NOT FOR OFFICIAL PUBLICATION
*See* Okla.Sup.Ct.R. 1.200 before citing.

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA



DIVISION II

B.S. MELTON, LLC,

Plaintiff/Appellant,

vs.

BUDZ 4 LE$$, LLC; CAPITAL MANAGEMENT SOLUTIONS, LLC; BRAD BRINKMAN; and MIKE SMITH,

Defendants/Appellees.

Case No. 121,928



APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY, OKLAHOMA

HONORABLE RICHARD OGDEN, DISTRICT JUDGE

**AFFIRMED**

Edward L. White
EDWARD L. WHITE, PC
Edmond, Oklahoma

For Plaintiff/Appellant

Cara S. Nicklas
Ashley M. Ray
MCALISTER, MCALISTER & NICKLAS PLLC
Edmond, Oklahoma

For Defendant/Appellee Capital Management Solutions, LLC

Brad Brinkman[1]
Goodwell, OK

*Pro se*

---

[1] We note that while Mr. Brinkman entered an entry of appearance in this case, it appears that the appellant, B.S. Melton, is only appealing the court's decision to direct a verdict for Capital Management Systems, LLC, and the court's failure to give joint venture jury instructions. Neither issue relates to Mr. Brinkman as a defendant. Additionally, neither Mr. Brinkman nor Mike Smith was listed on the verdict form, and that decision is not a subject of this appeal.

OPINION BY GREGORY C. BLACKWELL, JUDGE:

The plaintiff and appellant, B.S. Melton (Melton), appeals the court's decision to direct a verdict in favor of the defendant and appellee, Capital Management Solutions (CMS). Upon review, we find that the court properly directed a verdict in CMS's favor and thereby affirm.

**BACKGROUND**

On August 31, 2020, Melton entered into an agreement with Budz 4 LE$$ LLC (Budz) in which Melton agreed to advance Budz $150,000 as consideration for 500 pounds of cannabis "bud." CMS owns 160 acres of real property in Texas County and leased a portion of those acres to Budz for growing purposes. The remainder of the land was to be used for wheat farming. Kathleen Chaffee is the sole owner and manager of CMS, and Brad Brinkman owns 95% of Budz. Notably, Chaffee and Brinkman have been in a domestic relationship for over twenty-nine years but are not married.

Due to a contractual disagreement between Budz and Melton, Melton filed a petition naming Budz, CMS, Brinkman, Mike Smith (the co-owner of Budz), and William B. Webb Jr. d/b/a Lucky's Icehouse as defendants.[2] Melton's only claim against Budz and CMS was for breach of contract. Although not clear from the petition, Melton later argued that a joint venture existed between CMS and Budz; therefore, CMS should also be liable for breach even though it was not a party to the contract between Budz and Melton. The case proceeded to a jury

[2] Melton's second amended petition did not include either Webb or Lucky's Icehouse as defendants.

trial which was held on September 25-27, 2023. After Melton presented its case in chief, counsel for CMS moved for a directed verdict on the breach of contract claim, arguing that Melton failed to prove that CMS and Budz had a joint venture. The trial court originally denied the motion; however, upon receiving requests from Melton's counsel to include jury instructions on joint ventures, the court revisited CMS's motion for directed verdict and granted it. The jury returned a verdict in favor of Melton against Budz and determined damages to be $314,000. The court entered a journal entry of judgment reflecting the grant of directed verdict to CMS and the jury's verdict against Budz. Melton now appeals the court's grant of directed verdict.

**STANDARD OF REVIEW**

"A motion for directed verdict raises the question of whether there is any evidence to support a judgment for the party against whom the motion is made, and the trial court must consider as true all the evidence and inferences reasonably drawn therefrom favorable to the non-movant, and disregard any evidence which favors the movant." *Gillham v. Lake Country Raceway*, 2001 OK 41, ¶ 7, 24 P.3d 858. "A demurrer to the evidence or motion for directed verdict should be granted only if the party opposing the motion has failed to demonstrate a prima facie case for recovery." *Id.* "This Court must review the record in a light most favorable to the plaintiff but will disturb the trial court's sustention of the directed verdict only if there is competent evidence to support the material elements of the plaintiff's cause of action." *Id.* The Court's standard of review of

a trial court's grant of a demurrer or directed verdict is *de novo*. *Computer Pub's, Inc. v. Welton*, 2002 OK 50, ¶ 6, 49 P.3d 732.

