STATE OF MICHIGAN

COURT OF APPEALS

EUGENE VODOPYANOV and ANATOLY MANT,

Plaintiffs-Appellants,

v

KELLER WILLIAMS REALTY a/k/a NORTHVILLE MARKET CENTER, INC., MARINA SHEFFER a/k/a MARINA VALTSEV, ALEX VALTSEV, and RAPID ENTERPRISES, L.L.C.,

Defendants-Appellees.

UNPUBLISHED
August 25, 2011

No. 296939
Oakland Circuit Court
LC No. 2006-076762-CK

Before: CAVANAGH, P.J., and WILDER and OWENS, JJ.

PER CURIAM.

Plaintiff[1] appeals as of right a judgment in favor of Keller Williams Realty a/k/a Northville Market Center, Inc. (Keller Williams) on his statutory conversion claim. We affirm.

Plaintiff filed a complaint against Keller Williams, Marina Sheffer a/k/a Marina Valtsev, Alex Valtsev, and Rapid Enterprises, LLC, after money that he allegedly gave toward an earnest money deposit for a failed real estate transaction was not returned to him. The transaction was between Rapid Enterprises, whose sole member was Valtsev, and Danovi, LLC, which is not a party to this lawsuit. Valtsev was plaintiff's cousin. Sheffer was the real estate salesperson for Keller Williams and represented Rapid Enterprises, through Valtsev, in the Danovi transaction. Sheffer was married to Valtsev. Plaintiff alleged that Sheffer and Valtsev solicited money from him for a deposit on the Danovi transaction. He alleged that they presented a proposed business venture, advised him that the purchase was a good investment opportunity for him, and that his

[1] Plaintiff, Eugene Vodopyanov, alleged that he was the assignee of plaintiff Anatoly Mant and throughout the lower court proceedings they were referred to collectively as "plaintiff," in the singular. For ease of reference, we will do the same.

deposit would eventually be returned. In his complaint, plaintiff claimed that Sheffer was acting within the scope of her employment during these interactions with him.

Although plaintiff was never made a party to the Danovi transaction, he allegedly provided money in September of 2004 to fund the earnest money deposit required by the purchase agreement between Rapid Enterprises, through Valtsev, and Danovi. When the real estate transaction failed, Danovi sued for the earnest money deposit pursuant to the terms of the purchase agreement. A settlement was eventually reached which provided for Keller Williams, the escrow agent for the Danovi transaction, to release the funds to Danovi. In his complaint, plaintiff claimed that the release of the earnest money deposit by Keller Williams to Danovi without plaintiff's knowledge or consent amounted to a conversion of his money in violation of MCL 600.2919a.

After a timely response to the complaint was not filed, a default was entered against Keller Williams, Sheffer, and Rapid Enterprises. Valtsev was never served the complaint and, thus, no default was sought or entered against him. Keller Williams moved twice to set aside the default, but those motions were denied and the decisions were affirmed by this Court. *Vodopyanov v Keller Williams Realty Northville Mkt Ctr*, unpublished opinion per curiam of the Court of Appeals issued June 12, 2008 (Docket No. 274460). Then plaintiff moved for entry of a default judgment, arguing that no genuine issues of material fact existed regarding his statutory conversion claim and Keller Williams' vicarious liability for Sheffer's actions. And because the damages were liquidated, he was entitled to $150,000 in trebled damages. Keller Williams opposed the motion. The trial court granted the motion, in part, but held that there remained two issues to be resolved by jury trial; first, whether Keller Williams received $50,000 or $44,000 and, second, the apportionment of damages among the defendants.

Thereafter, a four day jury trial commenced. Plaintiff presented the witness testimony of Louis Ronayne, who was the broker manager at the Keller Williams' office when the disputed events occurred. Ronayne testified that there were no documents of any kind indicating that plaintiff was represented by Keller Williams or its salesperson, Sheffer, with regard to the Danovi transaction. After Valtsev's initial earnest money deposit check for $50,000 bounced, Valtsev brought in several checks to cover the deposit and plaintiff's name was on some of them as the remitter. Valtsev never did provide $50,000, he only provided $44,000. Ronayne testified that it was not unusual that Valtsev borrowed the deposit money from friends and family. It happened all of the time. But that did not mean that such lenders became a party to the underlying purchase agreement. Ronayne believed that plaintiff was merely Valtsev's relative who helped him cover the bounced check.

