NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

BJC by RHG

RHG

2011 CA 1183

ANDREW DOUGLAS GLASCOCK

VERSUS

PROP STOP ENTERPRISES, INC., MILTON DeMARS AND ROBIN DeMARS

On Appeal from the 21st Judicial District Court
Parish of Livingston, Louisiana
Docket No. 122,931, Division "B"
Honorable Bruce C. Bennett, Judge Presiding

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and	
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Ernest M. Forbes **Denham Springs, LA**	**Attorney for** **Defendants-Appellees** **Lance Valentine, Katherine Valentine,** **and KBT5, LLC**

BEFORE: CARTER, C.J., PARRO, AND HIGGINBOTHAM, JJ.

Judgment rendered OCT 17 2012

Higginbotham, J. Concurs.

PARRO, J.

The plaintiff, Andrew Douglas Glascock, appeals the judgment of the trial court, which dismissed, with prejudice, all but one of his claims against the defendants. For the reasons that follow, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This matter involves two competing purchase agreements covering property owned by Prop Stop Enterprises, Inc. (Prop Stop Enterprises), Milton DeMars, and Robin DeMars. Prop Stop Enterprises, which had been owned and operated by Mr. and Mrs. DeMars for many years, operated the Prop Stop bar and restaurant (Prop Stop) on the Tickfaw River in Livingston Parish. In 2008, Mr. DeMars and his wife were having serious financial difficulties and were facing foreclosure on the Prop Stop, as well as on their house and a warehouse they owned (collectively, the affected properties). Therefore, in April 2008, Mr. DeMars contacted his long-time friend, Wayne Glascock (Mr. Glascock), and requested financial assistance.

Mr. Glascock approached representatives of First Guaranty Bank (First Guaranty), which held the mortgage on the affected properties, to inquire if anything could be done to stop the impending sheriff's sale of these properties. However, based on these conversations, Mr. Glascock determined that First Guaranty officials were not willing to work with Mr. DeMars on this issue. Therefore, Mr. Glascock, through Worldwide Financial (Worldwide),[1] signed a new one-year note with First Guaranty in the amount of $147,000.[2] Worldwide then used the proceeds of that loan to pay off the debt owed by Mr. and Mrs. DeMars and prevent the sheriff's sale of the affected properties. The original notes and mortgages executed by Mr. and Mrs. DeMars were then assigned to Worldwide. Mr. Glascock was also required to sign a personal guarantee of the note signed by Worldwide. Finally, in addition to this personal guarantee, Mr. Glascock

[1] Worldwide was one of the corporate entities through which Mr. Glascock sometimes conducted business. Mr. Glascock testified that First Guaranty officials refused to sell him the note in his personal capacity and that he, therefore, had no other alternative but to act in a corporate capacity.

[2] The original loan had been made to Mr. and Mrs. DeMars in approximately August 2007, but they had made no payments on the loan. Therefore, the amount of the loan taken out by Worldwide and Mr. Glascock included the amount of the original loan, plus interest, accelerated interest, and additional penalties.

personally paid fees to the sheriff's office and the attorneys involved in the foreclosure proceedings.

Mr. Glascock and Mr. DeMars agreed on an initial term of six months for repayment of the loan, and Mr. DeMars contended that all of his assets, consisting of his house, a warehouse, a boat slip, and the Prop Stop business, were for sale and sufficient to repay the debt. However, during the initial six-month period, Mr. DeMars made only one payment on the loan, using funds he received from a sale of the boat slip he owned. Once certain tax liens were satisfied, the remainder of the proceeds of that sale was applied to the Worldwide loan. With a balance still remaining at the end of the initial six-month period, Mr. Glascock verbally agreed to give Mr. DeMars another six months to pay off the loan.

