[Cite as *Admin Net Tech, L.L.C. v. Med. Imaging Diagnostics, L.L.C.*, 2019-Ohio-3584.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

ADMIN NET TECH LLC,

Plaintiff-Appellant,

v.

MEDICAL IMAGING DIAGNOSTICS, LLC et al.,

Defendants-Appellees.

OPINION AND JUDGMENT ENTRY
Case No. 18 MA 0111

Civil Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 2015 CV 2551

BEFORE:
Carol Ann Robb, Cheryl L. Waite, Judges and Arlene Singer, Judge of the Sixth District Court of Appeals, Sitting by Assignment.

JUDGMENT:
Affirmed.

Atty. Edward T. Saadi, Edward T. Saadi, LLC., 970 Windham Court, Suite 7, Boardman, Ohio 44512 for Plaintiff-Appellant and

Atty. Andrew R. Zellers, Richard G. Zellers & Associates, Inc., 3965 Boardman-Canfield Road, Building B, Suite 300, Canfield, Ohio 44406 for Defendants-Appellees.

Dated: August 23, 2019

Robb, J.

{¶1} Plaintiff-Appellant Admin Net Tech, LLC appeals the decision of the Mahoning County Common Pleas Court finding Defendant-Appellee Albert M. Bleggi was not personally liable for the debts of Defendant Medical Imaging Diagnostics, LLC. Appellant contends this decision was not supported by sufficient evidence, was contrary to the manifest weight of the evidence, and improperly relied on documents generated after contract formation to speculate as to what a non-witness knew about the company prior to contract formation. For the following reasons, the trial court's judgment is affirmed.

STATEMENT OF THE CASE

{¶2} In 2015, Appellant filed a breach of contract action against Medical Imaging Diagnostics, LLC and Albert M. Bleggi dba Medical Imaging Diagnostics, alleging the defendants failed to pay outstanding invoices for computer equipment and services. Summary judgment was granted against Medical Imaging Diagnostics, LLC in the amount of $17,449.96. (5/9/17 J.E.) On the issue of whether Dr. Bleggi was personally liable for the debt, the case proceeded to a bench trial before a magistrate. At trial, Appellant's counsel framed the issue as whether Dr. Bleggi disclosed he was acting as an agent and whether he disclosed the identity of the principal. (Tr. 10-11).

{¶3} Appellant presented the testimony of its current president, Ellissa Scott. She said Bill Adair served as the president from 2001-2012, at which time he moved and relinquished his ownership interest in the company.[1] Ms. Scott was the vice-president and secretary of the company during that time; she also did the billing and was the custodian of records. (Tr. 49-50). Ms. Scott testified to unpaid invoices totaling $17,449.96 which were billed to "Medical Imaging Diagnostics" (without LLC after the

[1] When this member left, Ms. Scott refiled as different entity, changing the company's name from Administrative Network Technologies, Inc. to Admin Net Tech, LLC. The contracts at issue were thus entered during the existence of Appellant's predecessor, but both are collectively referred to as Appellant.

name). The first invoice, dated November 30, 2011, showed services rendered and equipment provided that month which totaled $3,657.04. (Pl. Ex. E).

{¶4} Earlier, on August 17, 2011, Appellant generated an estimate for 15 new computers and some accompanying services for this client. The computers were not ordered at the time, and the estimate was revised on February 20, 2012, showing the price for 12 computers and instructing the customer to sign, date, and return the estimate to schedule the installation. On February 29, 2012, Dr. Bleggi signed and dated the estimate, which was the only signed document produced. (Pl. Ex. B). The required deposit of $5,549.10 for the equipment order was paid to Appellant at this time, leaving $6,554.43 due as shown by a March 5, 2012 invoice. (Pl. Ex. G). The services part of the estimate was invoiced on June 4, 2012 for $4,393.87. (Pl. Ex. P).

{¶5} Other outstanding invoices included: $274.88 for a service call on January 4, 2012 (Pl. Ex. V); $103.12 for a March 7, 2012 service call (Pl. Ex. I); $145.98 for a March 13, 2012 service call (Pl. Ex. L); $375.50 for a service call on April 9, 2012 (Pl. Ex. K); $181.47 for equipment in a June 4, 2012 invoice (Pl. Ex. O); $301.30 for a service call on June 6, 2012 (Pl. Ex. R); $779.28 for service calls on June 13, 14, 19, and 22, 2012 (Pl. Ex. S); $559.68 for one year of data backup beginning in July 2012 (Pl. Ex. T); and $123.30 for diagnostics on July 6, 2012 (Pl. Ex. U).

