STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

THOMAS NEWTON LEITELT,

Plaintiff,

vs.

SERVISCREEN, INC.,

Defendant.
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Case No. 14-04100-CKB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER DENYING PLAINTIFF'S MOTION FOR J.N.O.V. OR, IN THE ALTERNATIVE, A NEW TRIAL

For six days, the attorneys for Plaintiff Thomas Newton Leitelt and Defendant Serviscreen, Inc. ("Serviscreen") exchanged blows in a trial about Leitelt's right to post-termination commissions from Serviscreen. On March 25, 2016, the jury returned a verdict rejecting Leitelt's claim for post-termination commissions. After the Court entered judgment, Leitelt presented a motion requesting judgment notwithstanding the verdict under MCR 2.610 or, in the alternative, a new trial pursuant to MCR 2.611(A)(1)(b), (e), and (g). After careful review, the Court concludes that the jury's verdict must stand.

Plaintiff Leitelt's attempt to overturn the jury's verdict amounts to a daunting task. Michigan law makes clear that, in considering Leitelt's motion for judgment notwithstanding the verdict, the Court "must view the evidence in a light most favorable to the nonmoving party" and deny relief if "'reasonable jurors could honestly have reached different conclusions[.]'" Guerrero v Smith, 280 Mich App 647, 666 (2008). Similarly, in weighing Leitelt's motion for a new trial, "'the trial court's function is to determine whether the overwhelming weight of the evidence favors the losing party.'"

Id. Needless to say, Leitelt bears a heavy burden in his endeavor to upset the verdict of a jury that he specifically demanded. See Plaintiff's Request for Jury Trial (July 20, 2015).

With respect to Plaintiff Leitelt's request for judgment notwithstanding the verdict, the Court repeatedly explained prior to trial (in addressing motions for summary disposition) and during trial (in denying motions for directed verdict) that there existed a genuine issue of material fact regarding Leitelt's demand for post-termination commissions. The evidence leaves no doubt that, while Leitelt worked for Defendant Serviscreen, he enjoyed a compensation package that included a commission of three percent on all outside business that he secured for Serviscreen. But Leitelt's agreement with his employer was silent on the subject of post-termination commissions. Therefore, as the Court told the jury in its instructions, the jurors had to determine whether Leitelt was the "procuring cause" of the sales for which he claimed post-termination commissions. On this point, the Court instructed the jurors that "[a] sales representative 'procures' a sale if he either introduces the Defendant to the customer or it is through the sales representative's active negotiations that a deal is struck between the Defendant and the customer." See Final Jury Instructions; see also Schmidt v Maples, 291 Mich 225, 235 (1939).

Although Plaintiff Leitelt certainly presented evidence to support his procuring-cause claim, Defendant Serviscreen responded with substantial evidence that Leitelt's business contacts resulted from recommendations from outside sources to potential customers, who in turn called Leitelt and dealt with other employees of Serviscreen. Thus, there was ample evidence to support a verdict for either side on the procuring-cause theory, so the Court left the matter to the jury, which decided in Serviscreen's favor. The record developed at trial most assuredly did not require a verdict in favor of either side, so the jury acted rationally in rendering a verdict for Serviscreen.

With respect to Plaintiff Leitelt's request for a new trial, he presents three separate theories in support of relief. First, he contends that Defendant Serviscreen's attorney engaged in pervasive misconduct that warrants a new trial. See MCR 2.611(A)(1)(b). Leitelt insists that Serviscreen's counsel disparaged him so severely that the jury ruled against him for improper reasons. "A lawyer's comments will usually not be cause for reversal unless they indicate a deliberate course of conduct aimed at preventing a fair and impartial trial or counsel's remarks were such as to deflect the jury's attention from the issues involved and had a controlling influence on the verdict." Ellsworth v Hotel Corp of America, 236 Mich App 185, 191-192 (1999). The Court saw nothing of the sort during the trial. To be sure, each side questioned the other side's motives, but the exchanges were measure for measure, so the Court cannot grant a new trial simply because each attorney responded in kind to the other side's attacks. Moreover, the jury posed questions during its deliberations that made clear the jurors' focus on the central issue, *i.e.*, application of the procuring-cause doctrine, drove the outcome in this case.*

