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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CV-21-259

IRAG ROVNAGHI

APPELLANT

V.

TURAG RONAGHI d/b/a RONAGHI
INTERNATIONAL RUG GALLERY

APPELLEE

Opinion Delivered May 11, 2022

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
SIXTH DIVISION
[NO. 60CV-17-518]

HONORABLE TIMOTHY DAVIS
FOX, JUDGE

AFFIRMED

BRANDON J. HARRISON, Chief Judge

Irag Rovnaghi appeals the judgment entered against him that ordered him to pay \$362,000 to Turag Ronaghi (d/b/a Ronaghi International Rug Gallery).¹ Rovnaghi argues that the circuit court erred in denying his motions for directed verdict and judgment notwithstanding the verdict (JNOV) based on the statute of frauds. We affirm.

In January 2017, Ronaghi filed suit against Rovnaghi and his wife, Pegah Deheshmand.² The complaint explained that in August 2007, smoke from a nearby fire damaged a large number of Persian rugs in Rovnaghi's possession. Rovnaghi retained Ronaghi's services to clean and preserve the rugs. The total bill for those services was \$1,663,347.73. The complaint alleged that Rovnaghi had made a \$50,000 payment toward

¹Rovnaghi and Ronaghi are brothers.

²All claims against Deheshmand were later dismissed, and she is not a party to this appeal.

the balance owed in February 2014, but no further payments had been received. The complaint also explained that Rovnaghi had provided storage services for 140 rugs owned by Ronaghi; that Rovnaghi returned ninety-one rugs; and that he refused to return the remaining forty-six rugs, which constituted a conversion of the rugs, valued at approximately \$365,696.

Rovnaghi answered and claimed that Ronaghi had volunteered to clean the rugs and that he was paid \$50,000 for providing a conversion of the measurements of the rugs from metric to square feet/square yards and relabeling the rugs. The answer also explained that Rovnaghi gave Ronaghi ninety-one rugs “in full payment of all claims of [Ronaghi] in regard to [Ronaghi’s] rendering of services in respect to said rugs and the fire loss described in [Ronaghi’s] complaint.” Rovnaghi also counterclaimed that Ronaghi was in possession of rugs that belonged to him. Ronaghi filed an amended complaint that reasserted the contract-damages claim and also asserted claims for misappropriation, deceit, and fraud.

The case was eventually tried in front of a jury. During the trial, Rovnaghi moved for a directed verdict; on the breach-of-contract claim, he argued that “all the evidence presented, even viewed in the light most favorable to the plaintiff, establishes that this claim is barred by the statute of frauds. The contract that cannot be performed within one year is unenforceable unless it is in writing and signed by the person to be bound.” The circuit court, noting that a partial payment had been made with respect to the contract, agreed that the cleaning and restoration was going to take multiple years but denied the motion under the statute of frauds. The motion was renewed and denied at the close of the case.

In August 2019, the circuit court issued a final judgment based on the jury’s findings

on a series of interrogatories. The judgment stated, in pertinent part, as follows:

Breach of Contract:

First, the jury found that Turag Ronaghi and Irag Rovnaghi entered into a contract for Turag to clean approximately 2,400–2,500 rugs that were damaged by smoke from a fire that occurred near Defendant’s house.

Second, the jury found that Turag Ronaghi cleaned and preserved the approximately 2,400–2,500 rugs as required by the contract.

Third, the jury found that Irag Rovnaghi failed to make payment in full to Turag Ronaghi for his work in cleaning and preserving the approximately 2,400–2,500 rugs.

Fourth, the jury found that Irag Rovnaghi owes Turag Ronaghi \$362,000 for cleaning and preserving the approximately 2,400–2,500 rugs.

Conversion:

Fifth, the jury found the fair market value of the 49 rugs to be \$173,000.

Sixth, the jury found that the Defendants, Irag Rovnaghi and Pegah Deheshmand, owned the 49 rugs prior to July 25, 2007.

