STATE OF MICHIGAN

COURT OF APPEALS

ALWATEN COMPANY FOR GENERAL TRADING & OIL SERVICES, LLC, TROY TRADING, INC., MOHAMMED AL-JABERI, and ALI AL-JABERI,

Plaintiffs-Appellees,

v

WALEED K. YOUSIF,

Defendant-Appellant,

and

NABEEL YOUSIF, LOBNA YOUSIF, MARTIN YOUSIF, J.P. MORGAN CHASE BANK, N.A., and JESSICA SHARP,

Defendants.

UNPUBLISHED
April 22, 2021

No. 352721
Wayne Circuit Court
LC No. 18-002526-CB

Before: GLEICHER, PJ., and BORRELLO and SWARTZLE, JJ.

PER CURIAM.

This case arises from a business dispute between the Iraqi owners of an oil supply company and their American agents. The circuit court determined that the American agents held no ownership interest in the company and ordered them to repay the Iraqi owners for funds syphoned from the business. The sole issue on appeal is whether the circuit court correctly determined that certain documents were not forgeries. We discern no error and affirm.

I. BACKGROUND

Plaintiffs Dr. Ali Al-Jaberi (Dr. Ali) and Dr. Mohammad Al-Jaberi (Dr. Mohammad), and defendants Waleed K. Yousif, Nabeel Yousif, and Lobna Yousif, dispute the ownership and control of Alwaten Company for General Trading & Oil Services, LLC (Alwaten) and Troy

Trading Inc. (Troy Trading). Waleed and Lobna are married United States citizens originally from Iraq. Nabeel is Waleed's brother.

Dr. Ali and Dr. Mohammad are brothers and Iraqi citizens. In Iraq, Dr. Ali and Dr. Mohammad claim to be partners, along with their father, in an Iraqi business also called Alwaten (Alwaten (Iraq)), which they formed in 2008. Dr. Ali testified that Alwaten (Iraq) was formed for the purpose of supplying the Iraqi Ministry of Oil with globally-sourced oil refinery products and supplies.

The parties agree that Dr. Mohammad and Waleed first met in 2009. At the time, Alwaten (Iraq) was doing business in the United States by making payment for supplies directly to its United States vendor through wire transfers from its company account in an Iraqi bank. According to Dr. Ali, payment by this method was slow and would inevitably mean the payments from Alwaten (Iraq) would not arrive before the goods were to be shipped. Dr. Ali and Dr. Mohammad believed that if they could facilitate faster payments to United States vendors by leveraging the United States banking system, they would be able to gain more business in the United States.

To that end, Dr. Ali contacted Lobna and Waleed to assist with forming a company in the United States, believing that as foreigners, they could not form a United States company on their own. Lobna would then be hired to run the day-to-day operations in the United States.[1] There was no formal agreement executed between the parties setting forth their roles and responsibilities.

On December 21, 2011, Waleed formed Alwaten by filing articles of incorporation with the State of Michigan. Shortly after the formation of Alwaten, on December 24, 2011, Waleed sent Dr. Ali and Dr. Mohammad an e-mail containing an operating agreement to sign, under which Dr. Ali and Dr. Mohammad were each identified as 50% owners of Alwaten, and Waleed was listed as resident agent. Dr. Ali and Dr. Mohammad signed the operating agreement and sent a signed copy back to Waleed. Waleed claims he contributed $200,000 to Alwaten after its formation; Dr. Ali and Dr. Mohammad dispute this assertion, and Waleed did not offer any documentary evidence of his alleged contribution.

According to Dr. Ali, Alwaten was formed to act as an intermediary within the United States through which Alwaten (Iraq), whose only client was the Iraqi Ministry of Oil, could make payments to its suppliers in the United States prior to product shipments to Iraq. This was important to Alwaten (Iraq) because suppliers in the United States were cautious when dealing with Iraqi companies due to the intense political and religious conflict in the region. Obtaining an account with J.P. Morgan Chase (Chase) was also important to Alwaten (Iraq), because it was one of the few banks in the United States that acted as a "corresponding" bank with their Iraqi bank.

