

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

YELLOW BOOK USA, LP.,)
A Delaware Limited Partnership)
)
Plaintiff,)
)
v.)
)
JAMES R. DEARWORTH,)
t/a DEARWORTH FRAMES WORK,)
)
Defendant.

C.A. No.: 2000-08-336

Date Submitted: September 19, 2002
Date Decided: October 1, 2002

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Defendant
Pro-Se

FINAL ORDER AND OPINION

This is a debt action brought by Plaintiff to recoup monies allegedly owed pursuant to a valid written contract with Defendant for advertising service in the Yellowbook Brandywine and Wilmington directory in 1999. The defendant has denied liability. Trial took place on September 19, 2002. For the reasons set forth below, the Court enters judgment against James R. Dearworth, t/a Dearworth Frames Work in the amount of the principal balance of \$2,540.00 plus costs and interest at the legal rate, pursuant to 6 *Del. C.* § 2301 from December 16, 1998.

The Facts

At trial, James R. Dearworth (“Dearworth”) testified that he owns a commercial establishment entitled Dearworth Frames Work (“Dearworth Frames”) located at 1601 Concord Pike, Suite 35, Independence Mall, in Wilmington, Delaware. He is co-owner of Dearworth Frames with his wife. The business is a proprietorship, not a corporation.

In December 1998, John Dearworth, defendant’s son, was acting as an employee and Manager of Dearworth Frames. Dearworth testified at trial that he was “unaware” that his son John was holding himself out as a manager at his store. Plaintiff’s Exhibit No. 1, received into evidence, was a credit application filed by the business with Yellowbook signed by John Dearworth on December 16, 1998. Dearworth identified at trial the signature of his son John Dearworth which appeared in Exhibit No. 1.

On cross-examination Dearworth testified that he did not know that “Yellowbook” was a separate legal entity from the “Yellow Pages” and believes he previously instructed his son to do business with the Yellow Pages.

Nicole Johnson (“Johnson”), an employee of Yellowbook USA, Inc. (“Yellowbook”) testified at trial. Johnson is the custodian of records and employed as a paralegal for Yellowbook. Pursuant to Delaware Rules of Evidence 803(6), plaintiff’s counsel moved into evidence without objection the file of Dearworth Frames with Yellowbook. Plaintiff’s

Exhibit Nos. 2, 3, 4, 5, and 6 were also moved and received into evidence without objection by the defendant. Plaintiff's Exhibit No. 2 was a copy of the Standard Contract with Yellowbook signed by "John Dearworth, Manager" which Johnson testified was maintained in the regular course of business by Yellowbook. Defendant's contract with Yellowbook, indicated that Dearworth Frames, located at 1601 Concord Pike No. 35, purchased advertisements in the Yellowbook Brandywine and Wilmington Directory on February 16, 1998 for the calendar year 1999. Dearworth Frames paid a deposit of \$508.00 by check No. 1339 on the contract. On page 2 of Plaintiff's Exhibit No. 2 various headings were listed where the advertisement for Dearworth Frames was to appear in both the Brandywine and Wilmington directory of Yellowbook. Plaintiff's Exhibit No. 3 was introduced into evidence and was a copy of the proposed advertisement that was to appear in Yellowbook for Dearworth Frames. The advertisement and copy sheet was signed by John Dearworth as "Manager" for Dearworth Frames on December 16, 1998 when it was executed and presented to Dearworth Frames by a salesperson of Yellowbook. Details of the quality and layout of the Dearworth Frames' advertisement were set forth in Plaintiff's Exhibit No. 3. This document clearly indicated that John Dearworth signed as "Manager" on the contract with Yellowbook.

Plaintiff's Exhibit No. 4 was received into evidence and was a copy of the actual Yellowbook advertisement for Dearworth Frames where it

was listed in the Yellowbook under “Art Supplies” with the address listed as 1601 Concord Pike. A copy of the Yellowbook Directory, page 73 indicated the advertisement of Dearworth Frames which actually appeared in the directory for 1999-2000. Plaintiff’s Exhibit No. 4 were copies of the Brandywine Directory of Yellowbook with the same advertisement listing for Dearworth Frames that appeared in the Yellowbook for Brandywine/Hockessin area.

Plaintiff’s Exhibit No. 6 was received into evidence and was a copy of the advanced payment sheet for the Brandywine and Wilmington directory of Yellowbook. A copy of the check drawn on Wilmington Trust, no. 1339 was signed by John Dearworth on Dearworth Frames letterhead was received into evidence. The check was in the amount of \$508.00 was made out to “Yellowbook USA” and was dated December 19, 1998.

Plaintiff’s Exhibit No. 7 was received into evidence and was a copy of the “Standard Terms and Conditions of Yellow Book” which appear on the reverse side of the contract signed and executed between the parties.

