# STATE OF MICHIGAN

# COURT OF APPEALS

BROTHERS ENTERPRISES, INC.,

Plaintiff-Appellee,

v

MADRAHI ENTERPRISES, INC. and MAHAMED MADRAHI,

Defendants-Appellants.

UNPUBLISHED
November 18, 2008

No. 281332
Macomb Circuit Court
LC No. 2006-003565-CK

Before: Beckering, P.J., and Borrello and Davis, JJ.

MEMORANDUM.

Defendants appeal as of right the judgment awarding plaintiff $90,000 following a bench trial. The trial court held that a check defendants claimed was payment on a promissory note they executed during their purchase of a business from plaintiff, was actually a loan to a third party, the manager of the business who was staying on after the purchase. For the reasons set forth in this opinion, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendants Madrahi Enterprises, Inc. and Mahamed Madrahi appeal as of right Macomb Circuit Court visiting judge Roland Olzark's October 5, 2007 judgment awarding plaintiff $90,000 following an August 17, 2007 bench trial. The parties disputed the amount of a balloon payment due on defendant's purchase of plaintiff's gas station and convenience store in 2001. Defendants claimed a $20,000 check dated the day after the sale should be deducted from the balance due. Plaintiff claimed the check was actually a loan to the store's manager, Akram Alnamer, who continued to purchase inventory using plaintiff's bank account for a short time after the sale and then managed the store for defendants as well.

This Court reviews findings of fact for clear error. MCR 2.613(C). We will not reverse if a different result could also have been reached but only if the evidence creates a definite and firm conviction that the trial court made a mistake. *Dimmitt & Owens Financial, Inc v Deloitte & Touche (ISC), LLC*, 481 Mich 618, 624; 752 NW2d 37 (2008); *Hill v City of Warren*, 276 Mich App 299, 308; 740 NW2d 706 (2007).

Although the evidence would support a different conclusion, we find no clear error in the trial court's judgment. Defendants cite the Supreme Court's holding in *Hiscock v Hiscock*, 257 Mich 16, 21; 240 NW 50 (1932), that a payment is presumed to be in payment of a debt, rather than a loan, unless circumstances indicated otherwise. However, the presumption is overcome if

there is evidence of other dealings between the parties on which the payment might have been made. *Gerasimos v Wartell's Estate*, 234 Mich 102, 104; 207 NW 919 (1926).

In the present case, all parties failed to clearly document the purpose of the check. Although the check, which was made out to plaintiff's co-owner, listed the name of the business manager in the notation section, defendants claimed plaintiff added the name. Defendants presented an amortization schedule that reflected the $20,000 as a payment but could not recall when it was prepared. The closing documents did not reference the payment, purportedly made the day after closing. Both parties offered explanations for the check that were somewhat outside normal business practices but were not entirely unbelievable.

The decision essentially rested on credibility. Defendants argue correctly that witness bias is relevant, citing *People v Coleman*, 210 Mich App 1, 8; 532 NW2d 885 (1995), and claim that the business manager was biased because he and defendants were involved in litigation at the time of trial. The trial court did not find that the litigation was sufficient motive to commit perjury. Both parties had motivation to lie, and the trial court was in a better position to judge witness credibility. See *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The trial court found plaintiff's co-owner and the business manager more credible than defendants. Although another court might have reached a different result, we are not left with a definite and firm conviction that the trial court made a mistake. Therefore, the trial court did not clearly err. See *Dimmitt & Owens Financial, Inc*, *supra* at 624.

Affirmed.

/s/ Jane M. Beckering
/s/ Stephen L. Borrello
/s/ Alton T. Davis