After Valtsev's check bounced, Sheffer was told to notify her client, Valtsev, and either get the funds or notify Danovi that the transaction was not binding. Ronayne later found out that Sheffer did not notify the seller about the deficient deposit. He did not find out about plaintiff's involvement in the real estate transaction until plaintiff came to the Keller Williams' office long after the legal action with Danovi was settled and it was paid the $50,000. Ronayne testified that if Sheffer went to plaintiff and discussed investing money in the Danovi property, she was operating on her own behalf as a friend of plaintiff's and not as a representative of Keller Williams. She would have been operating outside of the scope of her real estate license and outside of the scope of her employment with Keller Williams. Plaintiff was simply dealing with

a friend, Sheffer, who happened to work at Keller Williams. And Ronayne later found out that Sheffer married Valtsev at some point and Valtsev was plaintiff's cousin, as well as business partner in other ventures. Ronayne further testified that Keller Williams was merely the escrow agent for the Danovi transaction and it was required to release the escrowed funds at the direction of the parties to that transaction. In fact, because Valtsev only gave Keller Williams $44,000, Keller Williams had to pay the shortfall of $6,000 out of its own funds.

Plaintiff then testified as the only other witness. He had known Sheffer since 1992 and knew her parents as well. Plaintiff met Valtsev in 2004, after his cousin, Valtsev's mother, called him and asked him to help "support him somehow." Plaintiff knew that Sheffer and Valtsev got married in August of 2004, because he was at the wedding—which was before he wrote the first check to Valtsev related to the Danovi real estate transaction. He became involved in the Danovi transaction after Sheffer and Valtsev came to his house and presented a deal to him in that regard. He was asked to pay the security deposit of $50,000 and then they would develop the property. Plaintiff would be a 34 percent owner of a new entity called Rapid Enterprise Property that did not exist. According to plaintiff, Sheffer advised him that it was a good investment and advised him of its advantages. Then plaintiff opened a home equity line of credit, at Sheffer's suggestion, and secured the $50,000 for the deposit. Plaintiff testified that he was assured he would recover his investment even if the transaction failed and he knew Sheffer was a sales agent for Keller Williams. He trusted her. Plaintiff actually wrote some checks toward the deposit to Valtsev, who then turned the money over to Keller Williams under his own name. Eventually, plaintiff was told by Sheffer that the real estate transaction was successful and that the property was purchased. Later, when he could not reach Sheffer by telephone, he went to the Keller Williams' office and found out that the deal failed and he lost his money. He believed that Keller Williams "used all my money to cover this [Danovi] lawsuit."

On cross-examination, plaintiff testified that he had loaned Valtsev $16,000 in 2005 to open up a restaurant—even after he found out that the Danovi transaction failed. Plaintiff also gave Valtsev $14,000 in 2004 to pay Valtsev's apartment lease and car payments. Plaintiff was in a cell phone business in 2005 with Valtsev and was eventually sued on a commercial lease. That matter was settled with plaintiff paying $11,250 and Valtsev paying nothing. Valtsev never paid back any of the money that plaintiff gave him. Plaintiff testified that he did not have any written agreement with Valtsev or Sheffer regarding the Danovi transaction.

No other witnesses were called. Plaintiff then moved for a directed verdict on the issues of vicarious liability and apportionment of damages. The motion was denied. Thereafter, the jury rendered its verdict. Plaintiff was awarded damages in the amount of $41,000 and interest of $5,940. Keller Williams was assigned zero percent of the fault, Sheffer was assigned 33 percent, Valtsev 34 percent, and Rapid Enterprises 33 percent of the fault. In answer to the question whether Sheffer was acting outside of the scope of her employment in her dealings with plaintiff, the jury responded in the affirmative. A judgment consistent with the verdict was entered.

Plaintiff then moved for judgment notwithstanding the verdict or new trial, arguing that the jury findings with regard to Keller Williams and Sheffer were erroneous, against the great weight of the evidence, defied logic, and were the result of lack of judgment or the exercise of passion or bias. Keller Williams responded to the motion, primarily arguing that the evidence

clearly demonstrated that Sheffer acted outside the scope of her employment with regard to her alleged interactions with plaintiff; thus, Keller Williams could not be held vicariously liable for her actions. Further, Keller Williams argued, when the parties to the failed Danovi transaction reached a settlement and directed it to release the money to Danovi, it did so as required by the law. No conversion was committed. The trial court agreed with Keller Williams, for "the reasons articulated in the Response," and denied plaintiff's motion. This appeal followed.