Johnson testified at trial that the principal balance owed to Yellowbook by Dearworth Frames, which remained unpaid since December 16, 1998, was \$2,540.00

The defense presented its case in chief. John Dearworth was recalled and testified at trial. John Dearworth testified that Defendant’s Exhibit No. 3 which was his affidavit and received into evidence at trial. That affidavit alleged and John Dearworth so testified at trial that there

was a “No Solicitation Policy” in the Independence Mall. Dearworth’s affidavit provided that there were signs in “obvious places” in the Independence Mall in each individual business prohibiting contact by salespersons.

Other facts which were read into the record at trial from the affidavit were that John Dearworth believed that Yellowbook USA misrepresented themselves as the “Yellow Pages” of the phone book, and that he was instructed by his father to deal with the “Yellow Book Pages”. A copy of the “No Solicitation Policy” was also received into evidence, as well as Defendant’s Exhibit No. 4 which was a series of pictures with no soliciting signs that appear in entrance ways in the Independence Mall as a joint exhibit. Defendant’s Exhibit No. 5 was received into evidence, and which was a copy of the Yellow Pages Directory which was sent to Dearworth Frames Work at 1601 Concord Pike, Suite 35. Defendant’s Exhibit No. 6 was also received into evidence and depicted various logos for the limited purpose of showing the Yellowbook logos were similar to Yellow Pages’ logo. Defendant’s Exhibit No. 7 also depicted various business cards, which were offered for the limited purpose of depicting the alleged confusion between the Yellow Pages and the Yellowbook. Defendant’s Exhibit Nos. 1 and 2 were copies of Yellowbook’s pages of the previous calendar year, indicating the “House of 10000 Picture Frames” advertisement.

On cross-examination, John Dearworth testified that he was working at his father's store since December, 1997. He testified that he "used to be the Manager", but is no longer employed in that capacity. John Dearworth conceded his signature appears on the contract documents introduced into evidence. John Dearworth also indicated that the third page of the contract documents bears his signature. Plaintiff's Exhibit No. 2. indicated that by signing the contract that John Dearworth understood that he was ordering advertisements for Dearworth Frames from Yellowbook, not Yellow Pages. John Dearworth also conceded that Plaintiff's Exhibit No. 6 was a copy of the check tendered to "Yellowbook" signed by himself on December 16, 1998. John Dearworth testified that a co-worker "filled out" the executed contracts with Yellowbook and the check, but that he actually signed the written documents, as "Manager". John Dearworth also testified that the "copy sheets" depicting the form of advertisement received into evidence by the court bore his signature. He testified that he later examined the Yellowbook directories after the Dearworth Frames advertisements were placed in the directory at his request. John Dearworth also testified that the advertisements in Yellowbook were accurate and represented the advertisements he requested to be printed on December 16, 1998 from Yellowbook.

The Law

When there is a written contract, the plain language of a contract will be given its plain meaning. *Phillips Home Builders v. The Travelers Ins. Co.*, Del. Supr., 700 A.2d 127, 129 (1997). The party first guilty of material breach of contract cannot complain if the other party subsequently refuses to reform. *Hudson v. D.V. Mason Contractors, Inc.*, Del. Super., 252 A.2d 166, 170 (1969). In order to recover damages for any breach of contract, plaintiff must demonstrate substantial compliance with all the provisions of the contract. *Emmett Hickman Co. v. Emilio Capano Developer, Inc.*, Del. Super., 251 A.2d 571, 573 (1969). Damages for breach of contract will be in an amount sufficient to return the party damaged to the position that party would have been in had the breach not occurred. *Delaware Limousine Service, Inc. v. Royal Limousine Svc., Inc.*, Del. Super., C.A. No. 87C-FE-104, Goldstein, J., 1991 WL 53449 (April 5, 1991). At the same time, however, a party has a duty to mitigate once a material breach of contract occurs. *Lowe v. Bennett*, Del. Super., 1994 WL 750378, Graves, J. (December 29, 1994).

As set forth in *Continental-Wirth Electron. Corp. v. Sprague Electric Co.*, 329 F. Supp. 959, 963 (ED.Pa.1971) the following law applies:

An admitted agent is presumed to be acting within the scope of his authority where his act is legal and there is no evidence as to any limitations of his authority. In the absence of notice to the contrary, a third person dealing with a known agent may properly assume that he is acting within the scope of his authority.

His authority is presumed to be co-extensive with the business entrusted to him and to embrace whatever is necessary or usual in the ordinary business: 3 C.J.S. Agency §317, p. 256.

Apparent authority is the power to bind the principal where the principal has not actually granted authority but which he leads persons with whom his agent deals to believe that he has granted. Persons with whom the agent deals can reasonably believe that the agent has power to bind his principal if the principal knowingly permits the agent to exercise such power: *Rever Press, Inc. v. Blumberg*, 431 Pa. 370, 375, 246 A.2d 407 (1968).

“Section 27 of the Restatement of Agency, 2d, defines apparent authority as follows:

‘Apparent authority to do an act is created as to a third person by written or spoken words or any other conduct of the principal which reasonably interpreted, causes the third person to believe that the principal consents to have the act done on his behalf by the person purporting to act for him.’

