2016 IL App (1st) 150796-U

FIRST DIVISION
September 30, 2016

No. 15-0796

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

JOSEF HARMATA, Plaintiff-Appellant, v. JOHN KANTOR, Defendant-Appellee.	)))))))))	Appeal from the Circuit Court of Cook County. No. 12 L 12757 Honorable Joan E. Powell Judge Presiding

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JUSTICE SIMON delivered the judgment of the court.
Justices Harris and Mikva concurred in the judgment.

ORDER

¶ 1 *Held*: Plaintiff was not entitled to a judgment notwithstanding the verdict so the trial court properly denied that motion. The jury's verdict was not against the manifest weight of the evidence.

¶ 2 This appeal is taken from a judgment entered in a legal malpractice case after the jury found the defendant-attorney not to be liable. Plaintiff appeals arguing that the trial court erred when it did not grant his motion for a judgment notwithstanding the verdict. Plaintiff also argues that the jury's verdict is against the manifest weight of the evidence. The verdict is amply

supported by the evidence and, therefore, we affirm.

¶ 3 BACKGROUND

¶ 4 Plaintiff Josef Harmata owned an apartment building at 5201 South Calumet Avenue in Chicago. He agreed to sell the building to Wei Wei and Hong Zhou. The purchasers paid $200,000 of the $1,000,000 total purchase price at the closing and were to pay the rest over time. However, about a year and a half before they were supposed to pay the remainder, they found someone else, Calumet Court, LLC, that was interested in buying the building. The sale between Wei Wei and Hong Zhou and Calumet Court was to be for $1,285,000. So the parties set up a three-party, simultaneous closing. Plaintiff retained defendant John Kantor, an attorney, to assist him in the deal.

¶ 5 At the closing, plaintiff was supposed to receive about $800,000. Calumet Court, however, informed plaintiff and defendant that due to a lack of funds it would not proceed with the sale unless plaintiff loaned it $300,000 and accepted an unsecured promissory note. Plaintiff received $509,832.63 at the closing and was supposed to receive another check for $275,250.[1] Plaintiff also executed a promissory note and loaned $300,000 to Calumet Court. The rest of the facts are disputed.

¶ 6 At trial, Plaintiff testified that he was told that as to Calumet Court, "there was not enough money [to] close." He introduced evidence though that, contrary to Calumet Court having a lack of funds, they actually paid cash to Wei Wei and Hong Zhou. Accordingly, plaintiff maintains, he should have never been made to take a promissory note from Calumet Court because it actually had the money to pay him. Plaintiff introduced the closing statement, which was given to his

[1] Plaintiff contends that he never received this $275,250 check at the closing. He also contends that it was endorsed with his signature forged. However, despite the references to this matter, plaintiff does not press it as an issue in his appeal and we will therefore not examine it.

attorney at the closing and it reveals that Wei Wei and Hong Zhou were receiving $312,190.97 in cash. Plaintiff alleged that it was malpractice for his attorney to allow Wei Wei and Hong Zhou to get more than $300,000 in cash while directing him to accept an unsecured $300,000 promissory note. The note was never paid.

¶ 7 Defendant's version of events is much different. Defendant testified that he advised plaintiff before the closing that the sale was contingent on the loan. But defendant claims that plaintiff responded that the sale had to go forward because plaintiff needed to meet certain financial obligations. Defendant introduced a letter that he attests to have sent plaintiff which states that defendant was advising plaintiff "not to proceed with the loan without a mortgage against the property and/or other collateral." The letter proceeds, "you informed me that you have various pressing financial obligations and that you must complete the sale of the property to [Wei Wei and Hong Zhou] in order to have the funds to meet those obligations." Defendant testified that he reiterated his concerns to plaintiff at the closing. So, defendant's position is that plaintiff went into the sale with open eyes and accepted the risks associated with the transaction.

¶ 8 Plaintiff testified that he never received the letter introduced into evidence that defendant claims to have sent him warning him about the risks involved in proceeding with the transaction. Plaintiff also testified that he was not having financial problems at the time. Defendant, however, introduced evidence that plaintiff was behind on mortgage payments, that he had lost rental income because of a fire in another property that he owned, and that, on his tax returns, plaintiff stated that he lost money on commercial rentals at the relevant time. And plaintiff claims that the way defendant frames the case is a mischaracterization—it is not just that Calumet Court would only proceed if he made the loan; it is that he was led to believe the loan was necessary because

there was a lack of funds when that was not the case. Plaintiff maintains that his attorney should have protected him from that.

