PARATECH, L.L.C.

VERSUS

NOLA MOTOR CLUB, L.L.C. D/B/A
NOLA MOTORSPORTS PARK

NO. 17-CA-626

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 751-195, DIVISION "M"
HONORABLE HENRY G. SULLIVAN, JR., JUDGE PRESIDING

April 25, 2018

HANS J. LILJEBERG
JUDGE

Panel composed of Judges Susan M. Chehardy,
Hans J. Liljeberg, and Marion F. Edwards, Judge Pro Tempore

AFFIRMED IN PART; REVERSED AND REMANDED IN PART

HJL
SMC
MFE

COUNSEL FOR PLAINTIFF/APPELLEE,
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LILJEBERG, J.

Defendant/Appellant, NOLA Motor Club, L.L.C. ("NOLA Motor"), appeals the trial court's June 30, 2017 Judgment awarding plaintiff/appellee, ParaTech, L.L.C. ("ParaTech"), $76,450.16, plus costs and interest for information technology ("IT") services ParaTech provided at NOLA Motor's facilities. For the following reasons, we affirm the trial court's judgment in part and reverse in part.

FACTUAL AND PROCEDURAL HISTORY

NOLA Motor owns and operates NOLA Motorsports Park, a race car track facility in Avondale, Louisiana. In early 2015, NOLA Motor was preparing to host its first IndyCar Grand Prix race starting on April 10th. Several months prior to the race, the parties met to discuss upgrades to the facility's IT infrastructure required for the race, but NOLA Motor did not hire ParaTech to complete the work at that time. As the race date approached, ParaTech contacted NOLA Motor to inquire about the status of the work previously discussed. NOLA Motor explained that a race sponsor agreed to perform the upgrades and indicated it would not need ParaTech's IT services.

In late March 2015, Andhi Jeannot, NOLA Motor's IT Director, contacted Richard Perniciaro, ParaTech's CEO, looking for immediate help to repair a broken fiber cable. Initially, Mr. Perniciaro declined the work because ParaTech was working on several large projects for other clients. Mr. Jeannot called back a second time after he could not find another company to assist with the repairs. Mr. Perniciaro consulted with Jason Cleveland, a ParaTech project manager, and they agreed to send personnel to trouble shoot the fiber cable problem. ParaTech contacted a subcontractor, Kyle Miller, owner of 7 Level Telecommunications, L.L.C., to assist with resolving NOLA Motor's issue.

On March 25, 2015, Mr. Cleveland, Mr. Miller, and another ParaTech employee, Brandon Guillot, went to NOLA Motor's facility to locate the break and

provide a temporary connection. NOLA Motor requested an estimate for the cost to repair the fiber, but instructed ParaTech to continue working on the repair. On March 27, 2015, ParaTech sent Mr. Jeannot an email with a written estimate in the amount of $24,525.00. The estimate indicated it was a "Time and Material Project" and the labor rates were $115.00 per hour during normal business hours (8 AM – 5 PM Monday to Friday) and $172.50 per hour after normal business hours and on weekends. The estimate further stated the "final bill will be for the actual hours worked and the material used." NOLA Motor agreed to the price and ParaTech completed the work. On April 22, 2015, ParaTech issued Invoice #5331 in the amount of $19,994.78, which included time, materials and sales tax to repair the broken fiber. NOLA Motor later paid this invoice in full.[1]

While ParaTech was working to replace the broken fiber, preparations for the IndyCar race were ongoing. Several witnesses who testified at trial described the preparations as chaotic and unorganized. Several days after ParaTech began work at the race facility, Mr. Jeannot and NOLA Motor's systems administrator, Aaron Rodriguez, asked ParaTech to perform several other repairs, as well as race preparation work which a race sponsor previously agreed to complete but then later declined to provide. According to Invoice #5332, the additional materials and IT services ParaTech provided are described as follows:

> Provide and install approximately 900 feet of 24 strand, single mode, direct burial fiber. Install additional fiber provided by NOLA MotorSports. Provide and install outdoor boxes. Provide and replace fiber jumpers. Test and terminate existing fiber. Clean and seal existing outdoor fiber boxes. Connect existing boxes. Provide and install aerial cable. Install wireless access points. Configure switches. Performed all other tasks that were requested of us.

