[Cite as *Skoda Minotti Co. v. DiGioia*, 2010-Ohio-4901.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94810

SKODA MINOTTI COMPANY

PLAINTIFF-APPELLEE

vs.

MIKE DIGIOIA, ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-696073

BEFORE: Dyke, J., Kilbane, P.J., and Cooney, J.

RELEASED AND JOURNALIZED: October 7, 2010

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ANN DYKE, J.:

{¶ 1} This appeal is before the Court on the accelerated docket pursuant to App.R. 11.1 and Loc. App.R. 11.1.

{¶ 2} Defendants-appellants, Mike DiGioia and M. DiGioia Co., LLC ("defendants"), appeal the trial court's granting of summary judgment in favor of plaintiff-appellee, Skoda Minotti Company ("plaintiff"). For the reasons set forth below, we affirm.

{¶ 3} In a letter dated September 13, 2005, plaintiff proposed to offer accounting services for defendants. The letter read:

{¶ 4} "We will perform the following services:

{¶ 5} review the financial statements of the M. DiGioia Company, LLC beginning for the period ending December 31, 2005,

{¶ 6} compile an annual financial statement for Mike & Jeanne DiGioia,

{¶ 7} and prepare the various tax returns (see list below) of various affiliated entities."

{¶ 8} The letter then expressed the terms of the agreement, the services plaintiff would perform, and the responsibilities of both plaintiff and defendants. Additionally, the letter specifically identified the charges for each of the services to be performed by plaintiff and the terms regarding payment of those services. Specifically, plaintiff indicated that a fee of $20,000 to $27,000 would be incurred for the services. Finally, the letter concluded with the statement "Thank you for the opportunity, we look forward to a fine continuing relationship with your Company for many years to come." Mike DiGioia signed the bottom of the letter acknowledging its terms and the stated fees.

{¶ 9} Plaintiff undertook work contemplated in the engagement letter and sent defendants invoices for completed work. By November 2008, however, plaintiff informed defendants that there was an unpaid balance.

{¶ 10} On June 18, 2009, plaintiff instituted the instant action against defendants, alleging that defendants owed $15,130.03, including interest, for services rendered. Defendants denied liability, refuting the amount claimed, and the billing rates. Defendants also asserted that the parties had no agreement for the calendar years 2006 and 2007.

{¶ 11} Plaintiff moved for summary judgment on January 19, 2010. In relevant part, plaintiff presented evidence that defendant DiGioia signed the

engagement letter and had no evidence of payments that should be credited against the balance due. After considering plaintiff's motion, defendants' brief in opposition, and plaintiff's reply brief, the trial court granted judgment in favor of plaintiff and against defendants in the amount of $15,130.03.

{¶ 12} Defendants now appeal and present one assignment of error for our review. Their sole error provides:

{¶ 13} "The trial court erred in granting Appellee's Motion for Summary Judgment regarding the contract for accounting services at issue."

{¶ 14} With regard to procedure, we note that an appellate court reviews the grant of summary judgment de novo using the same standards as the trial court. *Nationwide Mut. Fire Ins. Co. v. Guman Bros. Farm*, 73 Ohio St.3d 107, 108, 1995-Ohio-214, 652 N.E.2d 684.

{¶ 15} A trial court may not grant a motion for summary judgment unless the evidence before the court demonstrates that: (1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the party against whom the motion for summary judgment is made. See, e.g., *Vahila v. Hall* (1997), 77 Ohio St.3d 421, 429-30, 674 N.E.2d 1164.

{¶ 16} The burden of showing that no genuine issue exists as to any material fact falls upon the moving party in requesting summary judgment. Id.,

citing *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66, 375 N.E.2d 46. The party moving for summary judgment bears the initial burden of informing the trial court of the basis for its motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. *Vahila v. Hall,* supra.

{¶ 17} In responding to a motion for summary judgment, the nonmoving party may not rest on "unsupported allegations in the pleadings." Civ.R. 56(E); *Harless v. Willis Day Warehousing Co.,* supra. Rather, Civ.R. 56 requires the nonmoving party to respond with competent evidence that demonstrates the existence of a genuine issue of material fact for trial. *Vahila v. Hall,* supra. Summary judgment, if appropriate, shall be entered against the nonmoving party. *Jackson v. Alert Fire & Safety Equip., Inc.* (1991), 58 Ohio St.3d 48, 52, 567 N.E.2d 1027.

{¶ 18} With regard to the substantive law, we note that the construction of a written contract is a matter of law, and such construction is reviewed without deference to the trial court's determination. *Nationwide Mut. Fire Ins. Co. v. Guman Bros. Farm*, supra. The goal of construing contract language is to effectuate the parties' intent. *In re Kelley & Ferraro Asbestos Cases*, 104 Ohio St.3d 605, 2004-Ohio-7104, 821 N.E.2d 159. "The intent of the parties to a contract is presumed to reside in the language they chose to employ in the agreement." *Kelly v. Med. Life Ins. Co.* (1987), 31 Ohio St.3d 130, 509 N.E.2d 411, paragraph one of the syllabus. Additionally, when the parties' agreement is

integrated into an unambiguous, written contract, courts should give effect to the plain meaning of the parties' expressed intentions. *Aultman Hosp. Assn. v. Community Mut. Ins. Co.* (1989), 46 Ohio St.3d 51, 544 N.E.2d 920, syllabus.

{¶ 19} In this matter, defendants maintain that the trial court erred in granting plaintiff summary judgment because genuine issues of material fact remain as to the contractual term "beginning for the period ending December 31, 2005." According to defendants, there was an agreement "through December 31, 2005," or ending as of that date, and there was no agreement for the next subsequent time periods. Moreover, according to defendants, the contractual language is susceptible to more than one interpretation and this ambiguity requires it to be interpreted by the court.

{¶ 20} In this matter, we do not find the phrase "beginning for the period ending December 31, 2005" to be ambiguous, as it clearly sets forth the period for which the engagement would begin. Further, we note that in *State ex rel. Bricker v. United/Anco Servs., Inc.,* Franklin App. No. 07AP-319, 2008-Ohio-1372, the court used the phrase "beginning with the pay period ending" to signal the start of the stated period. Conversely, in *Portage Chrysler Plymouth, Inc. v. Heisler* (Oct. 24, 1977), Portage App. No. 731, the court held that the phrase "term ending" unambiguously signals the termination of the stated period.

{¶ 21} In addition, defendants offered no documents to support the claim that representation ended as of December 2005, as no work from an earlier time

was shown and there was no explanation as to how plaintiffs undertook the engagements for 2006 and 2007 without defendant's help in supplying information and documentation. Further, in his deposition, DiGioia stated that billings were disputed "up through 2009."

{¶ 22} Defendants additionally assert that the engagement ended on December 31, 2005 because there is "no express agreed pricing for calendar years 2006 and 2007." The engagement letter plainly indicates, however, that plaintiff's standard hourly rates range from $75 to $250 per hour.

{¶ 23} Next, defendants argue that genuine issues of material fact precluded the award of summary judgment because defendants believed the accounting charges were excessive. DiGioia testified that "[a]ccording to quotes from everybody else about 75% of these bills that were sent to me were over billed." Defendants also presented DiGioia's handwritten note that "two different accountants quoted 06 for 4250 — why the big difference?" This hearsay evidence does not create a genuine issue of material fact as to the excessiveness of the bills. Defendants' remaining evidence, including bills from other accountants, is also insufficient to create a genuine issue of material fact as these bills, which were not verified by affidavit, did not demonstrate that plaintiff had charged an excessive rate or otherwise overbilled.

{¶ 24} In accordance with all of the foregoing, the trial court correctly awarded summary judgment to plaintiff. The assignment of error is without merit. Judgment affirmed.

It is ordered that appellee recover from appellants costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANN DYKE, JUDGE

MARY EILEEN KILBANE, P.J., and
COLLEEN CONWAY COONEY, J., CONCUR