

STATE OF MICHIGAN
COURT OF APPEALS

KURT WINTERS,

Plaintiff-Appellant,

v

BEAR CREEK INVESTMENTS, INC., BRENT J.
SNYDER, and THOMAS JOHNS,

Defendants-Appellees,

and

JACK KORTE,

Defendant.

UNPUBLISHED

March 12, 2002

No. 226494

Washtenaw Circuit Court

LC No. 99-010400-CK

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

PER CURIAM.

Plaintiff appeals of right from the trial court's judgment granting defendants' motion for involuntary dismissal with respect to defendants Snyder and Johns after presentation of plaintiff's proofs during a bench trial. We affirm.

Defendants Snyder, Johns, and Korte¹ (hereafter "individual defendants") formed defendant corporation, Bear Creek Investments, Inc. (hereafter "defendant corporation") in 1995, and they became defendant corporation's only officers and equal shareholders. Previously, in 1994, the three of them started a residential home development known as Shadowood. Shadowood was to be developed, improved, and managed as part of defendant corporation.² In November 1995, defendant corporation executed three promissory notes totaling approximately \$480,168 to individual defendants. These notes allegedly evidenced loans made by individual

¹ Defendant Korte was dismissed for non-service of the complaint, and he is now deceased.

² Apparently the individual defendants originally formed in 1994 a corporation known as Bear Creek Development, Inc., to develop Shadowood, and that corporation evolved into Bear Creek Investments, Inc., in 1995.

defendants to defendant corporation in the form of services rendered and cash to assist in the development of Shadowood.

In early 1996, defendant Snyder contacted plaintiff about performing excavation work at the Shadowood property. Plaintiff agreed to do the work, which was completed in 1997; however, defendants failed to pay for a majority of the services.

In late 1997, Great Lakes Federal Savings & Loans, who held the first lien on the Shadowood development, foreclosed on the property.³ LaPiccolo Homes⁴ purchased the property at a sheriff's sale, and subsequently LaPiccolo Homes paid \$90,000 to defendant corporation for the redemption rights. Pursuant to their authority as officers of defendant corporation, individual defendants paid the \$90,000, less deductions for legal fees to themselves individually in equal shares as partial repayment of the "loans" made by the individual defendants to defendant corporation in 1995.

In February 1999, plaintiff filed suit alleging breach of contract, fraudulent conveyance, and unjust enrichment. Before trial, the trial court granted the individual defendants' motion for summary disposition as to the breach of contract claim only. A bench trial commenced in February 2000, and after presentation of plaintiff's proofs, the trial court granted individual defendants' motion for involuntary dismissal on the basis that plaintiff contracted with defendant corporation, that there was no fraudulent transfer because defendant corporation had the right to favor one bona fide creditor over another bona fide creditor, i.e., the individual defendants over plaintiff, and that plaintiff failed to prove a correlation between the \$90,000 redemption amount and the value of the excavation services. The trial court also ruled, with the consent of both parties, that defendant corporation was liable for the unpaid excavation services. Subsequently, judgment was entered awarding plaintiff a total amount of \$43,258.51 against defendant corporation only, and finding no cause of action against individual defendants. Plaintiff then filed this appeal.

Plaintiff's first claim of error is that the trial court's factual finding that the excavation services that plaintiff performed were for the benefit of defendant corporation and, consequently, individual defendants were not liable for the breach of contract was clearly erroneous because the individual defendants were unjustly enriched.

A trial court's factual findings in a bench trial, in the context of a judgment granting a defendant's motion for involuntary dismissal pursuant to MCR 2.504(B)(2), are to be reversed only if they are clearly erroneous, and issues of law are subject to de novo review. *Sands Appliance Services, Inc v Wilson*, 463 Mich 231, 235-236 n 2, 238; 615 NW2d 241 (2000). "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed." *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). In *Marderosian v The Stroh Brewery Co*, 123 Mich App 719, 724; 333 NW2d 341 (1983), this Court stated:

³ Plaintiff filed a lien on the property after the Great Lakes' lien was recorded after his repeated and failed efforts to obtain payment for the excavation services.

⁴ The record refers to this entity as LaPiccolo Homes and LoPiccolo Homes.

Unlike the motion for directed verdict, . . . , a motion for involuntary dismissal calls upon the trial judge to exercise his function as trier of fact, weigh the evidence, pass upon the credibility of witnesses and select between conflicting inferences. Plaintiff is not given the advantage of the most favorable interpretation of the evidence. 2 Honigman & Hawkins, Michigan Court Rules Annotated (2d ed), pp 332-333.

