2011 IL App (2d) 100997-U
No. 2—10—0997
Order filed July 14, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

GEORGE NEDIYAKALAYIL,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 08—L—114
	)	
POOTHAKALLIL GABRIEL,	)	Honorable
	)	Dorothy F. French,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Presiding Justice Jorgensen and Justice McLaren concurred in the judgment.

ORDER

Held: (1) Because plaintiff admitted that he fraudulently altered a promissory note by increasing the agreed-upon interest rate, his cause of action for any recovery on the note was negated; (2) because plaintiff knowingly pleaded false allegations in seeking the recovery of interest under a promissory note, the trial court did not abuse its discretion in awarding sanctions under Rule 137.

¶ 1 Plaintiff, George Nediyakalayil, appeals from a judgment in favor of defendant, Poothakallil Gabriel, in plaintiff's action for recovery of money he claims that defendant borrowed from him. Plaintiff also seeks review of an order awarding attorney fees to defendant. We affirm.

¶ 2 On January 31, 2008, plaintiff filed a complaint in the circuit court of Du Page County, seeking recovery on a promissory note for $80,000 allegedly executed by defendant on January 21, 2000. It is undisputed, however, that plaintiff had modified the note without defendant's consent. During pretrial proceedings, defendant filed an affidavit to which he attached a copy of the unaltered original note, which bears the handwritten numeral "0" in the space indicating the rate of interest on the note. In his affidavit, defendant averred that he signed the note in that form. Without defendant's consent, plaintiff altered the note by adding the numeral "1" before the 0 and by adding the symbol "%" after it. Plaintiff attached the altered note to his complaint, wherein he alleged that defendant asked to borrow $80,000 and that plaintiff agreed to lend him that amount at an annual interest rate of 10%. He sought judgment for nearly $156,000.

¶ 3 The matter proceeded to a bench trial. The affidavit discussed above was admitted into evidence, but plaintiff did not proffer the original promissory note. Plaintiff testified that a friend, Joy Vachachira, introduced him to defendant. Vachachira was an investor in a business called "M. Tam Bus Company" (M. Tam), and plaintiff and defendant met to discuss an opportunity for plaintiff to invest in the company. Plaintiff testified that he invested about $350,000 in M. Tam. At some point defendant related that he was experiencing personal financial problems, and he asked plaintiff for a loan. Plaintiff obliged, delivering a brown bag with $80,000 in cash to defendant in exchange for a promissory note. Defendant agreed to repay the loan in a year, but failed to do so, and he had not paid despite repeated requests by plaintiff in the years that followed. Plaintiff admitted that in 2007 he altered the note to reflect a 10% interest rate. That same year, plaintiff recorded with the Cook County recorder of deeds a "memorandum of agreement" indicating that on January 21, 2000, defendant had executed a promissory note "with respect to the purchase of" certain real property in

Chicago. Asked on cross-examination why he recorded the memorandum of agreement, plaintiff testified, "Because I had been asking for eight [*sic*] years for my money. Then I got frustrated. Then I changed the note to—I put in a '1' in the front so that I can *** scare him to get—whenever he is going to sell the property so I can get my money." Plaintiff subsequently recorded a "release" stating that the memorandum of agreement had been recorded in error.

¶ 4 Defendant testified that the head of M. Tam, John Eapon, instructed him to collect $80,000 from plaintiff and to disburse $70,000 to Vachachira and $10,000 to an individual named George Parambil, who was visiting from New York. Defendant testified that he signed the promissory note two days later.

¶ 5 At the close of plaintiff's case-in-chief, the trial court found in favor of defendant pursuant to section 2—1110 of the Code of Civil Procedure (Code) (735 ILCS 5/2—1110 (West 2008)), on the basis that there could be no recovery on the promissory note because it was not in evidence. The trial court granted plaintiff leave to file an amended complaint in order to conform the pleadings to the proof. In his amended complaint, plaintiff alleged, *inter alia*, that defendant's affidavit regarding the unaltered promissory note "constitutes written evidence of the indebtedness owed Plaintiff by Defendant independent of the original Promissory Note." Plaintiff further alleged that the affidavit "ratifie[d] the Defendant's debt to Plaintiff." The trial court again entered a finding for defendant pursuant to section 2—1110 of the Code, and it entered judgment for defendant pursuant to that finding. The trial court indicated in unusually strong language that it did not find plaintiff to be a credible witness. The court credited defendant's testimony that he received the funds as an intermediary, rather than as a borrower. Defendant filed a motion for sanctions against plaintiff pursuant to Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994), seeking an award of $28,687.50 in

attorney fees. Finding that plaintiff's original complaint was filed in violation of Rule 137, the court awarded plaintiff $10,000 in attorney fees. This appeal followed.

