

STATE OF MICHIGAN
COURT OF APPEALS

OASIS OIL, L.L.C.,

Plaintiff-Appellee,

v

MICHIGAN PROPERTIES, L.L.C.,

Defendant-Appellant,

and

KAZEM SAFIEDINE,

Defendant-Appellant,

and

MTK FAMILY INVESTMENTS,

Defendant.

UNPUBLISHED
November 19, 2013

No. 306700
Wayne Circuit Court
LC No. 07-729120-CK

Before: MURPHY, C.J., and MARKEY and RIORDAN, JJ.

PER CURIAM.

Defendants, Michigan Properties, L.L.C., and Kazem Safiedine, appeal as of right the trial court's opinion and order granting judgment for plaintiff in this breach of contract case.¹ We affirm in part, and reverse in part.

I. FACTS AND PROCEEDINGS

This appeal involves plaintiff's delivery of gasoline to five gas station properties owned by defendants Michigan Properties, L.L.C., and MTK Family Investments, L.L.C. Safiedine is a member and manager of Michigan Properties, L.L.C., and MTK Family Investments, L.L.C.

¹ MTK Family Investments, L.L.C. is not a party to this appeal.

Hakim Fakhoury is the sole member and manager of plaintiff company, Future Fuels of America, L.L.C. Plaintiff is a gasoline wholesaler. The five stations involved in the lawsuit were plaintiff's customers. Hassan Shahine operated three of the stations. Shahine formed three corporations associated with the operation of the stations. Shahine's brother-in-law, Jihad Awad, operated the other two stations.

Michigan Properties, L.L.C. owned the two stations operated by Awad. MTK Family Investments, L.L.C. owned two of the stations operated by Shahine. MTK Family Investments, L.L.C. and Michigan Properties, L.L.C. jointly owned the third station that Shahine operated. Michigan Properties, L.L.C. and MTK Family Investments, L.L.C. signed lease agreements with Shahine's corporations and Awad for their respective stations. The leases were month-to-month, and provided Shahine's corporations and Awad pay a monthly rent.

Shahine ordered gasoline from plaintiff in the name of his corporations. Shahine's corporations each had corporate bank accounts. Shahine paid for the gasoline by check, draft, or wire, out of his corporate accounts. Shahine's corporations held gasoline, diesel, food, and sales tax licenses on behalf of the three stations that Shahine operated. The other two stations also had licenses associated with the addresses. Defendants did not hold any licenses.

In May of 2006, Shahine's corporations started having problems maintaining sufficient funds to pay plaintiff for the gasoline deliveries. At some point, plaintiff stopped gasoline deliveries to the stations because Shahine's corporations had multiple insufficient funds in one day. Safiedine called Fakhoury after plaintiff stopped delivery to the stations. Safiedine informed Fakhoury that he pays all of his debts. Safiedine asked Fakhoury what stations owed plaintiff money, promised to pay the debt, and eventually paid the bill. Safiedine also loaned \$100,000 to one of Shahine's corporations, in order that Shahine could pay for gasoline, and ensure delivery in the future. Safiedine called plaintiff multiple times in order to continue deliveries to the stations. Safiedine orally agreed to pay for the gasoline delivered to the stations.

Plaintiff provided gasoline to the five stations for which he was never paid. Kaleen Mozham, the person responsible for plaintiff's billing, faxed, and Fakhoury hand delivered all of the unpaid invoices from the stations to defendants' office.

Following a bench trial, the trial court ruled in favor of plaintiff on its breach of contract claim. The trial court found that Michigan Properties, L.L.C. and Safiedine, through their agent, Shahine, ordered and then failed to pay for the gasoline. The trial court determined that the statute of frauds did not apply because the contract fell under an exception to the statute. Finally, the trial court found that defendants' illegality argument failed because Shahine, as a licensed gasoline dealer, accepted the gasoline.

II. DISCUSSION

A. EXISTENCE OF A CONTRACT

Michigan Properties, L.L.C. and Safiedine first argue that the trial court erred by determining that a contract existed because Shahine did not have the authority to act as defendants' agent, and any agreement violated the statute of frauds. We agree, in part, and disagree, in part.

