

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Michael Gudorf and Gudorf
Group, LLC,
Appellants-Defendants,

v.

Michael J. McAndrew and True
Temp, Inc.,
Appellees-Plaintiffs

April 6, 2023

Court of Appeals Case No.
22A-PL-1809

Appeal from the Floyd Circuit
Court

The Honorable John Terrence
Cody, Judge

Trial Court Cause No.
22C01-2106-PL-722

Memorandum Decision by Chief Judge Altice
Judges Brown and Taviton concur.

Altice, Chief Judge.

Case Summary

- [1] Michael J. McAndrew owned and operated True Temp, Inc., for many years before retiring and selling the assets of the business to Gudorf Group, LLC, which is owned by Michael Gudorf (Michael). The parties entered into a four-year, seller-financed asset purchase agreement, and Michael executed a personal guaranty. Thereafter, Michael operated his business under a separate entity, Gudorf Plumbing Heating Cooling Electrical, Inc. (GPHCE), and GPHCE made payments on the loan for three months before stopping payment on the check issued for the fourth payment.
- [2] When no further payments were made to True Temp on behalf of Gudorf Group to satisfy the loan obligation, McAndrew and True Temp initiated this action for breach of contract. Gudorf Group counterclaimed for breach of contract, fraud, and criminal deception. Following a bench trial, the trial court found in favor of True Temp and McAndrew and entered judgment against Gudorf Group and Michael in the amount of \$123,856.38 plus attorney's fees.
- [3] On appeal, Gudorf Group and Michael contend that the trial court erred when it failed to find that McAndrew and True Temp breached the contract with Gudorf Group. Specifically, they claim that McAndrew failed to provide them with maintenance contracts and a customer list in accordance with their agreement.
- [4] We affirm and remand.

Facts & Procedural History

- [5] In 1988, McAndrew formed True Temp, an Indiana corporation in the business of heating, air conditioning, commercial refrigeration, and ice machines. McAndrew was the sole owner and operated the business out of his home in Floyds Knobs and his full sheet metal shop (the Shop) in Clarksville. Though McAndrew hired an employee here and there over the years, he generally operated as a “one-man show.” *Transcript* at 10. Since about 2000, he had worked alone “just doing service and replacement work.” *Id.*
- [6] After three decades in the business, McAndrew began to think about retirement. In early 2019, he listed the business for sale through a broker at the price of \$199,000. Michael, who owned and operated GPHCE in Jasper, reviewed True Temp’s profit/loss statements and balance sheets for the last few years and then made an offer of \$185,000 with seller financing. The broker, however, declined the offer without communicating it to McAndrew, and the listing expired.
- [7] The parties shared a common insurance agent, Scott Payton, who encouraged Michael to reach out to McAndrew in the fall of 2020. Payton informed him that he believed McAndrew was planning to retire by the end of the year whether or not he had a buyer. As a result of this conversation, Michael contacted McAndrew.
- [8] Michael and his wife, Amanda, met with McAndrew at the Shop for about an hour and a half. The parties orally agreed on a purchase price of \$150,000,

seller financed with twenty percent down and five percent interest for four years. McAndrew advised Michael that he was willing to take this reduced price due to his upcoming retirement and because he had “started to quit doing replacement work” over the last year and had been “just doing service work.” *Id.* at 14. On September 28, 2020, Michael signed a letter of intent to purchase, which was drafted by his attorney and reflected the agreed-upon terms.

[9] Michael’s attorney prepared a draft of an asset purchase agreement, which was subsequently revised by counsel for both parties. One such revision was changing the buyer from Michael to Gudorf Group, a new limited liability company created by Michael. This change in buyer resulted in the necessity of Michael providing a personal guaranty. The closing documents were exchanged between counsel, with final edits made on October 20, 2020.

[10] In the meantime, McAndrew provided Michael with three years of True Temp’s tax returns. The parties also discussed each other’s business structure, and McAndrew informed Michael that he did not have written service contracts, which appeared to surprise Michael. McAndrew explained that his service contracts were “mouth to mouth” and when a customer or business asked him to service their equipment, he would do so for the next twelve years. *Id.* at 27. Additionally, McAndrew told Michael that he “didn’t do any billing” because his practice was to invoice his customers and collect payment the day of the service. *Id.* McAndrew’s client records consisted only of service invoices, and according to McAndrew, he told Michael, “I have invoices, and that’s all I have.” *Id.* at 137.

