



NUMBER 13-16-00431-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

PATRICK JANIS,

Appellant,

v.

AT&T YELLOW PAGES, INC.,

Appellee.

**On appeal from the County Court at Law No. 2 of
Victoria County, Texas.**

MEMORANDUM OPINION

**Before Justices Contreras, Benavides and Longoria
Memorandum Opinion by Justice Longoria**

Appellee AT&T Yellow Pages, Inc. (Yellow Pages) brought suit against appellant Patrick Janis to recover the unpaid balance from the parties' advertising contracts. The trial court found Patrick Janis jointly and severally liable with Michael Bryant¹ on both

¹ Michael Bryant is not a party to this appeal.

contracts. On appeal, Janis argues that the trial court erred in finding him personally liable on both advertising contracts. We affirm.

I. BACKGROUND

Janis and Bryant are officers and shareholders of Calhoun Plumbing, Inc. d/b/a Mr. Rooter Plumbing. On February 21, 2008, Janis signed a contract with Yellow Pages to run advertising for Mr. Rooter Plumbing in the Victoria County Yellow Pages. On June 3, 2009, Bryant entered into another contract with Yellow Pages for advertising for Mr. Rooter Plumbing in the Victoria County Yellow Pages. After the advertising was published, Mr. Rooter Plumbing failed to make the necessary payments as required under the contracts. On January 26, 2011, Yellow Pages brought suit against Janis and Bryant individually to recover the unpaid balance, interest on the unpaid balance, and reasonable attorney's fees.

On April 19, 2016, the case was tried before the trial court. The trial court held that Janis was jointly and severally liable with Bryant on both contracts. The trial court entered judgment in favor of Yellow Pages for \$20,848.71, not including the prejudgment interest on the unpaid debt and \$7,500 for attorney's fees, subject to post-judgment interest. Janis and Bryant requested the trial court to enter written findings of fact and conclusions of law. See TEX. R. CIV. P. 296. However, the trial court did not submit any findings, and Janis did not file a past due notice for the findings. See *id.* R. 297. This appeal followed.

II. THE CONTRACTS

In one issue, Janis argues that the trial court erred in finding him personally liable on both contracts.

A. Standard of Review and Applicable Law

“The construction of an unambiguous contract is a question of law, which we review de novo.” *Wright Group Architects-Planners, P.L.L.C. v. Pierce*, 343 S.W.3d 196, 200 (Tex. App.—Dallas 2011, no pet.). Texas law does not presume agency. *Id.* To establish the affirmative defense of agency, a party must prove that he disclosed: (1) that he is acting in a representative capacity; and (2) the identity of the principal. *Id.*

Generally, the failure to file a past due notice for requested findings of fact and conclusions of law constitutes a waiver of the right to complain about the trial court’s failure to file findings. See *Sonnier v. Sonnier*, 331 S.W.3d 211, 214 (Tex. App.—Beaumont 2011, no pet.). In that situation, when the record contains no findings of fact and conclusions of law, courts imply all necessary findings to support the judgment. *Id.*

B. Discussion

i. 2008 Contract

For the 2008 contract that Janis personally signed, he argues that he should not be personally liable because the contract was unambiguous in indicating that he was acting merely as an agent of Mr. Rooter Plumbing. However, it is undisputed that Janis did not plead the affirmative defense of agency. Agency must be pled as an affirmative defense in order to avoid personal liability on a contract. See *Wright*, 343 S.W.3d at 200; TEX. R. CIV. P. 94. The defense is therefore waived. See *Wright*, 343 S.W.3d at 200.

Furthermore, even assuming that Janis pled the affirmative defense of agency, he did not demonstrate that he disclosed (1) that he was acting in a representative capacity and (2) the identity of the principal. See *id.* The contract lists the assumed name of Janis’s business, Mr. Rooter Plumbing, but it makes no mention of the “real principal,”

Calhoun Plumbing, Inc. See *Sw. Bell Media, Inc. v. Trepper*, 784 S.W.2d 68, 71 (Tex. App.—Dallas 1989, no writ). Janis argues that filing an assumed name certificate with the Secretary of State gave the entire public knowledge of the real principal. However, to be relieved of personal liability on a contract, an agent must show that the other party had actual knowledge of the real principal. See *id.* (holding that an “agent is not relieved from personal liability merely because the person with whom he dealt had a means of discovering that the agent was acting in a representative capacity, and knowledge of the real principal, irrespective of the source, is the test, which does mean actual knowledge, not suspicion”). Therefore, we conclude that the trial court did not err in finding Janis personally liable on the 2008 contract.

ii. 2009 Contract

For the 2009 contract signed by Bryant, Janis argues that the trial court erred in holding him jointly and severally responsible because he never signed that contract. Since Janis failed to file the required past due notice for the requested findings of fact and conclusions of law, see TEX. R. CIV. P. 297, all necessary findings to support the judgment are implied. See *Sonnier*, 331 S.W.3d at 214.

Janis and Bryant testified that they worked together as co-owners, but also that they frequently acted separately and independently from one another to operate the business. Based on the manner in which they conduct their business, the trial court found that Bryant had actual authority to sign the 2009 contract on Janis’s behalf. See *Texas Cityview Care Ctr., L. P. v. Fryer*, 227 S.W.3d 345 (Tex. App.—Ft. Worth 2007, pet. dism’d). We conclude that the Janis and Bryant’s testimony about how they conducted their business supports the trial court’s findings. See *Sonnier*, 331 S.W.3d at 214.

Therefore, the trial court did not err in finding Janis jointly and severally liable on the 2009 contract.

III. CONCLUSION

We affirm the judgment of the trial court.

NORA L. LONGORIA
Justice

Delivered and filed the
18th day of May, 2017.