2013 IL App (2d) 130008-U
No. 2-13-0008
Order filed October 23, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

DENNIS MOORE,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 07-L-1130
	)	
LEWIS JOHN CRAFT,	)	Honorable
	)	Dorothy French Mallen,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices McLaren and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The plaintiff provided sufficient evidence that he suffered actual damages due to the defendant's legal malpractice; therefore, the trial court properly denied the defendant's motion for a directed verdict, motion for a JNOV, motion to bar certain testimony, and the defendant's request to prohibit certain jury instructions; (2) the defendant failed to establish that the jury's verdict was the result of an impermissible compromise.

¶ 2 Following trial, the jury awarded the plaintiff, Dennis Moore, $80,000 on his claim for legal malpractice by the defendant, Lewis John Craft. On appeal, the defendant argues that the plaintiff failed to prove actual damages. He therefore contends that the trial court should have (1) granted his motion for a directed verdict; (2) granted his motion for a JNOV; (3) barred certain testimony

that was based on speculation; and (4) not allowed a jury instruction that he contends was based on speculation. The defendant also argues that the jury's decision should be vacated because it reflects an impermissible compromise verdict. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 The plaintiff owned property in Roselle consisting of two sections. The first section had a house built on it (the improved lot) and the second section was vacant (the vacant lot). The plaintiff decided to divide the property and sell both sections. In order to divide the property, he had it surveyed. The plaintiff wanted to sell the improved lot first, followed by the vacant lot. He was concerned that if he sold the vacant lot first, the buyer would start construction on it, making it more difficult to sell the improved lot. After marketing the property, he entered into an agreement with Krzysztof and Irena Gawedzki on August 23, 2005, to sell them the improved lot.

¶ 5 The plaintiff hired the defendant to represent him in the sale of the improved lot. The plaintiff informed the defendant that he was selling only the improved lot to the Gawedzkis and that he intended to sell the vacant lot separately after the closing on the improved lot. The defendant drafted the contract and represented the plaintiff at the closing. Unbeknownst to the plaintiff, the defendant conveyed both the improved lot and the vacant lot to the Gawedzkis.

¶ 6 The plaintiff planned to sell the vacant lot "as soon as [he] could" after the closing on the improved lot. Before he sold the improved lot, the plaintiff talked to his neighbor, Roger Bauer, Jr., who lived just south of the vacant lot. Bauer indicated that he wanted to buy the vacant lot, as he wanted to tear down his current house and build a new house. Bauer indicated that he wanted to buy the house for "a fair price." The plaintiff told Bauer that he would sell him the vacant lot after he

received the deed to the vacant lot. The plaintiff believed that he could not sell the vacant lot until he had the deed to that lot.

¶ 7 After the sale of the improved lot in October 2005, the plaintiff contacted the defendant as to when he would receive the deed to the vacant lot. The defendant said that he would look into it, but he did not get back to the plaintiff. In approximately January 2006, the plaintiff learned that the taxes on the vacant lot had been paid by someone else. At that point, he realized that he probably no longer owned the vacant lot. He contacted the defendant again, who now acknowledged that the vacant lot had been conveyed to the Gawedzkis at the closing. Meanwhile, Bauer was still interested in the vacant lot, which was evident because he occasionally would mow it. The plaintiff indicated that Bauer eventually lost interest in buying the vacant lot, and he moved out of town.

¶ 8 On October 26, 2007, the plaintiff filed suit against the defendant and the Gawedzkis. The plaintiff ultimately settled his claim against the Gawedzkis, which resulted in the vacant lot being reconveyed to him on February 15, 2012. The plaintiff's case against the defendant proceeded to trial. The plaintiff sought as damages (1) the loss in value of the vacant lot during the time he did not have title to it, and (2) the attorney fees he incurred in recovering the vacant lot from the Gawedzkis. Prior to trial, the defendant conceded that his conduct was negligent. Thus, the only issues at trial were whether the defendant's negligence proximately caused the plaintiff's damages, and the amount of the plaintiff's damages. During the trial, the parties also stipulated to the amount of attorney fees to which the plaintiff was entitled.

¶ 9 At trial, the plaintiff testified on his own behalf. Additionally, Keith Wolf, an appraiser testified for the plaintiff. Wolf testified that the vacant lot was worth $182,000 on August 23, 2005, and that it was worth $82,000 on February 15, 2012.

¶ 10 At the close of the plaintiff's case, the defendant moved for a directed verdict. The trial court denied his motion. Appraiser Aaron Taffera was the only witness to testify for the defense. He testified that the vacant lot was worth $170,000 on August 23, 2005. It was worth $70,000 on August 31, 2011.

