

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 CA 1466

BAYOU PRO SHOP, INC.

VERSUS

MA-ME'S L.L.C., RHONDA CLINE AND DELANO CLINE

DATE OF JUDGMENT: MAR 25 2013

ON APPEAL FROM THE EIGHTEENTH JUDICIAL DISTRICT COURT
NUMBER 36,189, DIVISION C, PARISH OF WEST BATON ROUGE
STATE OF LOUISIANA

HONORABLE ALVIN BATISTE, JR., JUDGE

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Delano Cline

BEFORE: KUHN, PETTIGREW, AND McDONALD, JJ.

Disposition: AFFIRMED.

KUHN, J.,

In this case involving the breach of a commercial lease and the conversion of restaurant equipment, the defendants appeal the trial court's finding that the plaintiff did not authorize the sale of the equipment, the imposition of personal liability, and the valuation of the equipment. Finding no error or abuse of discretion, we affirm.

PROCEDURAL AND FACTUAL BACKGROUND

This suit was filed by Bayou Pro Shop, Inc., against Ma-Me's, L.L.C., seeking unpaid rental payments for premises leased to Ma-Me's for use as a restaurant. Also named as defendants were Rhonda Cline, Ma-Me's sole member, and her husband, Delano Cline, who was an employee of Ma-Me's. Bayou Pro alleged that the Clines, without authorization to do so, removed four items of Bayou Pro's refrigerator and freezer equipment from the premises and sold it.

A bifurcated trial was held on the issues of liability and damages. During the liability phase, Rhonda and Delano Cline both testified that Troy LeBlanc, one of the owners of Bayou Pro, told them they could sell the equipment at issue and use the proceeds to improve the premises. Mr. LeBlanc denied giving the Clines such authority. The trial court accepted the testimony of Mr. LeBlanc and ruled that the Clines were personally liable for the value of the equipment unless it was returned to the plaintiff, which it was not. Additionally, Ma-Me's was held liable for unpaid rental payments.

During the damages phase of trial, conflicting testimony was presented concerning the condition of the equipment at issue. The Clines testified it was in extremely poor, nonworking condition, and the plaintiff presented testimony that it was in used, but working, condition. The plaintiff also presented an expert in commercial refrigeration sales on the issue of the equipment's value. Similarly,

the defendants presented testimony from an expert in commercial refrigeration equipment sales, who was also the same person who purchased the equipment from the Clines. At the conclusion of trial, the trial court fixed the value of the equipment as \$8,414.88.

Subsequently, a written judgment was issued in favor of plaintiff and against Ma-Me's for \$13,500.00 in rent and against Ma-Me's, Rhonda Cline, and Delano Cline for \$8,414.88 for the equipment removed from the leased premises and sold, plus legal interest and court costs. The defendants now appeal.

DISCUSSION

In three assignments of error, the defendants argue that the trial erred: (1) in "piercing the corporate veil" and finding Rhonda Cline and Delano Cline personally liable for the value of the plaintiff's equipment; (2) in finding the equipment was sold without the plaintiff's consent; and (3) in assigning an excessive value to the equipment. We find that each of these assignments lacks merit.

The trial court's finding that the Clines sold the plaintiff's equipment without consent is a factual conclusion that was based on the court's credibility evaluations. The trial court chose to credit Mr. LeBlanc's testimony that he did not consent to the sale of the equipment over the Clines' testimony asserting that Mr. LeBlanc told them they could sell the equipment and use the proceeds to improve the leased premises.

When there is evidence before the trier-of-fact that, upon its reasonable evaluation of credibility, furnishes a reasonable factual basis for its finding, the appellate court should not disturb that finding absent manifest error. *Canter v. Koehring Company*, 283 So.2d 716, 724 (La. 1973); *Robling v. Allstate Insurance Company*, 97-0582 (La. App. 1st Cir. 4/8/98), 711 So.2d 780, 786.

Thus, where two permissible views of the evidence exist, the trier-of-fact's choice between them can virtually never be manifestly erroneous or clearly wrong. *Rosell v. ESCO*, 549 So.2d 840, 845 (La. 1989). In the instant case, after a thorough review of the record, we find no manifest error in the trial court's finding that the sale of the plaintiff's equipment was unauthorized. Based on the trial court's reasonable credibility determinations, its finding was a permissible view of the evidence.

Nor do we find error in the trial court holding the Clines personally liable for the value of the plaintiff's equipment. Under La. R.S. 12:1320(B), members or employees of a limited liability company generally may not be assessed with personal liability for the debts and obligations of a limited liability company. However, while this provision generally insulates a member or employee from personal liability for the debts and obligations of a limited liability company, it does not protect a member or employee who commits an intentional wrongful act from personal liability. La. R.S. 12:1320(D); see also *W.J. Spano Co., Inc. v. Mitchell*, 05-2115 (La. App. 1st Cir. 9/15/06), 943 So.2d 1131, 1132-33.

In this case, even if the Clines committed the wrongful acts at issue in their respective capacities as a member and employee of Ma-Me's, their conduct also violated a personal duty they owed to the plaintiff. Outside of Rhonda Cline's capacity as a member of Ma-Me's and Delano Cline's capacity as an employee of Ma-Me's, they each had an obligation not to personally impinge on the plaintiff's ownership of the equipment located on the leased premises. By intentionally removing the equipment from the premises and selling it, when they lacked consent from the plaintiff to do so, they committed wrongful acts that subjected them to personal liability under La. R.S. 12:1320(D). In committing these intentional acts, the Clines breached an obligation owed to the plaintiff

independent of their respective status as a member and as an employee of Ma-Me's. Thus, the trial court imposed personal liability upon them, not due to their status as a member and as an employee of Ma-Me's, but due to the wrongful acts they personally committed. Under such circumstances, we find no error in the ruling of the trial court finding them each to be personally liable for the value of the equipment they sold without the plaintiff's consent. See La. R.S. 12:1320(D).¹

Lastly, we find no error or abuse of discretion in the \$8,414,88 valuation the trial court assigned to the plaintiff's equipment. In reaching its determination, the trial court considered the expert testimony presented by the defendants' expert regarding valuation, but concluded it was entitled to little or no weight since the expert was not disinterested, being the person who purchased the equipment from the Clines. As with other witnesses, the trial court was free to accept or reject, in whole or in part, the opinions expressed by the experts who testified at trial. *Givens v. Givens*, 10-0680 (La. App. 1st Cir. 12/22/10), 53 So.3d 720, 729. Moreover, the evidence in the record, particularly the testimony of the plaintiff's expert and the evidence presented by plaintiff as to the equipment's working condition, reasonably supported the trial court's valuation. Accordingly, we find no abuse of discretion in the trial court's valuation.

CONCLUSION

For the reasons assigned, the judgment of the trial court is affirmed. All costs of this appeal are to be paid by the defendants, Ma-Me's, L.L.C., Rhonda Cline and Delano Cline.

AFFIRMED.

¹ Because the Clines are personally liable pursuant to La. R.S. 12:1320(D) due to the intentional wrongful acts they committed, it is unnecessary to consider their argument concerning the trial court's alleged error in piercing the corporate veil. See *Matherne v. Barnum*, 11-0827 (La. App. 1st Cir. 3/19/12), 94 So.3d 782, 789-90, writ denied, 12-0865 (La. 6/1/12), 90 So.3d 442.