IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-123

Filed: 4 October 2016

Forsyth County, No. 12 CVS 4088

CREOLA HALL, Plaintiff,

v.

RODNEY TAYLOR BOOTH, Defendant.

Appeal by defendant from judgment entered 29 June 2015 by Judge Richard S. Gottlieb in Forsyth County Superior Court. Heard in the Court of Appeals 11 August 2016.

No appellee brief filed by plaintiff.

Randolph & Fischer, by J. Clark Fischer, for defendant-appellant.

McCULLOUGH, Judge.

Rodney Taylor Booth ("defendant") appeals from judgment entered against him as to Creola Hall's ("plaintiff") breach of contract claim. For the reasons stated herein, we affirm.

I. Background

On 18 June 2012, plaintiff filed a complaint against defendant for breach of contract, promissory estoppel, negligent misrepresentation, fraud, unfair and deceptive trade practices ("UDTP"), and unjust enrichment. Plaintiff alleged as

follows: Defendant was the owner of "The Country Corral," a nightclub located in King, North Carolina and in 2006, the nightclub suffered financial difficulties. In 2006, defendant approached plaintiff and her now-deceased husband "with the intention of borrowing money from the couple." Plaintiff and her husband orally agreed to give defendant a loan, taken out of a home equity line of credit, totaling $30,000.00 in return for monthly payments. On 31 October 2007, plaintiff loaned defendant an additional $2,000.00. On 12 May 2010, plaintiff again loaned defendant $2,000.00. On 21 October 2010, plaintiff loaned defendant $6,500.00. Defendant sold the nightclub shortly after receiving this final loan.

Plaintiff further alleged that on 1 July 2011, plaintiff and defendant signed a promissory note that reflected the debts defendant owed ("the promissory note"). Defendant agreed to make monthly payments towards plaintiff's home equity line of credit on the first day of each month until the loan was paid in full. The maturity date of the promissory note was 31 December 2011. Defendant made four minimum monthly payments to plaintiff in August, September, October, and November of 2011, totaling $3,000.00. Plaintiff received no payments from defendant after November 2011 and alleged that defendant currently owed plaintiff in excess of $10,000.00.

On 10 October 2012, defendant filed an amended answer and counterclaims alleging breach of contract for unpaid attorney's fees in an unrelated suit and for failing to repay defendant for purchasing books and tuition for Christina Hall,

plaintiff's daughter. On 30 November 2012, plaintiff filed a "Reply" in which she alleged that defendant's counterclaims failed to state a claim pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. On 26 June 2013, the trial court entered an order granting partial summary judgment in favor of plaintiff and dismissing defendant's counterclaims with prejudice.

Defendant's trial was held at the 4 May 2015 civil session of Forsyth County Superior Court, the Honorable Richard S. Gottlieb presiding. On 29 June 2015, the trial court entered "Findings of Fact, Conclusions of Law and Judgment." The trial court found as follows, in pertinent part: Plaintiff was the mother of Christina R. Hall ("Christina"), and Christina and defendant were in a romantic relationship from 2000 until 2011. Christina and defendant frequently paid one another's bills and living expenses. Defendant was the sole shareholder of Booth-Overby Promotions, Inc. ("BOP") which owned The Country Corral, a bar and music venue. Christina often assisted defendant in the management of The Country Corral and other BOP entities.

> 9. In or around September, 2006, Defendant and Christina promoted, through BOP, a band with concerts at the Cabarrus Arena and in Kentucky. The concerts were not successful and BOP was left with significant debt.
>
> 10. Christina suggested, and Defendant agreed, for Christina to approach her parents for a loan to cover the debt. Christina made Defendant aware at the time that her parents had an equity line of credit ("Equity Line") attached to their house that was free of debt. The Equity

Line has been in place since at least 2001.

11. Christina called her parents and asked for a loan in the amount of $30,000.00.

12. Plaintiff was told by Christina or Defendant that the loan would be repaid within three (3) weeks.

13. Plaintiff and her husband agreed to make a loan to Defendant and plaintiff wrote a check dated September 18, 2006 and payable to Defendant in the amount of $30,000.00 ("September 2006 Loan"). The September 2006 Loan was not documented by a separate writing, but the word "Loan" is written in the "For" section of the check, indicating that the amount was not a gift.

14. Plaintiff and her husband used their Equity Line to fund the September 2006 Loan.

15. The September 2006 Loan was not repaid by Defendant within three (3) weeks. However, Defendant began to pay the monthly, minimum payment on the Equity Line. . . .

