2019 IL App (5th) 180213-U

NO. 5-18-0213

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

BILLIE J. HILL,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Jackson County.
	)	
v.	)	No. 17-SC-457
	)	
MAHER ABOU-JABAL and AUTO WORLD, INC.,	)	
	)	Honorable
	)	W. Charles Grace,
Defendants-Appellants.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Chapman and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's finding in favor of the plaintiff is affirmed where the plaintiff had properly brought his statutory fraud claim under the Consumer Fraud and Deceptive Business Practices Act and had proven his claim by a preponderance of the evidence.

¶ 2 The defendants, Maher Abou-Jabal and Auto World, Inc., appeal from a judgment entered by the circuit court of Jackson County, ordering them to pay the plaintiff, Billie Hill, $7840.69 for the plaintiff's truck that the defendants had wrongfully repossessed; $500, representing the value of the tools that were located in

the back of the truck when it was repossessed; and court costs. For the following reasons, we affirm.

¶ 3 On September 7, 2017, the plaintiff filed a *pro se* small claims complaint against the defendants for "repossessing [his] vehicle when it was paid in full." The complaint did not further identify a cause of action under which he was seeking relief, and the defendants' counsel did not seek a dismissal of the complaint. On February 20, 2018, two days before the trial on the complaint, Eugenia Hunter entered her appearance as counsel for the plaintiff.

¶ 4 On February 22, 2018, the trial court held a bench trial on the *pro se* complaint. Before the trial began, the defendants' counsel attempted to clarify the cause of action raised by the *pro se* complaint. The following exchange occurred between counsel and the trial court:

> "[DEFENDANTS' COUNSEL]: *** [Y]ou know, my concern is this being small claims, this has to be couched in terms of tort or contract. I would really like to know what the cause of action is we are trying here today. Are we talking breach of contract? What it is and the reason being that they have sued Mr. Abou-Jabal in his personal capacity apparently, as well as the corporation, so I don't know if we are going to be trying to pierce a corporate veil here? I don't know exactly what we are doing, so I would like to *** get some understanding of exactly what it is we are trying to prove here today or disprove.
>
> THE COURT: What is it that you are telling the Court?
>
> [DEFENDANTS' COUNSEL]: I am asking the Court if the plaintiff can identify what the cause of action here is. It doesn't state specifically in the complaint that this is a breach of contract, whether this was fraud. I don't know what it is we are proceeding on, so I am asking the Court if it would clarify what the cause of action is.
>
> THE COURT: Well, we are here on the day of a trial and this matter first came on the docket back last September. You entered your appearance later than that, *** in January. That matter could have been raised pre-trial.
>
> [DEFENDANTS' COUNSEL]: I haven't had settings since I have been involved in it. This case hasn't been called since I entered an appearance, so, I

mean, I understand, but I still think whether we have raised it or not, we still need to know at the end of the day what we are proceeding on.

THE COURT: Well, my answer to that is they proceed and you make that determination and make any objections that you have if it *** does not square with small claims.

[DEFENDANTS' COUNSEL]: Okay. That will work."

The bench trial then followed.

¶ 5 The plaintiff testified that he was self-employed as a landscaper. On June 28, 2017, he went to Auto World to purchase a truck for his business. After he found a truck that he was interested in and got the price, he left the dealership and went to the bank to withdraw the money from his account to purchase it. He already had $400 in cash, so he only had to withdraw $7500 from his bank account. Before returning to the dealership, he picked up his friend, John Zachary Batson (Zach) and Zach's wife (Jamie), so that Zach could look at the truck before he bought it. He explained that he wanted Zach to look at the truck because Zach knew more about vehicles than he did. While he was test driving the truck, Zach and his wife stayed at the dealership to look at vehicles. The plaintiff decided to purchase the truck and gave Maher $7800 plus some change. He explained that he counted the money out and also had Zach count the money to make sure that it was right. Maher gave him $20 back because the plaintiff had overpaid him. Maher also gave him a document to sign, and the plaintiff believed that the document was to transfer the license plates.

