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NO. COA06-31

NORTH CAROLINA COURT OF APPEALS

Filed: 7 November 2006

ATLANTIC VENEER CORPORATION,
Plaintiff-Appellant,

v.

Carteret County
No. 04 CVS 58

TERRY ROBBINS,
Defendant-Appellee.

Appeal by Plaintiff from judgment entered 21 October 2005 by Judge Jack W. Jenkins in Superior Court, Carteret County. Heard in the Court of Appeals 23 August 2006.

Mason & Mason, P.A., by L. Patten Mason, for Plaintiff-Appellant.

Wheatly, Wheatly, Weeks, Valentine & Lupton, P.A., by Claud R. Wheatly, III, for Defendant-Appellee.

McGEE, Judge.

Atlantic Veneer Corporation (Plaintiff) appeals from a judgment renewing and crediting Plaintiff's judgment against Terry Robbins (Defendant). We affirm.

Defendant began working as a lumber buyer and manager for Plaintiff on or about 1 April 1986 and continued in that role until Plaintiff terminated Defendant's employment in 1991. Plaintiff first sued Defendant and Defendant's wife, Natalie Robbins, alleging that while serving as its lumber buyer, Defendant had embezzled significant amounts of money from Plaintiff. Plaintiff

sought to recover the actual monies embezzled, a sum alleged to be in excess of \$600,000.00, punitive damages in excess of \$10,000.00, and an attachment order against Defendant's assets. Plaintiff alleged it was "unable to determine the precise amount of the losses suffered" but that "the loss in inventory quantity alone exceed[ed] \$600,000.00[.]"

The parties settled the suit by consent judgment entered 14 April 1994 (the 1994 judgment). The 1994 judgment entitled Plaintiff to recover \$500,000.00 from Defendant and \$300,000.00 from William P. Robbins, Defendant's father. The 1994 judgment further provided that the judgment against Defendant's father would be cancelled if Defendant's father tendered \$150,000.00 within ninety days. The 1994 judgment included the following statement: "The Defendants' consent to this judgment shall not constitute an admission on their part as to any liability or responsibility and said consents are the basis for entry of the civil judgment herein."

Plaintiff next filed suit against Natalie Robbins in Carteret County Superior Court on 2 February 1995. In its complaint, Plaintiff alleged that while Defendant was employed by Plaintiff, Defendant had transferred to Natalie Robbins "large sums of money including at least the sum of \$59,800." Further, Plaintiff alleged that the transfers to Natalie Robbins were made for the purposes of hindering, delaying, and defrauding creditors, including Plaintiff. Additionally, although Defendant stated that he had no assets, Natalie Robbins had constructed a home in Ohio which cost more than

\$350,000.00 to build. Plaintiff sought to recover from Natalie Robbins all sums which Defendant had transferred to her, alleging the funds were wrongfully and fraudulently received from Plaintiff. Further, Plaintiff sought a declaration that the real property owned by Natalie Robbins was an asset of Defendant and thereby subject to execution to satisfy Plaintiff's outstanding judgment.

After a bench trial, the trial court concluded that Natalie Robbins "knowingly received \$250,000.00 from [Defendant] which she knew he had embezzled from [Plaintiff]. [Natalie Robbins] used those funds to build her house and to allow [Defendant] to operate a lumber business." The trial court ordered that Plaintiff recover \$250,000.00 from Natalie Robbins in a judgment entered on 17 June 1998 (the 1998 judgment). The 1998 judgment was later filed in Pike County, Ohio, where Defendant and Natalie Robbins had relocated. After several appeals in both North Carolina and Ohio courts, Natalie Robbins satisfied the 1998 judgment by remitting \$452,533.10 to Plaintiff by check dated 11 November 2003.

In the present case, Plaintiff sought to renew the 1994 judgment. In its complaint filed 20 January 2004, Plaintiff alleged that no portion of the 1994 judgment had been paid. In his answer, Defendant denied that allegation and claimed he was entitled to a set off against the 1994 judgment equal to the amount paid by Natalie Robbins to satisfy the 1998 judgment. Both parties moved for summary judgment, and both motions were denied. A bench trial was held, and the trial court entered judgment on 21 October 2005.

In its judgment, the trial court first ordered that the 1994 judgment be renewed. The trial court also concluded the sums paid by Natalie Robbins to Plaintiff to satisfy the 1998 judgment were derivative of the 1994 judgment. Accordingly, the trial court ordered that those sums be credited on the 1994 judgment. The trial court made the following pertinent findings of fact:

3. On or about the 14th day of April, 1994, judgment was entered against Terry Robbins, the Defendant herein, in an action entitled *Atlantic Veneer Corporation vs. Terry Robbins, et al.*, File Number 91-CVS-82, in the principal amount of \$500,000.00 together with interest thereon at a rate of 8% per annum from 14 April 1994 until paid, together with the cost[s] of said action (hereinafter, the "1994 Case").

. . .

6. In *Atlantic Veneer Corporation vs. Natalie K. Robbins*, Carteret County File Number 95-CVS-093, the Court found as a fact and entered a judgment to the effect that Natalie K. Robbins had received \$250,000.00 from her husband, the Defendant Terry Robbins herein and the Defendant in the 1994 Case, which originally had been embezzled from Atlantic Veneer Corporation by said Terry Robbins and which was transferred from Terry Robbins to Natalie K. Robbins to defraud and avoid creditors' obligations, in particular Atlantic Veneer Corporation.

Plaintiff appeals.

"[W]hen the trial court sits without a jury, the standard of review on appeal is whether there was competent evidence to support the trial court's findings of fact and whether its conclusions of law were proper in light of such facts." *Keel v. Private Bus., Inc.*, 163 N.C. App. 703, 707, 594 S.E.2d 796, 799 (2004) (citations omitted). The trial court's conclusions of law are reviewable de

novo. Humphries v. City of Jacksonville, 300 N.C. 186, 187, 265 S.E.2d 189, 190 (1980). Further, "in making findings of fact, the trial court is required only to make brief, pertinent and definite findings and conclusions about the matters in issue, but need not make a finding on every issue requested." *Fortis Corp. v. Northeast Forest Products*, 68 N.C. App. 752, 753, 315 S.E.2d 537, 538 (1984). "A finding of such essential facts as lay a basis for the decision is sufficient[.]" *Id.*

Plaintiff first argues that the trial court erred by failing to find (1) that the 1994 judgment entered against Defendant was a consent judgment; and (2) that Defendant's consent did not constitute an admission of liability. Plaintiff argues that by failing to so find, the trial court "impliedly concluded that the 1994 [j]udgment against [Defendant] was based upon [Defendant's] embezzlement of monies from [Plaintiff]." According to Plaintiff, there was no evidence before the trial court to support this finding since Defendant disavowed any wrong doing in the 1994 judgment. We find Plaintiff's argument to be without merit.

Plaintiff appeals a finding that is no more than a recitation of the proceedings which occurred prior to the instant action. Judgment was in fact entered against Defendant in favor of Plaintiff in the amount of \$500,000.00. Plaintiff fails to demonstrate why the trial court was required to include either of these two facts in its order, and why omitting them amounts to prejudicial error. Notably, the finding of fact is supported by competent evidence in the record, namely the 1994 judgment itself.

The trial court did not err in its finding.

Plaintiff also challenges the trial court's conclusions of law (1) that the monies paid by Natalie Robbins were derivative of the 1994 judgment against Defendant; and (2) that Defendant was entitled to a credit of \$250,000.00 against the 1994 judgment against him. We affirm the trial court's conclusions of law.

Plaintiff argues there was no finding of fact made by the trial court to support the conclusion that the monies paid by Natalie Robbins were derivative of the 1994 judgment against Defendant. We disagree. In its finding of fact number six, the trial court found that Natalie Robbins had received from Defendant \$250,000.00 "which originally had been embezzled from [Plaintiff] by [Defendant] and which was transferred from [Defendant] to [Natalie Robbins] to defraud and avoid creditors' obligations[.]" This finding supports the conclusion that the 1998 judgment obtained against Natalie Robbins was derivative of the 1994 judgment against Defendant. Further, since Plaintiff did not assign error to finding of fact number six, the finding is deemed to be supported by competent evidence, and is therefore binding on this Court. *Helms v. Schultze*, 161 N.C. App. 404, 411, 588 S.E.2d 524, 528 (2003). Thus, we are bound by the trial court's finding that the money recovered by Plaintiff from Natalie Robbins "originally had been embezzled from [Plaintiff] by [Defendant] and . . . transferred from [Defendant] to [Natalie Robbins]."

Additionally, Plaintiff's own allegations against Natalie Robbins stated that "the source of [Natalie Robbins'] funds has

been clandestine, secretive transfers from [Defendant and his company]" which she used to construct their Ohio residence and to operate a lumber business. Plaintiff also alleged that "the [monies] which [Defendant] wrongfully embezzled from Plaintiff have, in substantial part, been transferred by [Defendant] to [Natalie Robbins] with intent to hinder, delay and defraud creditors[.]" The only basis for the recovery against Natalie Robbins alleged in Plaintiff's complaint was Defendant's wrongful actions against Plaintiff, and Defendant's fraudulent transfers to Natalie Robbins. Plaintiff's own allegations support the trial court's conclusion that the 1998 judgment against Natalie Robbins was derivative of the 1994 judgment against Defendant.

Plaintiff also challenges, as unsupported by any findings of fact, the trial court's conclusion that Defendant is entitled to a credit for the principal paid by Natalie Robbins. However, finding of fact number six also supports the award of a credit. The money recovered from Natalie Robbins originated from money "wrongfully embezzled by [Defendant]." Thus, that money is part of the total recovery for that injury. Our Supreme Court has stated that "any amount paid by anybody, whether they be joint tort-feasors or otherwise, for and on account of any injury or damage should be held for a credit on the total recovery in any action for the same injury or damage." *Holland v. Utilities Co.*, 208 N.C. 289, 292, 180 S.E. 592, 593-94 (1935). Defendant is therefore entitled to the credit.

Plaintiff maintains throughout its brief that it has not been

fully compensated for the damages resulting from Defendant's embezzlement scheme. However, it is not for our Court to determine whether or not this is accurate. Importantly, Plaintiff freely chose to settle its 1994 action against Defendant for \$500,000.00 recoverable from Defendant, and \$300,000.00 recoverable from Defendant's father. The consent judgment was a complete settlement of Plaintiff's claims, with no reservations.

The trial court made adequate findings of fact based on competent evidence to support its conclusions of law. The trial court did not err in its judgment.

Affirmed.

Judges BRYANT and ELMORE concur.

Report per Rule 30(e).