16. In his Responses to Plaintiff's First Request for Admissions, Defendant admitted that "on or before September 18, 2006, Harvey Jarvis Hall loaned Rodney Booth $30,000."

17. BOP experienced additional financial hardship and Defendant and Christina returned to her parents for additional funding. On October 31, 2007, Plaintiff and Harvey Hall wrote a check payable to Booth Overby Promotion in the amount of $2,000.00 ("October 2007 Loan"). The October 2007 Loan was not documented by a separate writing, but the word "Loan" is written in the "For" section of the check, indicating that the amount was not a gift.

18. Plaintiff and her husband used their Equity Line to

fund the October 2007 Loan.

. . . .

20. On May 12, 2010, Plaintiff and Harvey Hall wrote a check payable to Defendant in the amount of $2,000.00 ("May 2010 Loan"). The May 2010 Loan was not documented by a separate writing, but the word "Loan" is written in the "For" section of the check, indicating that the amount was not a gift.

21. Plaintiff and her husband used their Equity Line to fund the May 2010 Loan.

. . . .

23. On October[] 21, 2010, Plaintiff wrote a check payable to Christina Hall in the amount of $6,500.00 ("October 2010 Check"). In contrast [to] the previous loans, the check did not contain a note indicating that it was for a loan. The October 2010 Check was also written on Mr. and Mrs. Hall's Equity Line.

. . . .

26. The relationship between Defendant and Christina soured and dissolved in February, 2011. From 2006 until sometime in 2011 after the end of the relationship with Christina, Defendant continuously made payments on the Equity Line.

27. Immediately prior to July 1, 2011, the Defendant went to Plaintiff's house to obtain the monthly statement for the Equity Line so that he could take it to the bank to pay some amount on it. At that time, Defendant was approached by the Plaintiff who indicated her concern that the Equity Line remain[ed] unpaid and demanded that Defendant sign a document to acknowledge his debt. At the time of this meeting, Defendant and Plaintiff did not discuss the total amount either party believed was owed.

Defendant agreed to meet Plaintiff at the bank the next day to sign a document. No evidence was presented indicating the form of acknowledgement that Plaintiff intended for the Defendant to sign.

28. On July 1, 2011, Defendant met Plaintiff and Christina at the bank. While Defendant was standing in line to make a payment on the Equity Line, he was approached by Christina who demanded that he sign a Promissory Note before a notary. Defendant demurred but Christina was insistent and Defendant admits that he reluctantly signed the Promissory Note and Affidavit. He disputes being provided with a payoff quote that is attached as page two of Exhibit 6.

. . . .

30. The Promissory Note contains a promise by Rodney Booth, "to pay the Equity Line of Credit to Bank of America (account ending in 213099) which is in the name of Creola D. Hall (Noteholder) in full by December 31st, 2011."

31. The Promissory Note does not recite that new consideration was given for it and no evidence was presented that new consideration was given for the signing of the Promissory Note.

32. The Promissory Note does not contain an unconditional promise to pay a sum certain. No evidence was presented as to the interest rate for the Promissory Note or the Equity Line.

33. No evidence was presented as to the amount owed on the Equity Line at the time of trial, or if additional debt had been incurred on the Equity Line.

34. The Promissory Note does not contain a sum certain for the obligation that is sought by the noteholder nor does it contain an amount which is identifiable by the instrument itself. Any determination as to the amount the

> noteholder was hoping to be paid requires reference to an outside source- the home Equity Line of credit, which by its terms was subject to change if additional debt was incurred or based on interest accumulated.
>
> . . . .
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> 37. No evidence was presented as to the total amount of payments made to the Equity Line by the Defendant[.]
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> 38. No evidence was presented as to the amount of payments, if any, made on the Equity Line by the Plaintiff or her husband before or after the lawsuit was filed, or if any debt was incurred by Plaintiff on the Equity Line other than the September 2006 Loan, October 2007 Loan, May 2010 Loan, or the October 2010 Check.
>
> 39. No evidence was presented as to the date any of the Loans was to be repaid or the date that final demand for payment, if any, was made before the filing of the lawsuit.

