

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).

SIXTH DIVISION
September 21, 2012

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PIERRE MOUNSEF,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant and Cross-Appellee,)	Cook County.
)	
v.)	No. 08 CH 11429
)	
GEORGE MOUNSEF and TERESA MOUNSEF,)	The Honorable
)	William Maki,
Defendants-Appellees and Cross-Appellants.)	Judge Presiding.

PRESIDING JUSTICE LAMPKIN delivered the judgment of the court.
Justices Robert E. Gordon and Palmer concurred in the judgment.

ORDER

¶ 1 HELD: Plaintiff failed to establish the contested businesses and property were partnerships. Plaintiff was not entitled to an accounting and could not maintain an action for breach of fiduciary duty. Plaintiff additionally could not maintain a breach of contract action where the document at issue was not a valid and enforceable contract. The trial court granted the appropriate relief based on its findings.

¶ 2 Plaintiff and cross-appellee, Pierre Mounsef, filed a complaint for, inter alia, dissolution of a partnership and an accounting against defendants and cross-appellants, George and Teresa Mounsef. A bench trial was held to determine whether and, if so to what extent, the brothers, Pierre and George, became partners in a number of businesses and real estate ventures. The trial court concluded the brothers did not enter into an overall partnership for all of the entities. The court, however, ordered the dissolution of three businesses and the sale of four properties, all of which the parties agreed were partnerships, with all obligations or proceeds from the sales to be divided equally between Pierre and George. The trial court denied Pierre's accounting claim, and breach of fiduciary duty and contract claims. The court further denied defendants' counter claim for constructive trusts. Plaintiff appeals.¹ Based on the following, we affirm.

¶ 3 FACTS

¶ 4 Pierre alleges that he and George entered a verbal agreement in 1988 to become equal partners in the following businesses, some in existence at that time and some created at later dates: Mounsef International Inc. (Mounsef International) (first incorporated in 1985), Al Khyam Grocery (grocery) (created in 1987), Al Khyam Bakery (bakery) (created in 1988), Al-Khaymeih Restaurant, Inc. (restaurant) (incorporated in 2000), Zennah, Inc. (Zennah) (incorporated in 2001); and Mounsef Real Estate Investment, L.L.C. (Mounsef Real Estate) (formed in 2006).

¶ 5 Prior to trial, the parties entered an agreed statement of facts/stipulations. In the statement, the parties stipulated that: (1) the restaurant's shares are owned equally by Pierre and George; (2) Zennah's shares are owned equally by Pierre and George; and (3) Mounsef Real

¹Defendants filed a cross-appeal, but we granted their motion to dismiss that cross-appeal.

Estate has two members, Pierre and George, each with 50% membership. The parties additionally stipulated that: (1) the property located at 4742-46 N. Kedzie in Chicago, Illinois, is held in a land trust, dated December 14, 1997, with Pierre and George as the sole beneficiaries; (2) the property located at 3201-3213 W. Lawrence in Chicago, Illinois, is held in a land trust, dated February 21, 2002, with Pierre and George as the sole beneficiaries; (3) the property located at 4748-50 N. Kedzie in Chicago, Illinois, is held in a land trust, dated December 6, 2002, with Pierre and George as the sole beneficiaries; and (4) the property located at 3665 W. Lunt Avenue in Lincolnwood, Illinois is held by Mounsef Real Estate with Pierre and George each holding 50% membership. The parties further stipulated that George and Teresa were the beneficiaries of a land trust dated November 15, 1991, for property located at 4738 N. Kedzie in Chicago, Illinois. Moreover, the parties stipulated that: (1) the bakery originally operated from an unowned property prior to moving to the 4738 N. Kedzie property, but was moved again to the 3665 W. Lunt property; (2) the grocery operated from the 4738 N. Kedzie property with some of it also operating out of the front of the 4742-46 W. Kedzie property; (3) the restaurant operated out of the 4748 N. Kedzie location; and (4) the 3201-3213 W. Lawrence property was purchased as an investment property. In addition, the parties stipulated that Mounsef International was dissolved by the Illinois Secretary of State in 1987 for unknown reasons, and formed as a new corporation in 2003.

