MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Vannin Healthcare Global Ltd.,
Appellant-Defendant,

v.

Illumination International LLC,
Appellee-Plaintiff.

July 31, 2023

Court of Appeals Case No. 23A-PL-96

Appeal from the Indiana Commercial Court
Marion Superior Court

The Honorable Heather A. Welch, Judge

Trial Court Cause No. 49D01-2103-PL-9067

Memorandum Decision by Judge Bradford
Judges Riley and Weissmann concur.

Bradford, Judge.

Case Summary

[1] In November of 2020, Illumination International LLC ("Illumination") contracted with Vannin Healthcare Global Ltd. ("Vannin") to purchase 705,300 boxes of nitrile gloves, which would be supplied by Vannin from VGlove Vietnam ("VGlove"). Illumination paid the agreed-upon downpayment, but Vannin failed to deliver the full order of gloves. Illumination brought suit, alleging that Vannin had breached the parties' contract. The matter proceeded to a jury trial. At the end of Illumination's case-in-chief, the trial court denied Vannin's request for a directed verdict. The jury subsequently found in favor of Illumination, finding that Vannin had breached the parties' contract and awarded Illumination damages in the amount of $3,324,161.00. On December 16, 2022, the trial court entered judgment against Vannin in the amount of $4,358,342.67, which included the $3,324,161.00 in damages awarded by the jury and, per the terms of the parties' contract, $1,034,181.67 in interest. Vannin appeals, arguing both that the trial court erred in denying its motion for a directed verdict and that the evidence is insufficient to support the jury's verdict. We affirm.

Facts and Procedural History

[2] On November 3, 2020, Illumination, represented by its CEO and President I Yang Li, entered into a contract ("the Agreement") with Vannin, represented

by its CEO and Chairman Peter van Veen,[1] in which Illumination agreed to purchase high-end premium nitrile gloves for a purchase price of $7.85 per box. The Agreement provided that "[u]nless otherwise agreed by the parties the delivery date for each Purchase Order shall be 30 days after receipt by VGlove of 50% downpayment of the purchase order." Ex. Vol. I p. 82. The initial purchase order, which was incorporated into the Agreement, was for 705,300 boxes of gloves. The Agreement further provided that

> 15. Penalties. If [Vannin] is unable to deliver the product for whichever circumstance after 35 days from down payment, [Vannin] shall be subject to a 10% penalty of the entire value of the contract due immediately. If [Vannin] cannot provide government or information from a credible source in the event of force majeure, [Vannin] shall be subjected to a 10% penalty of the entire value of the contract due immediately and refund any sums paid by Illumination within one business day.
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> 16. Default. In the event that [Vannin] is in default and unable to repay any amount previously paid by Illumination, the unpaid balance will incur annual interest equal to 18%.

Ex. Vol. I p. 83. The parties later amended the Agreement to change the timeframe for triggering the penalty from thirty-five to forty days.

[3] After entering into the Agreement, Vannin contracted with Kotinochi Joint Stock Company ("Kotinochi"), which had represented itself as an F1 distributor

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[1] While the Agreement was signed by Peter van Veen in his position as CEO and Chairman of Vannin, the record demonstrates that Oliver van Veen, the owner of Vannin, was involved in the contract negotiations.

for VGlove, to procure the gloves. Non-Vietnamese companies cannot purchase directly from VGlove and, instead, must use an F1 distributor. An F1 distributor would have a direct relationship with VGlove and access to a large allocation of product from VGlove. Illumination was informed that an F1 distributor would be used to procure the gloves. At some point, Oliver provided a document[2] to Li purporting to be a copy of Vannin's agreement with Kotinochi. The document, however, had all identifying information relating to Kotinochi redacted because Vannin claimed that it did not disclose its sources to protect its value in the transaction.

[4] Pursuant to the terms of the Agreement, the total purchase price of the first order of gloves was $5,534,250.00, of which $2,767,125.00 was due "up front" from Illumination. Ex. Vol. I p. 90. On November 19, 2020, Illumination tendered payment to Winston Ashe, Inc. ("Winston Ashe"), a representative of Vannin, in the amount of $2,770,265.00. The next day, Winston Ashe (on behalf of Vannin) wired $1,533,000.00 to Kotinochi for Vannin's required 30% down payment. Between December 3, 2020, and December 22, 2020, the remaining amount of Illumination's deposit was transferred from Winston Ashe to Vannin. Vannin, however, never tendered the gloves to Illumination per the terms of the Agreement.[3]

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[2] The document is written in what appears to be Vietnamese.

[3] Vannin claims that it did deliver some of the gloves but does not appear to dispute Illumination's claim that the full order of gloves was never delivered.

