Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-367

FEBRUARY TERM, 2002

Eric Siegel	}	APPEALED FROM:
v.	}	Rutland Superior Court
Green Mountain Ford-Mercury	}	DOCKET NO. S0747-99 RcC
	}	Trial Judge:Richard W. Norton

In the above-entitled cause, the Clerk will enter:

Defendant, the Dorset Motor Company, d/b/a Green Mountain Ford-Mercury, appeals from the superior court's order denying its motions for judgment notwithstanding the verdict and for a new trial. We affirm.

The litigation stems from plaintiff Eric Siegel's lease and eventual purchase of a new truck from defendant. The lease agreement was signed on June 30, 1997 and required plaintiff to pay defendant a $275 deposit and the Ford Motor Credit Company (hereafter Ford) $262.77 per month for twenty-four months, at which point plaintiff could purchase the vehicle for $8720.30. On June 29, 1999, plaintiff purchased the truck for $9104.72, excluding fees and taxes. Apparently, plaintiff expected Ford to refund the $275 security deposit that he had paid at the time he leased the vehicle. When plaintiff called Ford to inquire about the refund, he was told that he had signed a Dealer Refund Responsibility Form, dated July 22, 1999, indicating that the security deposit had been deducted from the purchase option price. Because plaintiff believed that he had not signed any such form, he attempted to contact defendant through counsel to find out what had happened to his security deposit. When these efforts failed, plaintiff filed suit, alleging that defendant had defrauded him of his security deposit by forging his name on the Dealer Refund Responsibility Form. Plaintiff obtained a jury verdict awarding him $537.30 in compensatory damages and $30,000 in punitive damages. Following the verdict, the district court denied defendant's motions for judgment notwithstanding the verdict and for a new trial. On appeal, defendant argues that the superior court erred in denying his post-judgment motions because (1) plaintiff failed to prove by clear and convincing evidence that defendant defrauded him of the security deposit when he purchased the truck; and (2) even if plaintiff's allegations in his complaint are true, punitive damages against defendant are not warranted.

Defendant acknowledges that, in considering its post-judgment motions, the trial court was required (1) to examine the evidence in the light most favorable to plaintiff, excluding the effect of any modifying evidence; (2) to defer to the jury with respect to weighing the evidence and judging the credibility of witnesses; and (3) to leave the verdict undisturbed unless the jury disregarded the evidence through passion, prejudice, or some misconstruction of the matter. See Harris v. Carbonneau, 165 Vt. 433, 437 (1996); Rubin v. Sterling Enters., Inc., 164 Vt. 582, 584 (1996); Corbin v. Dickerson, 155 Vt. 486, 490 (1990). Defendant also acknowledges that this Court must "give presumptive support to the trial court's ruling"on its post-judgment motions. Corbin, 155 Vt. at 490.

Nevertheless, defendant argues that the verdict should be overturned because plaintiff failed to prove at trial by clear and convincing evidence that defendant defrauded him of his security deposit when he purchased the truck. See In re Estate of Raedel, 152 Vt. 478, 485 (1989) (common law fraud must be proved by clear and convincing evidence). Defendant asserts that Ford's statement of accounts, which was admitted as an exhibit at trial, demonstrates that on June 29, 1999 - the date that plaintiff bought the truck - he still had two lease payments to make. According to defendant,

when one adds those two payments plus late charges to the $8720.30 buy-out sum from the lease agreement, and then deducts the security deposit, one arrives at a figure that is close to (within approximately $23 of) the buy-out sum plaintiff actually paid, excluding fees and taxes. In defendant's view, these facts suggest, indeed demonstrate, that the reason plaintiff's security deposit was not returned to him was because it was credited against the buy-out amount.

One of the problems with this argument is defendant's failure to acknowledge that, at trial, the evidence was disputed on the question of whether defendant had made twenty-two (all but two) or twenty-three (all but one) payments as of June 29, 1999. Plaintiff testified that he made the first payment at the time he signed the lease agreement on June 30, 1997. In support of this testimony, he submitted into evidence the lease agreement indicating that the first payment was made at that time. Defendant suggested to the jury that that payment was the same one indicated on the Ford statement of account as having been paid on July 11, 1997. Defendant also argued that plaintiff had accepted the statement of account as the complete record of all payments made under the lease agreement. Plaintiff disagreed, contending that the statement of account was accurate as to those payments sent to Ford, but did not indicate the initial payment made at the time the lease agreement was signed. The trial court ruled that the dispute was a factual question for the jury to resolve, and we agree.

Based on the evidence presented at trial, we conclude that the jury could have determined, by clear and convincing evidence, that defendant attempted to defraud plaintiff. Plaintiff testified that when he arrived at the dealership to purchase the truck on June 29, 1999, he was told that the buy-out figure was higher than what the lease agreement called for because Ford had not received his last payment, and that he would be refunded that payment after it was received along with his security deposit. Plaintiff further testified that when he called Ford later to obtain his refund, he was told that he had signed the Dealer Refund Responsibility Form indicating that the security deposit had been credited at the time he purchased the truck. The form was signed three weeks after he had purchased the truck, at a time when plaintiff was not even in the area. Plaintiff claimed that his signature had been forged on the form and he had never received the deposit or had it credited to the purchase price. The jury apparently believed plaintiff's testimony. In denying defendant's post-judgment motions, the trial court ruled that the amount of compensatory damages awarded to plaintiff was within seven cents of one lease payment plus the security deposit, and thus that the jury had awarded compensatory damages within the range of the evidence. We find no error.

Defendant argues, however, that even if plaintiff's allegations are true, he was not entitled to an award of punitive damages because he failed to show that an officer of defendant corporation directed, participated in, or ratified the fraudulent conduct that he alleges. See Brueckner v. Norwich Univ., 169 Vt. 118, 130 (1999). According to defendant, the most that plaintiff demonstrated at trial is that an unnamed salesperson working for defendant tried to deprive him of his security deposit, and that the salesperson's superiors merely failed to notice the salesperson's transgressions. We find no merit to this argument.

The court properly charged the jury on punitive damages pursuant to Brueckner. Defendant did not object to the substance of the charge, but made a general objection to punitive damages, stating only that "I don't think it's there." In its motion for judgment notwithstanding the verdict, defendant stated, without further explanation, that it was renewing its objection made at the close of evidence. Because defendant never articulated at trial the argument he raises here on appeal - that the evidence was insufficient for the jury to award punitive damages on the grounds that an officer of defendant directed, participated in, or ratified the alleged fraudulent conduct - the trial court did not address the argument in its order denying defendant's motions for judgment notwithstanding the verdict and for a new trial. Cf. Stacy v. Merchants Bank, 144 Vt. 515, 519 (1984) (party must affirmatively state grounds for directed verdict). Even assuming that the argument was properly preserved, the evidence demonstrated that Ronald Carpenter, defendant's owner and president, was the person who had signed the Dealer Refund Responsibility Form in question on a line alongside the apparent forged signature. He was also the person who attempted to avoid plaintiff's attorney through an alias before the complaint was filed. Based on the evidence presented at trial, the jury could have reasonably determined that Carpenter directed, participated in, or subsequently ratified the fraudulent act. See id. at 521 (in reviewing ruling on motion for judgment notwithstanding verdict, evidence is examined in light most favorable to prevailing party, excluding effect of modifying evidence; denial of motion must stand if there is any evidence fairly and reasonably supporting verdict).

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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John A. Dooley, Associate Justice

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James L. Morse, Associate Justice