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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1274

Filed: 7 August 2018

Wake County, No. 16-CVD-13635

BUSINESS IMPROVEMENT TECHNOLOGIES, INC., Plaintiff,

v.

WORLD FAMOUS, INC. d/b/a WORLD FAMOUS BHS, INC., and d/b/a WORLD FAMOUS BHS, INK, Defendant.

Appeal by Defendant from judgment entered 28 July 2017 by Judge Ned Mangum in Wake County District Court. Heard in the Court of Appeals 5 April 2018.

Gregory Alan Heafner, PA, by Gregory Alan Heafner, for plaintiff-appellee.

Carruthers & Roth, P.A., by J. Patrick Haywood and Rachel Scott Decker, for defendant-appellant.

MURPHY, Judge.

Plaintiff, Business Improvement Technologies, Inc., a retailer of business security equipment, contracted with Defendant, World Famous, Inc. for the purchase and installation of a new security system in three tattoo shops and a restaurant. At issue is Defendant's failure to either pay Plaintiff for the restaurant's security system or return the system after Plaintiff offered to take it back. Defendant alleges the

security system for the restaurant was to include a "text overlay" feature which was never installed. After a bench trial, the trial court found that Defendant's failure to pay for the security equipment installed at the restaurant, or to allow Plaintiff to recover that equipment, constituted a breach of contract. We affirm the trial court's findings of fact as well as the ultimate conclusion that Defendant breached the contract.

BACKGROUND

Plaintiff and Defendant executed a contract for the sale and installation of a security system in Defendant's shops and restaurant on 13 May 2015. The contract provided for Defendant to pay a total of $12,900.00 for the restaurant's security system. While not available at the time of contracting, Plaintiff informed Defendant that the text overlay feature would be available in a few months. The text overlay feature enables viewers of cash register security footage to simultaneously see employee entries into the register, lessening the difficulty of inventory and preventing theft. After the otherwise successful installation and operation of the system at all locations, Plaintiff was ultimately unable to deliver the additional text overlay feature at Defendant's restaurant. Defendant then refused to pay for the system's installation at the restaurant location, while also preventing Plaintiff from recovering the already installed equipment.

Plaintiff brought suit on claims of breach of contract, *quantum meruit*, conversion, and unfair and deceptive trade practices. Plaintiff later dismissed the unfair and deceptive trade practices claim. Following a bench trial in Wake County District Court, the trial court denied the *quantum meruit* and conversion claims, but found for Plaintiff on the breach of contract claim, awarding Plaintiff $8,900.00 plus interest and court costs. Defendant timely appealed.

ANALYSIS

Defendant claims a number of the trial court's findings of fact and a conclusion of law are incorrect. At the core of Defendant's appeal is the trial court's determination that Defendant materially breached the contract by failing to pay for the restaurant's security system.

"[F]indings of fact made by the trial judge are conclusive on appeal if supported by competent evidence, even if . . . there is evidence to the contrary." *Sisk v. Transylvania Cmty. Hosp., Inc.*, 364 N.C. 172, 179, 695 S.E.2d 429, 434 (2010) (alteration in original) (citation omitted). "Conclusions of law drawn by the trial court from its findings of fact are reviewable *de novo* on appeal." *Carolina Power & Light Co. v. City of Asheville*, 358 N.C. 512, 517, 597 S.E.2d 717, 721 (2004).

The trial court made nine Findings of Fact. Defendant challenges the designation of Findings of Fact 4, 5, and 6, claiming they are miscategorized and are

in actuality, conclusions of law. Alternatively, Defendant claims that the evidence does not support Findings of Fact 2, 4, 5, and 6. The trial court found:

> 1. On May 13, 2015 the Plaintiff and Defendant entered into a valid contract for Plaintiff to supply and install a video surveillance system at Defendant's restaurant located at 501 High Street in Portsmouth, Virginia.
>
> 2. *Plaintiff installed the system on May 29, 2015.*
>
> 3. Defendant has refused to pay Plaintiff anything for the system, and has retained the system.
>
> 4. *Defendant has breached the parties' contract by failing to pay Plaintiff anything.*
>
> 5. *The date the Defendant breached the contract was May 29, 2015.*
>
> 6. *Plaintiff is entitled to recover damages for Defendant's breach of the parties' contract in the amount of $8,900.00.*
>
> 7. Plaintiff's quantum meruit claim is denied because the parties entered into a contract as set forth above.
>
> 8. Plaintiff's conversion claim is denied for lack of evidence.
>
> 9. The parties stipulate that Judgment may be entered out of term and session.

