STATE OF MICHIGAN

COURT OF APPEALS

DANA SLOCUM,

Plaintiff/Counterdefendant-Appellant,

v

SCOTT CARTER,

Defendant/Counterplaintiff/Third-Party Plaintiff-Appellee,

and

TAMI SLOCUM and DLS 9TH STREET PROPERTIES, LLC,

Third-Party Defendants,

and

RANTOUL ASSOCIATES, INC., ACADEMY 729, INC., THORNAPPLE LAKE ESTATES LIMITED PARTNERSHIP, TOWN & COUNTRY – ILLINOIS, LLC, THE OAKS OF ILLINOIS, LLC, GREAT LAKES SELF STORAGE 1, LLC, GREAT LAKES SELF STORAGE 2, LLC, GREAT LAKES SELF STORAGE 3, LLC, GREAT LAKES RETAIL DEVELOPERS, LLC, GREAT LAKES COMMUNITY MANAGEMENT GROUP, LLC, and GREAT LAKES COMMUNITY BUILDERS, LLC,

Other Parties.

UNPUBLISHED
November 23, 2021

No. 353520
Kalamazoo Circuit Court
LC No. 2016-000577-CB

Before: MURRAY, C.J., and MARKEY and RIORDAN, JJ.

PER CURIAM.

Plaintiff Dana Slocum alleged causes of action for promissory estoppel, unjust enrichment, oppression, and breach of contract against defendant Scott Carter. After a bench trial, the court entered a judgment of no cause of action on the claims of promissory estoppel, unjust enrichment, and oppression. With respect to plaintiff's claim of breach of contract, the trial court found that a valid contract had never been formed. Because plaintiff had transferred shares of stock to defendant under the purported contract absent any performance by defendant, the trial court unwound the stock transfer and ordered defendant to reconvey the shares of stock to plaintiff. The trial court also ruled in favor of defendant on his counterclaim for breach of a contract, which was premised on a separate contract distinct from the contract alleged by plaintiff. Plaintiff appeals by right, challenging the trial court's rejection of his claims. We affirm.

I. BACKGROUND

Defendant has a majority interest in several commercial real estate businesses in which plaintiff has a minority interest. Eight of the entities are limited liability companies (LLCs), while two are corporations, and one is a limited partnership. The parties' business relationship began in 1985 when defendant invited plaintiff to become a limited partner of a limited partnership that he was forming to purchase a mobile home park. From 1985 until 1997, plaintiff was employed by one of the LLCs, Great Lakes Community Management Group (GLCMG), which managed each of the properties plaintiff and defendant owned. In 1997, plaintiff and his wife, third-party defendant Tami Slocum, formed a real estate company, ERA Network Real Estate (ERA), and plaintiff began working for ERA as a broker. In 2000, plaintiff formed third-party defendant DLS 9th Street Properties, LLC (DLS). Plaintiff is the sole member of DLS, which owned and operated an office building that it leased to ERA.

On June 5, 2003, defendant agreed to guarantee a mortgage loan made to DLS (the 2003 agreement).[1] Under the 2003 agreement, the parties agreed that plaintiff and Tami Slocum would receive 70% and that defendant would receive 30% of DLS's net operating cash flow available for distribution, net financing or refinancing proceeds available for distribution, and net sales proceeds available for distribution. Defendant's counterclaim pertains to the 2003 agreement.

In the meantime, plaintiff and defendant formed additional entities that purchased self-storage facilities and retail commercial properties. Plaintiff returned to his employment with GLCMG and was involved in strategy, management, planning, and "everything to run a commercial property." In March 2016, defendant proposed that plaintiff trade his interest in one of the entities, Academy 729, Inc.,[2] to defendant in exchange for defendant's interest in DLS that had been acquired under the 2003 agreement.

The parties' testimony about the proposed 2016 agreement differed greatly. According to plaintiff, in March 2016 defendant asked plaintiff "out of the blue" if he would consider trading his interest in Academy 729 to defendant in exchange for defendant trading his interest in DLS to

[1] The agreement referred to "DLS 9th Street Properties and Dana Slocum and Tami Slocum." Tami Slocum is not an owner of DLS.

[2] Plaintiff had a 15% interest, or 150 shares of stock, in Academy 729. Defendant had an 85% interest, or 850 shares of stock, in Academy 729.

plaintiff. Plaintiff did not respond to defendant, and the parties did not reach an agreement at the time. Plaintiff thought that defendant was proposing an "even swap" that would forgive any proceeds owed but not paid to defendant since June 2003 under the 2003 agreement. Plaintiff testified that when defendant offered the trade, it was phrased as, "I want to exchange my interest in DLS for your interest in 729 Academy. It wasn't I want to exchange my interest for your interest in 729 Academy, plus I want you to pay me cash for distributions." Plaintiff stated that defendant did not say that he expected to be paid any distributions or proceeds owing under the 2003 agreement.

