



SUPREME COURT OF GEORGIA
Case No. S10C1835

Atlanta, January 13, 2011

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

LEVEL ONE CONTACT, INC., et al. v. BJL ENTERPRISES, LLC.

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

Court of Appeals Case No. A10A1196, S10A0722

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from
minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court
hereto affixed the day and year last above written.

Theresa S. Barnes, Clerk

**SECOND DIVISION
MILLER, C. J.,
PHIPPS, P. J., and JOHNSON, J.**

NOTICE: Motions for reconsideration must be
physically received in our clerk's office within ten
days of the date of decision to be deemed timely filed.
(Court of Appeals Rule 4 (b) and Rule 37 (b), February 21, 2008)
<http://www.gaappeals.us/rules/>

July 8, 2010

In the Court of Appeals of Georgia

A10A1196. LEVEL ONE CONTACT, INC. et al. v. BJL
ENTERPRISES, LLC.

JOHNSON, Judge.

This contract case involves a commercial lease agreement. In April 2005, Samuel Winters, the owner of Level One Contact, Inc., contracted with Paul Green to rent a large manufacturing facility. Green spent over \$180,000 toward specialized tenant improvements, and Winters, on behalf of Level One, signed a 7-year lease. The lease began in August 2005 with initial monthly payments of \$5,250.00 and called for progressive payments until June 2012, with concluding monthly payments of \$6,573.00. After seven months, Green sold the property to John Lunsford by virtue of a warranty deed that transferred all rights and privileges. Lunsford thereafter

transferred title to the property to his family business, BJL Enterprises, LLC, by virtue of a similar warranty deed transferring all rights to the property.

Winters, on behalf of Level One, paid the rent each and every month. However, after operating the business for approximately two years, Winters sold substantially all business assets to North Star Chemicals, Inc. On September 4, 2007, Level One notified Lunsford that it was vacating the property and terminating the lease. Level One subsequently stopped paying rent.

In January of 2008, BJL Enterprises filed suit against Level One and Winters for the unpaid rent due on the lease, fraudulent conveyances, stubborn litigiousness, bad faith, and punitive damages. Level One and Winters counterclaimed for failure to return their security deposit pursuant to the lease, conversion, trespass to property, attorney fees, and punitive damages. A jury found in favor of BJL Enterprises and against Level One in the amount of \$103,954.00 in past due rent, \$67,734.00 in attorney fees and expenses of litigation pursuant to the lease, and \$1.00 for attorney fees for stubborn litigiousness and bad faith. The jury found in favor of BJL Enterprises and against Winters for fraudulent conveyance in the amount of \$103,954.00, and \$1.00 for attorney fees for stubborn litigiousness and bad faith.

Level One and Winters appeal, alleging (1) the trial court erred in denying their motions for directed verdict because BJL Enterprises lacked standing to pursue its claims and because the lease was terminated; (2) the trial court erred in failing to let them challenge the attorney fees evidence proffered by BJL Enterprises; (3) the trial court erred in failing to reduce the amount of attorney fees awarded against Level One as required by statute; and (4) the trial court erred in awarding pre-trial discovery sanctions to BJL Enterprises based on a finding that Level One and Winters withheld documents during discovery. We reverse the trial court's judgment with respect to the attorney fees awarded pursuant to the lease because the amount is limited by statute. However, we affirm the trial court's order and judgment on all other issues.

1. Level One and Winters contend the trial court erred in denying their motion for directed verdict because BJL Enterprises lacked standing to pursue its claims and because the lease was terminated either by agreement of the parties or by operation of law. We find no merit to either of these claims.

Under Georgia law, a directed verdict is authorized only where there is no conflict in the evidence as to any material issue and the evidence introduced, with all reasonable deductions therefrom, demands a particular verdict.¹ Consequently, the

¹ See *Rose v. Cain*, 247 Ga. App. 481, 482 (1) (544 SE2d 453) (2001).

of that amount, or \$15,593.10. Accordingly, we reverse the trial court's judgment in this regard and remand the case with direction that the trial court enter a new judgment consistent with this opinion.

4. Level One and Winters contend the trial court erred in awarding pre-trial discovery sanctions to BJL Enterprises based on a finding that Level One and Winters withheld documents during discovery. Trial judges have broad discretion in controlling discovery, including the imposition of sanctions, and this Court will not reverse a trial court's decision on such matters unless there has been a clear abuse of discretion.¹³ We find no abuse of discretion in this case.

The record shows that the parties entered into a consent order resolving cross motions to compel discovery. BJL Enterprises renewed its motion to compel discovery, and the trial court granted the motion and awarded BJL Enterprises \$700 in attorney fees. Specifically, the trial court found that Level One and Winters had failed to provide a sworn verification, as required by the consent order, stating that they had "produced all documents in their possession, custody, or control of which they are aware which are responsive to requests propounded upon them . . ." and that

¹³ *Daniel v. Corporate Prop. Investors*, 234 Ga. App. 148 (505 SE2d 576) (1998).

they “hold no additional documentation including, without limitation, documents in connection with the Asset Purchase Agreement . . .” The trial court noted that during oral argument on the motion to compel, Level One and Winters admitted they were withholding documents responsive to BJL Enterprises’ requests, but argued that the requests were overbroad and oppressive, an argument precluded by the consent order. In addition, while the trial court excluded income tax returns from production, it reminded Level One and Winters that BJL Enterprises’ fraudulent conveyance claims survived summary judgment. Indeed, discovery of financial documents was pertinent to the fraudulent conveyance claims. The trial court did not abuse its discretion in granting BJL Enterprises’ motion to compel and in imposing sanctions against Level One and Winters for their failure to comply with the consent order.

Judgment reversed as to the amount of attorney fees and case remanded for an entry of judgment consistent with this opinion; judgment and discovery order affirmed as to all other issues. Miller, C. J., and Phipps, P. J., concur.