First, plaintiff argues that his motions for (1) entry of a default judgment, (2) directed verdict, and (3) judgment notwithstanding the verdict or new trial should have been granted on the issues of Keller Williams' joint and several liability and vicarious liability. We disagree.

We review a trial court's decisions whether to grant a default judgment and whether to grant a new trial under MCR 2.116 for an abuse of discretion. *Saffian v Simmons*, 477 Mich 8, 12; 727 NW2d 132 (2007); *Kelly v Builders Square, Inc*, 465 Mich 29, 34; 632 NW2d 912 (2001). A trial court abuses its discretion "when the decision results in an outcome falling outside the range of principled outcomes." *Corporan v Henton*, 282 Mich App 599, 605-606; 766 NW2d 903 (2009) (citation omitted).

We review de novo a trial court's decisions on motions for directed verdict and for judgment notwithstanding the verdict (JNOV). *Sniecinski v Blue Cross & Blue Shield of Mich*, 469 Mich 124, 131; 666 NW2d 186 (2003). In our review we examine the evidence presented, and all legitimate inferences arising from the evidence, in the light most favorable to the nonmoving party to determine whether a question of fact existed on which reasonable jurors could differ. *Id*.; *Moore v Detroit Entertainment, LLC*, 279 Mich App 195, 201-202; 755 NW2d 686 (2008). It is for the jury to weigh the evidence and decide the credibility of the witnesses. *King v Reed*, 278 Mich App 504, 522; 751 NW2d 525 (2008). And if reasonable jurors could honestly reach different conclusions, the court may not substitute its judgment for the jury's and the jury verdict must stand. *Zantel Mktg Agency v Whitesell Corp*, 265 Mich App 559, 568; 696 NW2d 735 (2005).

Joint and several liability has generally been abolished by tort-reform statutes "designed to allocate fault and responsibility for damages among multiple tortfeasors." *Kaiser v Allen*, 480 Mich 31, 37; 746 NW2d 92 (2008); see, also, MCL 600.2956. However, MCL 600.2956 states that it "does not abolish an employer's vicarious liability for an act or omission of the employer's employee." Under the doctrine of respondeat superior, an employer may be vicariously liable for an employee's acts committed within the scope of his or her employment. *Helsel v Morcom*, 219 Mich App 14, 21; 555 NW2d 852 (1996). Or, as our Supreme Court noted in *Rogers v JB Hunt Transport, Inc*, 466 Mich 645, 651; 649 NW2d 23 (2002), "a master is responsible for the wrongful acts of his servant committed while performing some duty within the scope of his employment." (citation omitted.) Conversely, an employer is not liable for any act committed outside the scope of employment "because the employee is not acting for the employer or under the employer's control." *Id*. That is, to be liable for an employee's conduct, that employee must have been "engaged in the service of his master, or while about his master's business." *Riley v Roach*, 168 Mich 294, 307; 134 NW 14 (1912). An act is considered outside the scope of employment if the employee was acting to accomplish a purpose of his or her own. *Martin v Jones*, 302 Mich 355, 358; 4 NW2d 686 (1942).

Plaintiff argues that, because he alleged in his complaint that Sheffer was acting within the scope of her employment, his motion for entry of default judgment against Keller Williams should have been granted on the issues of joint and several liability and vicarious liability. Generally, a default settles the question of liability as to well-pleaded factual allegations and the defaulting party is precluded from litigating that issue. See *Kalamazoo Oil Co v Boerman*, 242 Mich App 75, 78-79; 618 NW2d 66 (2000). However, the entry of a default does not transform a legally deficient complaint into a legally sufficient complaint. "If the complaint fails to state a cause of action, it will not support a judgment." *State ex rel Saginaw Prosecuting Attorney v Bobenal Investments, Inc*, 111 Mich App 16, 22; 314 NW2d 512 (1981). Further, conclusions of law unsupported by sufficient factual allegations are not deemed admitted by a defaulting party. See *Cogswell v Kells*, 293 Mich 541, 545; 292 NW 483 (1940); *Bonnici v Kindsvater*, 275 Mich 304, 309-310; 266 NW 360 (1936).

