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FIFTH DIVISION
November 4, 2016

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GROWING LEAN FOODS, INC., an Illinois Corporation,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 08 M2 2639
)	
RIKA ENTERPRISES, INC., an Illinois Corporation,)	
KIMBERLY GARZA, and RICHARD GARZA,)	The Honorable
)	Jeffrey L. Warnick
)	Roger G. Fein,
Defendants-Appellees.)	Judges Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Gordon and Justice Reyes concurred in the judgment.

ORDER

¶1 *HELD:* Plaintiff failed to present a sufficient factual basis for its claims for breach of contract and one of its fraud claims in order to survive a motion for summary judgment. Plaintiff additionally failed to provide this court with a transcript or acceptable substitute to allow us to review its challenge to the trial court's order directing a finding in favor of defendants on plaintiff's remaining fraud claim.

¶2 This case appears before us for a second time. We dismissed the first appeal for lack of jurisdiction where one of the claims remained outstanding and the order being appealed from did not contain the requisite language granting this court jurisdiction under those circumstances pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). *Growing Lean Foods, Inc. v. RIKA Enterprises, Inc.*, No. 1-13-0808. On remand, the trial court dismissed the final outstanding claim with prejudice.

¶3 The underlying claims in this case arise from a dispute between plaintiff, Growing Lean Foods, Inc. (Growing Lean Foods), and defendants, RIKA Enterprises, Inc. (RIKA), Kimberly Garza, and Richard Garza, related to the parties' agreement for plaintiff's purchase of defendants' cafe and bakery known as Kim's Kitchen. Plaintiff appeals the trial court's order granting summary judgment on four of plaintiff's five breach of contract claims and one of plaintiff's fraud claims and also appeals the trial court's order granting a directed finding¹ on one of its fraud claims. Plaintiff contends there were genuine issues of material fact, which precluded summary judgment of its breach of contract and fraud claims. Plaintiff further contends the trial court erred both procedurally and substantively in entering a directed finding on the remaining fraud claim. Based on the following, we affirm.

¶4 **FACTS**

¶5 We repeat those facts provided in the initial appeal.

¶6 In 2001, Kimberly Garza opened Kim's Kitchen in Evanston, Illinois. Kim's Kitchen was a cafe and bakery and also operated as a catering business. The majority of the cafe's walk-in customers were Northwestern University students, professors, and administrators. According to

¹ Although the trial court directed the verdict in favor of defendant in a bench trial, a directed verdict can only occur in a jury trial. The proper nomenclature for a bench trial is a directed finding and we will treat the court's order for a directed verdict as a directed finding.

her affidavit, Kimberly continuously experimented with the cafe and catering menus. However, as of 2004, the menus became more stable and, by 2006, the menus were “vastly finalized.”

¶7 In 2008, Benson Friedman, co-owner and legal counsel for Growing Lean Foods,² and Kimberly conducted a number of meetings to negotiate the sale of Kim’s Kitchen to Growing Lean Foods. Kimberly and her husband, Richard Garza, formed RIKA, and transferred ownership of the assets of Kim’s Kitchen to the new entity. During the summer of 2008, Friedman visited Kim’s Kitchen on four occasions to discuss the terms of the purchase and to accompany various inspectors to the premises. Friedman and his wife also met with a number of Kim’s Kitchen employees.

¶8 On August 26, 2008, the parties entered into an asset purchase agreement. According to section 2.01 of the asset purchase agreement, the parties contracted to transfer from defendants to plaintiff “[t]hose certain leasehold improvements, equipment, fixtures and furnishings located in Seller’s business (the ‘Fixed Assets’) which are identified in the Bill of Sale which will be delivered at the Closing ***. The leasehold improvements, equipment, fixtures and furnishings being transferred are in good operating condition subject only to ordinary wear and tear unless otherwise stated in this Agreement. ***. [A]ll records and information pertaining to Seller’s customers, menus, and sales and promotional materials.” In addition, defendants agreed to transfer to plaintiff the rights to use the Kim’s Kitchen name, email, and website for one year from the effective date of the agreement, as well as granted the “nonexclusive and perpetual use of the Cafe Recipes and Catering Recipes.” Finally, defendants agreed to transfer to plaintiff “[t]he inventory located in Seller’s Business at Closing.” Plaintiff chose not to purchase the rights to Kimberly’s catering contracts. The agreed purchase price was \$83,832.00.