Second, Plaintiff Leitelt contends that the jury's verdict was "against the great weight of the evidence." See MCR 2.611(A)(1)(e). As the Court has already explained, the evidence at trial easily could have supported a verdict for either side on the central issue of the procuring-cause doctrine. Therefore, the great weight of the evidence did not support either side; it simply required resolution by the jurors. Indeed, Defendant Serviscreen presented substantial evidence that Leitelt obtained his business not through his own efforts in the first instance, but instead through referrals from outside sources. Beyond that, Serviscreen furnished significant evidence that many of its employees – rather

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* The Court shall discuss those jury questions in its subsequent analysis of Plaintiff Leitelt's final argument in support of his motion for a new trial. Suffice it to say that the jury's questions on the subject of the procuring-cause doctrine reflect their focus upon that important issue.

than Leitelt acting predominantly on his own – secured the business through a team effort that often had very little to do with Leitelt. Consequently, the Court cannot conclude that the jury's verdict was inconsistent with the great weight of the evidence.

Third, Plaintiff Leitelt asserts that the Court committed an "[e]rror of law" in submitting the procuring-cause issue to the jury. See MCR 2.611(A)(1)(g); see also MCR 2.611(A)(1)(e) (stating that new trial may be granted for "verdict or decision . . . contrary to law"). Leitelt's motion seems to suggest that the Court should have resolved the procuring-cause issue because that claim sounds in equity, not law. See Madugula v Taub, 496 Mich 685, 705 (2014). But our Supreme Court has consistently held that whether a sales representative "was the procuring cause of sale" is "a question of fact properly submitted to the jury." See Davis-Fisher Co v Hall, 182 Mich 574, 579 (1914); see also Wood v Smith, 162 Mich 334, 341 (1910). Thus, the Court did not err in permitting the jury to determine whether Leitelt was entitled to post-termination commissions under the procuring-cause doctrine.

At oral argument, Plaintiff Leitelt's position evolved into a theory that the Court erred when it gave the jury supplemental instructions about the procuring-cause doctrine. During deliberations, the jury posed the following question: "[D]oes there have to be a breach of contract for the Michigan law of post-termination commissions to go into effect or is it always in effect." After consulting with counsel, the Court sent the jurors a note asking them to clarify whether their question referred to the Michigan Sales Representative's Commissions Act or the procuring-cause doctrine. See Response to Jurors' Question #2. When the jury returned the note indicating that their question referred to the procuring-cause doctrine, see id., the Court again spoke with the attorneys on the record in an effort to fashion an appropriate response to the jury's question. As a result of those discussions, the Court

repaired to the language from our Court of Appeals in KBD & Associates, Inc v Great Lakes Foam Technologies, Inc, 295 Mich App 666 (2012), and instructed the jury as follows:

> In deciding whether to apply the "procuring cause" doctrine, you must first consider the terms of the parties' contract as you define them. If the parties' contract resolves the Plaintiff's claim for post-termination commissions, then you should not turn to the "procuring cause" doctrine. But if the parties' contract does not resolve the Plaintiff's claim for post-termination commissions, then you may consider the "procuring cause" doctrine to supplement the contract and determine whether the Plaintiff should be awarded post-termination commissions.

See Final Response to Jurors' Question #2 (March 25, 2016). The Court stands by that instruction as an accurate statement of the procuring-cause doctrine under Michigan law, so the Court finds no basis to grant a new trial due to instructional error.

Despite Plaintiff Leitelt's dissatisfaction with the jury's verdict, the Court believes that both sides received a fair trial and that the jury rendered a sustainable verdict based upon the evidence. As a result, the Court must deny Leitelt's motion for judgment notwithstanding the verdict or, in the alternative, for a new trial.

IT IS SO ORDERED.

Dated: June 9, 2016

HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge