

No. 1-17-0554

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CRAIG CHESNEY and OAK PARK MADISON,)	Appeal from the Circuit Court of
LLC,)	Cook County, Municipal Division.
)	
Plaintiffs-Appellees/Cross-Appellant,)	
)	
v.)	No. 2012 M1 170295
)	
AMY L. RENZULLI,)	Honorable Jessica O'Brien
)	Judge Presiding.
Defendant-Appellant/Cross-Appellee.)	

JUSTICE GRIFFIN delivered the judgment of the court.
Presiding Justice Mikva and Justice Walker concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court’s judgment was not against the manifest weight of the evidence.

¶ 2 Individual plaintiff Craig Chesney is the sole member of plaintiff Oak Park Madison, LLC (Oak Park Madison), an Illinois limited liability company that held title to a vacant lot in Oak Park, Illinois. Defendant Amy Renzulli is a principal of Four Good, Inc., an Illinois corporation that was granted the right to own and operate a “School of Rock” franchise in Oak Park, Illinois (School of Rock). The parties were introduced by a member of the Oak Park

Development Corporation and thereafter combined and coordinated their efforts to design, fund and construct a building on plaintiff's property that would house the School of Rock.

¶ 3 After six months of concerted effort, defendant decided to open the School of Rock at a different, pre-existing building. Plaintiff sued defendant in the circuit court of Cook County seeking damages for expenses incurred in reliance on defendant's alleged promises and false statements of material fact. Plaintiff's complaint contained three causes of action: (1) promissory estoppel; (2) fraudulent misrepresentation; and (3) unjust enrichment. The third cause of action was added after Oak Park Madison was granted leave to join the lawsuit. Unable to settle the case, the parties proceeded to trial.

¶ 4 Following a two-day bench trial, the trial court found that defendant promised to open the School of Rock on defendant's property and fraudulently misrepresented her efforts to obtain a letter of credit for plaintiff's benefit. The trial court entered judgment in favor of plaintiff on counts I and II. The trial court awarded plaintiff \$28,771.17 in damages as to count I and granted plaintiff leave to file a petition for attorney fees as to count II. The trial court denied plaintiff Oak Park Madison's claim for unjust enrichment and entered judgment in favor of defendant on count III.

¶ 5 Defendant filed a motion to reconsider judgment, which the trial court granted in part and denied in part. The trial court denied defendant's request to reconsider its decision that plaintiff proved his promissory estoppel claim. However, the trial court reconsidered its decision that plaintiff proved his fraudulent misrepresentation claim and entered judgment in favor of defendant. The trial court denied plaintiff's request for leave to conform the pleadings to the proof. Defendant appeals and plaintiff cross-appeals the trial court's judgment. We affirm.

¶ 6

BACKGROUND

¶ 7 Plaintiff and defendant were introduced in an email sent by a member of the Oak Park Development Corporation: “Amy is pursuing a School of Rock Facility for Oak Park that might fit well on your Madison Site.” Following their introduction, the parties met in person to discuss the possibility of constructing a building on plaintiff’s property that would house the School of Rock. The meeting was successful. In moving the project forward, plaintiff and defendant coordinated their efforts and contracted with an architect to perform services necessary to achieve their objective.

¶ 8 Over the course of the parties’ dealings, plaintiff entered into four contracts with the architect to: (1) perform a “feasibility study” of the property in order to determine the specific type of building that would suit the parties’ needs, reduce costs and comply with applicable laws; (2) develop computer-aided design (CAD) drawings of the proposed building to present to defendant; (3) consult about obtaining tax increment financing (TIF) from the Village of Oak Park; and (4) draft architectural plans for the development of a 3,000 square foot commercial building to house the School of Rock. Plaintiff also retained and received advice from a law firm in connection with the building design and funding process.

¶ 9 Defendant separately contracted with the same architect to design the interior of the building and to prepare two letters of intent, which included provisions related to defendant’s guaranty of the lease with an irrevocable letter of credit and the potential use of TIF funds for the parties’ mutual benefit. Defendant additionally contracted with the architect to help secure TIF funding from the Village of Oak Park and negotiate the terms of the parties’ proposed lease agreement.

¶ 10 Further moving the transaction along, the parties hired attorneys, negotiated the terms of a written lease agreement and discussed defendant's steps toward obtaining a letter of credit, which would: (1) mitigate plaintiff's costs in the event the School of Rock was not built on plaintiff's property; and (2) guarantee the lease agreement. Plaintiff stressed the importance of a letter of credit to defendant in an email: "I would like to stress that it is important that we get the lease [wrapped] up and the [letter of credit] in place so that I can forward the lease to my lender. Construction cannot start until this plan is in place." Defendant never obtained a letter of credit.

