

NO. 12-14-00310-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

***BRANDON SAXON,
APPELLANT***

§ APPEAL FROM THE

V.

§ COUNTY COURT AT LAW

***GROVE CLUB LAKE, INC.,
APPELLEE***

§ SMITH COUNTY, TEXAS

MEMORANDUM OPINION

Brandon Saxon appeals from an adverse judgment rendered after a trial before the court in a breach of contract action brought by Grove Club Lake, Inc. In three issues, Saxon contends the evidence is insufficient to support the judgment, and the trial court erred in granting a directed verdict against him on his counterclaim and in failing to award him attorney's fees. We affirm.

BACKGROUND

Grove Club Lake, Inc. is a nonprofit corporation created in 1942 to operate a private, recreational community. The Club's affairs are governed by its bylaws and a board of directors. Individuals who purchase share certificates become members and are entitled to build a home on the Club's property. The bylaws provide that members may have visitors, for the purpose of contacting a member, as long as the member or associate member is present somewhere on Club property. Additionally, the bylaws provide that individuals summoned by a member or associate member for the specific purpose of performing a specific service are considered "service personnel" and are subject to different rules than visitors.

Saxon is a member of the Club and lives on the property. The Board of Directors determined that Saxon violated the bylaws by having a visitor at his home on multiple occasions when Saxon was not at home. The board fined Saxon and, when he refused to pay the fine, the

Club brought suit against Saxon for breach of contract. Saxon counterclaimed, alleging that the Club violated the bylaws. The trial court found in favor of the Club on its claim and on Saxon's counterclaim, and ordered Saxon to pay \$765.00 in damages.

SUFFICIENCY OF THE EVIDENCE

In his first issue, Saxon contends there is no evidence that he violated the bylaws. He argues that the evidence conclusively establishes that William Hodge, the individual who stayed at his home, was there as service personnel, not a visitor.

Standard of Review

A party who challenges the legal sufficiency of the evidence to support an issue upon which he did not have the burden of proof at trial must demonstrate on appeal that there is no evidence to support the adverse finding. *G.D. Holdings, Inc. v. H.D.H. Land & Timber, L.P.*, 407 S.W.3d 856, 860 (Tex. App.—Tyler 2013, no pet.). When reviewing a no evidence issue, we determine whether the evidence at trial would enable reasonable and fair minded people to reach the verdict under review. *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). In making this determination, we must credit favorable evidence if a reasonable finder of fact could and disregard contrary evidence unless a reasonable finder of fact could not. *Id.* If there is any evidence of probative force to support the finding, i.e., more than a scintilla, we will overrule the issue. *Haggar Clothing Co. v. Hernandez*, 164 S.W.3d 386, 388 (Tex. 2005).

We are mindful that the trier of fact is the sole judge of the credibility of the witnesses and the weight to be given their testimony. *City of Keller*, 168 S.W.3d at 819. When there is conflicting evidence, it is the province of the trier of fact to resolve such conflicts. *Id.* at 820. In every circumstance in which a reasonable trier of fact could resolve conflicting evidence either way, the reviewing court must presume it did so in favor of the prevailing party, and disregard the conflicting evidence in its sufficiency review. *Id.* at 821.

Applicable Law

The elements of a breach of contract claim include (1) the existence of a valid contract, (2) performance or tendered performance, (3) breach of the contract, and (4) damage as a result of the breach. See *Critchfield v. Smith*, 151 S.W.3d 225, 233 (Tex. App.—Tyler 2004, pet. denied). The interpretation of an unambiguous contract is a question of law for the court. *Moayedí v. Interstate 35/Chisam Road, L.P.*, 438 S.W.3d 1, 7 (Tex. 2014).

Analysis

The Board's secretary, Debbie Malone, testified about the Club's structure and bylaws. She explained that, pursuant to the bylaws, any Club member and associate member are allowed at the Club at any time. The bylaws specifically state that a visitor is a person who comes onto Club premises for the purpose of contacting a member or associate member. Thus, visitors can be there only in the presence of a member. A visitor must be accompanied by a member or associate member at all times. The term "service personnel" includes lawn maintenance, appliance repair, construction, and anyone who is performing a service or helping in the upkeep maintenance on a member's home. Service personnel can be on the property without a member being there. Malone explained that service personnel are not considered members or associate members, and, although not specifically written in the bylaws, the bylaws prohibit overnight stays without a member present. She stated, "If the member's not there, I don't care if your caretaker spends the night with him every night as long as he's there according to the bylaws."

The bylaws state that "[t]he amount of the fine will be determined by the board based on the type, severity, potential danger to person, property or peaceful enjoyment of others of the violation, and the recommendations of the Investigative Committee. The amount of fines will increase for repeated violations." Malone admitted that the bylaws provide that a violation carries a \$15.00 fine, a second violation of the same offense carries a \$30.00 fine, and a third violation requires either suspension of privileges for six months or a fine of \$60.00. Malone explained that the board did not believe that a \$15.00 fine would keep Saxon, who had many more than three violations, from having unauthorized visitors. Malone testified that the bylaws provide the board with the authority to impose a \$500.00 fine on members if it determines that it will benefit the Club. She explained that, in 2011, the board decided to fine members \$500.00 per violation for having unauthorized visitors. She clarified that the 2011 resolution authorizing a \$500.00 fine for unauthorized visitors did not amend the bylaws.