In this case, plaintiff's complaint clearly failed to set forth "well-pleaded factual allegations" in support of its legal conclusion that Sheffer was acting within the scope of her employment with Keller Williams with regard to her interactions with plaintiff. See *Cogswell*, 293 Mich at 545; *Bonnici*, 275 Mich at 309-310. The most critical problem with plaintiff's factual allegations is that he failed to plead that any legally recognized relationship existed between plaintiff and either Keller Williams or Sheffer.

Sheffer was employed by Keller Williams as a real estate salesperson. However, as plaintiff avers in his complaint, Sheffer was acting as a buyer's salesperson to Rapid Enterprises, through Valtsev, with regard to a purchase agreement with Danovi. Plaintiff did not allege that he was a legal party to the Danovi real estate transaction. Plaintiff did not allege that he employed Sheffer or Keller Williams with regard to the Danovi transaction or any other real estate transaction. For example, plaintiff did not allege that he entered into a buyer representation agreement or service provision agreement with Keller Williams or Sheffer. If plaintiff did not employ either Keller Williams or Sheffer, i.e., if he was not their real estate client, how could Sheffer have been acting within the scope of her employment as a real estate salesperson for Keller Williams with regard to any interactions that she had with plaintiff? How could she have been "engaged in the service of [her] master, or while about [her] master's business," *Riley*, 168 Mich App at 307, when Keller Williams had no legal relationship of any kind with plaintiff?

And although plaintiff averred in his complaint that Keller Williams and Sheffer breached fiduciary duties owed to him, he did not set forth any facts establishing that a fiduciary relationship existed between plaintiff and either Sheffer or Keller Williams. See *In re Karmey Estate*, 468 Mich 68, 74 n 2; 658 NW2d 796 (2003). A fiduciary relationship arises between a real estate broker and a client, but plaintiff was not a client of Keller Williams or Sheffer. See *Brotman v Roelofs*, 70 Mich App 719, 729; 246 NW2d 368 (1976). In the absence of a fiduciary relationship, how did plaintiff acquire the right to be owed fiduciary duties by Keller Williams and its salesperson?

In summary, the factual allegations in plaintiff's complaint were clearly deficient to support his legal conclusion that Sheffer was acting within the scope of her employment with Keller Williams with regard to her interactions with plaintiff; thus, plaintiff was not entitled to

rely on the entry of default to prevail on this claim. Accordingly, the trial court properly denied plaintiff's motion for entry of a default judgment in this regard. See *Cogswell*, 293 Mich at 545.

The trial court also properly denied plaintiff's motions for directed verdict and for judgment notwithstanding the verdict on the issues of vicarious liability and joint and several liability. The evidence produced at trial did not establish that Sheffer was acting within the scope of her employment with Keller Williams with regard to her alleged interactions with plaintiff. Again, there was no evidence that Sheffer or Keller Williams had any legal relationship with plaintiff. Ronayne clearly testified, repeatedly, that no such relationship existed with plaintiff. Plaintiff's testimony did not contradict this fact and no other evidence contradicted this fact.

Plaintiff testified that Sheffer and Valtsev came to his house to discuss the proposed business investment and solicit a deposit on the Danovi property transaction. Plaintiff was promised a 34 percent ownership interest in a real estate development company that did not exist at that time in exchange for his money. Plaintiff was assured that it was a good business opportunity and that, even if the transaction failed, he would get his money back. If the transaction succeeded and the property was purchased, they would then develop the property and sell the developed lots. Plaintiff's lawsuit against Keller Williams is premised, in part, on the claim that Sheffer was acting within the scope of her employment with regard to this business proposal and solicitation of plaintiff's money for the deposit.

However, Ronayne testified repeatedly that if Sheffer went to plaintiff and discussed investing money in the Danovi property and solicited money from plaintiff to invest in that transaction, she was operating on her own behalf, outside the scope of her real estate license and outside of the scope of her employment. That is, she was not acting as a salesperson of Keller Williams but as plaintiff's friend or family member. And plaintiff testified that he knew Sheffer and her parents since 1992. Sheffer was married to Valtsev, who was his cousin. In fact, plaintiff attended their wedding even before he was approached by Sheffer and Valtsev and secured the home equity loan to fund the earnest money deposit.

