

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1551

September Term, 2014

ZHI FENG YU

v.

YAN DAN LI, *et al.*

Eyler, Deborah S.,
Nazarian,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: October 20, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

We are asked to determine whether the trial court properly granted two motions for judgment. Appellant Zhi Feng Yu (“Yu”) argues (1) that the trial court improperly granted appellees’ motion for judgment on Yu’s fraud claim and (2) that—although the trial court granted judgment in Yu’s favor on the breach of contract claim—the trial court improperly calculated the amount of damages.

BACKGROUND

On January 3, 2011, appellant Yu and appellees Yan Dan Li and Jian Wei Zhu (“Li” and “Zhu,” respectively) entered into a partnership agreement (the “Partnership Agreement”). The Partnership Agreement stated that Yu, Li, and Zhu were partners for the purpose of running a restaurant, Kobe Seafood Hibachi (the “Restaurant”) in Waldorf, Maryland. Additionally, the Partnership Agreement stated: (1) that “[t]he partners shall provide their full-time services and best efforts on behalf of the partnership;” (2) that each partner agrees to contribute equal “property, services, or cash” to the partnership; (3) that “[n]o partner shall receive a salary for services rendered to the partnership;” and (4) that “[t]he profits and losses of the partnership shall be divided by the partners equally.” Months later, after opening the Restaurant, the partnership fell apart. On August 7, 2013, Yu filed a three-count complaint against Li and Zhu in the Circuit Court for Charles County, alleging breach of contract, fraud, and conversion. A trial was held on August 18, 2014.

At trial, Yu was the sole witness to testify. Yu testified that he entered into the Partnership Agreement with Li and Zhu to operate the Restaurant. Li and Zhu’s wife,

however, had—prior to the signing of the Partnership Agreement—already filed articles of organization for an LLC with a name very similar to the Restaurant—Kobe Seafood Hibachi, LLC. Yu was not included in the LLC. Yu testified that he was unaware of the existence of the LLC when he signed the Partnership Agreement, and that neither Li nor Zhu told Yu about the LLC.

Yu testified that he invested \$75,000 in the Restaurant after signing the Partnership Agreement. To prove his investment, Yu submitted into evidence: a receipt from Zhu for a \$20,000 payment; an \$8,000 check signed by Yu's wife to Kobe Seafood Hibachi; a \$2,200 check signed by Yu to Zhu's wife; and a receipt from Zhu for a \$12,200 payment. Yu testified that he also purchased tables, chairs, food, and utensils for the Restaurant, but that Li and Zhu never provided him with receipts for these purchases. The Restaurant opened on May 18, 2011.

Yu testified that he worked at the Restaurant full time, managing the kitchen. While working at the Restaurant, Yu, a New York resident, lived in Li's basement.

The partners' relationship soured almost immediately. Yu testified that on September 5, 2011, Li and Zhu called the police on him, alleging that Yu had stolen food. Yu was not arrested and the police did not take a report. Following that incident, however, Yu left the Restaurant. Yu testified that he returned to the Restaurant the next day, but found that the locks had been changed. Additionally, he testified that Li asked him to move out of her basement.

Yu also testified about his income from the Restaurant. He stated that he was paid \$2,000 total for his work, and produced two paystubs for \$1,000 each. Yu also introduced a K-1 partnership tax form from 2011, which stated that Yu’s share of the partnership income was \$2,640.

At the close of Yu’s case, Li and Zhu moved for judgment on all three counts. The trial court granted Li and Zhu’s motion on the fraud and conversion counts, finding no evidence of either fraud or conversion.¹ The trial court, however, denied the motion for judgment on the breach of contract claim. Li and Zhu immediately rested their case and moved for judgment with respect to damages for the breach of contract claim. The trial court granted the motion. The trial court found that Yu had proven \$640 in damages—he was owed \$2,640 in his share of the partnership income that he never received, minus the \$2,000 in wages that he had previously received despite not being entitled to a salary under the Partnership Agreement. Yu filed this timely appeal.

DISCUSSION

“A party may move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party, and in a jury trial at the close of all the evidence.” Md. R. 2-519(a). A party is entitled to judgment “when the evidence at the close of the case, taken in the light most favorable to the nonmoving party, does not legally

¹ Yu’s appeal does not challenge the trial court’s grant of judgment on the conversion count.

support the nonmoving party's claim or defense." *Mallard v. Earl*, 106 Md. App. 449, 455 (1995). Conversely, "[i]f there is any evidence, no matter how slight, legally sufficient to generate a jury question, the motion must be denied." *James v. General Motors Corp.*, 74 Md. App. 479, 484 (1998).

