[Cite as *Snyder v. Lawrence*, 2020-Ohio-4731.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
CARROLL COUNTY

THOMAS SNYDER ET AL.,

Plaintiffs-Appellants,

v.

CAROLYN LAWRENCE ET AL.,

Defendants-Appellees.

OPINION AND JUDGMENT ENTRY
Case No. 19 CA 0938

Application for Reconsideration

BEFORE:
David A. D'Apolito, Gene Donofrio, Carol Ann Robb, Judges.

JUDGMENT:
Application Denied.

Atty. Chad Murdock, 228 West Main Street, P.O. Box 248, Ravenna, Ohio 44266, for Plaintiff-Appellant Village of Malvern and

Atty. John McCall, Jr., and *Atty. John Wirtz,* 4150 Belden Village Street NW, Suite 606, Canton, Ohio 44718, for Defendants-Appellees Russel and Lois Reed.

Dated: September 25, 2020

PER CURIAM.

{¶1} On June 24, 2020, Appellant, Village of Malvern filed an application for reconsideration of our June 15, 2020 opinion and judgment entry affirming the entry of summary judgment in favor of Appellees, Russell and Lois Reed by the Carroll County Common Pleas Court in this breach of contract action. See *Snyder v. Lawrence*, 7th Dist. Carroll No. 19 CA 0938, 2020-Ohio-3358. Appellees, Russell and Lois Reed, filed their brief in opposition on July 29, 2020. Appellant filed its reply brief on August 7, 2020.

{¶2} App.R. 26 provides for the filing of an application for reconsideration in this Court, but includes no guidelines to be used in the determination of whether a decision is to be reconsidered. *Deutsche Bank Natl. Trust Co. v. Knox*, 7th Dist. Belmont No. 09-BE-4, 2011-Ohio-421, 2011 WL 334508, ¶ 2, citing *Matthews v. Matthews*, 5 Ohio App.3d 140, 143, 450 N.E.2d 278 (10th Dist.1981). The test generally applied is whether the application for reconsideration calls to the attention of the court an obvious error in its decision or raises an issue for our consideration that was either not considered or not fully considered in the appeal. *Id.*

{¶3} An application for reconsideration is not designed for use in instances where a party simply disagrees with the conclusions reached and the logic used by an appellate court. *Deutsche Bank* at ¶ 2, citing *State v. Owens*, 112 Ohio App.3d 334, 336, 678 N.E.2d 956 (11th Dist.1996). Rather, App.R. 26 provides a mechanism to prevent the possible miscarriage of justice that may arise where an appellate court makes an obvious error or renders an unsupportable decision under the law. *Id.*

{¶4} In its application for reconsideration, Appellant contends that we erred when we considered certain evidence in the record to conclude that no implied-in-fact contract existed between the parties. More specifically, Appellant argues we should have limited our implied contract analysis to the transaction between the parties.

{¶5} A contract is implied in fact if the meeting of the minds is shown by the surrounding circumstances, which make it inferable that the contract exists as a matter of tacit understanding. *Christopher v. Automotive Fin. Corp.*, 7th Dist. Mahoning No. 06 MA 186, 2008-Ohio-2972, ¶ 33, citing *Legros v. Tarr*, 44 Ohio St.3d 1, 6-7, 540 N.E.2d 257

(1989). To establish a contract implied in fact, "a plaintiff must demonstrate that the circumstances surrounding the parties' transaction make it reasonably certain that an agreement was intended." *Wajda v. M&J Automotive, Inc.*, 7th Dist. Mahoning No. 10-MA-7, 2010-Ohio-6584, ¶ 44.

{¶6} Appellees began collecting rents at a manufactured home park pursuant to an assignment of rents in April of 2016. At the same time, Appellees began paying bills issued monthly by Appellant for water usage at the park. In January of 2019, Appellees stopped paying the water bill.

{¶7} Appellant argues that Appellees' voluntary payment of the mobile home park water bills, and the fact that they were the named account holders on the bills, constitutes evidence of an implied-in-fact contract between the parties. Appellees argue that they never tacitly agreed to be personally responsible for the water bills, but, instead, paid the water bills as long as the monthly rents were sufficient to pay the water bills.

{¶8} We relied, in part, on the following facts to conclude that no implied-in-fact contract existed between the parties:

> First, the April 20, 2016 letter to tenants plainly states that "[a]t the same time the mortgage was filed, an Assignment of Rents was also filed with the Carroll County Recorder. This document allows the Lender (Mr. Reed) to collect all of the rents from the Park, instead of Mrs. Lawrence." Appellees clearly explain in their initial correspondence with the tenants that they are collecting the rents pursuant to an assignment of rents, not because they are assuming ownership or control of the park.
>
> Further, when the water consumption at the park became an issue, Russell Reed informed the tenants that the water bills would not be paid. The December 7, 2017 letter reads, in pertinent part, "I[f] the leaks are not repaired immediately and usage returned to 100,000-120,000 [gallons] per month I can only assume the [V]illage will eventually shut the water off and all will be forced to move." The letter concludes with the admonition that "[i]f the consumption of water is not brought under control we will not be able to pay the water bills."

> Appellees' correspondence with the tenants establishes their belief that they were not personally liable for the water bill. There is no evidence that Appellees agreed to be responsible for water bills that exceeded the total rent collected each month.
>
> Of equal import, the trial court entered a default judgment against Carolyn Lawrence and/or the Trust and in favor of Appellant, based on Carolyn's written contract with Appellant. Appellant's pursuit of the default judgment against the Lawrences belies their argument that Appellees had tacitly assumed responsibility for payment of the water bill following the Lawrences' default on the loan. While Appellant may assert competing legal theories regarding the responsible party on the account, Appellant may not collect a single debt from multiple parties.

Snyder, supra, ¶ 33-36.

{¶9} Appellant contends that we erred in considering Appellees' correspondence with the tenants because our review of the evidence should have been limited to "the circumstances surrounding the <u>parties'</u> <u>transaction</u> * * *." (Emphasis in original)(App. at 1.) In other words, Appellant argues that we should have limited our consideration to Appellees' conduct as it related to Appellant only.

{¶10} Appellant's burden of proof in this case was not to show its own justifiable reliance on Appellees' conduct, but, instead, Appellees' tacit agreement to be personally responsible for the park's water bills. Consequently, we considered all of Appellees' conduct following the assignment of rents in April of 2016, in order to determine whether their conduct established that they had entered into an unwritten agreement to be personally responsible for the park's water bills.

{¶11} Because Appellees' ongoing correspondence with tenants regarding water usage at the park constitutes the "circumstances surrounding the parties' transaction," *Wajda*, *supra*, and demonstrates that Appellees intended to pay the park's monthly water bills so long as sufficient monthly rents were collected, Appellant's application for reconsideration is denied.

JUDGE DAVID A. D'APOLITO

JUDGE GENE DONOFRIO

JUDGE CAROL ANN ROBB

NOTICE TO COUNSEL

This document constitutes a final judgment entry.