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NO. COA04-598

NORTH CAROLINA COURT OF APPEALS

Filed: 16 August 2005

GRACE R. WALDON and ENVIRONMENTAL
WATER SOLUTIONS, INC., a North
Carolina Corporation,

Plaintiffs

v . Union County
No. 01 CVS 1455
DANNY L. BURRIS, JESSE JAMES
WALDON, JR. and ENVIRONMENTAL
WATER SOLUTIONS, INC., an
Oklahoma Corporation,

Defendants

Appeal by defendants from judgment entered 30 September 2003 by Judge Christopher M. Collier in Union County Superior Court. Heard in the Court of Appeals 31 January 2005.

Weaver, Bennett & Bland, P.A., by Michael David Bland, for plaintiffs-appellees.

Wishart, Norris, Henninger & Pittman, P.A., by William A. Navarro, for defendants-appellants.

MARTIN, Chief Judge.

Plaintiffs brought this action against defendants alleging five separate claims for relief, including misappropriation of corporate opportunity, constructive fraud, constructive trust, unfair and deceptive trade practices, and violation of the Lanham Act. These claims arose in connection with a contract procured by defendants to operate a waste water treatment facility on the Tinker Air Force Base in Oklahoma. The evidence at trial tended to show the following: from 1996 to 1998 plaintiff Grace Waldon and her husband, defendant Jesse Waldon, were part owners of a company called Environmental Process Systems, Inc. (EPSI) which manufactured water treatment equipment. Grace Waldon was Vice President of Marketing, and Jesse Waldon was Chairman of the Board of Directors. Defendant Dan Burris met the Waldons in 1997 while attending a training course to become a distributor for EPSI.

In early 1998, Grace and Jesse Waldon began an unincorporated business to act as the sales and marketing arm of EPSI, using the name Engineered Water Solutions, Inc. (EWS). They authorized Dan Burris to act as a selling agent and representative for EWS in Oklahoma. Burris wrote numerous letters on behalf of EWS seeking to acquire a contract with Dynpar, a subsidiary of DynCorp, to manage the industrial waste water treatment plant at Tinker Air Force Base in Oklahoma ("the contract"). DynCorp was bidding on a government contract at the base and needed a small company to manage the water treatment plant. Meanwhile, Jesse Waldon attempted to incorporate EWS in North Carolina. When the North Carolina Secretary of State notified him that the corporate name could not contain the word

“engineer,” he changed the name to Environmental Water Solutions, Inc. (EWSI-NC), which became incorporated in North Carolina on 8 June 1998.

According to plaintiff Grace Waldon, in order to make EWSI-NC a minority (female) owned corporation, she was issued 51% of the shares and defendant Jesse Waldon was issued 49%. Grace Waldon was also Vice President of the corporation, and Jesse Waldon was President. Dan Burris became a Vice President of EWSI-NC later that summer. In March 1999, defendant Burris incorporated a company in Oklahoma also called Environmental Water Solutions, Inc. (EWSI-OK), issuing 51% of the shares to his wife and 49% of the shares to himself. Defendant Burris claims that both Jesse Waldon and Grace Waldon were aware of the formation of EWSI-OK because they discussed merging the two companies. Grace Waldon, however, alleges that defendant Burris incorporated EWSI-OK using the same name as the North Carolina corporation without her knowledge or consent.

In the spring of 2000, when it appeared the Tinker contract was close to being accepted, defendants Burris and Jesse Waldon held an organizational meeting for EWSI-NC. Grace Waldon claims she was not aware this meeting took place. According to plaintiff Waldon, defendants Burris and Waldon redistributed the shares of EWSI-NC without her consent so that Jesse Waldon held 51% and Dan Burris held 49%. Burris was named President and Treasurer and Jesse Waldon was named Vice President and Secretary. The records for this organizational meeting were dated retrospectively to 12 January 2000. Defendants contend that “[t]here is no written evidence that an Organizational Meeting of Directors was held . . . or stock issued” at any time prior to this meeting. The record on appeal, however, contains a Dun & Bradstreet Business Information Report dated 15 March 1999 stating that “49% of capital stock [of EWSI-NC] is owned by Jesse J. Waldon, Jr. 51% of capital stock is owned by Grace Waldon.”

