STATE OF MICHIGAN

COURT OF APPEALS

MICHELE LASALA and CELESTINA LASALA,

Plaintiffs/Counter Defendants-Appellees,

v

SHAM L. GUPTA,

Defendant/Appellant,

and

VANDERBILT LUXURY TOWNHOMES, L.L.C.,

Defendant/Counter-Plaintiff.

UNPUBLISHED
July 23, 2009

No. 283983
Genesee Circuit Court
LC No. 05-081546-CK

Before: Talbot, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Defendant, Dr. Sham L. Gupta, appeals as of right a judgment for plaintiffs/counter-defendants, Michele LaSala ("LaSala") and his wife, Celestina LaSala ("Celestina"), entered following a bench trial. We affirm.

Defendant first argues on appeal that the trial court erred when it determined that the agency relationship between defendant and Vanderbilt Luxury Townhomes, L.L.C. ("Vanderbilt") was not fully disclosed and finding defendant personally liable. We disagree.

"This Court reviews a trial court's findings of fact in a bench trial for clear error and its conclusions of law de novo. MCR 2.613(C) . . . . A finding is clearly erroneous where, after reviewing the entire record, this Court is left with a definite and firm conviction that a mistake has been made." *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003). When applying the clearly erroneous standard, "regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C). "Under review de novo, a reviewing court gives no deference to the trial court and reviews the case with fresh eyes." *Buchanan v City Council of Flint*, 231 Mich App 536, 542 n 3; 586 NW2d 573 (1998).

"Any question relating to the existence and scope of an agency relationship is a question of fact." *Chiamp v Hertz Corp*, 210 Mich App 243, 246; 533 NW2d 15 (1995). Generally, "[a]n agent may work on behalf of a principal within the scope of the agency agreement as if the agent had stepped into the shoes of the principal without incurring any personal liability." *Uniprop, Inc v Morganroth*, 260 Mich App 442, 447; 678 NW2d 638 (2004) (citation omitted). However, "[a]n agent contracting for an undisclosed principal is personally liable for contractual obligations." *Penton Publishing v Markey*, 212 Mich App 624, 626; 538 NW2d 104 (1995). "[A] principal is considered undisclosed unless a party transacting with the principal's agent has notice that the agent is acting for the principal and notice of the principal's identity." *Id.* "[T]he other party has no duty to discover the principal's identity; rather, it is the agent's duty to disclose the principal's identity in order to avoid personal liability, and it is not enough that the other party had the means of ascertaining the principal's identity." *Detroit Pure Milk Co v Patterson*, 138 Mich App 475, 480; 360 NW2d 221 (1984).

To support his assertion that his agency relationship with Vanderbilt was fully disclosed, defendant points to the cross-examination of LaSala regarding the memorandum of understanding, which was entered into between defendant and LaSala and did not designate the limited liability corporation as an owner or partner in the property. Defendant relies on LaSala's acknowledgement that he understood Vanderbilt, L.L.C. owned the subject property and that defendant was the president of the limited liability corporation. LaSala admitted that before entering into the agreement, he received a profit and loss statement from defendant that included the company name. Defendant also notes that Celestina testified that she deposited checks into an account for "Vanderbilt Townhomes LLC" and admitted that the company name was also on her 1099 forms. Notwithstanding the above, we do not find that Vanderbilt was a fully disclosed principal.

The handwritten memorandum of understanding plainly stated that it was "btwn Michele Lasala and Sham Gupta, regarding Vanderbilt Court Townhomes in Mt. Morris, MI," with no mention of the limited liability company, leading the trial court to conclude that it was "not a memo of understanding between Mike and Vanderbilt Court Townhomes . . . acting through [defendant]." The trial court stated: "It's [defendant's] property. He . . . had the paperwork typed, and it does not, in my view, insulate him from liability. He drew it up as a personal agreement . . . ." In fact, defendant's secretary handwrote the original version of the agreement during a meeting in his medical offices in Taylor, Michigan. Consequently, we cannot say that the court clearly erred because, even if LaSala was aware of the existence of the limited liability company before entering into the agreement, an agent "always has it in his power to relieve himself from personal liability by fully disclosing his principal and contracting only in the latter's name." *Detroit Pure Milk Co*, *supra* at 479. Although plaintiffs may have seen checks or 1099 forms after moving into the complex, this happened after the contract was executed. Further, although LaSala indicated that he knew Vanderbilt owned the apartment complex and defendant was the president of the limited liability corporation, he also stated that he answered an advertisement seeking a partner and believed he was entering into a partnership agreement with defendant. Unlike a corporation or limited liability company, members of a partnership are personally liable for acts of the partnership. See MCL 449.15; *Carolin Mfg Corp v George S May, Inc*, 312 Mich 487, 500; 20 NW2d 283 (1945). Therefore, the trial court did not err in finding that Vanderbilt was not a fully disclosed principal and holding defendant personally liable.