Seventh, the jury found that Irag Rovnaghi and Pegah Deheshmand owned or were entitled to possess rugs in Turag Ronaghi’s possession.

Eighth, the jury found that Turag Ronaghi did not exercise dominion or control over the rugs in violation of Irag Rovnaghi’s and Pegah Deheshmand’s rights.

Finally, the jury found that Irag Rovnaghi and Pegah Deheshmand did not sustain any damages as a result of Turag Ronaghi’s conversion of their property.

Rovnaghi was ordered to pay Ronaghi \$362,000 for the cleaning and restoration of the rugs. The claims for conversion asserted by both parties were dismissed with prejudice.

Rovnaghi filed a motion for JNOV on 3 September 2019, again arguing that the work could not be completed within one year and that there was no signed contract, so the

agreement was in violation of the statute of frauds and not enforceable. He asserted that the partial payment did not constitute partial performance such as to take the agreement out of the statute of frauds. Ronaghi responded that his full performance of his obligation to clean the rugs removed the contract from the statute of frauds. The JNOV motion was not ruled on within thirty days, so it was deemed denied as of 3 October 2019. Rovnaghi filed a timely notice of appeal on November 4.

This court submitted the case in October 2020; however, we dismissed the appeal without prejudice because the judgment entered below was not final. *Rovnaghi v. Ronaghi*, 2020 Ark. App. 509. Specifically, we held that the court’s August 19 judgment was not final because “it did not address Turag’s contract claim against Pegah, and it did not address the fraud claim that Turag’s amended complaint alleged against Irag and Pegah.” *Id.* at 3.

On 22 February 2021, the circuit court entered an amended judgment in which it (1) dismissed with prejudice Ronaghi’s claim for breach of contract against Pegah Deheshmand and (2) dismissed with prejudice Ronaghi’s claims for fraud and/or deceit against both Rovnaghi and Deheshmand. Rovnaghi again filed a timely notice of appeal.

Typically, the appellate court reviews the circuit court’s denial of a motion for directed verdict and the denial of a motion for judgment notwithstanding the verdict to determine whether there is substantial evidence to support the jury’s verdict. *Miller Brewing Co. v. Ed Roleson, Jr., Inc.*, 365 Ark. 38, 223 S.W.3d 806 (2006). However, whether the parties’ agreement was barred by the statute of frauds is a question of law, which we review de novo. *Hodges v. John F. Jenkins Contracting, Inc.*, 98 Ark. App. 125, 252 S.W.3d 152 (2007).

The statute of frauds, in relevant part, requires a contract to be in writing if the contract or promise is incapable of performance within a year. *See* Ark. Code Ann § 4-59-101(a)(6) (Supp. 2021). Rovnaghi argues that there was no possible way the agreement to clean the rugs could be performed within one year, and the circuit court found as such; therefore, the statute of frauds applies. And because there was no signed contract, the statute of frauds was violated, and the contract cannot be enforced. He disagrees that the \$50,000 payment constituted part performance because, although part performance can take an oral contract out of the statute of frauds, the part performance must be “solely referable to the oral agreement.” *Moore v. Wallace*, 90 Ark. App. 298, 301, 205 S.W.3d 824, 826 (2005).

In this case, Rovnaghi asserts, he gave Ronaghi a \$50,000 cashier’s check in February 2014 and gifted to Ronaghi approximately ninety-one rugs. His reason for giving Ronaghi the check and the rugs was because he felt bad for his brother and not due to an obligation under any oral contract. In addition, Ronaghi had claimed that he was entitled to (1) money for cleaning services and (2) the value of the forty-one rugs not returned to him. Rovnaghi argues that there was no evidence that the \$50,000 check was solely related to the alleged cleaning contract as opposed to the value of the rugs. Thus, under *Moore*, the part performance does not take the agreement out of the statute of frauds. Rovnaghi also contends that part performance is accepted as a defense only in equitable proceedings, and this case was a suit at law. *See Rogers v. Hoskins*, 211 Ark. 687, 201 S.W.2d 1004 (1947) (noting that part performance is an equitable doctrine).