The trial court concluded that a valid and enforceable contract existed between plaintiff and defendant as to the September 2006 Loan for $30,000.00 and the May 2010 Loan for $2,000.00 and that absent evidence of a due date for the repayment of these loans, "the date of the filing of the Complaint is the reasonable date." The trial court further concluded that: defendant was not liable for the October 2010 Check, which constituted a loan made by plaintiff to Christina; that the Promissory Note fell short of being classified as a negotiable instrument ; that defendant was not unjustly enriched by the October 2007 Loan or by the October 2010 Check; and that because plaintiff failed to present any evidence to support her claims of promissory estoppel, negligent misrepresentation, fraud, or UDTP, judgment was entered against plaintiff

as to these claims. Accordingly, the trial court entered judgment against defendant as to plaintiff's claim for breach of contract and awarded plaintiff $32,000.00 plus interest at the legal rate from the date of the filing of the complaint. The trial court also entered judgment against plaintiff as to her remaining claims.

Defendant appeals.

II. Standard of Review

> The standard of review of a judgment rendered following a bench trial 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. Findings of fact by the trial court in a non-jury trial are conclusive on appeal if there is evidence to support those findings. A trial court's conclusions of law, however, are reviewable *de novo*.

Gilbert v. Guilford County, 238 N.C. App. 54, 56, 767 S.E.2d 93, 95 (2014) (citations and quotation marks omitted).

III. Discussion

On appeal, defendant argues that the trial court erred (A) by concluding that the September 2006 Loan and May 2010 Loan were valid and enforceable contracts and (B) by entering judgment against defendant for $32,000.00 when there was undisputed evidence that defendant made payments for which he had not received credit. We address each argument in turn.

A. The September 2006 Loan and the May 2010 Loan

In his first argument, defendant contends that the trial court erred by concluding that the September 2006 Loan of $30,000.00 and the May 2010 Loan of $2,000.00 were valid and enforceable contracts. We disagree.

In regards to the September 2006 Loan, defendant asserts that this was not a valid and enforceable contract because it was "far too indefinite." Specifically, defendant argues that there was a lack of specificity regarding material terms such as the repayment due date and what interest rate was to be charged on the unpaid balance. As to the May 2010 Loan, defendant argues the contract existed only between plaintiff and Christina.

"Under longstanding North Carolina law, a valid contract requires (1) assent; (2) mutuality of obligation; and (3) definite terms." *Charlotte Motor Speedway, LLC v. County of Cabarrus*, 230 N.C. App. 1, 7, 748 S.E.2d 171, 176 (2013) (citation omitted). "[I]n order that there may be a valid and enforceable contract between parties, there must be a meeting of the minds of the contracting parties upon all essential terms and conditions of the contract." *Quantum Corp. Funding, Ltd. v. B.H. Bryan Bldg. Co.*, 175 N.C. App. 483, 490, 623 S.E.2d 793, 798-99 (2006) (citation omitted). "[A] contract will not be held unenforceable because of uncertainty if the intent of the parties can be determined from the language used, construed with reference to the circumstances surrounding the making of the contract, and its terms

reduced to a reasonable certainty." *Brawley v. Brawley*, 87 N.C. App. 545, 549, 361 S.E.2d 759, 762 (1987).

Defendant relies on three cases from our Court for his arguments: *Lamp Co. v. Capel*, 45 N.C. App. 105, 262 S.E.2d 368 (1980); *F. Industries, Inc. v. Cox*, 45 N.C. App. 595, 263 S.E.2d 791 (1980); and *Gregory v. Perdue*, 47 N.C. App. 655, 267 S.E.2d 584 (1980). In *Lamp Co.*, our Court held that a letter written by the defendant was insufficient to be considered as a promise to pay the debt of the plaintiff because "the evidence [did] not establish what amount the defendant would pay [the] plaintiff, the date payment would be made, or the event that would determine when payment would be due." *Lamp*, 45 N.C. App. at 107-108, 262 S.E.2d at 370. In *F. Industries, Inc.*, the parties entered into an oral contract for the purchase and sale of four trucks at a price of $13,250.00 per truck with the proviso that, upon the purchase of two trucks, the plaintiff "would receive spare parts for and patent rights to the trucks at no additional cost." *F. Industries, Inc.*, 45 N.C. App. at 596, 263 S.E.2d at 792. Our Court held that "the agreement, if any, respecting the conveyance to [the] plaintiff of 'patent rights' is so general, vague and indefinite as to be incapable of ascertainment, much less enforcement." *Id.* at 599, 263 S.E.2d at 794. In *Gregory*, the plaintiff alleged that he began dismantling and remodeling six of his chicken houses, relying on the defendant's promise that the plaintiff would receive a contract to grow chickens

for the defendant in the houses. *Gregory*, 47 N.C. App. at 655, 267 S.E.2d at 585. Our Court held that there was no meeting of the minds where the parties

> never reached a mutual understanding as to how many chickens [the] plaintiff would grow, the time or times they would be delivered by [the] defendant to [the] plaintiff for growing or delivered by [the] plaintiff to [the] defendant after growing, or the compensation to be paid by [the] defendant to [the] plaintiff.