¶ 6 Counsel showed the plaintiff a document titled "Buyers' Order and Invoice" and asked whether he had seen that document before. The plaintiff responded that Maher had given him that document, and he assumed that it was an invoice for the

purchase of the truck. The Buyers Order and Invoice indicated that the total cost of the truck was $7840.69, which included the purchase price, a dealer handling charge, the license/title fee, and state tax; that the plaintiff had paid $6840 in cash and was financing $1000; that the total amount financed was due by July 10, 2017; and that the vehicle would be repossessed if customer was one day late with payments. All of this information was handwritten in the document. The document was signed by the plaintiff, and he acknowledged that this was the document that was given to him by Maher. The plaintiff testified that he had trouble reading, was "less than literate," and had trouble with his eyes. He did not see that the document said that he was financing $1000 of the purchase price of the truck. He looked at the document, handed it back to Maher, Maher wrote something on it, and gave it back to him. He did not ask Maher any questions about the document. After receiving the document, the plaintiff asked Maher if they "were good to go" and whether the truck was "paid for." Maher responded "yes." The plaintiff testified that he asked Maher three different times whether the truck was paid in full, and each time Maher said that it was. At trial, he could see that there was writing in the lower right-hand corner of the Buyers' Order and Invoice but could not read what it said. The paragraph at the lower right-hand corner of the document indicated that the purchaser agreed that the order included all of the terms and conditions of the sale and that it was a complete and exclusive statement of the agreement terms.

¶ 7 As for the Batsons' purchase, the plaintiff heard Maher talking with the Batsons about their purchasing a vehicle on the lot. Maher asked the plaintiff if that was okay,

and the plaintiff responded that he did not care what they did as long as his truck was paid off. Maher assured him that his truck was paid in full. The plaintiff testified that he would not have purchased the truck if there had been a balance owed and that he had approximately $12,000 in his bank account when he took out the money for the truck, so he had enough money to pay for the truck in full. He did not lend any money to the Batsons for the purchase of a vehicle, they never asked him to lend them any money, and he did not agree to have $1000 of his money put toward the Batsons' vehicle.

¶ 8 Approximately six weeks after purchasing the truck, it was repossessed by Auto World. Initially, the plaintiff did not know what had happened to his truck, so he called the sheriff's department and was told to contact the towing companies in the area. In the six weeks that he had the truck, he never made any additional payments to Auto World. He had landscaping tools and other personal items in the back of the truck totaling approximately $500. Since the truck was repossessed, he has been unable to do any landscaping jobs. He acknowledged that after his vehicle was repossessed, he never made a written demand that the vehicle be returned to him. He attempted to recover his tools and other personal belongings from the company that repossessed the truck, but they refused to give him the items without payment. He did not ask the defendants to return his tools and other personal belongings. He spoke to Maher after his truck was repossessed and discovered that Maher had taken $1000 of his money and put it toward the Batsons' vehicle.

¶ 9 The plaintiff testified that he filed a complaint with the Illinois Attorney General's office regarding this transaction. He filled out the complaint himself and had friends help him with the spelling of some words.

¶ 10 Zach testified that he was at the dealership when the plaintiff purchased the truck. He believed that the purchase price was $7500. He heard the plaintiff ask Maher on two or three occasions whether the truck was paid in full, and Maher responded that it was. He helped the plaintiff count out the money and observed the plaintiff handing it over to Maher. When Maher handed the plaintiff the contract, he heard the plaintiff ask whether his truck was paid off in full, and Maher responded that it was. While there, Zach and his wife also decided to purchase a vehicle. His understanding of the agreement was that they had to have a $1000 down payment but that they would be able to finance that amount along with the remaining balance of the total cost of the car. He believed that he and his wife would pay $250 per month for the total cost of the vehicle, which included the down payment. He never asked the plaintiff to borrow any money, and the plaintiff never loaned them any money for the car.

¶ 11 Thereafter, Zach discovered that the plaintiff's $1000 payment had been put toward his vehicle. Zach testified that Maher offered a reduction in the purchase price of his vehicle to tell him where the plaintiff lived and also offered to sell him the truck for $1000 after it was repossessed. Maher also offered a reduction on the vehicle cost to come to court with him.

¶ 12 When questioned on cross-examination about the $1000 down payment, Zach stated as follows:

> "I was under the impression that I didn't have any money and the money would come out of Billie's [(the plaintiff's)] money. [Maher] gave the money for the Cadillac. Billie paid for the car and then we made the deal about the Cadillac. We didn't have any money, so I got the money from him to go ahead and sign the papers, but I never asked Billie for a loan for $1000. I never touched the thousand dollars."

He clarified that he understood that he needed a $1000 down payment to buy the Cadillac but that the money came from Maher. He identified the Buyers' Order and Invoice for the Cadillac, which was signed by his wife and indicated that the total price for the Cadillac was $4647.88, that the Batsons had paid $1000 in cash, and that the amount financed was $3647.88. The document also stated that the first payment was due on July 15, 2017, and the monthly payments would be $250. Although he believed that the $1000 was included in the financing, he acknowledged that the contract indicated that the amount financed was $3647.88, not $4647.88. He explained that they did not have any money when they purchased the vehicle and could not pay the $1000 down payment. He further acknowledged that the plaintiff's address was listed on the plaintiff's contract with Auto World and that the plaintiff had not moved since he bought the truck.

¶ 13 Jamie Batson, Zach's wife, testified that she was also present when the plaintiff bought the truck from Maher. She testified that they went with the plaintiff to the dealership but had no intention of buying a vehicle and could not have afforded a vehicle if a down payment was required. She explained that her husband spoke to Maher about buying the Cadillac, and she believed that they were able to get financing with no down payment because the plaintiff was "buying the truck outright." During the interaction, she heard the plaintiff ask Maher more than once if his truck would be paid off, and

Maher responded that it would. She testified that they did not borrow any money from the plaintiff and that the plaintiff did not give them the $1000 for the down payment. She acknowledged that she did not read the contract before signing it. She first learned that the plaintiff's money was applied toward their down payment after his vehicle was repossessed. She explained that Maher told her the total cost of the vehicle was $3900.

¶ 14 Maher Abou-Jabal testified that he was the sales manager at Auto World, Inc., that his father was the owner and president of the corporation, and that he was the treasurer and secretary. He testified that he acted on behalf of the corporation when selling vehicles. Counsel asked Maher the status of the corporation with the Illinois Secretary of State's office (whether the corporation was in good standing). After Maher responded that he believed the corporation was in good standing, counsel asked him if it would surprise him to know that the Secretary of State reported that the corporation was not in good standing. Maher replied that he was not aware of that and that they had never received anything from the Secretary of State's office with regard to a change in Auto World's corporate status. Counsel did not admit into evidence any documents from the Secretary of State's office with regard to Auto World's corporate status.

¶ 15 Maher testified that he never sells vehicles off the lot with no down payment. With regard to the transaction at issue, he testified that while the plaintiff was test driving a truck, the Batsons stayed behind at the dealership, and he had a conversation with them about purchasing a vehicle of their own. They told him that they wanted to buy a vehicle but did not have enough money to pay for it, so he talked to them about in-house financing. He told them that if they made a $1000 down payment on the Cadillac, they

could drive it home that day. They responded that they would talk to the plaintiff when he returned to see if they could borrow the money from him. The Batsons talked to the plaintiff about borrowing the money and then paying him back within a week or two. After the plaintiff agreed to loan them the money, they all sat down to complete the paperwork. Maher did not remember whether Zach or Jamie handed him the $1000 for the down payment, but he knew that it was not the plaintiff. Maher explained that the financing agreement for the plaintiff's truck indicated that the $1000 was due on July 10, 2017, which was only a couple of weeks from the sale date. He acknowledged that it was unusual to have that large of a payment due that soon but explained that the plaintiff requested that the full amount be due by the tenth because the Batsons had said they would be able to repay the loan by then. Maher offered to extend the due date, but the plaintiff said that he would come up with the money. He denied offering Zach money off of the purchase price of the Cadillac for telling him where the plaintiff lived, explaining that he already knew where the plaintiff lived.

¶ 16 After hearing the testimony, the trial court stated as follows:

> "The issue before the Court has as much to do with credibility as the facts and circumstances, and the facts and circumstances as through the testimony is in stark contract [*sic*] between the plaintiff and the plaintiff's witnesses and the defendant. The evidence clearly shows that the defendant [*sic*] at the time of these transactions on June the 28th had a far more than sufficient balance remaining in his account to take care of [it] if there was a clear understanding that there was $1000 to be loaned and therefore to be subsequently carried by the defendant *** for a period of two weeks to have completed that transaction that day. That mitigates for the plaintiffs.
>
> There is no evidence before the Court[,] other than the written documents prepared by the defendant, that would refer to a loan by the plaintiff to the friends of the plaintiff, the Batsons. All of the evidence is to the contrary.

> This Court's finding is that the plaintiff has borne its burden of proof by a preponderance of the evidence that the transaction, according to all of the evidence except for the defendant, was that there was a completed transaction and according to the understanding of the plaintiff and the two witnesses for the plaintiff in that there were at least two, perhaps [three] questions put to the defendant about having made complete payment on the transaction, and accordingly, the Court finds for the plaintiff."

Accordingly, the court ordered the defendants to pay the total amount of the purchase price of the vehicle ($7840.69) and $500, representing the cost of the personal property located in the repossessed truck, to the plaintiff. The defendants appeal.

¶ 17 Initially, we have ordered taken with the case the plaintiff's motion to supplement his brief with *Bell v. Ring*, 2018 IL App (3d) 170649, a Third District case filed after the plaintiff had filed his briefs. Because this case has some relevance to the issues on appeal, we grant the plaintiff's motion to supplement.

¶ 18 We now turn to the arguments raised in the defendants' appeal. On appeal, the defendants argue that the cause of action in the plaintiff's small claims complaint was unclear even after the proceedings had concluded and, thus, in his brief on appeal identified the following theories that the plaintiff could have raised to recover economic damages in small claims court under these set of facts: breach of contract, conversion, fraud, and rescission. Addressing each cause of action, the defendants argue that none of the theories would support a finding in favor of the plaintiff.

¶ 19 As for a breach of contract claim, the defendants note that the contract unambiguously stated that the plaintiff was financing $1000, that the loan balance was due by July 10, 2017, and that the plaintiff admitted that he never paid the defendants any more money after leaving the premises on June 28. Thus, the defendants argue that the

evidence clearly showed that the only person who breached the written contract was the plaintiff. As for a conversion claim, the defendants argue that the plaintiff did not establish a claim for conversion because he made no demand of the defendants to return the truck or tools, which is required to establish conversion. With regard to fraud, the defendants argue that if the plaintiff's small claims complaint was based on this theory of recovery, we should reverse the trial court's decision for basing its finding on the wrong legal standard, *i.e.*, preponderance of the evidence, as fraud must be proven by clear and convincing evidence. As for rescission, the defendants argue that rescission, as a claim of equity, cannot be brought in a small claims court, that the plaintiff had failed to show that he had no adequate remedy at law, and that the court applied the incorrect legal standard as the burden of proof would be clear and convincing evidence.

¶ 20 In his reply brief, the plaintiff did not address any of the potential theories of liability raised by the defendants. Instead, the plaintiff argues that the case involved a straightforward statutory fraud claim based on the Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/l *et seq*. (West 2016)), in which the plaintiff, a consumer, was seeking recovery for economic damages that he suffered, when he relied on the deceptive practices of the defendants.

¶ 21 In response, the defendants argue that a statutory fraud claim cannot be brought in small claims courts, as Illinois Supreme Court Rule 281 (eff. Jan. 1, 2006) restricts small claims actions to common law tort and contract claims.

¶ 22 Thus, the first issue on appeal is whether a statutory fraud claim under the Consumer Fraud Act is prohibited from being brought in small claims court.

¶ 23 Illinois Supreme Court Rule 281 defines "small claim" as follows: "[A] small claim is a civil action based on either tort or contract for money not in excess of $10,000." Ill. S. Ct. R. 281 (eff. Jan. 1, 2006). It does not further define "tort." In support of his argument that statutory fraud claims under the Consumer Fraud Act are proper in small claims court, the plaintiff cites *Bell*, 2018 IL App (3d) 170649, ¶ 1, in which plaintiffs brought a small claims case against defendant under the Consumer Fraud Act. Although the substantive issues raised in this case are not relevant to the issue here on appeal, the plaintiff believes this case is significant due to the unchallenged use of small claims court to recover the relief sought under the Consumer Fraud Act.

¶ 24 In contrast, the defendants contend that a statutory fraud claim cannot be brought in small claims court, as evidenced by the fact that there is no right to a jury trial in a statutory tort claim under the Consumer Fraud Act but that Illinois Supreme Court Rule 285 (eff. Jan. 1, 1964) allows for a jury trial in small claim cases. Moreover, the defendants argue that a consumer fraud claim is separate and distinct from the common law tort of fraud in that it has different elements, a different standard of proof, and a different statute of limitations.

¶ 25 There is no limitation in Rule 281 that a "tort" claim in small claims court only consists of common law tort claims; there is no prohibition against statutory tort claims in the plain language of the rule. We are not going to read this limitation into the rule on the basis that a party has a right to jury trial in small claims cases but not in statutory fraud cases under the Consumer Fraud Act. In small claims court, the default is for a bench trial. Though a party has a right to request a jury for some claims, this does not preclude

them from bringing a statutory fraud action (that does not allow for a jury trial) in that same court. The rules of statutory construction apply to supreme court rules. See Ill. S. Ct. R. 2 (eff. Jan. 4, 2013). When analyzing a supreme court rule, this court must ascertain and give effect to the supreme court's intent. *Anderson v. Financial Matters, Inc.*, 285 Ill. App. 3d 123, 135 (1996). Where the language of the supreme court rule is plain and unambiguous, courts will not read in exceptions, limitations, or other conditions. *Id.* Thus, considering the plain language of Rule 281 in accordance with the rules of statutory construction, we cannot find that a "civil action based on * * * tort" excludes a statutory tort claim filed under the Consumer Fraud Act.

¶ 26 We therefore turn to the merits of the case, *i.e.*, whether the plaintiff has proven his statutory fraud claim under the Consumer Fraud Act by a preponderance of the evidence.

¶ 27 The Consumer Fraud Act provides broader consumer protection than a common law fraud action in that it prohibits any deception or false promise. *Hanson-Suminski v. Rohrman Midwest Motors, Inc.*, 386 Ill. App. 3d 585, 593 (2008). To state a cause of action for statutory fraud, a party must prove the following: (1) a statement by the seller; (2) of an existing or future material fact; (3) that was untrue, without regard to defendant's knowledge or lack thereof of such untruth; (4) made for the purpose of inducing reliance; (5) on which the victim relies; and (6) which resulted in damages to the victim. *Id.* A material fact is one where the buyer would have acted differently knowing the information. *Id.* Plaintiff must show that defendant's consumer fraud proximately caused the injury. *Id.* The appropriate standard of proof for a statutory fraud

claim is preponderance of the evidence. *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 192 (2005). "A proposition proved by a preponderance of the evidence is one that has been found to be more probably true than not true." *Hanson-Suminski*, 386 Ill. App. 3d at 592.

¶ 28 Here, the trial court found that the plaintiff had proven his case by a preponderance of the evidence. The plaintiff testified that he asked Maher on more than one occasion whether the truck was paid in full, and Maher responded in the affirmative. This testimony was corroborated by the Batsons, and the court found the plaintiff and the Batsons credible. It is the trial court's duty to resolve conflicting evidence and determine the credibility of the witnesses. *People v. Ortiz*, 196 Ill. 2d 236, 424 (2001). Maher's assurance that the plaintiff had paid his truck in full was a statement by a seller of an existing material fact. It was a material fact in that it induced the plaintiff to proceed with the transaction and sign the agreement; the plaintiff had testified that he would not have completed the transaction if he had known that he was financing $1000. The plaintiff's reliance on Maher's false statement caused him injury in that his truck was repossessed, and he lost $500 worth of personal property in addition to the truck. Thus, the plaintiff proved his case by a preponderance of the evidence.

¶ 29 As for whether the plaintiff sued the proper defendant, section 10a of the Consumer Fraud Act allows a person who has suffered actual damage as a result of the violation of the Act committed by any other person to bring an action against that person. 815 ILCS 505/10a (West 2016). Here, the defendant Maher made the false statement that the plaintiff relied upon when signing the purchase agreement. Thus, under the

Consumer Fraud Act, the plaintiff could bring an action against Maher. Accordingly, we affirm the trial court's finding that the defendant is liable to the plaintiff for the cost of the truck and the cost of the tools that were lost as a result of the truck being repossessed.

¶ 30 For the foregoing reasons, the judgment of the circuit court of Jackson County is hereby affirmed.

¶ 31 Affirmed.