COURT OF APPEALS
DECISION
DATED AND FILED

June 13, 2018

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2017AP870 **Cir. Ct. No. 2017SC74**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

GUS WIRTH, JR.,

PLAINTIFF-RESPONDENT,

V.

MARTHA GARCIA AND SILVAS, LLC D/B/A LAS FAJITAS,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Ozaukee County: JOSEPH W. VOILAND, Judge. *Affirmed*.

¶1 REILLY, P.J.[1] Martha Garcia appeals from a $47,995.40 eviction judgment entered following a bench trial. Garcia entered into a five-year

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

commercial lease with Gus Wirth, Jr., in 2013. Garcia opened a restaurant in the leasehold property. Wirth and Garcia also entered into a side deal in which Garcia paid approximately $35,000 to purchase kitchen equipment abandoned by the previous tenant. Garcia fell behind in lease and maintenance payments and Wirth sued for eviction and back rent in 2017. Garcia counterclaimed for unjust enrichment, claiming that she never received the kitchen equipment.

¶2 A court trial was held on April 21, 2017. Garcia and Wirth both provided testimony and evidence to the court. The court found the testimony of Wirth to be credible and Garcia's testimony to be not credible. We affirm; the trial court's decision was based upon credibility determinations, and Garcia has failed to show that the court clearly erred in any of its factual findings.

Unconscionability

¶3 Garcia's first argument on appeal is that the "court erred when it failed to evaluate the Lease for unconscionability." Garcia requests that we void the lease in its entirety due to its unconscionability as the lease was a contract of adhesion. We dismiss this argument as Garcia never argued before the trial court that the lease was unconscionable.[2] A party must raise an issue before the trial court so as to preserve any right to review that argument before us. ***State v.***

[2] Neither Garcia's answer and counterclaim nor the entire trial transcript contain the words "unconscionable" or "unconscionability." Garcia claims that "the trial court was aware of the unconscionability contract issues," despite her complete failure to state the claim. We reject Garcia's argument that essentially boils down to "the judge knew what I meant." We do not expect trial courts to ferret out the arguments of the parties; instead, a court must be made aware of the issue it is expected to address. *See* ***Schonscheck v. Paccar, Inc.***, 2003 WI App 79, ¶11, 261 Wis. 2d 769, 661 N.W.2d 476.

Hayes, 2004 WI 80, ¶21, 273 Wis. 2d 1, 681 N.W.2d 203; ***Schonscheck v. Paccar, Inc.***, 2003 WI App 79, ¶¶10-11, 261 Wis. 2d 769, 661 N.W.2d 476.

¶4 Even if we were to review the lease for unconscionability on its merits, we would affirm. "Unconscionability has often been described as the absence of meaningful choice on the part of one of the parties, together with contract terms that are unreasonably favorable to the other party." ***Wisconsin Auto Title Loans, Inc. v. Jones***, 2006 WI 53, ¶32, 290 Wis. 2d 514, 714 N.W.2d 155. "A determination of unconscionability requires a mixture of both procedural and substantive unconscionability that is analyzed on a case-by-case basis." ***Id.***, ¶33. "A contract is unconscionable when no decent, fair-minded person would view the result of its enforcement without being possessed of a profound sense of injustice." ***Foursquare Props. Joint Venture I v. Johnny's Loaf & Stein, Ltd.***, 116 Wis. 2d 679, 681, 343 N.W.2d 126 (Ct. App. 1983).

¶5 Garcia claims the lease was unconscionable "based on representations that did not occur, there was no meeting of the minds, and the Lease, as a whole, was unduly favorable to Mr. Wirth" and that it was a contract of adhesion.[3] Garcia cites to only three places in the record to support her assertions: (1) Garcia's testimony that she did not understand the language of the contract; (2) that Wirth did not explain the language of the contract to her; and (3) that there was no evidence as to whether Garcia fully understood or was able to

[3] An adhesion contract is "a contract entirely prepared by one party and offered to another who does not have the time or the ability to negotiate about the terms." ***Wisconsin Auto Title Loans, Inc. v. Jones***, 2006 WI 53, ¶52, 290 Wis. 2d 514, 714 N.W.2d 155. Even assuming that the lease was an adhesion contract, that fact alone is not sufficient to establish unconscionability. ***Id.***, ¶53 ("Ordinarily, however, adhesion contracts are valid.").

communicate with Wirth.[4] *See also* ***State Farm Fire & Cas. Co. v. Home Ins. Co.***, 88 Wis. 2d 124, 129, 276 N.W.2d 349 (Ct. App. 1979) ("Failure to read a contract before signing it will generally not affect its validity. A court will not protect a person who fails to take reasonable steps for his own protection."). Each of these three assertions are questions of fact, and based upon our independent review of the trial transcript, we conclude there is ample evidence to support the court's conclusion that Wirth's testimony regarding the lease and the parties' ability to communicate regarding the contract was more credible than Garcia's.

Unjust Enrichment

¶6 Garcia asks that we hold that Wirth was unjustly enriched in the amount of $62,336.00 for "assets and equipment" that Garcia claims she never received at the inception of the lease and for assets she never recovered after the judgment of eviction. "The elements of unjust enrichment … are (1) a benefit conferred upon the defendant by the plaintiff, (2) knowledge or appreciation of the benefit by the defendant, and (3) acceptance and retention by the defendant of such benefit under such circumstances that it would be inequitable for him or her to retain it without paying the value thereof." ***Ludyjan v. Continential Cas. Co.***, 2008 WI App 41, ¶7, 308 Wis. 2d 398, 747 N.W.2d 745. "Unjust enrichment is an equitable doctrine, and the trial court's decision to grant or deny a remedy is reviewed for erroneous exercise of discretion." ***Id.***, ¶6.

[4] We note that Garcia's brief is woefully inadequate in its preparation and adherence to appellate rules. Garcia cites to what we assume to be the trial record throughout, which is not the appellate record. It is not our job to search the record for support of a party's assertions.

¶7 We dismiss this argument on two grounds: (1) as to kitchen equipment at the inception of the lease, we uphold the trial court's credibility determination that Wirth's testimony was more credible than Garcia's relating to this equipment deal;[5] and (2) the record does not support Garcia's claims about postjudgment events as the record contains no such claim. Garcia did not argue any postjudgment unjust enrichment claim to the trial court and has filed no cross-appeal. Garcia did not preserve her postjudgment unjust enrichment claim for our review.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

[5] Garcia did not claim that she did not receive the kitchen equipment until years after the lease was signed. Garcia also did not claim unjust enrichment to the trial court regarding the deal for the kitchen equipment during a prior eviction action where the parties reached a settlement.