Id. at 657-58, 267 S.E.2d at 586-87.

After thorough review, we believe that the circumstances in the present case are distinguishable from those found in *Lamp Co.*, *F. Industries, Inc.*, and *Gregory*. In each of the cases defendant cites, our Court held that no contract was formed where the parties failed to specify essential and material terms – namely, the subject matter of the agreement and the price to be paid under the agreement. In the present case, however, the fact-finder could find based on the evidence presented at trial that the parties reached a clear and definite agreement as to the essential and material terms of the September 2006 Loan and May 2010 Loan. *See Arndt v. First Union Nat'l Bank*, 170 N.C. App. 518, 523, 613 S.E.2d 274, 278 (2005) (providing that "[w]hether a contract existed is a question for the jury"). As the trial court concluded, "[a]dequate consideration was present in the form of Defendant's promise to repay the loans and Plaintiff's making of the loans." The essential terms of which parties were involved, the amount of the money loaned, and mutual assent are apparent from the face of the September 2006 Loan and May 2010 Loan.

The facts of the case before us are similar to those found in *Calhoun v. Calhoun*, 76 N.C. App. 305, 332 S.E.2d 734 (1985). In *Calhoun*, the defendant borrowed $10,000.00 from his uncle in order to purchase a building for his business. *Id.* at 306, 332 S.E.2d at 735. The uncle wrote a check, made out to the defendant, and wrote "Loan, building" in the memo line of the check. *Id.* Thereafter, the defendant drafted a memorandum, signed by both parties, that stated that his uncle had loaned him $10,000.00 and that he would pay 8% interest upon the unpaid balance. *Id.* The defendant also testified that he had signed a second document which stated that the memorandum "was a twelve-month renewable note with unlimited renewable privileges." *Id.* at 307, 332 S.E.2d at 735. About one year later, the defendant gave his uncle a check for $800 which the uncle accepted. However, the defendant claimed that it was only because his uncle was facing financial difficulties. *Id.* The defendant testified that he was only to repay his uncle if the uncle needed the money, that the notations "Loan, building" were placed on the check in order to avoid tax implications, and that his characterization of the transaction as a "twelve-month renewable note with unlimited renewable privileges . . . was incorrect word usage on my part." *Id.* Our Court held that whether a valid contract existed was a matter that needed to be resolved by a jury. *Id.*

Here, the evidence tended to show and the trial court found that Christina called her parents to ask for a loan in the amount of $30,000.00 after Christina and

defendant discussed approaching her parents for a loan to cover business debt. Either Christina or defendant told plaintiff that the loan would be repaid within three weeks. The September 2006 Loan, dated 18 September 2006, was in the form of a check from plaintiff to defendant, payable to "Rodney Booth," in the amount of $30,000.00. The "For" section of the check contained the word "Loan," "indicating that the amount was not a gift." Furthermore, the trial court entered an unchallenged finding, which is binding on appeal, that defendant admitted that "on or before September 18, 2006, Harvey Jarvis Hall loaned [defendant] $30,000" in his response to plaintiff's first request for admissions. *Cape Fear River Watch v. N.C. Envtl. Mgmt. Comm'n*, 368 N.C. 92, 99, 772 S.E.2d 445, 450 (2015) (stating that "[a] trial court's unchallenged findings of fact are presumed to be supported by competent evidence and [are] binding on appeal") (citation omitted).

Although the September 2006 Loan did not include a repayment due date, our Court has stated that "money lent pursuant to a verbal agreement, which fails to specify a time for repayment, is payable within a reasonable time." *Helms v. Prikopa*, 51 N.C. App. 50, 54, 275 S.E.2d 516, 518 (1981). "The determination of what constitutes a reasonable time is a material issue of fact to be answered by the [fact-finder]." *Phillips & Jordan Inv. Corp. v. Ashblue Co.*, 86 N.C. App. 186, 188, 357 S.E.2d 1, 2 (1987). Based on the foregoing, the trial court properly determined that

the date of the filing of the complaint, 18 June 2012, was a reasonable due date for the repayment of the September 2006 Loan.