In April 2000, Dynpar accepted EWSI's bid to manage the waste water treatment plant at Tinker Air Force Base through September 2007. According to plaintiff, she and defendant Jesse Waldon believed EWSI-NC had won the contract, but defendant Burris signed the contract in the name of his company, EWSI-OK.

Plaintiff testified at trial that Jesse Waldon informed her in August 2000 that he had issued her shares of EWSI-NC to himself and the remaining shares to Burris. He told her he had taken all the corporate records for EWSI-NC and sent them to Oklahoma. Plaintiff testified she informed defendant Waldon his actions could incur criminal penalties and they would lose the contract since the business was no longer owned by a woman. Jesse Waldon then agreed to have Burris mail the corporate records back to North Carolina.

In September, Jesse Waldon informed plaintiff he was leaving her to live with his mistress in Vietnam. After he left, the corporate records arrived from Burris by means of the Waldons' joint Federal Express account. Plaintiff testified these records indicated defendants Burris and Waldon conspired to cut her out of her profits in the contract by taking control of EWSI-NC. She also searched the corporate headquarters in North Carolina and discovered the corporate books had been stripped and other files shredded.

Plaintiff hired an attorney to help her regain her shares of EWSI-NC and the profits from the contract. In November 2000, her attorney received an e-mail from defendant Burris saying EWSI-NC had never been a party to the contract. Instead, he had put the contract in the name of EWSI-OK, and he believed EWSI-NC was therefore bankrupt. Plaintiff informed Jesse Waldon in Vietnam of Burris's claims, whose e-mailed responses indicated he wanted, together with plaintiff, to bring civil and criminal charges against Burris. Plaintiff testified, however, that despite having the means and ability to do so, defendant Waldon made no effort to come to North Carolina and help her locate missing files, file a claim against Burris, or pay attorneys' fees.

Without the help of her husband, who was the sole Director of EWSI-NC, plaintiff testified she believed she could not bring suit against Burris on behalf of the company. Therefore, on the advice of her attorney, she called a shareholders' meeting of EWSI-NC to regain control of EWSI-NC. She sent a written notice of the meeting to Dan Burris but not to Jesse Waldon. Using a power of attorney granted to her by her husband in 1995, she signed the notice “Grace R. Waldon, as attorney-in-fact for Jessie J. Waldon, Jr.” The meeting was held on 7 March 2001 and attended by plaintiff and an attorney for Dan Burris. In the meeting, plaintiff used her power of attorney to vote her husband's shares of EWSI-NC,

removing Jesse Waldon and Dan Burris as officers and electing herself sole Director of the company. She then filed suit individually and on behalf of EWSI-NC against defendants Dan Burris, Jesse Waldon, and EWSI-OK, claiming misappropriation of corporate opportunity, constructive fraud, constructive trust, unfair and deceptive trade practices, and violation of the Lanham Act.

Defendant Waldon did not file an answer to plaintiff's complaint, and his default was entered. Defendants Burris and EWSI-OK moved for summary judgment. The trial court granted summary judgment in favor of defendants on the following claims of the individual plaintiff Grace Waldon: misappropriation of corporate opportunity, constructive trust, unfair and deceptive trade practices, and violation of the Lanham Act. The trial court denied defendants' summary judgment motion as to plaintiff Waldon's individual claim of constructive fraud. Summary judgment was denied as to all of the claims asserted on behalf of plaintiff EWSI-NC.

