COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

21-P-254

JOSEPH BOCCELLI & another[1]

vs.

R. ERIC RUMPF, individually and as trustee,[2] & another.[3]

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

This suit arises from a dispute among parties who had been engaged in a construction project. The case was tried to a jury, with the exception of the c. 93A claim, which the judge reserved to himself. The jury found in favor of the plaintiff, Joseph Boccelli, on his breach of contract claim, but found in favor of the defendant, R. Eric Rumpf, on his counterclaim for fraud. The trial judge then concluded that Boccelli had knowingly violated c. 93A, and awarded Rumpf $40,000 in damages, doubled to $80,000. The plaintiffs now appeal, arguing that (1) the evidence was insufficient to support the jury's verdict on the defendants' fraud counterclaim; (2) the trial judge erred in

[1] Five Gazelles, Inc., doing business as Central Contractor.
[2] Of the 22 Crooked Lane Construction Trust.
[3] Kemosabe Construction Corp.

finding that the plaintiffs had committed knowing violations of c. 93A and awarding the defendants double damages; and (3) liability for breach of contract should have been imposed on Rumpf personally as well as in his capacity as trustee. We affirm.

1. Sufficiency of the evidence of fraud. The defendants' fraud counterclaim was based on the allegation that Five Gazelles, Inc. (Five Gazelles) billed for work not actually performed and for work performed by Boccelli, who had agreed to work at no cost, as well as work on unrelated construction projects.[4] As a result, Five Gazelles was allegedly paid "far in excess of what was agreed [upon]." The jury returned a verdict in the defendants' favor. On appeal, the plaintiffs argue that the judge erroneously denied their directed verdict motion. We review "the denial of a motion for a directed verdict under the same standard applied by the trial judge," Beverly v. Bass River Golf Mgt., Inc., 92 Mass. App. Ct. 595, 600 (2018), and "evaluate whether 'anywhere in the evidence, from whatever source derived, any combination of circumstances could be found

[4] "The elements of fraud consist of '[1] a false representation [2] of a matter of material fact [3] with knowledge of its falsity [4] for the purpose of inducing [action] thereon, and [5] that the [defendants] relied upon the representation as true and acted upon it to [their] . . . damage.'" Balles v. Babcock Power, Inc., 476 Mass. 565, 573 (2017), quoting Danca v. Taunton Sav. Bank, 385 Mass. 1, 8 (1982).

from which a reasonable inference could be made in favor of the [verdict].'" Id., quoting Turnpike Motors, Inc. v. Newbury Group, Inc., 413 Mass. 119, 121 (1992).

Taken in this light, the evidence sufficiently supported the fraud claim. The evidence allowed the jury to find that that Five Gazelles charged the defendant Kemosabe Construction Corporation (Kemosabe) for Boccelli's time, despite an agreement not to do so, and charged $21,000 for decking work purportedly completed by Boccelli, but in fact undertaken by Kemosabe's own carpenters. The evidence also showed that Boccelli billed Rumpf $1,500 for tiling work that he did not do and $3,640 for painting work he did not do. Finally, Five Gazelles submitted invoices for work done on unrelated construction projects. Thus, there was sufficient evidence to support the jury's verdict that Boccelli and Five Gazelles defrauded the defendants by billing for work not actually completed by Boccelli, and for work unrelated to the 22 Crooked Lane project. See Keystone Freight Corp. v. Bartlett Consol., Inc., 77 Mass. App. Ct. 304, 316 (2010) (recognizing "billing misconduct" as basis for claims of deceit, negligent misrepresentation, and violation of G. L. c. 93A, but holding they were compulsory counterclaims in prior action).

The plaintiffs also appear to argue that, even if liability was adequately established, there was no factual support for the

jury's $27,888 damages award. The evidence permitted the jury to find that Boccelli billed Kemosabe $21,000 for decking work that he did not do, $1,500 for tiling work that he did not do, and $3,640 for painting work that he did not do. These figures add up to $26,140 and, when combined with other bills for work on projects unrelated to 22 Crooked Lane, provided more than adequate support for the jury's damages award. "[W]e do not disturb a jury's award of damages unless it 'exceeds any rational appraisal or estimate' of what the damages should be." Beaupre v. Cliff Smith & Assocs., 50 Mass. App. Ct. 480, 496 n.26 (2000), quoting Kolb v. Goldring, Inc., 694 F.2d 869, 871 (1st Cir. 1982).

2. The c. 93A counterclaim. The plaintiffs next argue that the trial judge erred in finding they had knowingly violated G. L. c. 93A, § 11, and in awarding double damages. The trial judge's findings of fact are not set aside unless they are clearly erroneous, but the judge's conclusions of law are reviewed de novo in order to "ensure that the judge's ultimate findings and conclusions are consistent with the relevant legal standards." Demoulas v. Demoulas Super Mkts., 424 Mass. 501, 510 (1997).

Here, the trial judge found -- pointing largely to the same evidence we outlined above -- that the plaintiffs submitted multiple false invoices to the defendants. The judge determined

that these false invoices, in total, amounted to $60,000; this finding is not clearly erroneous. See Kenner v. Zoning Bd. of Appeals of Chatham, 459 Mass. 115, 119 n.3 (2011), quoting Building Inspector of Lancaster v. Sanderson, 372 Mass. 157, 160-161 (1977) (finding is clearly erroneous only when reviewing court is "left with the definite and firm conviction that a mistake has been committed"). The trial judge further found that the construction project was not a joint venture among business partners and that Boccelli used the false invoices to demand payment from Kemosabe and the project's lender, and to threaten filing a mechanic's lien, which would have prevented Kemosabe from completing the project. These findings are all adequately supported by the evidence, and supported finding a violation of c. 93A. See VMark Software, Inc. v. EMC Corp., 37 Mass. App. Ct. 610, 620 (1994) ("To be held unfair or deceptive under c. 93A, practices involving even worldly-wise business people do not have to attain the antiheroic proportions of immoral, unethical, oppressive, or unscrupulous conduct, but need only be within any recognized or established common law or statutory concept of unfairness").

Without pointing to any legal authority to support the proposition, the plaintiffs suggest that the trial judge's amended award of $40,000 in damages, doubled to $80,000, was unreasonable because the judge "provided no backup" for the

figure. We review the amount of a damages award only for abuse of discretion, see Twin Fires Inv., LLC v. Morgan Stanley Dean Witter & Co., 445 Mass. 411, 424-425 (2005), and discern none here. The evidence permitted the judge to find that Boccelli leveraged his false billing to gain an advantage to himself (and to Rumpf's detriment) in connection with negotiating with the lender over releasing additional funds for the project. At that meeting, the judge found that Rumpf offered $135,000 and that the parties eventually settled on $225,000. Rumpf testified that he felt he was being "extorted" by Boccelli at the meeting with the lender, because if he did not agree to pay Boccelli $225,000, including an immediate payment of $50,000, the lender would not release additional funds and work on the project would not continue. Later, when the house was eventually sold, Rumpf met with Boccelli and the two agreed they could settle all claims between them for $131,000. The trial judge reasoned that the difference between Boccelli's inflated claim of $175,000 ($225,000 minus $50,000) and Rumpf's $131,000 offer is $44,000 and represents Rumpf's decreased bargaining power. The trial judge thus provided adequate support for the $40,000 he ultimately awarded to the defendants.

Likewise, the judge's findings support his conclusion that that the plaintiffs acted willfully or knowingly, and the judge's decision to award double damages was not error. See

Anthony's Pier Four, Inc. v. HBC Assocs., 411 Mass. 451, 475 (1991) ("[Plaintiff's] knowing use of a pretext to coerce [defendant] into paying [plaintiff] more than the contract required establishes wilfulness as a matter of law").

3. Rumpf's personal liability. The plaintiffs argue that the judge erred by "release[ing] Defendant, R. Eric Rumpf, individually from this case," and that the judge "was required to analyze factors to determine whether Rumpf has personal liability even if he [was] acting as a Trustee of the Trust." The argument is supported neither by the record, nor by citation to any legal authority. The record does not reflect that the judge "released" Rumpf from individual liability; in fact, the judge charged the jury on possible bases for Rumpf's liability to the plaintiffs, both personally and as trustee of the trust. Consistent with these instructions, the special verdict form asked (among other things) the jury to determine whether Rumpf individually had committed a breach of any contract the jury found to exist between the parties. In response, the jury found that "THE TRUSTEE," rather than Rumpf individually, had breached the contract with the plaintiffs. On this record, the

plaintiffs' argument necessarily fails.

Conclusion. For all of these reasons, we affirm the amended final judgment dated October 19, 2020.

So ordered.

By the Court (Wolohojian, Shin & Grant, JJ.[5]),

Joseph F. Stanton

Clerk

Entered: August 3, 2022.

[5] The panelists are listed in order of seniority.