1. STANDARD OF REVIEW

When reviewing a bench trial verdict, “this Court reviews findings of fact for clear error and conclusions of law de novo.” *Florence Cement Co v Vettraino*, 292 Mich App 461, 468; 807 NW2d 917 (2011). “Clear error exists only when the appellate court is left with the definite and firm conviction that a mistake has been made.” *Herald Co, Inc v E Mich Univ Bd of Regents*, 475 Mich 463, 471; 719 NW2d 19 (2006) (internal quotation marks omitted). “The existence of a contract involves a question of law that we review de novo.” *Holmes v Holmes*, 281 Mich App 575, 587; 760 NW2d 300 (2008). “Whether a statute of frauds bars enforcement of a contract is a question of law that we review de novo.” *Kloian v Domino’s Pizza LLC*, 273 Mich App 449, 458; 733 NW2d 766 (2006). “When there is a disputed question of agency, if there is any testimony, either direct or inferential, tending to establish it, it becomes a question of fact.” *St Clair Intermediate School Dist v Intermediate Ed Ass’n/Mich Ed Ass’n*, 458 Mich 540, 556; 581 NW2d 707 (1998) (internal quotation marks omitted).

2. CONTRACT LAW

“There are five elements of a valid contract: (1) parties competent to contract, (2) a proper subject matter, (3) a legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation.” *Calhoun Co v Blue Cross Blue Shield Michigan*, 297 Mich App 1, 13; 824 NW2d 202 (2012) (internal quotation marks omitted). Mutual assent or mutuality of agreement requires an offer and acceptance. *Eerdmans v Maki*, 226 Mich App 360, 364; 573 NW2d 329 (1997). “An offer is . . . the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.” *Id.* “Acceptance must be unambiguous and in strict conformance with the offer.” *Id.*

3. SAFIEDINE

Safiedine is not personally liable for the contract. “Unless otherwise provided by law or in an operating agreement, a person that is a member or manager, or both, of a limited liability company is not liable for the acts, debts, or obligations of the limited liability company.” MCL 450.4501(4). In order to pierce the veil of a limited liability company, “the [company] (1) must be a mere instrumentality of another individual or entity, (2) must have been used to commit a wrong or fraud, and (3) there must have been an unjust injury or loss to the plaintiff.” *Florence Cement Co*, 292 Mich App at 469. Plaintiff did not allege, nor did the trial court consider the issue of piercing Michigan Properties, L.L.C.’s or MTK Family Investments, L.L.C.’s veil. Plaintiff also did not allege that the operating agreement provided for Safiedine’s personal liability. Therefore, there was no basis in the record for the trial court to hold Safiedine personally liable under the contract.

4. MICHIGAN PROPERTIES, L.L.C.

The trial court did not commit clear error by determining that Shahine and/or his corporations had authority to act as Michigan Properties, L.L.C.’s agent. “An agency relationship may arise when there is a manifestation by the principal that the agent may act on his account.” *Meretta v Peach*, 195 Mich App 695, 697; 491 NW2d 278 (1992). “The test of whether an agency has been created is whether the principal has a right to control the actions of

the agent.” *Id.* See also *Briggs Tax Serv, LLC v Detroit Pub Schools*, 485 Mich 69, 80; 780 NW2d 753 (2010). “The authority of an agent to bind the principal may be either actual or apparent.” *Meretta* 195 Mich App at 698. “Apparent authority arises where the acts and appearances lead a third person reasonably to believe that an agency relationship exists.” *Alar v Mercy Memorial Hosp*, 208 Mich App 518, 528; 529 NW2d 318 (1995). “[A]pparent authority must be traceable to the principal and cannot be established only by the acts and conduct of the agent.” *Id.* “In determining whether an agent possesses apparent authority to perform a particular act, the court must look to all surrounding facts and circumstances.” *Meretta*, 195 Mich App at 699. “[A] duly authorized agent has the power to act and bind the principal to the same extent as if the principal acted.” *In re Estate of Capuzzi*, 470 Mich 399, 402; 684 NW2d 677 (2004). This Court “consider[s] the relations of the parties as they in fact exist under their agreements or acts” *St Clair Intermediate Sch Dist* 458 Mich at 557 (internal quotation marks omitted).

There is evidence that Safiedine, on behalf of Michigan Properties, L.L.C., acted in such a way to lead to plaintiff’s reasonable belief that Shahine possessed apparent authority. For example, Safiedine called Fakhoury after plaintiff stopped delivery to the stations, acknowledged the debt as his own, promised to pay, and then paid it. Safiedine called Fakhoury on multiple other occasions in order to continue deliveries to the stations. Safiedine orally agreed to pay for the gasoline delivered to the stations. Near the end of the relationship, Safiedine and his banker, Kevin Banks, called Fakhoury to inform him that he was transferring money into Shahine’s corporate account in order to cover Shahine’s gasoline debts. Therefore, the trial court did not commit clear error by determining that it was reasonable for plaintiff to assume that Shahine was acting on Michigan Properties, L.L.C.’s behalf when he ordered the gasoline.