The board then sent letters to Saxon explaining he would be fined for allowing an unauthorized visitor. Saxon attended a board meeting to discuss the fines. Malone testified that, although the infractions stopped for a short time, the violations resumed. In October 2012, the president of the board emailed Saxon, telling him specifically that "his brother-in-law William Hodge" cannot stay overnight at Saxon's home when Saxon is not there. Malone testified that Hodge, who had been referred to as Saxon's brother-in-law and his stepbrother, was apparently

“someone [Saxon] had hired to see to the day-to-day maintenance on his home when he was out of town.” She clarified that Hodge was initially hired for the day-to-day operations, but when he started staying at Saxon’s home, the board determined that he could not live there. She testified that Hodge stayed overnight when Saxon was not there and moved furniture in and out of the home. Additional letters were sent to Saxon detailing the bylaws violations and stating how much he owes in fines.

On direct, Malone stated that Saxon received a copy of the bylaws when he became a member and that he has paid his dues. Malone admitted on cross examination that the Club’s documentation shows that Saxon’s ex-wife signed the application indicating that she received the bylaws. The application was not signed by Saxon. She testified that Saxon’s fiancé, who resides at the Club, is considered an associate member even though the bylaws do not specifically state that significant others can be associate members. Malone verified that Saxon was fined for fourteen violations, all due to Hodge’s presence, not the fiancé’s presence.

Further, the bylaws provide that the board shall designate an investigative committee and that committee must report the results of its investigation and any recommendations. Malone admitted that was not done in this case. However, the board received actual complaints from members about the fourteen alleged violations. On cross examination, Malone agreed with counsel that the board considered the complaints and sent notice to Saxon that he was being fined without giving him the opportunity to attend Board meetings and defend himself. However, on redirect, she verified that the board had previously met with Saxon and heard his side.

Brandon Saxon testified that he purchased a share for Lot 7 of the Club and built a home on it. He first received a copy of the bylaws in March 2012 with an email from Malone. He denied ever agreeing to be bound by the bylaws as a contract. Saxon testified that he travels for his job and is typically away from home for six to seven months at a time. He stated that Hodge lived at Saxon’s home “from about September to January of 2012.”¹ Hodge was at the home when Saxon was not there. He agreed that there were at least fourteen times when Hodge stayed the night at the home when Saxon was not present. Saxon testified that he and Hodge had a “house sitting agreement.” They signed a written agreement in September 2012 but had an oral agreement before that. His contract with Hodge required Hodge to live in the home, protect Saxon’s possessions, care for his dog, and make sure that all the day-to-day operations at the

¹ Based on all of the evidence, it appears this should be September 2012 to January 2013.

home were being conducted, like lawn care. Saxon denied that there was ever a time when Hodge was on the property in any capacity other than as service personnel when Saxon was not there.

Saxon denied receiving all of the notices, which were certified letters. He received some notices “after the fact.” Saxon admitted that he met with the board for clarification about unauthorized visitors “prior to 2012,” by January 2012 he was aware of the violation letters, and he received the October 26, 2012 email from the board president. They disagreed about whether Hodge was service personnel or a visitor.

The record contains emails and letters from the board to Saxon, dating back to July 2011, either warning Saxon about the fine for having unauthorized guests or providing notice that the board is imposing a fine for the violations. Malone emailed a copy of the bylaws to Saxon on March 20, 2012, although he had previously been made aware of the possibility of an unauthorized guest fine. In spite of the fact that Hodge had stayed overnight many times before, the board imposed fines based on reports of Hodge staying overnight fourteen times, beginning November 5, 2012. The final demand letter, dated January 23, 2013, demanded payment of \$7,280.00 in fines and attorney’s fees. The “House Sitting Service Agreement” between Saxon and Hodge was effective September 1, 2012. Pursuant to its terms, the agreement was for six months and Saxon gave Hodge “a license to occupy the premises.” The document does not identify any duties, jobs, or responsibilities that Hodge is supposed to complete while occupying the premises.

