COURT OF APPEALS
DECISION
DATED AND FILED

July 31, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2010AP968 **Cir. Ct. No. 2003CV325**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

GEORGE ROUPAS,

PLAINTIFF-APPELLANT,

V.

GEORGE BARKOULIS,

DEFENDANT-APPELLANT,

PETER DIAMANTOPOULOS,

DEFENDANT,

DAVID J. ZAGRZEBSKI AND BARBARA ZAGRZEBSKI,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Portage County: THOMAS T. FLUGAUR, Judge. *Affirmed in part, reversed in part, and cause remanded with directions.*

Before Lundsten, P.J., Vergeront and Higginbotham, JJ.

¶1 HIGGINBOTHAM, J. This appeal arises out of a failed restaurant deal. George Roupas and George Barkoulis entered into a partnership with Konstantinos Bouras for the remodeling and operation of a restaurant in Stevens Point. The building in which the restaurant was located was owned by David and Barbara Zagrzebski. Barkoulis entered into a lease agreement with the Zagrzebskis for the restaurant. Bouras and Roupas were investors in the enterprise.

¶2 At some point, the relationship between Barkoulis and Roupas turned sour and a dispute between Barkoulis and the Zagrzebskis prompted the Zagrzebskis to lock Barkoulis out of the building. Several claims, counterclaims, and cross-claims were filed. For purposes of this appeal, the following three claims matter:

1) Roupas's claim for conversion against the Zagrzebskis alleging that the Zagrzebskis obtained restaurant equipment owned by Roupas when they took control of the building by changing the locks (the conversion claim);

2) Barkoulis's breach of lease claim against the Zagrzebskis alleging that the Zagrzebskis breached the lease by not making certain repairs to the premises, including not repaving the restaurant parking lot (the breach of lease claim); and

3) Barkoulis's tortious interference claim against the Zagrzebskis alleging that the Zagrzebskis interfered with an agreement between Barkoulis and Roupas by conspiring with Roupas to "squeeze" Barkoulis out of the restaurant and replace him with Roupas (the tortious interference claim).

As to each of these claims, the jury found against the Zagrzebskis and awarded damages. And, as to each, the Zagrzebskis filed post-trial challenges in the trial court.

¶3 In response to the Zagrzebskis' motions, the trial court granted relief as follows. As to the conversion claim, the trial court changed the jury's verdict answers, including reducing the damages to zero. As to the breach of lease claim, the trial court reduced the damages for lost profits to zero. Finally, as to the tortious interference claim, the trial court granted the Zagrzebskis a new trial. Roupas and Barkoulis appeal. As explained below, we reverse with respect to the conversion claim, but affirm in all other respects.

BACKGROUND

A. Factual Background

¶4 The following facts are taken from the trial record. In April 2003, George Barkoulis approached David and Barbara Zagrzebski about leasing their building, remodeling it and then opening it as a restaurant. Barkoulis was a general contractor who had extensive experience in building and remodeling restaurants, but had never run a restaurant. Barkoulis and the Zagrzebskis entered into a lease agreement for the restaurant on April 26, 2003, with the effective date of May 1, 2003. An addendum to the lease was drafted by Barkoulis's attorney and was signed by all parties on June 25, 2003.

¶5 In the early fall of 2003, Barkoulis entered into an agreement, entitled "Agreement Contract"[1] with Roupas, Konstantinos Bouras and William Bouras. Under the Agreement Contract, the partnership of Konstantinos Bouras and Roupas (the BR partnership) agreed to operate the restaurant. The Agreement Contract assigned to the BR partnership "all the options and components of the existing lease." Barkoulis and the BR partnership entered into a second agreement, a "Temporary Lease and details for Delivery of Equipment" (the Temporary Lease), which included a sublease of the lease for the restaurant and provided for the disposition of certain restaurant equipment provided to the deal by Konstantinos Bouras. Thereafter, Konstantinos Bouras assigned all his interest in the equipment and lease to Roupas. As a consequence, Roupas and Barkoulis alone were responsible for all duties and money owed under these two agreements.