In response, Ronaghi asserts that the contract is not subject to the statute of frauds due to his full performance and Rovnaghi’s partial performance of their respective

obligations under the contract. An oral agreement can be taken out of the statute of frauds if the making of the oral contract and its performance is proved by clear and convincing evidence. *Cobb v. Leyendecker*, 89 Ark. App. 167, 200 S.W.3d 924 (2005). Clear and convincing evidence “is evidence by a credible witness whose memory of the facts about which he testifies is distinct, whose narration of the details is exact and in due order, and whose testimony is so direct, weighty, and convincing as to enable the fact-finder to come to a clear conviction . . . of the truth of the facts related.” *Id.* at 170–71, 200 S.W.3d at 926. In addition, the full performance on the part of one party and the part performance of the opposing party operates to take an oral agreement out of the statute of frauds. *See Talley v. Blackmon*, 271 Ark. 494, 609 S.W.2d 113 (Ark. App. 1980) (holding that the full performance on the part of appellants by extending the loan and part performance on the part of appellee in making payments on the loan operated to take the oral agreement out of the statute of frauds).

Here, Ronaghi contends that the making and performance of the contract between him and Rovnaghi for the cleaning and restoration of the rugs was established by clear and convincing evidence, citing a written proposal and estimate that he claimed he gave to Rovnaghi prior to beginning the cleaning³ and the undisputed fact that the cleaning and restoration was completed. Rovnaghi’s partial performance was demonstrated by his \$50,000 payment to Ronaghi. Ronaghi rejects the suggestion that the \$50,000 could be connected to his conversion claim; Rovnaghi argued below, and the jury found, that

³This proposal was not mentioned in the pleadings prior to trial but was introduced at the jury trial.

Rovnaghi, in fact, owned the rugs in question. Ronaghi also dismisses the argument that partial performance is solely an equitable remedy; even if that were a viable argument, Ronaghi unquestionably fully performed his obligation under the contract to clean and preserve the rugs. Finally, Ronaghi argues that even if this court finds that the statute of frauds applies and the performance exception is not satisfied, we should still affirm the circuit court's denial of Rovnaghi's motions because the statute of frauds does not relieve him of his obligation to pay for the services that Ronaghi actually rendered. Even where the statute of frauds is found to apply, the parties are not discharged from their obligations for any portions of the contract that were performed. *See Swafford v. Sealtest Foods Div. of Nat'l Dairy Prod. Corp.*, 252 Ark. 1182, 483 S.W.2d 202 (1972) (holding that while oral contract for personal services in excess of one year is void and while part performance will not remove such contract from operation of statute of frauds, employer will be liable for whatever service was rendered).

The basis for the circuit court's ruling, while not fully articulated below, was that the \$50,000 constituted part performance so that the statute of frauds did not apply. Rovnaghi's primary argument is that the \$50,000 payment cannot support a finding of part performance that takes the agreement out of the statute of frauds because there was insufficient evidence that the \$50,000 was solely related to the alleged cleaning contract as opposed to the value of the rugs. But, by Rovnaghi's own argument, the \$50,000 had to relate to the contract, not the conversion claim, because Rovnaghi claimed he owned the rugs. There is no dispute that he did pay his brother \$50,000, and he would not pay his brother for rugs that he (Rovnaghi) owned. We hold that the circuit court did not err in finding that partial

payment took the agreement out of the statute of frauds and denying the motions for directed verdict and JNOV.

Affirmed.

ABRAMSON and GRUBER, JJ., agree.

Green & Gillespie, by: *Chad M. Green*, for appellant.

Rose Law Firm, a Professional Association, by: *Peter Kumpe* and *David S. Mitchell, Jr.*, for appellee.