[5] On March 16, 2021, Illumination filed suit against Vannin, Winston Ashe, and Samuel Nunberg. Illumination asserted claims for breach of contract against Vannin, Winston Ashe, and Nunberg; unjust enrichment against Vannin and Winston Ashe; and fraud against Vannin. On November 8, 2021, the trial court dismissed Illumination's claims against Nunberg. The trial court also issued an order dismissing Illumination's breach-of-contract claim against Winston Ashe, but allowed the unjust-enrichment claim to proceed to trial. Illumination's claims against Vannin and its remaining claim against Winston Ashe proceeded to a jury trial on December 13 and 14, 2022.

[6] During trial, Yi testified that Oliver had told him during negotiations that Vannin was a distributor for VGlove. Yi claimed that when he had asked for proof of Vannin's status as a VGlove distributor, Oliver had provided copies of documents purporting to be contracts showing Vannin to be a VGlove distributor and had sent text messages purporting to show gloves that Vannin had secured in connection with another contract. In addition, in an apparent attempt to give Yi confidence "about going into the deal," Oliver had represented to Yi that Vannin had supplied gloves to the Indiana National Guard and Intco, although it had not done so. Tr. Vol. III p. 14. Yi further testified that the gloves had never been delivered as agreed to by the parties, the downpayment had never been returned, and when he requested that the downpayment be returned, Oliver, acting in his capacity as owner of Vannin, had told Yi that he "deserved to get scammed because [he] didn't do enough due diligence." Tr. Vol. II p. 123. Despite it being uncontested that

Illumination had made the full downpayment pursuant to the terms of the Agreement, Oliver testified at trial that Vannin does not believe that VGlove ever received the money.

[7] At the close of Illumination's case-in-chief, Vannin moved for a directed verdict. The trial court denied the motion, finding that a directed verdict was improper because the parties had presented conflicting evidence, creating a question of fact to be decided by the jury regarding whether Vannin had breached the parties' contract. The jury subsequently reached a verdict in favor of Illumination, finding that Vannin had breached the terms of the Agreement and awarded Illumination damages in the amount of $3,324,161.00. On December 16, 2022, the trial court entered judgment against Vannin "in the amount of $4,358,342.67, which include[d] the $3,324,161.00 in damages awarded by the jury and $1,034,181.67 in interest through December 15, 2022 pursuant to the parties contractual agreement." Appellant's App. Vol. II p. 30.

Discussion and Decision

I. Denial of Directed Verdict

[8] Vannin contends that the trial court erred in denying its motion for a directed verdict.

> The standard of review on a challenge to a motion for judgment on the evidence is the same as the standard governing the trial court in making its decision. *J.E. Stone Tree Serv., Inc. v. Bolger*, 831 N.E.2d 220, 227 (Ind. Ct. App. 2005); *see also* Ind. Trial Rule 50(A) (governing judgments on the evidence). Judgment on the

> evidence is proper where all or some of the issues are not supported by sufficient evidence. *Id.* We will examine only the evidence and the reasonable inferences that may be drawn therefrom that are most favorable to the nonmovant, and the motion should be granted only where there is no substantial evidence supporting an essential issue in the case. *Id.* If there is evidence that would allow reasonable people to differ as to the result, judgment on the evidence is improper. *Id.*

Think Tank Software Dev. Corp. v. Chester, Inc., 30 N.E.3d 738, 744 (Ind. Ct. App. 2015), *trans. denied*.

[9] In denying Vannin's motion for a directed verdict, the trial court stated the following:

> there are multiple cases from the Court of Appeals and the Supreme Court which tell us that breach – whether or not somebody breached a contract is a question of fact.… I didn't grant summary judgment because there's a question of fact on the breach. And the testimony in the record is disputed. The contract required that Mr. Li pay Vannin via Winston Ashe. Then it was Vannin's job to get the money to V-Glove.
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> So, the testimony in the record is what it is. And it's a question for the jury to determine whether or not there was a breach of that contract. So, I will also deny [Vannin's] motion for directed verdict cause this is clearly an appropriate case … for a jury to decide. Uh – we all know that in – um – Indiana juris prudence [sic] granting a directed verdict is an extremely rare occurrence.
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> Been on the bench 22 years. I've done it one time. The time I did it … [t]here was a video of a car who did not have the right of way hitting a gentleman on his bike – his bicycle. I granted a directed verdict.… It was on video. It was like we were there, right. So, but other than that there's never been a time that

> anyone has convinced me that a directed verdict is appropriate. And this is definitely not one of those times.

Tr. Vol. III pp. 85–86.