Defendant also argues that the September 2006 Loan was too indefinite because it lacked specificity regarding what interest rate was to be charged on the unpaid balance, or otherwise, at breach. Defendant asserts that "[o]bviously the money was not paid in full within three weeks or even three years, so interest would have been a fundamental requirement of any contract that was in fact a loan."

However, this scenario is covered by N.C. Gen. Stat. § 24-5(a), which provides as follows, in pertinent part:

> (a) Actions on Contracts. -- In an action for breach of contract, . . . the amount awarded on the contract bears interest from the date of breach. The fact finder in an action for breach of contract shall distinguish the principal from the interest in the award, and the judgment shall provide that the principal amount bears interest until the judgment is satisfied. If the parties have agreed in the contract that the contract rate shall apply after judgment, then interest on an award in a contract action shall be at the contract rate after judgment; otherwise it shall be at the legal rate.

N.C. Gen. Stat. § 24-5(a) (2015). Our Court has established that "[o]nce breach is established, plaintiff[is] entitled to interest from the date of the breach as a matter of law." *Cap Care Group, Inc. v. McDonald*, 149 N.C. App. 817, 824, 561 S.E.2d 578, 583 (2002).

As to the May 2010 Loan, defendant argues that there was no evidence of any loan agreement between plaintiff and defendant. Rather, defendant contends that the May 2010 Loan was solely between plaintiff and Christina. After examining the record, we find his argument without merit.

At trial, plaintiff testified that she handed the $2,000.00 check which constituted the May 2010 Loan to Christina. Plaintiff testified that she did not talk to defendant about the May 2010 Loan. Yet, there was evidence presented at trial that the May 2010 Loan was from plaintiff, made out to "Rodney T. Booth" and that on the back of the check, it said, "For deposit only, Rodney T. Booth." Plaintiff testified that she was told the funds were "[t]o help pay for bills at the [Country] Corral." The word "Loan" was written in the "For" section of the check. Based on the foregoing evidence, the trial court did not err in finding that the May 2010 Loan was not a gift and concluding that a valid, enforceable contract existed between plaintiff and defendant.

For the reasons set forth above, the trial court did not err in concluding that the September 2006 Loan and May 2010 Loan were valid and enforceable contracts between plaintiff and defendant.

B. Judgment

In the second issue on appeal, defendant asserts that the trial court erred by entering judgment against defendant in the amount of $32,000.00 when there was

undisputed evidence that defendant made payments for which he should have received a credit.

Defendant directs our attention to the following testimony: Christina testified that defendant made four payments on the promissory note; Christina testified that defendant made payments prior to the execution of the promissory note; plaintiff testified that defendant made some payments toward the outstanding balance of the equity line; and defendant testified that he made payments towards plaintiff's equity line.

We agree with defendant to the extent that there was evidence presented at trial indicating that defendant made several payments towards plaintiff's equity line. However, at the trial level, defendant argued that he made these payments because he was assisting Christina, not because he was repaying a loan with plaintiff.

> Q. Okay. Now, about this money that you contend Christina borrowed from her family – well, yeah – the money you contend Christina borrowed from her family, did you make payments on the loan that they talked about that they took out so that they could give the money to Christina?
>
> A. Yes. Because at the time, Christina wasn't working a public job then. So it was up to me to keep family all in good relationships because they knew that I would help her out then.
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> Q. Now, was that because of a business loan you had undertaken with Mr. and Mrs. Hall or because you were in a relationship with Christina?

> A. In a relationship with Christina.
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> Q. Had you not been in a relationship with Christina, would you have made those payments?
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> A. No.
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> Q. Do you – did you at any point believe you were obligated to make those payments?
>
> A. Not really, no. Because it wasn't mine. But I was just doing it to help her out and keep faith in the family there.

Defendant cannot now assert a new and different theory on appeal. *Weil v. Herring*, 207 N.C. 6, 10, 175 S.E. 836, 838 (1934) ("An examination of the record discloses that the cause was not tried upon that theory, and the law does not permit parties to swap horses between courts in order to get a better mount[.]").

IV. Conclusion

We affirm the 29 June 2015 judgment of the trial court.

AFFIRMED.

Judges STEPHENS and ZACHARY concur.

Report per Rule 30(e).