Clearly, contrary to plaintiff's arguments on appeal, genuine issues of material fact existed and the evidence was sufficient for a jury to reasonably conclude that Sheffer was not acting within the scope of her employment with regard to her interactions with plaintiff. The evidence included that: (1) plaintiff was not a client of either Keller Williams or Sheffer; (2) plaintiff knew Sheffer and her parents since 1992; (3) plaintiff was Valtsev's cousin; (4) plaintiff knew that Sheffer was married to Valtsev before he gave the disputed funds; (5) plaintiff had been involved in other business transactions with Valtsev and had a significant history of giving Valtsev money and never getting paid back; (6) plaintiff was not a party to the Danovi transaction; (7) both Sheffer and Valtsev went to plaintiff's house to persuade him to invest in the Danovi business opportunity by paying the deposit; (8) plaintiff was promised that he would become part owner in a property development entity that did not exist in exchange for his money for the deposit; (9) plaintiff was assured that, even if the transaction failed, he would get his money back; and (10) if the transaction succeeded, they would develop the property and sell the developed lots.

Thus, plaintiff's claims in his appeal brief that there was no evidence that plaintiff's relationship with Sheffer was "based on friendship, rather than a broker/client relationship" and that there was no evidence that Sheffer "would profit personally" are without merit. The facts are uncontroverted and do not clearly establish that Sheffer was acting within the scope of her employment with Keller Williams with regard to her interactions with plaintiff.

Plaintiff also argues that Keller Williams, through Ronayne, admitted that Sheffer was authorized to receive the earnest money deposit and, thus, she was acting within the scope of her employment when she turned that money over to Keller Williams. However, Sheffer represented Valtsev in the Danovi transaction that required an earnest money deposit. The fact that Sheffer was permitted to receive money that plaintiff wanted to give on behalf of Valtsev's earnest money deposit debt does not establish that she was acting within the scope of her employment with regard to her alleged solicitation of funds from plaintiff for a purported business opportunity to become part owner in a real estate development company. That is, plaintiff did not establish that Keller Williams was aware of the manner in which Sheffer and Valtsev obtained the money for the earnest money deposit. And although plaintiff was a remitter on some of the checks, as Ronayne testified, people oftentimes borrow money from family members to pay toward a real estate transaction.

Plaintiff also argues that Keller Williams "ratified" the purported unauthorized acts of Sheffer "by accepting the benefit of Sheffer's activity and accepting the escrow money from its acknowledged source, the Plaintiff." Plaintiff is correct that even unauthorized acts of an agent can be deemed ratified by the principal if the principal accepts the benefits of the unauthorized acts with knowledge of the material facts. *Bruno v Zwirkoski*, 124 Mich App 664, 668; 335 NW2d 120 (1983). Here, plaintiff's claim against Keller Williams as pertains to the actions of Sheffer is that she was acting within the scope of her employment with regard to the business proposal and solicitation of plaintiff's investment in the Danovi transaction with the promise that he would not lose his money. But no evidence was presented that Keller Williams had any knowledge of the unauthorized acts by which Sheffer secured the money to fund the earnest money deposit. So even if Keller Williams was deemed to have accepted the benefits of the unauthorized acts, Keller Williams did not have knowledge of the material facts and this argument fails.

In summary, the trial court properly denied plaintiff's motions for directed verdict and judgment notwithstanding the verdict on the issues of vicarious liability and joint and several liability. Viewing the evidence presented and all legitimate inferences arising from the evidence in the light most favorable to Keller Williams, a reasonable jury could conclude that Sheffer was not acting within the scope of her employment with regard to her interactions with plaintiff. See *Moore*, 279 Mich App at 201-202. In light of our holding, we need not address plaintiff's issue on appeal that the trial court abused its discretion in denying his motion for JNOV or new trial without stating a particularized basis. Any such error would be harmless. See MCR 2.613(A).

Next, plaintiff argues that, because of the default that was entered and in light of the evidence presented at trial, he was entitled to a default judgment, directed verdict, and judgment notwithstanding the verdict on his statutory conversion claim and Keller Williams should have been found liable for the entirety of his damages, not Sheffer, Rapid Enterprises, or Valtsev. We disagree.

Plaintiff's statutory conversion claim set forth in his complaint provided as follows:

> 70. That Defendants, upon information and belief, knowingly failed to deposit the earnest money deposit into a broker's custodial account or escrow account in the name of the remitter, Vodopyanov; subsequently transferred and converted the earnest money deposit to their own use and transferred same to third parties, without the knowledge or consent of Plaintiff Vodopyanov, in violation of MCL 339.2515(j); and thereby knowingly concealed and converted the property of Plaintiff, contrary to MCL 600.2919a.
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> 71. That the Defendants' transfer to third parties of the earnest money deposit without prior knowledge or consent or [sic] the remitter was unauthorized, constitutes a conversion, and was motivated by the pecuniary self interest of Defendants in that their payment to third parties was in settlement of litigation naming all Defendants herein as party defendants.

