2013 IL App (4th) 130163-U

NO. 4-13-0163

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 24, 2013
Carla Bender
4th District Appellate
Court, IL

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| FRANK VALA and TAIMAX OF ILLINOIS, INC., Plaintiffs-Appellees, v. PHILLIP MATON, Defendant-Appellant, and MARINE BANK; MARINE BANCORP, INC.; MARK RICHARDSON; COYN RICHARDSON; and WILLIAM VALA, Defendants. | ) | Appeal from Circuit Court of Sangamon County No. 10L218 Honorable Kenneth R. Deihl, Judge Presiding. |

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Steigmann and Justice Appleton concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not abuse its discretion in finding defendant Phillip Maton in willful contempt of the trial court's August 6, 2012, order.

¶ 2 In February 2013, the trial court found defendant Phillip Maton did not have just reasons to refuse to answer deposition questions posed to him and found him to be in willful contempt of the court's order of August 6, 2012. Maton appeals, arguing the court erred in finding him in contempt and sanctioning him because the questions the court ordered him to answer were not relevant to any issues in the case, were not reasonably calculated to lead to the discovery of admissible evidence, and instead "were designed to embarrass, harass and intimidate [Maton], particularly when the information sought was already obtained by Plaintiffs in depositions of other witnesses and in documents produced pursuant to a Protective Order." We

affirm.

¶ 3 I. BACKGROUND

¶ 4 On September 29, 2010, plaintiffs Frank Vala and Taimax of Illinois, Inc., filed a six-count complaint against defendants Marine Bank, Marine Bankcorp, Inc., Mark Richardson, Coyn Richardson, and Phillip Maton. The complaint alleged the following: common law fraud against all defendants (count I); violation of the Illinois Consumer Fraud and Deceptive Business Practices Act against all defendants (count II); breach of an assumed duty to disclose accurate information against all defendants (count III); breach of fiduciary duty against all defendants (count IV); equitable estoppel against Marine Bank (count V); rescission and restitution against defendant Marine Bank (count VI).

¶ 5 According to the plaintiffs' initial complaint, Frank Vala and George Embrey formed Taimax of Illinois, Inc. (Taimax), for the purpose of owning and operating the Route 66 Motel (motel) in Springfield, Illinois. (Plaintiffs filed a motion for leave to file an amended complaint in this case. The trial court took this under advisement and reserved ruling on the motion.) Embrey later sold his interest in the motel, Taimax, and related matters and assigned all of his rights, interests and claims with respect to the motel transaction to Frank Vala. The motel in question, formerly a Ramada Inn, was previously owned by the Shri-Ohm Corporation and related parties.

¶ 6 At some point prior to 2002, Marine Bank made a loan to the Shri-Ohm Corporation and related parties, secured by a mortgage on the real property located at 625 East St. Joseph Street in Springfield, Illinois. The Small Business Administration (SBA) had also loaned the Shri-Ohm Corporation money secured by a subordinate mortgage on the property.

¶ 7 In 2002, Marine Bank filed a foreclosure case against the Shri-Ohm Corporation, the SBA, and others with regard to its mortgage on the property. That same year, L. Blair Fein, a loan officer at Marine Bank, had conversations with Vala and Embrey about purchasing the motel with the bank loaning Vala and Embrey both the money to buy and operate the motel. Fein told Vala and Embrey the motel could be purchased for Marine Bank's costs, which he said totaled $1,250,000. Plaintiffs allege defendants Phillip Maton and Coyn Richardson made the same statements to Vala and Embrey with regard to buying the motel at Marine Bank's costs. At all times relevant to this case, Coyn Richardson was one of the principal owners of Marine Bank. Maton was the chief executive officer and chairman of the board of Marine Bank until approximately December 2005.

¶ 8 According to the complaint, during the summer of 2002, Maton and Coyn Richardson told plaintiffs the purchase of the motel was a "good deal" for plaintiffs and the motel was profitable when operated properly. Maton and Richardson said the previous owners mismanaged the motel, the motel had a fair market value in excess of $3 million, and the motel required only a modest amount of repairs and improvements to be operational.

