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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0754**

Winston T. Tan,
Respondent,

vs.

Moulood Ahmad Nasir Qureshi,
Appellant.

**Filed December 26, 2017
Affirmed
Jesson, Judge**

Washington County District Court
File No. 82-CV-15-2174

Nathan M. Hansen, Hanson Law Offices, North St. Paul, Minnesota (for respondent)

Darren B. Schwiebert, DBS Law LLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Jesson, Judge; and Florey, Judge.

UNPUBLISHED OPINION

JESSON, Judge

Respondent Winston Tan went to a mall kiosk to purchase an engagement ring, but left after agreeing to invest \$80,000 in appellant Nasir Qureshi's jewelry business, in addition to buying a ring. The two became business partners, with Tan as an investor and Qureshi taking on the active business role. Over the span of a few years, Tan invested

approximately \$370,000 in this new business. But after seeing no inventory, invoices, or return for approximately seven years, Tan suspected that Qureshi had misled him. Unable to get any answers from Qureshi, Tan filed a lawsuit alleging fraud. The case went to trial and Tan ultimately prevailed. Qureshi filed a motion for judgment as a matter of law, arguing that there was no evidence of intentional factual misrepresentations, which is required to prove fraud. The district court denied the motion. Qureshi now appeals, arguing that the district court erred in denying his motion for judgment as a matter of law, or in the alternative, a new trial, based on an evidentiary ruling. We affirm.

FACTS

In April 2008, respondent Winston Tan was recently engaged and needed to purchase an engagement ring. His friend directed him to a Maplewood Mall kiosk, Maya Jewelers, owned and operated by appellant Nasir Qureshi. Tan purchased a ring from Qureshi, but the relationship did not end there.

That same day, Qureshi asked Tan if he wanted to invest in his jewelry business. Tan thought it was a good idea and agreed to sign several promissory notes for a total of \$80,000. Tan did not have any experience in the jewelry business, and he understood there was a risk in the investment. Later, Qureshi wanted to start a wholesale jewelry business, and after talking with Tan, Qureshi rolled over Tan's initial investment into the new business. In October 2008, Qureshi filed articles of incorporation for the new business, naming it Quality Enterprises, Inc.

From the initial investment in April 2008, through February 2009, Tan invested approximately \$370,000 into Quality Enterprises. The business had two other investors,

Thomas Oczak and Freddy Olivar, who invested a total of \$230,000 and \$124,000, respectively. Qureshi told Tan that he personally invested \$230,000, but because there were no documents to support this, Tan was unable to tell how much money, if any, Qureshi actually invested. After the parties made their investments, they entered into a shareholder agreement in April 2009. In the shareholder agreement, Qureshi was named president, and Tan was named vice president.

After the shareholder agreement was signed, Quality Enterprises entered into a five-year lease for space across the street from the Maplewood Mall kiosk location. Both Tan and Qureshi signed the lease. Qureshi paid rent for the first two months, but then stopped paying. Quality Enterprises was evicted, and the property owner of the retail space ultimately filed a lawsuit against Qureshi and Tan. By the time Quality Enterprises was evicted, the retail space was mostly empty, apart from some installed cabinets and improvements. Qureshi told Tan that he paid for the cabinets and improvements in cash, but there were no invoices or receipts.

After the parties entered into the lease, Qureshi told Tan that he needed to travel to Dubai to get diamonds and gold. Qureshi went to Dubai, but he came back empty-handed. Eventually he explained that the inventory was “stuck,” and that he needed more funds to retrieve it. Similarly, Qureshi went to Pakistan to buy inventory, and while in Pakistan, Tan wired Qureshi \$40,000 to secure jewelry. However, Qureshi again came back without any inventory. Qureshi also made trips to New York, Chicago, and Dallas to get inventory. But Tan never saw any inventory or invoices as a result of any trip.