Despite signing the operating agreement in 2011, Dr. Ali and Dr. Mohammad learned in 2013, in connection with a visa application, that official records in the United States reflected that Waleed was the sole owner of Alwaten. In an apparent effort to dispel any confusion over the ownership of Alwaten, Dr. Mohammad and Dr. Ali asked Waleed to sign a purchase agreement

[1] Lobna claimed that Waleed hired her to work for Alwaten, not Dr. Ali or Dr. Mohammad.

under which Waleed would sell any interest he held in Alwaten for $1,000. Waleed signed the purchase agreement, effective January 1, 2013.[2]

In March 2017, Dr. Ali and Dr. Mohammad purchased Troy Trading from Waleed. However, after transfer of ownership of Troy Trading, Waleed opened a T-Mobile cellular telephone account under Troy Trading's name. Waleed also wrote himself a check for "salary" from Troy Trading's bank account on August 29, 2017, in the amount of $4,500.

In April 2017, the doctors terminated Lobna's employment with Alwaten. Lobna resisted being characterized as "terminated," stating she "retired" due to conflict with the doctors. As part of the termination, the doctors paid Lobna $50,000, but Lobna disputed she was paid that much. The doctors claim that Lobna's termination made Waleed angry, leading Waleed to assert that Alwaten was his company. On the other hand, Waleed claimed the rift was caused by the doctors' desire to illegally sell oil refining products to Iran, and Waleed's subsequent refusal to go along with that scheme.

The parties again agreed to resolve their disagreements by signing a global memorandum agreement, effective November 6, 2017, under which Lobna was paid $50,000, and Waleed was paid $20,000, in exchange for their sale of any interest in Alwaten and Troy Trading. After signing the global memorandum agreement, Lobna stated she believed the doctors would nevertheless give her and Waleed more work. She also thought that she and Waleed deserved more from the doctors based on her belief neither she nor Waleed were paid enough during their tenure with Alwaten.

On March 6, 2018, plaintiffs filed a complaint against Waleed, asserting breach of contract, conversion, breach of fiduciary duty, and tortious interference.[3] On March 9, 2018, Dr. Ali stated he attempted to log into Alwaten's online Chase bank account and learned that his permission had been removed by Waleed. The day before, on March 8, 2018, Waleed and Nabeel went to a Chase branch in Michigan and executed forms removing Dr. Ali and Dr. Mohammad as signers on the accounts Alwaten had with the bank. They accomplished this change by first having an accountant, Samir Dawood, change the resident agent designation for Alwaten to Waleed's name to make it appear as though Waleed had an ownership interest in the company.

On March 9, 2018, Waleed wrote three checks to Nabeel from the Alwaten Chase accounts, totaling $50,000. Waleed also withdrew $54,000 from the Alwaten Chase accounts, which he deposited into his accounts at Huntington Bank and Bank of America. Waleed claimed that of the $54,000 he took from the Chase accounts, $43,000 was used to pay expenses such as attorney fees.

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[2] At trial, defendants challenged the authenticity of the purchase agreement, claiming Waleed's signature was forged. Although the trial court also expressed mild concern over apparent discrepancies between the doctors' signatures on the original and photocopies, it concluded that the purchase agreement was admissible because defendants effectively admitted the existence and authenticity of the purchase agreement in response to plaintiffs' request to admit.

[3] Plaintiffs would later amend their complaint to add the remaining defendants in the case. The parties subsequently stipulated to voluntarily dismiss Lobna (without prejudice), and Chase and Jessica Sharp (with prejudice) from the case.

Nabeel claimed the $50,000 he received was to repay him for help he provided to Waleed and Alwaten.