¶ 6 The trial court appointed a business receiver and a real estate receiver to establish accurate accountings of the entities, remedy funding and transfer issues amongst the parties, and maintain the entities for the duration of the litigation.

¶ 7 Defendants filed a bystander report, which was accepted and approved by the trial court. The following facts were found therein. From 1996 through 2000, George and his family left the United States for Lebanon. During that time, Pierre purchased the property located at 4742-46 N. Kedzie. Pierre conveyed the property into a land trust with the brothers as sole beneficiaries. In 2001, George formed Zennah to import goods. At that time, George issued all of the shares of stock in the corporation to himself. Then, in 2006, George transferred 50% of the Zennah shares of stock to Pierre. In 2003, when Mounsef International was recreated, George issued all of its shares of stock to himself.

¶ 8 The bystander report further indicated the trial court found that Pierre failed to establish an overall partnership. Rather, when the parties entered a partnership, as those explicitly named in the agreed statement of facts/stipulations, there was documentation establishing the relationship. The remaining "ventures" were not structured and Pierre engaged in those businesses as an employee. Additionally, the bystander report referenced a September 15, 2008², contract signed by the parties that was inadequate and non-specific as to its terms. The trial court denied Pierre's requested relief under the contract, finding it unenforceable.

¶ 9 The record contains two orders entered by the trial court, one on November 19, 2010, and one on November 23, 2010. The November 19, 2010, order denied plaintiff's request to dissolve an overall partnership or any businesses run by Mounsef International, namely, the grocery and bakery, and denied plaintiff's requested accounting and breach of fiduciary duty claims. In that order, the trial court further denied any partition of the 4738 N. Kedzie property. The trial court's

²The actual date of the contract is September 15, 2007.

1-10-3594

order also included the dissolution of the restaurant corporation, Zennah Inc., and Mounsef Real Estate, L.L.C., along with the sale of the following properties: 4742-46 N. Kedzie; 4748-50 N. Kedzie; 3201-13 W. Lawrence; and 3655 W. Lunt. In addition, the trial court appointed real estate receiver Foresite Realty Partners, L.L.C., to act as the sales broker for the properties with directions to list, market, and sell them. The order further denied the enforcement of the agreement signed by Pierre and George on September 15, 2007.

¶ 10 The November 23, 2010, order terminated Donald Shapiro as the real estate receiver, terminated the real estate receivership, and provided detailed directions for the real estate brokerage to follow.

¶ 11 DECISION

¶ 12 I. Partnership

¶ 13 Pierre contends he and George had express and implied agreements that the grocery, bakery, and Mounsef International were partnership entities. Pierre further contends the property at 4738 N. Kedzie was a partnership entity. Pierre contends the trial court's contrary findings were against the manifest weight of the evidence.

¶ 14 The Uniform Partnership Act (UPA) defines partnership as "an association of two or more persons to carry on as co-owners a business for profit." 805 ILCS 205/6(1) (West 1988)³.

A partnership is a contractual relationship requiring the mutual consent of the partners. In re

³See 805 ILCS 205/90 (West 2004) (the UPA applies to partnerships formed before January 1, 2003); see also Pub. Act 92-740, eff. January 1, 2003, repealing 805 ILCS 205/1 *et seq.*, and enacting 805 ILCS 206/100 *et seq.*

Estate of Goldstein, 293 Ill. App. 3d 700, 709, 688 N.E.2d 684 (1997). A partnership has the following characteristics: (1) parties that join together to carry on a venture for their common benefit; (2) contribution to the venture of property or services by each party; and (3) each party having a community interest in the profits. *Id.* (citing *Kennedy v. Miller*, 221 Ill. App. 3d 513, 521, 582 N.E.2d 200 (1991)).