{¶6} Ms. Scott said Appellant first performed work for Dr. Bleggi in 2002. A certificate from the Ohio Secretary of State showed Articles of Organization were filed in 2007 for Medical Imaging Diagnostics, LLC by its agent, Dr. Bleggi. (Pl. Ex. Y). Ms. Scott claimed she did not know Dr. Bleggi was acting as an agent for an LLC when he employed their services before or after this date. She believed he was personally doing business as Medical Imaging Diagnostics. (Tr. 37-38, 43-44). She was the person who entered the client's name in their system as "Medical Imaging Diagnostics" but did not know when she did so. (Tr. 61).

{¶7} On November 2, 2011, Ms. Scott received a fax from an employee at "Medical Imagining Diagnostics LLC" (note the use of LLC). The fax asked Ms. Scott to complete an attached questionnaire on the readiness of their prior computer system for

upgrade to a new billing system (required to bill government programs). (Tr. 46-47).[2] On March 13, 2012, another questionnaire was faxed to Ms. Scott from the same employee at "Medical Imagining Diagnostics LLC" who said "Bill said you could help me with this." Ms. Scott said this questionnaire was completed to show the specifications for the new computer systems. (Tr. 48-49). She said the handwriting on the form appeared to be that of Mr. Adair (Appellant's former president). (Tr. 62). He handwrote the "Client Name" on the questionnaire as "Medical Imaging Diagnostics LLC" (and elsewhere wrote "Medical Imaging"). On March 19, 2012, he faxed his response to "Medical Imaging Diagnostics LLC."

{¶8} On June 18, 2012, Appellant sent a letter (signed by both Mr. Adair and Ms. Scott) to "Medical Imaging, LLC" (at the same address listed on Appellant's invoices for "Medical Imaging Diagnostics"); the letter mentioned the project was put on hold by Dr. Bleggi. Although it was her company who placed this client name in the letter she signed, Ms. Scott said she did not know the name "Medical Imagining, LLC." Ms. Scott disclosed that Mr. Adair "was close with Dr. Bleggi" and his wife worked for Dr. Bleggi. After reviewing the documents, she acknowledged "[i]t looked like [Mr. Adair] might have known" Medical Imaging Diagnostics was an LLC. (Tr. 50-51).

{¶9} Dr. Bleggi did not attend the trial due to a health condition. Appellant caused to be read portions of Dr. Bleggi's deposition testimony into the record. Dr. Bleggi said he was the sole member of Medical Imaging Diagnostics, LLC. (Tr. 82). He assumed the invoices from Appellant represented work performed at the medical office, suggesting the employees at the office coordinated the work. He did not know whether any of the invoices had been paid. When asked if there was a reason he did not sign the estimate as president or as a member of Medical Imaging Diagnostics, LLC, he responded, "Not that I'm aware of, no." (Tr. 83-84). After he was asked to acknowledge that the estimate (generated by Appellant) did not say "LLC" after "Medical Imaging Diagnostics," he was asked, "Did you ever disclose to Admin Net Tech that you were acting on behalf of an LLC when you signed that document?" He replied, "I don't recall." (Tr. 84).

[2] Under the underlined main letterhead listing "Medical Imaging Diagnostics LLC," there were four other entities listed: Boardman X-ray/MRI; Breast Care Center, Liberty MRI, and The Mammovan (three of which had the same street address as Medical Imaging Diagnostics LLC).

{¶10} On April 9, 2018, the magistrate's decision found Dr. Bleggi was not personally liable. The magistrate reviewed the testimony and quoted case law on agency. The magistrate pointed out the issue of whether an agency relationship and the identity of the principal were disclosed or known to a third person was a question of fact. The magistrate noted the LLC was created years prior to the invoices at issue and the manner in which the parties conducted their prior business dealings was not presented at trial. The magistrate found that although Ms. Scott testified she was unaware the client was an LLC, the evidence clearly showed the agency relationship was known to Appellant's president and should have been known to Ms. Scott. The magistrate pointed to documents sent throughout the project establishing Appellant knew the agency relationship and the identity of the principal.

{¶11} Appellant filed timely objections, claiming Dr. Bleggi did not make Appellant aware he was an agent for an identified limited liability company and the court should not speculate as to what a non-witness (Appellant's former president) knew based on documents sent after contract formation. On September 19, 2018, the trial court overruled the objections and adopted the magistrate's decision. Appellant filed a timely appeal and contests the decision finding Dr. Bleggi was not personally liable.

ASSIGNMENTS OF ERROR

{¶12} Appellant sets forth the following four assignments of error, which Appellant addresses[3] together:

"INSUFFICIENT EVIDENCE EXISTS TO SUPPORT THE TRIAL COURT'S DECISION THAT APPELLEE ALBERT BLEGGI IS NOT PERSONALLY LIABLE FOR THE DEBTS TO THE APPELLANT."

"THE TRIAL COURT'S DECISION THAT APPELLEE ALBERT BLEGGI IS NOT PERSONALLY LIABLE FOR THE DEBTS TO THE APPELLANT IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

"THE TRIAL COURT ERRED IN BASING ITS DECISION ON SPECULATION AS TO WHAT A NON-WITNESS KNEW, OR WHAT A NON-WITNESS'S TESTIMONY MIGHT HAVE BEEN."

[3] We note App.R. 12(A)(2) and App.R. 16(A)(7) require an appellant to argue each assignment of error separately (and provide authority to disregard an assignment of error in violation of the rule).

"THE TRIAL COURT ERRED IN INFERRING, FROM DOCUMENTS CREATED AFTER FORMATION OF THE CONTRACT, THAT APPELLANT KNEW OF APPELLEE ALBERT BLEGGI'S AGENCY AND KNEW THE IDENTITY OF THE PRINICIPAL."

{¶13} As Appellant points out, sufficiency and weight are different standards that apply in civil cases (just as they are different standards in criminal cases). *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 6, 9-10, 13, 17. Sufficiency involves the burden of production, whereas weight involves the burden of persuasion. *See State v. Thompkins*, 78 Ohio St.3d 380, 390, 678 N.E.2d 541 (1997) (Cook, J., concurring). *See also Eastley* at ¶ 19.

{¶14} Sufficiency is a question of law asking whether adequate evidence was presented on each element to determine whether the evidence was legally sufficient to support a verdict as a matter of law (or whether the case could be submitted to a jury). *Id.* at ¶ 11, 19, citing *Thompkins* at 386. The question is merely whether some rational trier of fact could have found the elements of the claim proven by the applicable standard (here preponderance of the evidence) upon evaluating the evidence in the light most favorable to the party asserting the claim. *See generally State v. Goff*, 82 Ohio St.3d 123, 138, 694 N.E.2d 916 (1998) (light most favorable to the prosecution). Reasonable inferences can be considered. *See State v. Filiaggi*, 86 Ohio St.3d 230, 714 N.E.2d 867 (1999). And, circumstantial evidence inherently possesses the same probative value as direct evidence. *State v. Treesh*, 90 Ohio St.3d 460, 485, 739 N.E.2d 749 (2001).

{¶15} Weight involves the persuasive effect of the evidence upon evaluating whether credible evidence was offered at trial which indicates the party with the burden of proof was entitled to their verdict. *Eastley* at ¶ 12, 19. When considering a manifest weight challenge, the appellate court weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether in resolving conflicts in the evidence, the fact-finder clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered. *Id.* at ¶ 20, citing *Thompkins* at 387 (the power of the appellate court to reverse a judgment as being against the manifest weight of the evidence is to be exercised only in the exceptional case in which the evidence weighs heavily against the conviction).

{¶16} "In weighing the evidence, the court of appeals must always be mindful of the presumption in favor of the finder of fact." *Eastley*, 132 Ohio St.3d 328 at ¶ 21 (every reasonable presumption must be made in favor of the judgment and the finding of facts). "Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *C. E. Morris Co. v. Foley Const. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus. In addition, the trier of fact is in the best position to weigh the evidence and judge the witnesses' credibility by observing their gestures, voice inflections, and demeanor. *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984). The fact-finder is free to believe some, all, or none of the testimony presented by each witness and may separate the credible parts of the testimony from the incredible parts. *State v. Mastel*, 26 Ohio St.2d 170, 176, 270 N.E.2d 650 (1971); *State v. Heard*, 7th Dist. Mahoning No. 17 MA 0064, 2019-Ohio-1227, ¶ 45. When there are two fairly reasonable views of the evidence or two conflicting versions of events, neither of which is unbelievable, we will not choose which one is more credible. *See State v. Gore*, 131 Ohio App.3d 197, 201, 722 N.E.2d 125 (7th Dist.1999).

{¶17} Initially, Appellee responds that although the weight of the evidence can be reviewed, the allegation of insufficient evidence cannot, because the plaintiff is appealing a decision (after a bench trial) finding the defendant was not liable on the plaintiff's claim. Appellee notes that sufficiency involves the elements of the claim brought by the plaintiff.

{¶18} On the topic of sufficiency, Appellant cites the Supreme Court's *Wagner* case which states: "When a motion for a directed verdict is entered, what is being tested is a question of law; that is, the legal sufficiency of the evidence to take the case to the jury. This does not involve weighing the evidence or trying the credibility of witnesses. * * * The 'reasonable minds' test of Civ.R. 50(A)(4) calls upon the court only to determine whether there exists any evidence of substantial probative value in support of [the claims of the party against whom the motion is directed]." *Wagner v. Roche Labs*, 77 Ohio St.3d 116, 119, 671 N.E.2d 252 (1996). However, that case involved a directed verdict, which is limited to a jury trial.

{¶19} In a bench trial, a defendant can move for Civ.R. 41(B)(2) dismissal after the plaintiff's case, which allows the trial court to determine the facts by weighing the

evidence; on appeal, a dismissal on this ground will not be set aside unless there was a legal error or the judgment was against the manifest weight of the evidence; the review proceeds as if the entire trial proceeded. *Martin v. Lake Mohawk Property Owner's Assoc.*, 7th Dist. Carroll No. 04 CA 815, 2005-Ohio-7062, ¶ 19. "When reviewing a civil appeal from a bench trial, an appellate court utilizes a manifest-weight standard of review." *Victor v. Big Sky Energy, Inc.*, 11th Dist. Ashtabula No. 2017-A-0045, 2018-Ohio-4666, ¶ 50. *See also Susany v. Guerrieri*, 2016-Ohio-1062, 48 N.E.3d 637, ¶ 39-40 (7th Dist.).

{¶20} Here, we are reviewing the judgment rendered in favor of a defendant (after a civil bench trial). "[A] challenge to the sufficiency of the evidence asks whether the plaintiff has met his or her burden of production by proving each element by a preponderance of the evidence." *Averback v. Montrose Ford, Inc.*, 2019-Ohio-373, 120 N.E.3d 125, ¶ 33 (9th Dist.), quoting *Lynch v. Greenwald*, 9th Dist. Summit No. 26083, 2012-Ohio-2479, ¶ 20. We note the appellate court does not apply the sufficiency standard when reviewing the rejection of an affirmative defense in a criminal case. *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, 840 N.E.2d 1032, ¶ 38 (noting a sufficiency review involves "the sufficiency of the state's evidence, not the strength of defense evidence"). In any event, as implicated infra, reasonable minds could come to a conclusion in favor of Dr. Bleggi.

{¶21} We also note Appellant (who was the plaintiff) does not argue the trial court erred in finding it did not present sufficient evidence to allow its claim to proceed, and the trial court did not suggest it found the plaintiff's evidence insufficient as a matter of law. The magistrate issued a detailed decision outlining the facts presented at trial. The magistrate did not dismiss the claim in Appellant's complaint or rule as a matter of law. The magistrate specified that the issue (of whether the agency relationship and the identity of the principal were disclosed or known to the plaintiff) was a question of fact. It was concluded that certain evidence was "more compelling" than the evidence that Dr. Bleggi could not recall if he disclosed he was an agent for the LLC when he signed a particular estimate. This involves the weight of the evidence, as discussed in Appellant's second assignment of error.

{¶22} After arguing there was insufficient evidence to support the defense on Dr. Bleggi's agency because reasonable minds could only come to a conclusion in Appellant's favor, Appellant does not contest the law applied by the trial court. Appellant quotes from this court's *C-Z Construction* case:

> When a person incorporates his business and proceeds to conduct business on behalf of the corporation, he is acting as an agent for the corporation. But like any other agent, he may still incur personal liabilities. Thus, he will avoid personal liability for debts of the corporation only if he complies with the rules which apply in all agency relationships--he must so conduct himself in dealing on behalf of the corporation with third persons that those persons are aware that he is an agent of the corporation and it is the corporation (principal) with which they are dealing, not the agent individually.

C-Z Constr. Co. v. Russo, 7th Dist. Mahoning No. 02CA148, 2003-Ohio-4008, ¶ 18, quoting *Alpha Concrete Corp. v. DiFini*, 8th Dist. Cuyahoga No. 48390 (Jan. 10, 1985), citing *James G. Smith & Assoc., Inc. v. Everett*, 1 Ohio App.3d 118, 120, 439 N.E.2d 932 (1981) (10th Dist.).

{¶23} "Where a contract is made in furtherance of the interests of an undisclosed principal, both the principal and the agent are liable for breach of its underlying obligations. * * * Under such circumstances, the agent and the undisclosed principal are jointly and severally liable for breach of the agreement." *Illinois Controls, Inc. v. Langham*, 70 Ohio St.3d 512, 524-525, 639 N.E.2d 771 (1994). To avoid personal liability for contracts entered in his name, the agent must disclose the agency relationship and the identity of the principal. *C-Z Constr.* at ¶ 20. If both the existence of the agency and the identity of the principal are known to the person with whom the agent deals, then there is a disclosed principal situation and the agent is not liable. *See Alpha Concrete* (the rationale for not imposing personal liability is that the third-party intends to deal with the principal), citing *James G. Smith* at 120.

{¶24} In one case, a supplier sued a corporate owner personally in his name "dba Parks Hill Steel" to collect on outstanding invoices for goods sold. The owner's answer denied personal liability for the business debt of his company "Parkshill Steel Corp." After

a bench trial, the court imposed personal liability on the owner. The Eighth District reversed, finding the documentary evidence showed the plaintiff billed the customer as "Parks Hill Steel" (without "Corp.") at the corporation's address (and did not bill the owner), concluding the evidence strongly indicated the plaintiff "was put on notice that it was dealing with the business entity, Parkshill Steel Corp., rather than [the owner] personally, as all of the billings and account information were in the company's name." *M. Steel, Inc. v. Seltzer*, 8th Dist. Cuyahoga No. 95336, 2011-Ohio-2522, ¶ 14-15 (where the plaintiff's representative testified that payments were made through a company's checks but he was dealing with the owner personally).

{¶25} In an earlier case relied upon by Appellant, the Eighth District affirmed a trial court's finding of personal liability after a bench trial. *Independent Furniture Sales, Inc. v. Martin*, 184 Ohio App.3d 562, 2009-Ohio-5697, 921 N.E.2d 718 (8th Dist.). The court focused on the evidence of the parties' history of dealings and pointed out the supplier included the owner personally in bills prior to his incorporation under a new and dissimilar name unknown to the supplier prior to the contract. *Id.* at ¶ 14 (the defendant continued doing business under a fictitious name which was similar to the prior name). These facts are not on point.

{¶26} Even if the facts were similar to the case at bar, an appellate court's decision to affirm a fact-finder's decision after reviewing an assignment of error on the weight of the evidence would not necessarily require reversal where a different fact-finder weighed slightly similar evidence differently. *See, e.g., Mass v. Mass*, 7th Dist. Belmont No. 17 BE 0004, 2017-Ohio-9049, ¶ 19, 29 (in reviewing whether there was competent, credible evidence to support the trial court's decision, we noted that "upholding a trial court judgment in one case does not require reversal of an opposite trial court judgment in another case"). This is because weight of the evidence involves the persuasive effect of the evidence on the fact-finder and credibility judgments, and the appellate court is to give deference to the finder-of-fact on these matters where there is some competent, credible evidence in support. *Eastley*, 132 Ohio St.3d 328 at ¶ 21 (every reasonable presumption must be made in favor of the judgment and the finding of facts). A manifest weight review is not the same as the original weighing by the fact-finder.

{¶27} Finally, "[t]he issue of whether or not an agency relationship and the identity of the principal were disclosed or known to a third party is a question of fact." *C-Z Constr.,* 7th Dist. No. 02CA 418 at ¶ 21 (remanding for trial where the individual was billed for materials over the course of a year without indicating he was buying for a corporation), quoting *Alpha Concrete* (where the Eighth District reversed a trial court judgment after trial, refused to impose personal liability where bills had been paid with corporate checks even though the owner was billed personally at his home address, and found the supplier should have been on notice that the purchases were not personal). Also, if a contract is ambiguous as to whether a person intended to sign personally or as an agent, the matter is a question of fact for the trial court. *Van Dress Law Offices Co. v. Dawson*, 8th Dist. Cuyahoga No. 105189, 2017-Ohio-8062, ¶ 24.

{¶28} The standard of proof was preponderance of the evidence. "A preponderance of the evidence is defined as that measure of proof that convinces the judge or jury that the existence of the fact sought to be proved is more likely than its nonexistence." *State ex rel. Doner v. Zody*, 130 Ohio St.3d 446, 2011-Ohio-6117, 958 N.E.2d 1235, ¶ 54. This "more likely than not" standard does not require a firm conviction or belief (as where the standard is clear and convincing evidence). *Id.*

ANALYSIS

{¶29} The question presented to the trial court was whether Appellant was dealing with an undisclosed agency relationship or an undisclosed identity of the principal so that personal liability could be imposed upon Dr. Bleggi. We begin by noting some of the unpaid invoices were for work ordered by employees of Medical Imaging Diagnostics rather than by Dr. Bleggi personally, were not encompassed by the written estimate signed by Dr. Bleggi, and were based on oral contracts. The defense claims Dr. Bleggi was acting as an agent when signing the estimate addressed to the business, suggesting this was akin to the employees who were acting as agents of the business when they authorized less costly goods and services represented in other invoices at issue in this case. The parties agree the signed estimate was a written contract. The estimate did not mention anything about a personal guarantee and explicitly listed the client as Medical Imaging Diagnostics, not Dr. Bleggi. Although, the form of the signature was bereft of agent-specific signals, the form of the promise did not appear personal in nature.

{¶30} In the estimate and all of the outstanding invoices, Appellant named its client as "Medical Imaging Diagnostics" and billed this client at the Boardman address where the business was located. This was a location where Appellant's employees, including the current president, had visited to provide IT services and was in the same township as Appellant's own business. This name for the client was also used by Appellant in August 2011, months before the provision of goods and services in the disputed invoices, when the estimate was first generated; it was not signed by Dr. Bleggi until February 29, 2012, after revisions were made. This indicates Appellant knew Dr. Bleggi had authority as the agent of the business. From this, Dr. Bleggi urges the very invoices at issue clearly show the principal was not undisclosed and that Appellant was aware of the principal for whom Dr. Bleggi was signing. Appellant counters that the invoicing to "Medical Imaging Diagnostics" at the business address merely showed that Ms. Scott knew Dr. Bleggi's "dba name" not that she knew the business was a limited liability company (suggesting he could have been operating as a sole proprietorship).

{¶31} However, her testimony need not be accepted as wholly accurate or credible, and her knowledge is not the only knowledge relevant to show what Appellant and its representatives knew. On the first point, the fact that Dr. Bleggi could not recall whether he expressly disclosed (to Ms. Scott who said she watched him sign the estimate) that he was acting on behalf of an LLC *when he signed the estimate* in 2012 does not mean Appellant did not already know that Appellant's client was the business "Medical Diagnostics Imaging, LLC." The question posed was whether he "ever disclosed to [Appellant] that you were acting on behalf of an LLC when you signed this document?" The question was not simply whether he "ever" disclosed to a representative of Appellant that his business was an LLC.

{¶32} Ms. Scott said she believed Appellant was doing business with Dr. Bleggi and said he never disclosed the LLC status *to her*, but it was for the trial court to judge her credibility. After hearing her testimony and viewing the unobjected-to evidence, the trial court suggested Ms. Scott knew or should have known the business (that she entered into Appellant's database as a client and that she visited to perform IT services) was an LLC or otherwise separate from Dr. Bleggi personally. To the extent the trial court

suggested Ms. Scott in fact knew the client was an LLC, this would be a matter of credibility.

{¶33} To the extent the court alternatively said she should have known, it is generally held that the agent is not liable for services rendered to its principal if the third party providing the services had sufficient information to give notice of the identity of the principal and that information can come from any source. *See, e.g., Port Ship Service, Inc. v. Norton, Lilly & Co., Inc.*, 883 F.2d 23 (5th Cir.1989) (a plaintiff's constructive knowledge is sufficient for an agent to avoid personal liability); *Alpha Concrete*, 8th Dist. No. 48390 (finding the supplier "should have been on notice" defendant was acting as the agent for a certain principal).

{¶34} Regardless, Ms. Scott was not the only pertinent representative of Appellant. In fact, Ms. Scott acknowledged that it appeared Appellant's former president was aware the client was an LLC. She disclosed that Mr. Adair's wife worked at the client's office and Mr. Adair was "close" with Dr. Bleggi. Mr. Adair was Appellant's president from 2001-2012, for the entire relationship with this client (which first started in 2002 and ended in 2012). Although Mr. Adair was not called to testify, documents he generated were introduced as Appellant's business records without objection and were reviewed during the testimony of Ms. Scott.

{¶35} The fact that these documents were generated after the February 29, 2012 signed estimate (and after some other invoices) does not mean they cannot be considered. The timing and contents of the March 2012 upgrade form completed by Appellant's president (and the March 19, 2012 fax he sent thereafter) constituted part of the totality of the circumstances. Appellant's president (Mr. Adair) completed a form for "Medical Imaging Diagnostics, LLC" by expressly handwriting this name (including LLC) on the form and subsequently on a fax cover sheet *less than three weeks after the estimate was signed* by Dr. Bleggi. This form was specifically completed by Appellant *in anticipation* of the upgrades that were encompassed in the February 29, 2012 written estimate. Moreover, this use of LLC for the client was *before* some of the unsigned invoices which were used as part of Appellant's damages in this lawsuit.

{¶36} Three months after Mr. Adair completed the form using LLC for the client's name, he and Ms. Scott sent a letter about the pending project, which was addressed to

the LLC ("Medical Imaging, LLC") at the office's address. (Def. Ex. F). The fact that Mr. Adair and Ms. Scott forgot to put the word "Diagnostics" in the caption of their letter is clearly an issue attributable to Appellant's typist and not to the client. Going to her credibility, she signed this letter addressed to the LLC, but she then indicated she never knew during the project that the client was an LLC.

{¶37} These documents directly show what Appellant knew at the time the documents were generated. Contrary to Appellant's suggestion, the knowledge of Appellant's president, as announced in his communications that were admitted as business records, can be imputed to Appellant. *See generally Raible v. Raydel,* 162 Ohio St. 25, 29, 120 N.E.2d 425, 427 (1954) (general rule is that notice to an agent is notice to his principal).

{¶38} The timing of the March communication from Appellant's president also tends to show what Appellant knew days before, at the time of the February 29, 2011 estimate (which was addressed to the Medical Imaging Diagnostics, was an estimate for upgrading that client's computer system, and was signed by Dr. Bleggi). In general, a party's knowledge may be inferred from the circumstances surrounding the transaction at issue, including conduct occurring after the transaction. *See State v. Johnson*, 93 Ohio St.3d 240, 245, 754 N.E.2d 796 (2001) (intent for a criminal offense can be inferred from conduct occurring before, during, and after the offense). Although post-contract discovery of an agency relationship does not cure the undisclosed principal issue for completed contracts, there is no indication that the LLC status was discovered by Appellant in the days after the estimate was signed.[4]

{¶39} Moreover, "nothing in Ohio law prohibits a judgment in a civil case from being based on circumstantial evidence." *Dolan v. Glouster*, 4th Dist. Athens No. 11CA18, 2014-Ohio-2017, ¶ 45. "Both circumstantial and direct evidence are sufficient to support a verdict, and, in some cases, circumstantial evidence may be more persuasive

[4] Appellant continued to deal with the client and render future services in the contract (and other separate services) after the March communications in which Appellant labeled the client as an LLC. Even if the trial court would have ruled in favor of Appellant on the undisclosed agency/principal issue due to the evidence *at the time of the estimate*, Appellant does not explain how there would be personal liability for certain invoices issued subsequent to the March labeling by Appellant.

than direct evidence." *Price v. K.A. Brown Oil & Gas, L.L.C.*, 7th Dist. Monroe No. 13 MO 13, 2014-Ohio-2298, ¶ 30, citing *Michalic v. Cleveland Tankers, Inc.*, 364 U.S. 325, 330, 81 S.Ct. 6, 5 L.Ed.2d 20 (1960) (allowing the fact-finder to infer a dispositive fact because: "direct evidence of a fact is not required. Circumstantial evidence is not only sufficient, but may also be more certain, satisfying and persuasive than direct evidence.").

