

ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-23-248

SAMANTHA CORKINS AND ED
HUDSON

APPELLANTS

V.

HOLLY AND MICHAEL ADDIE

APPELLEES

Opinion Delivered March 6, 2024

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
TWELFTH DIVISION
[NO. 60CV-19-4920]

HONORABLE RALPH WILSON,
JR., JUDGE

AFFIRMED

BRANDON J. HARRISON, Chief Judge

Samantha Corkins and Ed Hudson appeal the judgment entered in favor of Holly and Michael Addie. They argue that the circuit court erred in denying their motions for directed verdict and judgment notwithstanding the verdict (JNOV) because there was no substantial evidence of a valid and enforceable contract. They also assert that there was no substantial evidence to support the amount of damages awarded. We affirm.

Janice and Ed Hudson owned and operated CJ’s Country Market for approximately twenty-five years. On 11 October 2018, the Hudsons sold the store to the Addies. Approximately eight months later, on 25 June 2019, the Addies and Corkins, the Hudsons’ daughter, signed a purchase agreement that provided Corkins would “purchase CJ’s Country Market from Michael and Holly Addie on July 10, 2019.” The purchase agreement provided that Corkins would receive all funds, including cash on hand, cash in

the ATM, funds in the business account, and all future payments. The agreement also stated that Corkins agreed to, among other things, pay all of CJ's debts, keep all accounts and vendor agreements current until they are closed, and transfer her name to all accounts, permits, and licenses by 31 August 2019.

On 15 July 2019, the Addies filed suit against Corkins, the Hudsons, and Hudson Rental Properties, LLC. The complaint alleged that on 12 July 2019, Corkins had closed the store and refused to pay either CJ's debts or the vendor accounts, leaving vendors to seek payment from the Addies. They asserted claims of breach of contract, fraud, and unjust enrichment. The Addies also alleged that Corkins's purchase had been financed by the Hudsons and Hudson Rental Properties, LLC, and they requested that the court pierce the corporate veil to hold the defendants personally liable and issue an immediate injunction to reopen the store during the pendency of litigation.

The Hudsons and Corkins responded with a counterclaim alleging, inter alia, breach of contract, fraud, conspiracy to commit fraud, and a violation of the Arkansas Deceptive Trade Practices Act (ADTPA). They alleged that CJ's owed no debts when it was sold to the Addies; that the operation of the store "changed dramatically" after the sale to the Addies; that the Addies had promised Corkins that vendor payments were current and that there were sufficient funds for operation of the store; and that when Corkins arrived at the store on 10 July 2019, the register was almost empty, and the store's bank account contained only \$4300.

Over the next two years, various parties, claims, and counterclaims were dismissed or withdrawn, leaving the following claims to be decided at a jury trial in August 2022: the

Addies' breach-of-contract claim against Corkins, Ed Hudson's¹ breach-of-contract counterclaim against the Addies, Corkins's fraud counterclaim against the Addies, Corkins's conspiracy counterclaim against the Addies,² and Corkins's ADTPA counterclaim against the Addies.

At trial, the following pertinent testimony was presented. Holly Addie testified that Corkins had reviewed the store's financial records, including the daily revenues, bank account, and tax documents, before she signed the purchase agreement. Corkins had also acknowledged via text message that she knew the current state of the store's inventory and that she would have to spend some of her own money "getting merchandise, product, and inventory back up." Holly denied that she or her husband had lied to Corkins and stated that Corkins knew all the financial details of the store. Holly explained that she had drafted the purchase agreement and that Corkins had reviewed it and asked for one change in the terms. According to Holly, Corkins

didn't want to be responsible for an early termination fee on [the Addies'] credit card provider, which would have been considered old debts, and so she asked me to revise the contract to reflect that. . . . [T]he body of the contract stayed the same, with that sentence added to the bottom relinquishing her . . . from that debt if it was to incur.

Holly stated that she fulfilled her part of the purchase agreement by turning over all the cash and other funds to Corkins. Corkins, however, did not fulfill her part of the agreement because she did not pay all debts with respect to CJ's, including the business property tax.

¹Janice Hudson passed away on 8 November 2020 and was dismissed from the case on 1 June 2022.

²The conspiracy claim was dismissed during the trial and is not at issue on appeal.