² Growing Lean Foods was co-owned by Benson’s wife, Susan Friedman.

¶9 Section 7.01 of the asset purchase agreement provided, in relevant part, that, “[f]rom the date hereof until the closing,” defendants promised to “carry on the Business diligently and in the usual, regular, and ordinary manner” and to “use its best efforts to carry on the Business in a manner consistent with its prior practice and in the ordinary course and will use its best efforts to preserve the relationship of its suppliers, customers, and others having a business relationship with it.” Moreover, section 11.05 of the asset purchase agreement included an integration clause. Section 11.05, entitled “Entire Agreement” provided that this agreement “constitute[s] the entire agreement and understanding between the parties relating to the subject matter hereof and thereof and supersedes all prior representations, communications and arrangements, whether oral, written or inferred, between the parties relating to the subject matter hereof. This Agreement may not be modified or amended, except upon a written instrument executed by a duly authorized representative of each of the parties hereto.”

¶10 The closing for the purchase of Kim’s Kitchen also took place on August 26, 2008, the same date that the asset purchase agreement was executed. According to Kimberly’s affidavit, negotiations for the agreement continued until “very shortly before the scheduled closing;” therefore, the asset purchase agreement was not executed until the closing date. In her affidavit, Kimberly further attested that, at the closing, defendants provided plaintiff with all of the items listed on the asset purchase agreement’s asset list, including various pieces of equipment, the cafe menu and the catering menu, the recipes for all items appearing on the menu as well as some additional recipes, and non-current menus in physical or electronic form. Plaintiff gained access to the website within three weeks of the closing.

¶11 On July 28, 2010, plaintiff was granted leave to file its four-count third amended verified complaint.³ In count I, plaintiff alleged defendants breached the parties' asset purchase agreement by: (a) failing to provide plaintiff with all catering and cafe recipes; (b) failing to honor its warranty that all cafe equipment was in good operating condition; (c) failing to carry on the business in a customary manner and to use its best efforts to maintain customer relationships; (d) failing to transfer all inventory to plaintiff; and (e) not providing plaintiff with all information relating to the entire collection of Kim's Kitchen menus and promotional materials. In count II, plaintiff alleged defendants fraudulently induced plaintiff to accept a purchase price based on Kimberly's false representations and faulty financial reports. In count III, plaintiff alleged defendants fraudulently omitted equipment or inventory from the inventory list. Finally, in count IV, plaintiff alleged defendants made a series of transfers totaling thousands of dollars from RIKA's assets to Kimberly and Richard's personal checking account in violation of the Uniform Fraudulent Transfer Act. On June 28, 2011, defendants filed a motion for summary judgment.

¶12 On October 12, 2011, in a written order, the trial court granted summary judgment in part and denied summary judgment in part. More specifically, the trial court granted summary judgment in favor of defendants on plaintiff's breach of contract claim for failing to provide plaintiff all catering and cafe recipes (count I(a)); failing to carry on the business in a customary manner and to use its best efforts to maintain customer relationships (count I(b)); failing to transfer all inventory to plaintiff (count I(d)); and not providing plaintiff with all information relating to the entire collection of Kim's Kitchen menus and promotional materials (count I (e)), and on plaintiff's fraud claim that related to the omission of equipment or inventory from the inventory list (count III). The trial court, however, denied summary judgment in favor of plaintiff on its breach of contract claim as to defendants' warranty that all café equipment was in good

³ Plaintiff's initial complaint was filed on October 20, 2008.

operating condition (count I(c)), on its fraud claim alleging defendants fraudulently induced plaintiff to accept a purchase price based on Kimberly's false representations and faulty financial reports (count II), and on plaintiff's Uniform Fraudulent Transfer Act claim (count IV).

