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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-338

Filed: 20 June 2017

Iredell County, No. 14 CVS 812

TERRA MAITRA, Plaintiff,

v.

QUARTER MILE MUSCLE, INC. AND BRYAN J. KLITZ, INDIVIDUALLY AND AS OWNER OF QUARTER MILE MUSCLE, INC., Defendants.

Appeal by Defendants from judgment entered 18 December 2015 by Judge Mark E. Klass in Iredell County Superior Court. Heard in the Court of Appeals 19 September 2016.

*Roberts Law Firm, P.A., by Scott W. Roberts, for Plaintiff-Appellee.*

*Jones, Childers, McLurkin & Donaldson, PLLC, by Kevin C. Donaldson, for Defendants-Appellants.*

INMAN, Judge.

Quarter Mile Muscle, Inc. (“Quarter Mile”) and Bryan J. Klitz (“Klitz”) (collectively “Defendants”) appeal a final judgment of the Iredell County Superior Court awarding Terra Maitra (“Plaintiff”), *inter alia*, \$156,038.49 in damages for Defendants’ breach of contract and violation of the North Carolina Motor Vehicle

Repair Act. Defendants assert that the trial court erred in denying their motion for judgment notwithstanding the verdict because the trial court's jury instructions allowed the jury to award double damages on Plaintiff's claims. Defendants also contend that the trial court erred by denying their motion dismissing the claims against Klitz in his individual capacity. After careful review, we affirm the trial court's judgment.

### **Factual and Procedural Background**

In August 2012, Plaintiff, who lived in Gastonia, North Carolina, inherited a 1951 Pontiac Chieftain (the "Vehicle") from her grandmother. Plaintiff decided to have the Vehicle restored and discovered Quarter Mile through internet advertisements for restoration of vintage cars. In October 2012, Plaintiff, along with her parents, met Klitz at the Quarter Mile facility in Mooresville, North Carolina to discuss the restoration. After the meeting, Plaintiff hired Defendants with the expectation of a "full frame-off restoration" of the Vehicle. On 20 November 2012, Plaintiff delivered the Vehicle to Quarter Mile's shop and the parties entered into a written Auto Restoration Contract (the "Contract"). Klitz signed the Contract on behalf of Quarter Mile as the "Owner/President."

The Contract provided, in pertinent part, that "[b]eginning on November 20, 2012, [Quarter Mile] will provide the [Plaintiff] with restoration services for a 1951 Pontiac Chieftain. Specific restoration items will be discussed with the [Plaintiff]

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after the car is delivered to [Quarter Mile] and will be ongoing during the restoration process.” Quarter Mile was to provide these services for a rate of “\$65.00 per man hour plus the cost of materials.” The Contract term was set to end upon the completion of the restoration process.

From 20 November 2012 until 30 August 2013—the date on which Plaintiff regained possession of the Vehicle—Klitz and Plaintiff remained in email communication about the progress of the restoration. Plaintiff made several trips to Quarter Mile’s shop to see the restoration in progress, and timely paid monthly invoices Klitz sent to her for the ongoing work.

As part of the restoration process, Defendants were to replace the original engine with a more modern one. In February 2013, Plaintiff provided Defendants with \$5,000 after receiving an invoice requesting a down payment for the purchase of a “donor vehicle” from which the engine and transmission were to be taken. On 25 March 2013, Klitz purchased a 1993 Corvette for \$6,400 from Wade Bengé to serve as the donor vehicle. Klitz titled the Corvette in his name individually and informed Plaintiff of the purchase on 3 April 2013. Klitz, however, did not mention in his emails to Plaintiff that the Corvette was titled in his name.

By July 2013, eight months after delivering the Vehicle and the commencement of work by Defendants, Plaintiff began expressing anxiety about the cost of the restoration—at this point she had invested roughly \$40,000—and how

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much work was yet to be done. Klitz informed Plaintiff that outstanding tasks included finishing the current metal and body work; priming, sanding, and painting the interior and exterior; painting and fabricating the chassis; rebuilding and installing the engine; installing steering and brakes; and wiring and upholstering; and finishing the glass, chrome, rims, tires, and audio system.

On 16 August 2013, Plaintiff went to Quarter Mile with her parents and other relatives to inspect the condition of the Vehicle and the progress of the restoration. Upon this inspection, Plaintiff decided to cease the restoration project. Plaintiff and her father picked up the Vehicle and the donor Corvette on 30 August 2016, and Plaintiff paid the last invoice bringing the total amount paid to \$66,038.49. Klitz gave Plaintiff the title to the Corvette; however, at the time of trial Klitz had not yet signed it.

On 21 April 2014, Plaintiff filed a complaint in Iredell County Superior Court against Quarter Mile and Klitz, both individually and in his capacity as the owner of Quarter Mile, for breach of contract, unjust enrichment, violation of the North Carolina Motor Vehicle Repair Act, unfair and deceptive trade practices, and conversion. A jury trial commenced on 12 October 2015.

During trial, Plaintiff presented expert testimony from three witnesses: Brian Allen, an expert in auto restoration and repair; Michael Akers, Plaintiff's uncle and an expert in auto restoration; and Eddie Clark, Plaintiff's father and an expert in

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auto restoration. Allen described the work done by Defendants as poor quality. He provided a report detailing the work and opined that Defendants billed Plaintiff for an inflated number of hours. Akers testified that the restoration cost “shouldn’t have been over \$40,000,” and that the cost to restore the Vehicle following Defendants’ work would be more “because you have to go back and do—redo 90 percent of what they’ve done.” Akers further testified that the Corvette engine was improper for the Vehicle and rendered it unsafe to drive. Clark testified that Defendants’ work was not done in a workmanlike manner.

At the end of Plaintiff’s evidence, Defendants moved for a directed verdict on the claims for breach of contract, violation of the North Carolina Motor Vehicle Repair Act, unfair and deceptive trade practices, and conversion. The trial court denied Defendants’ motion.

Klitz testified on behalf of himself and Quarter Mile. He offered an explanation for taking title to the Corvette—ostensibly purchased on behalf of Plaintiff for parts—in his own name. He also testified that billing to Plaintiff was legitimate and that a “full frame-off” restoration of the Vehicle would cost up to \$200,000.

Defendants renewed their motion for directed verdict as to all claims following Defendants’ presentation of evidence. The trial court granted Defendants’ motion as to the unfair and deceptive trade practices claim and otherwise denied the motion.

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The trial court gave the jurors, without objection, a verdict sheet, which provided:

Issue 1. Did the defendants breach the contract with plaintiff?

ANSWER: \_\_\_\_\_

Issue 2. Did the defendants violate the North Carolina Motor Vehicle Repair Act?

ANSWER: \_\_\_\_\_

If you answered yes to either issue #1 or #2 then answer issue #3. If you answered no, then move to issue #4.

Issue 3. What amount of damages is plaintiff entitled to receive from the defendants?

ANSWER: \_\_\_\_\_

Issue 4. Did the defendants convert plaintiff's property?

ANSWER: \_\_\_\_\_

If yes proceed to issue #5. If no then stop.

Issue 5. What amount of damages are the plaintiff entitled to receive from the defendants?

ANSWER: \_\_\_\_\_

The jury returned a verdict finding both Defendants liable for breach of contract, violating the North Carolina Motor Vehicle Repair Act, and conversion. The jury awarded Plaintiff \$156,038.49 in damages for breach of contract and violation of the North Carolina Motor Vehicle Repair Act and \$5,150.00 for conversion.

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Following the verdict, Defendants' counsel filed a motion for judgment notwithstanding the verdict requesting, *inter alia*, that the trial court reduce or set aside the jury's damages award for breach of contract and violation of the North Carolina Motor Vehicle Repair Act, and to reduce the damages award for the conversion claim. The trial court denied the motion as to the breach of contract claim and violation of the North Carolina Motor Vehicle Act, but allowed the motion as to the conversion claim, reducing the damages award for conversion to \$2,000.

Defendants gave timely notice of appeal.<sup>1</sup>

**Analysis**

Defendants argue that the trial court erred by instructing the jury that it could award damages on either the breach of contract claim or the violation of the North Carolina Motor Vehicle Repair Act claim, or both claims, because allowing damages for both claims would amount to a double recovery. Defendants also argue that the evidence does not support the damages award for breach of contract or violation of the North Carolina Motor Vehicle Repair Act. Lastly, Defendants argue the evidence does not support the claims against Klitz in his individual capacity.

**I. Jury Instructions**

Plaintiff argues that Defendants failed to properly preserve their challenge to the denial of the motion for judgment notwithstanding the verdict on the basis of

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<sup>1</sup> Defendants have not appealed from the trial court's reduction of damages awarded for conversion.

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improper jury instructions and verdict sheet, because Defendants did not object to the jury instructions or the verdict sheet at trial. We agree.

Rule 10(a)(1) of the North Carolina Rules of Appellate Procedure states: “In order to preserve an issue for appellate review, *a party must have presented to the trial court a timely request, objection, or motion*, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context.” N.C. R. App. P. 10(a)(1) (2016) (emphasis added). Rule 10(a) further states:

A party may not make any portion of the jury charge or omission therefrom the basis of an issue presented on appeal unless the party objects thereto before the jury retires to consider its verdict, stating distinctly that to which objection is made and the grounds of the objection; provided that opportunity was given to the party to make the objection out of the hearing of the jury, and, on request of any party, out of the presence of the jury.

N.C. R. App. P. 10(a)(2).

Here, the trial court provided an opportunity for Defendants to object outside the presence of the jury, as illustrated by the following excerpt of the transcript:

THE COURT: Let the record reflect the jurors have left the courtroom. Any request as to the charge from the plaintiff?

[Plaintiff’s Counsel]: Plaintiff is fine, your Honor.

THE COURT: From defendant?

[Defense Counsel]: Your Honor, I think we agreed that number 9 was going to be stricken, [that the] defendant’s

work on the Chieftain made it unsafe.

[Plaintiff's Counsel]: I don't remember that one.

[Defense Counsel]: That's fine. I don't think it affects it.

THE COURT: You all want to take a look at the verdict sheet?

[Plaintiff's Counsel]: We've got a copy. We're fine with that.

[Defendant's Counsel]: The defense is fine, your Honor.

Defendants' failure to object to the jury instructions and the verdict sheet allowing a damage award for both breach of contract and violation of the Motor Vehicle Repair Act precludes them from raising the issue on appeal.

## **II. Sufficiency of the Evidence**

### *1. Standard of Review*

The standard of review for the denial of a motion for directed verdict and the denial of a motion for judgment notwithstanding the verdict is "whether the evidence, taken in the light most favorable to the non-moving party, is sufficient as a matter of law to be submitted to the jury." *Davis v. Dennis Lilly Co.*, 330 N.C. 314, 322, 411 S.E.2d 133, 138 (1991) (citation omitted). "In determining the sufficiency of the evidence to withstand a motion for a directed verdict, all of the evidence which supports the non-movant's claim must be taken as true and considered in the light most favorable to the non-movant[.]" *Turner v. Duke Univ.*, 325 N.C. 152, 158, 381

S.E.2d 706, 710 (1989) (citation omitted). The non-movant is given “the benefit of every reasonable inference which may legitimately be drawn therefrom,” and we resolve any “contradictions, conflicts, and inconsistencies in the non-movant’s favor.” *Id.* “A motion for directed verdict should be denied if more than a scintilla of evidence supports each element of the non-moving party’s claim.” *Herring v. Food Lion, LLC*, 175 N.C. App. 22, 26, 623 S.E.2d 281, 284 (2005) (citations omitted).

*2. Damages Pursuant to Breach of Contract*

Defendants assert that there was no evidence in the record to support the jury’s finding of direct and consequential damages totaling \$156,038.49. We disagree.

“For a breach of contract the injured party is entitled as compensation therefor to be placed, insofar as this can be done by money, in the same position he would have occupied if the contract had been performed.” *Perfecting Serv. Co. v. Prod. Dev. & Sales Co.*, 259 N.C. 400, 415, 131 S.E.2d 9, 21 (1963). “The burden of proving damages is on the party seeking them.” *Olivetti Corp. v. Ames Bus. Sys., Inc.*, 319 N.C. 534, 547, 356 S.E.2d 578, 586 (1987) (citations omitted).

Here, the evidence, when viewed in the light most favorable to Plaintiff, supported the submission of both direct and consequential damages to the jury. The evidence at trial supports a finding that Plaintiff suffered \$66,038.49 in direct damages as a result of the money paid to Defendants. Trial testimony also established that as much as ninety percent of the work done by Defendants would

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have to be redone, that it would likely cost more to restore the Vehicle in its present condition than it would have cost prior to Defendants' work, and that the Vehicle will require substantial repairs simply to return it to the condition it was in prior to Defendants' work. Additionally, Klitz testified that a "full frame-off restoration" of the Vehicle could have cost up to \$200,000. Based on this evidence, it would have been reasonable for the jury to infer that Plaintiff was entitled to up to \$200,000 in consequential damages.<sup>2</sup> Therefore, when viewed in the light most favorable to Plaintiff, the evidence is more than sufficient to support an award for direct and consequential damages totaling \$156,038.49.

Accordingly, we hold the trial court did not err in denying Defendants' motion for judgment notwithstanding the verdict because there was more than a scintilla of evidence to support the issue of direct and consequential damages to the jury, and the jury's award of \$156,038.49 is not grossly excessive. Because the damage award did not exceed the total amount of contract damages supported by the evidence, we need not address whether or to what extent damages are permitted under a violation of the North Carolina Motor Vehicle Repair Act.

*3. Claims Against Klitz in His Individual Capacity*

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<sup>2</sup> Defendants note that one of Plaintiff's experts testified that a total restoration should cost only \$40,000. However, we resolve any conflicts or contradictions in evidence in Plaintiff's favor. *Turner*, 325 N.C. at 158, 381 S.E.2d at 710.

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Defendants next argue that the trial court erred by denying Defendants' motions for directed verdict and judgment notwithstanding the verdict as to the claims against Klitz in his individual capacity because: (1) the Contract was expressly made between Quarter Mile and Plaintiff, (2) the North Carolina Motor Vehicle Repair Act does not impose personal liability on individuals, and (3) Plaintiff did not plead a claim to pierce the corporate veil. We disagree.

Generally, officers and directors of North Carolina corporations are not personally liable for the debts of their corporations. N.C. Gen. Stat. § 55B-9(b) (2015) (“A shareholder, a director, or an officer . . . is not individually liable . . . for the debts, obligations, and liabilities of . . . the professional corporation that arise from errors, omissions, negligence, malpractice, incompetence, or malfeasance committed by another . . . representative of the professional corporation[.]”). “However, if the corporate officer enters into a contract allegedly for the benefit of the corporation, but fails to inform the third party of his agency status, *or if the corporate officer enters into a contract with a third party for the officer’s own benefit*, the corporate officer may not use the corporation name as a shield to personal liability.” *Nutek Custom Hosiery, Inc. v. Roebuck*, 161 N.C. App. 166, 168-69, 587 S.E.2d 502, 504 (2003) (emphasis added) (citation omitted).

In *Nutek*, this Court affirmed the trial court’s imposition of personal liability against a defendant where the record revealed that: (1) the defendant informed the

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plaintiff that the product was necessary for a “new business” venture; (2) the plaintiff had personally loaned money to the defendant in the past; (3) the defendant’s name was listed on the invoice as the party purchasing the goods; and (4) the defendant did not indicate to the plaintiff that she was doing business in a representative capacity. *Id.* at 169, 587 S.E.2d at 504. This Court reasoned that such evidence was sufficient to support the trial court’s determination that the defendant entered into the contract for her own benefit and that she was unable to use the corporation “as a shield to her personal liability.” *Id.*

Here, Defendants highlight that the Contract specified it was “by and between Quarter Mile Muscle, Inc. . . . and Terra Miatra . . . [;]” the Contract was signed by Klitz as the “Owner/President” of Quarter Mile; the invoices contained Quarter Mile and not Klitz’s name; there was no personal relationship between the parties; and Plaintiff never testified that Klitz represented to her that the Contract was meant to be between her and Klitz in his individual capacity. Defendants argue this evidence supports their contention that there was no evidence supporting the breach of contract claim against Klitz in his individual capacity.

However, it is not for this Court to balance the evidence; rather, we are only able to determine whether a scintilla of evidence supports a breach of contract claim against Klitz in his individual capacity regardless of the evidence to the contrary. The relevant evidence at trial establishes that: (1) Klitz had a personal interest in

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Corvettes; (2) Klitz suggested a Corvette engine be used for a replacement, even though such an engine was inappropriate and would render the Vehicle unsafe; (3) Klitz titled the donor Corvette in his own name; and (4) parts were removed from the donor Corvette without Plaintiff's permission. This evidence would allow a reasonable trier of fact to find that Klitz entered into the Contract for his own personal benefit, thus precluding him from using the corporation as a shield against personal liability. *Nutek*, 161 N.C. App. at 168-69, 587 S.E.2d at 504.

Accordingly, we hold the evidence, when viewed in a light most favorable to Plaintiff, supports Plaintiff's breach of contract claim and the jury's verdict and damage award against both Quarter Mile and Klitz. Because we hold that the damages award was sufficiently supported under a theory of breach of contract, we need not address the issue of Klitz's personal liability under the violation of the North Carolina Motor Vehicle Repair Act.

**Conclusion**

For the reasons stated above, we hold that (1) Defendants failed to preserve their arguments concerning the trial court's instructions to the jury, (2) the trial court did not err in denying Defendants' motions for directed verdict and judgment notwithstanding the verdict, and (3) there was sufficient evidence to support the imposition of personal liability on Klitz. Accordingly we affirm the judgment.

AFFIRMED.

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Chief Judge MCGEE and Judge STROUD concur.

Report per Rule 30(e).