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FILED
August 28, 2019
Carla Bender
4th District Appellate
Court, IL

2019 IL App (4th) 180689-U

NO. 4-18-0689

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

PAUL M. FLOYD,)	Appeal from the
Plaintiff-Appellant,)	Circuit Court of
v.)	Macon County
MARILYN DECHERT and AAA VACUUM, INC.,)	No. 16L91
Defendants-Appellees.)	
)	
)	Honorable
)	Erick F. Hubbard,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding (1) the determination of whether the allegations of the complaint taken as true demonstrated the private citizen defendant had probable cause to believe the plaintiff had committed a theft was a legal determination to be made by the trial court, (2) the trial court’s probable cause determination was not erroneous, (3) the private citizen defendant was not required to submit an affidavit explaining her rationale and reasoning for contacting the police, and (4) the trial court’s finding as to the speculative nature of the loss of future income was not erroneous.

¶ 2 Plaintiff, Paul M. Floyd, filed a complaint alleging various claims against defendants, Marilyn Dechert and AAA Vacuum, Inc. (AAA). Dechert filed a motion to dismiss the claims alleged against her, which the trial court granted. Thereafter, Floyd and AAA reached a settlement, and the claims against AAA were dismissed. Floyd now appeals from the trial

court's judgment in favor of Dechert. We affirm.

¶ 3

I. BACKGROUND

¶ 4

A. Small-Claims Complaint

¶ 5

In April 2016, Floyd filed a *pro se* small-claims complaint against Dechert in Macon County case No. 16-SC-599. Floyd alleged Dechert was responsible for having him falsely arrested for theft of her vacuum even though she signed an agreement allowing him to service her vacuum and take its possession to offer it for resale for a one-year period. Floyd sought damages in the amount of \$10,000 for his emotional distress and expenses associated with his involvement in the criminal justice system.

¶ 6

B. Small-Claims Answer and Counterclaim

¶ 7

In May 2016, Dechert filed an answer denying the allegations in Floyd's complaint and a small-claims counterclaim alleging Floyd violated the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 to 505/12 (West 2014)). In support of her counterclaim, Dechert alleged, on or about July 10, 2014, Floyd obtained \$625.15 and possession of her vacuum after he presented himself at her residence and misrepresented that he was an employee of Filter Queen and could make repairs to her vacuum and then take its possession for resale on behalf of Filter Queen. Dechert sought actual damages in the amount of \$625.14, punitive damages in an unspecified amount, and reasonable attorney fees and costs of suit.

¶ 8

C. Motion for Leave to File an Amended Complaint

¶ 9

In July 2016, Floyd, after hiring private counsel, filed a motion for leave to file an amended complaint against Dechert in case No. 16-SC-599. The amended complaint, which was attached to Floyd's motion, also alleged claims against AAA.

¶ 10

D. Amended Complaint

¶ 11 In August 2016, the trial court transferred the matter from the small-claims division to the law division, docketing the matter as Macon County case No. 16-L-91, and then granted Floyd's motion to file his amended complaint.

¶ 12 Floyd's amended complaint alleged claims against AAA for slander (count I), tortious interference with existing and prospective business expectancies (count II), and deceptive business practices (counts III). The claims were based on allegations suggesting officers, employees, or agents of AAA, a business which repaired and sold Filter Queen vacuums, made various "false, derogatory, hateful, slanderous, evil, nasty, vile, and malicious" statements to Floyd's customers for the purpose of putting Floyd, who was in the business of repairing and selling Filter Queen vacuums under the name of Family Industries, out of business.

¶ 13 Floyd's amended complaint alleged claims against Dechert for false arrest (count IV), malicious felony prosecution (count V), and intentional infliction of emotional distress (count VI). The claims were based on the same allegations from the small-claims complaint suggesting Dechert was responsible for having Floyd falsely arrested for theft of her vacuum even though she signed an agreement allowing him to service the vacuum and then take its possession to offer it for resale for a one-year period. Unlike the small-claims complaint, however, Floyd sought from Dechert compensatory damages totaling \$450,000 and punitive damages totaling \$1,700,000.

¶ 14

E. Second Amended Complaint

¶ 15 In February 2017, Floyd moved to file a second amended complaint, which the trial court granted over objection. Floyd's second amended complaint realleged the same claims

against AAA and Dechert. In addition, Floyd alleged a claim of breach of contract against Dechert (count VII), which sought damages in the amount of \$50,000 based on Floyd's inability to sell Dechert's vacuum. Floyd also increased the amount sought for damages for his claims of false arrest, malicious prosecution, and intentional infliction of emotional distress. For those claims, he sought compensatory damages totaling \$2,000,000 and punitive damages totaling \$4,500,000.

¶ 16 In support of his claims against Dechert, Floyd alleged as follows.