¶13 The case proceeded to a bench trial on the remaining counts. The record does not contain a transcript or acceptable substitute from the trial (Ill. S. Ct. R. 323, eff. Dec. 13, 2005). We, therefore, do not know what evidence was presented or what events took place. According to plaintiff, however, those witnesses appearing on both parties' witness lists were questioned by both parties during plaintiff's case-in-chief pursuant to the parties' pre-trial agreement. After the close of plaintiff's case, defendants filed a motion for a directed finding. According to the trial court's February 14, 2013, written order, the motion for directed finding was granted as to the fraud claim (count II), but judgment was entered in favor of plaintiff in the amount of \$1,262.59 for the "replacement of a faulty freezer" (count I(c)). As stated, the February 14, 2013, order did not contain a finding regarding plaintiff's Uniform Fraudulent Transfer Act claim (count IV), only stating that the order was "final and appealable." As a result, we dismissed plaintiff's initial appeal for lack of jurisdiction. On remand, the trial court entered an order on April 2, 2015, dismissing the Uniform Fraudulent Transfer Act claim. This appeal followed.

¶14

ANALYSIS

¶15

I. Summary Judgment

¶16 Plaintiff first contends the trial court erred when it granted summary judgment on all but one of its breach of contract claims and on one of its fraud claims where genuine issues of material fact existed precluding the entry of summary judgment.

¶17 We initially note that plaintiff failed to provide this court with the relevant summary judgment law and failed to provide this court with the applicable standard of review in violation of Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008).

¶18 Summary judgment is proper if, after considering the pleadings, depositions, admissions, exhibits, and affidavits on file in favor of the nonmoving party, there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2008). Summary judgment aids in the expeditious disposition of a lawsuit, but it is a drastic measure that should be allowed only when the right of the moving party is clear and free from doubt. *Rucker v. Rucker*, 2014 IL App (1st) 132834, ¶ 49 (citing *Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986)). Although the nonmoving party need not prove his or her case at this stage of proceedings, he or she must present some factual basis that would support the claim. *Id.* If a plaintiff fails to establish any element of his claim, summary judgment is appropriate. *Morris v. Margulis*, 197 Ill. 2d 28, 35 (2001). We review a trial court's decision to grant summary judgment *de novo*. *Rucker*, 2014 IL App (1st) 132834, ¶ 49.

¶19 Plaintiff contends the trial court erred in granting summary judgment on four of his breach of contract claims. Plaintiff maintains it demonstrated there were genuine issues of material fact showing that defendants breached the parties' agreement by: (1) failing to provide plaintiff with all of the cafe and catering recipes; (2) failing to carry on the business in a customary manner and to use their best efforts to maintain customer relationships; (3) failing to transfer all inventory to plaintiff; and (4) failing to provide plaintiff with all information relating to the entire collection of business' menus and promotional materials. Defendants respond that summary judgment was proper because plaintiff was unable to provide credible evidence in support of each element of its breach of contract claims.

¶20 In order to present a claim for breach of contract, a plaintiff must allege: (1) the existence of a valid and enforceable contract; (2) that it performed all of the required contractual conditions; (3) that the defendant breached the terms of the contract; and (4) that damages resulted from the defendant's breach. *Lindy Lu LLC v. Illinois Central Rail Co.*, 2013 IL App (3d) 120337, ¶ 21.

¶21 Plaintiff contends it presented evidence creating genuine issues of material fact as to whether defendants breached their obligation to provide all of the Kim's Kitchen recipes from menus published since 2004, once a stable menu had been established, as opposed to only the recipes from the menu current at the time of the purchase. Plaintiff maintains that the business was "worthless" without the recipes, which included seasonal, holiday, and unique dietary menu items. Moreover, for the first time on appeal, plaintiff argues that the parties' asset purchase agreement granted plaintiff a license to all of the café and catering recipes and ownership to "certain recipes." Defendants respond that plaintiff failed to establish the parties contracted for more recipes than those that plaintiff received at the closing and further failed to establish any resulting damages from the alleged breach.

¶22 We conclude that summary judgment was proper where plaintiff failed to establish resulting damages, even assuming, *arguendo*, that the parties' agreement entitled plaintiff to receive more recipes than provided by defendants. In its third amended complaint, plaintiff alleged it was damaged in the form of lost sales and additional expenses associated with generating new recipes. In his affidavit, Benson Friedman stated that, after the closing, plaintiff discovered:

"the recipe book Kim Garza had provided at the closing was incomplete.

Several recipes lacked critical directions, such as preparatory steps and cooking

times. Former Kim's Kitchen employees who continued with GL Foods also noticed that various staple cafe offerings and customer favorites did not appear in the recipe book. Longtime Kim's Kitchen customers asked about other baked goods and savory items that they had recently purchased at the cafe but which were missing from the recipe book. Kim Garza also failed to provide recipes for several soups listed as weekly offerings on the Kim's Kitchen website.

[] For example, Kim Garza had a monthly special diets baking menu (*e.g.* gluten free) she promoted on the cafe website. We had none of those recipes and were completely incapable of replicating those sales, despite multiple customer requests for special diet bakery goods. Kim Garza has also annually produced special menus for Thanksgiving, which yielded thousands of dollars in revenues. We had none of those recipes, either, and could not satisfy multiple requests from customers for the Thanksgiving foods they had purchased from Kim's Kitchen in previous years.

[] When GL Foods obtained a copy of the most recent Kim's Kitchen cafe menu from Kim Garza's graphic designer, the menu confirmed that GL foods lacked recipes for advertised baked goods and catering items.

[] Then, when I began examining hidden areas of the Kim's Kitchen website, I found a series of other café and catering menus that RIKA had failed to provide GL Foods. ***. Included were the annual Thanksgiving and holiday menus and menus for gluten-free baked goods, as well as a variety of other catering and café menus. Reviewing these menus, I found over 100 additional menu items for which Kim Garza failed to provide recipes.”

At his deposition, Benson said customers requested items for which no recipes had been provided and employees noticed that many recipes that had been in use at the cafe and for catering were missing, “especially those for holidays, and that holiday offerings provided thousands of dollars in sales each year.” When asked for names or contact information regarding customers “frustrated” by plaintiff’s inability to continue offering Kim’s Kitchen menu items, Benson spoke of one customer requesting Thanksgiving items and one other customer. Plaintiff maintained that the company lost sales because those customers could not purchase the requested items. Benson explained at his deposition that one of his employees spent “several hours of working on [a whoopie pie] recipe to re-create it.” Plaintiff, however, failed to provide substantiated proof of damages that resulted from the lack of recipes.

¶23 “The basic theory of damages in a breach of contract action requires that a plaintiff ‘establish an actual loss or measurable damages resulting from the breach in order to recover.’ ” *In re Illinois Bell Telephone Link-Up II*, 2013 IL App (1st) 113349, ¶ 19 (quoting *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 149 (2005)). “A plaintiff must prove damages to a reasonable degree of certainty, and evidence cannot be remote, speculative, or uncertain.” *Dowd & Dowd, Ltd. v. Gleason*, 352 Ill. 3d 365, 383 (2004). “Damages are an essential element of a breach of contract action and a claimant’s failure to prove damages entitles the defendant to judgment as a matter of law.” *In re Illinois Bell Telephone Link-Up II*, 2013 IL App (1st) 113349, ¶ 19.

¶24 Here, plaintiff’s evidence was self-serving and unsupported by credible sources, such as employee or customer affidavits. Benson provided the only evidence describing presumptive sales losses, even composing a comparative analysis of sales prior to its purchase of Kim’s Kitchen and after; however, there was no evidence actually demonstrating lost sales as a result of

the missing recipes. Overall, the self-serving testimony provided by Benson failed to provide the requisite reasonable degree of certainty necessary to establish resulting damages for a breach of contract claim to survive a motion for summary judgment. *Morris*, 197 Ill. 2d at 35. The motion, therefore, properly was granted as to this claim.

