# STATE OF MICHIGAN

# COURT OF APPEALS

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FOUR STAR SERVICES, INC. and HOWARD J. KLAASSEN,

Plaintiffs-Appellees/Cross-Appellants,

v

DENNIS A. CARTER, WILLIAM H. HICKMAN, RESOURCE MANAGEMENT INDUSTRIES, L.L.C., MARTIN J. RENEL and COMMERCIAL RESOURCE GROUP, INC.,

Defendants-Appellants/Cross-Appellees.

UNPUBLISHED
July 17, 2001

No. 217333
Oakland Circuit Court
LC No. 97-537086-CK

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Before: Griffin, P.J., and Jansen and Gage, JJ.

PER CURIAM.

This case involves the bitter business breakup of defendant entity Resource Management Industries, L.L.C. (RMI), in which plaintiff Howard J. Klaassen and defendants Dennis A. Carter, William H. Hickman and Martin J. Renel shared interests. Defendants appeal as of right from a post bench trial judgment for plaintiffs. The trial court determined that plaintiffs covered various RMI operating expenses and that Klaassen personally loaned RMI money, and consequently found defendants jointly and severally liable for $78,179. Plaintiffs cross appeal the trial court's conclusion that Klaassen was not entitled to a salary during his involvement with RMI because RMI never earned a profit. We affirm.

We first address defendants' contention that the trial court erred in finding that Klaassen loaned RMI $57,000. We review for clear error a trial court's findings of fact. MCR 2.613(C). A finding of fact is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. In applying the clearly erroneous standard, the reviewing court gives regard to the trial court's special opportunity to judge the credibility of the witnesses who appeared before it. *In re Forfeiture of $19,250*, 209 Mich App 20, 29; 530 NW2d 759 (1995).

The parties did not dispute that by the summer of 1996 RMI needed funds to satisfy outstanding debts to several of its subcontractors, some of whom sued or threatened legal action

against RMI, and that around this time Klaassen obtained a second mortgage on his home amounting to approximately $75,000. Klaassen testified at trial that he, Carter and Hickman agreed to seek second mortgages on their homes to help solve RMI's money problems.[1] According to Klaassen, he, Carter, Hickman and Renel all agreed that Klaassen would lend RMI $57,000 in the form of several blank checks to be written to the various subcontractors. Klaassen explained that the money was loaned at no interest, to be repaid when RMI generated sufficient income. Klaassen's wife testified that Carter and Renel promised her that RMI would repay the loan. Klaassen also introduced at trial an invoice to RMI and several pages of canceled checks from his personal account written to cover various debts of RMI. The invoice and checks totaled approximately $57,000. In light of this evidence, we are not left with the definite and firm conviction that the trial court erred in finding that Klaassen loaned RMI $57,000. *In re Forfeiture of $19,250*, *supra*. Although defendants vigorously denied ever agreeing to borrow $57,000 from Klaassen, the trial court apparently chose to accept Klaassen's testimony regarding the $57,000 loan, and we will not second guess this credibility determination. *Sparling Plastic Industries, Inc v Sparling*, 229 Mich App 704, 716; 583 NW2d 232 (1998) ("Due regard shall be given to the trial court's superior opportunity and ability to judge the credibility of witnesses.").

Defendants also argue that because Klaassen himself had a twenty-five percent interest in RMI, the trial court should have reduced by twenty-five percent its award to Klaassen of money that he allegedly paid on RMI's behalf. We decline to consider this issue, however, because defendants failed to properly preserve or present it for our review. Defendants nowhere objected to the trial court's damages calculations, and on appeal fail to cite any portion of the trial court record where discussion regarding a reduction in damages occurred or any authority supporting their argument. *Mudge v Macomb Co*, 458 Mich 87, 104-105; 580 NW2d 845 (1998) (noting that an appellant may not simply announce a position or assert error then leave it up to this Court to discover and rationalize the basis of his claim and uncover authority to sustain or reject his position); *Candelaria v B C General Contractors, Inc*, 236 Mich App 67, 83; 600 NW2d 348 (1999) ("Appellate review is generally limited to issues decided by the trial court.").

Defendants next assert that the trial court erred by invoking equity as a basis for holding all defendants jointly and severally liable for its award to plaintiffs. Defendants reason that because the trial court at the close of plaintiffs' proofs summarily dismissed all but four counts of plaintiffs' fourteen-count first amended complaint,[2] all of which remaining counts specifically named only defendant entity RMI, the trial court improperly held the remaining defendants, Carter, Hickman, Renel and Commercial Resource Group, Inc. (CRG),[3] jointly and severally liable with RMI. When reviewing equitable actions, this Court employs de novo review of the trial court's decision and reviews for clear error the findings of fact supporting the equitable decision rendered. *LaFond v Rumler*, 226 Mich App 447, 450; 574 NW2d 40 (1997).