¶ 9 During August and September 2002, Maton and Richardson persuaded plaintiffs to enter into a contract to purchase the motel for $1,750,000, falsely stating they had overlooked additional costs incurred by the bank. Around January 2003, Fein was told by either Howard Neuger or Dan Lanterman of the bank's legal department the extra $500,000 was used by the bank to pay off the SBA's second mortgage so the bank could get the motel loan off its books without waiting for the one-year period of redemption required by SBA loans. Plaintiffs stated they did not learn until September 2009 Fein was told the additional $500,000 of the purchase

price was allegedly used to pay the SBA's second mortgage on the motel. (Plaintiffs now contend, following discovery, the SBA actually wrote off its loan for $1,000, *i.e.*, $500,000 was never applied by the bank to the SBA loan.) Neither Vala nor Embrey had any experience in purchasing, valuing, or operating a motel or hotel and relied upon the representations of the defendants and their officers and agents the motel was worth substantially more than $1,250,000 and could be operated profitably.

¶ 10 The purchase was to be concluded once Marine Bank obtained the title to the motel. In September 2002, Vala and Embrey borrowed $501,000 from Marine Bank to cover the initial cost of operating the motel and began operating the motel and making the needed repairs and improvements.

¶ 11 In January 2003, Maton and Richardson allegedly persuaded plaintiffs to enter into a loan agreement in the amount of $2,250,000, which provided the funds to purchase the motel from Marine Bank for $1,750,000 and paid off Vala and Embrey's previous loan for the motel's operating expenses. Plaintiffs alleged, from January through March 2003, Maton and Richardson repeated their previous statements the motel was worth more than the purchase price and would generate sufficient profits to pay the loan, Marine Bank would continue the loan until profits from the motel paid the loan balance, and Richardson would make all decisions for Marine Bank regarding the loan for the motel.

¶ 12 In March 2003, Marine Bank obtained an appraisal from Ed Hofferkamp which valued the motel at $5 million. Plaintiffs alleged the true fair market value of the motel was less than $1 million at that time. According to the complaint, plaintiffs had operated the motel at a substantial loss and the costs of repairs and improvements required for profitable operation were

considerably higher than represented by Maton and Richardson prior to the sale. Maton and Richardson allegedly told plaintiffs the motel only needed minor or modest repairs to make it operational.

¶ 13 Plaintiffs alleged they would not have purchased the motel and would not have entered into the related loans with Marine Bank if they had known they were paying more than the bank's actual legitimate costs in closing out the previous loans on the motel.

¶ 14 Plaintiffs' complaint also included the following allegations:

> "20. On information and belief, Phillip Maton was either terminated, or resigned, from Ma[r]ine Bank because he had falsified documents presented to the Bank Examiners and had used funds from unrelated loans to pay amounts due the Bank on an unsecured loan he had issued to Randy McAffee and Darren Shipley who were subsequently convicted of Bank fraud. They had defrauded several banks. The Bank Examiners became suspicious because Marine Bank was reporting that its loan to Randy McAffee and Darren Shipley was current while all other Banks defrauded by the same scheme were showing losses. The Marine Bank records falsely indicated that the loan was paid up, because Phillip Maton had been transferring funds from other loans unrelated to Randy McAffee and Darren Shipley, to show, falsely, that payments had been made on the McAffee and Shipley loan. On information and belief, Coyn Richardson, and other officers of Marine Bank, knew

or should have known that Phillip Maton was falsifying Bank documents to mislead the Bank Examiners in this manner.

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22. On information and belief, Marine Bank paid Phillip Maton a bonus for making its loan portfolio look better than its true condition, to the Bank Examiners, by falsifying records and/or closing out bad loans and removing them from the Bank's bad loan file permanently.

23. On information and belief, Marine Bank and Coyn Richardson paid Phillip Maton a bonus for persuading Frank Vala and George Embrey to take over operations of the motel, and to enter into a contract to purchase the motel from Marine Bank, six months before the Bank acquired title to the motel. Marine Bank did not purchase the motel, at the public foreclosure sale, until March 2003, six months after it had contracted to sell the motel to the Plaintiffs. Coyn Richardson and Phillip Maton did not disclose to Plaintiffs, during 2002, or thereafter, that they were pressuring Plaintiffs to take over operation of the motel, before purchasing it, to make Marine Bank's loan portfolio look better to the Bank Examiners.

24. On information and belief, Marine Bank altered loan documents for loans issued to Glenn Garrison, Richard Tega, John

Pruitt, and William Hamlin by changing promissory notes and loan documents issued to 'GHPT' to 'GHTP' so the Bank Examiners would not discover the underperforming loan. After the bank examination, the loan documents were changed back to 'GHPT.' The initials, GHPT, represent the first letter in the last names of Garrison, Hamlin, Pruitt, and Tega. Defendants Coyn Richardson and Mark Richardson knew, or should have known, of this deceptive practice.