In 2014, Tan and Oczak called a special meeting of the shareholders, concerned about how their money was being spent. Tan, Oczak, and Qureshi were present, but Olivar did not attend. At this meeting, Qureshi explained that the money was with his accountant, that he did not have any of it at the moment, and he was unable to produce any invoices or receipts. Qureshi produced a one-page financial report dated July 2010. This document stated there were \$734,000 in expenses through July 2010, including \$88,000 in construction costs, \$37,800 in rent, \$30,000 in payroll, and \$551,250 in jewelry-inventory purchases. Qureshi ended the meeting early because he stated he had to go to work. Tan later testified at trial that he never saw any jewelry inventory, and the rent number was false because it came out during the lawsuit by the property owner that Qureshi only paid two months' rent. Tan never received any return on his investment.

In 2015, Tan filed a lawsuit against Qureshi alleging fraud, conversion, and civil theft. In response to an interrogatory during discovery, Tan stated that the sole alleged misrepresentation was that Qureshi "represented that he would establish a legitimate jewelry business." The case went to a jury trial in December 2016. Tan called one witness, himself. Tan testified, consistent with the earlier interrogatory answer, that the only material misrepresentation he alleged Qureshi made was that he would establish a legitimate jewelry business. Tan stated that Qureshi did not make any new material misrepresentations after that. However, when later asked if there were additional misrepresentations, he stated, "I mean throughout the whole process he kept saying things will come. Things will get better." It is unclear if Tan meant there were additional

misrepresentations, or if Qureshi continuously reinforced the original misrepresentation.¹ Tan also testified that he recognized Quality Enterprises was legitimately formed on paper.

During trial, Qureshi attempted to introduce an affidavit by Olivar, but Tan objected on hearsay grounds. The district court sustained the objection because Qureshi did not produce any evidence that he attempted to locate Olivar or compel his attendance.² After both parties rested, the court submitted the case to the jury. The jury determined Qureshi was liable for fraud for the \$370,029.04 Tan had invested, but not liable for the conversion or civil theft claims.

After the jury verdict, Qureshi filed a renewed motion for judgment as a matter of law on the grounds that there was insufficient evidence to support the fraud claim.³ He also argued in the alternative that he should be granted a new trial because the district court erred by excluding Olivar's affidavit. The district court denied Qureshi's motion. The court determined that Tan provided evidence that supported the jury's determination of false representations by Qureshi, including how Qureshi used Tan's money and the location of the inventory. The court also stated that Tan provided evidence that supported the jury's determination that Qureshi knew the representations were false, including the testimony

¹ In the district court's discussion of law in its order denying the motion for judgment as a matter of law, the court stated the interrogatory answer was contradicted, "Although Plaintiff's interrogatory is a sworn statement that was contradicted at trial, the practical effect of that contradiction is that the jury could have disregarded some or all of Plaintiff's testimony. Apparently, the jury decided to resolve that question of fact in favor of Plaintiff."

² This objection, and any conversation that took place, is not in the record. Instead, the facts come from the district court's findings of fact in a post-trial order.

³ Qureshi initially moved for judgment as a matter of law after Tan rested his case and renewed the motion prior to the case being submitted to the jury.

that Qureshi was evasive and unable to provide adequate answers at the shareholder meeting. Finally, the court held the exclusion of Olivar's affidavit was proper because Qureshi failed to establish that Olivar was unavailable. This appeal follows.

D E C I S I O N

Qureshi argues that the district court erred by not granting his motion for judgment as a matter of law because Tan was unable to establish the necessary elements of fraud. Qureshi further contends that the district court erred by not granting his motion for a new trial because it improperly excluded evidence on hearsay grounds. We address each argument in turn.

I. Qureshi is Not Entitled to Judgment as a Matter of Law Because Tan Offered Evidence Establishing Each of the Elements of Fraud

Qureshi argues the district court erred by denying his motion for judgment as a matter of law because Tan failed to establish the necessary elements of fraud. This court reviews the denial of a motion for judgment as a matter of law de novo, while viewing the evidence in a light most favorable to the nonmoving party. *Moore v. Hoff*, 821 N.W.2d 591, 595 (Minn. App. 2012). Judgment as a matter of law should only be granted “in those unequivocal cases where (1) in the light of the evidence as a whole, it would clearly be the duty of the trial court to set aside a contrary verdict as being manifestly against the entire evidence, or where (2) it would be contrary to the law applicable to the case.” *J. N. Sullivan & Assocs., Inc. v. F.D. Chapman Constr. Co.*, 304 Minn. 334, 336, 231 N.W.2d 87, 89 (1975).

