FOURTH DIVISION
March 7, 2019

No. 1-18-1797

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| DANIEL O'DONNELL, and YVETTE O'DONNELL, | ) | Appeal from |
| | ) | the Circuit Court |
| Plaintiffs-Appellees, | ) | of Cook County |
| | ) | |
| v. | ) | 2018-M6-003688 |
| | ) | |
| SOVEREIGNTY LLP, ARTIE HILL, and TAMIKA HILL, | ) | Honorable |
| | ) | Thomas J. Condon, |
| Defendants-Appellants, | ) | Judge Presiding |

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Gordon and Burke concurred in the judgment.

ORDER

*Held*: In breach of contract action, appellant waived two arguments he failed to present prior to trial court's entry of judgment and waived an argument that was not supported by the record tendered for appellate review.

¶ 1 Yvettte and Daniel O'Donnell filed a breach of contract action in the *pro se* small claims section of Cook County's Sixth Municipal District in Markham, Illinois. The O'Donnells alleged they were owed $1500 and court costs for a loan they had given the previous year to Mrs. O'Donnell's brother and his wife, Artie and Tamika Hill, and the Hills' company, Sovereignty, LLC. At the conclusion of a bench trial, the judge found the evidence indicated there had been a personal loan between a brother and sister, entered a judgment of $1968 against Mr. Hill only, and indicated no judgment would be entered against Mrs. Hill and Sovereignty

LLC, because the loan arrangement did not involve them. On a *pro se* basis, Mr. Hill initiated this appeal and filed an opening brief which at various points argues on behalf of the "defendants." Mr. Hill, however, is not a licensed attorney and cannot represent the legal interests of any other individual or corporate entity. See *Pratt-Holdampf v. Trinity Medical Center*, 338 Ill. App. 3d 1079, 1083, 789 N.E.2d 882, 886 (2003) (it is well established that only licensed attorneys are permitted to represent other persons); *Downtown Disposal Services, Inc. v. City of Chicago*, 2012 IL 112040, ¶ 17, 979 N.E.2d 50 (a corporate entity cannot litigate *pro se* and must be represented by a licensed attorney). More importantly, because the trial court did not enter a judgment against Mrs. Hill or Sovereignty, LLC, those two were not adversely affected by the trial court's ruling and cannot appeal the judgment that is pending against Mr. Hill. See *Strategic Energy, LLC v. Illinois Commerce Comm'n*, 369 Ill. App. 3d 238, 245, 860 N.E.2d 361, 367 (2006) (a party cannot complain of an error that does not prejudicially affect the party, and one who has obtained by judgment all that has been asked for cannot appeal from the judgment). "The appellate forum is not afforded to successful parties who may not agree with the reasons, conclusions, or findings below." *Strategic Energy*, 369 Ill. App. 3d at 245. Accordingly, we disregard the erroneous references to the interests of the "defendants" and we dismiss Mrs. Hill and Sovereignty LLC from this appeal. The only defendant, judgment-debtor, and appellant before this court is Mr. Hill. On the other side of the appeal is Mr. Hill's sister, Mrs. O'Donnell, who has responded with a *pro se* brief. Because Mrs. O'Donnell is not licensed to represent the legal interests of other persons, her husband, Mr. O'Donnell, cannot be considered a party to this appeal. See *Pratt-Holdampf*, 338 Ill. App. 3d at 1083, 789 N.E.2d at 886.

¶ 2 With those procedural details out of the way, we will now summarize what occurred in the trial court and then address the appellate arguments.

¶ 3 The record tendered for our review does not include a transcript of the bench trial conducted in mid 2018. Nor is there a bystander's report recounting the proceedings or an agreed statement of facts. The parties, however, provide short summaries in their appellate briefs and describe the proceedings as follows.