* * *

39. Defendants, and each of them, acting in concert, fraudulently and falsely represented to Plaintiffs that they were purchasing the motel for the Bank's costs, $1,750,000.00, while fraudulently concealing from the Plaintiffs that about $500,000.00 of that sum was transferred by Marine Bank to pay part of the SBA loan because of Phillip Maton's friendship with Douglas Kinley and Small Business Growth Corporation. This conduct of the Defendants was part of their established pattern of making false statements and falsifying documents to conceal the true condition of Marine Bank's loan portfolio to the Bank Examiners and to make Marine Bank's loan portfolio appear, to the Bank Examiners, to be more financially sound than it really was, as described in ¶¶ 20 and 22-25 set forth above."

¶ 15 On June 1, 2011, counsel for all the defendants, including Maton, filed a motion to strike ¶¶ 20, 22, 24, and the last sentence of ¶ 39 from plaintiffs' complaint, arguing those allegations were "about matters (and third-parties) that are completely irrelevant to the issues in this lawsuit" and "derogatory and scandalous." On September 20, 2011, the trial court denied defendants' motion to strike, stating plaintiffs had "raised sufficient information about the Defendants' conduct." However, the court also noted defendants could raise the issue again and have another hearing after the completion of discovery.

¶ 16 In February 2012, plaintiffs deposed Maton. At the deposition, Maton refused to answer any questions about the allegations contained in ¶¶ 20, 22, 24, and the last sentence of ¶ 39 of the complaint. This included questions about loans made to Randy McAffee and Darren Shipley and a loan to Glen Garrison, Richard Tega, John Pruitt, and William Hamlin. Maton also refused, on advice of counsel, to answer questions about the reason his employment as chief executive officer at Marine Bank ended, exhibit Nos. 10 and 19 (reports on transactions made with respect to the Shipley-McAffee loans), his salary upon leaving his position at Marine Bank, his meetings with bank examiners, and whether he sold Marine Bank stock after his employment at Marine Bank ended.

¶ 17 According to Maton's brief to this court:

> "Prior to this deposition being taken, all of the parties were in possession of two reports produced pursuant to an agreed Protective Order, referred to as 'Exhibit 10' [citation] and 'Exhibit 19' [citation]. Exhibit 10 is an investigation report conducted by independent auditors at Cummings, Ristau & Associates, P.C. and

dated February 1, 2006, outlining transactions made with respect to the Darrin Shipley and Randolph McAfee loans referenced in paragraph 20 of the Complaint. [Citations.] This report also includes some limited information about the end of Mr. Maton's employment with Marine Bank. [Citation.] Exhibit 19 is an earlier report on the same topic prepared by Bank Auditors, Inc. in December 2005."

¶ 18 On March 7, 2012, plaintiffs filed a motion to compel Maton to answer questions posed to him during his February 13, 2012, deposition. On March 9, 2012, Maton filed a response to plaintiffs' motion to compel and a motion to limit the scope of plaintiffs' deposition of him. According to the motion:

"Pursuant to Illinois Supreme Court Rule 206(e), it is apparent that questions asked of Mr. Maton regarding the subjects of the Motion to Compel were designed to unreasonably annoy, embarrass or oppress Mr. Maton and this Court should order that his examination be limited on those issues. He should not be compelled to answer those obviously inappropriate questions. This case relates to whether Plaintiffs were defrauded by Marine Bank and other Defendants with regard to a loan for a hotel in Springfield, Illinois in 2002[-]2003. The questions which are the subject of the Motion to Compel have nothing to do with that subject."

¶ 19 On March 9, 2012, plaintiffs requested leave to file an amended complaint.

¶ 20 On August 6, 2012, the trial court reserved ruling on plaintiffs' motion for leave to file an amended complaint, allowed Marine Bank's motion to compel discovery, allowed plaintiffs' motion to compel Maton to answer questions posed during his February 13, 2012, deposition, and reserved ruling on a motion for sanctions filed by some of the defendants.

¶ 21 On August 31, 2012, Maton appeared for another deposition. However, he again refused to answer the questions he previously objected to answering.

¶ 22 On November 5, 2012, plaintiffs filed a "motion for an order holding Maton in contempt of court and imposing sanctions for contempt and discovery violations." The trial court heard arguments on the motion on January 3, 2013. On February 1, 2013, the court made a docket entry, stating:

> "The Court finds that Defendant Phillip Maton did not have just reasons to refuse to answer the deposition questions on both occasions and finds him to be in willful contempt of this Court's orders. The Court also finds that the Defendant Phillip Maton is subject to sanctions for failing to comply with the discovery order of August 6, 2012. Pursuant to Illinois Supreme Court Rule 219[(c)]. Per Agreement of the counsel at the January 3, 2013[,] hearing, leave is given them to submit an agreed contempt order or, in the alternative, the issue will be heard at the status hearing to be held on February 7, 2013[,] at 2:00 pm in Carlinville, IL."