To establish fraud, a party must show: (1) there was a false representation by a party of a past or existing material fact susceptible of knowledge; (2) that was made with knowledge of the falsity of the representation or made as of the party's own knowledge without knowing whether it was true or false; (3) with the intention to induce another to act in reliance thereon; (4) that the representation caused the other party to act in reliance thereon; and (5) that the party suffered pecuniary damage as a result of the reliance. *Angeles v. Medtronic, Inc.*, 863 N.W.2d 404, 422 (Minn. App. 2015). Qureshi argues there was insufficient evidence to establish the first two elements. We disagree.

Here, the record established multiple representations by Qureshi sufficient to allow a fact-finder to find that they were false. In its order, the district court succinctly and accurately explained as much:

Plaintiff's testimony was replete with examples of potential misrepresentations that occurred during [Quality Enterprises]'s operation. Plaintiff testified that every time money was sent to Defendant for inventory, no inventory was returned. Defendant's claim that inventory and money were tied-up in other parts of the world, viewed in light of Plaintiff's testimony and most favorably to Plaintiff, is tantamount to misrepresentation of a material fact.

The potential misrepresentations did not stop at the failure to produce inventory after trips. Qureshi told Tan that he would establish a legitimate jewelry business. He did not. Unable to produce invoices or receipts supporting any of his alleged purchases, Qureshi was evasive during the shareholder meeting about the status of the inventory and investments. All of these constituted statements that a jury could find were misrepresentations. It is the jury's responsibility to resolve factual issues and determine if the statements were false,

and here there is sufficient evidence to support their finding. *See 650 N. Main Ass'n v. Frauenshuh, Inc.*, 885 N.W.2d 478, 487 (Minn. App. 2016) (stating it is the jury's exclusive duty to resolve factual issues), *review denied* (Minn. Nov. 23, 2016).

Furthermore, there was sufficient evidence to establish that these potential representations were made with knowledge of their falsity. While there is no direct evidence establishing Qureshi knew the statements were false, circumstantial evidence can be sufficient on its own. *See Benson v. Rostad*, 384 N.W.2d 190, 195 (Minn. App. 1986) (denying a directed verdict because a reasonable jury could conclude knowledge of falsity based on the surrounding facts and circumstances). Here, circumstantial evidence abounds. For example, Qureshi was never able to produce any inventory. Nor did he maintain receipts. He only provided one outdated financial document, and Tan testified to its inaccuracy.

Qureshi urges this court to restrict its analysis to the sole alleged misrepresentation of Qureshi telling Tan that he would establish a legitimate jewelry business. He points to Tan's interrogatory answer and testimony at trial that Qureshi's statement about forming a legitimate jewelry business was the only misrepresentation. Qureshi contends that there is insufficient evidence produced at trial to support a jury's finding that this sole representation was false, especially in light of the evidence establishing that Quality Enterprises was "formed" when the articles of incorporation were filed with the Secretary of State. And Tan acknowledged that the company was, in fact, legitimately formed.

But our analysis is not restrained to the sole misrepresentation, and we therefore do not reach the merits of Qureshi's argument of whether the representation that the company

would be legitimately established constituted fraud.⁴ The fact that Tan stated in an interrogatory and testified at one point during trial that there was only one misrepresentation does not prevent the jury's ability to determine there were other misrepresentations constituting fraud.⁵ As the district court correctly pointed out, Tan's testimony was replete with potential misrepresentations by Qureshi, and it is within the jury's realm to determine which, if any, were false. *See Swanson v. Minneapolis St. Ry. Co.*, 252 Minn. 484, 486–87, 90 N.W.2d 514, 516–17 (1958) (stating it is the jury's responsibility to resolve any contradictions and inconsistencies in regards to genuine issues of fact).