¶25 Plaintiff next contends it presented evidence creating genuine issues of material fact as to whether defendants breached their obligation to carry on the business in a customary manner and to use their best efforts to maintain customer relations in accordance with section 7.01 of the asset purchase agreement. Plaintiff alleged the parties entered an oral agreement on July 30, 2008, to operate the cafe in a customary fashion pending the closing, thereby requiring defendants to satisfy their obligations from July 30, 2008, until August 26, 2008, the date of the closing. Plaintiff argues it presented evidence demonstrating defendants failed to maintain correspondence with customers and did not maintain consistent business hours in August 2008, resulting in lost sales. Plaintiff recognizes that the trial court granted summary judgment on this breach of contract claim based upon the integration clause in the parties' asset purchase agreement, which expressly stated that "[p]rior oral representations or inferences are expressly superseded and replaced by the written contract." Plaintiff, however, argues that, pursuant to section 2-201 of the Uniform Commercial Code (UCC) (810 ILCS 5/2-201 (West 2008)), section 7.01 of the asset purchase agreement, which obligated defendants to operate the café in a customary fashion "from the date hereof until the closing," evidenced the parties' prior oral agreement and, therefore, its obligations began on July 30, 2008. Plaintiff maintains that the trial court's interpretation of the integration clause improperly rendered meaningless section 7.01 where the agreement was signed on the same date as the closing.

¶26 We conclude that summary judgment was proper on plaintiff's claim that defendants breached their obligation to operate the cafe in a customary fashion so as to protect the business' goodwill pending the closing where the integration clause contained within the parties' asset purchase agreement expressly disavowed any prior oral agreements such as the July 30, 2008, agreement alleged by plaintiff. Our conclusion is based on the familiar principles of contract interpretation, which requires us to ascertain and give effect to the intent of the parties by relying on the language of the written contract itself. *W.W. Vincent & Co. v. First Colony Life Insurance Co.*, 351 Ill. App. 3d 752, 757 (2004). "The parol evidence rule generally precludes evidence of understandings not reflected in the contract, reached before or at the time of its execution, which would vary or modify its terms." *Id.* at 757-58.

¶27 In section 11.05 of the asset purchase agreement, the parties included a clause entitled "Entire Agreement," which stated "[t]his agreement and the Exhibits and Schedules attached hereto, constitute the entire agreement and understanding between the parties relating to the subject matter hereof and thereof and supersedes all prior representations, communications and arrangements, whether oral, written or inferred, between the parties relating to the subject matter hereof." The supreme court has advised that when parties to a contract include an integration clause, such as the one at issue here, "they are explicitly manifesting their intention to protect themselves against misrepresentations which might arise from extrinsic evidence." *Air Safety, Inc. v. Teachers Realty Corp.*, 195 Ill. 2d 457, 464 (1999). Moreover, parol evidence of prior negotiations will not be considered to create an "extrinsic ambiguity" where the parties have included an integration clause in their contract. *W.W. Vincent & Co.*, 351 Ill. App. 3d at 758 (citing *Air Safety, Inc.*, 195 Ill. 2d at 464-65). Plaintiff agreed to include the integration clause in the parties' asset purchase agreement, thereby manifesting its intent to protect itself from

extrinsic evidence not expressly included in the written agreement. Section 7.01 stated that defendants were obligated to carry on the business in a customary manner and to use their best efforts to maintain customer relations “[f]rom the date hereof until the Closing.” The date of the agreement, *i.e.* “the date hereof,” was August 26, 2008, as was the date of the closing.

Accordingly, due to the circumstances of the agreement being executed on the same date as the closing, the requirements of section 7.01, by their nature, began and ended on August 26, 2008.