After trial on the remaining issues, the jury returned a verdict in favor of plaintiffs on all claims. The jury found that defendants Burris and Waldon conspired to deprive plaintiff of her shares of EWSI-NC with the intent to deprive her of the profits from the contract. The jury found "defendant Dan Burris" took advantage of a position of trust and confidence with plaintiffs EWSI-NC and Grace Waldon to bring about the contract and wrongfully used the name "Environmental Water Solutions, Inc." to procure the contract. The jury found that defendants (1) wrongfully interfered with the prospective contract between plaintiff EWSI-NC and Dynpar, (2) did not act openly, fairly, and honestly in bringing about the contract, (3) secretly diverted the contract from EWSI-NC to EWSI-OK, (4) wrongfully obtained the contract by submitting supporting documents procured from or prepared by agents of EWSI-NC and claiming EWSI-NC's skilled employees, and (5) violated the provisions of 18 U.S.C. 1001. The jury also found that defendants' conduct was in or affecting commerce and was a proximate cause of plaintiffs' injury. The jury awarded damages, discussed *infra*, for which the trial court held defendants jointly and severally liable. The jury's verdict, filed on 3 September 2003, subjected the profits from the Tinker contract to a constructive trust in favor of EWSI-NC. However, on 20 September 2003, defendant Burris sent a letter to Dynpar tendering EWSI-OK's resignation to its obligations under the contract. Judgment was entered on 30 September 2003. Plaintiff filed a motion to show cause and for relief under the Uniform Fraudulent Transfer Act, claiming defendants' resignation rendered EWSI-OK insolvent and prevented plaintiffs from recovering the profits under the contract. Plaintiffs also claimed that Burris persuaded Dynpar to move the contract from EWSI-OK to a new company Burris had formed called Water Resources Corporation. The trial court issued a mandatory injunction awarding EWSI-NC a constructive trust against any proceeds of Water Resources Corporation from the contract and requiring defendants to (1) assign all rights and interests in the contract back to EWSI-OK, and (2) turn over all records, documents, files, computers, assets, vehicles, and property of every kind belonging to EWSI-OK to the appointed receiver for EWSI-NC. The court also required Dynpar to pay all funds due under the contract to the receiver, or in the alternative, enabled the receiver to operate the contract.

From the judgment entered and the mandatory injunction, defendants Burris and EWSI-OK ("defendants") appeal. Defendant Waldon did not give notice of appeal.

The record on appeal contains thirty-two assignments of error. In their appellants' brief, defendants have brought forward, in the manner required by N.C.R. App. P. 28(b), proper arguments in support of thirteen of these assignments of error. The remaining assignments of error are deemed abandoned and are dismissed. N.C. R. App. P. 28(b)(6). The assignments of error argued on appeal raise issues relating to the admission of evidence, the denial of defendants' motion for directed verdict as to plaintiff Waldon's individual claims, the jury instructions, the trebling of certain damages awarded by the jury, and the trial court's grant of injunctive relief. For the reasons which follow, we affirm in part, reverse in part, and remand to the trial court for re- calculation of the damage award.

I.

The first argument in defendants' brief does not identify or refer to the assignments of error pertinent to

the argument, as is required by N.C.R. App. P. 28(b)(6). As the North Carolina Supreme Court has recently instructed in *Viar v. N.C. Dept. Of Transportation*, 359 N.C. 400, 610 S.E.2d 360 (2005), the Rules of Appellate Procedure are mandatory, and a failure to follow them subjects an appeal to dismissal. While dismissal of defendants' first argument may seem a harsh sanction, the Rules of Appellate Procedure are meaningless unless they are consistently applied, and "it is not the role of the appellate courts . . . to create an appeal for an appellant." *Id.* at 402, 610 S.E.2d at 361. Therefore, we dismiss, without further consideration, the first argument contained in defendant-appellants' brief. *See Hines v. Arnold*, 103 N.C. App. 31, 37-38, 404 S.E.2d 179, 183 (1991) (Court declined to address merits of argument, and dismissed that portion of appeal, where appellant failed to reference assignment of error supporting argument).

II.

Defendants argue that the trial court should have submitted, in accordance with their request, the issue of whether plaintiff Waldon owned stock in EWSI-NC, and, if so, the amount of such stock in order to determine whether she had standing to bring a derivative suit as a minority shareholder. However, the trial court need not have reached the question of whether plaintiff had standing to sue derivatively. Plaintiff became President and sole Director of EWSI-NC after voting defendant Waldon's shares pursuant to the power of attorney granted her by defendant Waldon, which, according to the evidence before us, at no time prior had been revoked. This power of attorney specifically granted plaintiff the power "to vote any investment; and to act as [Jesse Waldon's] attorney-in-fact or proxy with respect to any such investment." After plaintiff became President and sole Director of the corporation, she had authority to bring suit on behalf of the corporation. This argument is overruled.

III.