In the present case, plaintiff argues, in essence, that the trial court erred in dismissing the unjust enrichment claim. It is undisputed that defendant corporation paid the \$90,000 received for redemption rights to individual defendants for partial payment of the loans they made to defendant corporation. According to plaintiff, these payments unjustly enriched individual defendants because the work that plaintiff performed increased the value of the Shadowood property and this increased value was reflected in the amount of money LaPiccolo Homes was willing to pay to defendant corporation for the redemption rights. Plaintiff contends that when defendant corporation paid that money to individual defendants to partially satisfy their loans instead of to plaintiff, whose work created the value, it unjustly enriched individual defendants at plaintiff's expense. In the entire discussion of his first issue, plaintiff cites no authority, except concerning the standard of review. Issues insufficiently briefed are deemed abandoned on appeal. *Dresden v Detroit Macomb Hospital Corp*, 218 Mich App 292, 300; 553 NW2d 387 (1996). "This Court will not search for authority either to sustain or reject a party's position." *Schellenberg v Rochester, Michigan, Lodge No 2225 of the Benev & Protective Order of Elks of the USA*, 228 Mich App 20, 49; 577 NW2d 163 (1998).

Regardless, plaintiff's claim lacks merit because he failed to provide evidence to establish a correlation between the excavation work and the \$90,000 benefit, as the trial court noted. We believe that it is indisputable that a benefit was received through plaintiff completing the excavation services; however, the question becomes whether the benefit had anything to do with the \$90,000, which plaintiff sought in part to cover the outstanding bill, and which LaPiccolo Homes paid for redemption rights. See *Barber v SMH (US), Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993) (elements necessary to establish unjust enrichment claim). Once again, there was no evidence regarding a correlation between the excavation services and the \$90,000. Plaintiff failed to put anyone from LaPiccolo Homes on the stand to testify as to the basis of the \$90,000 offer, or to procure testimony regarding negotiations on the sale of the redemption rights. In addition, plaintiff failed to provide evidence establishing the value of any benefit that defendants received as a result of the excavation services. The trial court did not err in dismissing plaintiff's claim for unjust enrichment.

Next, plaintiff asserts that the trial court erred in finding that defendants did not breach the fraudulent conveyances act.⁵ We note, initially, that plaintiff's reliance on the Uniform Fraudulent Transfer Act (UFTA), MCL 566.31 *et seq.*, is misplaced. The provision on which plaintiff relies, MCL 566.34, became effective December 30, 1998, which was after the transfer

⁵ Recently the Uniform Fraudulent Conveyance Act has been repealed, MCL 566.43, and it was replaced by the similar Uniform Fraudulent Transfer Act (UFTA), MCL 566.31 *et seq.*, effective December 30, 1998. 1998 PA 434, § 13; see also *Nationsbanc Mortgage Corp of Georgia v Luptak*, 243 Mich App 560, 567; 625 NW2d 385 (2000).

at issue was made to individual defendants. Therefore, unless the act has retroactive application, it is not applicable in this case. The general rule is that new or amended statutes apply prospectively unless the Legislature indicates an intent to give it retroactive effect or the statute is remedial or procedural in nature. *Seaton v Wayne Co Prosecutor (On Sec Remand)*, 233 Mich App 313, 316-317; 590 NW2d 598 (1998). Neither circumstance applies here.

We also find without merit plaintiff's assertion that the transfer was in violation of MCL 566.221. Plaintiff maintains that "defendants defrauded [p]laintiff by selling their redemption rights and distributing the proceeds to the shareholders instead of the creditors." Again, in this issue plaintiff has failed to cite any authority, other than the statute itself. He merely rests on the conclusion that the "actions [of individual defendants] are clearly contrary to MCL 566.221." To the contrary, we fail to comprehend how the sale of the redemption rights to LaPiccolo Homes and the use of the proceeds to pay a debt owed by defendant corporation constitutes a violation of MCL 566.221.⁶

Finally, plaintiff cannot rely on MCL 450.1855a of the Business Corporation Act, MCL 450.1101 *et seq.* MCL 450.1855a applies in situations where a corporation is dissolved. Here, no evidence was presented that defendant corporation was dissolved.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Joel P. Hoekstra

⁶ As part of his discussion of his claim that the UFTA was violated, plaintiff argues that individual defendants were not creditors of defendant corporation because their contributions represented capital contributions and not loans. To the extent that that assertion is relevant to the resolution of this issue, we note that the trial court found against plaintiff on that matter, concluding that the promissory notes in question were valid. From our review of the evidence, we cannot say that the trial court's ruling was clearly erroneous. *Sands, supra*; *Walters, supra*.