(emphasis added).

Utilizing these findings, the trial court concluded:

> 1. The Court has jurisdiction over the parties and subject matter.

> 2. *The Defendant has breached the parties' contract.*
>
> 3. As a result of Defendant's breach of contract, the Plaintiff is entitled to recover damages from Defendant.
>
> 4. The amount of damages Plaintiff is entitled to recover is $8,900.00.
>
> 5. Plaintiff is entitled to recover both pre-judgment interest from the May 29, 2015 date of the Defendant's breach of the parties' contract, and post-judgment interest, both at the legal rate of eight percent (8%) per annum.

(emphasis added). Defendant also challenges Conclusion of Law 2.

A. Breach of Contract

Despite appealing multiple findings of fact, Defendant failed to challenge Findings of Fact 1 and 3. "[F]indings of fact which are left unchallenged by the parties on appeal are presumed to be supported by competent evidence and are, thus conclusively established on appeal." *Chaisson v. Simpson*, 195 N.C. App. 463, 470, 673 S.E.2d 149, 156 (2009) (internal quotation marks and citation omitted).

However, Defendant asserts that Finding of Fact 4 is miscategorized or, in the alternative, is not supported by the evidence. This "finding of fact" consists of both a finding of fact, that Defendant failed to pay Plaintiff, and a conclusion of law, that the failure to pay constituted a breach of contract. *Long v. Long*, 160 N.C. App. 664, 670, 588 S.E.2d 1, 5 (2003) ("Breach of contract is a conclusion of law reviewable by this Court."). Where there are mixed "findings of fact and conclusions of law, the

factual elements of a mixed finding must be supported by competent evidence, and the legal elements must . . . be supported by the facts." *Rolan v. N.C. Dep't of Agric. & Consumer Servs.*, 233 N.C. App. 371, 380, 756 S.E.2d 788, 794 (2014). Further, "[a] mislabeled finding of fact which is in reality a conclusion of law will be reviewed as such." *In re M.M.*, 230 N.C. App. 225, 231, 750 S.E.2d 50, 54 (2013). As to Finding of Fact 4's factual determination that Defendant failed to pay Plaintiff, there is competent evidence that Defendant did not pay for the equipment or services performed at the restaurant location, as admitted by Defendant at trial:

> *Plaintiff's Counsel*: Okay; and you refused and have not paid Business Improvement Technologies anything for the system at the Humboldt Steel restaurant; right?
>
> *President of World Famous, Inc.*: Correct.
>
> *Plaintiff's Counsel*: And you have refused to let them retrieve that system; right?
>
> *President of World Famous, Inc.*: Correct.

Findings of Fact 1 and 3, along with the factual element of Finding of Fact 4 are sufficient to conclude a breach of contract occurred, establishing both the creation of a valid contract and Defendant's failure to pay after Plaintiff's performance. *Poor v. Hill*, 138 N.C. App. 19, 26, 530 S.E.2d 838, 843 (2000) ("The elements of a claim for breach of contract are (1) existence of a valid contract and (2) breach of the terms of that contract."). Even assuming *arguendo* that Findings of Fact 2 and 5 were

incorrectly categorized or insufficiently supported by the evidence, the remaining findings of fact support the conclusion of law that Defendant breached the contract.

B. Damages

Defendant also ostensibly challenges Finding of Fact 6 regarding the trial court's determination of damages. However, Defendant presents no argument concerning damages; rather, he argues that the trial court erred in concluding that Defendant breached the contract. Consequentially, the trial court's determination of damages is not before us.

CONCLUSION

The trial court's findings of fact support the conclusion of law that Defendant breached the contract. Accordingly, we affirm the trial court's judgment.

AFFIRMED.

Judges DAVIS and INMAN concur.

Report per Rule 30(e).