STATE OF MICHIGAN

COURT OF APPEALS

JERRY BARNHART and MARILYN BARNHART,

Plaintiffs-Appellants,

v

CHRYSLER CORPORATION,

Defendant-Appellee.

UNPUBLISHED
May 8, 1998

No. 200653
Oakland Circuit Court
LC No. 96-514636-NZ

Before: Gage, P.J., and Reilly and Jansen, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a November 18, 1996 order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). In an order dated December 30, 1996, the trial court denied plaintiffs' motion for reconsideration or rehearing. We affirm.

Plaintiffs argue that they are entitled to recover prize money won by Jerry Barnhart in the 1995 Jeep Masters International Shooting Competition from defendant, the corporate sponsor, because the promoter, Masters Foundation, was unable to pay. This Court has recently addressed the relationship between the sponsor of a prize contest and the entrant. *Bellows v Delaware McDonald's Corp*, 206 Mich App 555; 522 NW2d 707 (1994). Basic contract principles govern the relationship between the sponsor of a prize contest and an entrant in the contest. *Id.* at 558. Establishment of an enforceable contract requires the entrant to show: (1) the offer of a prize by the sponsor for the performance of a specified act; (2) competition in the contest; and (3) the performance of the specified act required for winning the contest. *Id.* After review of the lower court record, we find that plaintiffs have failed to present any evidence that an offer of prize money was made by defendant. The entry form, which plaintiff Jerry Barnhart filled out and submitted to Masters Foundation, nowhere bears the name or logo of defendant or any of its affiliates. Furthermore, plaintiffs presented no evidence that any statements or representations were made to Jerry Barnhart that indicated defendant would be sponsoring the prize contest at the time he entered the contest. In fact, Jerry Barnhart submitted his entry form in March or April, 1995 and defendant agreed to participate as a corporate sponsor in June 1995.

Therefore, the trial court did not err when it found that the Masters Foundation, and not defendant, was the sponsor of the prize contest, for which the Masters Foundation would be responsible to pay any prize money.

Next, plaintiffs argue that defendant is responsible for payment of the prize money because an implied in fact contract existed between plaintiff Jerry Barnhart and defendant. Where the intention to form a contract is not explicitly manifested by the words of the parties, a contract implied in fact may exist if its existence may be gathered by implication or from proper deduction from the conduct of the parties, language used or things done by them, or other pertinent circumstances attending the transaction. *Temborius v Slatkin*, 157 Mich App 587, 596; 403 NW2d 821 (1986). An implied in fact contract cannot be based upon subjective expectations; rather, it must be based upon the common understanding or mutual intent to contract between the parties. *Ford v Blue Cross & Blue Shield of Michigan*, 150 Mich App 462, 467; 389 NW2d 114 (1986). In determining whether mutual assent to contract exists, courts follow the objective theory of assent, focusing on how a reasonable person in the position of the promisee would have interpreted the promisor's statements or conduct. *Goldman v Century Ins Co*, 354 Mich 528, 535; 93 NW2d 240 (1958).

Plaintiffs attempt to establish an implied in fact contract based upon their expectation that defendant was responsible for payment of the prize money. Plaintiff Jerry Barnhart testified at his deposition that he had been told that defendant was going to be sponsoring the event. However, he admitted that no employee or representative of defendant ever made a representation that defendant would be responsible for payment of the prize money. We find that plaintiffs expectation of payment from defendant was purely subjective.

Plaintiffs argue that the large display check Jerry Barnhart received from defendant at the awards banquet signed by the executive vice-president of Chrysler and presented by the Chrysler merchandising manager after he had won the competition established a mutual assent to contract. In order to have an implied in fact contract, the party performing the services must at the time he performs such services expect compensation from another who expects to pay for such services. *In re Lewis Estate*, 168 Mich App 70, 75; 423 NW2d 600 (1988). However, presentation of the check occurred after Jerry Barnhart had performed his duties under the alleged contract. Therefore, defendant's "representations" did not invite Jerry Barnhart's performance under an implied in fact contract.

Accordingly, the trial court did not err in granting summary disposition in favor of defendant. Contrary to plaintiffs' claim, there is no material factual dispute presented that an implied in fact contract existed between plaintiffs and defendant such that defendant would be liable to pay for the contest. The trial court did not err in ruling that the Masters Foundation made the offer of the prize money and that no material factual dispute existed regarding this issue.

Moreover, the trial court did not apply an improper standard in ruling on the motion for summary disposition. *Skinner v Square D Co*, 445 Mich 153, 161-162; 516 NW2d 475 (1994).

Affirmed.

/s/ Hilda R. Gage
/s/ Maureen Pulte Reilly
/s/ Kathleen Jansen