On February 8, 2013, the court signed an order submitted by Maton finding Maton subject to

sanctions for failing to comply with the August 6, 2012, discovery order and imposing a $50 fine.

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 The sole issue in this appeal is whether the trial court erred in holding Maton in contempt and sanctioning him for his failure to comply with its order to answer deposition questions posed to him by counsel. However, the underlying question is whether the court erred in ordering Maton to answer these questions. See *Western States Insurance Co. v. O'Hara*, 357 Ill. App. 3d 509, 514-15, 828 N.E.2d 842, 846 (2005). According to Maton, the questions the court ordered Maton to answer are "neither relevant nor calculated to lead to the discovery of admissible evidence, but rather are asked for the purpose of embarrassing, harassing and intimidating [Maton], particularly when the information sought by the questions has been obtained from other witnesses and other documents produced in the case pursuant to a Protective Order."

¶ 26 According to Maton, the issues in this case relate to Marine Bank's sale of the foreclosed motel during 2002 and 2003, but the deposition questions relate to different loans made by Marine Bank to different customers at different times for different properties. As a result, defendant argues these questions "bear no reasonable relationship to the questions which are the subject of this appeal. Defendant further contends the deposition questions with regard to the reasons and issues surrounding his resignation from the Bank are also "irrelevant and non-discoverable."

¶ 27 This court has jurisdiction over this appeal pursuant to Illinois Supreme Court Rule 304(b)(5) (Ill. S. Ct. R. 304(b)(5) (eff. Jan. 1, 2006)).

¶ 28 A trial court's rulings on issues involving discovery will generally not be disturbed unless the trial court abused its discretion. *Youle v. Ryan*, 349 Ill. App. 3d 377, 380, 811 N.E.2d 1281, 1283 (2004). Where reasonable minds could differ on the scope of discovery, appellate courts defer to the judgment of the trial court, which is given great latitude in determining the scope of discovery. *In re Estate of Blickenstaff*, 2012 IL App (4th) 120480, ¶ 51, 980 N.E.2d 1285. A court's ruling constitutes an abuse of discretion if it is clearly against logic or if no reasonable person would take the view adopted by the court. *In re Estate of Blickenstaff*, 2012 IL App (4th) 120480, ¶ 51, 980 N.E.2d 1285.

¶ 29 Illinois Supreme Court Rule 201 (eff. July 1, 2002) governs the scope of permissible pretrial discovery. Rule 201 states a party may obtain the following through the discovery process:

> "[A] party may obtain by discovery full disclosure regarding any matter relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking disclosure or of any other party, including the existence, description, nature, custody, condition, and location of any documents or tangible things, and the identity and location of persons having knowledge of relevant facts." Ill. S. Ct. Rule 201(b)(1) (eff. July 1, 2002).

¶ 30 Maton first argues the trial court did not have discretion to order him to answer the questions at issue because the questions are not relevant to this case. *Manns v. Briell*, 349 Ill. App. 3d 358, 361, 811 N. E.2d 349, 352 (2004). Maton next argues plaintiffs are only asking

these questions to embarrass, harass, and intimidate Maton because the information requested has already been disclosed to plaintiffs in another manner. We find the court did not abuse its discretion in ordering Maton to answer the questions at issue in this case.

¶ 31 Maton argues pretrial discovery is permitted for two types of information: that which is admissible at trial and that which leads to what is admissible at trial. *Monier v. Chamberlain*, 35 Ill. 2d 351, 357, 221 N.E.2d 410, 415 (1966). Citing *Manns v. Briell*, 349 Ill. App. 3d 358, 361, 811 N. E.2d 349, 352 (2004), Maton argues a trial court does not have discretion to order discovery of information that does not meet the threshold requirement of relevance to matters actually at issue in the case.

¶ 32 Plaintiffs argue this information is relevant because defendants defrauded them by intentionally making false representations while intentionally concealing material facts. According to plaintiffs, the questions at issue are relevant to show the intent of both Maton and Marine Bank in its dealings with plaintiffs. A plaintiff can use circumstantial evidence to establish a defendant's intent to defraud a plaintiff. *White v. DaimlerChrysler Corp.*, 368 Ill. App. 3d 278, 286, 856 N.E.2d 542, 549 (2006).