NOLA Motor did not request, and ParaTech did not provide, estimates for the additional work. Mr. Jeannot and Mr. Rodriguez told ParaTech to do whatever was necessary to get the work done in time for the race. As a result, ParaTech

[1] NOLA Motor does not seek to recover any amounts paid under Invoice #5331.

delayed work for other clients and assigned employees to NOLA Motor's facility to help complete the work in time for the race. The parties agreed that in the rush to complete the IT work prior to the race, neither ParaTech nor NOLA Motor followed their usual business practices. ParaTech continued to provide IT services at NOLA Motor's facility even after the race through April 20, 2015.

Shortly after the race, NOLA Motor requested that ParaTech quickly submit invoices for the IT services provided. On or about April 22, 2015, ParaTech submitted both Invoices #5331 and #5332 for payment. NOLA Motor paid Invoice #5331 and it is not at issue in this appeal. Invoice #5332 sought payment in the amount of $76,450.16, which included $15,156.50 for materials, $55,142.50 for labor (400 regular hours at $115.00 per hour and 53 overtime hours at $172.50 per hour) and sales tax in the amount of $6,151.16.

After receiving Invoice #5332, NOLA Motor's Chief Financial Officer, Frank Csaki, sent ParaTech an email questioning the work and materials provided. Initially, NOLA Motor did not dispute the specific amounts charged in Invoice #5332, but refused to pay on the grounds that either the work was not authorized by NOLA Motor, or because another entity, NOLA Motorsports Host Committee, Inc. ("Host Committee"), was responsible for payment. At trial, Mr. Jeannot testified that all of the materials billed in Invoice #5332 were installed in the track and NOLA Motor did not express any issues with the workmanship provided by ParaTech. However, NOLA Motor disputed the number of hours charged for the additional work provided at the facility. To date, NOLA Motor has not paid any of the amounts charged under Invoice #5332.

On July 2, 2015, ParaTech filed a Petition for Suit on Open Account, Breach of Contract, and Unjust Enrichment. A judge trial was set for March 27, 2017, with a discovery cut-off date of December 30, 2016. On February 21, 2017, NOLA Motor filed a motion for leave to file a reconventional demand to assert

claims for fraud and misrepresentation against ParaTech. On March 14, 2017, the trial court denied the request to add these claims due to the upcoming trial date and NOLA Motor's delay in seeking leave to file its reconventional demand.

On March 27, 2017, the parties tried the matter. The trial court took the matter under advisement and allowed time for the parties to obtain a copy of the trial transcript and submit post-trial memoranda. On June 30, 2017, the trial court rendered a judgment in favor of ParaTech for $76,450.16, the full amount of Invoice #5332, plus costs and interest. The trial court did not award attorney fees. NOLA Motor requested written reasons and on July 24, 2017, the trial court issued reasons explaining that it found a contract existed between the parties and alternatively, ParaTech could recover the full amount demanded under Invoice #5332 pursuant to the theory of unjust enrichment. The trial court also explained that it denied ParaTech's request for attorney fees because the agreement between the parties did not qualify as an open account.

On September 8, 2017, NOLA Motor filed a timely motion for devolutive appeal and the trial court signed an order of appeal on the same day. ParaTech submitted a timely answer to the appeal asking this Court to award it attorney fees pursuant to La. R.S. 9:2781, alleging the business arrangement between the parties qualified as an open account.

DISCUSSION

In its first assignment of error, NOLA Motor contends the trial court erred in awarding ParaTech $76,450.16, because the award is unsupported by the evidence and contrary to ParaTech's records. It first contends NOLA Motor and ParaTech did not enter into a contract to complete the additional work because its systems administrator, Mr. Rodriguez, did not have the authority to bind NOLA Motor. It also disputes that a valid contract exists because the parties did not agree to the cost of the labor to provide the additional work. Finally, NOLA Motor contends

the number of hours ParaTech billed for the labor to complete the work was excessive and unsupported by the evidence, and also argues it is entitled to a credit in the amount of $1,317.50 for the remaining balance of unused hours it purchased from ParaTech prior to the race.[2]

We first address the issue regarding whether Mr. Rodriguez possessed authority to request the additional work on behalf of NOLA Motor.[3] A contract is formed by the consent of the parties established through offer and acceptance. La. C.C. art. 1927. Unless the law prescribes a certain formality for the intended contract, an offer and acceptance may be made orally, in writing, or by action or inaction that under the circumstances is clearly indicative of consent. *Id.; see also Read v. Willwoods Cmty.*, 14-1475 (La. 3/17/15), 165 So.3d 883, 887; *DBR Assocs., L.L.C. v. Burnell*, 15-629 (La. App. 5 Cir. 2/24/16), 186 So.3d 1225, 1229.

La. C.C. art. 1846 provides that an oral contract in excess of $500.00 must be proven by at least one credible witness and other corroborating circumstances. Only general corroboration is required, and it is not necessary for the plaintiff to offer independent proof of every detail. *Peter Vicari Gen. Contr., Inc. v. St. Pierre*, 02-250 (La. App. 5 Cir. 10/16/02), 831 So.2d 296, 301. The existence or non-existence of a contract is a finding of fact which will not be disturbed unless it is clearly wrong. *DBR Assocs.,* 186 So.3d at 1230. When findings are based on determinations regarding the credibility of witnesses, the manifest error - clearly wrong standard demands great deference to the trier of fact's findings; for only the fact finder can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding and belief in what is said. *Rosell v. ESCO,* 549 So.2d 840, 844 (La. 1989).

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[2] NOLA Motor and ParaTech had a preexisting business relationship, and NOLA Motor purchased blocks of time for IT support services from ParaTech.

[3] NOLA Motor concedes on appeal that Mr. Jeannot possessed authority to bind NOLA Motor for the work at issue.

To establish apparent authority. Louisiana law requires two elements: 1) the principal must first act to manifest the alleged agent's authority to an innocent third party; 2) the third party must reasonably rely on the manifested authority of the agent. *Jefferson Parish Hosp. Serv. Dist. No. 2 v. K&W Diners, L.L.C.*, 10-767 (La. App. 5 Cir. 4/12/11), 65 So.3d 662.

The parties do not dispute that Mr. Rodriguez was a low-level employee and that he requested the majority of the additional work billed in Invoice #5332. NOLA Motor also does not dispute that its IT Director, Mr. Jeannot, possessed authority to bind NOLA Motor. At trial, Mr. Rodriguez testified that all of the additional work he requested from ParaTech was approved by Mr. Jeannot. Furthermore, Mr. Cleveland testified that Mr. Jeannot directed ParaTech's work at the facility until an unexpected death occurred in his family requiring Mr. Jeannot to leave the country. Mr. Jeannot turned authority for the race projects over to Mr. Rodriguez and instructed ParaTech to follow Mr. Rodriguez's direction in his absence.

In addition, after noticing the volume of time involved with NOLA Motor's requests for additional work, Mr. Perniciaro sent an email to Mr. Jeannot seeking confirmation that NOLA Motor approved these additional requests from Mr. Rodriguez. Though Mr. Jeannot denies the conversation, Mr. Perniciaro testified that Mr. Jeannot told him ParaTech should do whatever Mr. Rodriguez requested to complete the additional IT services required prior to the race. According to Mr. Perniciaro, Mr. Jeannot also confirmed ParaTech would be paid for these additional services.

We find the trial court was not manifestly erroneous in determining NOLA Motor's employees possessed actual or apparent authority to bind NOLA Motor for the additional IT services billed for in Invoice #5332. The parties agree they did not follow normal business practices when requesting and performing the

additional work. Mr. Jeannot acted on behalf of NOLA Motor in confecting the terms of the agreement for the work completed for the first Invoice #5331, and it was not unreasonable for ParaTech to assume he had the authority to request and approve the additional work billed in Invoice #5332. Furthermore, Mr. Rodriguez testified Mr. Jeannot approved the additional work he requested from ParaTech.