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[1] Neither Carter nor Hickman sought second mortgages to generate funds for RMI.

[2] Plaintiffs voluntarily withdrew one count, and on defendants' motion at the close of plaintiffs' proofs the trial court dismissed nine more counts.

[3] CRG was a general contracting entity formed by Carter, Hickman and Renel in June 1996. Klaassen claimed that the individual defendants stole RMI business opportunities for CRG.

We initially reject defendants' suggestion that they unfairly were forced to defend against a theory of liability of which they had no knowledge or notice. Plaintiffs' first amended complaint as a whole clearly alleged specific, culpable behavior by all the individual defendants, RMI and CRG. Defendants undisputedly had awareness of the specific allegations and causes of action contained within the four complaint counts remaining at the time they presented their defense. The trial court specifically advised defendants before they presented their defense of the possibility of joint and several liability with respect to the four remaining counts. The possibility of defendants' joint and several liability on these remaining counts did not itself constitute a new cause of action inappropriately based on undisclosed or unpleaded allegations. Furthermore, to the extent that defendants urge in their appellate brief that the trial court's imposition of joint and several liability caused "manifest injustice reversible error," defendants fail to explain how they were prejudiced.

Defendants further assert with respect to the trial court's imposition of joint and several liability that the court improperly resorted to an equitable remedy because it specifically had found that defendants engaged in no conspiracy, fraud or other surreptitious conduct and because plaintiffs otherwise had an adequate remedy at law. We observe, however, that defendants need not be found to have acted fraudulently before the court may resort to fashioning an equitable remedy. Equitable jurisdiction is recognized where the facts involved in litigation are such that a claimed legal remedy, although available, will not afford adequate relief. A legal remedy cannot be said to give full and ample relief if it is not as effectual as that which equity affords. *Mooahesh v Dep't of Treasury*, 195 Mich App 551, 561; 492 NW2d 246 (1992), overruled on other grounds in *Silverman v Univ of Michigan Bd of Regents*, 445 Mich 209, 216; 516 NW2d 54 (1994).

We conclude that in this case the trial court properly invoked equity to support its order that all defendants be held jointly and severally liable for the award to plaintiffs. The trial court noted that the individual defendants, who "were intimately involved in all of the decisions reached during the effective life of R.M.I.," took salaries from RMI and then pursued CRG as a "seamless continuity of" RMI's business.[4] Moreover, at the time of trial RMI did not remain a viable business entity: Carter, Hickman and Renel had voted to dissolve RMI; abundant evidence reflected RMI's lack of sufficient projects to finance its ongoing existence, including its failures to pay several subcontractors and its involvement in litigation besides the instant case that apparently was ongoing at the time of the instant trial; and Hickman testified that at the time of trial RMI had no money. Because the trial court's limitation of plaintiffs' right to recover from the essentially defunct RMI entity abandoned by the individual defendants would have precluded any recovery by plaintiffs of the damages caused by RMI, we cannot conclude that the trial court erred in invoking equity to facilitate plaintiffs' recovery of the damages the court awarded them. *Mooahesh*, *supra*.

Lastly, we consider plaintiffs' contention that the trial court erred determining that because RMI never earned a profit Klaassen was entitled to no salary for his work on behalf of

[4] As plaintiffs note in their brief on appeal, defendants do not challenge the trial court's findings of fact in these respects.

RMI. Klaassen agreed to forego a salary until RMI became profitable. We detect no error in the trial court's finding that "[t]he proofs showed a failing business, R.M.I, which was unable to pay its subcontractors and which never achieved a profit." In light of (1) the abundant trial testimony regarding RMI's inability to sustain its business, (2) Hickman's testimony that RMI had no money at the time of trial, and (3) plaintiffs' failure to introduce specific figures or testimony regarding some specific amount of RMI's alleged net profit,[5] we are not left with the definite and firm conviction that the trial court made a mistake in concluding that Klaassen was not entitled to the salary he deferred because RMI never achieved profitability. *In re Forfeiture of $19,250*, *supra*.

Affirmed.

/s/ Richard Allen Griffin
/s/ Kathleen Jansen
/s/ Hilda R. Gage

[5] Although plaintiffs point to an "RMI Net Revenues" chart introduced by defendants that purported to reflect RMI's net profitability by $4,732.79, Hickman testified that despite the chart's title it reflected RMI's *gross* profits because the chart did not take into account RMI's rent and administrative costs. Hickman further explained that RMI never received all the money it earned pursuant to its various contracts because Klaassen diverted money to Four Star.