IN THE UTAH COURT OF APPEALS

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A-1 Disposal, Plaintiff and Appellee, v. Mel Ingersoll, Defendant and Appellant.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20060261-CA F I L E D (August 9, 2007) 2007 UT App 272

Third District, Salt Lake Department, 030904374
The Honorable Bruce C. Lubeck

Attorneys: Blake S. Atkin, William O. Kimball, and Brennan H. Moss, Salt Lake City, for Appellant
Carl E. Kingston, Salt Lake City, for Appellee

Before Judges Davis, Orme, and Thorne.

ORME, Judge:

Mel Ingersoll appeals the trial court's order concluding that no enforceable contract existed between the parties. Because Ingersoll does not challenge the trial court's factual findings--only its legal conclusions--we take the trial court's findings of fact as our starting point and proceed to review its legal conclusions for correctness. See Wardley Better Homes & Gardens v. Cannon, 2002 UT 99,¶14, 61 P.3d 1009; In re Estate of Beesley, 883 P.2d 1343, 1347, 1349 (Utah 1994).

The trial court concluded that there was "no contract to enforce" because (1) it could not decipher the parties' intentions, (2) essential terms of the agreement were missing, and (3) it "[could] not determine whether the 'key' features [of the agreement had] been breached." We believe that the trial court's legal conclusion that there was no enforceable contract logically follows from the court's findings of fact, and we therefore affirm this pivotal determination.

Ingersoll argues that the trial court erred in concluding that there was no contract between the parties because the parties never disputed that there was a valid contract and

because the evidence clearly shows that there was a bargained for agreement whereby the parties agreed to exchange certain items and services. Ingersoll is right in a limited sense, but it is clear in context and from the findings that the trial court meant there were no unfulfilled contract terms that were sufficiently clear for the court to enforce.[1] And indeed, even when parties attempt to create an enforceable agreement or contract, missing or indefinite terms may render the agreement legally unenforceable. See Nielsen v. Gold's Gym, 2003 UT 37,¶¶11-12, 78 P.3d 600; Nunley v. Westates Casing Servs., Inc., 1999 UT 100,¶22, 989 P.2d 1077.

A trial court's determination that an agreement is unenforceable is a legal conclusion that we review for correctness, affording no particular deference to the trial court. Cf. Carter v. Sorensen, 2004 UT 33,¶6, 90 P.3d 637 ("We determine the existence of a contract . . . by resorting to principles of law; therefore, we grant no deference to the trial court[.]"); Herm Hughes & Sons, Inc. v. Quintek, 834 P.2d 582, 583 (Utah Ct. App. 1992) ("Whether a contract exists between parties is a question of law [that] we review . . . under a correction of error standard."). "'An agreement cannot be enforced if its terms are indefinite[.]'" Nunley, 1999 UT 100 at ¶22 (quoting Richard Barton Enters., Inc. v. Tsern, 928 P.2d 368, 373 (Utah 1996)). Thus, even if a writing and the circumstances under which the writing was formed show that the parties tried to reach an enforceable agreement, the agreement is unenforceable as a matter of law if a court cannot sufficiently discern the parties' intentions. See Nielsen, 2003 UT 37 at ¶12 ("[A] court must be able to enforce a contract according to the parties' intentions; if those intentions are impenetrable . . . there can be no contract to enforce."). Most importantly in this case, if a "trial court [can]not discern any basis for deciding whether [a contract] ha[s] been breached . . ., [it can]not enforce the contract." Id. Here, the trial court found that it "[could] not determine whether the 'key' features [of the agreement] ha[d] been breached" because essential terms were missing, including information regarding "payment, payment for what, . . . and the

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[1]Although, as Ingersoll suggests, some language used by the trial court may have been confusing, taken as whole the trial court's factual findings and legal conclusions demonstrate that it actually concluded there was no sufficiently clear contract between the parties that it could enforce with confidence. The trial court's intentions in this regard are not just a matter of inference. Indeed, the trial court stated, with our emphasis, that there was "no contract to enforce."

consideration for th[e] credit."[2] We agree that the parties' intentions under their purported agreement are largely impenetrable and their respective performances uncertain.

However, the parties did act in accordance with what they each believed was agreed upon during the May meeting, and we see no clear error in the trial court's determination that Ingersoll owes A-1 $8307. The findings show that A-1 provided Ingersoll with waste disposal services and expected payment for those services in the amount of $8307. The findings also show that Ingersoll acknowledged, at both the October and November meetings, that he owed A-1 $8307. At the November meeting, Ingersoll further acknowledged "that the remaining 'credit' of $6193 could be applied to what Powell owed A-1." Thus, these findings demonstrate that Ingersoll knew he owed A-1 $8307 for its services and that he basically assigned any interest he may have had in the credit to Powell to put toward the debt Powell owed A-1. See Milford State Bank v. Parrish, 88 Utah 235, 53 P.2d 72, 73-74 (1935) ("[I]t is a good equitable assignment . . . whenever . . . the person to whom an obligation is due authorizes the payment thereof to another, either for his own use, or for that of some other person, or authorizes any one to receive or hold moneys and to apply them to any specific purpose other than for the use or benefit of the assignor.") (citation and internal quotation marks omitted). A-1 also acknowledged that it owed Ingersoll a credit, as evidenced by its actions following the November meeting when it applied the credit to Powell's debt. Accordingly, because Ingersoll asked A-1 to apply his credit to

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[2]The trial court determined that the disputed agreement was not a multiple party contract among Powell, Ingersoll, and A-1, as asserted by Ingersoll, but an agreement only between Ingersoll and A-1. We note that we are not entirely convinced that this legal conclusion was supported by the factual findings. We also note that the factual finding stating why A-1 gave Ingersoll a credit is inconsistent with the trial court's conclusion that "A-1 did not give a 'credit' of $14,500 to a person A-1 had never met or done business with, as Ingersoll contends, based on the consideration of Powell's 'promise' to provide a truck." To the extent that these conclusions are not supported by the factual findings, however, any error does not affect our ultimate conclusion that there was no enforceable contract. The factual findings, taken as a whole, establish that it is impossible to discern the parties' intentions and whether and how anyone breached the agreement. Cf. DeBry v. Noble, 889 P.2d 428, 444 (Utah 1995) ("It is well-settled that an appellate court may affirm a trial court's ruling on any proper grounds, even though the trial court relied on some other ground.").

Powell's account, and because A-1 did as requested, Ingersoll knew or should have known that he still owed A-1 $8307 based on his own statements and actions at the November meeting--at least as found by the trial court.

Finally, we reject Ingersoll's argument that his Due Process rights were violated because he had no notice that the validity of the agreement was in issue. A-1 sued Ingersoll to recover payment for its services, and Ingersoll filed a counterclaim asserting that A-1 still owed him a credit. This fundamental disagreement about the parties' respective obligations was enough to put Ingersoll on notice that in order for the trial court to be able to enforce the agreement, it would have to determine what the terms of the agreement were and whether they were sufficiently definite as to be enforceable. Cf. Cottonwood Mall Co. v. Sine, 767 P.2d 499, 502 (Utah 1988) ("'[A] condition precedent to the enforcement of any contract is that there be a meeting of the minds of the parties, which must be spelled out, either expressly or impliedly, with sufficient definiteness to be enforced.'") (quoting Valcarce v. Bitters, 12 Utah 2d 61, 362 P.2d 427, 428 (1961)) (alteration in original).

Affirmed.

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Gregory K. Orme, Judge

WE CONCUR:

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James Z. Davis, Judge

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William A. Thorne Jr., Judge