Plaintiffs filed a motion for temporary restraining order and preliminary injunction on March 9, 2018, asserting that Waleed had converted funds from the Chase accounts and was wrongfully representing himself as the owner of Alwaten. On the same day, the trial court issued a temporary restraining order and preliminary injunction, ordering:

> 2. Defendant is immediately enjoined and restrained, directly and indirectly, whether alone or in concert with others, including his wife Lobna Yousif, until further order of this court from[:]
>
> a. further converting any of Plaintiffs' business funds;
>
> b. opening any accounts in Plaintiffs' name;
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> c. accessing any of Plaintiffs' accounts including but not limited to Chase Business accounts ending in 66735 and 29703;
>
> d. Falsely portraying he has any association with Plaintiffs' businesses, including but not limited to signing any documents on behalf of the Plaintiffs; and
>
> 3. Chase Bank shall immediately remove Waleed Yousif as the primary signatory of the accounts.

On March 16, 2018, the parties stipulated to an order enjoining Waleed and Lobna from "further preventing Plaintiffs' from use of their business funds," "opening any bank accounts in Plaintiffs' name," "opening any accounts on behalf of Plaintiffs," or "accessing any of Plaintiffs' business banking accounts." But the dispute over ownership persisted. On March 23, 2018, plaintiffs filed a motion to show cause, asserting Waleed opened a Chase account in Alwaten's name on March 13, 2018, and filed an annual statement with the State of Michigan asserting he was Alwaten's registered agent. The parties resolved the dispute through a "Consent Preliminary Injunction," under which the trial court ordered:

> 1. Defendant is immediately enjoined and restrained, directly or indirectly, whether alone or in concert with third parties including, but not limited to Nabeel Yousuf[];
>
> a. preventing Plaintiffs' from use of their business funds;
>
> b. opening any bank accounts in Plaintiffs name or affiliates names;
>
> c. accessing any of Plaintiffs or affiliates business banking accounts;
>
> d. portraying he has any association with Plaintiff's [sic] entities, including but not limited to signing any documents on behalf of the Plaintiff [sic] or associated entities;

e. Contacting any government agency or official, including but not limited to Internal Revenue Service or Michigan Secretary of State representing himself to be an agent or member of Plaintiffs' or associated entities[;]

f. Contacting any business associates of entities or its members, Ali Al-Jabri and Mohammed Ali Al-Jaberi, or affiliates representing himself to be associated with entities or its members or affiliates in any capacity;

g. Interfering in any aspect of Plaintiffs, its affiliates or its members' business interest in the United States or Iraq;

h. Using email or U.S. Mail to interfere win any aspect of Plaintiffs' or its members business.

3. Close all accounts in Plaintiffs' entities name including but not limited to, Chase Business accounts ending in 6735 and 9703 will be closed; [and]

4. Defendant will remove his name from Plaintiffs' entities bank accounts, including but not limited to Chase and Citizen bank[.]

On August 1, 2018, Waleed and Nabeel went to a Citizens Bank branch in Michigan to change the approved signers for an Alwaten account that had been opened by Dr. Ali and Dr. Mohammad on March 16, 2018. After Waleed removed the doctors as approved signers for the account and added his name, Waleed withdrew $22,800.

When plaintiffs learned of the activity with Citizens Bank they filed another motion to show cause, asserting that Waleed violated the trial court's prior orders by interfering with and taking money from Alwaten's Citizens Bank account. On August 6, 2018, the trial court issued an order requiring Waleed to appear "and show cause why he should not be held in contempt of Court." The trial court also ordered that Waleed "may not dispose of the $22,800 withdrawn from Citizens Bank and should the court find him in contempt, and so order, he shall be ready, able and willing to tender the withdrawn funds to the Plaintiff [sic] at the time of the hearing."

On August 8, 2018, the trial court issued an order finding Waleed in contempt of court The order stated that Waleed "admitted that he violated the Consent Preliminary Injunction" and "admitted that he did not bring the $22,800 with him to court as ordered in the Show Cause Order entered on August 6, 2018 . . . ." Thus, the trial court found Waleed to be in contempt of court and ordered Waleed "into the custody of the Wayne County Jail, which contempt may be satisfied by payment of $22,800 to the Court or Plaintiffs' counsel."

Plaintiffs subsequently moved for partial summary disposition of their claims under MCR 2.116(C)(10). Plaintiffs claimed that the purchase agreements for Alwaten and Troy Trading, as well as the global memorandum agreement, conclusively established that defendants no longer had any interest in Alwaten or Troy Trading. Despite selling any ownership interest in the companies they may have had, plaintiffs claimed that Waleed fraudulently convinced Chase and Citizens Bank to add himself as the approved signer in place of the doctors so that he could help himself to money from those accounts.

In response to plaintiffs' motion, Waleed averred that the parties always agreed to split the profits from Alwaten equally. Waleed asserted that the 2013 purchase agreement, under which he sold his interest in Alwaten to the doctors for $1,000, was "fraudulently created by the Plaintiffs and the fraud is discernable as the signatures appear to be pasted onto the document that is presented as a sale document." On May 30, 2019, the trial court granted plaintiffs' motion for partial summary disposition, stating:

> [T]here is no question of fact that the January I. 2013 Purchase Agreement and the November 6, 2017 Global Memorandum Agreement are validly executed by the parties and are in full force and effect establishing that MOHAMMED ALI ABDULAMEER TAHA AL-JABERI and ALI ABDULAMEER TAHA AL-JABERI (who are Iraqi Nationals) are the owners of ALWATEN CO FOR GENERAL TRADING & OIL SERVICES, LLC, a Michigan Limited Liability Company effective January 1, 2013, and TROY TRADING INC., a Michigan Corporation effective March l, 2017;
>
> IT IS HEREBY ADJUCATED [sic] AND ORDERED that Plaintiff's [sic] Motion for Partial Summary Disposition for a Declaratory Judgment against Defendant Waleed Yousif is Granted in favor of Plaintiff [sic] and this Court hereby declares that MOHAMMED ALI ABDULAMEER TAHA AL-JABERI and ALI ABDULAMEER TAHA AL-JABERI (who are Iraqi Nationals) are hereby exclusive owners and members of ALWATEN CO FOR GENERAL TRADING & OIL SERVICES, LLC, a Michigan Limited Liability Company effective January 1, 2013, and TROY TRADING INC., a Michigan Corporation effective March l, 2017;
>
> IT IS FURTHER ORDERED AND DECLARED that Waleed Yousif have no ownership in Alwaten Co For General Trading & Oil Services, LLC and Troy Trading, Inc as of January 1, 2013.

A bench trial was subsequently conducted on the issue of damages. The parties testified consistent with the narrative above. On January 27, 2020, the trial court issued an order containing its findings of fact and conclusions of law.

With respect to plaintiffs' breach of contract claim, which concerned Waleed's opening of a T-Mobile account under Troy Trading after he sold the company, the trial court concluded: "Incurring a debt with T-Mobile for cell phones on behalf of the corporation and failing to pay violates the ownership agreement in which Waleed Yousif stated that he had no interest in the company. The Plaintiff [sic] is entitled to a Judgment against Waleed Yousif in the amount of $2963.83."

The trial court also concluded that Waleed was liable to plaintiffs under their count for conversion, finding that Waleed converted $81,300 from Alwaten. Specifically, the trial court found:

> As of March 1, 2017, when Waleed Yousif sold his interest in Troy Trading, there was no indication that he was working for the company as a salaried

employee. Nonetheless, on August 29, 2017, he wrote himself a check in the amount of $4,500 for "salary[.]" Without any evidence that he was an owner or an employee of Troy Trading at the time, the salary payment was a conversion of Plaintiffs property to his own use. There was no evidence presented that Waleed Yousif was entitled to keep the money. Plaintiff Trial Exhibit 8.

