

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CA 0020

BRADEN JONES

VERSUS

KELLY SILLS

Judgment Rendered: JUN 11 2010

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On Appeal from the Nineteenth Judicial District Court
In and for the East Baton Rouge
State of Louisiana
Docket No. 565832

Honorable Janice Clark, Judge Presiding

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BEFORE: DOWNING, GAIDRY AND McCLENDON, JJ.

McCLENDON, J.

This is an appeal by the defendant, Kelly Sills, from a judgment in favor of the plaintiff, Braden Jones, awarding the plaintiff \$5,000.00 for breach of contract. The plaintiff answered the appeal. For the following reasons, we amend and affirm the judgment.

FACTS AND PROCEDURAL HISTORY

This litigation arises out of the purchase of two motorcycles. Plaintiff filed a petition for breach of contract on April 8, 2008, asserting that he loaned defendant \$5,000.00 toward the purchase of the two motorcycles. Plaintiff further alleged that he and defendant entered into an oral contract wherein plaintiff would be reimbursed \$1,120.00 for expenses he incurred in traveling from Baton Rouge to Daytona Beach, Florida to pick up the two motorcycles and for the costs of \$321.55 for a starter and \$1,400.00 for a four-day trailer rental. Plaintiff asserted that although defendant agreed to pay said amounts, defendant has not repaid the monies owed to him. Accordingly, plaintiff prayed for a money judgment in the amount of \$7,841.55, together with legal interest from judicial demand and costs.

Following a trial on July 9, 2009, the trial court rendered judgment on August 31, 2009, in favor of the plaintiff in the amount of \$5,000.00. The court further determined that defendant owned the two motorcycles, "through his company that maintained the title for each." The trial court also dismissed all other claims and ordered that each party bear their own costs.

Defendant appealed the judgment, asserting that the trial erred in ruling that defendant, as opposed to his company, was the owner of the two motorcycles and that he was personally liable for the \$5,000.00.¹ Plaintiff answered the appeal, contending that the trial court erred in not awarding him \$1,400.00 for trailer rental fees and \$1,120.00 for travel expenses. Plaintiff

¹ Defendant's company is Fidelity Motor Company, LLC and the name in which the motorcycles were titled at the time of their purchase.

further alleged that the trial court erred in failing to award interest and costs as prayed for in his petition.

DISCUSSION

A contract is an agreement by two or more parties whereby obligations are created, modified, or extinguished. LSA-C.C. art. 1906; **Ricky's Diesel Service, Inc. v. Pinell**, 04-0202, p. 4 (La.App. 1 Cir. 2/11/05), 906 So.2d 536, 538. A party claiming the existence of a contract has the burden of proving that the contract was perfected between himself and his opponent. LSA-C.C. art. 1831; **Pennington Construction, Inc. v. R A Eagle Corporation**, 94-0575, p. 5 (La.App. 1 Cir. 3/3/95), 652 So.2d 637, 639. A contract is formed by consent of the parties established through offer and acceptance. LSA-C.C. art. 1927; **Imperial Chemicals Limited v. PKB Scania (USA), Inc.**, 04-2742, p. 7 (La.App. 1 Cir. 2/22/06), 929 So.2d 84, 90, writ denied, 06-0665 (La. 5/26/06), 930 So.2d 31.

Moreover, Louisiana Civil Code article 1846 provides:

When a writing is not required by law, a contract not reduced to writing, for a price or, in the absence of a price, for a value not in excess of five hundred dollars may be proved by competent evidence.

If the price or value is in excess of five hundred dollars, the contract must be proved by at least one witness and other corroborating circumstances.

To meet the burden of proving an oral contract by a witness and other corroborating circumstances, a party may serve as his own witness and the "other corroborating circumstances" may be general and need not prove every detail of the plaintiff's case. However, the corroborating circumstances that are required must come from a source other than the plaintiff. **Pennington Construction, Inc.**, 94-0575 at p. 5, 652 So.2d at 639.