After clarifying with defendant a few days later that the trade of Academy 729 would include both buildings owned by Academy 729, plaintiff told defendant that he would make the trade. Plaintiff signed a document prepared by defendant that gave defendant plaintiff's 150 shares of stock in Academy 729. Plaintiff denied that defendant asked him to prepare a document for defendant to sign to transfer his interest in DLS to plaintiff. He testified that defendant later called him into his office and told him that he did not think that the trade was a fair one and that he did not believe that he was receiving enough value for guaranteeing the loan for DLS. Defendant asked plaintiff to give him plaintiff's interest in another entity, Great Lakes Self Storage 3 (GLSS3), before defendant would release his interest in DLS. Plaintiff refused to do so because, in his view, the trade the parties had agreed to was a "fair trade of equity." Plaintiff testified that defendant had never stated that plaintiff owed defendant "X" dollars under the 2003 agreement, nor did defendant discuss the value of the entities being exchanged. Plaintiff further claimed that defendant never signed over his interest in DLS to plaintiff. Plaintiff stated that the dispute over the trade precipitated his quitting his job with GLCMG. Plaintiff testified that he wanted the 2016 oral contract to be enforced, "[o]r if [defendant] feels strongly that the values aren't equal, then I would like to return to the pre-agreement where I'll have my 15 percent interest of 729 Academy, he'll still have his interest in DLS and if he wants to structure a new deal, he can present it and we can talk about it."

Defendant testified that he proposed the trade in order to make Academy 729 a "Carter-owned entity." He told plaintiff that he would trade what was owed to him by DLS under the 2003 agreement for plaintiff's interest in Academy 729. Defendant asserted that he was unaware at that time that proceeds were owed to him under the 2003 agreement and that he did not intend to forgive any proceeds that were already due and owing under that agreement. Defendant testified that plaintiff signed the document prepared by defendant to give plaintiff's shares of stock in Academy 729 to defendant. Defendant also testified that he asked plaintiff to prepare the release for defendant to sign regarding his interest in DLS. According to defendant, after plaintiff failed to prepare the release, plaintiff agreed that defendant would prepare it. Defendant stated that he reviewed financial documents related to DLS before preparing the release and discovered that DLS had a cash flow resulting in distributions, thereby entitling defendant to his 30% interest. He then told plaintiff that DLS had not paid him what was called for under the 2003 agreement up to that point and that he suggested to plaintiff that he calculate the amount owing to defendant under the 2003 agreement and pay it to defendant. Defendant testified that, in the alternative, he suggested to plaintiff that he give defendant his 15% interest in GLSS3. Defendant testified, "I have released my interest going forward, but I expect to be paid for what had occurred up to this date." He acknowledged, however, that he had not taken any formal action to release his interest in DLS.

As relevant to this appeal, plaintiff initiated an action for breach of the 2016 trade agreement and, in the alternative, for promissory estoppel and unjust enrichment. His lawsuit also included a claim for oppression in which he alleged that defendant engaged in a number of actions after the parties' March 2016 dispute that were oppressive to plaintiff's minority interests in the various entities. Plaintiff's oppression claim sought the remedy of dissolution of the entities. Defendant filed a counterclaim and third-party complaint for breach of the 2003 agreement.

Following the trial, the trial court issued an oral opinion finding that the parties never reached agreement in March 2016 with respect to the essential terms of a contract, that an oral contract was not formed, and that the parties' interests in Academy 729 and DLS should be restored. The trial court also found no cause of action on plaintiff's equitable claims of promissory estoppel and unjust enrichment. The trial court further ruled that plaintiff was liable to defendant for breach of the 2003 agreement and that plaintiff failed to prove his claim of oppression.

Specifically, the trial court determined that with respect to defendant's counterclaim, plaintiff breached the unambiguous terms of the 2003 agreement. The court noted that defendant was not entitled to damages beyond the six-year limitations period before plaintiff's filing of the complaint. The trial court ordered that plaintiff's payment for the damages be deducted from future distributions of the various entities that the parties jointly owned.