¶ 17 In 1995, Floyd sold a Filter Queen vacuum to Dechert. In the years that followed, Floyd visited Dechert's home at Dechert's request to make repairs to the vacuum. Floyd completed repairs to Dechert's satisfaction. Dechert had no complaints about Floyd's work.

¶ 18 On July 10, 2014, Floyd visited Dechert's home at Dechert's request to make repairs to her vacuum. Floyd completed the needed repairs. Dechert was satisfied with the repairs and paid Floyd "in full" by check. During the visit, Dechert complained her vacuum was too heavy for her to lift due to her age and requested Floyd remove the vacuum from her home to sell it to a younger customer. Floyd agreed to Dechert's request, and then he and Dechert entered into a written agreement whereby Floyd would remove the vacuum for resale. Floyd removed the vacuum from Dechert's home and attempted to sell it to a third party.

¶ 19 On or about July 14, 2014, an AAA representative told Dechert: " '[Floyd] was a former employee of Filter Queen, and that [Floyd] had previously scammed customers claiming to still be employed by Filter Queen.' " Contrary to those statements, Floyd had not worked for Filter Queen and had not scammed any of Filter Queen's customers. The AAA representative also told Dechert: " '[Floyd] takes customers' money and then provides no vacuum services for

them. [Floyd] has stolen your vacuum cleaner and he will not return it.’ ” Contrary to those statements, Floyd had not taken customer money without providing services and did not steal Dechert’s vacuum.

¶ 20 On or about July 14, 2014, Dechert, “based in part on the false and slanderous statements made by AAA,” asserted in the presence of police officers Floyd had committed a theft of her vacuum. The Macon County state’s attorney filed an information charging Floyd with theft. On or about April 21, 2015, Floyd was arrested and placed in the county jail, where he remained “for several days” until he had the funds to post a cash bond. The information was later dismissed on motion of the Macon County state’s attorney.

¶ 21 Floyd, having been unable to sell Dechert’s vacuum, returned the vacuum to Dechert’s possession.

¶ 22 Floyd attached several exhibits to his second amended complaint.

¶ 23 Exhibit 1 is a handwritten customer order slip dated July 10, 2014, detailing various services provided to Dechert and the associated costs. The order slip totals \$625.15 and includes a service for “List [t]o Sell up[]to 1 year” at a cost of \$100. The order slip appears to be signed by Dechert and indicates, “Paid [i]n Full.”

¶ 24 Exhibit 2 is a handwritten agreement dated July 10, 2014. It states the repairs provided to Dechert’s vacuum and the fact the vacuum was “being offered by original owners and is now in like new condition.” The agreement states, “Will list from 07/14/2014 to 07/14/2015.” The agreement appears to be signed by Dechert.

¶ 25 Exhibit 3 is a copy of a \$625.15 check drafted for Floyd from Dechert’s bank account. The check indicates it was signed and cashed by Floyd on July 10, 2014.

¶ 26 Exhibit 4 is a copy of an information filed in September 2014 charging Floyd with theft (720 ILCS 5/16-1(a)(1)(A) (West 2014)). The information alleged Floyd “knowingly and by deception obtained property of [Dechert], a person 60 years of age or older, namely: \$625.15 US Currency and a vacuum cleaner, intending to deprive the owner permanently of the use of the property.”

¶ 27 Exhibit 5 is a copy of a document indicating Floyd was released on bail in his criminal case.

¶ 28 Exhibit 6 is a copy of an August 2015 motion to dismiss the criminal information filed by the Macon County state’s attorney. The motion alleged Dechert’s vacuum had been repaired and returned to her custody. The State asserted it had insufficient evidence at that time to prove beyond a reasonable doubt Floyd had the requisite criminal intent at the time he possessed the vacuum.

¶ 29 F. Dechert’s Motion to Dismiss

¶ 30 In March 2017, Dechert filed a motion to dismiss counts IV through VII of Floyd’s second amended complaint pursuant to section 2-619(a)(9) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(9) (West 2016)). Dechert argued dismissal of counts IV through VI was appropriate because Floyd’s allegations in his complaint, specifically the allegations relating to the statements made to her by AAA, made clear she had probable cause to believe Floyd had committed a theft, thereby defeating Floyd’s claims. Dechert also argued dismissal of count VII was appropriate because the allegations in Floyd’s complaint, along with a personal affidavit she attached to her motion averring no additional funds were due to Floyd in the event he sold the vacuum, made clear Floyd was fully compensated for his services and could not

establish any injury.