NOLA Motor next contends that a contract did not exist between the parties due to their lack of agreement regarding the cost of the additional IT services provided by ParaTech. It further argues that in the event this Court finds that a contract existed between the parties, the trial court failed to award a reasonable price for ParaTech's services. NOLA Motor contends the trial court should have determined the reasonable price based on the terms applied by the parties in Invoice #5331, but failed to do so. Specifically, NOLA Motor notes that it did not agree to "holiday pay" or agree to allow ParaTech to double or otherwise inflate the hours actually worked by its subcontractor, Kyle Miller. NOLA Motor also complains that the hours charged for ParaTech's own employees appear inflated and are unsupported by ParaTech's records and evidence.

The lack of an agreement with respect to the amount a party is to receive for his services does not vitiate the contract. *Bordelon v. Comeaux Furniture & Appliance, Inc.*, 97-2864 (La. 2/13/98), 705 So.2d 740, 741; *Morphy, Makofsky & Masson, Inc. v. Canal Place 2000*, 538 So.2d 569, 574 (La. 1989). The law will imply in the contract a provision that the party would be paid a reasonable sum for his services. *Bordelon*, 705 So.2d at 741; *DBR Assocs.,* 186 So.3d at 1229. The technique or measure used to establish the price varies according to the circumstances of each case. *Tallulah Constr., Inc. v. Northeast La. Delta Cmty. Dev. Corp.*, 07-1029 (La. App. 4 Cir. 4/23/08), 982 So.2d 225, 233.

La. C.C. art. 2054 provides guidance in determining a "reasonable sum" for the services performed:

> When the parties made no provision for a particular situation, it must be assumed that they intended to bind themselves not only to the express provisions of the contract, but also to whatever the law, equity, or usage regards as implied in a contract of that kind or necessary for the contract to achieve its purpose.

"Equity" and "usage" are defined in La. C.C. art. 2055 as follows:

> Equity, as intended in the preceding articles, is based on the principles that no one is allowed to take unfair advantage of another and that no one is allowed to enrich himself unjustly at the expense of another.
>
> Usage, as intended in the preceding articles, is a practice regularly observed in affairs of a nature identical or similar to the object of a contract subject to interpretation.

See also Bordelon, 705 So.2d at 741.

Furthermore, a trial court's award of damages for breach of contract is subject to the abuse of discretion standard of review. *Hernandez v. Martinez*, 00-1282 (La. App. 5 Cir. 2/28/01), 781 So.2d 815, 821.

Our review of the record indicates the trial court did not err by finding a contract existed between the parties for the performance of the additional IT services provided in Invoice #5332, despite the lack of an express agreement regarding the costs for these services. NOLA Motor requested the additional work and does not dispute that ParaTech supplied materials and completed the requested work. The inability of the parties to follow the normal business procedure of requesting and providing a cost estimate was created by the last-minute nature of NOLA Motor's race preparations. Furthermore, ParaTech provided the cost estimate and terms for the original work at the same time NOLA Motor began requesting that ParaTech provide the additional IT services and materials.

With respect to the reasonable price for the additional services performed, in its written reasons, the trial court indicated that it applied the terms agreed to between the parties for the initial work billed in Invoice #5331. Both parties agree that applying these terms is the proper method to calculate the value of the

additional services provided. However, as noted above, NOLA Motor contends that the number of labor hours billed by ParaTech for its own employees, as well as the hours billed for its subcontractor, were excessive and unsupported by the evidence.

We first address the issue of the number of hours billed for labor provided by ParaTech's own employees. At trial, ParaTech produced a time log of the hours worked by its employees and the subcontractor, Kyle Miller. In addition, Mr. Cleveland testified that due to the rushed request from NOLA Motor for the invoice, the time log did not contain all of the time worked by ParaTech employees. He explained that he also included time and materials included on handwritten notes and verbal communications he received to calculate the amount billed on the invoices. He also testified that ParaTech did not include all of the hours billed by its employees on Invoice #5332 because some employees failed to bill their time to the NOLA Motor account.

ParaTech did not follow its ordinary documentation and billing procedures due to the emergency nature of the job, the lack of time to prepare estimates or change orders, and the lack of plans or specifications from NOLA Motor. In order to help NOLA Motor out of the difficult situation it faced, ParaTech pulled employees from other projects and placed those projects on hold to get the job done for NOLA Motor. ParaTech's witnesses testified that in addition to performing the tasks noted on the invoice, their employees spent a significant amount of time locating and retrieving materials since the lack of time prohibited them from ordering material from their usual suppliers. In addition, they would have to wait for escort vehicles to move them around the track to complete their work due to safety issues created by the IndyCars using the track.

NOLA Motor also admitted it did not follow its normal procedure of requesting estimates prior to approving work due to the last-minute preparations

required for the race. At trial, NOLA Motor disputed the amount of hours billed by ParaTech through testimony from Mr. Jeannot and Mr. Rodriguez, who simply questioned whether certain tasks required the amount of time noted on the time log provided by ParaTech. Based on the foregoing, we do not find that the trial court was manifestly erroneous in awarding ParaTech the full amount of the hours billed in Invoice #5332 for ParaTech's own employees.

NOLA Motor also contends the trial court erred by allowing ParaTech to charge the overtime rate for the nine hours ParaTech's employee, Brandon Guillot, worked on Friday, April 3, 2015, which was the Good Friday holiday. NOLA Motor argues that the prior terms agreed to between the parties did not provide for different rates for holidays which fall on a day during the regular work week and during regular business hours (8AM – 5PM). We agree and find that ParaTech should have charged the rate of $115.00 per hour as opposed to $172.50 per hour as this work occurred on a Friday presumably during regular business hours as the records do not indicate otherwise. The difference between the rates is $57.50 and therefore, we find the amount awarded to ParaTech should be reduced by $517.50 for the nine hours incorrectly charged at the overtime rate on Friday April 3, 2015.

The primary dispute raised by NOLA Motor regarding the hours billed for labor in Invoice #5332 centers on the work performed by subcontractor, Kyle Miller. On his invoice submitted to ParaTech, Mr. Miller charged $65.00 per hour for regular time and $100.00 per hour for overtime. ParaTech charged the rates agreed to in Invoice #5331, which were $115.00 and $172.50 per hour correspondingly. The parties agree that a markup for services provided by a subcontractor is standard for the industry.

The evidence also indicates that ParaTech doubled and in two instances quadrupled the hours charged by Mr. Miller on his invoice submitted to ParaTech. NOLA Motor contends the trial court erred in awarding these inflated hours as part

of the reasonable price because the parties previously agreed with respect to the original work to base the labor charges on the "actual hours worked." We agree with NOLA Motor that, in light of the trial court's proper decision to apply the terms agreed to with respect to the original work, the trial court abused its discretion by awarding ParaTech damages, which included charges for hours the subcontractor, Kyle Miller, did not actually work. Therefore, the number of labor hours charged in Invoice #5332 should not have been based on Mr. Miller's doubled or quadrupled hours, but rather should be reduced to reflect the actual hours worked by Mr. Miller with respect to Invoice #5332.

However, the only issue at trial and before this Court involved the amount billed in Invoice #5332. This Court is unable to determine from the evidence which of the hours listed in Mr. Miller's invoice apply to the original work performed under Invoice #5331 and which hours apply to the additional work billed in Invoice #5332. Therefore, we remand this matter to the trial court to conduct a hearing with the parties to determine the amount of the subcontractor's hours pertaining to Invoice #5332 and to reduce the damages awarded to ParaTech to reflect the actual hours worked by Mr. Miller under this invoice.

We further find that the trial court abused its discretion by failing to credit NOLA Motor for $1,317.50, which represents 15.5 hours of unused IT services NOLA Motor previously purchased from ParaTech. As explained above, prior to the race, NOLA Motor purchased blocks of credit for IT services from ParaTech. At trial, ParaTech did not dispute that this credit remained in favor of NOLA Motor. Therefore, we also find that the trial court erred by failing to allow NOLA Motor a credit in the amount of $1,317.50.

In its second assignment of error, NOLA Motor argues the trial court erred by awarding ParaTech all of the sales tax charged on Invoice #5332. ParaTech

charged 8.75% Louisiana sales tax on both the labor and materials billed in this invoice for a total of $6,151.16.

NOLA Motor concedes it was properly charged sales tax on the materials sold to it by ParaTech, but it contests the sales tax charged on the labor billed in Invoice #5332 to install the materials. NOLA Motor contends that pursuant to La. R.S. 47:301(13)(a), sales tax is due on the sale of materials at retail and the tax is paid on the sale price. However, it contends that pursuant to the definition of "sales tax," ParaTech should not have included sales tax on the labor and services provided to install the material:

> 'Sales price' means the total amount for which tangible personal property is sold, less the market value of any article traded in including any services, except services for financing, that are a part of the sale valued in money, whether paid in money or otherwise, and includes the cost of materials used, labor or service costs, except costs for financing which shall not exceed the legal interest rate and a service charge not to exceed six percent of the amount financed, and losses; provided that cash discounts allowed and taken on sales shall not be included, nor shall the sales price include the amount charged for labor or services rendered in installing, applying, remodeling, or repairing property sold.

We also note, however, that La. R.S. 47:302(C) provides for a tax on the "sale of services," which is defined in part in La. R.S. 47:301(14)(g)(i)(aa) as the "furnishing of repairs to tangible personal property." Tangible personal property is defined to include all equipment as well as:

> . . . machinery, appliances and equipment which have been declared immovable by declaration under the provisions of Article 467 of the Louisiana Civil Code, and things which have been separated from land, buildings or other constructions permanently attached to the ground or their component parts as defined in Article 466 of the Civil Code.

La. R.S. 47:301(g)(ii).

Furthermore, Title 61:I:4301(b) of the Louisiana Administrative Code provides that the entire amount charged to a customer for the sale of services is taxable if billed in a lump sum. This provision also recognizes that "[a]lthough the

law provides many exemptions, unless they are specifically identified and segregated in billings to customers, the entire charge will be subject to the tax." *Id.*

ParaTech billed all of the labor and services provided in connection with Invoice #5332 in a lump sum. The evidence in the record does not distinguish between labor and services provided to install property sold to NOLA Motors and labor and services provided to repair tangible personal property versus immovable property. Therefore, we find the trial court was not manifestly erroneous in awarding the entire amount of sales tax billed in Invoice #5332.

In its third assignment of error, NOLA Motor argues the trial court abused its discretion by denying its request to file a reconventional demand to assert fraud and misrepresentation claims based on ParaTech's increase of the hours billed by its subcontractor.

Amendment of pleadings should be liberally allowed provided that the movant is acting in good faith, the amendment is not sought as a delaying tactic, the opponent will not be unduly prejudiced, and trial on the issues will not be unduly delayed. *United Teachers of New Orleans v. State Board of Elementary and Secondary Education*, 07-0031 (La. App. 1 Cir. 3/26/08), 985 So. 2d 184, 199. The decision as to whether to grant leave to amend or supplement a pleading is within the sound discretion of the trial court, and its ruling will not be disturbed on appeal except where an abuse of discretion has occurred and indicates a possibility of resulting injustice. *Id.*

NOLA Motor did not file its motion for leave to add the reconventional demand until a month prior to the scheduled trial date and after the expiration of the discovery deadline. At the hearing on the motion before the trial court, NOLA Motor argued that it was not aware of ParaTech's practice of increasing the subcontractor hours until it deposed ParaTech's Project Manager, Jason Cleveland. ParaTech established during the hearing that it provided documents showing the

hours billed by the subcontractor and the corresponding increased hours billed by ParaTech in March 2016, a year prior to the trial. Based on the foregoing, we do not find the trial court abused its discretion in denying NOLA Motor's request to amend its answer to add a reconventional demand for fraud and misrepresentation on the eve of trial.

In its final assignment of error, NOLA Motor argues the trial court erred by failing to find that Invoice #5332 was owed by the Host Committee rather than NOLA Motor. It explains that it leased its facility to the non-profit Host Committee for the IndyCar race and all services provided for the Indy race were the responsibility of the Host Committee. NOLA Motor further explained that it accepted responsibility for Invoice #5331 because it was responsible to provide the Host Committee with a facility with the repaired fiber cable. It argues the additional IT services and materials provided in Invoice #5332 related solely to issues relevant to the race and were not its responsibility.

NOLA Motor agrees, however, that its employees, Mr. Jeannot and Mr. Rodriguez, were the individuals who interacted with ParaTech in requesting the work provided under both Invoices #5331 and #5332. Neither of these employees communicated to ParaTech the Host Committee's alleged responsibility for services provided with respect to the Indy race. The trial court correctly noted in its reasons for judgment that NOLA Motor provided no evidence of the Host Committee's responsibility for Invoice #5332, other than the self-serving testimony of its owners. Therefore, we find the trial court was not manifestly erroneous in rejecting NOLA Motor's argument on this issue.

Finally, in answer to the appeal, ParaTech argues the trial court erred by failing to award it attorney fees because the agreement between itself and NOLA Motor was an "open account" arrangement. La. R.S. 9:2781 provides for claims on an open account in pertinent part as follows:

> A. When any person fails to pay an open account within thirty days after the claimant sends written demand therefor correctly setting forth the amount owed, that person shall be liable to the claimant for reasonable attorney fees for the prosecution and collection of such claim when judgment on the claim is rendered in favor of the claimant. Citation and service of a petition shall be deemed written demand for the purpose of this Section. If the claimant and his attorney have expressly agreed that the debtor shall be liable for the claimant's attorney fees in a fixed or determinable amount, the claimant is entitled to that amount when judgment on the claim is rendered in favor of the claimant. Receipt of written demand by the person is not required.
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> ***
>
> D. For the purposes of this Section and Code of Civil Procedure Articles 1702 and 4916, "open account" includes any account for which a part or all of the balance is past due, whether or not the account reflects one or more transactions and whether or not at the time of contracting the parties expected future transactions. "Open account" shall include debts incurred for professional services, including but not limited to legal and medical services. For the purposes of this Section only, attorney fees shall be paid on open accounts owed to the state.

Louisiana jurisprudence has distinguished open accounts from conventional obligations by finding open accounts involve expectations of recurrent future business dealings over a period of time:

> An open account necessarily involves an underlying agreement between the parties on which the debt is based. Certainly, an open account is a contract, but our jurisprudence has made a distinction between open accounts and conventional obligations. A contract is significantly different from an open account. A "contract" is an agreement by two or more parties whereby obligations are created, modified, or extinguished, thereby establishing a concurrence in understanding the terms. An "open account," however, is an account in which a line of credit is running and is open to future modification because of expectations of prospective business dealings, and services are recurrently granted over a period of time.

Signlite, Inc. v. Northshore Service Center, 05-2444 (La. App. 1 Cir. 2/9/07), 959 So.2d 904, 908 (Citations omitted.).

In its reasons the trial court determined an open account did not exist because the parties did not agree to a course of dealings over a period of time. The agreement involved the preparation of NOLA Motor's facility for the upcoming

Indy race. The trial court further determined that neither party expected that ParaTech would continue to update, repair and install equipment at the track under the same terms once the event was over. We agree with the trial court's findings and conclusion that an open account did not exist between the parties and therefore, find ParaTech is not entitled to recover attorney fees under La. R.S. 9:2781.

DECREE

Based on the foregoing, we affirm the trial court's June 30, 2017 Judgment in part and reverse and remand in part. We affirm the trial court's damages award for NOLA Motor's failure to pay Invoice #5332, except as follows: 1) we find the damage award should be decreased by $517.50 for erroneous "holiday rate" charged for labor performed on April 3, 2015; 2) the damage award should be decreased by $1,317.50 for the unapplied credit existing in favor of NOLA Motor; and 3) we remand the matter for the trial court to determine the extra hours charged for the subcontractor on Invoice #5332, which are not hours actually worked by the subcontractor.

AFFIRMED IN PART; REVERSED AND REMANDED IN PART

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
ROBERT M. MURPHY
STEPHEN J. WINDHORST
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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **APRIL 25, 2018** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CHERYL Q. LANDRIEU
CLERK OF COURT

17-CA-626

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE HENRY G. SULLIVAN, JR. (DISTRICT JUDGE)
WILLIAM J. LARZELERE, III (APPELLEE)
SCOTT L. STERNBERG (APPELLANT)
MICHAEL S FINKELSTEIN(APPELLANT)

MAILED

NO ATTORNEYS WERE MAILED