In summary, in light of the evidence supporting Qureshi's multiple misrepresentations to Tan, this is not a situation where a contrary verdict would be manifestly against the entire evidence, nor would it be contrary to the applicable law. And because of the numerous potential misrepresentations that were supported by sufficient

⁴ Though we do not reach the issue of whether Qureshi's statement that he would establish a legitimate business was a misrepresentation, we note that his argument is an overly narrow interpretation of what establishing a legitimate business entails. Establishing a legitimate business is broader than simply forming a business on paper.

⁵ If Qureshi wanted Tan to be constrained at trial to present evidence only of the sole misrepresentation listed in his interrogatory, then Qureshi needed to raise that argument prior to appeal. *See McCarthy Well Co. v. St. Peter Creamery, Inc.*, 410 N.W.2d 312, 317 (Minn. 1987) (stating that when a party fails to supplement information after answering interrogatories, the proper form of relief lies within the discretion of the trial court). Similarly, because this issue of Tan being bound by his interrogatory answer was not raised at any point in district court, it is now forfeited on appeal. *See Leiendecker v. Asian Women United of Minnesota*, 895 N.W.2d 623, 633 (Minn. 2017) (stating that issues not raised below are generally not considered on appeal).

evidence, we do not have to reach Qureshi's argument that the sole representation, regarding the business being legitimately established, did not constitute fraud.

II. Qureshi is Not Entitled to a New Trial Because the District Court Properly Excluded Evidence on Hearsay Grounds

Qureshi argues that he is entitled to a new trial because the district court wrongfully excluded Olivar's affidavit on hearsay grounds. Evidentiary rulings are within the discretion of the district court, and this court will only reverse the ruling if: (1) the district court abused its discretion and (2) the abuse of discretion prejudiced the objecting party. *Melius v. Melius*, 765 N.W.2d 411, 417 (Minn. App. 2009).

Generally, hearsay is inadmissible unless it falls within an exception. Minn. R. Evid. 802. The exception relevant here is statements against interest, which requires the declarant to be unavailable for trial. Minn. R. Evid. 804(b)(3). A declarant is unavailable if he or she is "is absent from the hearing *and* the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means." Minn. R. Evid. 804(a)(5) (emphasis added). The proponent of the evidence has the burden to prove unavailability. *See Miles v. State*, 840 N.W.2d 195, 203-04 (Minn. 2013) (stating the proponent of the evidence had burden to establish the declarant was unavailable); *see also* Peter Thompson, *Minnesota Practice*, Evidence § 804.01 (4th ed. 2017).

Here, there is no transcript of Qureshi attempting to introduce the affidavit. The lack of transcript limits the scope of review to whether the district court's conclusions of

law are supported by its findings of fact. *In re Bender*, 671 N.W.2d 602, 605 (Minn. App. 2003). The district court held that the statements-against-interest exception did not apply because Olivar was not unavailable as Qureshi failed to put forth any evidence that he tried to locate or compel Olivar's attendance pursuant to rule 804(a)(5). This holding is supported by the facts in the record. The district court found that there were no subpoenas, letters, or any documents showing an attempt to obtain Olivar's attendance or to take a deposition of him. There is nothing in the record that shows Qureshi attempted to procure Olivar's attendance. Because these findings of fact support the district court's conclusion of law, the district court did not abuse its discretion.

Qureshi attempts to argue the district court erred in its evidentiary ruling on multiple theories, including waiver⁶ and burden-shifting.⁷ However, these arguments are unpersuasive and fail to establish Olivar was unavailable, as required for the statements-against-interest exception to apply. The district court appropriately exercised its discretion in excluding Olivar's affidavit and denying Qureshi's motion for a new trial.

Affirmed.

⁶ Qureshi argues that Tan waived his "unavailability" objection by failing to raise it during the trial and that it was improper for the trial court to raise the issue of unavailability during a post-trial order because the court never mentioned it at trial. But because there is no transcript of this discussion, it is unclear what was actually said by the district court or Tan.

⁷ Qureshi adds that there was nothing in the record that would show any challenge as to whether Olivar was unavailable. This improperly shifts the burden of proof because Qureshi has the burden to show Olivar was unavailable.