{¶40} The trial court rationally considered the labels in documents generated by Appellant *in conjunction with* earlier documents which put any post-contract documents in context. Notably, other evidence existed in this case. This other evidence includes the close relationship of Appellant's president and Medical Imaging Diagnostic, LLC's sole member, the fact that the wife of Appellant's president worked at this client's office, and pre-contractual communications disclosing the LLC status of the client. Showing pre-contractual knowledge by Appellant or disclosure by the client of the status as an LLC, there was consistency in the form of the client's letterhead, with LLC after the name. As stated above, this accurate client name was used to fax Appellant the requested form that was completed on March 13, 2012.

{¶41} Even earlier, the client faxed the same upgrade form to Appellant on November 2, 2011, in order to memorialize the computer system's pre-upgrade specifications. This fax was sent to Appellant, specifically to Ms. Scott, by an employee of the client on the letterhead of "Medical Imaging Diagnostics, LLC" with the same business address contained in Appellant's client database. This communication from the client was almost four months prior to the estimate signed by Dr. Bleggi and weeks prior to the first rendering of services at issue in this case at the oral request of other employees. (Def. Ex. B). This evidence can be used by a fact-finder to extend Appellant's awareness to before the first invoice at issue (for November 21, 2011 services).

{¶42} Contrary to Appellant's claim, the fact that four other business names were listed under this main, centered, underlined business heading does not detract from the significance of "LLC" placed after Medical Imaging Diagnostics, which was the company listed in Appellant's own client database. Notably, *this fax was sent to Ms. Scott*, the very witness whose testimony could be judged by the fact-finder for accuracy and credibility.

{¶43} Again, the invoices *generated by Appellant* (with Ms. Scott in charge of billing) were the documents that failed to contain LLC after the client's name. The

creditor's own data entry is not akin to a client's active use of a trade name that could be interpreted as an individual doing business under the trade name. There was no evidence that *the client sent* documents omitting LLC from the name, and the only evidence of documents generated by the client were documents that *did contain the LLC specification*. One of these documents was provided to Appellant before any of the work at issue was performed. There was no indication of how Appellant billed the client prior to the 2007 formation of the LLC at issue. Although there was no evidence Appellant had been paid from the LLC's account, there was also no evidence this "long term client" made payments on a personal account at any time before the 2011-2012 work (or during this period, such as when making the deposit on the estimate).

{¶44} The client in Appellant's billing system and printed on the signed estimate was "Medical Imaging Diagnostics," not Dr. Bleggi. The lack of LLC after the name of the signed estimate did not per se mean that he was personally liable. *See The Promotion Co., Inc. v. Sweeney*, 150 Ohio App.3d 471, 2002-Ohio-6711, 782 N.E.2d 117, ¶ 25 (7th Dist.) ("As for naming the represented person, appellant seems to argue that without the word "Inc.," the principal was not actually disclosed. However, a principal was disclosed; the omission of "Inc." by the plaintiff-drafter of the contract did not make the principal undisclosed or partially disclosed"). The factual question was for the trial court after the bench trial. *C-Z Constr.,* 7th Dist. No. 02CA148 at ¶ 21 ("The issue of whether or not an agency relationship and the identity of the principal were disclosed or known to a third party is a question of fact").

{¶45} We conclude the trial court did not err in assigning weight to documents drafted by a non-witness after the contract was formed and did not issue a decision contrary to the manifest weight of the evidence. Not only could some rational mind find in favor of Dr. Bleggi, but there was substantial competent, credible evidence to support the trial court's decision. The trial court weighed the evidence and testimony and decided that the totality of the circumstances showed Appellant was put on notice and was aware that it was dealing with an LLC owned by Dr. Bleggi before the contracts were entered for the provision of goods and/or services to the business in Appellant's client database. This is not the exceptional case where the evidence weighs heavily against the trial court's decision finding it "more likely than not" the client's status as an LLC was disclosed to

Appellant prior to the contracts or Appellant was otherwise aware it was dealing with an LLC whose computer system needed upgraded and that Dr. Bleggi acted as its agent when he signed the estimate addressed to the business. Appellant's assignments of error are overruled, and the trial court's judgment is affirmed.

Waite, P.J., concurs.

Singer. J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.