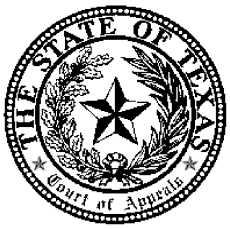
Affirmed and Opinion filed September 27, 2001.



In The

Fourteenth Court of Appeals

NO. 14-99-01277-CV

GLENN FRASIER D/B/A CITY LIGHTS ADVERTISING, Appellant

V.

M.I. MANAGEMENT, INC., Appellee

On Appeal from the 165th District Court
Harris County, Texas
Trial Court Cause No. 96-62874-B

M E M O R A N D U M O P I N I O N

The parties are already familiar with the background of the case and the evidence adduced at trial, therefore, we limit recitation of the facts. We issue this memorandum opinion pursuant to Texas Rule of Appellate Procedure 47.1 because the law to be applied in the case is well settled.

This is a garnishment case. Appellant, Frasier, won a judgment against a group of auto dealers, then garnished bank accounts in the dealers' names. Appellee, MI, intervened in the garnishment action, claiming ownership of the bank accounts. At trial, the court determined that MI was the owner of the funds. Appellant argues that the evidence was

insufficient to support the court's finding of ownership in MI. We affirm.

Background

On June 16, 1997, the 165th District Court entered final judgment in favor of appellant, Frasier, against Dodge City Tomball, Inc., and McCollum Pontiac Cadillac GMC Truck, Inc. ("the dealers"). The next day, Frasier filed an application for writ of garnishment on two bank accounts in the dealers' and appellee, MI's, names. On July 11, 1997, the garnishee, NationsBank of Texas, N.A., answered the writ, indicating that the accounts contained approximately $163,900 at the time the writ was served. On July 22, 1997, MI intervened, claiming that it was the equitable owner of the bank accounts and that the dealers held no more than bare legal title.

The relationship between MI and the dealers began on November 8, 1996. On that day, the dealers, who were in financial trouble, signed a management agreement ("the agreement") with MI for MI to manage the dealerships. The parties also executed agreements for the later sale of the dealerships to MI; however, the sales were never consummated. The agreement provided that:

- the dealers and MI would split 50/50 any net profits from the operation of the dealerships;
- MI was to open bank accounts into which all of the receipts from the dealerships were to be deposited after November 8;
- MI had "capitalized its management operation at an initial advance of $300,000. . . ."
- the dealers "recognize[d]" that the $300,000 capitalization was "for the benefit of the Dealership Companies and for preservation of the assets of the dealerships";
- MI had "no obligation to pay from [dealership] revenues generated subsequent to November 8, 1996, any obligation incurred by any of the Dealership companies prior to November 8, 1996."

The later-garnished accounts were opened by MI pursuant to the agreement. The relationship came to an end when the dealerships were foreclosed upon by creditor Chrysler

Financial in April, 1997. MI purchased the dealerships assets in the foreclosure sales.

The trial court found the funds were owned by MI and rendered judgment in its favor. It also entered findings of fact and conclusions of law.

On appeal, Frasier raises factual sufficiency issues, arguing that the great weight and preponderance of the evidence established that: (1) the garnished accounts contained funds from the $300,000 advance, which he characterizes as loan proceeds vesting ownership to those funds in the dealers, and (2) the garnished accounts contained funds that were generated from the dealerships, thus those funds were owned by the dealers. Alternatively, he argues there was insufficient evidence to establish the contrary. Additionally, Frasier argues that the court's finding that the funds in the garnished accounts came from operations after the termination of the operating agreement is contrary to the great weight and preponderance of the evidence; alternatively, he claims there is insufficient evidence to support that finding.[1]

Standard of Review

We review the trial court's conclusions of law de novo. *Smith v. Smith*, 22 S.W.3d 140, 143-44 (Tex. App.—Houston [14th Dist.] 2000, no pet.). The trial court's findings of fact have the same force as a jury verdict, and this court reviews sufficiency challenges to findings of fact by the same standards that are applied in reviewing a jury's findings. *Anderson v. City of Seven Points*, 806 S.W.2d 791, 794 (Tex. 1991). In reviewing a factual sufficiency challenge, we weigh all of the evidence in the record. *Ortiz v. Jones*, 917 S.W.2d 770, 772 (Tex. 1996). Findings may be overturned only if the evidence is so weak or if they are so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. *Id.; Melendez v. Exxon Corp*., 998 S.W.2d 266, 283 (Tex. App.—Houston [14th Dist.] 1999, no pet.).

[1] Frasier also complains that the court erred in dissolving the writ of garnishment because MI did not have standing to raise its failure to properly serve the dealers. Because of our disposition of the case, we need not address this issue. *See* TEX. R. APP. P. 47.1.

Discussion

Garnishment is a proceeding in which the property, money, or credits of a debtor that are in the possession of another – the garnishee – are applied to the payment of the garnishor's debt. *Bank One, Tex., N.A. v. Sunbelt Sav., F.S.B.*, 824 S.W.2d 557, 558 (Tex. 1992). The garnishor may enforce, against the garnishee, any rights the debtor could have enforced had he sued the garnishee directly. *Beggs v. Fite*, 106 S.W.2d 1039, 1042 (Tex. 1937). The primary issue in a garnishment proceeding is whether the garnishee is indebted to or has in its possession effects belonging to the debtor. *Putman & Putman, Inc. v. Capital Warehouse, Inc.*, 775 S.W.2d 460, 463 (Tex. App.—Austin 1989, writ denied). In order for either Frasier or MI to be awarded the funds, each party was under an affirmative burden to prove ownership in the funds as alleged. *See Id*. Should both parties fail to meet their burden, then neither may recover the funds. *See Id.*

We first address Frasier's argument that he established that the $300,000 advance made by MI was a loan to the dealers, which, in turn, vested the dealers with ownership of the funds. "Advance" is defined as: "1. The furnishing of money or goods before any consideration is received in return. 2. The money or goods furnished." BLACK'S LAW DICTIONARY 53 (7th ed. 1999). Advance is thus a very broad term, which, though it could include a loan within its definition, is not necessarily a loan. However, in asserting that the advance was a loan, Frasier improperly reads the word in isolation. *See Heritage Resources, Inc. v. NationsBank*, 939 S.W.2d 118, 121 (Tex. 1996) (court examines entire document and considers each part with every other part so that the effect and meaning of one part on any other part may be determined). The agreement stated that the "advance" was for MI to "capitalize[] its management operation." Additionally, Cecile Hanus of MI testified that the advance was MI's money and was used to keep the dealerships in operation pending the sale of the dealerships. In light of the language in the agreement and the testimony regarding the surrounding circumstances at trial, there was more than sufficient evidence establishing that the advance was not a loan to the dealers. *See Vickery v. Comm'n for Lawyer Discipline*, 5

S.W.3d 241, 252–53 (Tex. App.—Houston [14th Dist.] 1999, pet. denied) (in cases where the court makes explicit findings of fact, additional facts may be presumed if there is supporting evidence for the finding).

Next, Frasier contends that the established the bank accounts contained funds generated from the dealerships; and thus those funds were owned by the dealers. Additionally, he argues that the court should not have concluded that the funds in the garnished accounts came from operations after the termination of the operating agreement. We address these two arguments together. Frasier is correct that during the operation of the management agreement, proceeds from the sale of goods and services from the dealerships were deposited into the accounts before the April foreclosures. However, Frasier failed to adduce any evidence that the funds in the accounts at the time the account was garnished, which was at least two months after the foreclosure by Chrysler Financial, were from operations prior to the foreclosure. Conversely, MI showed that it purchased the dealership assets in the April foreclosure sales. The bank statements show that after the foreclosures, but before the accounts were garnished in June, the balances in both accounts had been overdrawn. Also, the statements between the foreclosures and the garnishment show hundreds of deposits and withdrawals were made totaling millions of dollars. The balances and activity showed that MI owned the funds in the bank accounts at the time of the garnishment and that any funds that might have belonged to the dealers were long since gone.[2]

After having reviewed the entire record, we find that the judgment was not contrary to the great weight of the evidence, and that the evidence supporting the judgment was not so weak as to be manifestly unjust and clearly wrong.

Appellant's issues are overruled. The judgment of the trial court is affirmed.

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[2] Additionally, under the management agreement the dealers and MI stipulated that the profits from the dealerships were to be split 50/50. At trial, Hanus testified that the dealerships did not turn a profit and in fact sustained losses of over six figures.

/s/ Don Wittig
Justice

Judgment rendered and Opinion filed September 27, 2001.

Panel consists of Justices Yates, Fowler, and Wittig.

Do Not Publish — TEX. R. APP. P. 47.3(b).