Defendants also assign error to the trial court's denial of their motion for a new trial. On appeal, the trial court's decision regarding a motion for a new trial pursuant to Rule 59 of the North Carolina Rules of Civil Procedure is not reviewable absent "a manifest abuse of discretion." *Britt v. Allen*, 291 N.C. 630, 635, 231 S.E.2d 607, 611 (1977); *see also In re Buck*, 350 N.C. 621, 625, 516 S.E.2d 858, 861 (1999). "An appellate court should not disturb a discretionary Rule 59 order unless it is reasonably convinced by the cold record that the trial judge's ruling probably amounted to a substantial miscarriage of justice." *Buck*, 350 N.C. at 625, 516 S.E.2d at 861 (internal citations omitted).

Rule 59(a)(8) of the North Carolina Rules of Civil Procedure states that a party may be granted a new trial due to an "[e]rror in law occurring at the trial and objected to by the party making the motion." N.C. Gen. Stat. § 1A-1, Rule 59(a)(8) (2003). This Court has previously held that "the moving party must have objected to the error which is assigned as the basis for the new trial." *Barnett v. Security Ins. Co. of Hartford*, 84 N.C. App. 376, 380, 352 S.E.2d 855, 858 (1987) (citing N.C. Gen. Stat. § 1A-1, Rule 59(a)(8)). On appeal, defendants argue the sole shareholders of EWSI-NC are defendants Jesse Waldon and Dan Burris; therefore, the action by EWSI-NC amounted to an action by a corporation to sue itself. Defendants, however, did not raise an objection at trial on the grounds that the action by EWSI-NC was invalid as an action by a corporation to sue itself, as required by Rule 59. Therefore, we conclude the trial court did not abuse its discretion in denying defendants' post-trial motion for a new trial on this basis. This argument is overruled.

IV.

Defendants' next several arguments allege error in the trial court's instructions on damages and the jury's damage awards. First, they argue the trial court erred in instructing that if the jurors found the Tinker contract to be subject to a constructive trust in favor of EWSI-NC, they could also find EWSI-NC was entitled to recover actual damages. We disagree. The relevant issues submitted to the jury and the jury's findings are as follows:

2. Did the Defendant wrongfully interfere with a prospective contract between plaintiff EWSI-NC and Dynpar for the Tinker AFB contract to operate its wastewater treatment plant?

ANSWER: YES

3. Did the Defendant Dan Burris take advantage of a position of trust and confidence with EWSI-NC to bring about the contract between EWSI-OK and Dynpar?

ANSWER: YES

4. Did the Defendant act openly, fairly and honestly in bringing about the contract between EWSI-OK and Dynpar?

ANSWER: NO

5. Is the Tinker AFB contract subject to a constructive trust in favor of the plaintiff EWSI-NC?

ANSWER: YES

6. What amount of money damages is the plaintiff EWSI-NC entitled to recover from the defendants?

ANSWER: \$1,114,000.00

A constructive trust is an equitable remedy “to prevent the unjust enrichment of the holder of title to, or of an interest in, property which such holder acquired through fraud, breach of duty or some other circumstance making it inequitable for him to retain it against the claim of the beneficiary of the constructive trust.” *Roper v. Edwards*, 323 N.C. 461, 464, 373 S.E.2d 423, 424-25 (1988)(quoting *Wilson v. Development Co.*, 276 N.C. 198, 211, 171 S.E.2d 873, 882 (1970)). Here, the jury found EWSI-OK had fraudulently acquired the contract; therefore, a constructive trust in favor of EWSI-NC was proper to prevent defendants' unjust enrichment. The award of a constructive trust does not preclude the plaintiff from receiving damages; “[e]quity applies the principles of constructive trusts wherever it is necessary for the obtaining of complete justice, although the law may also give the remedy of damages against the wrongdoer.” *Speight v. Trust Co.*, 209 N.C. 563, 566, 183 S.E. 734, 736 (1936). At trial, the evidence tended to show that the total historical and projected profits from the contract were \$2,228,000. Therefore, the jury awarded actual damages of exactly one-half past and future profits. Defendants argue that the contract was for a term of eighty-four months, forty of which had passed by the date of trial. The trial court instructed the jury it could award the plaintiff the profit that would have been gained from full performance of the contract, plus incidental damages. By awarding half the profits in damages and preserving future profits in a constructive trust, the jury, in effect, awarded plaintiff 100% of the profits from the contract in two distinct forms of recovery, plus incidental damages. The evidence does not indicate plaintiffs received a double recovery. This argument is overruled.

Next, defendants argue that, as worded, Issue One implied to the jury that Grace Waldon could individually recover the lost profits of the contract. Issue One asks whether defendants Burris and Waldon conspired to deprive the individual plaintiff Grace Waldon of her shares in EWSI-NC “with the intent to deprive her of the profits of the Tinker Contract.” Because defendants did not object to the wording of Issue One at trial, they have not properly preserved this question for review. Under our Rules of Appellate Procedure, “[i]n order to preserve a question for appellate review, a party must have presented to the trial court a timely request, objection or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context.” N.C.R. App. P. 10(b)(1). We therefore decline to review defendants' argument regarding the wording of Issue One.

Defendants also assign error to the submission of Issue One to the jury on the basis that the trial court erred in denying their motion for a directed verdict on the individual plaintiff's claim for constructive fraud. “The question raised by [a motion for directed verdict] is whether the evidence is sufficient to go to the jury.” *Dockery v. Hocutt*, 357 N.C. 210, 216, 581 S.E.2d 431, 436 (2003) (citations omitted). The

court must consider the evidence in the light most favorable to the non-moving party. All conflicts in the evidence must be resolved in favor of the non-movant, and she is entitled to every reasonable inference to be drawn therefrom. *Id.* at 216-17, 581 S.E.2d at 436. The party seeking a directed verdict “bears a heavy burden under North Carolina law.” *Martishius v. Carolco Studios, Inc.*, 355 N.C. 465, 473, 562 S.E.2d 887, 892 (2002) (citation omitted).

Issue One was submitted to the jury and answered as follows:

1. Did Dan Burris and Jesse Waldon conspire to deprive Grace Waldon of her shares in EWSI- NC with the intent to deprive her of the profits of the Tinker contract?

ANSWER: YES

The evidence at trial tended to show that Grace Waldon originally owned 51% of the shares in EWSI-NC as evidenced by the 15 March 1999 Business Information Report; that at some later date, defendants Burris and Waldon redistributed the shares such that Jesse Waldon owned 51% of the shares of EWSI-NC and Dan Burris owned 49%; and that Grace Waldon was not aware of the redistribution of the shares or the existence of EWSI-OK. We conclude there was sufficient evidence to support the existence of a conspiracy between defendants Burris and Waldon, and the trial court did not err in submitting Issue One to the jury. Defendants also contend that by not offering evidence at trial regarding the value of her stock in EWSI-NC, plaintiff Waldon failed to prove actual damages suffered as a result of defendants' conspiracy to deprive her of those shares. Therefore, the trial court should have granted their motion for directed verdict on plaintiff's individual claim for constructive fraud. However, the trial court instructed the jury only on the issue of conspiracy under Issue One, not on constructive fraud. The trial court instructed as to constructive fraud in Issue Thirteen, actual damages for constructive fraud in Issue Fourteen, and punitive damages for constructive fraud in Issue Fifteen. Defendants, however, have not presented arguments with respect to Issues Thirteen, Fourteen, or Fifteen. The trial court instructed, in Issue Fourteen, that actual damages for constructive fraud could include “monies expended in pursuit of and in preparation for the Tinker contract, and lost opportunities including loss of income.” Defendants do not argue plaintiff has failed to prove these particular damages, and we will not create an argument for them on appeal. *Viar v. N.C. Dept. Of Transportation*, 359 N.C. 400, 402, 610 S.E.2d 360, 361 (2005). This argument is dismissed.

Defendants' final argument on the issue of damages is that the trial court erred in trebling the damages awarded in Issue Six as those were not the damages determined by the jury to be a proximate result of a violation of N.C. Gen. Stat. § 75-1.1. We agree. N.C. Gen. Stat. § 75-1.1(a) states that “[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful.” N.C. Gen. Stat. § 75-1.1(a) (2003). To prevail on a claim of unfair and deceptive trade practices, plaintiff must show “(1) defendant committed an unfair or deceptive act or practice, (2) the action in question was in or affecting commerce, and (3) the act proximately caused injury to the plaintiff.” *Tucker v. Blvd. at Piper Glen, L.L.C.*, 150 N.C. App. 150, 153-154, 564 S.E.2d 248, 251 (2002) (quoting *Pleasant Valley Promenade v. Lechmere, Inc.*, 120 N.C. App. 650, 664, 464 S.E.2d 47, 58 (1995)). The verdict sheet submitted to the jury queried:

9. Did the defendant do (*at least one of*) the following:

(1) Secretly take the Tinker AFB contract from EWSI-NC and divert the contract to EWSI-OK,
or

_____ANSWER: YES

(2) Wrongfully obtain the Tinker AFB contract by submitting supporting documents either procured from or prepared by agents of EWSI-NC, or

ANSWER: YES

- (3) Wrongfully obtain the Tinker AFB contract by claiming EWSI-NC's skilled employees, or

ANSWER: YES

- (4) Violate the provisions of 18 U.S.C. 1001?

ANSWER: YES

10. Was the defendant's conduct in commerce or did it affect commerce?

ANSWER: YES

11. Was the defendant's conduct a proximate cause of the plaintiff's injury?

ANSWER: YES

12. In what amount, if any, has the plaintiff EWSI-NC been injured?

ANSWER: \$75,000.00

This series of questions establishes a *prima facie* case of unfair and deceptive practices, and by its verdict, the jury determined that defendants' conduct was "in or affecting commerce," that such conduct proximately caused damage to EWSI-NC, and that the amount of damages was \$75,000. Therefore, the damages awarded under Issue Twelve were the proper damages for unfair and deceptive practices, and it was these damages which should have been trebled. N.C. Gen. Stat. § 75-16 (2003)(if damages are assessed for a violation of Chapter 75, the verdict of the jury shall be trebled); *Pinehurst, Inc. v. O'Leary Bros. Realty*, 79 N.C. App. 51, 61, 338 S.E.2d 918, 924, *disc. review denied*, 316 N.C. 378, 342 S.E.2d 896 (1986) (damages assessed pursuant to N.C. Gen. Stat. § 75-1.1 are trebled automatically). Instead of trebling the \$75,000 awarded under Issue Twelve, however, the trial court trebled \$1,114,000, the damages awarded under Issue Six, *supra*. We therefore remand to the trial court for an adjustment of plaintiff's award consistent with this opinion.

V.

Defendants' next two arguments allege error in the trial court's decision to admit several items of evidence over their objection. First, defendants argue the trial court should not have admitted plaintiff's Exhibits 38 and 59 into evidence as these exhibits were not properly authenticated and constituted inadmissible hearsay. Exhibit 38 purports to be a letter from Jesse Waldon to Dan Burris, which plaintiff alleges is proof of their conspiracy to deprive her of her shares in EWSI-NC. Exhibit 59 is the group of documents plaintiff Waldon claims to have received in the Federal Express package from defendant Burris after Jesse Waldon left for Vietnam. The documents contained in Exhibit 59 include (1) a Shareholders' Agreement listing Jesse Waldon and Dan Burris as the sole shareholders, (2) a blank stock certificate for Environmental Water Solutions, Inc., and (3) the alleged letter of conspiracy from Jesse Waldon to Burris, also entered into evidence as Exhibit 38.

Prior to opening arguments, defendants moved in limine to exclude Exhibit 38 for lack of authentication and relevance. Defendants also moved, by a separate motion in limine, to exclude hearsay statements of Jesse Waldon. At trial, upon plaintiff's offer of Exhibits 38 and 59 into evidence, defendants objected only on the grounds of authentication and relevance. Therefore, we will limit our review to the question of authentication. *See State v. Roache*, 358 N.C. 243, 292, 595 S.E.2d 381, 413 (2004) (stating that "a motion *in limine* is not sufficient to preserve for appeal the question of admissibility of evidence if the defendant does not object to that evidence at the time of trial"); *see also State v. Tutt*, ___ N.C. App. ___, ___ S.E.2d ___ (July 19, 2005) (COA04-821) (although the North Carolina Legislature amended Rule 103(a)(2) of the N.C. Code of Evidence to state that "[o]nce the court makes a definitive ruling on the

record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal,” where such amendment directly conflicts with N.C.R. App. P. 10(b), the amended statute must fail as the “procedure and practice” of the Appellate Division “lies within the exclusive authority of our Supreme Court”).

