THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. BCD-23-454

RANDALL BELYEA,
Appellant

v.

HEATHER CAMPBELL, ET AL.
Appellee

ON APPEAL from the Business and Consumer Docket

APPELLANT'S BRIEF

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INTRODUCTION

The person wearing a FedEx unform, and driving a FedEx truck, who delivers packages to you on behalf of FedEx, is not actually a FedEx employee. (3Tr. 11). Instead, FedEx relies on contractors who have negotiated "ownership of a specific area" and who are responsible for servicing specific FedEx routes within that area. (3Tr. 11-12). Ownership interest in these (often quite lucrative) contracts cannot be transferred without FedEx approval because, as explained in detail momentarily, FedEx has specific requirements that each contractor must satisfy. (*See, e.g.*, 3Tr. 11-12).

Plaintiff Randall Belyea built Belyea Enterprises, Inc. ("BEI") by himself, starting in 2001 with just one truck. (1Tr. 27). Eventually, BEI delivered and picked up packages for FedEx "all over" Aroostook County, growing to about ten delivery trucks in 2016. (1Tr. 27, 30). Not bad, as Randy himself agrees, for a kid who dropped out of high school during his sophomore year. (1Tr. 24, 71, 75).

Unfortunately, in 2012, Randy committed a misdemeanor, which, he would realize in 2016, would disqualify him from future contracts with FedEx. (1Tr. 37). FedEx was willing to re-up with BEI, however, so long as Randy's name did not appear on the paperwork and he did not work at the terminal or wear the company's uniform. (1Tr. 38, 78; 3Tr. 7, 21). Randy contemplated selling the company, its assets, and its inside-track to a contract with FedEx, to his son, Matt. (1Tr. 38). But when he told the woman to whom he had recently been engaged to marry, Defendant Heather

Campbell, about this plan, Heather insisted on keeping BEI for the couple. (1Tr. 38-39, 48).

So, after meeting with a senior manager at FedEx, Randy and Heather agreed: BEI would renew its contract with FedEx, but Heather's name, not Randy's, would be listed on that contract as the authorized officer. (1Tr. 38-39, 78; 3Tr. 5, 9-10). Otherwise, the couple agreed, "nothing's going to change," meaning: BEI remained Randy's company; Randy "did the hiring and firing;" Randy would still "provide services" to BEI as permitted by FedEx; and, above all, Heather would own BEI only "on paper." (1Tr. 39; 3Tr. 21). In May 2016, Heather became the authorized officer of BEI for purposes of its contract with FedEx. (3Tr. 10-11). In August 2016, Randy transferred all his stock in BEI to Heather. (1Tr. 21). He received no monetary compensation from Heather in return. (1Tr. 21).

After their relationship soured and Heather returned to her ex-husband, Randy was cut out of BEI, which prompted him to bring suit, claiming several theories of damages, two of which remain pertinent to this appeal: breach of contract (Count VIII) and conversion (Count I). At trial, Randy prevailed on the breach-of-contract count, and the jury awarded him $250,000 in damages. However, the court granted Heather's motion for judgment as a matter of law on the breach-of-contract claim, pursuant to M.R. Civ. P. 50(b) because, according to the judge, Randy offered insufficient evidence of "specific" contractual terms. (4Tr. 50-53). Similar reasoning caused the court to grant Heather's Rule 50(b) motion at the close of Randy's case, on the conversion count. (2Tr. 99-100).

QUESTIONS PRESENTED

This appeal therefore presents two simple interrelated legal questions: Do these facts, and some others Randy develops below, permit a rational jury to conclude that Randy and Heather formed a contract? The answer is a resounding "yes." And if a contract existed, then mustn't Randy have had a legal interest in BEI, which Heather unlawfully converted to herself? "Yes," again.

JURISDICTIONAL STATEMENT

The originating superior court had subject-matter jurisdiction pursuant to 4 M.R.S. § 105, 14 M.R.S. § 704-A(2), and 14 M.R.S. § 6051(13). 14 M.R.S. § 704-A further afforded the court personal jurisdiction over the parties, to which the parties anyway consented. (*See* A95, ¶ 6). Transfer to the Business and Consumer Docket was made pursuant to M.R. Civ. P. 131, as authorized by Me. Admin. Order JB 07-01 (effective Nov. 17, 2008). *See* 4 M.R.S. §§ 1, 7, 8; *see also* 14 M.R.S. § 508.

By virtue of 4 M.R.S. § 57 and 14 M.R.S. § 1851, this Court retains jurisdiction to review the final judgment. *See also* M.R. App. P. 1, 2A.

STATEMENT OF THE CASE

In early 2019, Randy brought a ten-count complaint against Heather in Houlton Superior Court, alleging, *inter alia*, breach of contract and conversion. In March of that year, the Business and Consumer Docket (Duddy, J.) accepted the transfer of the case. (A6).

The court granted Heather's Rule 50(a) motion on Counts I (conversion), V (tortious interference with an advantageous relationship),

and VI (fraudulent transfer), after Randy rested his case-in-chief. (*See* 2Tr. 99-101); M.R. Civ. P. 50.

Counts IV (constructive trust), IX (accounting), and X (injunctive relief) were "in effect, tried to the bench," and at the conclusion of all the evidence, the court granted judgment in Heather's favor. (A16-17; 4Tr. 55-56).

Count II (unjust enrichment) was also tried to the court, and the court found in Randy's favor. (A16; 4Tr. 53-55). The court awarded Randy $63,534.00 in unjust enrichment damages. (A17; 4Tr. 55).

Counts III (fraud) and VIII (breach of contract) were tried to a jury verdict. The jury found for Heather on the fraud count. (4Tr. 46). However, the jury found that Rady proved by a preponderance of evidence that Heather breached their contract and caused him damages, (4Tr. 46), and it awarded Randy $250,000 in damages, (4Tr. 47). Despite that, the court granted Heather's post-verdict motion for judgment of as a matter of law, nullifying the jury's verdict and award. (A16; 4Tr. 50-53).

After final judgment was entered on November 7, 2023, Randy timely appealed. (A13). Heather has not cross-appealed. *See* M.R. App. P. 2C(a)(1).

I. Evidence adduced at trial

Because the issue on appeal requires this Court to evaluate the sufficiency of evidence in the light most favorable to him, Randy here presents the facts in such light. *See* M.R. Civ. P. 50(a) (requiring court to "view[] the evidence and all reasonable inferences therefrom most favorably

to the party opposing the motion"); *cf. West v. Jewett & Noonan Transp., Inc.*, 2018 ME 98, ¶ 13, 189 A.3d 277. Likewise, because the quantum of damages awarded by the jury is not at issue on appeal, Randy does not thoroughly discuss the factual record in that regard.

A. Randy built the company.

As a teenager, Randy worked a handful of jobs before he found work with a family friend, Richard Nickerson. (1Tr. 24-26). Nickerson, in those days, was an independent contractor holding a contract with FedEx to serve some of its routes in northern Maine. (1Tr. 26-27). The only way to become an independent contractor for FedEx, at least during the time relevant to this case, was to buy out someone who owned a contract with the company. (1Tr. 28). So, after a successful year or so on the job, Randy bought Nickerson's routes and started out on his own. (1Tr. 26-28).

In 2001, Randy created Belyea Enterprises, Inc. ("BEI"), a company he named with input from his father. (1Tr. 27, 72). Randy was the company's sole owner and president. (1Tr. 28). BEI delivered and picked up packages for FedEx, eventually negotiating and securing contracts with the company to do so. (1Tr. 28-29).

At first, Randy had only one truck, and he worked by himself; by 2016, BEI had about ten trucks. (1Tr. 27, 30). BEI owned the trucks, the drivers' unforms, and a computer; Randy himself provided the tools to maintain the vehicles. (1Tr. 30). Annually, Randy drew a modest income from BEI – just over $30,000 in 2017, the final year of his full-time employment for the company. (1Tr. 33; PX 1).

B. In 2016, Randy learned that he'd no longer be able to contract directly with FedEx.

In 2012, Randy was convicted of a misdemeanor. (1Tr. 37). When it came time, in late 2015 and early 2016, to renegotiate another 5-year contract with FedEx, Randy learned that the conviction would pose a problem: FedEx policy prohibited Randy from serving as the authorized officer on the contract. (1Tr. 37-38). In other words, the contract with FedEx could not be in Randy's name, (1Tr. 37-38); Randy could not be at the FedEx terminal, (1Tr. 47, 79); Randy could not drive a FedEx vehicle, (1Tr. 78); and Randy could not wear a FedEx uniform. (1Tr. 79). However, *BEI*, just not *Randy*, could negotiate a new contract with FedEx. (1Tr. 37-38). A representative from FedEx confirmed: Randy would be able to transfer the FedEx contract. (3Tr. 6-7, 11). And FedEx itself permitted Randy to remain involved with BEI and servicing the FedEx contract, so long as his involvement with FedEx was indirect, such as maintaining the vehicles or answering phone calls. (1Tr. 79; 3Tr. 21-22).

C. After considering his options, Heather persuaded Randy to transfer BEI to her.

Randy planned to transfer BEI to his eldest son, Matthew. (1Tr. 52-53). The plan was for Matthew, who had been working for BEI for some time, to take over the company, make payments to Randy, and permit Randy to keep working for BEI, as permitted by FedEx. (1Tr. 53). Randy thought of this as his "retirement plan." (1Tr. 102). Of course, there existed the possibility that Randy might sell BEI to anyone whom FedEx found suitable.

(1Tr. 103-04, 107-08). Plainly, there is a value for an independent contractor who has a contract with FedEx. (1Tr. 108).

But, in late December 2015, just months before the expiration of BEI's contract with FedEx, Randy asked Heather to marry him. (1Tr. 47-48). Heather accepted, and they were engaged. (1Tr. 47-48). When Randy told Heather about his plan to transfer BEI to Matthew, Heather demurred. (1Tr. 38-39). Heather told Randy, "I'm going to be your wife in a few months," and she wanted the couple to keep control of BEI themselves. (1Tr. 38-39, 53).

D. Randy and Heather reached an agreement whereby Heather would take control of BEI in name only, leaving Randy as the silent partner.

The couple agreed: Heather would become "owner on paper only." (1Tr. 39). "Nothing" else "was going to change," meaning Randy remained the owner behind the scenes, responsible for "hiring and firing." (1Tr. 39). Other than Heather's role in name only and dealing with FedEx at the terminal, Randy would continue to operate and own BEI. (1Tr. 53-54, 71).