Holly introduced a spreadsheet she had created showing the bills that Corkin had not paid (exhibit 4) and stated that the total unpaid amount was “about \$17,000.” She also explained that some of the debt was in the name of CJ’s Country Market, LLC, which was owned by her and her husband, but they were still responsible for that debt.³

Michael Addie testified that he had never promised Corkins that a certain amount of money would be left in the store’s business account or that there would be no debts outstanding. He also verified his wife’s testimony that the store’s financial records had been available and that Corkins reviewed those records. He agreed that he was asking the jury to award him and Holly the amount of the outstanding debt so that they could pay the debt. He also agreed that neither he nor his wife make a distinction between debt that is past due and debt that is current; both are “money owed.” In reference to a specific propane bill in the amount of \$449.58 with a due date of 12 June 2019, Michael agreed that it would be reasonable for Corkins to think that it had already been paid. Nevertheless, when asked if Corkins should be responsible for it, Michael replied, “Well, it says all debts on the contract.” He reiterated that he had never told Corkins that all vendor agreements were current. He also confirmed that because Corkins did not fulfill the terms of the purchase agreement, he and his wife are legally responsible for the debts listed on exhibit 4.

Corkins testified that she had read the purchase agreement between her and the Addies and showed it to her husband before signing it. She acknowledged that after she signed the agreement, she did not pay the debts owed by the store, but there were funds in

³CJ’s Country Market, LLC was added as a party during litigation but was dismissed at trial.

the store's business account and cash in the register at the store. She verified text messages between herself and Holly in which Holly stated, "[W]e were under the impression we hand over all money, payments, etc to you and you just pick up exactly where we left off," and Corkins responded, "[T]hat's exactly what's happening." She also admitted that the Addies had complied with the terms of the agreement by handing over all cash and other funds. But, she explained, the language in the agreement requiring her to "keep all accounts and vendor agreements up to date and current" implied that the accounts were current at the time she signed the contract. She claimed that Michael Addie had told her in multiple conversations that all the debt was paid. But she also agreed that there was no documentary evidence that the Addies had made such a promise and that her claims were based solely on her word.

Corkins stated that she had asked to see the bank statements for the store's business account but was not given access. She later said that she gained access to the account on July 9 and learned that there was \$4000 in the account. She explained that if she had seen the bank statements earlier, she would have seen that the store's revenue did not match what the Addies were depositing into the store's account and that "it was a lie."

Corkins agreed that she "start[ed] to get worried" on July 9. After taking ownership of the store, she discovered "outstanding invoices from months prior that they just decided to not pay." On July 11, Corkins told Michael Addie that she was not paying for any invoices prior to July 10. On July 12 at noon, Corkins closed the store and told Michael that she had not added herself to the store's business account. On July 15, she informed

Michael that the “contract is legally invalid” and that “[t]he store is legally yours and Holly’s.”

Ed Hudson testified and agreed that the Addies had agreed to pay him \$250,000 in monthly installments for the store. He also reluctantly agreed that after Corkins had signed the agreement with the Addies, she owned the store and was responsible for the \$235,000 still owed on the note. Hudson confirmed that the store had ultimately been sold to a third party for \$175,000, that he had applied that amount toward the \$235,000 owed, and that he was suing the Addies for the remaining balance.

The jury returned interrogatories and found that the Addies and Corkins had entered into a contract, that Corkins was not unilaterally mistaken as to the terms of the contract, that the Addies had not fraudulently induced Corkins to enter into the contract, that the Addies had not prevented Corkins’s performance of the contract, and that the Addies suffered damages of \$17,000. The jury also found that the Addies had not committed fraud against Corkins and had not breached their contract with Corkins or Hudson, that Hudson was estopped from claiming that the Addies owed him money on the promissory note after the sale to Corkins, and that the Addies had not violated the ADTPA. Corkins has timely appealed the jury’s verdict and the resulting judgment. Specific arguments from the directed-verdict motions made at trial and the JNOV motion will be discussed below.