Furthermore, the existence or non-existence of a contract is a question of fact, and the trial court's determination of this issue will not be disturbed unless manifestly erroneous or clearly wrong. **Townsend v. Urie**, 00-0730, p. 6 (La.App. 1 Cir. 5/11/01), 800 So.2d 11, 15, writ denied, 01-1678 (La. 9/21/01),

797 So.2d 674. Similarly, the issue of whether there were corroborating circumstances sufficient to establish an oral contract is a question of fact. **Pennington Construction, Inc.**, 94-0575 at p. 5, 652 So.2d at 639. Moreover, when evaluating the evidence needed to establish the existence or non-existence of a contract, the trial court is allowed to make credibility determinations. **Imperial Chemicals Limited**, 04-2742 at p. 12, 929 So.2d at 93.

At the trial of this matter, plaintiff testified that he agreed to loan defendant \$5,000.00 toward the purchase price of the motorcycles and obtained a cashier's check in that amount made payable to the vendor, Chopper Nation. He stated that he and his girlfriend picked up the motorcycles on March 10, 2007 in Daytona Beach. He also delivered to Chopper Nation a cashier's check in the amount of \$37,250.00 from defendant's company. Plaintiff further stated that there was an agreement that he would be paid for time and travel and for the trailer rental. Copies of the cashier checks and invoices, as well as the registration certificate for one of the motorcycles in the name of Fidelity Motors, Inc., were introduced into evidence. Also, a copy of the invoice of the trailer rental to plaintiff and a copy of an invoice for \$1,120.00 prepared by plaintiff was introduced.

In contrast, defendant testified that he and plaintiff each agreed to buy a motorcycle and the \$5,000.00 paid by plaintiff was towards the purchase of plaintiff's motorcycle. Defendant also stated that he never agreed to pay plaintiff for a trailer rental or for expenses for plaintiff's time and travel.

Following a thorough review of the record, we conclude that there is sufficient evidence to support the trial court's conclusion that plaintiff carried his burden of proving an oral contract between himself and defendant for the loan of \$5,000.00 to the defendant. In dismissing plaintiff's other claims, the trial court must have also concluded that the evidence was not sufficient to establish an oral contract for the \$1,120.00 in travel expenses, \$1,400.00 for the trailer

rental, or \$321.55 for the starter. We find no clear error in our review of these factual conclusions.

Further, we note that the ownership of the motorcycles was immaterial in this breach of contract suit. Whether defendant personally or his company owned the motorcycles was not an issue with regard to the oral contract entered into between plaintiff and defendant regarding the \$5,000.00 loan.

Plaintiff argues that the trial court erred in failing to include legal interest in its judgment, as prayed for, in accordance with LSA-C.C.P. art. 1921. We agree. Louisiana Code of Civil procedure article 1921 provides that “[t]he court *shall* award interest in the judgment as prayed for or as provided by law.” (Emphasis added). Despite a prayer for legal interest in plaintiff’s petition, the trial court failed to make such an award in its judgment. Thus, the judgment will be amended accordingly to reflect an award of interest. See **Bickham v. Bickham**, 02-1307, p. 5 (La.App. 1 Cir. 5/9/03), 849 So.2d 707, 710-11; **Guidroz v. State, Through Dept. of Transp. and Development**, 94-0253, p. 17 (La.App. 1 Cir. 12/22/94) 648 So.2d 1361, 1371.²

CONCLUSION

For the foregoing reasons, the judgment of the trial court is amended to award legal interest in favor of plaintiff and against defendant, in accordance with law. In all other respects, the judgment is affirmed. Costs of this appeal are assessed against defendant.

AMENDED AND, AS AMENDED, AFFIRMED.

² We also find no merit in plaintiff’s contention that the trial court failed to address costs, as the judgment clearly states that each party was to bear their own costs.