At trial, plaintiff testified that upon receipt of the Federal Express package, she “immediately called Dan [Burris],” who acknowledged having sent the package. With respect to Exhibit 38, the alleged letter between Burris and Waldon, she testified Burris told her it was “something that he and Jesse had discussed.” Under Rule 901 of the North Carolina Rules of Evidence, the requirement of authentication can be satisfied by the “Testimony of a Witness with Knowledge . . . [who states] that a matter is what it is claimed to be.” N.C. Gen. Stat. § 8C, Rule 901(b)(1) (2003). We conclude plaintiff demonstrated sufficient knowledge of the contents of the package she received from defendant Burris to authenticate those contents. The trial court did not err in admitting Exhibits 38 and 59 into evidence, and defendants' argument is overruled.

Second, defendants argue the trial court erred by allowing Exhibits 87 and 88 into evidence. Plaintiff Waldon testified these exhibits were deposit slips showing, respectively, one \$40,000 deposit made on 31 July 2001 and one \$50,000 deposit made on 2 August 2001 into Jesse Waldon's bank account. Plaintiff testified the deposits were made around the time dividends or profits would have been paid out under the contract. Defendants argue Exhibits 87 and 88 were not properly authenticated and plaintiff failed to lay a sufficient foundation for their admission.

At trial, defendants made general objections to the admission of Exhibits 87 and 88. However, defendants failed to provide any specific grounds for these objections. Rule 10(b)(1) of the North Carolina Rules of Appellate Procedure requires that “[i]n order to preserve a question for appellate review, a party must have presented to the trial court a timely request, objection or motion, stating the *specific grounds* for the ruling the party desired the court to make if the specific grounds were not apparent from the context.” N.C.R. App. P. 10(b)(1) (emphasis added). Upon careful review of the trial transcript, the grounds for defendants' objections were not apparent from the context at the time the exhibits were admitted. This Court has said that “a general objection, if overruled, is ordinarily not effective on appeal.” *State v. Hamilton*, 77 N.C. App. 506, 509, 335 S.E.2d 506, 508-09 (1985), *disc. review denied*, 315 N.C. 593, 341 S.E.2d 33 (1986) (stating that “a general objection to specific opinion testimony will not suffice to preserve the question of [an] expert's qualifications” to state his opinion as to the cause of death); *see also* N.C. Gen. Stat. § 8C-1, Rule 103(a)(1) (2003). This assignment of error is dismissed.

VI.

Defendants' final argument is that the trial court erred in granting a mandatory injunction awarding EWSI-NC a constructive trust against any proceeds from the contract of Water Resources Corporation, the corporation allegedly formed by Burris after the verdict in the trial court. The mandatory injunction required defendants to assign all rights and interests in the contract back to EWSI-NC and turn over all records, documents, and property of any kind belonging to EWSI-OK to the appointed receiver for EWSI- NC. The court also required Dynpar to pay all funds due under the contract to the receiver, or in the alternative, enabled the receiver to operate the contract.

Plaintiffs claim defendants' argument regarding the mandatory injunction is now moot because the contract was terminated in January 2004 by Computer Sciences Corporation, d/b/a Dynpar. Although there is nothing in the record before us to confirm plaintiffs' contention, both parties agree that the contract at issue has been terminated. Defendants contend the contract was terminated before the mandatory injunction was issued on 12 December 2003. It appears from the record that defendants wrongfully terminated the contract themselves to avoid payment to plaintiffs. However, because plaintiffs concede that there is no contract to be returned to either party, and because defendants' argument regarding the mandatory injunction is based on the non- existence of the contract, we conclude there is no controversy for this Court to resolve. *Bizzell v. Insurance Co.*, 248 N.C. 294, 296, 103 S.E.2d 348, 350 (1958) (holding that “[w]henver in the course of litigation it becomes apparent that there is an absence of a genuine adversary issue between the parties, the court should withhold the exercise of jurisdiction and

dismiss the action”). Therefore, this argument is dismissed.

Affirmed in part, reversed in part, and remanded for re- calculation of the damage award.

Judges MCCULLOUGH and ELMORE concur.

Report per Rule 30(e).

*** *Converted from WordPerfect* ***