We will reverse the denial of a motion for directed verdict or a motion for JNOV if there is no substantial evidence to support the jury’s verdict, and the moving party is entitled to judgment as a matter of law. *Ark. Realtors Ass’n v. Real Forms, LLC*, 2014 Ark. 385, 442 S.W.3d 845. Substantial evidence is that which goes beyond suspicion or conjecture and is

sufficient to compel a conclusion one way or the other. *Id.* It is not our place to try issues of fact; rather, we simply review the record for substantial evidence to support the jury's verdict. *Id.* In determining whether there is substantial evidence, we view the evidence and all reasonable inferences arising therefrom in the light most favorable to the party on whose behalf judgment was entered. *Id.* A motion for directed verdict should be denied when there is a conflict in the evidence or when the evidence is such that fair-minded people might reach different conclusions. *Id.* The same standard holds true for a motion for JNOV; a circuit court may enter a JNOV only if there is no substantial evidence to support the verdict, and the moving party is entitled to judgment as a matter of law. *Carter v. Cline*, 2011 Ark. 474, 385 S.W.3d 745.

I. *Valid and Enforceable Contract*

Corkins first argues that the Addies failed to present substantial evidence of a valid and enforceable contract because there was no meeting of the minds. In her directed-verdict motion below, she argued that the undisputed evidence showed that the parties did not agree on the terms of the contract and specifically that “the parties interpreted the terms of all debts differently.” Corkins believed that she was “assuming the debts that were coming in as she took over.” In addition, Michael Addie had agreed it would be reasonable for her to believe that a bill due before she took ownership had been paid. For the Addies to now claim that those outstanding debts are Corkins's responsibility is “inconsistent” and “confusing.”

In her JNOV, Corkins reasserted that the parties clearly interpreted the term “all debts” differently, which shows that the parties had not agreed to and were not reasonably certain as to the essential terms of the contract at the time of its execution.

On appeal, Corkins⁴ again argues that there was no substantial evidence of a valid and enforceable contract because there was no mutual agreement as to the terms of the contract. To her, “all debts” meant that she was taking over the vendor contracts and any related ongoing and future obligations to those contracts. In addition, Michael Addie had told her that all accounts and vendor agreements were current. Thus, she contends, she “agreed to pay the Store’s obligations that became due after July 10, 2019—the date that she took over the store.” In contrast, the Addies’ definition of “all debts” was any debt of the store, even if incurred before 10 July 2019. She argues that it is clear the parties had a misunderstanding as to the term “all debts,” so they did not have a valid contract.

The essential elements of a contract include (1) competent parties, (2) subject matter, (3) legal consideration, (4) mutual agreement, and (5) mutual obligations. *Billingsley v. Benton NWA Props., LLC*, 2015 Ark. 291. Both parties must manifest assent to the particular terms of a contract. *Pine Hills Health & Rehab., LLC v. Matthews*, 2014 Ark. 109, 431 S.W.3d 910. This court employs an objective test for determining mutual assent, by which we mean objective indicators of agreement and not subjective opinions. *Id.*

Whether there is a meeting of the minds is an issue of fact, and we do not reverse the fact-finder’s decision unless it is clearly erroneous. *DaimlerChrysler Corp. v. Smelser*, 375

⁴Corkins and Ed Hudson are both listed as appellants, but for simplicity’s sake, we will refer to both appellants as “Corkins.”

Ark. 216, 289 S.W.3d 266 (2008). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed. *Id.* Moreover, disputed facts and determinations of credibility are within the province of the fact-finder. *Simmons v. Dixon*, 96 Ark. App. 260, 240 S.W.3d 608 (2006).

Corkins claims that she “agreed to pay the Store’s obligations that became due after July 10, 2019—the date that she took over the store.” But by the clear terms of the contract, that is not what she agreed to; she agreed to “pay all debts in respect to CJ’s Country Market LLC.” If she wanted to limit her responsibility to those debts incurred after 10 July 2019, she could have requested that language be added to the contract. Corkins was given the opportunity to read the contract and suggest changes, which she did. Corkins testified at trial that she “assumed everything was current and paid.” An incorrect assumption on her part is not enough to demonstrate a lack of mutual assent to the contract. The jury assessed the credibility of the witnesses and found that the parties had entered into a contract, and we hold that this decision was not clearly erroneous and that the jury’s verdict is supported by substantial evidence.

