974) ("Objections should be sufficiently

specific to inform the court of the ground for the objection, and a general objection, if overruled, will not preserve the issue for review on appeal.").

¶ 54 Defendants should not have been allowed to question Fein in the manner they did regarding the letter. Defendants do not argue the opinions contained in the letter were not hearsay. Instead, defendants argue Fein adopted the opinions in the letter prior to being questioned about those opinions. Defendants also contend the letter was admissible because it addressed Fein's mental condition and credibility. Defendants cite *People v. Friesland*, 130 Ill. App. 3d 595, 596, 474 N.E.2d 865, 866 (1985), for the proposition that "[i]t is well established in Illinois that evidence of a witness' mental condition is admissible to the extent that it relates to the credibility of the witness' testimony." However, the evidence must be admitted in a proper manner. The doctor's letter was inadmissible hearsay. As stated earlier, though, plaintiffs failed to properly preserve this issue.

¶ 55 In closing, we note the trial court's pretrial rulings denying both plaintiffs' and defendants' respective motions *in limine* to bar evidence of Frank Vala's gambling and evidence of Phil Maton's bad acts and the bank's bad loans, which plaintiffs could not connect with the hotel transaction at issue in this case, invited a no-holds-barred, mudslinging match between the parties. It is no surprise both sides' hands were dirtied so extensively. Under these circumstances, we can say the parties did not receive a perfect trial, but we cannot say the parties failed to receive a fair trial.

¶ 56 III. CONCLUSION

¶ 57 For the reasons stated above, we affirm the trial court's judgment.

¶ 58 Affirmed.