¶ 4 Mrs. O'Donnell testified about reaching a verbal agreement with her brother and his wife regarding a loan. The record does not indicate when this conversation occurred, but does indicate that Mrs. O'Donnell expected to be repaid in September 2017, when Mr. and Mrs. Hill anticipated receiving some checks from the State of Illinois. Mrs. O'Donnell did not require a written loan contract because she trusted her brother and sister-in-law and wanted to help them. Mrs. O'Donnell withdrew $5000 from the bank, and lent $3500 to her friend Regina Fisher and $1500 to her brother and sister-in-law. Mrs. O'Donnell tendered proof of her $5000 withdrawal to the trial court. Mrs. O'Donnell further testified that in September 2017, when she talked with her brother about repayment, her brother responded that they did not have the funds yet but he intended to repay the loan. Mrs. O'Donnell also testified that she and her brother had a falling out after their mother died on February, 6, 2018, and that he subsequently denied the existence of the loan. Mrs. O'Donnell texted her brother on March 1, 2, and 9, 2018, to ask about repayment, but her brother did not respond. Mrs. O'Donnell then texted her sister-in-law, who responded by text that Mr. Hill intended to repay the loan, and the women also talked on the phone about the loan's repayment. Mrs. O'Donnell received a text from her brother on March 23, 2018, stating that if Mrs. O'Donnell did not stop calling him and his wife, he would pursue harassment charges. Mrs. O'Donnell offered the trial court printouts of the texts as well as her phone records corroborating the dates and times of the phone conversations.

¶ 5 Regina Fischer testified that she witnessed Mrs. O'Donnell withdraw $5000 from the

bank and that Mrs. O'Donnell had said that she was going to give $1500 of this sum to her brother and sister-in-law as a loan so they could buy a van for their medical transportation business.

¶ 6 Diana Green testified that she had telephone conversations with her friend Mrs. O'Donnell regarding the $1500 loan to the Hills. (Mr. Hill does not mention Ms. Green in his opening appellate brief, but he did not file a reply brief and has thus not disputed Mrs. O'Donnell's contention that Ms. Green was an additional witness.) Ms. Green testified that she clearly remembers the conversations because she was also interested in buying a van and getting into the medical transportation business.

¶ 7 Mr. Hill then testified and admitted to discussing a loan arrangement with his sister and her husband. Mr. Hill testified there was no actual loan, however, because he could not reach an agreement with the van's owner and had subsequently obtained a different van without the financial assistance of his sister and brother-in-law. Mr. Hill was not, however, cross-examined and thus not asked to confirm or deny Mrs. O'Donnell's testimony and exhibits indicating she contacted her brother and sister-in-law in 2017 and 2018 about repaying the loan.

¶ 8 Mrs. Hill corroborated her husband's testimony. Mrs. Hill was not, however, asked to confirm or deny Mrs. O'Donnell's testimony and exhibits indicating the women texted and conversed by phone about the timing of the loan's repayment.

¶ 9 The trial judge determined that the plaintiffs' case was credible and that the Hills were not credible, and then entered judgment against Mr. Hill only, consisting of the $1500 loan and costs.

¶ 10 In a motion to reconsider the judgment entered against him, Mr. Hill made two arguments: (1) the complaint was "faulty on its face" because it did not include a statement of

the date, time, and place of the parties' oral agreement; and (2) a claim of an alleged loan "to the business of the defendants" was subject to the Credit Agreements Act, 815 ILCS 160/1 *et seq.* (West 2016), which, according to Mr. Hill, "requir[ed] all agreements to lend money in a commercial setting to be in writing."

¶ 11 There is no indication in the record or the parties' appellate briefs that either of these reconsideration arguments were presented to the trial judge before the judgment was entered. The purpose of a motion to reconsider, however, is to bring to the trial court's attention three things: (1) an error in the court's previous application of the law, (2) a change in the law, or (3) newly discovered evidence that was not available at the time of the first hearing. *Kaiser v. MEPC American Properties, Inc.*, 164 Ill. App. 3d 978, 987, 518 N.E.2d 424, 429-30 (1987); *Gardner v. Navistar International Transportation Corp.*, 213 Ill. App. 3d 242, 248, 571 N.E.2d 1107, 1111 (1991). In other words, a motion to reconsider is not a means to present new defense theories or evidence that could have been marshalled before the judgment, unless there is a reasonable explanation for why the issues were not raised at the previous opportunity. *Kopley Group V., L.P. v. Sheridan Edgewater Properties, Ltd.*, 376 Ill. App. 3d 1006, 1022, 876 N.E.2d 218, 232 (2007) (where new issues are raised for the first time in a motion to reconsider, and a reasonable explanation is given for why the additional issues were not raised at the original hearing, the trial court has the discretion to address them). The contentions raised in Mr. Hill's motion to reconsider were improper because Mr. Hill was not asking the trial court to reconsider any matter but, rather, asking the trial court to consider two arguments that Mr. Hill had not previously made.