¶ 11 At the close of the trial, the jury found in favor of the plaintiff and awarded him $80,000 for the loss in value of the vacant lot. The defendant thereafter filed a motion for JNOV and a motion for a new trial. After the trial court denied his posttrial motions, the defendant filed a timely notice of appeal.

¶ 12 ANALYSIS

¶ 13 On appeal, the defendant raises five contentions. Four of those contentions are based on the same premise—the plaintiff was not entitled to any relief for the loss in value of the vacant lot during the time he did not have title to it because he failed to establish any actual damages. Specifically, the defendant argues that the plaintiff is not entitled to any damages because he failed to demonstrate that he had a willing, able, and ready buyer for the vacant lot in 2005. As such, the defendant insists that the trial court erred (1) in denying his motion for a directed verdict; (2) in denying his motion for a JNOV; (3) in denying his motion to bar testimony that was based on speculation; and (4) allowing a jury instruction that permitted the jury to engage in speculation.

¶ 14 The standard of review for both a motion for a directed verdict and a motion for JNOV is *de novo*. *Schott v. Halloran Construction Co.*, 2013 IL App (5th) 110428, ¶ 7. A verdict should be directed, and/or a motion for JNOV should be granted, where there is a total failure or lack of evidence to prove any necessary element of the plaintiff's case. *Townsend v. Fassbinder*, 372 Ill. App. 3d 890, 898 (2007). In other words, a verdict ought to be directed when the evidence, viewed

most favorably to the opponent, so overwhelmingly favors the movant that no contrary verdict based on the evidence could stand. *First National Bank of LaGrange v. Lowrey*, 375 Ill. App. 3d 181, 196 (2007).

¶ 15 In order to recover on a claim for legal malpractice, the plaintiff must establish (1) the existence of an attorney-client relationship; (2) a breach of the attorney's duty to his client due to a negligent act or omission; (3) proximate cause establishing that but for the attorney's negligence, the plaintiff would have prevailed in the underlying action; and (4) actual damages. *Lucey v. Law Offices of Pretzel & Stouffer, Chartered*, 301 Ill. App. 3d 349, 353 (1998). Actual damages require more than supposition or conjecture. *Terraciana v. Castelli*, 80 Ill. App. 3d 475, 480 (1980).

¶ 16 Considering the evidence in the light most favorable to the plaintiff, the plaintiff presented ample evidence from which the jury could conclude that the plaintiff had suffered actual damages and that the defendant's negligence was the proximate cause of those damages. According to the plaintiff, he had a buyer for the vacant lot in 2005 that was willing to pay him a "fair price" for the lot. However, because of the defendant's negligence, the plaintiff did not have title to the vacant lot and, thus, could not sell it. By the time the plaintiff received title to the vacant lot in 2012, his would-be-buyer was no longer interested in purchasing the property. Both appraisers testified that the vacant lot was worth $100,000 more in 2005 than it was in 2011 or 2012. Thus, the jury could have determined that plaintiff had suffered actual damages due to the defendant's negligence. Accordingly, the trial court properly denied the defendant's motion for a directed verdict and motion for a JNOV.

¶ 17 In so ruling, we reject the defendant's argument that the plaintiff's testimony as to his damages was too speculative. The defendant insists that the plaintiff did not prove damages because

he did not establish that he and his neighbor agreed what a "fair price" for the land was. However, this is something that the jury could determine. See *Estes v. Furlong*, 59 Ill. 298, 303-04 (1871) (a contract of sale at a fair price or fair valuation will be enforced in equity, when it is sufficiently certain, fair in all parts, based on adequate consideration and capable of performance); *Miller v. Bloomberg*, 26 Ill. App. 3d 18, 19 (1975) (where contract specifies that the price is to be measured by fair market value, the price is sufficiently certain in order to have an enforceable obligation). The fact that the plaintiff and his neighbor agreed that the land transaction would be at a "fair price" rather than a specific price does mean that they did not have an agreement for the plaintiff to sell his neighbor the vacant lot.

¶ 18 We also reject the defendant's argument that the plaintiff had to actually establish that his neighbor was "able" to purchase the vacant lot. The jury could reasonably infer from the plaintiff's testimony that the neighbor had that ability. The plaintiff testified that the neighbor planned to tear down his existing house and to use the adjoining vacant lot to build a bigger house. The neighbor's ability to build a new house suggests that he had financial means to purchase the vacant lot. Further, the price for the vacant lot would not have been that exorbitant as both experts testified that the vacant lot would have been worth between $170,000 and $180,000 in 2005. Based on this evidence, we cannot say that the jury's implicit determination that the plaintiff's neighbor had the ability to purchase the vacant lot was unreasonable. See *Holland v. Schwan's Home Service*, Inc., 2013 IL App (5th) 110560, ¶ 109 (our standard of review does not allow us to usurp the jury's fact-finding process when the evidence can be interpreted to support the jury's findings). Because the jury could find that the plaintiff's neighbor was able to purchase the vacant lot, we find misplaced the plaintiff's reliance on *Rodes v. Preston Corp.*, 61 Ill. App. 3d 599, 608-09 (1978) (jury's verdict awarding a

commission to a real estate broker was reversed because the broker failed to prove that the purported buyer was a ready, willing and able buyer).