[10] Vannin claims that the trial court erred in denying its motion for a directed verdict because "Illumination failed to satisfy its burden [of] proving the element of breach." Appellant's Br. pp. 12–13. However, as the trial court noted, the parties presented conflicting evidence at trial regarding the question of whether Vannin had breached the parties' contract, thus creating a question of fact that was to be resolved by the jury. Specifically, the parties presented conflicting evidence on the questions of whether Vannin had held itself out as an agent of VGlove and, if so, whether Illumination's act of tendering payment to Vannin had been sufficient to trigger a duty for Vannin to deliver the gloves to Illumination. Given the conflicting evidence relating to the question of whether Vannin breached the parties' contract, we cannot say that the trial court erred in denying Vannin's motion for a directed verdict. *See Chester, Inc.*, 30 N.E.3d at 744.

II. Sufficiency of the Evidence

[11] Vannin alternatively contends that the evidence is insufficient to sustain the jury's verdict.

> Our standard of review on a challenge to the sufficiency of the evidence supporting a jury verdict is the same in civil as in criminal cases. *Auto Liquidation Ctr., Inc. v. Chaca*, 47 N.E.3d 650, 654 (Ind. Ct. App. 2015). Thus, we consider only the evidence

> most favorable to the verdict and the reasonable inferences to be drawn therefrom. *Id.* We will neither reweigh the evidence nor assess witness credibility, and we will affirm unless we conclude that the verdict "is against the great weight of the evidence." *Id.*

Bergal v. Bergal, 153 N.E.3d 243, 252 (Ind. Ct. App. 2020), *trans. denied*.

[12] It is undisputed that Illumination paid the $2,767,125.00 downpayment but that Vannin did not deliver the full order of gloves in accordance with the terms of the Agreement. In arguing that the evidence is insufficient to support the jury's verdict, Vannin asserts that "Illumination's claim for breach of contract hinges entirely upon a claim that Vannin failed to deliver the [gloves] in accordance with the terms of the Agreement" and that its duty to deliver the gloves to Illumination was only triggered when VGlove received the downpayment. Appellant's Br. p. 12. Vannin further claims that because "[t]here is simply no evidence that VGlove received the down payment due to the parties' mistaken belief that Kotinochi had a valid relationship with VGlove," and so its duty to act under the contract was never triggered, meaning there could be no breach. Appellant's Br. p. 12. For its part, Illumination claims that Vannin did breach the Agreement as Vannin's duty to deliver the gloves was triggered when it delivered the downpayment to Vannin, which had held itself out as VGlove's agent.

[13] "An implied agency relationship can arise when one party holds itself out to be acting as the agent for another." *Parrish v. Nat'l Football League Players Ass'n*, 534 F. Supp. 2d 1081, 1098 (N.D. Cal. 2007). Indiana recognizes such a

relationship when an agency relationship can be "implied from the actions and circumstances of the parties.'" *Kruszewski v. Kwasneski*, 539 N.E.2d 965, 966 (Ind. Ct. App. 1989). Courts have held that one who receives money, or any other thing of value, in the assumed exercise of authority as agent for another, may be estopped thereafter to deny such authority. *See State v. Kearns*, 129 N.E.2d 547, 550 (Ohio Com. Pl. 1955); *see also*, *McCornick & Co., Bankers, v. Tolmie Bros.*, 243 P. 355, 358 (Idaho 1926) ("One who professes to act as agent for another in a particular transaction may be estopped as against both the supposed principal, and third persons interested in the transaction, to deny the agency.").

[14] At trial, Illumination presented evidence indicating that Oliver had held Vannin out as an agent for VGlove. The evidence demonstrated that Oliver had made statements suggesting that Vannin was acting as an agent for VGlove and had shown Yi documents which purported to show Vannin's position as an agent for the sale of gloves from VGlove. In addition, the jury could have reasonably inferred from Oliver's statement to Yi that Yi "deserved to get scammed because [he] didn't do enough due diligence" that Oliver had held himself out to be an agent of VGlove, despite knowing that Vannin did not hold any such position. Tr. Vol. II p. 123.

[15] The jury considered the evidence and found that payment of the funds by Illumination to Vannin was sufficient to trigger Vannin's responsibilities under the Agreement. The question of whether an agency relationship exists is generally a question of fact, to be determined by the jury. *Bauermeister v.*

Churchman, 59 N.E.3d 969, 974 (Ind. Ct. App. 2016). Given the evidence presented at trial, we cannot say that the jury's determination in this regard is unreasonable. Vannin's challenge on appeal effectively amounts to an invitation for this court to reweigh the evidence, which we will not do. *See Bergal*, 153 N.E.3d at 252.

[16] The judgment of the trial court is affirmed.

Riley, J., and Weissmann, J., concur.