As a member of the Club, Saxon agreed to be bound by the Club’s bylaws. *See Harden v. Colonial Country Club*, 634 S.W.2d 56, 58 (Tex. App.–Fort Worth 1982, writ ref’d n.r.e.). The bylaws make a distinction between visitors, those who come onto Club property to contact a member or associate member, and service personnel, those who are invited to perform a specific purpose. Saxon met with the board regarding the visitor/service personnel distinction, prior to 2012. It was explained to him that there is no prohibition against visitors spending the night with members when the member is present. Also, the trial court could determine that the bylaws do not allow visitors to stay overnight without a member present. *See Moayedi*, 438 S.W.3d at 7. Additionally, the board interprets the bylaws to mean that service personnel cannot stay overnight without a member present. The Club has the right to interpret its bylaws. *Harden*, 634 S.W.2d at 59. Further, the trial court had evidence before it that, due to the distinction between visitors and

service personnel, anyone not meeting the definition of service personnel must be in the presence of a member when on Club property. The court could determine that Saxon had been made aware of this distinction prior to the dates Hodge stayed at Saxon's home, and therefore had notice of the violations. *See City of Keller*, 168 S.W.3d at 827.

The trial court could have believed the Club's evidence that, although Hodge was initially hired as "service personnel," his status changed when he began staying overnight in Saxon's absence. *See id.* at 819. At that point, he was an unauthorized visitor because the bylaws do not permit visitors to be on the premises without the member present.

Saxon admitted that Hodge lived at his home when he was not there and that Hodge stayed overnight at least fourteen times when he was not present. The trial court could have disbelieved Saxon's testimony that Hodge was there to perform certain jobs for Saxon. *See id.* Their written agreement gave Hodge permission to occupy the home and did not name any jobs Hodge was to perform. Saxon did not explain why it was necessary for someone to live at his home in order to perform the ordinary day-to-day operations. Malone testified that some members do not live there full time. A reasonable trier of fact could have believed the Club's evidence showing that Hodge was not living in Saxon's home in the capacity of "service personnel." *Id.* at 820. We disregard Saxon's testimony to the contrary. *Id.* at 821. Accordingly, there is more than a scintilla of evidence to support the trial court's determination that Saxon violated the bylaws. *See Hernandez*, 164 S.W.3d at 388. We overrule Saxon's first issue.

DIRECTED VERDICT

In his second issue, Saxon contends the trial court erred in granting a directed verdict in favor of the Club on Saxon's breach of contract counterclaim. He argues that the Club violated its bylaws by fining him for allowing service personnel to come on Club premises, by imposing fines unauthorized by the bylaws, failing to establish an investigative committee or provide notice and an opportunity to be heard, and by trying to seize Saxon's home and share without following the bylaws or Texas law.

Saxon's counterclaim asserts that "Plaintiff has materially violated its own Bylaws by its acts and omissions, including the acts and omissions of its officers, directors, agents, and employees. Plaintiff's acts and omissions caused damages to Defendant." In its motion for

directed verdict, the Club asserted only that Saxon failed to present any evidence of actual damages. On appeal, Saxon merely reurges his counterclaim for breach of contract. He does not address the element of damages in his counterclaim or in his argument on appeal. Accordingly, Saxon has not met his burden of establishing that the directed verdict cannot be sustained on the ground set out in the motion for directed verdict. See *McKelvy v. Barber*, 381 S.W.2d 59, 62 (Tex. 1964); *McAx Sign Co. v. Royal Coach, Inc.*, 547 S.W.2d 368, 369-70 (Tex. Civ. App.–Dallas 1977, no writ). We overrule Saxon’s second issue.

ATTORNEY’S FEES

In his third issue, Saxon contends that the trial court erred in not awarding him attorney’s fees and costs. He argues that the Club violated the bylaws and this court should reverse and render judgment in his favor. As the prevailing party, the argument continues, he is entitled to an award of attorney’s fees.

Texas follows the “American Rule” prohibiting fee awards unless specifically provided by contract or statute. *MBM Fin. Corp. v. Woodlands Operating Co., L.P.*, 292 S.W.3d 660, 669 (Tex. 2009). Texas Civil Practice and Remedies Code Section 38.001(8) allows an award of attorney’s fees in a breach of contract case. TEX. CIV. PRAC. & REM. CODE ANN. § 38.001(8) (West 2015). However, attorney’s fees are recoverable under this section only to the prevailing party. *Green Int’l, Inc. v. Solis*, 951 S.W.2d 384, 390 (Tex. 1997). A prevailing party is one who is vindicated by the trial court’s judgment. *Robbins v. Capozzi*, 100 S.W.3d 18, 27 (Tex. App.–Tyler 2002, no pet.). Saxon is not the prevailing party in this case. Accordingly, we overrule Saxon’s third issue.

DISPOSITION

We *affirm* the trial court’s judgment.

BRIAN HOYLE
Justice

Opinion delivered May 4, 2016.

Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(PUBLISH)



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

MAY 4, 2016

NO. 12-14-00310-CV

BRANDON SAXON,
Appellant
V.
GROVE CLUB LAKE, INC.,
Appellee

Appeal from the County Court at Law
of Smith County, Texas (Tr.Ct.No. 61,853)

THIS CAUSE came to be heard on the oral arguments, appellate record, and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that all costs of this appeal are hereby adjudged against the Appellant, **BRANDON SAXON**, for which execution may issue, and that this decision be certified to the court below for observance.

Brian Hoyle, Justice.

Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.