¶ 31 G. Floyd's Response to Dechert's Motion to Dismiss

¶ 32 In April 2017, Floyd filed a response to Dechert's motion to dismiss. Floyd argued dismissal of counts IV through VI was inappropriate due to the existence of a material factual issue as to whether Dechert was reasonable in believing the statements from AAA. Floyd suggested a jury could conclude it was unreasonable for Dechert to believe or entertain an honest and strong suspicion he had stolen her vacuum based on the statements from a stranger and in light of their prior, positive relationship and the fact she entered into a contract to list the vacuum for resale. Floyd suggested Dechert should have contacted him to discuss AAA's statements or to make a demand for the vacuum before contacting the police. Floyd also argued dismissal of counts VII was inappropriate as he sustained injuries for the loss of future income that he would have received had he sold Dechert's vacuum and had the new owner hired him for servicing the vacuum.

¶ 33 H. Dechert's Reply to Floyd's Response to Her Motion to Dismiss

¶ 34 In June 2017, Dechert filed a reply to Floyd's response to her motion to dismiss. Dechert maintained dismissal of counts IV through VI was appropriate because Floyd's allegations in his complaint made clear she had probable cause to believe Floyd had committed a theft, thereby defeating Floyd's claims. Dechert asserted the existence of any prior, positive relationship between her and Floyd and the fact they previously entered into a contract did not defeat the existence of probable cause to believe Floyd had committed a theft based on the later statements by AAA. Dechert also maintained dismissal of count VII was appropriate because Floyd's complaint did not allege, nor did the exhibits attached to his complaint support, the

contracting parties intended or expected Floyd to receive future profits from servicing the vacuum if he sold the vacuum to a third party and any alleged injury was purely speculative.

¶ 35 I. Written Order Dismissing Floyd's Claims Against Dechert

¶ 36 Following a January 2018 hearing, the trial court entered a written order dismissing with prejudice counts IV through VII of Floyd's second amended complaint. The court found, accepting the allegations in the complaint as true, the statements made to Dechert by AAA would, as a matter of law, lead a person of ordinary caution and prudence to entertain an honest and strong suspicion Floyd was guilty of wrongdoing. That is, the court found Dechert had probable cause to believe Floyd had committed a theft, the presence of which served as a bar to Floyd's claims of false arrest and malicious prosecution. In reaching its decision, the court acknowledged the existence of a prior, positive relationship but found that relationship did not affect the existence of probable cause as it was axiomatic people often commit wrongdoings against individuals with whom they have a relationship. The court further found, because Dechert had probable cause to believe Floyd had committed a theft, Floyd's claim of intentional infliction of emotional distress based on Dechert reporting her suspicions to law enforcement could not be considered extreme and outrageous, a necessary element for the cause of action to stand. Finally, with respect to Floyd's breach-of-contract claim, the court found Floyd could not establish any injury as the loss of future income for repairs, which it noted was not alleged in the complaint, was speculative.

¶ 37 J. Settlement

¶ 38 In October 2018, the trial court entered an agreed order dismissing the remaining claims against AAA as AAA and Floyd had reached a settlement.

¶ 39 This appeal followed.

¶ 40 II. ANALYSIS

¶ 41 On appeal, Floyd argues we should reverse the trial court’s judgment in favor of Dechert because (1) the court improperly invaded the purview of the jury by deciding a factual issue as to whether probable cause existed, (2) the court erroneously concluded based on the allegations of his second amended complaint Dechert had probable cause to believe he committed a theft, (3) Dechert failed to attach a sufficient affidavit explaining her rationale and reasoning for contacting the police, and (4) the court erroneously concluded any injury for loss of future income for repairs was speculative.

¶ 42 A. The Determination of Whether Probable Cause Exists

¶ 43 Floyd argues we should reverse the trial court’s judgment in favor of Dechert because the court improperly invaded the purview of the jury by deciding a factual issue as to whether probable cause existed. We disagree.

¶ 44 In support of his position, Floyd cites *Hirsch v. Feeney*, 83 Ill. 548 (1876), and *Luthmers v. Hazel*, 212 Ill. App. 199 (1918). These cases, however, do not indicate the determination of whether probable cause exists is *solely* a factual issue for the jury to decide. Floyd does not address more recent case law—case law cited by the trial court in its written order—holding the determination of whether probable cause exists is question of law where the factual circumstances are not in dispute. See *Poris v. Lake Holiday Property Owners Ass’n*, 2013 IL 113907, ¶ 63, 983 N.E.2d 993 (“[T]he existence of probable cause is a question of law and only becomes a question of fact if the operative facts are in dispute.”); see *Fabiano v. City of Palos Hills*, 336 Ill. App. 3d 635, 642, 784 N.E.2d 258, 266 (2002) (“Whether the circumstances

alleged to show probable cause are true is a question of fact, but, if true, whether those circumstances amount to probable cause is a question of law to be decided by the court.”).

¶ 45 In this case, the trial court was asked to make a determination of whether the allegations in Floyd’s second amended complaint taken as true established the existence of probable cause. Because the operative facts were not in dispute, the court was presented with a question of law. The court did not improperly invade the purview of the jury by deciding a disputed factual issue as to whether probable cause existed.