¶ 15 The party asserting a partnership claim has the burden of proving its existence. *Id.* The question of whether a partnership exists is to be determined by a fact finder from all of the facts and circumstances presented. *Id.* at 710. “In determining the existence of a partnership, the trial court should consider the following factors: how the alleged partners have dealt with each other; how each of the alleged partners have dealt with third persons; whether the alleged partners have advertised using a firm name; and whether the partners have shared profits.” *Id.* at 709-10. A reviewing court may not overturn the trial court’s determination unless it is against the manifest weight of the evidence. *In re Marriage of Hassiepen*, 269 Ill. App. 3d 559, 565, 646 N.E.2d 1348 (1995). “A trial court’s judgment is against the manifest weight of the evidence only when an opposite conclusion is clearly evident or the factual findings upon which it is based are unreasonable, arbitrary, or not based on the evidence.” *Muhammad v. Muhammad-Rahmah*, 363 Ill. App. 3d 407, 414, 844 N.E.2d 49 (2006).

¶ 16 We conclude that the trial court’s findings regarding the disputed businesses and property were not against the manifest weight of the evidence. The trial court’s findings of fact were that Pierre failed to meet his burden of proof establishing that he and George were equal partners in all of the businesses. Specifically, as provided in the bystander’s report, the court found “some

of the ventures between George and Pierre were structured and others were not. When they shared a 50/50 relationship, it was spelled out in documents. The overall partnership was not proven. Pierre engaged in a number of businesses, some as an employee and some as a partner.” Based on our review of the record, we cannot say an opposite conclusion is clearly evident or the trial court’s factual findings were unreasonable, arbitrary, or not based on the evidence.

Muhammad, 363 Ill. App. 3d at 414.

¶ 17 Pierre's contentions suffer from lack of legal support where he sparsely cited to legal authority that does not support his claims. More importantly, though, Pierre's contentions suffer from lack of factual support. The record reflects that this case was extensively litigated, yet the trial court's findings only appear in the orders appealed from, i.e., November 19, 2010, and November 23, 2010, and the limited factual findings provided in the bystander's report, as there is no transcript of the proceedings. The bystander's report provides:

"It was agreed that an order would be prepared and circulated to all counsel for agreement before presentation to the Court. Following that discussion, counsel for Pierre Mounsef asked if the Court would type up its notes and place them in the court file. The Court stated that it had given an explanation of its conclusions as the parties had been present throughout the trial and were present that day. Counsel for George Mounsef stated that either party could have brought a court reporter, and neither party had done so."

¶ 18 It is commonly understood that the appellant has the burden to present a sufficiently complete record to support his claim of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, 459

1-10-3594

N.E.2d 958 (1984). "An issue relating to a circuit court's factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding." *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156, 839 N.E.2d 524 (2005). Where the record presented is inadequate, the reviewing court must presume the lower court had a sufficient factual basis for its holding and the order is in conformance with the law. *Id.*

¶ 19 We presume the trial court had a sufficient factual basis to determine a partnership did not exist for the grocery, bakery, Mounsef International, and 4738 N. Kedzie. Indeed, it was the trial court's duty to make credibility determinations and assess the facts and circumstances to determine whether a partnership existed. As stated, our review of the record does not reveal an opposite conclusion or that the limited factual findings provided were unreasonable, arbitrary, or not based on the evidence. *Muhammad*, 363 Ill. App. 3d at 414. We recognize George admitted in his trial testimony that he used one bank account, under the name Mounsef International, for all of his businesses and properties, including those that were indisputedly partnerships; however, the testimony presented also demonstrated that George was in complete control of the profits and decision making for the contested businesses and property. Moreover, the trial court's November 19, 2010, order demonstrates a finding that the grocery and bakery were operated by Mounsef International. When Mounsef International was originally incorporated in 1985, George offered Pierre, and two other brothers, shares in the company. None of the brothers, including Pierre, purchased the offered shares and there is no evidence that Pierre received any shares. When Mounsef International was incorporated in 2003, George retained 100% of the shares. Additionally, Pierre testified at trial that a so-called partnership agreement was written in 1993,

but admittedly disregarded. Importantly, that document provided: "Peter [aka Pierre] Mounsef [has] the right to manage said bakery and [has] no rights, and no interest whatsoever at the business 4738 N. Kedzie."

¶ 20 Further, as to the property located at 4738 N. Kedzie, it was placed in a land trust in 1991 with defendants as the named beneficiaries. The trust has never been modified.