Corkins also contends that even if there is a valid contract, she did not breach it because (1) the Addies fraudulently induced her to enter the contract or (2) she was unilaterally mistaken as to the terms of the contract. However, the record shows that Corkins failed to move for a directed verdict on these grounds, nor did she argue these points in her motion for JNOV. It is well settled that the appellate courts will not consider arguments made for the first time on appeal; an appellant is limited by the scope and nature

of the objections and arguments presented at trial. *Stormes v. Gleghorn*, 2022 Ark. App. 416, 653 S.W.3d 820.

II. *Damages*

Corkins asserts that the Addies failed to present substantial evidence of actual losses to support the damages award. In her directed-verdict motion, Corkins asserted that she was entitled to a directed verdict on her breach-of-contract claim because on the spreadsheet identifying the Addies' alleged debts, "some claims are in their name, some aren't, some are in the LLC, some are in neither. And so I think it's going to be confusing to the jury." This argument was renewed at the close of the evidence.

In her JNOV, Corkins argued that the jury's damages award was presumably based on the Addies' exhibit showing a list of debts still unpaid to creditors. However, unpaid debts are not proof of actual damages, and the jury could only speculate that the Addies would use the damages award to settle the debts. Corkins also asserted that even if the unpaid debts proved actual damages, the majority of the debts were owed by CJ's Country Market, LLC, and not the Addies. She contended that "[b]ecause of the discrepancies in who actually might be liable for the invoices," the jury's award could only be based on conjecture or speculation.

The circuit court agreed that the Addies were not entitled to recover damages for any debts incurred in the name of CJ's Country Market, LLC, and found that the Addies were entitled to recover the following:

- a. \$6,453.72 for debts owed to the Douglas Companies, Inc. by virtue of the Addies' personal guaranties of those debts;

- b. \$1,700.48 in debts incurred in the name of CJ's Country Market without the LLC designation;
- c. \$769.71 in debt to the Pulaski County Treasurer incurred in the name of CJ's Country Market Pizza Pro, as this debt was not incurred in the LLC's name and the Addies were the sole proprietors of the store;
- d. \$478.73 paid by the Addies from the[ir] personal checking account to employees Joshua Harness, Autumn Taylor, Brittany Hotelling, and Samantha Walton; and
- e. \$4,533.50 in debts where the incurring debtor was not specified, as these amounts are specific and not speculative.

Thus, the total damages amount was reduced to \$13,910.14.

On appeal, Corkins again argues that the list of debts was not proof of actual damages and that the jury's award was based on speculation that the Addies would use the money to settle the unpaid debts. She also again asserts that due to the discrepancies on who is liable for the unpaid debts, the jury's award to the Addies was based on conjecture and speculation. Corkins concludes that because the Addies failed to prove any damages with reasonable certainty, the circuit court erred in denying her motion for directed verdict.

In general, damages recoverable for breach of contract are those damages that would place the injured party in the same position as if the contract had not been breached. *Optical Partners, Inc. v. Dang*, 2011 Ark. 156, 381 S.W.3d 46. Evidence must exist that provides a basis for measuring the plaintiff's loss with reasonable certainty, and the evidence must be such that the jury may find the amount of the loss by reasonable inferences from established facts and not by conjecture, speculation, or surmise. *JAG Consulting v. Eubanks*, 77 Ark. App. 232, 72 S.W.3d 549 (2002).

Here, the jury was presented with not just a list of the unpaid debts but also extensive documentary evidence of those debts. The debt amounts were certain and not based on speculation or conjecture. Corkins argues that the jury had to “speculate” to find that the Addies would use the money to pay the debts, but the jury heard testimony from Michael Addie that he and his wife are legally responsible for the debt and that they were seeking damages in the amount of the total debt so it could be paid. It is within the purview of the jury to assess the credibility of the witnesses. *Simmons, supra*. In awarding damages to the Addies, the jury placed them in the position they would have been in if Corkins had fulfilled the terms of the contract; in other words, Corkins would have paid the debt she agreed to pay, and the Addies would not be liable for the unpaid debt. We hold that substantial evidence supports the jury’s award of damages.

Affirmed.

WOOD and MURPHY, JJ., agree.

Mitchell, Williams, Selig, Gates & Woodyard, PLLC, by: *Audra Hamilton* and *Cara D. Butler*, for appellants.

WH Law, by: *Chris W. Burks*, or appellees.