

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

DEVANG V. PATEL and MA SADHI, LLC,)

Plaintiffs,)

v.)

SHREE JI, LLC, JITENDRA R. MAGDALIA,)
and BHAVIN JITENDRA MAGDALIA,)

Defendants.)

C.A. No.: CPU4-12-003579
SPEED

Submitted: July 12, 2013
Decided: August 9, 2013

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**MEMORANDUM OPINION AND ORDER ON
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

This matter arises out of the sale of a liquor store business between the seller, Defendants, and buyer, Plaintiffs. On June 3, 2013, Defendants filed the instant Motion for Summary Judgment (the "Motion") pursuant to *Court of Common Pleas Civil Rule 56*. On June 13, 2013, Plaintiffs filed a response in opposition to the Motion.

A hearing on the Motion was held on July 12, 2013, and the Court heard oral argument from both parties. At the conclusion of the hearing, the Court reserved decision. For the reasons discussed herein, the Court finds that issues of material fact exist. Accordingly, Defendants' Motion is **DENIED**.

Facts and Procedural History

On September 14, 2012, Plaintiffs, Devang V. Patel (“Patel”) and Ma Sadhi, LLC (“Ma Sadhi”) (collectively, “Plaintiffs”), brought this action seeking Declaratory Judgment and for fraud against Defendants, Shree Ji, LLC (“Shree Ji”), Jitendra R. Magdalia (“Jitendra”) and Bhavin Jitendra Magdalia (“Bhavin”) (collectively, “Defendants”), for alleged misrepresentations made in the course of the sale of a liquor store from Defendants to Plaintiffs. In the Complaint, Plaintiffs alleged the following: on September 10, 2011, Plaintiffs entered an agreement with Defendants (the “Agreement”), whereby Plaintiffs would purchase Peddler’s Liquor Store (“Peddler”) from Defendants, including fixtures, equipment, and inventory. The Agreement provided that the inventory included in the transaction was to be determined the day preceding the closing, and was to be paid for by Plaintiffs in accordance with terms of a promissory note.

Plaintiffs allege that prior to entering the Agreement, Defendants represented to Plaintiffs, on more than one occasion, that Peddler did not contain any “dead” inventory.¹ Plaintiffs claim it relied on such assertions when it entered the Agreement. At the time of closing, on December 29, 2011, the inventory was valued at \$133,132.64, and a promissory note in that amount was executed, in accordance with the terms of the Agreement.

Plaintiffs allege that, after operating Peddler for several months, it discovered \$1,130.72 worth of inventory had expired. Additionally, Plaintiffs observed that “much of the inventory” was not being purchased by customers, prompting Plaintiffs to analyze Peddler’s records. Plaintiffs determined \$22,603.40 worth of inventory had been “dead over

¹ Plaintiffs defined “dead” inventory as inventory which had not sold in a “long time.” Complaint ¶ 2.

six months old.”² Plaintiffs maintain that, after deducting the expired and dead inventory, the value of the inventory was actually \$109,398.52; not \$133,132.64, as assessed prior to closing. Plaintiffs request a declaratory judgment as to the value of the inventory, as well as compensatory and punitive damages for the alleged fraudulent misrepresentations made by Defendants regarding the inventory.

On November 15, 2012, Defendants filed an Answer and Counterclaim,³ alleging Plaintiffs breached the Agreement by failing to pay interest and attorney’s fees. Defendants request that the Court enter an order declaring the validity of the Agreement.

On April 8, 2013, Plaintiffs filed a response to Defendants’ Counterclaim, in which Plaintiffs deny that it breached the contract by failing to pay interest and attorney’s fees.

On June 3, 2013, Defendants filed the instant Motion for Summary Judgment pursuant to *Court of Common Pleas Civil Rule 56(c)*. On June 13, 2013, Plaintiffs filed a response in opposition to Defendants’ Motion for Summary Judgment. On July 12, 2013, a hearing on the Motion was held, and the Court heard oral argument from both parties.

a. Parties’ Positions

It is Defendants’ position that there are no genuine issues of material fact in this case because it is undisputed that there was a valid contract between the parties. In regards to the dead inventory, Defendants aver that Plaintiffs were given an opportunity to inspect Peddler and the inventory prior to the closing. Defendants argue that the parol evidence rule

² Complaint ¶ 12

³ Defendants’ pleading was titled and docketed as “DEFENDANT’S ANSWER AND CROSSCLAIMS.” However, the claims were presented under a heading titled “COUNTER CLAIMS,” and the claims were directed at “Plaintiff” rather than a co-party, thus the Court will treat the claims as counterclaims. *Court of Common Pleas Civil Rule 13(a)*.

precludes the introduction of evidence of the alleged misrepresentations, because the communications contradict the Agreement and were made prior to the execution of the Agreement.