The couple implemented their agreement, transferring BEI's ownership to Heather in August 2016. (2Tr. 47-48). Attorney Phillip Jordan testified that, because theirs was not a typical arms-length transaction – the parties were engaged to be married – no purchase and sale agreement was drawn up. (2Tr. 50). As far as FedEx was concerned, Randy was no longer the authorized officer – Heather now was – so the contract with BEI was renewed. (3Tr. 8-10).

BEI did well, particularly during the pandemic, growing to upwards of 20 employees. (2Tr. 174). In 2021, the company reported a net income of just shy of $460,000. (1Tr. 409; JX 17). In fact, quite a bit of testimony suggests that, under Heather, BEI's income would actually have been higher but for questionable payments she expensed to the company, including: thousands of dollars on aesthetic upgrades to her residence, (3Tr. 55-56); tens of thousands of dollars, over the course of a few years, for her son to park BEI vehicles on family property and to mow the grass around the vehicles a handful of times, (3Tr. 59); eight thousand dollars on a zero-turn lawn mower Heather uses at her residence, (3Tr. 69); commercial-grade meat-fryers, (3Tr. 53); and payments for Heather's three personal pick-up trucks, (3Tr. 73-77) – to name just a few.

Randy's and Heather's personal relationship deteriorated, culminating in 2018 with Heather directing Randy to move out. (1Tr. 60-61). In the preceding months, according to Randy, Heather had "gone cold" on Randy, preferring to get "real buddy, buddy" with her ex-husband. (1Tr. 56). Randy was heartbroken when Heather began spending more time with her ex than with him. (1Tr. 58). Heather never did agree to set a date for their marriage. (1Tr. 56).

Following their break-up, Heather moved quickly to dislodge Randy from BEI, removing his name from the company's bank accounts in 2018. (1Tr. 62-63). She emptied their joint personal bank account. (1Tr. 62). Within a month or so, she fired Randy from BEI. (1Tr. 63). She made it difficult for Randy to secure his own personal property. (1Tr. 65-67, 70).

E. Other evidence corroborates the existence of the agreement as described by Randy.

Following their agreement in 2016, Randy remained working for BEI for two years, just as they had contemplated: He made hiring/firing decisions, assigned loads during peak seasons, dealt with the drivers on a daily basis, fielded calls from FedEx, and helped maintain the vehicles. (1Tr. 79, 86; 2Tr. 130). The office-work portion of these duties were performed away from the terminal and at BEI's office, which was inside Heather's home (2Tr. 130). Heather continued to do the books, which she had done since sometime in 2014. (1Tr. 44-46; 2Tr. 108-09).

Heather, too, seemed to acknowledge that in 2018, BEI was still Randy's company. In texts with Randy, she asked him whether BEI – which she described as "Your business" – wanted to sponsor a particular charity. (3Tr. 83-85; PX 8). And, on a loan application in May 2018, Heather listed Randy as the "manager/owner" of BEI. (3Tr. 82-85; PX 7). Recall: Randy remained a signatory on the company's bank accounts until Heather booted him in 2018. (1Tr. 62-63).

Other people thought Randy owned BEI, too. In 2018, one BEI employee spoke with Randy about acquiring BEI from Randy, even proposing getting attorneys involved. (3Tr. 155-57, 160). The employee testified that he knew that Heather would ultimately have to sign off on the deal, but he negotiated with Randy, believing that Randy had a stake in the company. (3Tr. 156-57). According to the employee, Heather was aware of these discussions about a potential sale. (3Tr. 157). In fact, a second BEI

employee testified to having had similar discussions, back in 2017 or so, about purchasing BEI from Randy. (2Tr. 33).

When Heather finally did extirpate Randy from BEI, his son, Matt, was startled to learn that Randy did not own BEI. (2Tr. 10-11). Until that day, Matt had been hoping, one day, to take over the company bearing his family's namesake. (2Tr. 11).

Also, as Randy's lawyers developed at trial, there was no provision of law specifically applicable to Heather which would have made Heather personally liable for BEI's debts, in the event BEI could not pay them. (2Tr. 49; *see* JX 9). Typically, a corporation's shareholders are not liable for such debts. (2Tr. 50-51). This fact, counsel argued to the jury, made Heather's testimony that she took BEI "free and clear" – *i.e.*, without any reciprocal benefit to Randy – particularly dubious. (3Tr. 81; 4Tr. 9-10).

II. The judge reversed the jury's verdict.

After Randy rested initially, Heather moved for judgment as a matter of law. (2Tr. 92-103). Though the court granted the motion as to other counts, including conversion, it reserved as to the fraud and breach-of-contract counts. (2Tr. 101-02). Later, after both parties rested, the court all but asked Heather to renew the Rule 50 motion, laying out in some detail his thoughts about the issue. (2Tr. 165-68).

With prompting, Heather did, in fact, renew that motion, (3Tr. 171-73), but the court again withheld ruling, despite telling Randy that the remaining counts for the jury were "hanging by a thread." (3Tr. 184). As to

the breach-of-contract count, the judge stated that the terms of the alleged contract seemed "too ambiguous." (3Tr. 185).

The court's focus on specificity prompted it, *sua sponte* and over Randy's objection, (3Tr. 196-97), to include this in the charge to the jury:

> [T]he terms of the contract must be stated with some specificity. In order for an enforceable contract to be formed, the terms must be sufficiently definite to determine their exact meaning and fix exactly the responsibilities of the parties.