Mr. Glascock testified that, on January 10, 2009, Mrs. DeMars asked him to come to her home to talk to her husband because he was extremely depressed.[3] Mr. Glascock agreed to do so and while he was at the house, he and Mr. DeMars discussed Mr. DeMars' financial situation. During that conversation, Mr. DeMars indicated that he was interested in selling the Prop Stop and some of his other property at a greatly reduced price. Mr. Glascock responded that he was not interested in purchasing any of the property, but he indicated that his son, Andrew, had recently moved back home from Dallas and that he might be interested in buying the property. Mr. Glascock advised Mr. DeMars that he would send Andrew over to discuss the purchase of the property. Andrew attempted to find Mr. DeMars that same day, but he was unsuccessful. Mr. DeMars and Andrew subsequently discussed the purchase of the property on January 11, 2009; however, no purchase agreement was signed at that time.

On January 12, 2009, Mr. and Mrs. DeMars signed a purchase agreement with Lance and Katherine (Kathy) Valentine, in which they agreed to sell Prop Stop

[3] According to Mr. Glascock's testimony, Mrs. DeMars called him and told him that Mr. DeMars was sitting on the couch with a gun. In his testimony, Mr. DeMars denied that he ever had a gun or that he was depressed; however, he did acknowledge that he and his wife were in a bad financial situation at the time. In any event, by the time Mr. Glascock arrived at the house, Mr. DeMars did not have a gun. Mrs. DeMars did not testify at the trial.

Enterprises to the Valentines. Specifically, the agreement stated that Mr. and Mrs. DeMars[4] agreed to sell:

> Prop Stop Enterprises, which include[s] a building located on the Tickfaw River and all its furniture, camera equipment and sound equipment, a home located at 32410 Keila Lane[,] and a property on 32746 Cypress Dr[ive] ... to [the Valentines for] the amount of $140,000.

The Valentines agreed to pay a $500 deposit, and the sale was to close within forty-five days.

Despite having already signed this purchase agreement with the Valentines, Mr. DeMars later signed a second purchase agreement for the same property with Andrew Glascock (Andrew) on January 21, 2009. This second purchase agreement provided that Mr. and Mrs. DeMars, Prop Stop Enterprises, and Andrew came to the following agreement:

> [Andrew] agrees to buy and [Prop Stop Enterprises and Milton DeMars and Robin DeMars] individually agree to sell all furniture, fixtures, tools, equipment, three boats, structures where [Prop Stop] is located on the Tickfaw [R]iver, and any patents, trademarks and [logos,] including but not limited to[,] Prop Stop and Worm Bucket, work in progress or finished[,] or any items used in the operation of the Prop Stop.
>
> [Andrew] agrees to pay or assume any mortgages currently held by Worldwide Financial, First [Guaranty] Bank or any other holder in due [course on] property belonging to Prop Stop Enterprises or property belonging to [Milton DeMars or Robin DeMars] individually[,] including real estate at 32746 Cypress Drive and 32410 Keila Drive, Livingston Parish, Louisiana.
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> Once said mortgages are paid or assumed[,] it is agreed that [Milton DeMars and Robin DeMars] will receive or continue to hold the property at 32410 Keila Lane free of any mortgages or liens related to the mortgages held by Worldwide Financial, First Guaranty Bank, or any holder in due [course].
>
> [Milton DeMars and Robin DeMars] agree that once said mortgages are paid or assumed[,] [Prop Stop Enterprises, Milton DeMars and Robin DeMars] will deed the property located at 32746 Cypress Drive to [Andrew].
>
> Payment to [Prop Stop Enterprises, Milton DeMars and Robin DeMars] will consist of $85,000.00 in cash [paid] by [Andrew]. Cash will be paid as follows: $5,000.00 at the signing of this agreement, receipt of which is acknowledged. $10,000.00 at the closing of real estate as agreed above, and $5,000.00 per month payable on the first of every month starting in March 1, 2009[,] until November 1, 2009[,] when whatever balance is due on the $85,000.00 will be paid in full. Parties will execute a note at the real estate closing in favor of [Milton DeMars and Robin DeMars] by [Andrew].
>
> Parties agree that this is a firm and binding agreement. Purchaser

[4] The agreement was signed by the Valentines and by Mr. and Mrs. DeMars. The agreement did not indicate that Mr. and Mrs. DeMars were signing in both their individual capacities and their capacities as representatives of Prop Stop Enterprises.

reserves right of specific performance in case of default by seller. Closing will take place within 30 days of today's date. Signed this 21st day of January 2009.

After the parties signed this purchase agreement, Mr. DeMars gave Andrew keys to the Prop Stop and possession of certain boats belonging to the business because, as he testified, he fully expected to complete the sale and he wanted to let Andrew check out the property. Andrew set a closing on this agreement for February 11, 2009. However, Kathy Valentine discovered that Mr. DeMars had signed a purchase agreement with Andrew, and she questioned Mr. DeMars about this. Mr. DeMars contended that he had only signed this second purchase agreement because he was under the impression that the Valentines were unable to obtain a loan and that he was afraid that he was going to lose his property without getting any return otherwise. Kathy Valentine assured Mr. DeMars that this information was incorrect and that she and her husband still intended to buy the property. Therefore, Mr. DeMars decided not to attend the closing set by Andrew and, instead, decided to recognize the purchase agreement with the Valentines.

According to the Valentines, they attempted to obtain the payoff amount owed by Mr. and Mrs. DeMars from Worldwide and Mr. Glascock, but they were unsuccessful. Because they wanted to begin making repairs to the Prop Stop so that it could be open in April,[5] the Valentines purchased the goodwill, trade names, and leasehold interest of the Prop Stop on February 11, 2009.[6] To make this purchase, the Valentines used some of their cash savings, as well as funds from an existing line of credit at Whitney Bank. They did not, however, obtain a new loan from the bank as they had originally planned, nor did they purchase the home and warehouse from Mr. and Mrs. DeMars as provided in the original purchase agreement. The Valentines ultimately purchased the physical assets of the Prop Stop, which consisted entirely of movable property, after an appraisal on May 1, 2009. The Valentines carried out the transaction involving the trade names, goodwill, and leasehold interest through their limited liability company,

[5] The Prop Stop is a seasonal business and is generally open from April through September.

[6] A new lease was negotiated with the lessor on April 22, 2009.

KBT5, LLC (KBT5).[7] The sale of the physical assets was to the Valentines individually.

Meanwhile, after Mr. and Mrs. DeMars failed to appear at the scheduled February 11, 2009 closing, Andrew filed the underlying petition on February 12, 2009, against them and Prop Stop Enterprises, seeking specific performance of the purchase agreement between them. In addition, Andrew recorded a notice of lis pendens against the immovable property subject to the purchase agreement, which apparently prevented the Valentines from getting a loan from the bank to buy the house and warehouse as they had planned.

Thereafter, Andrew discovered that certain assets of the Prop Stop had been sold; therefore, he amended his petition to name KBT5 and the Valentines as defendants.[8] According to the amended petition, KBT5 and the Valentines "acted in concert with [Prop Stop Enterprises and Mr. and Mrs. DeMars] in an effort to defraud [Andrew] and to deprive [him] of his exclusive right to the purchase of the Prop Stop Assets in accordance with his agreement with [Prop Stop Enterprises and Mr. and Mrs. DeMars]." Andrew further requested a preliminary injunction to prohibit the Valentines and KBT5 from taking possession or in any way exercising ownership over any of the Prop Stop's assets until after a hearing could be held to determine the rightful owner. The request for a preliminary injunction was denied.

After a trial on the merits, the trial court issued written reasons finding that Andrew's purchase agreement was null and void because it "was procured under false circumstances and erroneous impressions." The trial court further determined that Andrew was required to return the boats in his possession, as they had been sold in good faith to the Valentines. The trial court also found that Andrew had failed to prove by sufficient evidence that he was entitled to reimbursement for improvements he had allegedly made to the Prop Stop's premises or assets. However, the trial court

[7] There is nothing in the record to suggest that the Valentines ever transferred their rights from the first purchase agreement to KBT5. Furthermore, the original purchase agreement did not mention the trade names, goodwill, or leasehold interest belonging to Prop Stop. Instead, it referred only to a building, furniture, camera equipment, and sound equipment, as well as the house and warehouse belonging to Mr. and Mrs. DeMars.