Defendant next asserts that the trial court erred in finding that LaSala was not provided an opportunity to exercise his option to purchase the complex. Defendant does not dispute that the memorandum of understanding gave LaSala the option to buy the property, with shares credited from 50 percent of the profits (minus expenses, including defendant's investment). Rather, defendant contends that LaSala is not entitled to relief because he never exercised the option by submitting a written offer to purchase the property. Defendant cites LaSala's statement that the reason he did not buy the property was because defendant "wanted too much money." Defendant further points to testimony from Jason Gardner, the listing agent, to support his contention that LaSala knew the property was for sale but failed to act. We do not find these arguments persuasive.

The trial court found that LaSala "was never given an opportunity to exercise" his option to buy the property." The court doubted that LaSala would have known that the property was for sale as "there would be no incentive for Mr. Gardner to tell Mike because he could possibly lose his commission. There's no testimony that [defendant] told Mike, and, in fact, the testimony is directly contrary to that . . . ." What the testimony did indicate is that LaSala tried repeatedly, but unsuccessfully, to discover how many shares of the property he had earned. LaSala even brought potential investors to a meeting with defendant, but was unable to determine the amount of shares he owned. Without that information, LaSala could not know how much money he needed to raise or borrow to purchase the property. Therefore, we cannot say that the trial court clearly erred when it found that LaSala was not given an opportunity to purchase the property, as provided for in the memorandum of understanding.

Defendant next argues that the trial court erred in awarding damages to LaSala. "When reviewing a dispositional ruling in an equitable matter, an appellate court will set aside a trial court's factual findings only if they are clearly erroneous, but whether equitable relief is proper under those facts is a question of law that an appellate court reviews de novo." *Sinicropi v Mazurek*, 279 Mich App 455, 461; 760 NW2d 520 (2008) (citation omitted). Plaintiffs' complaint included a claim for an accounting. Specifically:

> "An action for an accounting is equitable in nature, but whether a plaintiff has stated a cause of action for an accounting must be determined from the facts pled in the plaintiff's complaint rather than from the prayer for relief . . . To sustain a bill for an accounting there must be mutual demands, a series of transactions on one side, and payments on the other. Where all the items are on one side, there can be no accounting . . . . *An accounting may not be had where the action is for a specific sum due under a contract . . . . An accounting is unnecessary where discovery is sufficient to determine the amounts at issue*." [*Boyd v Nelson Credit Centers, Inc,* 132 Mich App 774, 779-780; 348 NW2d 25 (1984) (internal citations omitted, emphasis added).]

In other words, "equity will not take jurisdiction where there is an adequate and complete remedy at law, as where the account involved is based on a claim which, in effect, is merely for damages for breach of contract . . . ." *Basinger v Provident Life & Accident Ins Co,* 67 Mich App 1, 8 n 21; 239 NW2d 735 (1976), quoting 1 CJS, Accounting, § 16 pp 648-649.

Defendant argues that the trial court erred in failing to first determine whether LaSala was entitled to an accounting. We agree that LaSala's claim was for breach of contract, and

therefore, he was not entitled to equitable relief. Indeed, plaintiffs successfully used discovery to obtain the profit and loss statements from 2003 and 2004, which had previously been withheld by defendant. See *Cyril J Burke Inc v Eddy & Co*, 332 Mich 300, 303; 51 NW2d 238 (1952).

Defendant's argument that LaSala was not entitled to damages, however, does not follow from the trial court's lack of jurisdiction in equity, because plaintiffs also brought a claim at law under MCL 408.384a of the Minimum Wage Act, MCL 408.381, *et seq*. While the trial court found that the minimum wage act did not apply, it held that the memorandum of understanding controlled and decided the action as a breach of contract claim. Although LaSala did not bring a claim for breach of contract, "when issues not raised by the pleadings are tried by express or implied consent of the parties, they are treated as if they had been raised by the pleadings." *Zdrojewski v Murphy*, 254 Mich App 50, 60; 657 NW2d 721 (2002), quoting MCR 2.118(C)(1). Plaintiffs attached the handwritten copy of the memorandum of understanding to the complaint in conformity with MCR 2.113(F). Accordingly, "the written contract becomes part of the pleadings themselves . . . ." *Laurel Woods Apartments v Roumayah*, 274 Mich App 631, 635; 734 NW2d 217 (2007). In addition, defendant and Vanderbilt counterclaimed for breach of contract. At trial, defendant did not dispute the existence of an agreement. Hence, it was not improper for the trial court to award damages to plaintiff based on a breach of contract.

Defendant further argues that the trial court erred in determining damages by relying on rent receipts and profit and loss statements that were not authenticated. However, defendant did not object to their admission. "Objections to the admission of evidence may not be raised for the first time on appeal absent manifest injustice." *Phinney v Verbrugge*, 222 Mich App 513, 558; 564 NW2d 532 (1997). To resolve the issue in this case it was necessary to determine the amount of profit made by the apartment complex in order to ascertain LaSala's share in the property in accordance with the memorandum of understanding. Defendant was free to introduce evidence at trial regarding the profitability of the complex, but instead elected to focus on whether LaSala exercised his option to purchase. Therefore, defendant's argument is without merit.

Affirmed.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra