[Cite as *Morgan v. Village Printers, Inc.*, 2004-Ohio-3751.]

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

DANIEL P. MORGAN, formerly d/b/a THE VILLAGE PRINT SHOP, INC.,	:	APPEAL NO. C-030701 TRIAL NO. A-0103897
Plaintiff-Appellee,	:	*D E C I S I O N.*
vs.	:	
THE VILLAGE PRINTERS, INC.,	:	
and	:	
NEIL ADAMS and GWEN ADAMS,	:	
Defendants-Appellants,	:	
and	:	
CAPSTEAD INC., BANK ONE N.A., CENTRAL SAVINGS ASSOCIATION,	:	
and	:	
ROBERT A. GOERING, TREASURER,	:	
Defendants.	:	

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: July 16, 2004

McElwee & McElwee and *John L. McElwee,* for Plaintiff-Appellee,

Cohen, Todd, Kite & Stanford, LLC, and *Michael R. Schmidt*, for Defendants-Appellants.

We have sua sponte removed this cause from the accelerated calendar.

Per Curiam.

{¶1} Pursuant to a 1996 sales agreement, defendants-appellants, The Village Printers, Inc., Neil Adams and Gwyn Adams ("Village Printers") purchased a printing business from plaintiff-appellee, Daniel P. Morgan. Village Printers now appeals from three judgments of the trial court arising from disputes over accounts-receivable payments due to Morgan under the agreement. Village Printers argues that, pursuant to R.C. 1303.40, it established the defense of accord and satisfaction when Morgan negotiated its check payable for less than the amount due under the sales agreement, which was accompanied by a letter indicating that the check was payment in full on a promissory note. Because Village Printers had not established that its dispute over the accounts receivable was a bona fide dispute, as defined in R.C. 1303.40, it was not entitled to the accord-and-satisfaction defense.

{¶2} In 2001, Morgan brought suit to recover the unpaid amounts due under the 1996 sales agreement. As part of that agreement, Village Printers was to obtain accounts receivable in the amount of $20,000. Morgan and Village Printers created a list of accounts receivable prior to closing. This list was incorporated as an exhibit to the sales agreement. At the closing, Village Printers signed a promissory note payable to Morgan in the amount of $120,665 pursuant to the sales agreement.

{¶3} After the sale, Village Printers received payment of the first $20,000 specified in the agreement from the accounts receivable listed on the exhibit. When the

balance on the note became due in January 2001, Village Printers subtracted from the amount still due the amount owed on accounts for Environmental Networks and the Red Cross listed in the receivables exhibit, totaling $5,946.78.

{¶4} Village Printers argued that an accord and satisfaction occurred when Morgan negotiated a check that was accompanied by a letter indicating that the check was payment in full on the promissory note. Morgan had accepted the check but noted that the check was a "partial" payment.

{¶5} In their first assignment of error, Village Printers argues that the trial court abused its discretion in overruling the magistrate's initial decision granting summary judgment to Village Printers on the bona-fide-dispute issue. The assignment of error is overruled.

{¶6} Any error by a trial court in denying a motion for summary judgment is rendered moot or harmless, when a subsequent trial on the same issue reveals that there are genuine issues of material fact supporting a judgment in favor of the party opposing the motion. See *Continental Ins. Co. v. Whittington*, 71 Ohio St.3d 150, 1994-Ohio-362, 642 N.E.2d 615, syllabus; see, also, *Air Products & Chemicals, Inc. v. Indiana Ins. Co.* (Dec. 23, 1999), 1st Dist. Nos. C-980947 and C-990009.

{¶7} Here, the magistrate held a subsequent trial on the issue of whether the dispute was bona fide. The parties presented evidence on this issue. The trial court reviewed the record, received the briefs of counsel, heard arguments on this issue, and upheld the magistrate's decision. Therefore, the pretrial error, if any, was moot or harmless. "[I]t would work an injustice to reverse a judicial determination based upon a greater quantum of evidence in favor of one reached before trial on less evidence." *Air*

Products & Chemicals, Inc. v. Indiana Ins. Co., citing *Continental Ins. Co. v. Whittington,* 71 Ohio St.3d at 157, 1994-Ohio-362, 642 N.E.2d 615.

{¶8} In its second assignment of error, Village Printers argues that the trial court "abused its discretion" in overruling its objections and adopting the magistrate's finding, after a bench trial, that there was no bona fide dispute over the amount of accounts receivable and that Village Printers could not prevail on the defense of accord and satisfaction.

{¶9} Accord and satisfaction is available as a defense only when there is an actual disagreement as to the amount owed: there must be a "good-faith dispute about the debt." *Allen v. R.G. Indus. Supply* (1993), 66 Ohio St.3d 229, 611 N.E.2d 794, paragraph two of the syllabus. R.C. 1303.40 requires that the amount of the claim be "subject to a bona fide dispute" before accord and satisfaction is available as an affirmative defense to a claim for money damages. See, also, *Allen v. R.G. Indus. Supply*, 66 Ohio St.3d at 231, 611 N.E.2d 794; *Blevins v. Uniglobe Blevins Travel, Inc.* (Dec. 23, 1987), 1st Dist. No. C-870129; *Dawson v. Anderson* (1997), 121 Ohio App.3d 9, 13, 698 N.E.2d 1014.

{¶10} Whether a dispute is bona fide is ordinarily a question of fact to be resolved by the trier of fact. See *Dawson v. Anderson*, 121 Ohio App.3d at 14, 698 N.E.2d 1014; see, also, *Blevins v. Uniglobe Blevins Travel, Inc.*, citing *Indianapolis v. Domhoff & Joyce Co.* (1941), 69 Ohio App. 109, 36 N.E.2d 153. Thus Village Printers essentially argues that the magistrate and the trial court, after reviewing the exhibits and a complete transcript of the bench trial, erred in weighing the testimony adduced in two days of trial. Specifically, it contends that it was justified in withholding amounts due from the Environmental Networks and Red Cross printing jobs because those jobs were

not properly accounts receivable, as they had been outsourced and were not invoiced by Morgan at the time of the sale.

{¶11} It is well settled that a judgment supported by some competent, credible evidence going to all the essential elements of a case or defense will not be reversed by a reviewing court as being against the manifest weight of the evidence. See *Myers v. Garson* (1993), 66 Ohio St.3d 610, 614 N.E.2d 742; see, also, *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578. It is also firmly established that, in reviewing the weight of the evidence, an appellate court is ordinarily bound by the credibility determinations made by the magistrate and adopted by the trial court as the trier of fact. See *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus; see, e.g., *Pitts v. Children's Hosp. Med. Ctr.*, 1st Dist. No. C-010506, 2002-Ohio-2039.

{¶12} While the testimony at the trial highlighted numerous disputes between the parties about what amounts were due to Morgan under the sales agreement, there was competent, credible evidence to support findings (1) that the exhibit to the sales agreement contained a clear, complete, and mutually prepared list of accounts receivable; (2) that it was incorporated into the sales agreement and included the amounts for the Environmental Networks and Red Cross printing jobs; (3) that Village Printers received the first $20,000 of accounts receivable as specified in paragraph two from various customers identified in the accounts-receivable exhibit; and (4) that Village Printers received the entire consideration that it had contracted to receive in January 1996. The second assignment of error is overruled.

{¶13} In its third assignment of error, Village Printers argues that the trial court erred in awarding attorney fees to Morgan under a fee-shifting agreement in the promissory note. Village Printers' reliance on this court's decision in *Vermeer of S. Ohio, Inc. v. Argo Constr. Co.* (2001), 144 Ohio App.3d 271, 277-278, 760 N.E.2d 1, is misplaced. Unlike the lessor's service manager in *Vermeer*, here, during the protracted period of negotiation over the sale of the printing business, each of the parties was represented by experienced business professionals with access to legal counsel. The trial court's fee ruling was correct, as the fee agreement was "the product of a 'free and understanding negotiation,' between 'parties of equal bargaining power and similar sophistication.'" Id. at 278, 760 N.E.2d 1 (internal citations omitted). The third assignment of error is overruled.

{¶14} Therefore, the judgment of the trial court is affirmed.

Judgment affirmed.

HILDEBRANDT, P.J., GORMAN and **SUNDERMANN, JJ.**

Please Note:

The court has placed of record its own entry in this case on the date of the release of this Decision.