**ANALYSIS**

On appeal, Melton raises three issues to be addressed by this Court: (1) whether the court properly granted a directed verdict in CMS's favor; (2) whether the court erred by failing to give joint venture instructions to the jury; and (3) whether the court erred in "*sua sponte* granting a directed verdict that Defendants did not seek." *Brief-in-Chief*, 12.

Melton argues that the clear weight of the evidence shows that a joint venture existed between CMS and Budz; therefore, the court should not have granted a directed verdict in CMS's favor. Oklahoma courts have defined a joint venture as follows:

> A joint venture is generally a relationship analogous to, but not identical with, a partnership, and is often defined as an association of two or more persons to carry out a single business enterprise with the objective of realizing a profit. The essential criteria for ascertaining the existence of a joint venture relationship are: **(1) joint interest in property, (2) an express or implied agreement to share profits and losses of the venture and (3) action or conduct showing cooperation in the project**. None of these elements alone is sufficient. The contributions of the respective parties need not be equal or of the same character, but there must be some contribution by each co-adventurer of something promotive of the enterprise.

*Martin v. Chapel, Wilkinson, Riggs, & Abney*, 1981 OK 134, ¶ 11, 637 P.2d 81, 85 (emphasis supplied). Further, "[i]n the absence of an express agreement setting forth the relationship, the status may be inferred from the conduct of the parties in relation to themselves and to third parties." *Id.* at ¶ 12. As CMS

apparently did not have any kind of formal agreement or contract with Budz or Melton, or at least none that was included in this record, we will examine CMS's potential status as a participant in a joint venture with Budz based on its conduct and relationship to Budz and third parties such as Melton.

Melton cites the following examples as clear and convincing evidence of a joint venture between CMS and Budz. First, Melton highlights the fact that Brinkman, owner of Budz, and Chaffee, owner of CMS, had been living together for nearly thirty years and had previously partnered in a range of real estate and cannabis ventures during that time frame. Additionally, Melton points out that it paid CMS, instead of Budz, $128,600 for the contract at closing. Further, Melton argues that CMS alleged, but did not sufficiently prove, that it actually paid the $128,600 to Budz. Melton also notes that CMS's business was leasing property and that its "only customer" was Budz. *Brief-in-Chief*, 7. Thus, had Budz failed to produce its crop, it would have been unable to pay rent to CMS. Finally, Melton notes that Chaffee testified about working in Budz's field operation; therefore, her "labor-intensive sweat equity should not be discounted" as evidence of a joint venture. *Id.* at 12.

First, we note that while evidence of the parties' domestic partnership and evidence of prior joint projects and businesses could show a pattern or a general proclivity for working together, such a proclivity has no bearing on whether the elements for a joint venture listed in *Martin* are satisfied in this case. Further, it is not disputed Chaffee was present at closing or that CMS received the initial payment from Melton on behalf of Budz for the contract. However, Brinkman

and others testified that Budz did not have a checking account because the state would not allow marijuana companies to have checking accounts at that time. Tr. (Sept. 26-27), 55. Thus, the check was made out to CMS so it could be cashed or deposited, which would in turn allow Budz to produce product that year. *Id.* While Melton claims CMS did not produce evidence in its financial records to show that CMS paid Budz the money back that it received on Budz's behalf, we note that Budz's financial records that were introduced as an exhibit by Melton pre-date the signing of the contract. Additionally, at trial, counsel for the defendants showed Brinkman the exhibit and pointed him to the income column of the ledger, which indicated that Budz had received $127,390 at some point in 2020. *Id.* at 80. While this amount does not represent the full amount of $128,600, Brinkman had earlier testified that the full amount was not paid back because he had owed CMS for some things but could not recall what he owed. *Id.* at 57.

