NOT DESIGNATED FOR PUBLICATION

MAURICE J. RYAN,
An Individual

VERSUS

MARTECH UNLIMITED, INC.,
A Texas Corporation

NO. 02-CA-951

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE 29TH JUDICIAL DISTRICT COURT
PARISH OF ST. CHARLES, STATE OF LOUISIANA
NO. 50,855, DIVISION C
HONORABLE EMILE R. ST. PIERRE, JUDGE PRESIDING

DECEMBER 30, 2002

SOL GOTHARD
JUDGE

Panel composed of Judges Edward A. Dufresne, Jr.,
Sol Gothard, and Clarence E. McManus

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AFFIRMED

Plaintiff filed a petition for damages against his employer, Martech, alleging breach of an oral contract of employment. After trial on the merits, the court ruled in favor of plaintiff, awarding the sum of $9,658.73, together with legal interest thereon from date of judicial demand until paid, and costs. Thereafter, the trial court granted a partial new trial, for the limited purpose of denying defendant's exception of prescription. Defendant now appeals. We affirm the decision of the trial court.

Defendant, Martech Unlimited, Inc., is a company that performs marine surveys, and specializes in conducting "vetting" or pre-charter inspections of marine vessels. Martech employed Captain David Hallett as its president.

Evidence at trial established that in May of 1995, Captain Hallett hired plaintiff. During the initial interview, he and plaintiff were the only two people present. At that time, they discussed the manner of how wages would be calculated. Plaintiff was informed that he would receive his "bonus" in early to mid December, in time for the holiday season.

Plaintiff received his bonus check of $6,957.00 in mid-December. He was unsatisfied with amount, and he complained to Captain Hallett. Captain Hallett recalculated the bonus and on March 15, 1996, a second check for $877.00 was

issued. This payment was classified as a deferred portion of the 1995 bonus. Captain Ryan stated that this amount was still inadequate.

Captain Ryan ceased his employment with Martech in March of 1996.

The salary agreement between the parties was based on the billing fees from the jobs on which plaintiff worked. From these fees, Captain Ryan would receive a monthly salary and medical insurance coverage. Expenses were deducted and the remaining profit was split 50-50% between Martech and Captain Ryan. The parties disagreed on the manner of calculating deducted expenses. Captain Ryan stated that the deduction amounts were actual expenses incurred. Captain Hallett testified that the expenses deducted were a standardized amount, based on the fee generated for the job. If the expenses were greater, then the actual cost was deducted. However, if the expenses were less, no credit was given.

Captain Ryan submitted his actual expenses at trial, and based on this evidence, contended that he was still owed $9,958.73. The trial court found for plaintiff, and rendered judgment accordingly.

In this appeal, Martech alleges that the trial court erred in finding that plaintiff had satisfied his burden of proof. Defendant further alleges that the trial court erred in applying La. C.C. art. 2056. Finally, defendant alleges that the trial court erred in failing to find that plaintiff's cause of action, relative to the 1995 bonus, had prescribed.

> On appellate review, the court's function is to determine whether the findings of the trier of fact were clearly wrong or manifestly erroneous. *Brown v. Seimers*, 98-694 (La.App.5 Cir.1/13/99), 726 So.2d 1018, 1021, *writ denied*, 99-0430 (La.4/1/99), 742 So.2d 556. Where there is a conflict in testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable. *Id.* at 1021. The issue to be resolved by the reviewing court is not whether the factfinder was right or wrong, but whether its conclusion was a reasonable one. Id. Thus, where two permissible views of the evidence exists, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong. *Id.* at 1021. Only where the

> documents or objective evidence so contradict a witness' story, or the story itself is so internally inconsistent or implausible on its face that a reasonable factfinder would not credit a witness' story, may the court of appeal find manifest error, even in a finding purportedly based upon a credibility determination. *Id.* at 1021; *Rosell v. Esco*, 549 So.2d 840, 844-45 (La.1989).

Robinson v. Doe , 02-0258 (La.App. 5 Cir. 9/30/02), ___ So. 2d ___.

In this case, there is no written contract, and the judgment hinges on the trial court's determination of credibility. The trial court considered the testimony of all the witnesses, and found that Captain Ryan was correct in his assertion of the calculation of wages. This is a factual finding, and we are bound by the standard of review as stated above.

Appellant argues that the trial court erred in applying La. C.C. art. 2056, which states that:

> In case of doubt that cannot be otherwise resolved, a provision in a contract must be interpreted against the party who furnished its text.
>
> A contract executed in a standard form of one party must be interpreted, in case of doubt, in favor of the other party.

In his reasons for judgment, the trial court indicated that although the contract at issue was not a written contract, the principles expounded in C.C. art. 2056 would be applicable. He then explained that Martech "chose to rely solely on its own understanding of the agreement" for compensation between the parties, instead of providing to its new employee a "written explanation of the comprehensive compensation scheme that it utilized" for calculating payment.

A "trial court's written reasons, while defining and elucidating the principles upon which he is deciding a case, form no part of the official judgment he signs and from which appeals are taken." *First Progenitor, v. Lake Financial Serv.*, 95-251 (La. App. 5 Cir. 9/26/95), 662 So.2d 507, 509. We cannot find that the trial court was in error in accepting plaintiff's interpretation of the employment agreement.

Martech next alleges that the trial court erred in denying its exception of prescription. C.C. art. 3494 provides a three-year prescriptive period for an action for the recovery of compensation for services rendered. C.C. art. 3495 provides that prescription "accrues as to past due payments even if there is a continuation of labor, supplies, or other services." Defendant asserts that this suit, filed on January 4, 1999, is untimely insofar as it asserts a claim for the December 1995 bonus.

Captain Hallett testified that when Captain Ryan questioned the amount of the 1995 bonus, he agreed to recalculate the amount, and he then issued a supplemental check in March of 1996. This was sufficient to interrupt the running of prescription, and therefore prescription did not begin to accrue until March of 1996, when Captain Ryan received the last of the 1995 bonus. Compare *Gary v. Camden Fire Ins. Co.*, 96-0055 (La. 7/2/96), 676 So.2d 553. We find no error in the trial court's denial of the exception of prescription.

For the above-discussed reasons, the trial court's judgment is affirmed. All costs are assessed against appellant.

AFFIRMED

Court of Appeal

FIFTH CIRCUIT

STATE OF LOUISIANA

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CERTIFICATE

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN MAILED OR DELIVERED THIS DAY DECEMBER 30, 2002
TO ALL COUNSEL OF RECORD AND TO ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

PETER J. FITZGERALD, JR.
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