[8] Andrew referred to the claim against KBT5 and the Valentines as a third party demand; however, it appears that he was merely adding them as additional defendants.

concluded that Andrew was entitled to the refund of the $5000 down payment he had paid to Mr. DeMars at the time of the signing of the purchase agreement. A judgment in accordance with these reasons was signed on February 22, 2011.[9] This appeal by Andrew followed.

APPLICABLE LAW

A court of appeal may not overturn a judgment of a trial court absent an error of law or a factual finding that is manifestly erroneous or clearly wrong. Morris v. Safeway Ins. Co. of Louisiana, 03-1361 (La. App. 1st Cir. 9/17/04), 897 So.2d 616, 617, writ denied, 04-2572 (La. 12/17/04), 888 So.2d 872. With regard to a factual finding of the trier of fact, the supreme court posited a two-part test for the appellate review of facts: (1) the appellate court must find from the record that there is a reasonable factual basis for the finding of the trier of fact; and (2) the appellate court must further determine that the record establishes that the finding is not clearly wrong (manifestly erroneous). Mart v. Hill, 505 So.2d 1120, 1127 (La. 1987). Thus, if there is no reasonable factual basis in the record for the trier of fact's finding, no additional inquiry is necessary to conclude there was manifest error. However, if a reasonable factual basis exists, an appellate court may set aside a factual finding only if, after reviewing the record in its entirety, it determines the factual finding was clearly wrong. See Stobart v. State, through Dep't. of Transp. and Dev., 617 So.2d 880, 882 (La. 1993); Moss v. State, 07-1686 (La. App. 1st Cir. 8/8/08), 993 So.2d 687, 693, writ denied, 08-2166 (La. 11/14/08), 996 So.2d 1092.

If the trial court's factual findings are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse those findings even though convinced that, had it been sitting as the trier of fact, it would have weighed the evidence differently. Hulsey v. Sears, Roebuck & Co., 96-2704 (La. App. 1st Cir. 12/29/97), 705 So.2d 1173, 1176-77. However, an appellate court may find manifest error or clear wrongness even in a finding purportedly based upon a credibility

[9] The Valentines and KBT5 had filed a reconventional demand, seeking damages they allegedly sustained for the delay in being able to open their business because of the legal proceedings and other actions carried out by Andrew. The trial court denied the reconventional demand, finding that the Valentines and KBT5 had failed to prove their damages by sufficient evidence. This part of the judgment has not been appealed.

determination, where documents or objective evidence so contradict the witness's story, or the story itself is so internally inconsistent or implausible on its face, that a reasonable fact finder would not credit the witness's story. Id. at 1177.

DISCUSSION

In the judgment in this matter, the trial court rendered judgment in favor of Andrew and against Prop Stop Enterprises, Milton DeMars, and Robin DeMars in the amount of $5,000, representing the down payment Andrew had made. The trial court then dismissed all other claims Andrew had brought against all other parties, with prejudice. The judgment itself makes no declaration or finding of fraud or any other vice of consent with regard to the purchase agreement entered into between Andrew, Prop Stop Enterprises, Mr. DeMars, and Mrs. DeMars. However, in its written reasons, the trial court specifically found that Andrew's purchase agreement was null and void and that it had been "procured under false circumstances and erroneous impressions." The trial court further found that Mr. DeMars had been acting under severe duress and the "mistaken impression of imminent foreclosure." On appeal, Andrew has challenged these specific findings of the trial court in an effort to overturn the judgment. Although we do not believe that the evidence in the record was sufficient to support a finding of fraud or duress,[10] we find that it is not necessary to reach such issues.

We note that the original purchase agreement in favor of the Valentines, in addition to being signed first, simply provided for the sale of Prop Stop Enterprises, and

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[10] Consent may be vitiated by error, fraud, or duress. LSA-C.C. art. 1948. Fraud need only be proved by a preponderance of the evidence and may be established by circumstantial evidence. LSA-C.C. art. 1957. The finding of fraud appears to have been based solely on the testimony of Mr. DeMars, who claimed that Mr. Glascock told him that the Valentines were not going to be able to get a loan to complete the deal and that he had heard this information from the Valentines' banker. Both Mr. Glascock and the banker flatly denied that they had ever said any such thing, and Mr. DeMars said that he never attempted to confirm the information with either of the Valentines. While this testimony is clearly contradictory, even the choice by the trial court to credit Mr. DeMars' testimony over that of the others does not rise to the level of proof for fraud by a preponderance of the evidence. The trial court suggested that the circumstances supported this finding; however, aside from the simple fact that Mr. DeMars acted the way he did, it is unclear to what circumstances the trial court is referring.