5. STATUTE OF FRAUDS

The contract to buy gasoline falls under an exception to the statute of frauds for sale of goods over \$1,000, MCL 440.2201. Defendants argue that the relevant statute is MCL 566.132(1)(b) (statute of frauds for a personal guarantee). However, Safiedine’s statements to Fakhoury implicated an agency relationship, not a personal guarantee. Shahine’s gasoline orders were the basis of the contract, not Safiedine statements to Fakhoury. Therefore, the appropriate statute of frauds section is MCL 440.2201 (statute of frauds for sale of goods over \$1,000).

MCL 440.2201, states in relevant part:

(1) [e]xcept as otherwise provided in this section, a contract for the sale of goods for the price of \$1,000.00 or more is not enforceable by way of action or defense unless there is a writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his or her authorized agent or broker.

* * *

(3) A contract that does not satisfy the requirements of subsection (1) but is valid in other respects is enforceable in any of the following circumstances:

* * *

(c) With respect to goods for which payment has been made and accepted or that have been received and accepted

MCL 440.2606 provides, in relevant part:

(1) Acceptance of goods occurs when the buyer

(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their nonconformity; or

(b) fails to make an effective rejection (subsection (1) of section 2602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

Shahine, on behalf of Michigan Properties, L.L.C., received and accepted the gasoline, pursuant to MCL 440.2201(3)(c). Shahine then sold the gasoline. This was inconsistent with plaintiff's ownership. MCL 440.2606(1)(c). Therefore, the contract did not violate the statute of frauds.

B. ILLEGALITY OF THE CONTRACT

Alternatively, Michigan Properties, L.L.C. and Safiedine argue that if there was a contract for the sale of gasoline between plaintiff and defendants, the contract is void and unenforceable because defendants did not have licenses to purchase gasoline. We disagree.

When reviewing a bench trial verdict, "this Court reviews findings of fact for clear error and conclusions of law de novo." *Florence Cement Co*, 292 Mich App at 468. This Court reviews the construction, and interpretation of a contract de novo. *Comerica Bank v Cohen*, 291 Mich App 40, 46; 805 NW2d 544 (2010).

"[C]ourts presume the legality, validity, and enforceability of contracts." *Coates v Bastian Bros, Inc*, 276 Mich App 498, 507; 741 NW2d 539 (2007). Generally, "contracts founded on acts prohibited by a statute, or contracts in violation of public policy, are void." *Johnson v QFD, Inc*, 292 Mich App 359, 365; 807 NW2d 719 (2011); *Maids Intern, Inc v Saunders, Inc*, 224 Mich App 508, 511; 569 NW2d 857 (1997).

MCL 290.646(1) provides, in relevant part:

Before a distributor or retail dealer engages in transferring, selling, dispensing, or offering for sale gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel in this state, the distributor or retail dealer shall obtain a license from the department for each retail outlet operated by that person.

First, the contract did not violate the statute. Shahine, as Michigan Properties, L.L.C.'s agent, obtained a valid license to buy and sell gasoline. "[T]he characteristic of the agent is that he is a business representative [of the principal]." *St Clair Intermediate Sch Dist*, 458 Mich at 557 (internal quotation marks omitted). As the business representative of Michigan Properties, L.L.C., Shahine held the license for the property to buy and sell gasoline. Therefore, the sale of gasoline to Michigan Properties, L.L.C., through Shahine, was legal.

Second, even if there was a violation of the statute, the contract still is enforceable. Not "every statutory or regulatory violation by one of the contracting parties renders the parties' contract void and unenforceable." *Johnson*, 292 Mich App at 365. Some exceptions to the general rule that a contract violating a statute is unenforceable include, when a party is ignorant of the illegal nature of contract, and when it is "a matter of slight illegality." *Kukla v Perry*, 361 Mich 311, 323; 105 NW2d 176 (1960). There is no indication that the parties were aware that they might be breaking the law. Furthermore, any violation was minor because there were licenses to sell gasoline associated with the stations.

III. CONCLUSION

The trial court did not err by determining that defendant Michigan Properties, L.L.C., through its agent, entered into a contract to buy gasoline from plaintiff. However, it did err by determining that defendant Safiedine was personally liable. We affirm the trial court's ruling in part, and reverse in part. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Jane E. Markey
/s/ Michael J. Riordan