¶6 Barkoulis opened the restaurant in mid-December 2003, utilizing some equipment and staff provided by the BR partnership. He operated the restaurant through Mother's Day, May 9, 2004.[2] Roupas never made any of the payments to Barkoulis as required under the terms of the Agreement Contract.[3] In addition, the Zagrzebskis allegedly breached certain terms of their lease agreement with Barkoulis. In turn, Barkoulis withheld rent payments to the Zagrzebskis for

[1] Although undated, Barkoulis testified that it was signed the same day as the Temporary Lease and details for Delivery of Equipment document appended to it, i.e., September 14, 2003.

[2] Testimony varied as to the day of the month; we take judicial notice that in 2004, Mother's Day was May 9.

[3] Under the Agreement Contract, the BR partnership agreed to pay Barkoulis a down payment of $25,000, with the remaining balance of $80,000 to be paid in $1500 monthly installments plus interest on the remaining balance at the annual rate of six percent. For an option on the lease, the BR partnership agreed to pay an additional $1000 per month for fifteen years for a total of $180,000.

the months of March, April, and May 2004. The Zagrzebskis subsequently served Barkoulis with a notice of default. Barkoulis decided to close the restaurant and to open a sports bar and lounge. He was remodeling the building when, on May 28, 2004, the Zagrzebskis changed the locks on the building, thereby locking Barkoulis out of the building.

B. Procedural History

¶7 Roupas commenced this action against Barkoulis on October 28, 2003, alleging a breach of the Agreement Contract.[4] Roupas alleged that Barkoulis was intending to sublet the restaurant to a third party and to prevent Roupas from operating the restaurant. Roupas sought: (1) a declaratory judgment stating that he has the authority to operate the restaurant; (2) injunctive relief barring Barkoulis from occupying and operating the restaurant and from subletting the restaurant to any third parties, or to use the equipment and other items belonging to Roupas; (3) an order of replevin placing him in possession of the equipment and other items in the restaurant belonging to him; and (4) an accounting. Roupas also named the Zagrzebskis as defendants because they owned the restaurant building and, as such, might have an interest in the proceedings.

¶8 Roupas attached an affidavit he signed to the complaint. Pertinent to this case, Roupas averred that he "purchased or arranged to pay for new and used restaurant equipment, furniture and fixtures to be delivered or installed at the" restaurant. He further averred that "[a] considerable amount of equipment,

[4] The complaint also named Peter Diamantopoulos. The claims relating to Diamantopoulos are not a part of this appeal.

furniture, and fixtures paid for by me, is now located" at the restaurant, and that "Konstantinos Bouras has assigned any interest he may have had in personal property at [the restaurant location] to me and assigned his interest under the Agreement Contract and Temporary Lease and details for Delivery of Equipment (Exhibit B) to me."

¶9 Barkoulis answered and counterclaimed against Roupas, alleging a breach of the Agreement Contract and the Temporary Lease for failing to make payments to him according to the terms of the agreements. Barkoulis also filed a cross-claim against the Zagrzebskis, alleging a breach of the lease agreement. On February 26, 2004, Barkoulis moved for an order permitting him to escrow the rent and real estate taxes due under the lease agreement pending resolution of his cross-claim.

¶10 Roupas amended his complaint on April 28, 2004, adding assertions as to money owed, a claim for equitable lien, and reasserting that he was joining the Zagrzebskis only as parties due to their ownership of the premises. The Zagrzebskis answered Barkoulis's cross-claim on May 7, 2004, and filed their own cross-claim against Barkoulis on May 28, 2004, the day they locked him out of the restaurant, alleging breaches of the lease agreement.

¶11 Roupas and the Zagrzebskis sought injunctive relief. A hearing was held on June 9, 2004, on these motions and on Barkoulis's motion to escrow rents. The court granted the Zagrzebskis a temporary injunction against Barkoulis, giving them sole use of the premises.