With respect to plaintiff's breach of contract claim, the trial court found that the 2016 trade proposed by defendant sought to provide a fair trade of interests and that the

> transaction has never been completed. There has not been . . . payment to the plaintiff for his signature on Academy 729. Since that transaction has never been consummated based upon the determination on the part of the defendant that the 2003 agreement was not completed—basically we've reached a place where there was no agreement of the parties.
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> So, under contract law, the court [is] charged with really two options. One, to order defendant [to] complete the transaction with regard to a sign-off on DLS or to declare that the parties never reached agreement, and that restoration of the respective parties' interest in those two [entities] should be restored.
>
> This Court chooses the later [sic]. I believe that because the contract was not agreed to, certainly the parties had different interruption [sic] of what the agreement was to be, that the contract was not completed in terms of the understanding of the parties and therefore should be voided. Meaning that, the defendant will need to re-convey the . . . 15-percent interest, that plaintiff would have in Academy 729.

With respect to plaintiff's claim of oppression, the trial court found that plaintiff failed to establish the necessary elements for a claim of oppression under MCL 450.4515(1),[3] MCL 450.1489(1),[4] or MCL 449.1802.[5]

II. STANDARD OF REVIEW

This Court reviews "the trial court's factual findings after a bench trial and in an equitable action for clear error, and its legal conclusions de novo." *Harbor Park Market, Inc v Gronda*, 277 Mich App 126, 130; 743 NW2d 585 (2007). We give deference to the trial court's superior ability to judge the credibility of the witnesses appearing before it. *Glen Lake-Crystal River Watershed Riparians v Glen Lake Ass'n*, 264 Mich App 523, 531; 695 NW2d 508 (2004). "A finding is clearly erroneous if there is no evidentiary support for the finding or, after reviewing the entire record, this Court is definitely and firmly convinced that the trial court made a mistake." *Menhennick Family Trust v Menhennick*, 326 Mich App 504, 509; 927 NW2d 741 (2018). The question whether a party has been unjustly enriched is generally a factual question. *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 193; 729 NW2d 898 (2006). But "whether a claim for unjust enrichment can be maintained is a question of law, which we review de novo." *Id.* "A trial court's dispositional ruling on equitable matters . . . is subject to review de novo." *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005). "The existence and interpretation of a contract are questions of law reviewed de novo." *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006).

III. ANALYSIS

On appeal, plaintiff argues that the trial court erred by failing to find that defendant breached the 2016 trade agreement, by failing to rule in favor of plaintiff on his alternative equitable claims of promissory estoppel and unjust enrichment, by failing to find in favor of plaintiff on his oppression claim, and by failing to order the remedy of dissolution on the oppression claim.

A. BREACH OF CONTRACT

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[3] MCL 450.4515(1), a provision of the Michigan Limited Liability Company Act, MCL 450.4101 *et seq*., authorizes a member of the LLC to bring an action to establish that the acts of the managers or members in control of the limited liability company are illegal or fraudulent or constitute willfully unfair and oppressive conduct toward the limited liability company or the member.

[4] MCL 450.1489(1), a provision of the Michigan Business Corporation Act, MCL 450.1101 *et seq.*, authorizes a shareholder of a corporation to bring an action against the directors or those in control of the corporation for illegal, fraudulent, or willfully unfair and oppressive conduct.

[5] MCL 449.1802 is the section of the Uniform Partnership Act, MCL 449.1 *et seq*., that provides authority for the circuit court, on application by or for a partner, to order dissolution of a limited partnership when it is established that the acts of the general partners or the partners of those in control of the limited partnership are illegal, fraudulent, or willfully unfair and oppressive to the limited partnership or to such partner.

"A party asserting a breach of contract must establish by a preponderance of the evidence that (1) there was a contract (2) which the other party breached (3) thereby resulting in damages to the party claiming breach." *Miller-Davis Co v Ahrens Constr, Inc*, 495 Mich 161, 178; 848 NW2d 95 (2014). "A valid contract requires five elements: (1) parties competent to contract, (2) a proper subject matter, (3) legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation." *AFT Mich v Michigan*, 497 Mich 197, 235; 866 NW2d 782 (2015). "The party seeking to enforce a contract bears the burden of proving that the contract exists." *Id.* If the parties do not agree on the material terms of a contract, then there is no meeting of the minds and no enforceable contract. *Kamalnath v Mercy Mem Hosp Corp*, 194 Mich App 543, 548; 487 NW2d 499 (1992). "A meeting of the minds is judged by an objective standard, looking to the express words of the parties and their visible acts, not their subjective states of mind." *Id.* (quotation marks and citations omitted). A "meeting of the minds" simply means mutual assent. *Id.* at 548-549.