¶ 11 After six months of concerted effort, defendant chose to open the School of Rock in another building. Though the parties had exchanged letters of intent, negotiated a lease agreement and worked together to open the School of Rock, they never executed an agreement in writing. Plaintiff filed a lawsuit against defendant in the circuit court of Cook County.

¶ 12 Plaintiff's complaint pleaded two causes of action: promissory estoppel (count I) and fraudulent misrepresentation (count II). Plaintiff sought damages for architectural (\$18,024.92) and legal (\$10,746.25) expenses incurred in reliance on defendant's alleged promises and misrepresentations. Defendant filed a motion to dismiss (735 ILCS 5/2-619 (West 2016)) for lack of standing, which the trial court denied. Defendant then filed a combined motion to dismiss (735 ILCS 5/2-619.1 (West 2016)) arguing that plaintiff: (1) failed to plead sufficient facts to support defendant's purported promise to lease; and (2) failed to plead fraudulent misrepresentation with specificity and particularity. The trial court denied defendant's motion to dismiss count I and granted it as to count II with leave to amend.

¶ 13 Plaintiff filed an amended complaint and defendant filed another motion to dismiss count II, which was denied. Defendant then answered the amended complaint in its entirety. The trial court struck all of defendant's affirmative defenses and granted the parties leave to initiate

discovery. At the close of discovery, the parties filed cross-motions for summary judgment, which were denied. Plaintiff filed a motion for leave to join Oak Park Madison as a plaintiff and to add an additional claim for unjust enrichment (count III) that was specific to Oak Park Madison. The trial court granted plaintiff's motion and defendant answered count III.

¶ 14 The parties proceeded to a bench trial without a court reporter. At the close of the two day trial, the trial court ordered the parties to file posttrial briefs in lieu of closing arguments. Plaintiff's posttrial brief included a request to amend his pleadings. He argued that the amendment was necessary to conform his pleadings to the proof that defendant misrepresented her efforts to secure a letter of credit. Defendant asked the trial court to deny the request.

¶ 15 In a written order, the trial court found that plaintiff proved his promissory estoppel and fraudulent misrepresentation claims. The trial court entered judgment in favor of plaintiff on counts I and II. The trial court awarded plaintiff \$28,771.17 in damages as to count I and granted plaintiff leave to file a petition for attorney fees as to count II. The trial court denied Oak Park Madison's claim for unjust enrichment and entered judgment in favor of defendant on count III.

¶ 16 Defendant filed a motion to reconsider judgment pursuant to section 2-1203 of the Illinois Code of Civil Procedure, which allows a party to ask a court to modify or vacate judgment within 30 days of its entry. 735 ILCS 5/2-1203 (West 2014). Defendant argued that the trial court erred when it: (1) found that plaintiff proved the elements of promissory estoppel; and (2) improperly rested its judgment upon facts not pleaded in plaintiff's claim for fraudulent misrepresentation. Plaintiff opposed the motion and again, argued that he should be permitted to amend the pleadings to conform them to the proof.

¶ 17 The trial court granted in part and denied in part defendant's motion to reconsider judgment. The trial court reconsidered its decision to enter judgment in favor of plaintiff on his

fraudulent misrepresentation claim and declined to reconsider its judgment that plaintiff proved his promissory estoppel claim. The trial court denied defendant's request for leave to conform his pleadings to the proof. The parties appealed and cross-appealed the trial court's respective adverse judgments.

¶ 18

I. Appeal

¶ 19 The issues on appeal are: (1) whether the trial court's judgment entered in favor of plaintiff on his promissory estoppel claim was against the manifest weight of the evidence; and (2) whether the trial court erred when it included legal expenses in its award of reliance damages in favor of plaintiff.

¶ 20 Defendant argues that plaintiff failed to prove each of the elements of promissory estoppel by a preponderance of the evidence. Whether plaintiff proved the elements of promissory estoppel is question of fact. *Centro Medico Panamericano, Ltd. v. Benefits Management Group Inc.*, 2016 IL App (1st) 151081, ¶ 25 (“[t]he existence of the elements of promissory estoppel presents questions of fact for the trial court's determination”). Accordingly, we will not reverse the trial court's judgment unless it was against the manifest weight of the evidence. *Id.*

¶ 21 Promissory estoppel is an affirmative cause of action that allows a party to enforce a promise that is not supported by consideration. *Newton Tractor Sales, Inc. v. Kubota Tractor Corp.*, 233 Ill. 2d 46, 59 (2009); *Matthews v. Chicago Transit Authority*, 2016 IL 117638, ¶ 91. To succeed on a claim of promissory estoppel, a plaintiff must prove that: (1) defendant made an unambiguous promise to plaintiff; (2) plaintiff relied on such promise; (3) plaintiff's reliance was expected and foreseeable by defendant; and (4) plaintiff relied on the promise to its detriment. *Newton Tractor Sales, Inc. v. Kubota Tractor Corporation*, 233 Ill. 2d 46, 51 (2009). The

promise must be unambiguous, but may be inferred from conduct and words. *First National Bank of Cicero v. Sylvester*, 196 Ill. App. 3d 902, 912 (1990). A claim of promissory estoppel may also be based upon a promise of future action. *Derby Meadows Util. Co. v. Inter-Continental Real Estate*, 202 Ill. App. 3d 345, 361 (1990).

¶ 22 Plaintiff argues that we are unable to make the determination whether the trial court's judgment was against the manifest weight of the evidence because defendant failed to include the trial transcript or bystander's report and the trial exhibits in the record on appeal. We agree.

¶ 23 Defendant's failure to provide us with the trial transcript and exhibits is fatal to her argument. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005) (issues related to a trial court's factual findings obviously cannot be reviewed absent a report or record of the proceeding). The appellant bears the burden of providing us with a record that is adequate for a determination of the issues presented on appeal. *Compton v. Country Mutual Insurance Company*, 382 Ill. App. 3d 323, 330 (2008) (appellant bears the burden of presenting a record that is adequate for a determination of the issues). Without the trial exhibits or transcript, we simply cannot determine whether the opposite conclusion should have been drawn from the evidence or whether the trial court's factual findings were unreasonable, arbitrary or not based upon the evidence. *Best*, 223 Ill. 2d at 350 (a trial court's finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented).

¶ 24 In absence of a complete record on appeal, we resolve all doubts against the appellant and presume that the trial court's judgment was entered in conformity with law and had a sufficient factual basis. *Urban Sites of Chicago, LLC v. Crown Castle USA*, 2012 IL App (1st) 111880, ¶ 21 citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984) (in the absence of a

complete record on appeal doubts are resolved against the appellant and its is presumed that the trial court's judgment had a sufficient factual basis and was entered in conformity with law). Accordingly, the trial court's judgment that plaintiff proved his promissory estoppel claim was not against the manifest weight of the evidence.

¶ 25 Defendant's additionally argues that plaintiff (1) was "not an 'innocent party' as contemplated under the doctrine of promissory estoppel" and (2) "has \$18,024.92 worth of 'vanilla box' drawings for a feasible building on his vacant land," and "he can move forward with a new tenant at any time." These arguments challenge the trial court's factual findings that plaintiff justifiably relied on plaintiff's promise to open the School of Rock on his property and suffered \$28,771.17 in damages as a result. *Schrager v. North Community Bank*, 328 Ill. App. 3d 696, 709 (2002) (justifiable reliance is a question of fact); *1472 N. Milwaukee, Ltd. v. Feinerman*, 2013 IL App (1st) 121191, ¶ 13 ("[w]here an award of damages is made after a bench trial, the standard of review is whether the trial court's judgment is against the manifest weight of the evidence"). Again, without the benefit of the evidence presented at trial we must presume that the trial court's findings had sufficient factual bases and its judgment was made in conformity with the law. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005); *Foutch*, 99 Ill. 2d at 391-92.

¶ 26 Defendant argues that the trial court erred when it recharacterized and denied her motion for leave to file a "Sur-Reply to its Motion to Reconsider" as an improper second postjudgment motion. Defendant also revives the argument contained in her surreply on appeal: plaintiff's promissory estoppel claim violated the Frauds Act (740 ILCS 80/1 *et seq.*) (West 2014) because "it involved an interest in real estate that could not be performed in less than a year" and an "oral promise to pay the obligation of another."

¶ 27 Even if we were to find that the trial court erred when it denied defendant's motion for leave to file a surreply, we could not consider defendant's argument. *Evanston Insurance Company v. Riseborough*, 2014 IL 114271, ¶ 36 (arguments raised for the first time in a motion for reconsideration in the trial court are forfeited on appeal). Defendant's argument is forfeited. We also note that defendant failed to plead a violation of the Frauds Act (740 ILCS 80/1 *et seq.*) (West 2014) as an affirmative defense in the trial court. *Goldwater v. Greenberg*, 2017 IL App (1st) 163003, ¶ 10 (the statute of frauds is an affirmative defense); *Enterprise Recovery Systems, Inc. v. Salmeron*, 401 Ill. App. 3d 65, 76, 927 N.E.2d 852, 861 (2010) (affirmative defenses must be set forth in the answer or reply to a complaint to prevent unfair surprise).

¶ 28 Defendant's final argument is that the trial court erred when it included legal expenses in its award of reliance damages in favor of plaintiff. Illinois follows the "American rule," which prohibits a party prevailing in litigation from recovering attorney fees from the losing party absent an express statutory or contractual provision. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 64. However, a trial court may award attorney fees as a form of damages if an obligation was incurred as a result of the defendant's wrongdoing and the amount of the obligation was reasonable. See *Duignan v. Lincoln Towers Insurance Agency, Inc.*, 282 Ill. App. 3d 262, 270 (1996) citing *Omni Overseas Freighting Co. v. Cardell Insurance Agency*, 78 Ill. App. 3d 639, 645 (1979) ("to recover attorneys' fees as damages it is necessary to (1) show that an obligation was incurred as a result of the defendant's wrongdoing; and (2) that the amount of the obligation is reasonable").

¶ 29 The "American rule" has no application here. The trial court awarded plaintiff \$11,021.25 in legal expenses that were "directly related to the ["School of Rock"] project (e.g., lease and TIF application)" and incurred prior to the parties' litigation. Defendant fails to

challenge the award as unreasonable. Accordingly, the trial court did not err when it included legal expenses in its award of reliance damages in favor of plaintiff. *Newton*, 233 Ill. 2d at 59 (all that is required to achieve justice once a plaintiff has proved the elements of promissory estoppel is to put the plaintiff in the position he would have been in had he not acted in reliance upon the defendant's promise").

¶ 30

II. Cross-Appeal

¶ 31 The issue on cross-appeal is whether the trial court's judgment entered in favor of defendant on plaintiff's fraudulent misrepresentation claim was against the manifest weight of the evidence.

¶ 32 Following a two-day bench trial, the trial court entered judgment in favor of plaintiff on his fraudulent misrepresentation claim and expressed its reasons for doing so in a written order. Defendant timely filed a motion to reconsider the trial court's judgment and raised two arguments: (1) plaintiff failed to prove the elements of fraudulent misrepresentation by clear and convincing evidence; and (2) plaintiff failed "to plead any allegation regarding a [letter of credit]" with specificity and particularity. The trial court reconsidered its decision and entered judgment in defendant's favor.

¶ 33 Plaintiff argues that the trial court's judgment was the product of flawed legal reasoning and therefore, constituted an abuse of discretion. See *Myrick v. Union Pacific Railroad Company*, 2017 IL App (1st) 161023, ¶ 21 (it is always an abuse of discretion to base a decision on an incorrect view of the law). However, even if the trial court's reasoning was flawed, we will not reverse the trial court's judgment unless it was incorrect. *City of Chicago v. Holland*, 206 Ill. 2d 480, 492 (2003) citing *Board of Managers of Dominion Plaza One Condominium Ass'n No. 1-A v. Chase Manhattan Bank, N.A.*, 116 Ill. App. 3d 690, 694 (1983) (the findings upon which

the trial court's order is based are not material if its judgment is correct). Thus, our resolution of plaintiff's argument issue turns on whether the trial court's judgment was against the manifest weight of the evidence. *Hassan v. Yusuf*, 408 Ill. App. 3d 327, 343 (2011) (“[a] reviewing court will not disturb a trial court's findings on a count of fraud unless they are against the manifest weight of the evidence”).

¶ 34 To prevail on a claim of fraudulent misrepresentation, a plaintiff must establish the following elements: (1) a false statement of material fact; (2) known or believed to be false by the person making it; (3) an intent to induce the plaintiff to act; (4) action by the plaintiff in justifiable reliance on the truth of the statement; and (5) damage to the plaintiff resulting from such reliance. *Doe v. Dilling*, 228 Ill. 2d 324, 342-43 (2008). These elements must be proven by clear and convincing evidence. *Johnson v. Waterfront Services Co.*, 391 Ill. App. 3d 985, 993 (2009) (“a plaintiff must prove the elements of fraudulent misrepresentation by clear and convincing evidence”).

¶ 35 Plaintiff, as cross-appellant, bears the burden of presenting a complete record on appeal. *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001) (“in order to support a claim of error on appeal the appellant has the burden to present a sufficiently complete record”). Plaintiff has not provided us with the information necessary to determine whether the trial court's judgment was against the manifest weight of the evidence. *Best*, 223 Ill. 2d at 350. (a trial court's finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented).

¶ 36 Without the trial transcript or the exhibits introduced into evidence at trial, we are unable to determine whether the trial court's judgment was against the manifest weight of the evidence and must presume that the trial court's judgment had a sufficient factual basis and was made in

conformity with the law. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005); *Foutch*, 99 Ill. 2d at 391–92. Accordingly, the trial court’s judgment was not against the manifest weight of the evidence. Because we affirm the trial court’s judgment, we need not address plaintiff’s remaining argument that the trial court erred when it denied his requests to conform his pleadings to the proof.

¶ 37

CONCLUSION

¶ 38 Accordingly, we affirm.

¶ 39 Affirmed.