

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

Scheid Concrete, Inc.

Court of Appeals No. E-07-004

Appellee

Trial Court Nos. 06-CVH-061
06-CVH-062

v.

Terry McDonald

DECISION AND JUDGMENT ENTRY

Appellant

Decided: May 4, 2007

* * * * *

Paul G. Lux, for appellee.

Michele A. Smith, for appellant.

* * * * *

PIETRYKOWSKI, P.J.

{¶ 1} This is an appeal from the judgment of the Huron Municipal Court which, following a bench trial, found in favor of appellee, Scheid Concrete, Inc., for the amount it alleged was owed for completed concrete flat work. For the reasons that follow, we affirm the trial court's decision.

{¶ 2} On March 23, 2006, appellee, Scheid Concrete, Inc. ("Scheid Concrete"), filed two complaints in this action; both were for monies allegedly due on oral contracts

for concrete flat work. Appellant, Terry McDonald, denied liability claiming that appellant incorrectly named him, individually, rather than Today's Lifestyle Builders, Inc., with whom he was employed as secretary.

{¶ 3} On October 2, 2006, appellant filed a motion for summary judgment arguing that because he clearly disclosed his agency status, he could not be held personally liable for the amounts due on the invoices. The trial court denied the motion. On December 5, 2006, the case proceeded to a bench trial where the following evidence was presented.

{¶ 4} Jeffrey Scheid, president and CEO of Scheid Concrete, testified that appellant telephoned him and met him in person to show him a new home construction which needed a concrete driveway, sidewalk, and patio. Scheid testified that he and appellant orally contracted for Scheid Concrete to do the work. Once the work was completed, Scheid sent an invoice to Today's Lifestyle Builders, Inc. for \$7,336.17. Scheid testified that appellant told him to send the invoice to Today's Lifestyle Builders.

{¶ 5} Scheid testified regarding two additional jobs Scheid Concrete completed at appellant's request. Scheid met appellant at the job site and they orally contracted for the work. Again, Scheid invoiced Today's Lifestyle Builders for a total of \$10,626.85. Scheid Concrete was not paid on the invoices.

{¶ 6} Scheid testified that appellant never indicated that Scheid Concrete was doing work for a corporation; Scheid dealt only with appellant. Scheid denied that

appellant gave him a business card the first time they met. Scheid testified that he was able to contact appellant because his telephone number was saved on his cell phone.

{¶ 7} Appellant testified that he has been the secretary with Today's Lifestyle Builders, Inc., since 2000. Appellant stated that there is also a president of the corporation. Appellant testified that when he first met with Scheid he indicated that he worked for Today's Lifestyle Builders; appellant also gave Scheid one of his business cards identifying him as the company secretary. Appellant stated that a Today's Lifestyle Builders sign was out in front of the home where they met. Appellant further testified that he never indicated to Scheid that he was personally requesting Scheid Concrete's services. Appellant admitted that Scheid Concrete completed its work in a timely and workmanlike manner.

{¶ 8} On December 8, 2006, the trial court granted judgment in favor of Scheid Concrete. The court found that appellant had failed to demonstrate that he affirmatively disclosed his agency status to Scheid Concrete. This appeal followed. Appellant now raises the following assignment of error:

{¶ 9} "The trial court erred when it found that appellant did not disclose his agency relationship to the appellee and found that appellant was personally liable for funds due and owing to appellee."

{¶ 10} Initially, we note that in reviewing factual findings of a trial court, the standard of review an appellate court must apply is manifest weight of the evidence. The judgment of a trial court should not be overturned as being against the weight of the

evidence if some competent and credible evidence supports that judgment. *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 280. Factual findings of the trial court are deferred to because the trial court is in a better position "to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80.

{¶ 11} In his sole assignment of error, appellant argues that the testimony and exhibits presented at trial demonstrate that appellant affirmatively disclosed his agency relationship to Scheid. Appellant asserts that he informed Scheid as follows: he verbally notified Scheid of the agency relationship prior to the start of Scheid Concrete's first job; he gave Scheid a business card identifying him as an officer of Today's Lifestyle Builders; Today's Lifestyle Builders' signs were in the front yards of the homes they were constructing; he re-informed Scheid, on November 1, 2004, that Today's Lifestyle Builders was to be invoiced for the work; and Scheid was re-informed when appellant was contacted regarding the initial invoice.

{¶ 12} In general, an agent may be held personally liable for the principal's debt only if the principal is undisclosed, partially disclosed, or fictitious or nonexistent. (Citations omitted.) *Stryker Farms Exchange Co., Inc. v. Mytczynskyj* (1998), 129 Ohio App.3d 338, 341-342. The required disclosure includes not only the identity of the principal but also the agency relationship. *Sommer v. French* (1996), 115 Ohio App.3d 101, 103-104, citing *Dunn v. Westlake* (1991), 61 Ohio St.3d 102, 106.

{¶ 13} The crux of this case is whether appellant disclosed his agency relationship to Scheid. The answer to this question hinged on whether the trial court believed appellant's testimony or Scheid's testimony. Obviously, the court found Scheid's testimony to be more credible. Upon review of the transcript, we cannot say that the trial court's judgment was against the manifest weight of the evidence. Accordingly, we find that appellant's assignment of error is not well-taken.

{¶ 14} On consideration whereof, we find that substantial justice was done the party complaining and the judgment of the Huron Municipal Court is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Erie County.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, P.J.

JUDGE

Arlene Singer, J.

JUDGE

William J. Skow, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
