2014 IL App (1st) 132330-U

SECOND DIVISION
October 28, 2014

No. 1-13-2330

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

CHRISTOPHER CHUDZIK,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 11 L 1128
	)	
GEORGE GEORGIO,	)	
	)	Honorable Margaret Ann Brennan,
Defendant-Appellee.	)	Judge Presiding

PRESIDING JUSTICE SIMON delivered the judgment of the court.
Justices Neville and Liu concurred in the judgment.

O R D E R

¶ 1 *Held*: The trial court did not err when it entered a directed finding against plaintiff and in favor of defendant after plaintiff presented its case in chief at a bench trial. The trial judge's finding that the evidence presented by plaintiff was insufficient to prove fraud, conversion, or to sustain an action for replevin was not against the manifest weight of the evidence.

¶ 2 After Plaintiff Christopher Chudzik completed presenting his case in chief at a bench trial,

Defendant George Georgio moved for and was awarded a directed finding on all of the claims

asserted. Chudzik appeals arguing that the trial court's rulings were against the manifest weight of the evidence. We affirm.

¶ 3 BACKGROUND

¶ 4 On February 1, 2006, Georgion, LLC and Chudcorp, LLC, by their agents, executed a letter of intent evidencing their proposed agreement for the lease of the property located at 8888 West 159th Street, Orland Hills, Illinois. The letter of intent states that it represented the parties' entire agreement at that time, but it also contemplated that the parties would subsequently execute a more formal agreement. Defendant George Georgio[1] signed the document on behalf of Georgion, LLC[2] and Plaintiff Christopher Chudzik signed on behalf of Chudcorp, LLC. The letter of intent contains a provision entitled "contingency" which provides that the lease "will be subject to obtaining . . . [a] liquor license." Chudzik gave Georgio a $30,000 cashier's check for a security deposit.

¶ 5 Subsequently, a lease agreement for the premises was executed by Chudzik's wife on behalf of Detours Grill & Bar, LLC as tenant, and by Georgio on behalf of DIO AA, LLC as landlord. Chudzik's wife signed the lease because Chudzik could not be involved in applying for a liquor license as a result of being convicted of a felony. The lease indicates that the tenant intended to use the premises as a restaurant and nightclub, but it does not mention the liquor license contingency. The parties' testimony conflicted as to which agreement each party believed governed their transaction and whether they intended that their transaction was

[1] The trial transcript reveals that defendant's name is actually George Georgiou. However, to remain consistent with the caption of the case and with how the parties have referred to defendant throughout the proceedings, we will refer to him as "Georgio" in this order.

[2] The trial transcript also reveals that the limited liability company was Georgiou, LLC, but was named incorrectly in the letter of intent.

contingent on the procurement of a liquor license. Chudzik testified that his wife applied for a liquor license on behalf of Detours Grill & Bar, LLC, but that the application was denied. The lease eventually went into default as a result of non-payment and Georgio changed the locks on the premises. Chudzik alleges that, prior to being locked out, he had moved certain personal property into the leasehold in anticipation of running the business. The lessor terminated the lease and retained the security deposit.

¶ 6 In his amended complaint, Chudzik interposed claims for fraud, conversion, and replevin. A bench trial was held by the trial court. After Chudzik presented his case, Georgio moved for a directed finding which, after arguments were heard, was granted. The trial court found that Chudzik had failed to meet his burden of proof on the fraud claim because there were just two "he said-he said" statements that did not "rise[] to the level of fraud." The trial court also found that Chudzik did not meet his burden of proof on the conversion or replevin claims because the evidence was too speculative. This appeal followed.

¶ 7 ANALYSIS

¶ 8 In all cases tried without a jury, the defendant may, at the close of the plaintiff's case, move for a finding or judgment in his favor. 735 ILCS 5/2-1110. In ruling on a motion for a directed finding, the trial court shall weigh the evidence, considering the credibility of the witnesses and the weight and quality of the evidence. *Id.* If the trial court considers the evidence and testimony presented by the plaintiff when it makes a directed finding, we review the trial court's ruling to determine whether it was against the manifest weight of the evidence. *Prodromos v. Everen Securities, Inc.*, 389 Ill.App.3d 157, 170 (2009). A ruling is against the manifest weight of the evidence when the opposite conclusion is clearly evident or the determination is unreasonable,

arbitrary, or without basis in the evidence presented. *Id*. at 170-71. Here, both parties agree that we are called on to determine whether the trial court's ruling was against the manifest weight of the evidence.

¶ 9 In support of his fraud claim, Chudzik alleged that Georgio represented to him that a liquor license was available for the premises. Chudzik alleged that Georgio's statement was false when it was made and that Georgio knew it was false. Chudzik also alleged that Georgio intended that Chudzik would rely on the statement and that he did rely on it by tendering $30,000 as a security deposit that was never returned.

¶ 10 In order to prove fraud, a plaintiff must establish: (1) that defendant made a false statement of material fact; (2) that defendant had knowledge that the statement was false; (3) that defendant intended that the statement induce the plaintiff to act; (4) that plaintiff relied upon the truth of the statement; and (5) that plaintiff suffered damages resulting from reliance on the statement. *Connick v. Suzuki Motor Co. Ltd.*, 174 Ill.2d 482, 496 (1996). The presumption is that all transactions are fair and honest, and fraud is not presumed. *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill.2d 100, 191 (2005). Therefore, a plaintiff must prove fraud by clear and convincing evidence. *Id*.

¶ 11 The trial court properly granted Georgio's motion for a directed finding on the fraud claim. There was no evidence at trial that Georgio intentionally made a false statement, much less that he knew the alleged statement was false at the time it was made. The trial court found the evidence to be insufficient stating that the fraud was based on just "he said-he said" statements that did not "rise[] to the level of fraud." For Chudzik to have prevailed on a fraud claim, he would have had to prove that at the time the security deposit was paid, Georgio knew that Detours Grill & Bar

could not get a liquor license. No evidence was submitted that would remotely support that position. The process for obtaining a liquor license had not even begun at the time the statement was allegedly made, and Georgio did not and could not have known whether Chudzik would be able to procure the license.

¶ 12 Additionally, Chudzik failed to prove reliance. Chudzik testified that he and his wife performed the due diligence for getting the liquor license. The testimony introduced at trial also revealed that Chudzik and his wife were responsible for filing for the liquor license and that they filled out the application. As the trial court noted, both Chudzik and his wife had been involved in the nightclub business. They knew or should have known that Georgio could not guarantee that a liquor license would be granted. Georgio's testimony was that he did not and could not assure Chudzik that a liquor license could be procured. There was no evidence presented of any intent to deceive. The trial court's directed finding on the fraud claim was not against the manifest weight of the evidence.

¶ 13 In support of his conversion claim, Chudzik alleged that Georgio obtained possession of the security deposit monies by making the false statement that Detours Grill & Bar would get a liquor license. Chudzik also alleged that Georgio unlawfully obtained certain personal property Chudzik brought to the premises after changing the locks at the leasehold. Chudzik claims that Georgio has not returned the security deposit or the personal property and that Georgio's conduct demonstrates an intent to permanently deprive Chudzik of the property. The trial court found that Chudzik did not establish facts that would entitle him to relief for conversion.

¶ 14 To prove conversion, a plaintiff must establish: (1) that he has a right to the property; (2) that he has an absolute and unconditional right to the immediate possession of the property; (3) that

he made a demand for possession; and (4) that the defendant wrongfully and without authorization assumed control, dominion, or ownership over the property. *Kovac v. Barron*, 2014 IL App (2d) 121100, ¶ 97.

¶ 15 Chudzik makes two claims of conversion one of which is for the money paid as a security deposit that was retained when the tenant defaulted on the lease and the other of which relates to a claim for personal property locked within the premises. The money paid as a security deposit is not the proper subject of a conversion claim. *Karimi v. 401 North Wabash Venture, LLC*, 2011 IL App (1st) 102670, ¶ 15. Rather, a claim for recovery of funds paid under a lease as a security deposit is a claim on the contract.

¶ 16 Chudzik's conversion claim seeks the recovery of damages for personal property that was allegedly present at the premises at the time of the lockout. There was testimony at trial from Chudzik, who stated that his personal property was brought to and left at the premises, and there was testimony from Georgio, who stated that he never saw any personal property at the leasehold other than what was present when he initially leased the space. Georgio also testified that no one ever made a demand to him for any personal property. The trial court stated "I'm hearing again, it's 'he said, he said.' We put all this property in there, but we don't do anything to try and remove the property, to get that property." Chudzik did not present any physical evidence or any testimony from uninterested witnesses to corroborate his story. Obviously the trial judge credited Georgio's testimony over Chudzik's testimony and we cannot say that the finding was against the manifest weight of the evidence. We give great deference to the trial court's credibility determinations and will not substitute our judgment for that of the trial court because, as the factfinder, it is in the best position to evaluate the witnesses' conduct and demeanor. *Samour, Inc.*

v. Board of Election Com'rs of City of Chicago, 224 Ill.2d 530, 548 (2007).

¶ 17 While Chudzik claims Georgio breached the parties' agreement by retaining the security deposit despite the fact that their agreement was conditioned on obtaining a liquor license and he is entitled to a return of the security deposit, Chudzik repeatedly states that "the letter of intent is still binding on the parties." But Chudzik did not assert a breach of contract claim and neither party to this suit is a party to either the letter of intent or the executed lease agreement. The letter of intent is between two non-party corporations and the lease is between two other non-party corporations. Chudzik did not execute any documents in his personal capacity and has no personal rights or obligations under the letter of intent or the lease.

¶ 18 Chudzik also interposed a claim for replevin. In a replevin action, the plaintiff must prove that he is lawfully entitled to possession of certain property and that the defendant has wrongfully detained the property and refused to deliver the possession of the property to the plaintiff. *Carroll v. Curry*, 392 Ill.App.3d 511, 514 (2009). As with the claim for conversion of his personal property, the trial court found that Chudzik failed to prove he was entitled to replevin. Chudzik argues that based on Georgio's other testimony, Georgio's statement that he never saw any of Chudzik's property is "suspect, at the very least." However, it was for the trial judge to determine which witness's testimony was suspect, and we will not substitute our judgment for that of the trial court. We conclude that the trial court's finding that Chudzik did not meet his burden of proof for an action of replevin was not against the manifest weight of the evidence.

¶ 19 As a final point, throughout his brief, Chudzik cites to only general propositions of law, but does not support his specific arguments with citation to relevant authority as is required. *See Robinson v. Point One Toyota, Evanston*, 2012 IL App (1st) 111889, ¶ 54. This Court is not a

repository into which an appellant may foist the burden of argument and research, and it is neither the function nor the obligation of this court to act as an advocate or search the record for error. *Obert v. Saville*, 253 Ill.App.3d 677, 682 (1993). Chudzik failed both here and in the trial court to set forth a cohesive basis as to why he is personally entitled to recover from Georgio under any of the asserted causes of action. The trial court did not err by entering a directed finding in Georgio's favor.

¶ 20 CONCLUSION

¶ 21 Accordingly, we affirm the judgment of the Circuit Court of Cook County.

¶ 22 Affirmed.