¶ 21 Our review of the record, therefore, demonstrates that partnerships for the contested businesses and property were not supported by evidence showing George and Pierre shared a mutual consent to carry on as co-owners of the named entities for profit.

¶ 22 II. Breach of Fiduciary Duty And Accounting

¶ 23 Because we have determined the trial court's finding that the grocery, bakery, Mounsef International, and 4738 N. Kedzie were not partnership entities was not against the manifest weight of the evidence, Pierre cannot sustain his contentions for breach of fiduciary duty and an accounting. See *Thornwood, Inc., v. Jenner & Block*, 344 Ill. App. 3d 15, 799 N.E.2d 756 (2003) ("[p]artners have a fiduciary relationship"); *Kennedy*, 221 Ill. App. 3d at 521 ("at the initial hearing to determine if a party is entitled to an accounting, the party seeking the accounting must prove the intent to form a partnership, as well as contribution to the partnership of either property or services")

¶ 24 III. Breach of Contract

¶ 25 Plaintiff further contends the trial court erred in finding George did not breach the parties' 2007 buy-out agreement. The agreement provided that Pierre would "transfer all of [his] shares and rights" to 4742 N. Kedzie, 4744 N. Kedzie, 4748 N. Kedzie, 4750 N. Kedzie, and 3665 W.

Lunt and "transfer the shares that [he owned] in any business between [he] and George, including Al Khayam Bakery and Zennah Inc., and any other business entity *** with George Mounsef. [He] will decline all *** rights to all above to George Mounsef. Also includes any entity that has 'Mounsef' name." The agreement continued that "in compensation" George would pay Pierre \$4 million and the "closing" would be no later than November 1, 2007. The agreement further provided: "If any party changes his mind for any reason or the deal doesn't go through for any reason then a penalty of \$300,000 will be paid by the defaulting party or the declining party." The agreement was dated September 15, 2007, and was signed by Pierre and George, along with three witnesses. As stated in the bystander's report, the trial court found the "document [was] inadequate and non-specific as to its terms."

"It is basic contract law that in order for a contract to be binding and enforceable, its terms must be definite and certain. [Citations.] They must also be free from ambiguity and doubt. [Citation.] If the material terms are not ascertainable, no enforceable contract is created. [Citation.]" *Shults v. Griffin-Rahn Insurance Agency, Inc.*, 193 Ill. App. 3d 453, 457-58, 550 N.E.2d 232 (1990).

¶ 26 We agree with the trial court that the September 15, 2007, document was not an enforceable contract. The terms lacked definition and certainty, especially regarding the "entities" being purchased, what constituted a "closing," and the "default" or "declining" events. Pierre, therefore, cannot sustain a breach of contract action.

¶ 27

IV. Relief

¶ 28 Pierre finally contends the trial court's November 19, 2010, and November 23, 2010, orders should be reversed because neither party requested the relief granted. Plaintiff's argument lacks merit.

¶ 29 In his amended complaint, plaintiff requested the dissolution of "The Partnership," which included all of the properties, the disputed and agreed upon partnerships, and the bakery, grocery, restaurant, and Zennah. In Pierre's amended complaint, he alleged that George "wrongfully maintained" Mounsef International as the owner of the properties and named businesses. We, therefore, conclude that when the trial court ordered the dissolution of those businesses that were agreed partnerships and the dissolution and sale of those properties that were agreed partnerships, the court was complying with the relief requested by Pierre to the extent allowable by its findings. The trial court could not order the dissolution of businesses or property that were found to not constitute partnerships.

¶ 30

CONCLUSION

¶ 31 We affirm the judgment of the trial court in finding only the agreed upon businesses and properties constituted partnerships. Plaintiff, therefore, was not entitled to an accounting and could not maintain a cause of action for breach of fiduciary duty for those entities for which the evidence failed to establish partnership agreements. In addition, plaintiff could not maintain a breach of contract action where the terms of the document in question lacked definition and certainty. The relief granted by the trial court was proper.

¶ 32 Affirmed.

1-10-3594