(4Tr. 30).

After about five hours of deliberations, (*see* 4Tr. 42, 45), the jury returned, on the breach-of-contract count, a 6-3 verdict in favor Randy. (4Tr. 46). Damages awarded by the jury totaled $250,000. (4Tr. 46-47).

But Heather again renewed the Rule-50 motion, and this time the court granted it. (4Tr. 48-53). In substance, the court reasoned:

> I find that the jury could not reasonably find for Mr. Belyea on an issue under the substantive law that is an essential element of the claim, to wit, a meeting of the minds on specific terms to form a contract.
>
> So specifically, as we've discussed earlier in Rule 50 arguments, the terms of the asserted contract between Mr. Belyea and Ms. Campbell are vague, indefinite, not specific, and probably impossible to use as a term, even if they were specific. The terms had been variously framed by plaintiff. The terms had been variously framed by plaintiff as the agreement was the business would continue to belong to Mr. Belyea. Nothing would change. Ms. Campbell would remain an owner on paper only. Mr. Belyea would retain the benefit of ownership. And that's pretty much the agreement and pretty much what was described in the complaint.
>
> None of those terms as – none of those items are actual terms that allow for a sufficiently definite understanding to permit enforcement. So for instance, first off, it's not possible that things were going to remain the same. That – that was impossible. Mr. Belyea could no longer go to the FedEx terminal.

> He could no longer have any communication with FedEx whatsoever. He couldn't troubleshoot on behalf of FedEx, nor do anything else that touched upon FedEx at all. So clearly, his role, even if not owner, could not remain the same. He could not negotiate contracts on behalf of Belyea Enterprises.
>
> Moreover, even if we look at those terms, there's nothing that fleshes them out. What happens if a company takes a turn for the worse? How long as these terms supposed to be in effect? Does it lock everything in as is, meaning no pay raises for Randall Belyea ever? Does it mean no new contracts with FedEx? Does it mean we can't buy new trucks? The number of trucks stay the same? The drivers stay the same? That you can't apply for grant applications? And if there's a reconveyance, when is that supposed to occur and under what terms? There's literally nothing here by which the contract could be enforced. Meaning there's nothing here by which there could be a meeting of the minds, a term sufficiently specific to allow enforceability.
>
> For that reason, notwithstanding the jury verdict, I find that the jury could not reasonably find that there was a contract formed as between Mr. Belyea and Heather Campbell.

(4Tr. 51-52).

However, the court did award Randy $63,534 in unjust-enrichment damages. (4Tr. 52-55).

ARGUMENT

First Assignment of Error

I. The trial court erred by concluding that there was insufficient evidence of an enforceable contract between Randy and Heather, therefore causing it to grant judgment for Heather notwithstanding the jury's verdict for Randy.

Randy's and Heather's contract may have been unembellished, but that is because they did not need many terms. Their agreement was simple: Randy would remain the owner of BEI, except "on paper," where Heather would appear to own the company so as to satisfy FedEx's corporate

requirements. FedEx understood and assented to this arrangement and, not only did both a FedEx manager and Randy testify that such an arrangement existed, but nearly two years of post-contract conduct by the parties and those around them confirms Heather's and Randy's intent to be mutually bound. No outstanding essential terms remained, and if, for the sake of argument, some such term was missing or ambiguous, it could have only been the sort of term that Maine courts routinely interpret from the circumstances and the parties' conduct.

To affirm, this Court would have to devalue the role of jurors in deciding the existence and terms of contracts. To affirm, it would have to impose unnecessary restraints on Mainers' ability to contract, requiring superfluous terms and conditions – even for couples who are engaged to be married. This is not the present state of the law, nor should it become so. This Court should instead reinstate the jury's verdict, as there is abundant competent evidence to support it.

A. Preservation and standard of review

This issue is preserved by Randy's objections, on the record, to the court's grant of judgment as a matter of law. (*See*, *e.g.*, 4Tr. 49-50). Therefore, viewing the evidence in the "light most favorable" to Randy, including all "justifiable inferences therefrom," this Court will affirm only if no "reasonable view of the evidence could sustain a verdict" for Randy. *Tobin v. Barter*, 2014 ME 51, ¶ 8, 89 A.3d 1088 (quotation marks and citations omitted). If "reasonable minds could reach different conclusions," about that evidence, in other words, the Court will reverse the grant of a M.R. Civ.

P. 50(b) motion. *Ibid*. (quotation marks and citation omitted). That is so because, when "the existence of an oral contract is disputed … , it is for the trier of fact to ascertain and determine the nature and extent of the obligations and rights of the parties." *Carter v. Beck*, 366 A.2d 520, 522 (Me. 1976); *cf. Sullivan v. Porter*, 2004 ME 134, ¶ 13, 861 A.2d 625 ("[T]he existence of a contract is a question of fact to be determined by the jury.") (quotation marks and citations omitted).

B. Trial court's reasoning

Of course, this Court may read the court's reasoning in full at Pages 25, 27-29, 31-33, 40-48, 55-60, of the Appendix. In summary, though, the court's rationale sounds in a small handful of themes:

Primarily, the court felt that Randy's evidence was insufficient because, in its view, the contract lacked "definite" and "specific" terms. For instance, the court wondered aloud about the number of trucks, the number of employees, Randy's wages, and contractual duration, etc. (4Tr. 51-52).

Related to this supposed lack of particularity, the court questioned, albeit obliquely, the contract's enforceability: "There's literally nothing here by which the contract could be enforced. Meaning there's nothing here by which there could be a meeting of the minds, a term sufficiently specific to allow enforceability." (4Tr. 52).

Also, the court briefly alluded to its belief that the contract called for the "impossible." By that, the court meant, in light of Randy's disqualification from personally holding the FedEx contract, he could no

longer be present at the terminal, negotiate contracts with FedEx, or "have any communication with FedEx whatsoever." (4Tr. 51-52).

C. Analysis

Randy centers his analysis on the court's reasoning, as summarized in the prior subsection. He contends: (1) the unadorned nature of the contract was actually a function of its definiteness, not evidence of a lack of mutual intent to contract; (2) there is abundant record-evidence that the contract was enforceable; and (3) likewise, the record is replete with evidence that the contract was possible.

1. The contract was definite: Except on paper, Randy called the shots and remained the owner.

In regard to contractual definiteness, there are two primary considerations. First, a contract's terms should be specific enough to support a conclusion that the parties in fact intended to form a contract. Second and relatedly, even if key terms are omitted from an oral contract, courts should be loath to preclude enforcement. Randy analyzes both of these touchstones.

i. There was abundant evidence of Randy's and Heather's intent to contract to the terms.

Contract terms must be definite enough to demonstrate the parties' mutual intent to be bound by them. *Pelletier v. Pelletier*, 2012 ME 15, ¶ 15, 36 A.3d 903 ("[The] lack of a key term is not necessarily fatal to the enforcement of a contract, as long as the missing term does not indicate a lack of contractual intent."). It has been the law in Maine since at least 1894 that, "the question whether the parties made an oral contract is mainly one of intention, an issue of fact." *Rulon-Miller v. Carhart*, 544 A.2d 340, 341

(Me. 1988) (cleaned up) (citing *Mississippi and Dominion S.S. Co., Ltd. v. Swift*, 86 Me. 248, 258, 29 A. 1063, 1066 (1894)); *cf. VanVoorhees v. Dodge*, 679 A.2d 1077, 1080 (Me. 1996) ("'It is the duty of the fact-finder to determine the existence of the parol contract....'") (quoting *Dehahn v. Innes*, 356 A.2d 711, 716 (Me. 1976)). Often, "'the actions of the parties may show conclusively that they have intended to conclude a binding agreement, even though one or more terms are missing or left to be agreed upon.'" *Lush v. Terri & Ruth F/V*, 324 F. Supp. 2d 90, 93 (D. Me. 2004) (Hornby, J.) (quoting Restatement (Second) of Contracts § 33, cmt. a (1981)).

The point here is not that Randy and Heather entered into a contract with missing terms. Rather, the point is that *even if* a term is missing, a contract can still exist. Requiring non-lawyers to draft comprehensive agreements, which anticipate and discuss every operational aspect of a business, lest a court find that no contract at all exists, has never been the law. Were it to become the law, businesses owners would eschew operating here out of concern that their contracts would be deemed unenforceable. *See* Part 3(1)(ii), *supra*.

Pelletier v. Pelletier, 2012 ME 15, 36 A.3d 903 is a case in point. "[D]isccusions" between two brothers about how to divide mutually held real-estate properties constituted competent evidence sufficient to support the existence of a valid oral contract. *Id.* ¶ 14 n. 7. The terms were minimal: The parties agreed merely (1) which properties each would receive, and (2) that one brother would further pay the other "an additional amount necessary to equalize the division of property between the brothers," based

on a future appraisal. *Ibid*. Nonetheless, the Court upheld the oral contract, holding that it included sufficiently definite terms. It helped, the *Pelletier* Court added, that the brothers' "actions in the years that followed were consistent with and in furtherance of their agreement." *Id*. ¶ 15.

In our case, just like in *Pelletier*, the terms are admittedly minimal: (1) Heather would receive BEI in name only ("on paper"), and (2) Randy would retain ownership except "on paper." As in *Pelletier*, Randy's and Heather's "actions in the years that followed were consistent with and in furtherance of their agreement." *Ibid*. Randy kept working, answering FedEx phone calls, maintaining the vehicles, and coordinating the drivers. Heather continued to keep the books. Those around them believed that Randy was still the owner. Heather's texts and a loan application evince her belief that Randy still owned BEI as late as 2018. There was abundant evidence that they both intended to be bound by these terms.[1] The court erred by ruling otherwise.

To bring home the point, Randy distinguishes our case from one in which a claimed oral contract was insufficient as a matter of law to demonstrate an intent to be bound. In *Searles v. Trustees of St. Joseph's College*, 1997 ME 128, 695 A.2d 1206, an injured college basketball player sued his college for breach of contract. The player alleged that the team's coach promised the player's parents that, if the player played through his

[1] It's also worth noting that the parties in *Pelletier* were brothers; here, the parties were engaged to be married. People in close relationships are more likely to have a "meeting of the minds" without feeling the need to express every detail, as more often occurs in a typical arms-length transaction.

knee pain and became injured, the school's insurance would pay for any related medical expenses. *Searles*, 1997 ME 128, ¶ 12. But the evidence did not bear this allegation out: The player merely adduced proof that the coach told his parents that the university would pay medical bills for the player's knee; there was no evidence that the player himself accepted such an "offer" in exchange for continuing to play through the pain. *Id*. ¶¶ 12-13. Thus, the evidence was insufficient as a matter of law because it failed to support a finding that the parties had "'a distinct and common intention which [was] communicated by each party to the other.'" *Id*. ¶ 13 (quoting 17A Am. Jur. 2d *Contracts* § 27 (1991)).