Furthermore, a threat of doing a lawful act or of exercising a right does not constitute duress. LSA-C.C. art. 1962. The testimony was contradictory as to whether Mr. Glascock threatened to foreclose on the mortgage of Mr. DeMars for his failure to make payments on his note. Mr. Glascock again flatly denied that he had ever threatened to foreclose. However, even if such threats had been made, he and Worldwide had a legal right to do so. The fact that Mr. DeMars may have felt pressured by that knowledge or by his precarious financial situation does not constitute duress under the law.

some additional immovable property owned by Mr. and Mrs. DeMars.[11] Although there is some confusion in the record, Prop Stop Enterprises consisted entirely of movable property and conducted its business in leased premises.

When the Valentines attempted to obtain a payoff amount from Worldwide and First Guaranty so that they could complete the sale, they were apparently prevented from obtaining this information for reasons that are not entirely clear from the record. The Valentines claim that they requested the information, but were not given the information by the bank or by Mr. Glascock. Mr. DeMars contends that officers of First Guaranty simply refused to give him the information and that he believed one of them was trying to undermine the sale; nevertheless, he had no evidence to support any of this testimony. However, there was evidence that the initial payoff amount given to the Valentines was several thousand dollars too high. For whatever reason, the Valentines had difficulty obtaining this information, and they were, therefore, unable to obtain a loan in a timely fashion. Accordingly, they decided to purchase the Prop Stop business alone, which was the true focus of the agreement, until they could work out other arrangements for a loan. As noted previously, the Prop Stop business consisted entirely of movable property; therefore, the ownership of those assets was transferred immediately by a contract between the Valentines and Prop Stop Enterprises, Milton DeMars, and Robin DeMars. The transfer was complete as to third parties once the movables were delivered to the Valentines. See LSA-C.C. art. 518.

Andrew did not file his lawsuit until after the transfer of the Prop Stop business to the Valentines, and his notice of lis pendens listed only the immovable property that was part of the agreement. Because of that notice and this litigation, the Valentines have been unable to secure any loan to complete the purchase of the immovable property as originally contemplated in the purchase agreement.

As the first party to sign a purchase agreement regarding this property, the Valentines were entitled to an expectation that their purchase agreement would be

[11] The parties noted repeatedly in testimony that the purpose of purchasing this immovable property, which included the DeMars family home, was to use it as collateral for a loan. The true object of the purchase was to obtain the Prop Stop.

honored for the period of time during which the agreement was to remain in effect. Therefore, it was improper for Mr. DeMars and his wife to sign a new purchase agreement with Andrew while the Valentines' agreement was still in effect. Because the Valentines' agreement had not expired, Andrew's purchase agreement could not supersede it.

As the holder of the second-signed purchase agreement, Andrew was limited to a claim for any damages he may have sustained. However, Andrew attempted to prove that he suffered damages as a result of his involvement in this matter at the trial, and the trial court found that he failed to prove his entitlement to damages by sufficient evidence. After a thorough review of the record, we find no error of fact or law in this finding by the trial court.

The evidence in the record supports the judgment of the trial court, which dismissed Andrew's claims against the defendants, with the exception of his claim for reimbursement of his $5,000 down payment. While we do not agree with the trial court's factual findings suggesting that Mr. DeMars was acting under a vice of consent at the time he signed the second purchase agreement, we are mindful of the well-settled rule that appellate courts review judgments, not reasons for judgment. Wooley v. Lucksinger, 09-0571 (La. 4/1/11), 61 So.3d 507, 572. Accordingly, after a thorough review of the record, we find no manifest error in the factual findings of the trial court relative to the ultimate findings of fact, nor do we find any error of law.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the trial court. All costs of this appeal are assessed to Andrew Douglas Glascock.

AFFIRMED.