Plaintiff's argument on appeal identifies the elements of a breach of contract claim and asserts that plaintiff provided evidence to establish each element. Plaintiff does not discuss the trial court's factual findings. Rather, plaintiff asserts that he accepted defendant's offer to trade business interests, that defendant breached the contract by refusing to transfer 100% of his interest in DLS, and that plaintiff suffered damages by losing 100% of his interest in Academy 729. Plaintiff's appellate argument misconstrues the nature of appellate review of factual findings made by a trial court in a bench trial. Plaintiff's argument is suitable for appellate review of a ruling on a motion for summary disposition, not for review of a trial court's factual findings after a bench trial. He has selected only evidence that supports his assertion that he presented evidence on each element of the cause of action; he does not address the conflicting evidence at trial, nor does he address the trial court's factual findings. Plaintiff does not provide this Court with a legal basis upon which to conclude that the trial court clearly erred with respect to any findings of fact, and he does not argue that the trial court committed any error of law regarding the existence or interpretation of the alleged 2016 agreement.

The trial court found that no contract was formed because the parties never reached an agreement regarding the essential terms of the contract—in other words, there was no mutuality of assent or meeting of the minds. The court found that defendant made an offer for a "fair trade" of interests between the parties with each party signing off on their respective minority interests in Academy 729 and DLS. The trial court further found that the parties did not reach an agreement on the terms because each party had a different understanding regarding the nature of the terms. As discussed above, there was conflicting testimony presented with respect to mutuality of assent or agreement; consequently, the trial court concluded that the parties did not reach an agreement on the essential terms of the contract. Plaintiff has failed to demonstrate that on comprehensive review of the record and giving due regard "to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it," MCR 2.613(C), the trial court clearly erred; we do not have a "definite and firm conviction that a mistake was made." *Menhennick Family Trust*, 326 Mich App at 509. Because the trial court ruled that the parties had not reached an agreement and that a contract did not exist, the court did not err by granting plaintiff's alternative request to unwind the conveyance of plaintiff's shares of stock in Academy 729 to defendant and to order defendant to reconvey the 150 shares of stock in Academy 729 to plaintiff.

B. EQUITABLE CLAIMS

The premise of plaintiff's arguments on appeal regarding promissory estoppel and unjust enrichment is that defendant received plaintiff's 150 shares of stock in Academy 729 and that plaintiff received nothing of value in return. But the very thing that plaintiff claimed would be inequitable or unjust for defendant to retain—plaintiff's 150 shares of stock in Academy 729—must be returned to plaintiff by defendant under the trial court's ruling. Plaintiff has failed to demonstrate that the trial court erred by failing to grant equitable relief on the claims of promissory estoppel and unjust enrichment.

C. OPPRESSION AND DISSOLUTION

Plaintiff disagrees with the trial court's finding that defendant did not engage in willfully unfair and oppressive conduct toward plaintiff after the March 2016 dispute. He contends that he presented evidence of each oppressive act and that the trial court should have found in favor of plaintiff and ordered dissolution of the LLCs as the remedy for oppression.

Significant testimony was presented at trial from both parties' witnesses with respect to plaintiff's allegations of oppressive conduct. The trial court considered the testimony in support of the claim of oppression and found that plaintiff failed to establish the necessary elements for a claim of oppression under MCL 450.4515(1), MCL 450.1489(1), or MCL 449.1802.

On appeal, plaintiff again only references evidence that supports his arguments and fails to acknowledge the contrary evidence presented at trial. On the basis of the evidence that he discusses, some of which took place before the parties' dispute, plaintiff concludes that "he has suffered a continued course of conduct that substantially interfered with his interests as a member."[6] Plaintiff does not discuss the trial court's findings of fact or explain how the court erred. His arguments fail to provide this Court with a basis upon which to conclude that the trial court clearly erred by finding that plaintiff failed to prove his claim of oppression; therefore, the trial court also did not err by refusing to order the remedy of dissolution.[7]

We affirm. Having fully prevailed on appeal, defendant may tax costs under MCR 7.219.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Michael J. Riordan

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[6] MCL 450.4515(2) defines "willfully unfair and oppressive conduct" as "a continuing course of conduct or a significant action or series of actions that substantially interferes with the interests of the member as a member." See also MCL 450.1489(3) (similar definition in relation to shareholders).

[7] Plaintiff's argument on appeal with respect to dissolution asserts only that the trial court erred by failing to dissolve the limited partnerships and corporations. Nonetheless, because the trial court found that plaintiff failed to prove his claims of oppression with respect to any of the entities, dissolution was not an available remedy under MCL 440.4515(1)(a) (limited liability companies), MCL 450.1489(1)(a) (corporations), or MCL 449.1802 (limited partnerships).