¶28 Even assuming, *arguendo*, section 2-201 of the UCC had application in this case, which defendants dispute, the statute provides that “[b]etween merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies [the statute of frauds] unless written notice of objection to its contents is given within 10 days after it is received.” 810 ILCS 5/2-201(2) (West 2008). As a result, the writing here, namely, the asset purchase agreement, would be the writing to confirm the alleged July 30, 2008, contract between the parties. In its third amended complaint, plaintiff stated the parties agreed to the purchase price of the business on July 30, 2008, and Kimberly’s attorney began drafting the written agreement. The complaint further stated that “[p]ending execution of the written agreement, the parties agreed that Kimberly Garza would continue to operate Kim’s Kitchen in a customary fashion in order to maintain the café’s goodwill.” The language of section 7.01, however, did not include July 30, 2008, as the beginning date for its stated obligations. In fact, the asset purchase agreement made no reference to the alleged July 30, 2008, oral agreement. Plaintiff, therefore, made no effort to include the alleged July 30, 2008, oral agreement within the asset purchase agreement. Instead, section 7.01 of the mutually agreed upon asset purchase agreement provided an unspecified reference to the “date hereof” in relation to the imposition of the obligations known as “actions

pending closing.” As stated, the “date hereof” was August 26, 2008. By definition, plaintiff’s allegation that defendants did not comply with section 7.01 prior to August 26, 2008, must fail.

¶29 Contrary to plaintiff’s argument, the language of the asset purchase agreement was not ambiguous and, therefore, extrinsic evidence is unnecessary to ascertain the parties’ intent. The language of the contract is not susceptible to more than one meaning. *Gallagher v. Lenart*, 226 Ill. 2d 208, 233 (2007). Once again, the challenged language stated “[f]rom the date hereof” and the effective date of the contract was clearly stated as August 26, 2008. There was no ambiguity. Moreover, we disagree with plaintiff’s argument that our conclusion, and that of the trial court, finding the integration clause barred the enforcement of the alleged prior July 30, 2008, oral agreement, improperly rendered section 7.01 meaningless. Although the asset purchase agreement was signed on the same date as the closing, defendants were bound to those obligations described in section 7.01 for the time between the execution of the agreement and the actual closing of the agreement, however minimal.

¶30 Plaintiff also contends it presented evidence creating genuine issues of material fact as to whether defendants failed to transfer all inventory to plaintiff in violation of the asset purchase agreement. In particular, plaintiff alleged in its third amended complaint that Kimberly took “various liquors that had been at the store for baking purposes.” Plaintiff argues the trial court erred in granting summary judgment on the basis that the disputed items were not included in the list of assets attached to the bill of sale where section 2.01 of the asset purchase agreement expressly stated that defendants agreed to transfer to plaintiff “[t]he inventory located in Seller’s Business at Closing.”

¶31 We conclude that, even assuming, *arguendo*, plaintiff could establish that defendants did, in fact, breach the asset purchase agreement by removing inventory from the business, summary

judgment was proper where plaintiff failed to present any evidence to demonstrate resulting damages. Plaintiff did not present sufficient evidence demonstrating damages from the loss of inventory. In his deposition, plaintiff guessed that Kim removed “some brandy—there were a couple of [liquors]” that he estimated were valued at less than \$100. As stated, plaintiff was required to “prove damages to a reasonable degree of certainty, and evidence cannot be remote, speculative, or uncertain.” *Dowd & Dowd, Ltd.*, 352 Ill. 3d at 383. Plaintiff’s testimony was speculative, at best. We, therefore, find plaintiff could not establish his breach of contract claim. See *In re Illinois Bell Telephone Link-Up II*, 2013 IL App (1st) 113349, ¶ 19 (“[d]amages are an essential element of a breach of contract action and a claimant’s failure to prove damages entitles the defendant to judgment as a matter of law”).

¶32 In its final breach of contract contention, plaintiff argues it presented evidence creating genuine issues of material fact regarding whether defendants breached the asset purchase agreement by failing to provide plaintiff with all information relating to the entire collection of Kim’s Kitchen menus and promotional materials.

¶33 We again conclude that summary judgment was proper where plaintiff failed to establish any resulting damages from the missing menus. In his deposition, Benson admitted that, although Kimberly only provided one menu at the time of the closing, he gained access to all of the menus within three weeks of the closing. Plaintiff failed to present any evidence, other than Benson’s self-serving testimony, that the business suffered losses because of the missing menus. Benson’s speculation that plaintiff lost customers was not substantiated. Plaintiff was required to “prove damages to a reasonable degree of certainty, and evidence cannot be remote, speculative, or uncertain.” *Dowd & Dowd, Ltd.*, 352 Ill. 3d at 383. Where plaintiff could not satisfy its burden, the breach of contract claim must fail. See *In re Illinois Bell Telephone Link-Up II*, 2013 IL App

(1st) 113349, ¶ 19 (“[d]amages are an essential element of a breach of contract action and a claimant’s failure to prove damages entitles the defendant to judgment as a matter of law”).

¶34 Finally, plaintiff contends the trial court erred in granting summary judgment on its fraud claim where defendants orally provided an inventory list of items prior to the parties’ closing, but some of the items that were “within the universe of assets” were omitted from the asset list of the asset purchase agreement. Plaintiff’s fraud claim alleged that Kimberly agreed to sell the omitted items during their conversation on July 30, 2008.

¶35 In order to present a claim for fraud, a plaintiff must provide facts demonstrating: (1) the existence of a false statement of material fact; (2) by one who knows or believes the statement to be false; (3) made with the intent to induce action by another in reliance on the statement; (4) action by the other in reliance on the truthfulness of the statement; and (5) an injury to the other due to the reliance. *Benson v. Stafford*, 407 Ill. App. 3d 902, 921 (2010). As part of the fraud claim, a plaintiff must show its reliance on the misrepresentation was justified. *Id.* “In determining whether reliance was justifiable, all of the facts which the plaintiff knew, as well as those facts the plaintiff could have learned through the exercise of ordinary prudence, are taken into account.” *Adler v. William Blair & Co.*, 271 Ill. App. 3d 117, 125 (1995). The question of whether a plaintiff’s reliance was reasonable generally is a question of fact; however, where only one conclusion can be drawn from the undisputed facts, the question becomes one for the court. *Doe v. Dilling*, 371 Ill. App. 3d 151, 174 (2006). Moreover, “[a] promise to perform an act in the future made by one who intends not to perform is not actionable fraud, unless the false promise of future performance is part of a scheme or device to defraud another of her property.” *Chatham Surgicore, Ltd. v. Health Care Service Corp.*, 356 Ill. App. 3d 795, 805 (2005).

¶36 We conclude that the trial court properly granted summary judgment on plaintiff's fraud claim related to the alleged omitted inventory. Plaintiff concedes that it received all of the items on the asset list of the asset purchase agreement. As stated, section 11.05 of the asset purchase agreement was an integration clause that expressly limited the parties to representations contained within that document. *Air Safety, Inc. v. Teachers Realty Corp.*, 195 Ill. 2d 457, 464 (1999) (an integration clause explicitly manifests contracting parties' intention to protect themselves against misrepresentations which might arise from extrinsic evidence). Section 2.01 of the asset purchase agreement contained an asset list detailing the inventory, equipment, and assets that were subject to the agreement. Plaintiff proceeded with the closing on August 26, 2008, without questioning the inclusion of all of the alleged promised items on the asset list and without attempting to include the existence of the alleged July 30, 2008, conversation into the parties' agreement. We, therefore, must find plaintiff failed to support its fraud claim where there is no evidence of a false statement of material fact.

¶37

II. Directed Finding

¶38 Plaintiff additionally contends the trial court erred in granting defendants' motion for a directed finding on procedural grounds where the motion was entered improperly after defense witnesses had testified and on substantive grounds because it "was against the manifest weight of the evidence."

¶39 The relevant law provides that "[a] directed [finding] or a judgment *n.o.v.* is properly entered in those limited cases where 'all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors movant that no contrary verdict based on that evidence could ever stand.'" *Maple v. Gustafson*, 151 Ill. 2d 445, 453 (1992) (quoting *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510 (1967)). "The court has no right to

enter a judgment *n.o.v.* if there is any evidence, together with reasonable inferences to be drawn therefrom, demonstrating a substantial factual dispute, or where the assessment of credibility of the witnesses or the determination regarding conflicting evidence is decisive to the outcome.”⁴ *Maple*, 151 Ill. 2d at 454. We review an order granting a motion for a directed finding *de novo*. *Rucker*, 2014 IL App (1st) 132834, ¶ 38.

¶40 Again, to establish a claim for fraud, a plaintiff must prove: (1) a false statement or omission of a material fact; (2) knowledge or belief of the falsity by the party making the statement; (3) intention by that party to induce the other party to act; (4) action by the other party in reliance on the truth of the statement; and (5) resulting damages. *Lindy Lu LLC*, 2013 IL App (3d) 120337, ¶ 26. “[F]raud does not exist where the parties have equal knowledge or the means to obtain equal knowledge. [Citation.] A person may not enter a transaction with his eyes closed to available information and then charge that he has been deceived by another.” *Id.*

¶41 As stated, the record does not contain a transcript or acceptable substitute from the trial. As a result, we have no means by which to determine what evidence was considered by the trial court. We, therefore, cannot perform any review to determine whether the trial court’s decision to grant defendants’ motion for a directed finding was proper. Such a review would require this court to consider all of the evidence and reasonable inferences in the light most favorable to plaintiff to determine whether there was a total failure or lack of evidence to prove the elements of its fraud claim. Moreover, without a sufficient record, we are unable to address plaintiff’s argument that the trial court improperly considered defendants’ motion for a directed finding after defense witnesses had testified in violation of section 2-1110 of the Code of Civil

⁴ Motions for directed verdicts and motions for judgments *n.o.v.* raise the same questions and are governed by the same rules of law. *Maple*, 151 Ill. 2d at 453, n.1.

Procedure (735 ILCS 5/2-1110 (West 2010)). See *Century National Insurance Co. v. Tracy*, 316 Ill. App. 3d 639, 645-46 (2000).

¶42 It is well established that an appellant has the burden of presenting a sufficiently complete record of the trial proceedings to support a claim of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984). In absence of a complete record, this court will presume that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Id.* at 392. We resolve any doubts which may arise from the incompleteness of the record against the appellant. *Id.*

¶43 Without a record of what occurred at trial, we have no basis upon which to determine whether the trial court's directed finding procedurally violated section 2-1110 of the Code of Civil Procedure or substantively was in error. Instead, we must presume the trial court's directed finding of plaintiff's fraud claim alleging defendants fraudulently misrepresented the financial condition of Kim's Kitchen in order to induce the sale of the business was in conformity with the law and had a sufficient factual basis. We, therefore, find the trial court did not err in directing a finding in favor of defendant on plaintiff's remaining fraud claim.

¶44 III. Dismissal of Uniform Fraudulent Transfer Act Claim

¶45 Because we have concluded that the trial court did not err in granting summary judgment in favor of defendants on plaintiff's breach of contracts claims, we need not address whether doing so improperly rendered moot plaintiff's claim under the Uniform Fraudulent Transfer Act.

¶46 CONCLUSION

¶47 We affirm the judgment of the trial court granting summary judgment on four of plaintiff's breach of contract claims and one of its fraud claims where plaintiff failed to sufficiently establish the requisite elements of its claims. We must further affirm the judgment

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of the trial court directing the finding in favor of defendants on plaintiff's remaining fraud claim where we have no basis upon which to conduct our review without a transcript of the trial.

¶48 Affirmed.