Again, Randy *did* adduce evidence of such a meeting of the minds. In addition to his own testimony, Randy's and Heather's conduct for the two years following their agreement is sufficient to prove their intent to be bound by the terms of their contract.

ii. Even if, *arguendo*, Randy's and Heather's contract lacked some "key term," the trial court nonetheless erred in finding it too unspecific to be enforceable.

Questions concerning a contract's definiteness can also arise when key terms are either altogether missing or ambiguous.[2] This happens not infrequently because, after all, a contract need not be detailed, verbose, or include provisions about every possible contingency. *See Towne v. Larson*, 142 Me. 301, 305, 51 A.2d 51, 53 (1947) (rejecting notion "that every single

[2] For the sake of clarity, Randy contends that no essential terms were missing or ambiguous. This argument is in the alternative.

detail must be set forth."). Because "all agreements have some degree of indefiniteness," courts must not impose "pedantic or meticulous" requirements regarding definiteness. 1 Corbin, Contracts § 95 at 396 (1963); *see Blue Rock Industries v. Raymond International, Inc.*, 325 A.2d 66, 73 (Me. 1974) (Contracts need not be "completely free of ambiguity."). Rather, a court must be "reluctant to construe a contract so as to render it unenforceable if that result can be avoided." *Towne*, 142 Me. at 305, 51 A.2d at 53. In other words, parties' "own indifference" to uncertainty "does not preclude the existence of a contract; nor does is render the contract incapable of enforcement." *Blue Rock Industries*, 325 A.2d at 73.

Where needed, missing or uncertain contractual terms may be gleaned "'from the language of the contract and the circumstances under which it was made.'" *Top of the Track Assocs. v. Lewiston Raceways*, 654 A.2d 1293, 1295 (Me. 1995) (quoting *Sacramento Nav. Co. v. Salz*, 273 U.S. 326, 329, 71 L. Ed. 663, 47 S. Ct. 368 (1927)). Doing so necessitates "greater reliance on [the parties'] own course of performance and practical construction in interpreting the agreement." *Blue Rock Industries*, 325 A.2d at 73.

Here again it is illustrative to refer to the *Pelletier* case, cited above, about the two brothers who contracted to divide amongst themselves their mutually held properties. It was true, the *Pelletier* Court wrote, that the oral contract omitted a "key term:" exactly how much the one brother would pay the other to equalize the uneven distribution of properties. *Pelletier*, 2012 ME 15, ¶ 15. However, the Court noted, "a court may supply a key term missing from a contract using the standard of reasonableness." *Id.* ¶ 16. It

was appropriate, therefore, for the fact-finder to infer the missing price-term based on the terms the brothers did agree on, including their agreement to have an appraiser determine the value of the properties. *Id.* ¶¶ 15-16; *cf. Carter*, 366 A.2d at 522 ("In such situation in which the existence of an oral contract is disputed or testimony as to its terms and nature is conflicting, it is for the trier of fact to ascertain and determine the nature and extent of the obligations and rights of the parties.").

Rather than seeking to implement "the standard of reasonableness," *Pelletier*, 2012 ME 15, ¶ 16, or being "reluctant" to construe the contract as unenforceable, *Towne*, 142 Me. at 305, 51 A.2d at 53, the court below erroneously insisted on perfect clarity. Randy and Heather did not need that level of detail, for an obvious reason: As contracted for, Randy retained the right to make all decisions himself, as he would continue to own BEI except on paper. It would have been foolishly unnecessary, for example, to specify how many trucks or drivers BEI might employ, or what wages Randy might draw, or whether BEI might take out loans. Any such predictions would have been wrong anyway because the pandemic drastically altered BEI's operations. The central term of the contract – Randy remained the owner – permitted him to make all necessary decisions as they arose in real-time, in the same manner and to the same degree as every other small business owner in Maine.

In juxtaposition is *Roy v. Danis*, 553 A.2d 663 (Me. 1989). There, the plaintiff sold his transmission shop to the defendant for money and an oral agreement to employ the plaintiff thereafter. 553 A.2d at 664. By

implication, the *Roy* Court suggested that such a contract was enforceable. *Ibid*. ("Although *any contract* may be modified by a subsequent agreement…") (emphasis added). Rather, it was the claimed subsequent modification of that contract – the defendant "stated to" the plaintiff that, instead of employing the plaintiff, the defendant would "send" the plaintiff some work if the plaintiff opened a new shop – that lacked sufficient definiteness. *Id*. at 664-65. Though, with some irony, the *Roy* Court's reasoning was rather cryptic, it is nonetheless easy to see how a promise to, at some unknown point in the future, send some unknown amount of work to the plaintiff is insufficient to "fix exactly the legal liability of the parties." *Id*. at 664.

In *Roy*, when would the defendant be liable for breach of the supposed contract and what quantum of work was "some"? That is the critical question: Does the agreement "contain[] terms that enable the court to allocate liability[?]" *Cote v. Dep't of Human Servs*., 2003 ME 146, ¶ 3 n. 2, 837 A.2d 140. In our case, in the light most favorable to Randy, there is no doubt: Any attempt by Heather to assert ownership over BEI, other than in name only, would immediately incur liability. The other "missing" terms for which the trial court looked in vain are not essential, and if they were, they can be reasonably inferred from the parties' conduct and their agreement that Randy would retain ownership.

2. There was competent evidence that their contract was enforceable.

To the extent that the court's reasoning that the contract was unenforceable is supposed to be an independent basis for the court's M.R. Civ. P. 50(b) ruling, respectfully, it requires little response other than that presented above. Specifically, the court remarked:

- "[N]one of those items are sufficiently definite understanding to permit enforcement." (4Tr. 51); and
- "There's literally nothing here by which the contract could be enforced. Meaning there's nothing here by which there could be a meeting of the minds, a term sufficiently specific to allow enforceability." (4Tr. 52).

Again, the concept of enforceability, as it touches on the court's reasoning, requires only proof sufficient to establish the parties' intent to be bound. *Searles*, 1997 ME 128, ¶ 13 ("For a contract to be enforceable, the parties thereto must have a distinct and common intention which is communicated by each party to the other.") (quotation marks and citation omitted). Randy adduced plenty of evidence – which the jury believed – that he and Heather had such a "distinct and common intention." The trial court, in granting judgment as a matter of law, "ignore[d] the general rule that courts will seek to construe contracts to give them meaning rather than to render them unenforceable." *Ault v. Pakulski*, 520 A.2d 703, 705 (Me. 1987) (Glassman, J., dissenting).

3. Performance of the contract was possible.

The court's flirtation with the notion that performance of the contract was "not possible," frankly, is belied by the evidence that, for over two years, the contract was performed. The court's reasoning does not match up with the evidence:

> So for instance, first off, it's not possible that things were going to remain the same. That – that was impossible. Mr. Belyea could no longer go to the FedEx terminal. He could no longer have any communication with FedEx whatsoever. He couldn't troubleshoot on behalf of FedEx, nor do anything else that touched upon FedEx at all. So clearly, his role, even if not owner, could not remain the same. He could not negotiate contracts on behalf of Belyea Enterprises.

(4Tr. 51-52). "Remain the same," the court erroneously concluded, must refer to the nature of the work-duties Randy performed. But it was for the jury, not the judge, to find "the nature and extent of the obligations and rights of the parties." *Carter*, 366 A.2d at 522. Clearly, the jury supportably found that "remain the same" refers to ownership, not mundane work-duties.

Again, Randy and Heather contemplated and entered into the contract with full knowledge that Randy's day-to-day duties *would* change; that was the very reason for their desire to form the contract. It strains credulity to find that Randy's changing work duties somehow made the contract impossible to perform. The contract, rather, was the very thing that made Randy's continued ownership possible going forward. Anticipation of those changes was the raison d'etre of their contract.

The court's quasi-findings are also erroneous. It is not true that Randy could have no communication with FedEx "whatsoever." Randy testified that

he fielded phone calls from "CBC," representatives from FedEx contacting him about scheduling deliveries, lost packages, and other issues. (1Tr. 79). He assigned loads via FedEx's online portal. (1Tr. 86). Likewise, it is not accurate that Randy could do nothing that "touched upon FedEx at all." (4Tr. 52). Literally, Randy touched the vehicles emblazoned with FedEx logos, maintaining them on a regular basis. (2Tr. 130). Further, until 2018, he retained full authority to hire and fire BEI employees; deal with drivers on a daily basis; and make decisions about what charities BEI would contribute to and what loans BEI might apply for. (1Tr. 86; 3Tr. 82-85; PXs 7 & 8). BEI's banking accounts remained in Randy's name for the following two years. (1Tr. 62-63).

What's more, the court's logic is flatly contradicted by the evidence that *Heather* adduced. Even now, Heather doesn't do the things the court referenced either, even though she's the putative owner of BEI – proving that the arrangement Randy and Heather envisioned was far from "impossible." Heather testified that much of the work she does on behalf of BEI is done away from the terminal and at her own home (hence all of the questionable tax allowances). Likewise, Heather is no longer the principal negotiator on behalf of BEI for FedEx contracts; she's assigned that task to her deputy. Today, Heather is far less involved in the day-to-day management of BEI than Randy ever was.[3]

[3] Even assuming *arguendo* that Heather, not Randy, was exclusively responsible for BEI's day-to-day operations after 2016, the analysis would be the same. That alone is insufficient to defeat the enforceability of a contract. It should go without saying: innumerable people invest in businesses as

Clearly, it was quite possible for Randy to remain the owner of BEI even though Heather's name appeared on the paperwork. There is even evidence that Heather thought so, too. (*See* PXs 7 & 8). Certainly, others, including Matthew and the BEI employees who negotiated to purchase BEI from Randy, thought so as well.

The contract merely contemplated that, as far as FedEx was concerned, Randy was a sort of silent partner. He was just that for two years, demonstrating that it was quite possible for BEI to contract with FedEx in this manner. The trial court erred when it stripped the jury of its verdict in favor of Randy on Count VIII, breach of contract, and denied Randy the jury's award of $250,00.

Second Assignment of Error

II. The trial court erred by concluding that in 2018, Randy had no right to demand a return of BEI, thereby causing it to grant judgment for Heather on the conversion claim.