We find no law indicating that CMS receiving and then disbursing money from Melton to Budz under these circumstances constitutes a joint interest in property or an agreement to share profits or losses as required by *Martin.* It appears no different from any person cashing a check for someone who does not have a bank account. It is clear that this transaction only took place because Budz could not obtain a checking account, not to advance some joint goal or project between Budz and CMS. Melton argues however, that it was CMS's burden to present evidence showing that the money was given to Budz. We note that not only does the ledger introduced at trial reflect that Budz received

slightly less than the full amount of the check given to CMS by Melton in 2020, the year the contract was signed, but we also emphasize that, as Melton was the party pursuing the joint venture claim, it was Melton's duty to affirmatively prove that CMS kept Melton's investment in Budz which could show a joint interest in the investment and constitute conduct demonstrating their cooperation in a marijuana business venture. However, it failed to do so.

Next, although not explicitly argued, it appears that Melton highlights the fact that Budz was CMS's only customer as evidence of a joint interest in property or an agreement to share profits and losses. According to Melton, if Budz was not successful in growing its crop, it could not pay the CMS lease, which in turn would lead to CMS's demise. However, it does not follow that a landlord and tenant are in a joint venture simply because the landlord is benefitted if a tenant makes a profit and is therefore able to pay rent. Indeed, pursuant to this theory, all landlords are engaged in joint ventures with their business tenants. We find no support for this proposition in Oklahoma law. Melton paid Budz to grow marijuana, and Budz leased CMS's land to grow that product. The ventures are entirely separate as there is not a joint or shared interest that connects CMS to the agreement between Budz and Melton. For example, CMS had no interest in Budz's products or the sale of said products, its only interest was the lease of the acreage Budz was farming, and we find no evidence that the lease payments

were variable based upon the eventual profit made.[3] While CMS received money from Melton, that money only passed through CMS and was paid to Melton, with the exception of roughly $1,000 which could have been subtracted from the total as a lease payment.

Melton also notes that Chaffee testified about working in Budz's marijuana field with other growers. Although not clear from the brief, Melton likely cites this as a purported example of "action or conduct showing cooperation in the project." *See Martin*, 1981 OK 134, ¶ 11. When asked about how involved she was with Budz and what she knew about the marijuana business, Chaffee responded:

> You know, I don't know a lot about it. I did—Brad was working in it and I was home. He was coming home so worn out that I thought, well, you know, I'll just go help ... so I learned, you know about farming and planting and I was around other people instead of just sitting home alone.

Tr. (Sept. 26-27), 133. She later added that she would drive Brad and his partner to make deliveries or pick items up. *Id.* Chaffee did not specify how many times she went to the grow, how long she would work for, or any other pertinent details, nor did opposing counsel further inquire about such details. It appears that Chaffee would go to the field to assist her long-term boyfriend and connect with other people, not in furtherance of any joint business goal between CMS and Budz. In fact, we find no evidence sufficient to create an implication that Chaffee

---

[3] *See McGee v. Alexander*, 2001 OK 78, ¶ 22, 37 P.3d 800, 806 (finding no joint venture when there was no record that alleged joint venturer was prepared to offer its services at a loss or reap additional profits depending on the success or lack of an enterprise).

went to the field as an agent of CMS or in service of any joint venture or with any expectation to share in a joint profit as a result of her work. We cannot construe this assistance from a long-term girlfriend which apparently occurred out of a desire to meet other people and willingness to occasionally assist her domestic partner of thirty years, as the kind of "cooperation" for a joint venture contemplated by *Martin.*

Melton relies on *LeFlore v. Reflections of Tulsa, Inc.*, 1985 OK 72, ¶ 13, 708 P.2d 1068, 1072, and other Oklahoma and federal cases for its analysis. The Court in *LeFlore* found that the defendants were involved in a joint venture as all three elements listed in *Martin* were satisfied. The Court held that the first element of a joint interest in the property was satisfied as each of the three parties respectively provided a venue, entertainment, and food and drink to put on a joint event with the intent of reaping a joint profit. *Id.* at ¶ 13. There is no such cohesion or collaboration in the present case. Budz and Melton signed a contract in which Budz would provide marijuana to Melton for $150,000. Budz and CMS had an entirely separate agreement in which Budz would pay CMS for use of its property to grow the marijuana. It is clear that Budz and CMS were not jointly working towards the project assigned to Budz by Melton: the growing of 500 pounds of cannabis; only Budz was working towards that goal.

Further, the Court in *LeFlore* held that, regarding the second element in *Martin* that profits and losses must be shared by the parties in the joint venture, the "profits accruing to the parties of an alleged joint venture must be 'joint' and not 'several.'" *Id.* at ¶ 16 (citing *Commercial Lumber Co. v. Nelson,* 181 OK 122,

72 P.2d 829 (1937)).[4] The *LeFlore* Court specifically found that the defendants had engaged in profit or loss sharing and therefore, the second element of a joint venture was satisfied. There is no evidence of profit sharing of any kind in the record for the present case. Budz's payment to CMS for the lease was separate from Melton's payment to Budz for the marijuana. Absent from the record is any evidence that CMS expressly or impliedly agreed to share in Budz's profits and vice versa; their profits were not derived from a common source as in *LeFlore*.

Finally, the Court in *LeFlore* found that because the parties each provided different goods and services to put on a single event, the third element of *Martin*—"conduct showing cooperation"—was satisfied. The only evidence that could be construed as conduct showing cooperation between CMS and Budz is the fact that Chaffee, at some point in time, for an unknown duration, worked in the Budz field. There was no evidence presented that Chaffee was compensated for her work, that Budz and CMS agreed that other CMS employees would start working for Budz to help with the product, or anything else that could be construed as collaboration between Budz and CMS. Thus, it is clear that Melton failed to demonstrate a prima facie case for recovery on its joint venture claim. Therefore, the court properly granted CMS's directed verdict on this issue.[5]

---

[4] *Commercial Lumber* is clear that the simple fact that several parties may each make a profit from participating in an enterprise does not create a jointly-sought profit or a joint venture. "The profit accruing however must be joint and not several, otherwise every person, firm, or individual who furnished material or supplies or performed work or labor in connection with the enterprise might be termed joint adventurers therein whether they had any such intention or not." *Id.*, ¶ 2.

[5] Because the court properly granted a directed verdict for CMS on its joint venture claim, it is unnecessary to address Melton's second issue regarding whether the court should have included jury instructions on joint ventures.

Melton also apparently argues that the court erred in *sua sponte* granting a directed verdict because CMS demurred to the evidence at the close of Melton's case and then waited until discussion of jury instructions before directing a verdict in favor of CMS. However, Melton cites no authority on this issue and instead uses this section of its brief to restate various arguments made under its first assignment of error. This is generally impermissible. *See Cox Oklahoma Telecom, LLC, v. State ex rel. Oklahoma Corp. Comm'n*, 2007 OK 55, ¶ 33, 164 P.3d 150, 162 (holding that judicial review will not be given to issues that receive only superficial treatment in an appellate brief or to assignments of error that lack a reasoned argument or supporting authority). Further, Melton did not object to the alleged "*sua sponte*" nature of trial court's grant of the directed verdict, and thus forfeited appellate review of the question. *See Jones v. Alpine Inv., Inc.*, 1987 OK 113, ¶ 11, 764 P.2d 513, 515. ("Issues not raised below will not be considered for the first time on appeal."). Nevertheless, we hold that the trial court did not err in revisiting the motion for directed verdict at the close of evidence when discussing the instructions that should be given to the jury.[6] The alternative would be to hold that the trial court was required to have sent the case to the jury even though it correctly believed, upon review of the proper

[6] Our Supreme Court, although disagreeing with the trial court's finding that no *prima facie* case existed, took no issue with a court granting a truly *sua sponte* directed verdict in *O'Petro Energy Corp. v. Canadian State Bank*, 1992 OK 126, 837 P.2d 1391, where the "trial court upon hearing evidence from the Bank's first witness, stopped the trial and withdrew the case from the jury. The judge entered judgment *sua sponte* for O'Petro." *Id.* ¶ 5.

instructions, that no jury question was presented. Such was not required under the circumstances of this case.

**AFFIRMED.**

WISEMAN, P.J., and FISCHER, J., concur.

March 26, 2025