Defendants further argue that Plaintiffs' claim of fraudulent misrepresentation is meritless because Plaintiffs rely solely on conversations that took place between the Plaintiffs and Jitendra. According to Defendants, Jitendra was an employee of Shree Ji, but he was not a member or officer of that entity; he was not the owner of Peddlers; and, he was not a party to the Agreement. Defendants maintain that, to the extent that there was a misrepresentation during the course of the sale, any misrepresentations were made by an outside third party, not a party to the contract, and there was no authority for anyone, other than the owner of Peddler, to make representations on behalf of the business. Defendants conclude that, because the store owner did not make any fraudulent misrepresentations to the Plaintiffs, there are no genuine issues of material fact and they are entitled to judgment as a matter of law.

It is Plaintiffs' position that in the negotiations for the purchase of Peddler, Jitendra and Bhavin were agents for the Shree Ji. According to Plaintiffs, Jitendra testified in his deposition that he was the manager of Peddler, and that prior to being manager, he had owned the store for eight years, and was involved in all aspects of its operation throughout his ownership. Although the Shree Ji owned Peddlers at the time of the sale, and Jitendra is not a member of Shree Ji, Plaintiffs allege that they reasonably relied on Jitendra's representations because he was the full-time store manager who was "personally involved in

running Peddler's.”⁴ Plaintiffs argue that Shree Ji is liable for Jitendra's representations under an agency theory because Jitendra had apparent authority when making representations to Plaintiff during the course of the sale. Therefore, Plaintiffs conclude, summary judgment is not appropriate because an issue of material fact exists as to whether Jitendra had apparent authority as an agent of Shree Ji; thus, Defendants are not entitled to judgment as a matter of law.

Discussion

Motions for summary judgment are governed by *Court of Common Pleas Civil Rule 56(c)*, which provides that “[t]he judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” The burden is on the moving party to establish that no material facts are in dispute.⁵ When considering a motion for summary judgment, the Court will view the record in a light most favorable to the non-moving party.⁶

a. The parol evidence rule does not bar the introduction of evidence of misrepresentations made prior to the execution of the Agreement.

At the outset, Defendants argue that any contradictory representations made to Plaintiffs prior to the execution of the Agreement are barred by the parol evidence rule. “The parol evidence rule bars the admission of evidence extrinsic to an unambiguous, integrated written

⁴ Jitendra Magdalia Tr. 10

⁵ *Moore v. Sizemore*, 405 A.2d 679, at 680 (Del. 1979).

⁶ *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, at 99 (Del. 1992) (citation omitted).

contract for the purpose of varying or contradicting the terms of that contract.”⁷ However, the parol evidence rule will not apply where a party to a contract asserts that there was fraud in the inducement.⁸ “Courts have long recognized that where fraud or misrepresentation is alleged, evidence of oral promises or representations which are made prior to the written agreement will be admitted.”⁹ In alleging fraudulent misrepresentation, the plaintiff must show:

“ (1) the defendant made a false representation, usually one of fact; (2) the defendant knew or believed that the representation was false, or made it with reckless indifference to the truth; (3) the defendant's false representation was intended to induce the plaintiff to act or refrain from acting; (4) the plaintiff's action or inaction was taken in justifiable reliance upon the representation; and (5) the plaintiff was damaged by such reliance.”¹⁰

The Court finds that Plaintiffs have pled the requirements to satisfy an allegation of fraud. Accordingly, the parol evidence rule will not apply to bar evidence of the allegedly fraudulent statements made by Defendants prior to the execution of the Agreement.

b. An issue of material fact exists as to whether Jitendra acted as an agent of Shree Ji

Plaintiffs argue that they reasonably relied on the fraudulent representations of Jitendra, whom they claim was acting as an agent of Shree Ji. In support of its position, Plaintiffs rely on the deposition of Jitendra. In his deposition, Jitendra stated that he owned Peddler from 2000 through 2008 and, after selling the business in March 2008, he continued to work at Peddler as a manager. Plaintiffs contend that, as manager of Peddler, Jitendra was an agent

⁷ *Galatino v. Baffone*, 46 A.3d 1076, at 1081 (Del. 2012) (citing *Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1232 (Del. 1997)).

⁸ *Oglesby v. Conover*, 2011 WL 3568276, at *3 (Del. Super. May 16, 2011).

⁹ *Id.* (quoting *Anglin v. Bergold*, 565 A.2d 279 (Del. 1989)).

