

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LOREN A. LORENZETTI,	§
	§ No. 281, 2012
Plaintiff Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
DOROTHEA HODGES, TAMARA	§ C.A. No. S10C-07-007
HODGES and MICHAEL	§
BAGLEY,	§
	§
Defendants Below-	§
Appellees.	§

Submitted: January 4, 2013
Decided: February 13, 2013

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 13th day of February 2013, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The plaintiff-appellant, Loren A. Lorenzetti, filed an appeal from the Superior Court’s April 27, 2012 order entering judgment against him and in favor of the defendants-appellees, Dorothea Hodges, Tamara Hodges and Michael Bagley (the “defendants”), following a bench trial.¹ We find no merit to the appeal. Accordingly, we affirm.

¹ The Superior Court also entered judgment in favor of Lorenzetti on the defendants’ counterclaims of abuse of process, malicious prosecution and bad faith and denied their

(2) The history of this dispute is as follows. Lorenzetti and Dorothea Hodges (“Hodges”) began a relationship with each other in 1998, at which time Lorenzetti executed a durable power of attorney in favor of Hodges.² For a time the couple lived together at Rockingham, Lorenzetti’s property in Vermont. When they ended their relationship in 2003, Lorenzetti remained at Rockingham. Hodges moved to Lorenzetti’s property in Dagsboro, Delaware, known as Helms Landing. Both of the properties had been conveyed to Lorenzetti by his ex-wife during divorce proceedings.³ In December 2004, Lorenzetti decided to deed Helms Landing to Hodges, instructing her to use the deed to Helms Landing that had been prepared during his divorce proceedings as a model. Hodges agreed to pay \$150,000 for the property.

(3) Hodges hired an attorney to prepare the deed and other documents in accordance with Lorenzetti’s instructions and sent them to Lorenzetti. Lorenzetti consulted an attorney prior to executing the documents. The Helms Landing deed was recorded in Delaware on January 24, 2005. In 2008, Michael Bagley, the boyfriend of Tamara Hodges, Dorothea Hodges’ daughter, agreed to assist Hodges in obtaining a mortgage

request for punitive damages, attorney’s fees and costs as well as their pretrial motions for sanctions. The defendants have not appealed those rulings.

² The power of attorney has not been used since 2008 and was terminated in April 2011.

³ The Rockingham property is not at issue in this case.

against the property and his name was added to the deed. In that same year, Hodges moved out of Helms Landing because, she claimed, Lorenzetti had threatened and intimidated her. In 2010, Helms Landing was deeded from Hodges and Bagley back to Hodges and then sold to Wayne and Kimberly Cropper.

(4) Lorenzetti filed a complaint against the defendants on July 30, 2010.⁴ The complaint alleged fraud, breach of contract, conversion, conspiracy, libel and slander.⁵ Lorenzetti claimed that, in exchange for Helms Landing being “gifted” to her, Hodges agreed to rent the property from him for \$300 a month and promised to prepare a will bequeathing her possessions to him, but that she failed to do so. He also claimed that Hodges improperly disposed of personal property that he left at Helms Landing, most notably a rebuilt racing car. Lorenzetti sought damages in the amount of the sales price for Helms Landing paid by the Croppers and back rent from August 2008 through January 2010. Michael Bagley was named in the fraud and breach of contract counts and Tamara Hodges was named as a co-conspirator with Hodges.

⁴ The Superior Court dismissed a fourth defendant referred to in the complaint as “John Doe” on January 27, 2012.

⁵ Lorenzetti’s claims of libel and slander were dismissed at trial. He does not appeal that ruling. An additional claim of breach of fiduciary duty was transferred to the Court of Chancery.

(5) The Superior Court's April 27, 2012 decision from the bench reflects the following. First, the Superior Court entered judgment in favor of Michael Bagley on the ground that there was no evidence of fraud and that Bagley was not a party to whatever verbal agreement may have existed between Lorenzetti and Hodges regarding the rent and the will. The Superior Court also found that there was inartful language in the Helms Landing deed that led to disagreements between Lorenzetti and Hodges. For example, there was language that implied Lorenzetti owned Helms Landing with his first wife at the time of the conveyance to Hodges, which was not the case. In accordance with the testimony of real estate experts at trial, the language was accepted by the Superior Court as a scrivener's error. Based on the evidence presented, the Superior Court concluded that the Helms Landing deed conveyed a fee simple interest to Hodges as grantee from Lorenzetti as grantor, supported by consideration of \$150,000. The Superior Court found Lorenzetti's contention that the property was a gift to be without any factual foundation.

(6) The Superior Court also found that there was no evidence to support Lorenzetti's claim that Hodges had falsely promised to prepare a will bequeathing all of her property to him. The Superior Court found her testimony that she prepared such a will in 2006 only because Lorenzetti had

threatened her to be credible and, furthermore, found that Hodges had the right to subsequently change her will to leave all of her property to her children. As for Lorenzetti's claim that Hodges defrauded him because she stopped paying monthly checks to him, the Superior Court found that Hodges acted reasonably in stopping the checks. Specifically, the Superior Court found credible Hodges' testimony that she had paid Lorenzetti \$300 a month because he had little income and she felt sorry for him, but stopped the payments in 2008 after she moved out of Helms Landing because of Lorenzetti's threats. On this basis, the Superior Court found that there was no "agreement" to pay rent to Lorenzetti and, therefore, no breach of contract.