¶ 6 Section 2—1110 of the Code provides, in pertinent part:

> "In all cases tried without a jury, defendant may, at the close of plaintiff's case, move for a finding or judgment in his or her favor. In ruling on the motion the court shall weigh the evidence, considering the credibility of the witnesses and the weight and quality of the evidence. If the ruling on the motion is favorable to the defendant, a judgment dismissing the action shall be entered." 735 ILCS 5/2—1110 (West 2008).

In ruling on the motion, the trial court first determines whether the plaintiff has established a *prima facie* case and then weighs the evidence, including evidence favorable to the defendant. *Midfirst Bank v. Abney*, 365 Ill. App. 3d 636, 651 (2006). "[I]f this weighing process negates some of the evidence necessary to the plaintiff's *prima facie* case, the court should grant the motion and enter judgment for the defendant." *Id.* "The grant of a section 2—1110 motion is upheld unless the judgment is against the manifest weight of the evidence." *Id.*

¶ 7 Here, the trial court engaged in the weighing process, finding that defendant's testimony was credible and that plaintiff's was not. As noted, the trial court concluded that defendant did not borrow funds from plaintiff, but merely received the funds as a conduit for the purpose of transferring the funds to third parties. Accordingly, the trial court entered judgment in defendant's favor. On appeal, however, defendant raises an alternative basis for the trial court's judgment. Defendant contends that "[o]nce a holder or payee, as plaintiff alleged he was, fraudulently alters a note, as the record evidence proved he did, the underlying debt should have been extinguished." Plaintiff responds that, because the trial court did not rule that the alteration of the note was

fraudulent, defendant was obliged to pursue a cross-appeal in order to raise fraud as a bar to plaintiff's recovery of the underlying debt. Plainiff's argument is meritless. Our supreme court has stated:

> "A party cannot complain of error which does not prejudicially affect it, and one who has obtained by judgment all that has been asked for in the trial court cannot appeal from the judgment. [Citations.] 'It is fundamental that the forum of courts of appeal should not be afforded to successful parties who may not agree with the reasons, conclusion or findings below.' [Citations.] *** It is the judgment and not what else may have been said by the lower court that is on appeal to a court of review. [Citations.] The reviewing court is not bound to accept the reasons given by the trial court for its judgment [citation], and the judgment may be sustained upon any ground warranted, regardless of whether it was relied on by the trial court and regardless of whether the reason given by the trial court was correct. [Citations.] Findings of the trial court adverse to the appellee do not require the appellee's cross-appeal if the judgment of the trial court was not at least in part against the appellee." *Material Service Corp. v. Department of Revenue*, 98 Ill. 2d 382, 386-87 (1983).

¶ 8 Here, the judgment of the trial court was adverse to defendant only inasmuch as the trial court did not award the full amount of attorney fees he sought. However, the issue of whether plaintiff altered the promissory note with fraudulent intent pertains only to the judgment on plaintiff's cause of action for recovery of the underlying indebtedness. The judgment was entirely favorable to defendant on this point, so no cross-appeal was required, and the denial of relief to plaintiff may be sustained on any basis supported by the record.

¶ 9 The doctrine of unclean hands is an equitable doctrine that bars relief when the party seeking relief is guilty of misconduct in connection with the subject matter of the litigation. It precludes the party from taking advantage of his own wrong. See *Gambino v. Boulevard Mortgage Corp.*, 398 Ill. App. 3d 21, 60 (2009). As the following cases relate, the plaintiff attempted to take advantage of his own wrong and was guilty of "unclean hands."

¶ 10 In *Vogle v. Ripper*, 34 Ill. 100, 106-07 (1864), our supreme court stated:

> "A material alteration of an instrument, fraudulently made by its holder, justly deprives the wrong-doer of all rights by virtue of it. The identity of the instrument is thereby destroyed, and courts will not assist persons who have been guilty of a fraud, to carry out the transaction wherein it was perpetrated. A party who voluntarily and fraudulently destroys the evidence of a debt agreed upon by the parties, ought not be allowed to supply its place by other evidence."