When reviewing the trial court's decision on a motion for judgment, this Court must conduct the same analysis. *Id.* As such, this Court assumes "the truth of all credible evidence on the issue, and all fairly deducible inferences therefrom, in the light most favorable to the party against whom the motion is made" and determines if there is evidence legally sufficient to generate a jury question. *Orwick v. Moldawer*, 150 Md. App. 528, 531-32 (2003). Upon review of the evidence in the light most favorable to Yu, the nonmoving party, we conclude that the trial court properly granted both judgment on the fraud claim and judgment for \$640 in damages on the breach of contract claim.

I. Fraud

Yu challenges the trial court's grant of Li and Zhu's motion for judgment on the fraud action. Specifically, Yu claims that there was sufficient evidence for a jury to find that Li and Zhu had committed fraud. Yu failed, however, to present evidence that established every element of fraud, much less that established fraud clearly and convincingly, as is required under Maryland law. As such, the trial court's grant of judgment on the fraud claim was correct.

“A judge must grant a civil defendant’s motion for judgment as a matter of law if the plaintiff failed to present evidence that could persuade the jury of the elements of the tort... .” *Darcars Motors of Silver Spring, Inc. v. Borzym*, 379 Md. 249, 270 (2004). To prevail in a fraud action, a plaintiff must show, by clear and convincing evidence, that:

- (1) the defendant made a false representation to the plaintiff;
- (2) the representation’s falsity was either known to the defendant or the representation was made with reckless indifference as to its truth;
- (3) the misrepresentation was made for the purpose of defrauding the plaintiff;
- (4) the plaintiff relied on the misrepresentation and had the right to rely on it;
- and (5) the plaintiff suffered compensable injury resulting from the misrepresentation.

Maryland Envtl. Trust v. Gaynor, 370 Md. 89, 97 (2002) (internal quotations omitted).

Fraud must be proven by clear and convincing evidence; therefore, we must consider that standard in determining whether the jury should have decided the issue. *Darcars Motors*, 379 Md. at 270-71 (“a judge must account for and consider the appropriate burden of persuasion in deciding whether to allow the jury to decide an issue.”).

Yu failed to present evidence that even slightly established every element of fraud, much less that established fraud clearly and convincingly, as required. Although all five elements were wanting, Yu produced absolutely no evidence of an intent to defraud, the third element of fraud. Yu established that Li and Zhu’s wife formed the LLC before the parties signed the Partnership Agreement and alleged that the LLC owned the Restaurant, not the partnership as he claims he was promised. Yu produced no evidence, however, that Li and Zhu had created the LLC for the purpose of defrauding him. In fact, it is equally, if

not more likely that the nascent LLC was simply a precursor to the partnership, created by novices to business law, if not to the restaurant business. As such, there is no evidence that they intended to defraud Yu. Therefore, the trial court’s grant of judgment on the fraud claim was correct. We affirm.

II. Breach of Contract

Yu also challenges the trial court’s grant of judgment on the amount of damages for the breach of contract claim. Yu asserts that the jury, and not the trial court, should have decided the damages amount. Yu alleges that his damages were \$75,000—his investment in the Restaurant—not \$640. But, because Yu only proved \$640 in damages at trial, the trial court’s award was correct.

In a breach of contract action, the non-breaching party may recover damages that have been proven with reasonable certainty. *Hoang v. Hewitt Ave. Assocs., LLC*, 177 Md. App. 562, 594 (2007). At trial, Yu only proved damages of \$640. Yu introduced evidence that the partnership owed him \$2,640. That evidence was a K-1 partnership tax form for the year 2011, which stated that Yu’s partnership income was \$2,640. Yu alleges that he never received that amount. Yu also introduced evidence that he had already been paid \$2,000 in wages (two paystubs for \$1,000 each). Because the Partnership Agreement stated that “No partner shall receive a salary for services rendered to the partnership,” the trial court deducted the \$2,000 in wages already paid to Yu from the \$2,640 that the partnership still owed Yu, for a total of \$640 in damages. Thus, the trial court awarded Yu every dollar

of the damages that he proved at trial. That was indisputably correct and left no question of fact for the jury to decide.

Yu suggests, however, that his amount of damages should have been \$75,000, the amount that he testified was his initial investment in the Restaurant. He is incorrect because he confuses his investment with his damages. First, Yu presented evidence of damages totaling \$640, not \$75,000. Second, the evidence Yu presented of his investment—the receipts and checks—did not total \$75,000. Thus, he failed to prove that he invested, and lost, \$75,000. Most importantly, even if Yu did invest \$75,000 in the Restaurant, an award of that amount would hold him harmless from the risk of his investment. Investing in a restaurant includes an amount of risk. The judicial system, while sympathetic to losses, does not indemnify business investors from that risk.

Because the trial court awarded Yu all of the damages that he proved at trial, we affirm.

**JUDGMENT OF THE CIRCUIT COURT
FOR CHARLES COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**