¶ 33 As for defendant's argument the questions at issue were not relevant, we note:

> "The concept of relevance in discovery is broader than relevancy for admission of evidence at trial. Discovery presupposes a range of relevance and material which includes not only what is admissible at trial, but also that which leads to material admissible at trial. [Citation.] Relevancy is determined by reference to the issues, for generally, something is relevant if it tends to prove or

disprove something in issue." *Bauter v. Reding*, 68 Ill. App. 3d 171, 175, 385 N.E.2d 886, 890 (1979).

Under this broad definition of relevance for discovery purposes, plaintiffs' questions for Maton were relevant.

¶ 34 Our supreme court has stated:

"[I]n order to establish a claim for common law fraud in Illinois, a plaintiff must allege and prove: (1) a false statement of material fact; (2) the party making the statement knew or believed it to be untrue; (3) the party to whom the statement was made had a right to rely on the statement; (4) the party to whom the statement was made did rely on the statement; (5) the statement was made for the purpose of inducing the other party to act; and (6) the reliance by the person to whom the statement was made led to that person's injury." *Siegel v. Levy Organization Development Co., Inc.*, 153 Ill. 2d 534, 542-43, 607 N.E.2d 194, 198 (1992).

According to plaintiffs' theory of the case:

"Marine Bank's pattern of deceptive practices in dealing with the Bank Examiners, the SBA and the Plaintiffs is interrelated, originated from the Bank's attempts to cover up the numerous bad loans issued as part of its aggressive policy of increasing its loan portfolio and is relevant to the Defendants' intent to deceive the Plaintiffs. The Defendant intentionally

> concealed the delinquent status of the Central Illinois Real Estate/McAfee/Shipley loan, the GHPT loan and the Shri-Ohm loan from the Bank Examiners; intentionally deceived the SBA about the Bank's costs in the Shri Ohm loan, inducing the SBA to settle its second mortgage claim for $1,000.00 through false representation and intentionally deceived the Plaintiffs about the Bank's costs in the Shri-Ohm loan as part of the misrepresentations and concealments that induced the Plaintiffs to buy the Motel while the Shri-Ohm loan was foreclosed, while also intentionally concealing the delinquent status of the Shri-Ohm loan from the Bank Examiners. The Bank's in-house auditing firm, Banc Auditors, Inc.[,] concluded that Phillip Maton used a fictitious loan that was paid down with fee income earned by the Bank from other accounts and that the evidence appeared to substantiate an elaborate and complex scheme to hide and pay down a fictitious loan that once originated from a bad unsecured loan, in violation of generally accepted accounting principles, by violating the FDIC rules and regulations, by violating the Bank's loan policies and by violating the Bank's ethics policies."

In other words, defendants allegedly were engaging in a pattern of behavior to hide bad loans Marine Bank had made from bank examiners and recoup its losses on these bad loans, including the motel, in other ways. It appears plaintiffs are attempting to collect information from Maton

concerning any connection between defendants' actions with regard to the motel and these other loans and to show Maton had engaged in other similar conduct in this same period to benefit defendants.

¶ 35 Maton also argues plaintiffs were only asking these questions to embarrass, harass, and intimidate him. We disagree. While the questions might have that effect, the record does not reflect plaintiffs are asking the questions for those reasons. As stated above, it appears plaintiffs are attempting to collect information from Maton to (1) establish a possible connection between defendants' actions with regard to the motel and these other bad loans and (2) strengthen its allegations Maton intentionally deceived plaintiffs with regard to the value of the motel and Marine Bank's "costs" associated with the motel. The fact other witnesses have testified on this topic and plaintiffs are in possession of two reports discussing the loans does not prevent plaintiffs from questioning a named defendant about these matters to gather more information.

¶ 36 In their brief to this court, plaintiffs argue Maton has waived his right to assert the privilege against self-incrimination in the trial court because he did not invoke the privilege at the earliest opportunity. Maton has filed a motion to strike this portion of plaintiffs' brief. After plaintiffs responded to Maton's motion to strike, Maton asked for leave to file a reply to plaintiffs' response to Maton's motion to strike. We deny both of Maton's motions. However, we make no ruling on Maton's ability to invoke his privilege against self-incrimination because Maton has not attempted to invoke this right. As a result, this question is premature at this time.

¶ 37 III. CONCLUSION

¶ 38 For the reasons stated, we affirm the trial court's contempt ruling.

¶ 39 Affirmed.