¶12 On August 19, 2004, Roupas and Barkoulis stipulated to the dismissal without prejudice of all of Roupas's and Barkoulis's claims against one another, leaving their claims against the Zagrzebskis to be tried, along with the

Zagrzebskis' counterclaim against Barkoulis. During the pendency of the proceedings, Barkoulis filed bankruptcy. After discovery and depositions had taken place, Barkoulis amended his cross-claim to include a tortious interference with contract claim against the Zagrzebskis. A four-day trial was held to a jury five years later. Just prior to trial, the trial court allowed Roupas to file a second amended complaint, adding a conversion claim against the Zagrzebskis. Pertinent here, the jury entered the following verdicts:

(1) for Roupas on his conversion claim against the Zagrzebskis and awarding Roupas $20,000 in damages;[5]

(2) for Barkoulis on his breach of lease claim against the Zagrzebskis and awarding Barkoulis $258,000 in damages relating to the Agreement Contract; and

(3) for Barkoulis on his claim for tortious interference with contract against the Zagrzebskis and awarding Barkoulis $278,000 in damages.

¶13 The Zagrzebskis moved the court to change the verdict answers on Roupas's and Barkoulis's claims or to conduct a new trial. The court granted the motion in large part, changing the answers on Roupas's conversion claim, the damage answer on Barkoulis's breach of lease claim, and ordering a new trial on Barkoulis's tortious interference with contract claim. Roupas and Barkoulis appeal. Additional facts are set forth in the discussion section where necessary.

[5] Based on Roupas's second amended complaint filed in 2009.

DISCUSSION

I. ROUPAS'S CONVERSION CLAIM

¶14 As already noted, the Zagrzebskis asked the court to change the verdict answers relating to Roupas's conversion claim.[6] At the start of its oral ruling, the court expressed its view on the lack of credibility of the testimony of all of the parties—Roupas, Barkoulis, and the Zagrzebskis—by saying "that this Court was shocked by the jury verdict and had it been tried to the Court, everybody's cases would have been thrown out based on the lack of credibility

[6] The verdict questions answered by the jury relating to Roupas's conversion claim were:

> QUESTION 1: Did David J. Zagrzebski and Barbara Zagrzebski intentionally take property belonging to George Roupas?
>
> ANSWER: yes
>
> QUESTION 2: If you answered Question #1 "yes", then answer this question: Did David J. Zagrzebski and Barbara Zagrzebski take the property without the consent of George Roupas?
>
> ANSWER: yes
>
> QUESTION 3: If you answered Question #1 and Question #2 "yes", then answer this question: Did David J. Zagrzebski and Barbara Zagrzebski's actions with respect to the property seriously interfere with the right of George Roupas to possess the property?
>
> ANSWER: yes
>
> QUESTION 4: Regardless of how you answered questions 1, 2, and 3, answer this question: What sum of money will fairly and reasonably compensate the plaintiff, George Roupas, for the loss of his personal property?
>
> ANSWER: $20,000

and inconsistencies." The court also said: "The impeachment of witnesses was really unbelievable, and that goes to both sides …." With this as background, the court gave two reasons for changing the jury's answers on the conversion claim.

> With respect to the Zagrzebskis' request for a motion—or judgment notwithstanding the verdict, the Court is going to grant that motion against Roupas for two reasons: first of all, what the Court would characterize as complete lack of proof and evidence to sustain the jury's verdict and also based on Exhibit 4, which unequivocally states that any personal property that did exist didn't belong to Mr. Roupas.

¶15 During trial, Roupas introduced documentary evidence (trial exhibits 5-11) relating to the equipment and other property he purchased for the restaurant and testified that he paid for the equipment. He also testified that the property was still in the restaurant building when the Zagrzebskis locked Barkoulis out in May 2004 and that the property had not been returned to Roupas. The documentary evidence also indicated the cost for each item listed. Roupas did not produce any cancelled checks or other documents indicating he actually purchased and owned the property.