¶ 19 We also reject the defendant's argument that the trial court erred in denying his motions *in limine*. The defendant argues that the trial court should not have allowed the plaintiff to testify regarding his planned use for the property because the plaintiff only speculated that he may have sold the property. Since the plaintiff's plan to sell the property was speculative, the defendant insists that the trial court should not have allowed Wolf to testify to what he believed the property was worth in 2005. Again, the defendant's argument is premised on the contention that the plaintiff's testimony, that his neighbor wanted to buy the vacant lot for a "fair price," was too speculative to establish an agreement to actually sell the property. However, as explained above, the plaintiff's testimony was sufficient to establish that he had an agreement to sell the vacant lot to his neighbor. See *Miller*, 26 Ill. App. 3d at 19. Thus, the trial court did not err in allowing the plaintiff to testify regarding his agreement with his neighbor or Wolf to testify about the property's value in 2005.

¶ 20 Furthermore, we reject the defendant's argument that the trial court should not have instructed the jury regarding the loss of value of the vacant lot because such an instruction was based on the plaintiff's speculative theory that he could have sold the vacant lot back in 2005. However, as already stated, the plaintiff's theory for recovery was based on more than just speculation. His theory was based on his testimony that he actually reached an agreement to sell the vacant lot to his neighbor for a "fair price." Thus, the trial court did not err in instructing the jury based on the plaintiff's theory of the case. See *Mack v. Anderson*, 371 Ill. App. 3d 36, 57 (2006) (where party presents sufficient evidence, he is entitled to instruction on his theory of the case).

¶ 21 The defendant's final contention on appeal is that the jury's award of $80,000 for the plaintiff should be vacated because it was based on an improper compromise verdict. Specifically, the defendant points out that both appraisers testified that the vacant lot lost $100,000 in value between 2005 and 2011 or 2012. The jury was instructed not to consider how anyone else may have contributed to that loss (such as the Gawedzkis, for not returning the deed to the vacant lot to the plaintiff sooner). As there was no evidence to support the jury's award of $80,000, the jury must have improperly found that part of the plaintiff's loss was attributable to someone else. As such, the defendant insists that jury's verdict constituted a compromise verdict, and it therefore must be set aside.

¶ 22 Jury verdicts that indicate compromises were made on damages and liability cannot be allowed to stand. *Winters v. Kline*, 344 Ill. App. 3d 919, 926 (2003). However, a compromised verdict will not be presumed. *Merrill v. Hill*, 335 Ill. App. 3d 1001, 1008 (2002). The appealing party bears the burden on appeal of showing from the record that the verdict is the result of a compromise. *Smith v. City of Evanston*, 260 Ill. App. 3d 925, 941 (1994). An award of damages that does not bear a reasonable relationship to the evidence presented at trial is an indication of a compromised verdict. *Bruzas v. Richardson*, 408 Ill. App. 3d 98, 106 (2011). Further, in reviewing a jury's decision, we note that jurors are not expected to forgo their common sense (*People v. Runge*, 234 Ill. 2d 68, 146 (2009)) or life experiences (*Janky v. Perry*, 343 Ill. App. 3d 230, 237 (2003)) when serving on a jury.

¶ 23 Here, the jury's award of $80,000 bore a reasonable relationship to the evidence presented at trial. The appraisers testified that the vacant lot had a fair market value that was $100,000 greater in 2005 than it was in 2012. The plaintiff testified that he wanted to sell the vacant lot to his

neighbor and his neighbor was willing to pay a "fair price" for it. Fair market value and fair price are not necessarily equivalent. The jury could have used its common sense and life experiences to determine that a fair price would have been something less than its fair market value. The fact that the jury found that the plaintiff's damages were less than $100,000 does not in itself demonstrate that the jury's verdict was the result of a compromise. Accordingly, we cannot say that the defendant carried its burden on appeal of showing from the record that the verdict is the result of a compromise. See *Smith*, 260 Ill. App. 3d at 941. We therefore will not set aside the jury's verdict. See *Merrill*, 335 Ill. App. 3d at 1008.

¶ 24 CONCLUSION

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

¶ 26 Affirmed.