As discussed above, the entry of a default does not transform a legally deficient complaint into a legally sufficient complaint. The first obvious problem with plaintiff's complaint averments and allegations is his reliance on article 25 of the Michigan Occupational Code. "MCL 339.2515(j)," as stated in his allegation, does not exist. And if plaintiff was actually referring to MCL 339.2512(j) in an attempt to establish liability for Keller Williams' alleged violations of the provisions that govern real estate brokers, such claim must fail on its face. As MCL 339.2512 clearly sets forth in its first sentence, the penalties for committing prohibited acts are set forth in article 6. As this Court explained in *Claire-Ann Co v Christenson & Christenson, Inc*, 223 Mich App 25; 566 NW2d 4 (1997), article 6 does not provide "that private persons may bring or intervene in civil actions to enforce any of the provisions of the Occupational Code." *Id*. at 30-31.

The next obvious problem with plaintiff's complaint averments and allegations are his claims that the money he provided should have been deposited in Keller Williams' "broker's custodial account or escrow account in the name of the remitter, [plaintiff]." As discussed above, plaintiff was not a party to the Danovi transaction and was not a client of Keller Williams; thus, Keller Williams was not required to have a custodial account in plaintiff's name. The earnest money deposit provision set forth in the Danovi purchase agreement required that the purchaser, Rapid Enterprises, deposit with Keller Williams an earnest money deposit—not plaintiff.

Further, the evidence presented at trial was clear. Plaintiff testified that he willingly gave his money to Sheffer for the purpose of investing in the Danovi business deal with his cousin, Valtsev, who was the sole member of Rapid Enterprises. Plaintiff knew that his money was being used for a deposit on the Danovi transaction and agreed to that arrangement even though he was not a party to that transaction. Plaintiff fails to explain how being a remitter on some of the checks he gave toward funding the earnest money deposit for Rapid Enterprises' transaction with Danovi gave rise to any rights against Keller Williams with respect to (1) that underlying transaction or (2) the money that he gave away or loaned to Rapid Enterprises and Valtsev for that transaction. The evidence was uncontested that, as the escrow agent for the Danovi transaction, Keller Williams did, in fact, place the money it received to fund the earnest money

deposit into its custodial account for the Danovi transaction. It amounted to $44,000. No contrary evidence was admitted at trial in this regard. However, when that transaction failed, the parties to it—Rapid Enterprises, through Valtsev, and Danovi—reached a settlement agreement that required Keller Williams as the escrow agent to relinquish the earnest money deposit to Danovi. Rule 339.22313(5) of the Michigan Administrative Code (Rule 313) requires that "[d]isbursement of an earnest money deposit shall be made in accordance with the agreement signed by the parties." And it is irrelevant that Keller Williams was a named party to the Danovi lawsuit for failing to previously release the escrow deposit on Danovi's demand.

Statutory conversion consists of (1) another person steals or embezzles property or converts property to his own use or (2) another person buys, receives, possesses, conceals or aids in the concealment of stolen, embezzled, or converted property knowing that the property had been stolen, embezzled, or converted. MCL 600.2919a. As set forth above, to the extent that plaintiff is relying on the first provision with regard to Sheffer's alleged act of stealing, embezzling or converting plaintiff's money, that claim fails because she was acting outside the scope of her employment with regard to her interactions with plaintiff.

The claim that Keller Williams converted plaintiff's money when it transferred the earnest money deposit to Danovi fails as well. The money that Keller Williams received for the Danovi transaction's earnest money deposit was placed in its trust account. There was no evidence presented that Keller Williams had any knowledge of the manner or means used by Sheffer or Valtsev to secure these funds. When the legal parties to that transaction directed that the deposit be released to Danovi, Keller Williams released the deposit as required by Rule 313. Plaintiff does not explain why Keller Williams had to seek and receive the consent of plaintiff in order to carry out its duty as the escrow agent on the Danovi transaction in compliance with the purchase agreement and settlement terms of the parties to that transaction. That is, how did plaintiff acquire the right to any accounting of the funds that he allegedly paid with regard to a legally binding purchase agreement between Rapid Enterprises—Keller Williams' client—and Danovi, to which plaintiff was not a party?