¶16 On appeal, Roupas contends the trial court erroneously applied WIS. STAT. § 805.14(1) (2007-08)[7] in changing the verdict answers relating to his conversion claim. He argues there was sufficient credible evidence to support the jury's answers. In support, Roupas argues that he introduced sufficient documentary evidence (trial exhibits 5-11) relating to the equipment he supplied

[7] Although Roupas did not specifically cite WIS. STAT. § 805.14(1) in his argument, we infer from his argument that he relied on this statute in support.

All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

for the restaurant. He maintains that this evidence was probative of what he purchased and supplied to the restaurant. Roupas also points to Barkoulis's testimony that on or about May 10, 2004, Barkoulis gave up on the idea of running a restaurant and decided to turn the restaurant into a sports bar. Barkoulis testified that, although he removed some equipment from the building, Roupas's equipment remained in the building when the locks were changed on May 28, 2004. Barkoulis also testified that he ordered, and Roupas paid for, the exhaust hoods listed on exhibit 5.

¶17 Roupas argues that the exhibits and the testimony introduced explaining the significance of those exhibits were sufficient to support the jury's verdict in his favor. He acknowledges that the testimony may have been inconsistent and contradictory at times. However, he argues, it is the jury's province to evaluate all of the evidence and make its own determination as to the credibility of that evidence. He further argues that, in changing the verdict answers, the court did not search the record for evidence to sustain the jury's verdict, but rather the court searched for evidence to sustain a verdict that the jury could have reached, but did not do so.

¶18 In response, the Zagrzebskis contend that Roupas's reliance on WIS. STAT. § 805.14(1) is misplaced because the statute specifically provides that the evidence must be credible and that the trial court was correct in determining that Roupas's testimony was not credible. They also argue that the court was correct in finding that the exhibits Roupas relied on lacked probative value. As for Roupas's allegation that the Zagrzebskis took his equipment, the Zagrzebskis assert that this allegation is contradicted by Roupas's affidavit attached to his complaint against Barkoulis, where Roupas previously asserted that Barkoulis took the property and equipment. In sum, the Zagrzebskis argue that Roupas's

and Barkoulis's testimony about the equipment Roupas alleged was converted by the Zagrzebskis and the documentary evidence introduced in support of that testimony "was incredible as a matter of law."

¶19 "In considering a motion to change the jury's answer, a trial court must view the evidence in the light most favorable to the verdict and sustain the verdict if it is supported by *any credible evidence*." ***Fischer v. Wisconsin Patients Comp. Fund***, 2002 WI App 192, ¶20, 256 Wis. 2d 848, 650 N.W.2d 75 (emphasis added). Because a trial court is "better positioned to decide the weight and relevancy of the testimony, an appellate court 'must also give substantial deference to the trial court's better ability to assess the evidence.'" ***Weiss v. United Fire & Cas. Co.***, 197 Wis. 2d 365, 388-89, 541 N.W.2d 753 (1995) (citation omitted). We should not reverse a trial court's decision to overturn a jury verdict "for insufficient evidence unless the record reveals that the [trial] court was clearly wrong." ***Id.*** at 389 (citations omitted).

¶20 However, if there is any credible evidence to support the verdict, "the court is not justified in changing the jury's answers," and if it does so, it is "clearly wrong." ***Fischer***, 256 Wis. 2d 848, ¶20. Stated differently, "[w]hen there is *any* credible evidence to support a jury's verdict, 'even though it be contradicted and the contradictory evidence be stronger and more convincing, nevertheless the verdict … must stand.'" ***Weiss***, 197 Wis. 2d at 389-90 (citations omitted).

¶21 In determining whether there was sufficient evidence to support the jury's verdict for Roupas, the trial court must be "guided by the proposition that the credibility of witnesses and the weight given to their testimony are matters left to the jury's judgment." ***Fischer***, 256 Wis. 2d 848 ¶20 (citation omitted); ***Nowatske v. Osterloh***, 201 Wis. 2d 497, 511, 549 N.W.2d 256 (Ct. App. 1996)

("It is the jury's responsibility to determine the credibility of the witnesses and the weight to be afforded their testimony."). "[W]here more than one inference can be drawn from the evidence, the court must accept the inference drawn by the jury." ***Fischer***, 256 Wis. 2d 848, ¶20 (citation omitted). "Although we have said that a jury may, if it so desires, place less credence in the testimony of a witness whose evidence is inconsistent, that does not render that testimony incredible as a matter of law." ***Millonig v. Bakken***, 112 Wis. 2d 445, 453-54, 334 N.W.2d 80 (1983). "Thus, *it is the function of the jury* to determine where in the discrepant testimony and contradiction of the witness the truth really lay." ***Id.*** at 454 (emphasis added).

¶22 We begin by commenting on the trial court's statements regarding the credibility of the parties. As we have explained, the trial court must be "guided by the proposition that the credibility of witnesses and the weight given to their testimony are matters left to the jury's judgment." ***Fischer***, 256 Wis. 2d 848, ¶20. Simply because the testimony of a witness is inconsistent, internally or with prior statements, it does not render that testimony incredible as a matter of law. *See* ***Millonig***, 112 Wis. 2d at 453-54. It is the jury's function "to determine where in the discrepant testimony and contradiction of the witness the truth really lay." ***Id***. at 454. When an action is tried to a jury, the truth-seeking function does not belong to the trial court; it belongs to the jury. The court's determination that the testimony of Roupas and Barkoulis was not credible is inconsistent with the above standard.

¶23 We also observe that, based on our review of the record, the trial court did not view the evidence in a light most favorable to the jury's verdict. Rather, as we discuss below, the court, in changing the jury's answers, viewed the evidence in a light that supported a verdict the jury could have reached, but did not. *See* ***Fischer***, 256 Wis. 2d 848, ¶20 ("In considering a motion to change the

jury's answer, a trial court must view the evidence in the light most favorable to the verdict and sustain the verdict if it is supported by any credible evidence.").

¶24 By way of example, in determining whether Roupas presented sufficient proof "as to whether [the equipment Roupas claims he purchased] existed" and the value of the equipment, the court analyzed exhibit 5 in the following way.

> Exhibit 5 appears to be a proposal, if you will, or a quote. Whatever it is, it is to George at J.B. Construction. I think it's a reasonable inference— Well, I guess it wouldn't be. I was going to say those are his initials, but there's plenty of George's in this case and "J" is not the initial for George anyway. It was to be shipped to the restaurant there. There's no proof that payment was ever made. There's no cancelled check. There's no mark "paid," stamped "paid."

¶25 We agree with the trial court that exhibit 5 does not bear all of the characteristics of a "receipt." However, when this document and related testimony is viewed in a light most favorable to the jury's verdicts, the evidence is sufficient. First, Roupas testified that he paid for the items listed on the "receipt," and that testimony is not inherently incredible. Second, exhibit 5 tends to support his assertion. Although the document does not provide specific prices for each item listed, it does specify the following costs: subtotal-$12,013.65; shipping-$896.28; tax-$710.05, for a total cost of $13,619.98. The document is addressed to "George" at J.B. Construction, and the notation "Ship-to: Forum Restaurant, 101 Division St., Stevens Point," which is the address for the restaurant at issue in this case.

¶26 As a second example, we focus on exhibit 7. Exhibit 7 purports to be an invoice from Midwest Equipment Co. in Racine for stainless steel storage shelves and a stainless steel cabinet sold to George Roupas at the restaurant's

address. The invoice indicates that the items were shipped to Roupas at the restaurant on October 2, 2003, and that the shelves and cabinet cost $10,600 plus $100 for shipping. Roupas testified that these shelves were used in the restaurant. Barkoulis testified that this equipment was left in the restaurant when the locks were changed.

¶27 The trial court's skepticism about whether exhibit 7 was sufficient proof that Roupas paid for the equipment listed on that exhibit rested on the seller's failure to list the sales tax on the invoice. The court also questioned whether the exhibit was a proposal or a receipt.

¶28 We agree that the trial court's inference was reasonable, but it is not the only reasonable inference. Another is that the seller did not charge Roupas for the tax, as Roupas testified. Regardless, there is nothing inherently incredible about exhibit 7 or the testimony regarding that exhibit that would warrant changing the jury's answers on Roupas's conversion claim. Indeed, it is noteworthy that the trial court acknowledged that exhibit 7 reflected that it was an invoice from Midwest Equipment, and that the invoice was issued within the relevant timeframe when Roupas and Barkoulis were starting up the restaurant.

¶29 Without discussing the remainder of the evidence, it suffices to say that, while a reasonable jury could question the reliability of the evidence, it was within the jury's role as the trier-of-fact to decide which evidence to believe. We cannot say, based on our review of the exhibits and reading the transcripts of Roupas's and Barkoulis's testimony on this topic, that there was no credible evidence to sustain the jury's verdict. We now turn to the court's second reason for changing the jury's verdict on Roupas's conversion claim.

¶30 The trial court changed the jury's verdict on Roupas's conversion claim for a second reason. The court interpreted trial exhibit 4, the Agreement Contract and the Temporary Lease, as stating "that any personal property that did exist [in the building] didn't belong to Mr. Roupas." We understand the court to say that, even if Roupas did pay for equipment that was left in the restaurant, under the terms of the Agreement Contract and the Temporary Lease, any of Roupas's personal property left in the building belonged to the premises and not to Roupas. The specific provision that the court was referring to in the Temporary Lease provides that the equipment listed on an attached exhibit to the document, identified as exhibit A ("attachment A"), is owned by Konstantinos Bouras, but "that should the business file for bankruptcy, or one of the partners, including Konstantinos Bouras, fall out of the business, in any way whatsoever, the equipment will become the property of the premises at 101 Division Street, Stevens Point, Wisconsin." This is the address for the restaurant. Attachment A contains a non-exclusive listing of "[e]quipment, furniture, fixtures and leaseholder improvements and betterments."

¶31 According to our comparison of the items listed in attachment A to the Temporary Lease with the property listed on trial exhibits 5 to 11, which Roupas testified he purchased and placed in the restaurant, it is readily apparent that all of the items listed in attachment A are not included on trial exhibits 5-11. For example, attachment A to the Temporary Lease includes, among other items listed: 15 double booths, 16 single booths, 1 broiler for fish, 1 slice machine automatic, a complete set of bar glasses, and 5 large chandeliers. There are just three items on the list that arguably overlap with the property itemized in trial exhibits 5 to 11—1 steam table, 5 stainless steel tables, and 15 stainless steel

shelves. However, a close comparison of the trial exhibits with attachment A reveals that these items are not included in the property shown in the trial exhibits.

¶32 We conclude that a reasonable jury could read attachment A to the Temporary Lease as not including the equipment found in trial exhibits 5 to 11. As we have indicated, most of the equipment and furniture listed on attachment A plainly are not included in the property itemized in the trial exhibits.