¶ 9 The jury returned a verdict for defendant, finding him to not have been negligent. Plaintiff filed a motion for a judgment notwithstanding the verdict that was denied. He appeals the judge's ruling on that motion and, alternatively, argues that the jury's verdict was against the manifest weight of the evidence.

¶ 10 ANALYSIS

¶ 11 A trial court's ruling on a motion for judgment notwithstanding the verdict is reviewed *de novo*. *Thornton v. Garcini*, 237 Ill. 2d 100, 107 (2010). A judgment notwithstanding the verdict is not appropriate if reasonable minds might differ as to inferences or conclusions to be drawn from the facts presented. *McClure v. Owens Corning Fiberglas Corp.*, 188 Ill. 2d 102, 132 (1999). Instead, a motion for judgment notwithstanding the verdict should only be granted when the evidence and inferences, viewed in the light most favorable to the nonmoving party so overwhelmingly favors the movant that no contrary verdict based on that evidence could ever stand. *Thornton*, 237 Ill. 2d 100, 107 (2010).

¶ 12 To succeed on a claim for legal malpractice, a plaintiff must prove: (1) the existence of an attorney-client relationship, (2) a breach of a duty arising from that relationship, (3) causation, and (4) damages. *Belden v. Emmerman*, 203 Ill. App. 3d 265, 268 (1990). Here, the only question is whether there was a breach of the duty of care owed by the defendant-attorney. An attorney is liable to his client for malpractice when he fails to exercise a reasonable degree of care and skill which is question of fact. *Gruse v. Belline*, 138 Ill. App. 3d 689, 695 (1985).

¶ 13 Plaintiff's only real charge of negligence against defendant is that defendant did not advise

him that Wei Wei and Hong Zhou would receive $300,000 from the transaction and he would receive that amount in a promissory note, despite being told there were not sufficient funds to pay him in full. But this case is really the classic credibility contest.

¶ 14 Plaintiff testified that he was told that Calumet Court could not go through with the transaction because it was financially unable to do so. But contrary record evidence states only that Calumet Court would not do the deal without it, giving no reason. If the jury disbelieved plaintiff, then the fact that Wei Wei and Hong Zhou got cash and he got a promissory note is essentially irrelevant. Plaintiff maintains that defendant failed to give him all the information needed to make an informed decision, but that was for the jury to decide. *Adams v. Family Planning Associates Medical Group, Inc.*, 315 Ill. App. 3d 533, 546 (2000).

¶ 15 Moreover, if the jury credited defendant's testimony, as it appeared to do, then the letter he apparently sent to plaintiff fully apprised plaintiff of the situation. He advised plaintiff of the potential risks of accepting an unsecured promissory note and then advised plaintiff not to do the deal in that manner. If the jury also credited defendant's testimony that plaintiff went ahead with the deal regardless because plaintiff had other financial obligations, their conclusion is supported by the evidence. Defendant introduced (and impeached plaintiff with) multiple records that would provide a reason why someone might go through with a sale and be willing to accept a promissory note instead of cash. If that was the only way Calumet Court would go forward with the deal, plaintiff's urgency to go forward is explainable. So certainly when the evidence and inferences are viewed in the light most favorable to defendant it is impossible to say that it so overwhelmingly favors plaintiff that no contrary verdict could ever stand.

¶ 16 For the same reasons plaintiff claims the court erred in denying its motion for a judgment

notwithstanding the verdict, his claim that the jury's verdict was against the manifest weight of the evidence also fails. A reviewing court should not set aside a jury verdict unless it determines that the verdict is contrary to the manifest weight of the evidence. *Johnson v. Chicago Transit Authority*, 248 Ill. App. 3d 91, 94 (1993). A verdict is only against the manifest weight of the evidence if it is unreasonable, arbitrary, not based on the evidence, or only if the opposite conclusion is readily apparent. *Holloway v. Sprinkmann Sons Corp. of Illinois*, 2014 IL App (4th) 131118, ¶ 132.

¶ 17 And it is the jury who weighs contradictory evidence, makes inferences from the evidence, and draws the ultimate conclusion as to the facts. *Johnson*, 248 Ill. App. 3d at 94. Plaintiff had a full opportunity to address his grievances to the jury and the jury rejected the notion that defendant's conduct fell below the applicable standard of care. That verdict is amply supported by the evidence presented and we have no reason to disturb the verdict.[2]

¶ 18 CONCLUSION

¶ 19 Accordingly, we affirm.

¶ 20 Affirmed.

[2] We also note that the record on appeal is incomplete to the point that we could have dismissed the appeal outright. Nonetheless, based on the arguments of the parties and the partial record of the proceedings, we were able to determine that, on the merits, plaintiff is not entitled to reversal or a new trial.