Waleed Yousif is also liable for converting funds from the Chase and Citizen bank accounts. He removed $104,000 from the Chase bank accounts. $54,000 was reversed by Chase, but Waleed kept $54,000 of money that did not belong to him. Since Nabeel was actively working with Waleed and received $9,000, he is likewise liable for conversion. He claims he used the money, in part, to pay attorney fees. He did not present any evidence to suggest there was a proper basis for the removal of the funds and therefore the Court finds that he converted them "to his own use."

Waleed Yousif also removed $22,800 from the new Citizen's account, 2793, which was never repaid, and hence converted as well. The Court ordered him to account for the money during the contempt proceeding, which he failed to do. Therefore, the Court finds that he converted those funds to his own use.

The Court finds that the Plaintiff [sic] has established with respect to the checks written on the Chase and Citizen accounts that Waleed Yousif embezzled the money without any legitimate purpose and converted it to his own use. Plaintiff [sic] is therefore entitled to treble damages as follows: $4,500 + $54,000 + $22,800 = $81,300 x 3 = $243,900. Plaintiff [sic] is also entitled to an award of costs and attorney fees.

Alwaten US is also entitled to a judgment for conversion against Nabeel Yousif. Nabeel Yousif participated in the actions which resulted in his brother Waleed issuing a check to him in the amount of $9,000. There was no explanation of any legitimate entitlement to the money and it was not returned. The Court finds that Nabeel Yousif converted the funds to his own use and is liable for treble damages totaling $27,000, together with an aware of costs and attorney fees under MCL 600.2919a.

Finally, with respect to plaintiffs' tortious interference claim, the trial court concluded that while plaintiffs presented sufficient evidence to conclude Waleed tortiously interfered with their businesses, they did not present damages related solely to that claim. Thus, no damages were awarded for tortious interference. This appeal followed.

II. STANDARD OF REVIEW

The determination of damages following a bench trial are reviewed for clear error. *Chelsea Investment Group, LLC v Chelsea*, 288 Mich App 239, 255; 792 NW2d 781 (2010). "The clear error standard provides that factual findings are clearly erroneous where there is no evidentiary support for them or where there is supporting evidence but the reviewing court is nevertheless left with a definite and firm conviction that the trial court made a mistake." *Hill v Warren (On*

Remand), 276 Mich App 299, 308; 740 NW2d 706 (2007). Challenges to the admissibility of evidence and other discovery matters are reviewed for abuse of discretion. *Mueller v Brannigan Bros Restaurants & Taverns, LLC*, 323 Mich App 566, 571; 918 NW2d 545 (2018). "A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes." *Id*. (quotation marks and citation omitted).

III. DISCUSSION

Waleed raises only one issue on appeal: whether the trial court erred when it concluded that plaintiffs purchased and owned Alwaten. Specifically, Waleed claims that he never executed the 2013 purchase agreement under which he sold his interest in Alwaten, claiming the signature on that purchase agreement was forged. The trial court did not err by concluding that Dr. Ali and Dr. Mohammad were the owners of Alwaten.

Waleed challenged the authenticity of the 2013 purchase agreement both in his response to plaintiffs' motion for summary disposition and during trial. The trial court did not address the issue in its opinion granting plaintiffs' motion for summary disposition but did address it at trial. Specifically, the trial court concluded that Waleed's failure to answer a request to admit, in which he was asked to admit that he sold any interest in Alwaten by signing the 2013 purchase agreement, was deemed an admission under MCR 2.312(B)(1). According to the trial court, it was conclusively established that Waleed signed the 2013 purchase agreement and sold his interest in Alwaten to Dr. Ali and Dr. Mohammad because he failed to respond to the admissions' request.