¶33 In summary, even after giving substantial deference to the court's "better 'ability to assess the evidence,'" ***Weiss***, 197 Wis. 2d at 391, we conclude there is credible evidence to support the jury's answers on Roupas's conversion claim. We therefore conclude the trial court was clearly wrong in changing these answers. *See* ***id.*** at 392.[8]

II. BARKOULIS'S BREACH OF LEASE CLAIM

¶34 In their motions after verdict, the Zagrzebskis moved to change the jury's verdict answers relating to Barkoulis's claim that the Zagrzebskis breached certain terms of the lease agreement. The jury found in Barkoulis's favor and, pertinent here, awarded Barkoulis $258,000 for lost profits. The court granted the Zagrzebskis motion to reduce the $258,000 damage award to zero.[9]

[8] The Zagrzebskis do not make a separate argument that, in the event we reverse the trial court's change of the verdict answers on Roupas's conversion claim, Roupas is not entitled to receive the entire amount awarded by the jury. Consequently, we see no impediment to awarding Roupas the entire amount the jury determined he is entitled to receive based on its finding that the Zagrzebskis had converted Roupas's property.

[9] Question 7 also involves an award that the Zagrzebskis do not challenge relating to Barkoulis's personal property. Our discussion ignores this part of the verdict.

¶35 The trial court gave three reasons for granting the Zagrzebskis' motion to change the jury's answer: (1) because Barkoulis had breached the lease agreement with the Zagrzebskis, he was unable to perform under the terms of the Agreement Contract he had with Roupas and therefore he had no lease to sublet to Roupas; (2) Barkoulis had failed to complete construction and never opened the restaurant; and (3) Barkoulis was in breach of the Agreement Contract and Temporary Lease between himself, Roupas, Konstantinos Bouras, and William Bouras because his expenses exceeded $15,000. We need focus only on the court's first reason because it is a sufficient basis on which to change the jury's answer.

¶36 As we have explained, under the terms of the Agreement Contract and the Temporary Lease, Barkoulis agreed to sublease the restaurant to the BR partnership. In consideration, Roupas, individually, and the BR partnership agreed to pay Barkoulis a certain sum of money immediately and over a fifteen-year period. It appears that the $258,000 awarded by the jury in lost profits is the approximate amount the BR partnership and Roupas, individually, agreed to pay Barkoulis over the period of the Agreement Contract for constructing and operating the restaurant. However, in May 2004 the Zagrzebskis terminated the lease agreement with Barkoulis for the restaurant because of certain alleged violations of the lease. The jury found that Barkoulis had breached the lease agreement with the Zagrzebskis, thus Barkoulis was unable to fulfill his obligations under the Agreement Contract to sublease the restaurant to Roupas and to the BR partnership.

¶37 In changing the damages awarded for lost profits to zero, the court reasoned that, because Barkoulis breached the lease agreement with the

Zagrzebskis, Barkoulis "had no lease to sublet to Roupas," and, therefore, Barkoulis could not have suffered lost profits on the lease.

¶38 We find no place in the appellate briefs where Barkoulis challenges the trial court's reasoning. Notably, Barkoulis did not move after verdict for the court to change the jury's finding that he breached the lease agreement and it is undisputed that the actions underlying that finding predate the Zagrzebskis' terminating the lease. Thus, Barkoulis has not persuaded us that the trial court erred.[10]

III. BARKOULIS'S TORTIOUS INTERFERENCE WITH CONTRACT CLAIM

¶39 Barkoulis claimed that the Zagrzebskis tortiously interfered with the Agreement Contract he had with Roupas. The claim rested on a theory that Roupas and the Zagrzebskis conspired to "squeeze" Barkoulis out of the restaurant business. Barkoulis testified that Roupas informed him during the summer of 2004 that Mr. Zagrzebski approached Roupas with the idea of leasing the restaurant building directly to Roupas. According to Barkoulis, the plan was to force Barkoulis to go out of business and for Roupas to take over the restaurant. This would allow Roupas to save approximately $300,000 from the payments Roupas had agreed to pay Barkoulis under the Agreement Contract, and it would save the Zagrzebskis the cost of reconstructing the parking lot. The jury found in favor of Barkoulis and awarded him $278,000 in damages.

[10] Because we conclude the trial court did not err in changing the jury's damage award in verdict question 7(b) from $258,000 to zero, we need not address the court's other two reasons for changing the jury's damage award.