¶ 12 However, in an attached affidavit, Mr. Hill contended, as he had at trial, that there had been no acceptance of funds or a loan agreement. Nevertheless, in the affidavit he consistently

misspelled his relatives' last name, "O'Donnell," as "O'Connell."

¶ 13 After the trial court denied Mr. Hill's motion to reconsider the judgment, he filed this appeal. Briefly, Mr. Hill is contending that the supposed verbal loan agreement is not enforceable and that his sister and the witnesses that testified on her behalf were not credible. Mrs. O'Donnell responds that her brother is now attempting to overturn the trial court's decision on the basis of arguments he did not present before the judgment was entered.

¶ 14 To prevail on a breach of contract claim, the plaintiff must plead and prove the existence of a contract, performance by the plaintiff, breach of the contract by the defendant, and the resultant damages or injury to the plaintiff. *Kopley Group*, 376 Ill. App. 3d at 1014. The existence of an oral contract, its terms, and the intent of the parties are questions of fact which the trial court may determine from the manifest weight of the evidence. *Anderson v. Kohler*, 397 Ill. App. 3d 773, 785, 922 N.E.2d 8, 18 (2009).

¶ 15 Oral contracts are enforceable. An oral agreement is binding where there is an offer, an acceptance, and a meeting of the minds as to the terms of the agreement. *K4 Enterprises, Inc. v. Grater, Inc.*, 394 Ill. App. 3d 307, 313, 914 N.E.2d 617, 624 (2009). For a contract to be enforceable, the material terms of the contract must be definite and certain. *K4 Enterprises*, 394 Ill. App. 3d at 313. " '[A] contract "is sufficiently definite and certain to be enforceable if the court is enabled from the terms and provisions thereof, under proper rules of construction and applicable principles of equity, to ascertain what the parties have agreed to do.' " *Midland Hotel Corp. v. Reuben H. Donnelley Corp.*, 118 Ill. 2d 306, 314, 515 N.E.2d 61, 65 (1987) (*quoting Morey v. Hoffman*, 12 Ill. 2d 125, 131, 145 N.E.2d 644, 647-48 (1957)). " 'It suffices that the conduct of the contracting parties indicates an agreement to the terms of the alleged contract.' " *Midland Hotel Corp.*, 118 Ill. 2d at 313-14 (*quoting Steinberg v. Chicago Medical School*, 69 Ill.

2d 320, 331, 371 N.E.2d 634, 640 (1977).) "Otherwise, a party would be free to avoid his contractual liabilities by simply denying that which his course of conduct indicates." *Midland Hotel Corp.*, 118 Ill. 2d at 314.

¶ 16 Mr. Hill now proposes three grounds for vacating the judgment. Mr. Hill (1) reiterates his reconsideration argument that the Credit Agreements Act, 815 ILCS 160/1 (West 2016), mandates that an agreement to lend money "in a commercial setting" be reduced to writing; (2) contends, apparently for the first time in this litigation, that the Statute of Frauds indicates that "contracts for [the] sale of goods over $500 must be in writing;" and (3) contends, as he apparently did at the trial, that the evidence of a contract and its breach was not credible.

¶ 17 We find that Mr. Hill waived the first two arguments by failing to present them prior to the trial court's entry of judgment. As we noted above, the argument that a written contract was required by the Credit Agreements Act appeared for the first time in Mr. Hill's motion for reconsideration. Appellate review is limited to the record that existed when the trial court entered judgment. *Campos v. Campos*, 342 Ill. App. 3d 1053, 1066, 796 N.E.2d 1101, 1112 (2003) (declining to consider new evidence attached to a motion to reconsider entry of summary judgment). Accordingly, Mr. Hill's argument about the Credit Agreements Act was untimely and was waived.

¶ 18 Even if it had not been waived, we would reject the argument on the merits, because Mr. Hill has failed to demonstrate that the Credit Agreements Act is applicable in this context. 815 ILCS 160/1 (West 2016). The statute defines "Creditor" as "a person engaged in the business of lending money or extending credit." 815 ILCS 160/1 (West 2016). Thus far, the statute has been applied in eleven reported cases, all of which involved professional lenders. See *Van Pelt Construction Co., Inc. v. BMO Harris Bank, N.A.*, 2014 IL App (1st) 121661, 8 N.E.3d 554;

*Schafer v. UnionBank/Central*, 2012 IL App (3d) 110008, 973 N.E.2d 449; *International Supply Co. v. Campbell*, 391 Ill. App. 3d 439, 907 N.E.2d 478 (2009) (regarding an agreement to repay a bank's construction loan); *R & B Kapital Development, LLC v. North Shore Community Bank & Trust Co.*, 358 Ill. App. 3d 912, 832 N.E.2d 246 (2005); *Bank One, Springfield v. Roscetti*, 309 Ill. App. 3d 1048, 723 N.E.2d 755 (1999); *Haney v. Illinois Development Finance Authority*, 53 Ill. Ct. Cl. 171 (1998), 1998 WL 34303190; *Teachers Insurance & Annuity Ass'n of America v. LaSalle National Bank*, 295 Ill. App. 3d 61, 691 N.E.2d 881 (1998); *Nordstrom v. Wauconda National Bank*, 282 Ill. App. 3d 142, 668 N.E.2d 586 (1996); *Klem v. First National Bank of Chicago*, 275 Ill. App. 3d 64, 655 N.E.2d 1211 (1995); *McAloon v. Northwest Bancorp, Inc.*, 274 Ill. App. 3d 758, 654 N.E.2d 1091 (1995); *First National Bank in Staunton v. McBride Chevrolet, Inc.*, 267 Ill. App. 3d 367, 642 N.E.2d 138 (1994). There is no indication that Mr. and Mrs. O'Donnell were "engaged in the business of lending money or extending credit" and were therefore "Creditors" within the meaning of the statute who needed to reduce the loan agreement to writing in order to enforce it in a court of law. 815 ILCS 160/1 (West 2016). Rather, the record indicates Mr. and Mrs. O'Donnell were private individuals who made one loan to a member of their family. The Credit Agreements Act has no bearing on the parties' loan agreement and we reject its application on these facts.

¶ 19 Mr. Hill's Statute of Frauds argument is also untimely, but for a different reason: the Statute of Frauds argument was presented for the first time in Mr. Hill's opening appellate brief. Issues not raised in the trial court are deemed waived and a defendant is generally not permitted to raise new theories of defense for the first time on appeal. *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536, 662 N.E.2d 1248, 1253 (1996) (citing *Daniels v. Anderson*, 162 Ill. 2d 47, 58-59, 642 N.E.2d 128, 133 (1994) (there are numerous cases which indicate "that the theory upon

which a case is tried in the lower court cannot be changed on review, and that an issue not presented to or considered by the trial court cannot be raised for the first time on review").

> "Allowing the defendant to change his theory of defense on appeal would 'not only weaken the adversarial process and our system of appellate jurisdiction' (*Daniels*, 162 Ill.2d at 59, 642 N.E.2d 128), but would likely prejudice the plaintiff, since he may have been able to present evidence to discredit the theory had it been raised in the evidence presentation stage, that is to say, in the trial court.' *Daniels*, 162 Ill. 2d at 59, 642 N.E.2d 128." *Haudrich*, 169 Ill. 2d at 36.

¶ 20 Thus, we need not address this untimely defense.