- [11] Prior to closing, Michael did not request to review any customer lists, maintenance contracts, or copies of warranties that True Temp may have had. While he had been provided the names of a couple of True Temp's commercial clients, Michael "basically had no idea who, what, when, what we ... were getting prior to closing." *Id.* at 119.
- [12] On October 21, 2020, the closing took place at McAndrew's attorney's office. Michael, individually and for Gudorf Group, and Amanda attended for the buyer, and McAndrew, individually and as president of True Temp, attended for the seller. The parties executed the respective closing documents, which included a Bill of Sale, Asset Purchase Agreement, Security Agreement, Promissory Note, and Continuing Guaranty Agreement.
- [13] During and after the closing there were discussions between the parties. What precisely was discussed was disputed at trial. Michael testified that McAndrew had promised to provide him with a Rolodex of all his customers. McAndrew, however, testified that he never told Michael that he had a Rolodex and that he had explained to Michael, on more than one occasion, that he would be receiving customer contact information through job invoices.
- [14] Immediately after closing, McAndrew provided Michael with boxes of client invoices from True Temp's last five years in business. McAndrew viewed the invoices as his customer list, since he had no other customer records. McAndrew assigned True Temp's phone number to GPHCE and signed a letter announcing his retirement and introducing GPHCE to True Temp's

customers.¹ Michael also picked up all the equipment from the Shop that was identified in the Purchase Agreement.

[15] GPHCE, based in Jasper, opened a branch in Jeffersonville, and McAndrew tried for some time to help this new branch succeed “short of getting back in the truck and going to do service calls.” *Id.* at 39. He also took GPHCE employees and introduced them to True Temp’s former commercial clients. Ultimately, it became apparent that GPHCE’s way of doing business – focusing on trying to sell maintenance contracts – was substantially different from that of True Temp.

[16] GPHCE made the first three monthly payments owed by Gudorf Group pursuant to the Promissory Note.² After sending the fourth payment to True Temp, GPHCE issued a stop payment order. Amanda sent an email, as office manager of GPHCE, to McAndrew on March 9, 2021, explaining:

Good afternoon Mike,

I am sending this email to inform you of the hard decision that was made today under the advisement of our counsel, we have issued a stop payment on the check you received Friday 3/5. [The Jeffersonville] branch is not making revenue to cover operating expenses. At this time, we cannot afford to keep operating in the negative each month in that office. We want to

¹ Michael never conducted any business in the name of Gudorf Group after the closing.

² The Promissory Note provided for monthly installments of \$2,763.29 starting November 15, 2020, and a 5% late fee if not paid by the 30th of each month.

make this work and will need to reevaluate with our professional team to get a plan to be on track again.

If you need to discuss this further with counsel, please let me know and I will provide him with your contact information.

Thank you and I hope you understand that we need to get a plan together to make this office successful for everyone and be able to keep all customers taken care of.

Appellees' Appendix at 4.

- [17] On June 3, 2021, after receiving no further payments, McAndrew and True Temp filed a complaint against Michael and Gudorf Group, alleging default in payment under the Promissory Note. Gudorf Group responded with counterclaims for breach of contract, fraud, and criminal deception, and Michael counterclaimed for fraud.
- [18] A bench trial was held on April 25, 2022, at which McAndrew, Michael, and Amanda testified. As noted above, McAndrew and Michael disputed whether there had been a promise that a Rolodex of customers would be provided. Michael acknowledged, however, that he went ahead and signed the closing documents without first seeing True Temp's customer list, which ended up being boxes of invoices. He testified that the stop payment was placed on the final check because "we feel we have given all the value of the business because there's very, very little value in the customer list." *Transcript* at 106. Michael continued, "I feel we grossly overpaid for the business." *Id.* at 107.

[19] On July 5, 2022, the trial court issued its order, which included findings of fact and conclusions. The findings included much of the facts set out above. Additionally, the trial court found that McAndrew believed that his service invoices constituted his customer list and contained all pertinent information, while Michael expected to receive a Rolodex as a customer list. The court found further:

29. ...It is unfortunate that Michael did not request to review True Temp[’s] customer lists prior to closing. A review of the customer list could have been accomplished utilizing nondisclosure and confidentiality agreements. Michael and Gudorf [Group] did not conduct due diligence before signing the closing documents on October 21, 2020.

30. While True Temp[] did not provide a customer list and, based on the evidence, could not have provided a customer list that complied with section 1.01 of the Asset Purchase Agreement[,] True Temp[’s] customer information could have been discovered prior to closing by Michael and Gudorf [Group] by conducting due diligence.

31. McAndrew was not a sophisticated businessman. Any misrepresentations he made – if there were any – were not knowingly false, and he had no intent to defraud Michael or Gudorf [Group].

33. It is unfortunate that Michael’s business did not succeed. He hired a crew and rented an office in Jeffersonville, Indiana without a thorough understanding of how the business would operate. More planning could have helped avoid some of the

issues and miscommunications that occurred. Unfortunately, Michael demonstrated his lack of business sophistication.

40. True Temp[] exclusively used a cell phone for its business purposes. It is unfortunate that no plans were put into place to allow for a smooth transition of the phone number to Michael and/or Gudorf [Group]. Further discussions by the parties – prior to or at closing – about how this process would take place would have provided clarity to both parties about the expectations regarding the phone number and the phone.

44. There is no mention of fraud or breach of contract in [the March 9, 2021 email from Amanda to McAndrew.]

51. The provisions of the Asset Purchase Agreement signed at the closing on October 21, 2020 by Michael was between Gudorf Group[(not GPHCE)] and McAndrew and True Temp[]. Section 7.05 of the Asset Purchase Agreement states that it is the entire agreement, it supersedes all prior and contemporaneous understandings and agreements, and it is controlling.

52. The Promissory Note due True Temp[] and McAndrew provides for late charges and attorney's fees in the event of default in the payment.

53. Gudorf [Group] defaulted in the payments to McAndrew and True Temp.

54. The Continuing Guaranty Agreement makes Michael personally liable for the debt obligations of Gudorf [Group], including attorney's fees.

Appellants' Appendix at 14-18.

[20] Ultimately, the trial court determined that McAndrew and True Temp were entitled to recover the full amount of the debt, which as of the date of the judgment was \$123,856.38 in principal, interest, and accrued late charges. The court also awarded attorney's fees in an amount to be determined.³ Finally, the court concluded that neither Gudorf Group nor Michael had provided sufficient evidence of fraud, breach of contract, or criminal deception by McAndrew and/or True Temp.

[21] Michael and Gudorf Group now appeal. Additional information will be provided below as needed.

Standard of Review

[22] Where, as in this case, a trial court enters special findings and conclusions, we apply a two-tiered standard of review. *G. S. v. H. L.*, 181 N.E.3d 1040, 1043 (Ind. Ct. App. 2022). First, we consider whether the evidence supports the findings and then whether the findings support the judgment. *Id.* "We neither

³ On September 6, 2022, the trial court awarded to McAndrew a supplemental judgment for attorney's fees in the amount of \$6,444.99.

reweigh evidence nor reassess witness credibility; we give deference to the trial court’s factual findings as long as they are supported by evidence and any legitimate inferences therefrom.” *Indiana Land Tr. Co. v. XL Inv. Properties, LLC*, 155 N.E.3d 1177, 1182 (Ind. 2020). Findings will be found to be clearly erroneous only when the record contains no facts to support them either directly or by inference; a judgment will be found to be clearly erroneous if it applies the wrong legal standard to properly found facts. *G. S.*, 181 N.E.3d at 1043. “Ultimately, we will reverse only upon a showing of clear error: ‘that which leaves us with a definite and firm conviction that a mistake has been made.’” *Id.* (quoting *Egley v. Blackford Cnty. Dep’t of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992)).

Discussion & Decision

[23] Gudorf Group and Michael (referred to collectively hereafter as Gudorf) contend that the trial court erroneously failed to find that True Temp breached its contract with Gudorf.⁴ Specifically, Gudorf argues that True Temp breached the Asset Purchase Agreement by failing to provide maintenance contracts and a customer list.

[24] The Purchase Agreement provided, in relevant part, that “Seller shall sell, assign, transfer, convey and deliver to Buyer ... all of Seller’s right, title and

⁴ Gudorf does not appeal from the trial court’s rejection of Gudorf’s counterclaims for fraud and criminal deception.

interest in the assets set forth on Section 1.01 of the disclosure schedules.”

Appellant’s Appendix at 23. Section 1.01 of the disclosure schedules set out the purchased assets as follows:

1. Inventory (see attached list).
2. Vehicle (see attached list).
3. Customer lists, including all names, addresses, telephone numbers, email addresses, purchasing history, customer service history, whether in written, electronic, tangible or intangible form, concerning all past and present, and potential, purchasers of Seller goods and services.
4. Seller tradenames, websites, domains, URLs, telephone and facsimile numbers, email addresses, advertising (whether in print, online or other media), and all lead sources, including but not limited to Angie’s List.
5. Those assets that are not Excluded Assets that are listed on the Seller balance sheet/depreciation schedule.

Id. at 32. The two attached lists were handwritten and included a short list of excluded assets and existing jobs and a lengthy list of included equipment and a 2005 work van.

[25] Notably, the list of purchased assets did not expressly include written maintenance contracts. To the extent those had existed – which they did not – this information might reasonably have fallen under #3 above as customer service or purchase history. The record establishes that Gudorf was fully informed, during the negotiation process, of the way McAndrew had done business, which included not having maintenance contracts with his clients.

[26] Regarding customer lists, the evidence most favorable to the judgment indicates that McAndrew provided all the information that he had regarding his customers.⁵ That is, on the day of closing, he handed over boxes of job invoices from his last five years in business. He offered to provide invoices from earlier years, but Gudorf indicated that was not necessary. Additionally, McAndrew took employees of GPHCE to his handful of commercial clients, which were serviced monthly, and introduced them. As the trial court observed, Gudorf could have reviewed the invoices or asked to see customer lists before or at closing, but Gudorf failed to conduct due diligence before executing the closing documents. Moreover, there is no evidence in the record that Gudorf objected, at the time, to the nature of the customer information provided to him on the day of the closing.

[27] More than four months after execution of the Asset Purchase Agreement, and after making multiple payments on the loan, Gudorf notified McAndrew that its new branch was “not making revenue to cover operating expenses” and that it needed to stop payment on the loan. *Appellees’ Appendix* at 4. Gudorf advised

⁵ The Asset Purchase Agreement required McAndrew to deliver the listed assets to the extent he had “right, title and interest” in them. *Id.* at 23. Thus, he needed to deliver only what he had – assets that actually existed. For example, the disclosure schedule also listed “websites, domains, URLs, telephone and facsimile numbers, email addresses, advertising (whether in print, online or other media), and all lead sources, including but not limited to Angie’s List.” *Id.* at 32. Gudorf could not legitimately argue – nor does it – that the contract was breached because McAndrew transferred only his telephone number to Gudorf but did not deliver any of the other listed assets that did not exist.

further that it “want[ed] to make this work” and it needed to “reevaluate ... to get a plan to be on track again.” *Id.*

[28] This is a clear case of buyer’s remorse. As Michael testified, he came to realize that there was “very little value in the customer list” and began to feel that Gudorf “grossly overpaid for the business.” *Transcript* at 106, 107. This may be so, but such does not equate to a breach of contract by True Temp.

[29] We conclude that Gudorf has failed to establish that the trial court committed clear error when it rejected the counterclaim for breach of contract. Further, the record clearly establishes that Gudorf Group defaulted on the loan after making only three payments and that Michael failed to act on his personal guaranty. As the Security Agreement and Continuing Guaranty Agreement both provide for the award of reasonable attorney’s fees in the event of default, and Michael and True Temp so request, we remand with instructions for the trial court to determine and award reasonable appellate attorney’s fees to McAndrew and True Temp.

[30] Judgment affirmed and remanded.

Brown, J. and Tavitas, J., concur.