¶40 The Zagrzebskis moved to change the jury's verdict finding that the Zagrzebskis tortiously interfered with Barkoulis's contract with Roupas. In the alternative, the Zagrzebskis moved to set aside the verdict and retry the claim on the ground that the jury's verdict was against the great weight and clear preponderance of the evidence. The trial court granted the Zagrzebskis a new trial. As we explain, this was a discretionary decision and we affirm the trial court's exercise of discretion.

¶41 WISCONSIN STAT. § 805.15(1) governs motions after verdict for a new trial. Under § 805.15(1), "[a] party may move to set aside a verdict and for a new trial because … the verdict is contrary to law or to the weight of evidence …." *See* ***Krolikowski v. Chicago & Nw. Transp. Co.***, 89 Wis. 2d 573, 580, 278 N.W.2d 865 (1979) (A court may grant a new trial in the interest of justice where it concludes "the jury findings are contrary to the great weight and clear preponderance of the evidence, even though the findings are supported by credible evidence."). However, under § 805.15(2), "[t]he order granting a new trial in the interest of justice must contain the reasons and bases for the general statement contained therein that the verdict is against the great weight and clear preponderance of the evidence." ***Id.*** Our review is generally limited to the reasons set forth in the trial court's order. ***Id.*** When reviewing a trial court's order granting a new trial in the interest of justice, we do not seek to sustain the verdict of the jury, but look "for reasons to sustain the findings and order of the trial judge." ***Id.*** We may reverse only if we conclude that the trial court erroneously exercised its discretion. ***Id.*** We will affirm a trial court's exercise of discretion if it "sets forth a reasonable basis for its determination that one or more material answers in the verdict are against the great weight and clear preponderance of the evidence." ***Id.*** at 581. "[I]f the trial court grounds its

decision upon a mistaken view of the evidence or an erroneous view of the law," we will reverse for the court's erroneous exercise of discretion. ***Id.*** (citations omitted).

¶42 We conclude the court properly exercised its discretion in granting the Zagrzebskis' motion for a new trial under WIS. STAT. § 805.15(1). At the core of the court's reason for ordering a new trial was the court's determination that Roupas's and Barkoulis's testimonies were not credible. The court's credibility determinations were based on its observation of the witnesses and their testimony, and the various ways by which the witnesses were impeached. The court observed that the trial testimony of Barkoulis and Roupas was "repeatedly" impeached with conflicting statements in sworn affidavits. The court observed that the tortious interference claim was not brought until four years after the lawsuit had been initiated by Roupas and that Roupas had not averred in his affidavits filed in support of his complaint and amended complaint that the Zagrzebskis had approached him to take over the restaurant and move Barkoulis out of the business. The court plainly reasoned that the delay was explained by a change in tactics by Barkoulis and Roupas in which they dropped claims against each other and, instead, Roupas would help Barkoulis recover from the Zagrzebskis.

¶43 While we would like to see more specific reasons from the court for setting aside the verdict and granting a new trial, we conclude that the court's explanation is sufficient reason to grant a new trial. While it is true that Barkoulis testified briefly about the issue, Roupas was the key witness in support of Barkoulis's claim. In light of Roupas's credibility problems and the other related evidence, the court reasonably concluded that a new trial is warranted.

CONCLUSION

¶44 For the foregoing reasons, we conclude the trial court did not err in changing the jury's damage award to Barkoulis in the amount of $258,000 to zero relating to his breach of lease claim. We also conclude that the court properly exercised its discretion in granting a new trial on Barkoulis's tortious interference with contract claim. However, we conclude the court erred in changing the jury's answers to verdict questions concerning Roupas's conversion claim, and direct the trial court to reinstate the jury's answers to questions one through four. We therefore affirm the judgment in part, reverse in part, and remand for further proceedings consistent with this decision.

By the Court.—Judgment affirmed in part, reversed in part and cause remanded with directions.

Not recommended for publication in the official reports.