¶ 21 Waiver aside, a Statute of Frauds defense would have no bearing on this dispute. The Statute of Frauds is a legal doctrine designed to prevent false claims by requiring a writing in certain instances to evidence the parties' contractual intent. *Anderson v. Kohler*, 397 Ill. App. 3d 773, 922 N.E.2d 8 (2009). "In Illinois, oral contracts are not considered void *** although they may be unenforceable if they are subject to a Statute of Frauds provision." *Meyer v. Logue*, 100 Ill. App. 3d 1039, 1043, 427 N.E.2d 1253, 1255 (1981); *Cain v. Cross*, 293 Ill. App. 3d 255, 258, 687 N.E.2d 1141, 1143 (1997) ("A contract that is allegedly invalid on basis of statute of frauds is merely voidable, not void and may be enforced unless the defendant sets up the statute of frauds as a defense"). "The legislature has enacted such provisions for contracts that cannot be performed within a year ***, contracts for the sale of an interest in land ***, contracts for the sale of goods *** , and contracts for the sale of securities ***." *Meyer*, 100 Ill. App. 3d at 1043. The Statute of Frauds applicable to the sale of goods is found in section 2-201(1) of the Uniform Commercial Code (UCC), which generally requires a written contract for "the sale of goods for the price of $500 or more." 810 ILCS 5/2-201(1) (West 2016). Section 2-106(1) of the UCC

defines a "sale" as "the passing of title from the seller to the buyer for a price." 810 ILCS 5/2-201(1) (West 2016). The transaction at issue was the transfer of cash and was not the sale of any goods. The fact that the borrower may have intended to subsequently spend the funds on a vehicle did not transform the transaction between the lenders and the borrower into the sale of goods. In other words, there were two, separate transactions: (1) a cash loan and (2) a vehicle purchase. The Statute of Frauds was not applicable to Mr. Hill's loan transaction and did not require that the $1500 loan agreement be reduced to a writing. Therefore, even if Mr. Hill had raised the Statute of Frauds defense on a timely basis in the trial court, it would have not prevented the entry of judgment against him. The doctrine is simply not applicable to this transaction.

¶ 22 Mr. Hill's third argument is also infirm. Mr. Hill contends that Mrs. O'Donnell's evidence was not credible. However, the parties have provided us with only short summaries of the trial (the appellant's summary was considerably less detailed than the appellee's summary) and we have no way of knowing exactly what occurred during those proceedings. As the appellant, Mr. Hill bore the burden of presenting a sufficiently complete record of the proceedings to support his claim of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391, 459 N.E.2d 958, 959 (1984). Under Illinois Supreme Court Rule 323 (eff. Dec.13, 2005), an appellant may provide a report of the proceedings by filing (1) a verbatim transcript from a court reporter, (2) a bystander's report, or (3) an agreed statement of facts. When the record is incomplete, a reviewing court must presume that the trial court acted in full accordance with the law and that its findings had sufficient evidentiary support. *Foutch*, 99 Ill. 2d at 392, 459 N.E.2d at 959. Accordingly, we reject Mr. Hill's third argument for reversal.

¶ 23 Moreover, even if the record tendered for our review had been more detailed, the

judgment was based almost entirely on witness testimony about an oral contract, and case law is clear that a reviewing court cannot reweigh testimony or substitute its own independent evaluation of witness credibility for that of the trial court. *Racky v. Belfor USA Group, Inc.*, 2017 IL App (1st) 153446, ¶ 107, 83 N.E.3d 440, 463-64. Because the trial court has a superior vantage point to observe and judge the witnesses' demeanor and credibility and a reviewing court has only the cold record, reviewing courts do not disturb credibility determinations. *Racky*, 2017 IL App (1st) 153446, ¶ 107; *In re Marriage of Lewis*, 188 Ill. App. 3d 142, 146, 544 N.E.2d 24, 27 (1989) (declining to disturb the trial court's findings where only a transcript was before the reviewing court and stating that a reviewing court will not presume to substitute its own independent evaluation of witness credibility unless the trial court's evaluation is manifestly erroneous). In this situation, we would defer to the trial court's findings on this issue. Therefore even if the trial testimony had been presented in full detail, we would not attempt to reweigh the witnesses' credibility.

¶ 24 In addition, the plaintiffs supplemented the witnesses' testimony about the oral contract with exhibits evidencing a bank withdrawal and various texts and phone calls about the Hills' intentions for repayment, exhibits that were not refuted by Mr. or Mrs. Hill. After reviewing the record, we cannot say that the trial court's assessment of the conflicting presentations was manifestly erroneous.

¶ 25 Thus, Mr. Hill's last attempt to disturb the judgment is unpersuasive.

¶ 26 For these reasons, we affirm the trial court's judgment.

¶ 27 Affirmed.