¹⁰ *Carrow v. Arnold*, 2006 WL 3289582, at *8 (Del. Ch. Oct. 31, 2006) (citation omitted).

of the principal, Shree Ji. Defendants, on the other hand, maintain that, in this instance, there was no authority for anyone other than the owner of Peddler to make representations for the business. Defendants argue that any alleged fraud was made by a third party, not in privity of contract, and Plaintiffs cannot establish a prima facie case for fraud against Defendants. Thus, Defendants conclude, there is no genuine issue of material fact.

Generally, the existence of an agency relationship is a question of fact.¹¹ Express authorization is not the only means by which an agent's conduct can impute liability on the principal, for "an agency relationship may be created by the act of the parties or by operation of law."¹² In *Jack J. Morris Assocs. v. Mispillion St. Partners, LLC*, the Delaware Superior Court described the three types of authority by which an agent may act in the ordinary course of business:

Express authority may be conveyed to the agent, either orally or in writing. Implied authority may be evidenced by conduct of the principal. Apparent authority may be evidenced by the conduct of an agent who holds himself out as possessing authority with the apparent consent or knowledge of the principal. In these circumstances, the principal cannot deny the agent's authority.¹³

In the present case, a factual dispute exists as to whether an agency relationship existed between Jitendra and Shree Ji at the time the alleged misrepresentations. Although Defendants assert that there was no authority for anyone other than the owner to make representations for the business, the record indicates that, in fact, Jitendra may have acted with the apparent consent or knowledge of the principal, Shree Ji. Defendants have not met

¹¹ *Montgomery v. Achenbach*, 2007 WL 3105812, at *3 (Del. Super. July 26, 2007) (citation omitted).

¹² *Wilson v. Active Crane Rentals, Inc.*, 2004 WL 1732275, at *1 (Del. Super. July 8, 2004).

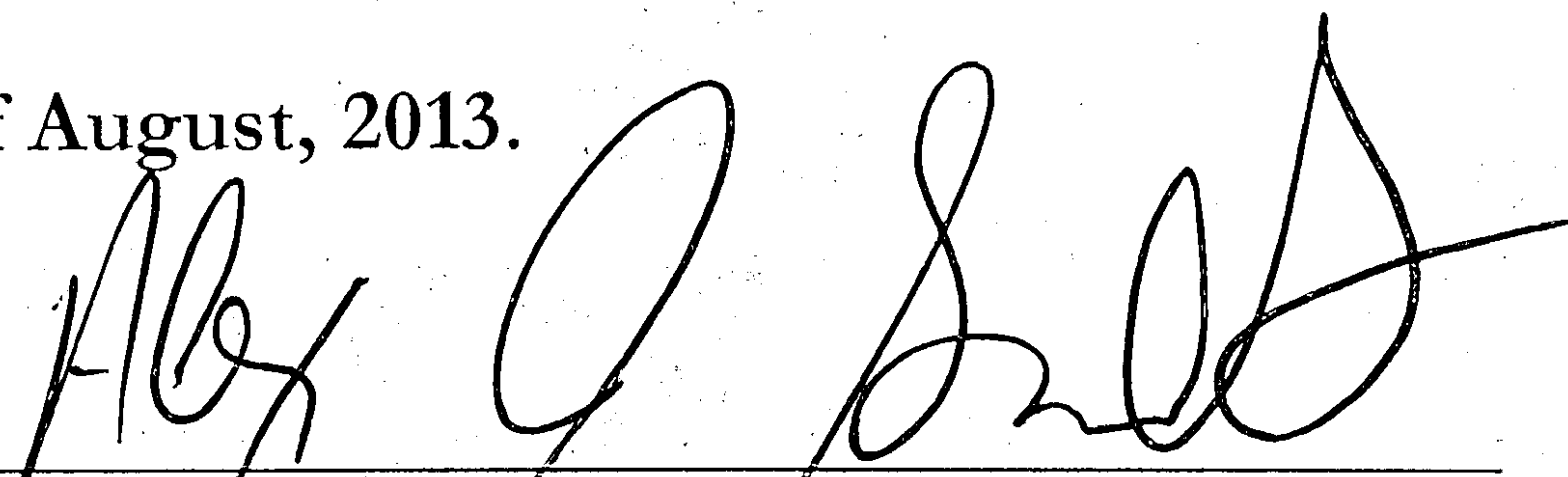
¹³ *Jack J. Morris Assocs. v. Mispillion St. Partners, LLC*, 2008 WL 3906755, at *3 (Del. Super. Aug. 26, 2008).

their burden to establish that no genuine issues of material fact exist. Therefore, Defendants are not entitled to judgment as a matter of law.

Conclusion

For the foregoing reasons, it is hereby ORDERED that Defendants' Motion for Summary Judgment is DENIED.

IT IS SO ORDERED this 9th day of August, 2013.



Alex Smalls, Chief Judge.