It is sufficient to create apparent authority if the principal should realize that his conduct is likely to create a belief that the agent is authorized to act for him. Restatement of Agency, 2d, § 27, Comment a, p. 104. See *Revere Press, Inc. v. Blumberg, et al.*, 431 Pa. 370, 246 A.3d 407 (1968). Once apparent authority has been created, it does not terminate until the third person has reason to know that the principal has revoked the authority, or that the agent has renounced it, or that such time has elapsed or such events have happened after the authorization as to require the reasonable inference that the agent’s authority has terminated. Restatement of Agency, 2d, § 125, Comment b.”

Emphasis supplied.

Under Delaware law, two elements are necessary to establish apparent agency. First, by its acts and conduct the principal must hold out the alleged agent as being authorized to act in the principal's behalf. Second, the third party must reasonably rely upon this representation. See *Billips v. Magress Construction Co.*, Del. Supr., 391 A.2d 195 (1978)

In *Magress Construction Co.* the court stated as follows:

The concept of apparent agency or authority focuses not upon the actual relation of a principal and agent, but the apparent relationship. Manifestations by the alleged principal which create a reasonable belief in a third party that the alleged agent is authorized to bind the principal create an apparent agency from which spring the same legal consequences as those which result from an actual agency. *Finnegan [Constr. Co.] v. Robino-Ladd Co.*, 354 A.2d 142 (Del. Super. Ct. (1976). The manifestations may be made directly to the third party, or may be made to the community in general, for example, by way of advertising. *Gizzi v. Texaco, Inc.*, 437 F.2d 308 (3d Cir.), cert. denied, 404 U.S. 829, 30 L.Ed.2d 57, 92 S.Ct. 65 (1971); Restatement 2d Agency §§ 8, 8B, 27 (1957). In order to establish a chain of liability to the principal based upon apparent agency, a litigant must show reliance on the indicia of authority originated by the principal, *Bowman v. Home Life Ins. Co. of America*, 260 F.2d 521 (3d Cir. 1958); Restatement 2d Agency § 267; and such reliance must have been reasonable. *Finnegan Constr. Co. v. Robino-Ladd Co.*, supra.

Final Opinion And Order

The Court finds that Plaintiff, Yellowbook has proven by a preponderance of the evidence that James R. Dearworth, t/a Dearworth Frame breached its advertising contract with Yellowbook for nonpayment. The Court therefore enters judgment in the amount set forth in the complaint of \$2,540.00. The Court bases such conclusion on

the evidence and documents presented at trial and concludes that by actual and apparent authority John Dearworth signed and executed the contract with plaintiff as “Manager” for the defendant and bound Dearworth Frames into a firm contract with Yellowbook. The Court also finds John Dearworth was aware and reviewed the advertisements after they were placed in the Brandywine and Hockessin Directories and never objected to the publication of these advertisements or rescinded, orally or in writing, the contract that were executed on December 16, 1998 with Yellowbook. At trial, the record indicated that all of the advertisements presented as documentary evidence at the trial were placed in the Yellowbook were accurate. There was no dispute that Dearworth Frames paid \$508.00 as a deposit and executed the contract with Yellowbook when it was signed by John Dearworth and made out to Yellowbook. The Court finds the defendant’s son was clearly authorized by the doctrines of actual and apparent authority to sign the contract as the Manager and to bind Dearworth Frames.

The Court also finds that if there was a solicitation policy in the Independence Mall, it does not constitute an affirmative defense to the instant breach of contract action. Nonetheless, if such a policy did exist, defendants waived said policy when it entered into a binding signed contract executed and entered into by two of its employees and signed by John Dearworth Manager with Yellowbook on December 15, 1998. Defendant has established no affirmative defense which would cause the

Court to not find by a preponderance of evidence that the parties did not enter into a firm binding, binding written contract for advertising services which was clearly breached by Dearworth Frames when it failed to pay the remaining balance due and owing on the contract.

While there may have been some informal understanding between James R. Dearworth and his son not to do business with the Yellow Pages, John R. Dearworth was of the age of majority and entered into a binding contract with Yellowbook. The Court bases such a finding on the fact that John Dearworth executed a check made out to Yellowbook, and was aware that the advertisements were published. John Dearworth signed all the necessary contract documents with Yellowbook, and paid \$508.00 as a deposit. Clearly, John Dearworth was the agent of defendant who was acting within his scope of authority as Manager of defendant when he executed and signed the instant contract on December 15, 1998. James Dearworth, by placing his son in the establishment as Manager of the business and representing to third parties that John Dearworth had the requisite authority to sign as Manager clearly is liable when the terms of the contract.

The Court finds by a preponderance of evidence that a judgment shall be entered in the amount of \$2,540.00 plus interest at the legal rate from December 18, 1998 and Court costs.

IT IS SO ORDERED this 1st day of October, 2002.

JOHN K. WELCH
ASSOCIATE JUDGE