

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

SATURDAY KNIGHT, LTD.,	:	APPEAL NOS. C-110545
		C-110766
Plaintiff-Appellant/Third- Party Defendant/Cross- Appellee,	:	TRIAL NO. A-0804963
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
ROBERT C. LAFKAS,	:	
HOWARD C. JACKSON,	:	
and	:	
2100 SECTION ROAD, LLC,	:	
Defendants-Appellees/Third- Party Plaintiffs/Cross- Appellants,	:	
	:	
vs.	:	
FRANKLIN S. KLING,	:	
and	:	
THOMAS H. BERGMAN,	:	
Third-Party Defendants/Cross- Appellees.	:	
	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

2100 Section Road, LLC, (“2100”) is the owner of the property located at 2100 Section Road in Cincinnati, Ohio. The sole members of 2100 are Robert Lafkas and Howard Jackson. Saturday Knight, Ltd., (“SKL”) is the lone tenant of the property owned by 2100. SKL’s lease had transferred to 2100 upon its purchase of the property. Prior to 2100’s purchase of the property, Lafkas and Jackson had participated in the drafting of a series of documents along with Franklin Kling, president of SKL. Kling had desired to purchase the Section Road property himself, but was unable to do so because of an ongoing legal dispute with SKL’s former landlord. So Kling recruited Lafkas and Jackson to form 2100 and purchase the property. Per Kling’s proposed plan, Lafkas and Jackson were to receive a monthly fee of \$7,000 while they owned the property, and they were to transfer ownership of the property to Kling when his legal dispute was resolved. The documents drafted by the parties memorialized this agreement in significantly greater detail, but they were never signed. Although the documents were not signed, the parties performed under their terms for a short period of time. But the relationship between the parties deteriorated, and this lawsuit ensued.

SKL filed suit against Lafkas and Jackson, alleging that they had failed to perform their obligations under the unsigned contract that the parties had drafted and that they had misappropriated trade-secret information from SKL. Lafkas and Jackson successfully filed a motion to have 2100 labeled as a necessary party and added as a defendant. Lafkas, Jackson, and 2100 (collectively referred to hereafter as “the defendants”) filed a counterclaim against SKL and a third-party complaint

against Kling and Thomas Bergman, Kling's attorney, asserting claims of fraud. And they asserted two additional claims against SKL, specifically breach of lease and breach of an oral management agreement. The latter claim was based on the unsigned documents that the parties had drafted.

The trial court granted summary judgment to the defendants on each of SKL's claims. The case proceeded to a jury trial on the claims against SKL, Kling, and Bergman. At the close of evidence, the trial court granted a directed verdict against the defendants on the fraud claims. And the jury returned a verdict in favor of SKL on the remaining claims, finding that it had not breached its lease with 2100 or the oral management agreement. Both SKL and the defendants have appealed from the judgments rendered below.

In its first assignment of error, SKL argues that the trial court erred in granting summary judgment to the defendants on its claim that the defendants had breached the parties' unsigned agreements by failing to transfer ownership of 2100 to SKL. We hold that the trial court properly granted summary judgment to the defendants on SKL's claim. Because the parties' contract concerned the sale of personal property and involved an amount greater than \$5,000, pursuant to the statute of frauds it was unenforceable if not signed. R.C. 1301.12(A). *See also* R.C. 1705.17 ("a membership interest in a limited liability company is personal property"). We are not persuaded by SKL's arguments that the doctrine of part performance removes this case from the statute of frauds. *See Hodges v. Ettinger*, 127 Ohio St. 460, 189 N.E. 113 (1934), syllabus. Nor do we find that SKL had completely performed its own obligations under the unsigned contract or that the defendants had ratified the unsigned agreements by bringing suit against SKL. The trial court

properly granted summary judgment to the defendants on this claim, and we accordingly overrule the first assignment of error.

In its second assignment of error, SKL argues that the trial court erred in granting summary judgment to the defendants on SKL's claim for misappropriation of trade secrets. Because the record contains no genuine issues of material fact as to whether the defendants misappropriated any alleged trade secret, we hold that the trial court properly granted summary judgment on this claim. R.C. 1333.61(A) and (B); *Montrose Ford, Inc. v. Starn*, 147 Ohio App.3d 256, 262, 2002-Ohio-87, 770 N.E.2d 83 (9th Dist.). SKL's second assignment of error is overruled.

The defendants have raised four assignments of error in their cross-appeal. They first argue that the trial court erred in submitting their claim for breach of the lease agreement to the jury and in failing to determine as a matter of law that SKL had breached the lease. We cannot agree with the defendants' allegations that no questions of fact existed concerning whether SKL had breached the lease. To the contrary, numerous factual issues needed to be resolved to determine whether or not SKL had breached its lease with the defendants. Consequently, we hold that the trial court properly submitted this claim to the jury and did not err in failing to direct a verdict for the defendants. *See* Civ.R. 50; *Kemper v. Springfield Twp.*, 1st Dist. Nos. C-110514 and C-110546, 2012-Ohio-2461, ¶ 15.

The defendants further argue under this assignment of error that the trial court gave an improper jury instruction concerning the breach of the lease because it had instructed the jury to determine whether SKL had "substantially performed" under the lease and whether it had breached a "material" term of the lease. But this instruction was not contrary to law. *See Ohio Farmers Ins. Co. v. Cochran*, 104 Ohio St. 427, 135 N.E. 537 (1922), paragraph two of the syllabus. And under the facts and

circumstances of this case, the trial court did not abuse its discretion in providing the instruction. *State v. Wolons*, 44 Ohio St.3d 64, 68, 541 N.E.2d 443 (1989); *Hollingsworth v. Time Warner Cable*, 168 Ohio App.3d 658, 2006-Ohio-4903, 861 N.E.2d 580, ¶ 48 (1st Dist.). The first assignment of error is overruled.

The defendants argue in their second assignment of error that the trial court erred in admitting prejudicial and irrelevant evidence concerning the confidentiality of SKL's financial statements and whether the defendants had breached that confidentiality. They argue that admission of this evidence was in error because SKL's claim for misappropriation of trade secrets had been disposed of prior to trial. But following our review of the record, we cannot conclude that this information was irrelevant to the issues at hand or that the trial court abused its discretion in allowing its admittance. *Beard v. Meridia Huron Hosp.*, 106 Ohio St.3d 237, 2005-Ohio-4787, 834 N.E.2d 323, ¶ 20. The second assignment of error is overruled.

In their third assignment of error, the defendants argue that the trial court erred in failing to direct a verdict for 2100 on the issue of damages with respect to its claim for breach of lease. As we stated in our response to the defendants' first assignment of error, the trial court properly submitted the matter to the jury for determination because issues of fact existed concerning whether the lease had been breached. And because the jury returned a verdict finding that the lease had not been breached, the trial court did not err in failing to direct a verdict for defendants on the issue of damages or in failing to grant the defendants' motion for judgment notwithstanding the verdict. *See Civ.R. 50*. Damages cannot be awarded in the absence of a breach. The third assignment of error is overruled.

In their fourth assignment of error, the defendants argue that the trial court erred in granting a directed verdict against them on their fraud claims. We cannot

OHIO FIRST DISTRICT COURT OF APPEALS

agree. After construing all evidence in the light most favorable to the defendants, we find that reasonable minds could only conclude that the evidence submitted did not support the elements of a claim for fraud. Civ.R. 50(A); *Roark v. Rydell*, 174 Ohio App.3d 186, 2007-Ohio-6873, 881 N.E.2d 333, ¶ 79 (1st Dist.). The fourth assignment of error is overruled.

Having overruled all assignments of error raised in this appeal and cross-appeal, we accordingly affirm the judgment of the trial court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., HENDON and FISCHER, JJ.

To the clerk:

Enter upon the journal of the court on July 13, 2012
per order of the court _____.
Presiding Judge