(7) Lorenzetti also claimed that, at the time he "gifted" Helms Landing to Hodges, the property contained a rebuilt racing car and numerous household furnishings that Hodges maliciously converted to her own use in 2008. The testimony at trial established that Lorenzetti was aware that the items remained at Helms Landing in 2004. Moreover, Lorenzetti visited Hodges at Helms Landing days after she arrived and did nothing to claim the items. Also, in August 2007, Lorenzetti returned to Helms Landing and took away with him several items of furniture, but not the race car.

(8) Hodges testified that, in October of 2008, she notified Lorenzetti that she had removed the car from the house, placed it in storage and arranged for it to be delivered to Rockingham at her expense. She told Lorenzetti that, if he did not agree to pay the storage fees and take delivery of the race car, it would be disposed of. Lorenzetti refused to agree to those proposed arrangements. The evidence at trial established that Hodges sued in Justice of the Peace Court in February 2010 seeking to dispose of the race car on the ground of abandonment. Judgment was entered for Hodges, the Court of Common Pleas dismissed Lorenzetti's appeal and he did not appeal to the Superior Court. For all of these reasons, the Superior Court found that the race car had been abandoned by Lorenzetti and that, therefore, Hodges was not liable for conversion.

(9) The Superior Court likewise rejected Lorenzetti's claim of a civil conspiracy. As the trial testimony established, Tamara Hodges assisted her mother in removing the race car from Helms Landing and assisted in making arrangements for its storage and possible transport to Rockingham. However, the Superior Court concluded, those actions were not unlawful and were not done in furtherance of a conspiracy.

(10) In this appeal, Lorenzetti claims that the Superior Court erred by a) failing to consider Dorothea Hodges' position as his agent via the

power of attorney; b) finding that he had abandoned his personal property; c) finding that Helms Landing had been conveyed to Hodges in fee simple; d) finding that there was no rental contract between him and Hodges; e) refusing to permit him to ascertain the amount of Hodges' pension through discovery; and f) making findings of fact that are not supported by Delaware law or trial testimony.⁶

(11) On a claim of fraud, the plaintiff must prove a) a false representation; b) the defendant's knowledge or belief that the representation was false, or was made with reckless indifference to the truth; c) an intent to induce the plaintiff to act or to refrain from acting; d) the plaintiff's action or inaction taken in justifiable reliance upon the representation; and e) resulting damage to the plaintiff.⁷ On a claim of breach of contract, the plaintiff must prove a) the existence of a contract; b) the breach of an obligation imposed by that contract; and c) resulting damages to the plaintiff.⁸ On a claim of conversion, the plaintiff must prove a) a right to the property in question and b) that the defendant holds the property in contravention of that right.⁹ Finally, on a claim of civil conspiracy, the plaintiff must prove a) a

⁶ During trial, Lorenzetti was found to be in contempt of court for making inappropriate and abusive comments. A \$150.00 fine was imposed. Lorenzetti does not appeal the Superior Court's ruling.

⁷ *Gaffin v. Teledyne, Inc.*, 611 A.2d 467, 472 (Del. 1992).

⁸ *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612 (Del. 2003).

⁹ *Arnold v. Society for Sav. Bancorp, Inc.*, 678 A.2d 533, 535-36 (Del. 1996).

combination of two or more persons; b) an unlawful act done in furtherance of the conspiracy; and c) resulting damages to the plaintiff.¹⁰ The Superior Court explicitly utilized these standards in its April 27, 2012 decision from the bench.

(12) In an appeal from the entry of a civil judgment following a Superior Court bench trial, this Court will uphold the judge's factual findings if they are sufficiently supported by the record and not clearly erroneous, and are the product of an orderly and logical deductive process.¹¹ This Court reviews *de novo* the Superior Court's formulation and application of legal principles.¹² We have reviewed the entire trial transcript in this case and conclude that the Superior Court's factual findings are supported by the record and are the product of an orderly and logical deductive process. Moreover, we conclude that the Superior Court formulated and applied the proper legal principles to the facts of this case. Finally, we conclude that the Superior Court acted within its discretion when it denied Lorenzetti's request for discovery regarding Hodges' pension.¹³ Therefore, the judgment of the Superior Court must be affirmed.

¹⁰ *Nicolet, Inc. v. Nutt*, 525 A.2d 146, 149 (Del. 1987).

¹¹ *Homestore, Inc. v. Tafeen*, 888 A.2d 204, 217 (Del. 2005); *Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972).

¹² *Gilbert v. El Paso Co.*, 575 A.2d 1131, 1142 (Del. 1990).

¹³ *ABB Flakt, Inc. v. Nat'l Union Fire Insur. Co.*, 731 A.2d 811, 815 (Del. 1999).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

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