STATE OF MICHIGAN

COURT OF APPEALS

PILOT INDUSTRIES, INC.,

Plaintiff-Appellant,

and

ROBERT A. DAVIS, FREDERICK W. WOODWARD, and M. LAWRENCE PARKER,

Plaintiffs,

v

GRANT THORNTON, LLP and RUSSELL G. WIEMAN,

Defendants-Appellees.

UNPUBLISHED
July 20, 2006

No. 258689
Washtenaw Circuit Court
LC No. 01-001355-NM

Before: Donofrio, P.J., and O'Connell and Servitto, JJ.

PER CURIAM.

Plaintiff Pilot Industries, Inc. (Pilot), appeals as of right from the trial court's finding of no cause of action following a bench trial. We affirm. This case arose when Grant Thornton, LLP (Thornton), while auditing Pilot for fiscal year 2000, found an error in Pilot's 1999 financial documents that Thornton had missed in its 1999 audit.

Although Pilot argues that the trial court committed legal error by misapplying the legal standard, Pilot's proposed standard would inappropriately hold defendant strictly liable for any material misrepresentations in Pilot's 1999 financial statements. This is not the standard. "Accountants, like physicians and lawyers, owe a duty to perform their services with that degree of skill and competence reasonably expected of persons in their profession in the community." *FDIC v Schoenberger*, 781 F Supp 1155, 1157 (ED La 1992). An auditor's certification does not usually guarantee that the audit's results are flawless, but represents that the audit complied with professional standards. See *Id*. In Michigan, a public accountant is not liable to a client unless the accountant's acts or omissions are negligent. MCL 600.2962(A). Therefore, the existence of

errors or misstatements in the audit report does not automatically justify legal relief, and the trial court correctly held Thornton to the professional-negligence standard.[1]

Pilot next claims the trial court clearly erred when it found that Pilot failed to prove by a preponderance of the evidence that Thornton breached its standard of care. We disagree. "This Court reviews a trial court's findings of fact in a bench trial for clear error and reviews de novo its conclusions of law." *Ambs v Kalamazoo Co Rd Comm*, 255 Mich App 637, 651; 662 NW2d 424 (2003). "A finding is clearly erroneous where, although there is evidence to support the finding, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been made." *Id*. at 652. This case revolved around Thornton's confirmation of an $6.7 million account receivable as an internal account between Pilot and a subsidiary (which would have no real effect on Pilot's overall financial picture) and an unrealized, outside account (which would leave Pilot without real funds). The trial court heard evidence that Pilot's management verified that the account was offset by a $6.5 million account payable, which accorded with Thornton's expectations and with the subsidiary's previously audited financial statements. The trial court heard competing expert testimony regarding whether Thornton sufficiently tested these figures to verify competently the averments of Pilot's management. Ultimately, the trial court held that Pilot conformed to the standard of care, and we defer to the trial court's superior ability to observe the witnesses and weigh their credibility and the importance of their testimony. *Zeeland Farm Services*, *Inc v JBL Enterprises*, *Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996). Because this case came down to a closely drawn question whether Thornton should have done more to root out apparently substantiated misrepresentations by Pilot's management, we cannot confidently say that the trial court misinterpreted the facts.

However, according to Pilot, the trial court erred when it found that Thornton reasonably relied on the unsupported categorization of the $6.7 million dollar account as an essentially internal debt. Pilot correctly argues that auditors are supposed to evaluate the validity and reliability of internal financial statements. *Ameriwood Industries Int'l Corp v Arthur Andersen*, 961 F Supp 1078, 1090 (WD Mich, 1997). It is the duty of an auditor to independently analyze a company's books as a "watchdog" on behalf of a company's creditors, stockholders, and the investing public at large. *Comm'r of Insurance v Albino*, 225 Mich App 547, 565-566; 572 NW2d 21 (1997). Therefore, the "discovery of negligent misrepresentations is an anticipated purpose of the audit . . . ." *Ameriwood*, *supra*. Nevertheless, Pilot mischaracterizes the trial court's findings. The trial court did not find that Pilot's misstatements automatically exonerated Thornton from investigating the accounts, but that the misunderstanding and misrepresentations suggested that no problem existed, making it harder to detect. The trial court heard testimony that Pilot's mischaracterization of the $6.7 million account was tested, but that the tests Thornton used failed to reveal any problem. In other words, the trial court concluded that everybody, including Pilot's internal accountants, failed to detect the problem, which was evidence that the problem was not as easily detectable as Pilot alleged. Because the trial court did not misinterpret

[1] We note that if errors automatically led to liability, then the law would discourage accountants from responsibly revisiting, revising, and, when necessary, repudiating their earlier audits.

the purpose behind the audit or give conclusive weight to the misrepresentations of Pilot's management, Pilot has failed to demonstrate any error requiring reversal.

Affirmed.

/s/ Pat M. Donofrio
/s/ Peter D. O'Connell
/s/ Deborah A. Servitto