The evidence, viewed in the light most favorable to Randy, established that Heather ousted Randy from BEI in 2018, unlawfully taking his interest in BEI as her own. Heather then and now has refused to relinquish ownership back to Randy.

A. Preservation and standard of review

Randy incorporates here this Court's standard of review when evaluating a trial court's grant of a judgment as a matter of law, as set out in

owners and opt to have no involvement whatsoever in the business's operations; plainly, such contractual arrangements are acceptable in Maine.

Part I(A), *supra*. This issue is preserved by Randy's objections, on the record, to the court's grant of judgment as a matter of law. (*See*, *e.g.*, 2Tr. 93-95).

B. The trial court's reasoning

The trial court assumed that Randy lawfully transferred his BEI stock to Heather in 2016, but it reasoned that because Randy no longer had a stake in the company by 2018, there could be no conversion. In the court's view, by then (2018), Randy "had no legal interest in the company at all." (2Tr. 100). The court's reasoning is set out in full below:

> The problem is that one of the essential elements for a claim of conversion is that the plaintiff – the person making the claim – had to have a right to possession at the time of the alleged conversion.
>
> Here, the date of the alleged conversion is 2018. I expressly queried counsel as to what's the date of the conversion. It's 2018. We're not talking about 2016. And at 2018, its undisputed and undisputable that Heather Campbell was the sole owner of stock of Belyea Enterprises, Inc.; therefore at that time, at the demand for return of the property, Randal Belyea had no legal interest in the company at all. He, therefore, had no right to demand its return under a conversion claim. Therefore, under any review of the facts, no jury could reasonably find for Randall Belyea on his conversion claim. And therefore, I grant judgment as a matter of law as to conversion.

(2Tr. 100).

C. Analysis

"The gist of conversion is the invasion of a party's possession or right to possession at the time of the alleged conversion." *Withers v. Hackett*, 1998 ME 164, ¶ 7, 714 A.2d 798. The necessary elements to establish a claim for conversion are a showing that (1) the person claiming that his or her property was converted has a property interest in the property; (2) the

person had the right to possession at the time of the alleged conversion; and (3) the party with the right to possession made a demand for its return that was denied by the holder. *Estate of Barron v. Shapiro Morley*, LLC, 2017 ME 51, ¶ 14, 157 A.3d 769. Conversion "requires an actual interference with the property owner's rights beyond a brief and ultimately harmless withholding," *Lougee Conservancy v. CitiMortgate, Inc.*, 2012 ME 103, ¶ 22, 48 A.3d 774, but there's no doubt of that here: by 2018, Heather had dispossessed Randy of the *entire* company and she has since refused to return to Randy what is rightfully his.

The argument here builds on the previous one. In 2016, the parties envisioned that Randy would retain control over BEI and that Heather would be the owner "in name only." And so, as outlined *supra*, from 2016 to 2018, Randy, *inter alia*, remained on the company's bank accounts, he drew a modest salary, he made hiring and firing decisions, he dealt with drivers on a daily basis, he maintained vehicles, and he communicated with FedEx. *Supra,* STATEMENT OF THE CASE, Part E.

But then, in 2018, when Heather's and Randy's romantic relationship soured, Heather made changes that were *not at all* anticipated by the parties' 2016 arrangement: again, as outlined *supra*, Heather emptied the couple's joint personal bank account, and she fired Randy from BEI. *Supra,* STATEMENT OF THE CASE, Part D. These changes at BEI were precipitated by changes in the couple's personal, not legal, relationship with one another.

Respectfully, the court was wrong to conclude that in 2018 Randy had no right to claim ownership in BEI. Heather and Randy had an enforceable

contract in place in 2018, which retained Randy's interest in BEI. Viewing the evidence in the light most favorable to Randy, all the elements of conversion were comfortably established: (1) in 2018 – as in 2016 and 2017 – Randy had an interest in his namesake company, BEI; (2) in 2018 – as in 2016 and 2017 – Randy was entitled to his fair share of BEI's profits; and (3) in 2018, for personal reasons, Heather denied Randy what was rightfully his from BEI. The trial court erred by granting Heather's Rule 50 motion on Count I, conversion.

CONCLUSION

Randy prays that this Court vacate the judgment in Heather's favor on Counts I (conversion) and VIII (breach of contract), and remand for further proceedings, which must include reinstatement of the jury's $250,000 award on Count VIII in Randy's favor, and which may in addition also include the creation of a constructive trust (Count IV) to administer the disbursement of that award.

Respectfully submitted,
Randall Belyea,
By his attorneys,

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Certificate of Service

I sent a native PDF version of this brief to the Clerk of this Court and to opposing counsel at the e-mail address provided in the Board of Bar Overseers' Attorney Directory. I sent 10 paper copies of this brief to this Court's Clerk's office via FedEx, and I sent two copies to opposing counsel using the same carrier, at the address provided on the briefing schedule.

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STATE OF MAINE SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. BCD-23-454

Randall Belyea

v. **Certificate of Signature**

Heather Campbell

I am filing the electronic copy of this brief with this certificate. I will file the paper copies as required by M.R.App.P. 7A(i). I certify that I have prepared the brief and that the brief and associated documents are filed in good faith, conform to the page or word limits in M.R.App.7A(f), and conform to the form and formatting requirements of M.R.App.P. 7A(g).

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