Under MCR 2.312(B)(1), "[e]ach matter as to which a request is made is deemed admitted unless, within 28 days after service of the request, or within a shorter or longer time as the court may allow, the party to whom the request is directed serves on the party requesting the admission a written answer or objection addressed to the matter." Once an admission is made under the court rule, it "is conclusively established unless the court on motion permits withdrawal or amendment of an admission." MCR 2.312(D)(1). Waleed never answered plaintiffs' requests to admit, and does not claim otherwise. Nor does he dispute that the effect of this failure means the matters set forth in the admissions were deemed admitted. And there is no record indication that Waleed attempted to amend his response, or that he sought extra time under MCR 2.312(B)(1). Thus, Waleed's failure to respond to the request to admit acted as an admission to the request, and the trial court did not abuse its discretion by admitting the document at trial. See *Medbury v Walsh*, 190 Mich App 554, 556-557; 476 NW2d 470 (1991) (the trial court did not err when it granted the defendants' motion for summary disposition on the basis that the plaintiff failed to respond to the defendants' request to admit). Waleed also could have moved to withdraw or amend his response to the requests for admissions, but did not avail himself of this option, either. See MCR 2.312(D).

Moreover, a party claiming fraud, including forgery, has the burden to proving the fraud by clear and convincing evidence. *Groth v Singerman*, 328 Mich 615, 619; 44 NW2d 155 (1950); *Foodland Distributors v Al-Naimi*, 220 Mich App 453, 459; 559 NW2d 379 (1996). In the trial court, Waleed simply claimed that the signature was not his, and that it appeared that the signature block was photocopied onto the purchase agreement. He presented no additional evidence on this subject. The trial court had the opportunity to review the original agreement and compare it with the copies. While the trial court did agree that the doctors' signatures looked slightly different

between the original and copy, it made no findings and did not comment regarding Waleed's signature.

Waleed also now claims that the fact he signed a lease agreement on behalf of Alwaten after the effective date of the 2013 purchase agreement casts doubt as to the validity of the purchase agreement. However, Waleed fails to explain how the signing of the lease agreement impacts his right to an ownership interest in Alwaten, in light of the other agreements executed in this case.

Indeed, the issue of whether the 2013 purchase agreement effectively transferred ownership of Waleed's interest in Alwaten is not dispositive of the doctors' claim to sole ownership of Alwaten. On appeal, Waleed completely ignores—or at least fails to dispute—the fact that he signed a global memorandum agreement in 2017, for which he was paid $20,000, in exchange for any remaining interest he claimed to have in Alwaten. In other words, even if the 2013 purchase agreement had been forged, the trial court's conclusion that Waleed had no interest in Alwaten at the time of the conversion of funds in 2018 will not be disturbed on appeal because Waleed confirmed his intent to sell his interest in Alwaten when he signed the global memorandum agreement. See *Martin v Martin*, 331 Mich App 224, 242-243; 952 NW2d 530 (2020) (concluding the trial court's erroneous findings of fact did not warrant reversal because those facts were "no longer relevant when the court made its final decision.").

Although not explicitly raised by Waleed, to the extent he challenges the sufficiency of the evidence presented at trial, we find no clear error with the trial court's determination of damages. Waleed freely admitted to taking the money from the Chase and Citizens Bank accounts, claiming that because Alwaten was his company, he could do whatever he wanted with it. This was corroborated by the testimony of Nabeel and Lobna, as well as a representative from Chase. Waleed also testified he used the money he took from the bank accounts to pay attorney fees and other bills. Plaintiffs established, therefore, that Waleed exercised unlawful control over Alwaten's money and appropriated that money to his own use. See *Aroma Wines & Equip, Inc v Columbian Distribution Servs, Inc*, 497 Mich 337, 346; 871 NW2d 136 (2015); MCL 600.2919a.

We affirm.

/s/ Elizabeth L. Gleicher
/s/ Stephen L. Borrello
/s/ Brock A. Swartzle