Which leads us to consider the next obvious problem with plaintiff's complaint, as noted by Keller Williams which argued that plaintiff's claim of statutory conversion fails on its face because it involves money. Generally, money is considered intangible and not subject to a claim for conversion unless the claim involves an obligation to return to the plaintiff precise and specific money. See *Anderson v Reeve*, 352 Mich 65, 70; 88 NW2d 549 (1958); *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 111-112; 593 NW2d 595 (1999). In this case, although it may be arguable that plaintiff's money to fund the earnest money deposit was identifiable because it was to be deposited into an escrow account, there are at least two other problems. The first pertains to the issue whether Keller Williams ever had the requisite obligation to *return* the money at all because (a) it was a deposit that likely would have been applied toward the remaining balance if the Danovi transaction progressed to finality and (b) it was subject to the punitive term of the purchase agreement. The second problem pertains to the issue whether Keller Williams ever had the requisite obligation to return the money to *plaintiff* because plaintiff was not its client and was not a party to the purchase agreement. It appears to us, again, that plaintiff failed to state a legally enforceable claim of statutory conversion.

And the legal support for plaintiff's statutory conversion claim as set forth in his appeal brief is inapposite. The cases relied upon by plaintiff, including *Garras v Bekiares*, 315 Mich 141; 23 NW2d 239 (1946), *Owosso Masonic Temple Assoc v State Savings Bank*, 273 Mich 682; 263 NW 771 (1935), and *Wilcox v Gauntlett*, 200 Mich 272; 166 NW 856 (1918), do not involve any situation even remotely similar to the situation presented in this case. They involve, respectively, a consignment agreement, general and special bank deposits, and recovery of a security deposit from directors of a bankrupt company. Plaintiff has not cited to a single case that has any factual or legal similarity to this case and we could find none. Further, to the extent that plaintiff is relying on MCL 339.2512(j) to support his claim, it fails as discussed above. See *Claire-Ann Co*, 223 Mich App at 30-31.

Thus, we reject plaintiff's arguments that he was entitled to a default judgment, directed verdict, or judgment notwithstanding the verdict. Viewing the evidence presented and all legitimate inferences arising from the evidence in favor of Keller Williams, a reasonable jury could conclude that Keller Williams did not violate MCL 600.2919a. See *Moore*, 279 Mich App at 201-202. Further, the trial court did not abuse its discretion when it denied plaintiff's motion for new trial because the verdict was not against the great weight of the evidence and the jury verdict was supported by the evidence. See *Allard v State Farm Ins Co*, 271 Mich App 394, 406-407; 722 NW2d 268 (2006); *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 194; 600 NW2d 129 (1999).

Finally, plaintiff argues that the trial court abused its discretion when it failed to allow the admission of two of his proposed exhibits. We disagree. See *Lewis v LeGrow*, 258 Mich App 175, 200; 670 NW2d 675 (2003).

Plaintiff argues that the trial court should have allowed him to introduce proposed exhibit C, a proof of service "showing the date of service of the Danovi suit upon Keller Williams," and proposed exhibit D, "a copy of the Danovi pleadings," which apparently consisted of the Danovi complaint and amended complaint naming the parties. In the trial court, plaintiff argued that these exhibits were relevant to the issue of apportionment. The court noted that "apparently you want to litigate that complaint in my court. That case was settled." Plaintiff's counsel responded that he did not care about the allegations in the complaint, but needed it "to show who the parties were to the lawsuit and when the money was paid on behalf of whom that money was paid." The court then asked defense counsel if he would stipulate to those items and he replied in the affirmative. Plaintiff's counsel then replied, "All right." Thus, it appears that this matter was settled in the trial court by stipulation of the parties. A party cannot agree to an issue in the trial court and then argue on appeal that the resulting action was error. See *Dresselhouse v Chrysler Corp*, 177 Mich App 470, 477; 442 NW2d 705 (1989). Therefore, we decline to address plaintiff's argument on appeal pertaining to the admission of these proposed exhibits. However, even if we agreed with plaintiff that the proposed exhibits were admissible, such error would be deemed harmless and no relief would be warranted. See MCR 2.613(A).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kurtis T. Wilder
/s/ Donald S. Owens