¶ 11 Consistent with this reasoning, in *Black v. Bowman*, 15 Ill. App. 166 (1884), the Third District held that the fraudulent alteration of an instrument extinguishes the debt for which it was given. The *Black* court reasoned that "[i]t is necessary that the forfeiture of the debt should be imposed upon the person who fraudulently tampers with the instrument which evidences or secures it, and it is done upon the well known principle that 'no man shall be permitted to take the chances of gain by the commission of a fraud without running the risk of loss in the case of detection.' " *Id.* at 167. Although decisions of the appellate court issued before 1935 are not binding as precedent, courts view such decisions as persuasive. *North Shore Community Bank & Trust Co. v. Kollar*, 304 Ill. App. 3d 838, 844 (1999). On the question of fraud, the evidence presented at trial admits of no reasonable conclusion other than that plaintiff fraudulently altered the promissory note executed by

defendant by changing the stated interest rate from 0% to 10%. As stated in *Black*, "when a note is knowingly and deliberately altered by the payee or holder so as to increase the liability of the maker, not only without his consent but after such consent had been asked and refused or withheld, the natural tendency of the act would be to defraud the maker, and the only reasonable inference that can be drawn from such acts is that fraud was intended." *Black*, 15 Ill. App. at 169. Although there is no evidence here that plaintiff asked defendant to pay interest or that defendant expressly refused to do so, plaintiff's testimony that he altered the note to "scare" defendant leaves no doubt that plaintiff was aware that defendant had never consented to the alteration. Plaintiff's own testimony establishes that the alteration of the note—which was coordinated with the recording of an instrument falsely linking the note to the purchase of real estate—was part of a dishonest scheme to obtain payment of the funds that he claims were lent to defendant. The evidence that the note was fraudulently altered effectively negated the cause of action for recovery of any money plaintiff may have lent to defendant. The entry of judgment for defendant may be sustained on that basis alone and without regard to the correctness of the trial court's finding that no loan was ever extended to defendant.

¶ 12 Plaintiff next argues that the trial court erred in imposing sanctions pursuant to Rule 137. That rule provides, in pertinent part:

> "Every pleading, motion and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name ***. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his

> knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. *** If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney fee." Ill. S. Ct. R. 137 (eff. Feb. 1, 1994).

Our supreme court has held that "[t]he decision whether to impose sanctions under Rule 137 is committed to the sound discretion of the circuit judge, and that decision will not be overturned unless it represents an abuse of discretion." *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487 (1998).

¶ 13 In *Heritage Pullman Bank & Trust Co. v. Carr*, 283 Ill. App. 3d 472, 479 (1996), it was observed that "[t]he imposition of attorneys fees is proper where movant demonstrates his opponent has pled statements which he knew, or should have known, to be untrue." Although *Carr* involved fees awarded under section 2—611 of the Code (Ill. Rev. Stat. 1989, ch. 110, par. 2—611), as pertinent to this case the principal difference between section 2—611 and Rule 137 is that sanctions for violations were mandatory under the former provision but are discretionary under the latter. See Ill. S. Ct. R. 137, Committee Comments (adopted Aug. 1, 1989). Here, plaintiff alleged in his original complaint that he "agreed to loan Defendant *** $80,000.00 at an annual interest rate of 10% and Defendant executed a Promissory Note to that effect on January 21, 2000." There is no

dispute that plaintiff knew full well that this allegation was untrue. Plaintiff argues that when he signed the complaint he believed he was entitled to collect interest if the note was not timely paid. There is no evidence in the record to support that statement. In any event, the salient question is not what relief plaintiff believed he was entitled to receive, but whether his pleading was well grounded in fact. The facts alleged in support of the claim for interest were untrue, and plaintiff knew it. Moreover, although plaintiff contends that a good-faith basis to seek repayment of the $80,000 received by defendant arguably existed despite the alteration of the note, the claim for interest was completely groundless. Knowingly making false allegations that significantly overstate the amount of a debt owed by the defendant violates Rule 137. Accord *Brubakken v. Morrison*, 240 Ill. App. 3d 680 (1992) (attorney's attempt to collect amount from judgment debtor that exceeded amount of judgment on promissory note was sanctionable conduct under section 2—611 of the Code). The trial court did not abuse its discretion in awarding attorney fees to defendant.

¶ 14 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 15 Affirmed.