¶ 46 B. The Trial Court’s Probable Cause Determination

¶ 47 Floyd argues we should reverse the trial court’s judgment in favor of Dechert because the court erroneously concluded based on the allegations of his second amended complaint Dechert had probable cause to believe he committed a theft. We disagree.

¶ 48 “Probable cause is defined as a state of facts which, if known, would lead a person of ordinary caution and prudence to believe or entertain a strong and honest suspicion that the person arrested is guilty.” *Poris*, 2013 IL 113907, ¶ 63; see also *Johnson v. Target Stores, Inc.*, 341 Ill. App. 3d 56, 72, 791 N.E.2d 1206, 1219 (2003) (“Probable cause has been defined in a malicious prosecution case involving criminal proceedings as a state of facts that would lead a person of ordinary caution and prudence to believe, or to entertain an honest and strong suspicion, that the person arrested committed the offense charged.” (Internal quotation marks omitted.)). “A reasonable ground for belief of the guilt of an accused may be on information from other persons as well as on personal knowledge.” (Internal quotation marks omitted.) *Johnson*, 341 Ill. App. 3d at 72.

¶ 49 In this case, Dechert, a private citizen, was contacted by a representative from a

business which repaired and sold Filter Queen vacuums and was told Floyd, who had recently provided repairs to her vacuum and taken its possession for the purpose of resale, had scammed his customers and stolen and would not return her vacuum. As the trial court concluded, we find these facts, regardless of any prior, positive relationship or handwritten contract, would place a person of ordinary caution and prudence to entertain a strong and honest suspicion Floyd had committed a theft. The court did not error in finding Dechert had probable cause to believe Floyd had committed a theft.

¶ 50 C. Dechert's Affidavit

¶ 51 Floyd argues we should reverse the trial court's judgment in favor of Dechert because Dechert failed to attach a sufficient affidavit explaining her rationale and reasoning for contacting the police. We disagree.

¶ 52 "The test for probable cause is an objective one." *Fabiano*, 336 Ill. App. 3d at 645. The test for whether conduct is extreme and outrageous—for purposes of a claim of intentional infliction of emotion distress—is also an objective one. *Bianchi v. McQueen*, 2016 IL App (2d) 150646, ¶ 83, 58 N.E.3d 680.

¶ 53 In order for the trial court to make determinations as to whether Dechert had probable cause to believe Floyd had committed a theft and whether Dechert's action of reporting the same was extreme and outrageous, Dechert did not have to submit an affidavit explaining her subjective rationale and reasoning for contacting the police.

¶ 54 D. Breach of Contract Injury

¶ 55 Floyd argues we should reverse the trial court's judgment in favor of Dechert because the court erroneously concluded any injury for loss of future income for repairs was

speculative. We disagree.

¶ 56 “When a contract is breached, the injured party is entitled to be placed in the position he would have been in had the contract been performed.” *Kirkpatrick v. Strosberg*, 385 Ill. App. 3d 119, 130, 894 N.E.2d 781, 792 (2008). “Plaintiffs have the duty to establish that they sustained damages as well as a reasonable basis for computing those damages.” *C-B Realty & Trading Corp. v. Chicago & N. Western Ry. Co.*, 289 Ill. App. 3d 892, 901, 682 N.E.2d 1136, 1143 (1997). Injuries from a breach will be deemed speculative “when uncertainty exists as to the fact of their existence.” *Thornhill v. Midwest Physician Ctr. of Orland Park*, 337 Ill. App. 3d 1034, 1051, 787 N.E.2d 247, 261 (2003).

¶ 57 In his complaint, Floyd acknowledged he was paid “in full” by Dechert yet sought damages in the amount of \$50,000 for unspecified injuries caused by his failure to sell Dechert’s vacuum. In his response to Dechert’s motion to dismiss, Floyd indicated the damages sought were for loss of future income from repairs had he sold the vacuum to a new customer and had that new customer hired him to complete future repairs. As the trial court concluded, we find any loss of future income under these circumstances to be speculative. Floyd also suggests for the first time on appeal the damages sought were for his (1) loss of income from his current customers during the time in which he was incarcerated, (2) emotional distress and anguish from being charged with a crime, and (3) damage to his reputation. Because Floyd did not allege or argue such injuries before the trial court, we decline to consider them for the first time on appeal. See *Enbridge Pipeline (Illinois), LLC v. Hoke*, 2019 IL App (4th) 150544-B, ¶ 38, 123 N.E.3d 1271 (“Issues not raised before the trial court are deemed forfeited and may not be raised for the first time on appeal.”).

¶ 58 In summary, Floyd has failed to present any persuasive argument to support his request for a reversal of the trial court's judgment in favor of Dechert.

¶ 59 III. CONCLUSION

¶ 60 We affirm the trial court's judgment.

¶ 61 Affirmed.