

[Cite as *Glenn Med. Sys., Inc. v. RT Servs., L.L.C.*, 2009-Ohio-4534.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

GLENN MEDICAL SYSTEMS, INC.

Plaintiff-Appellant

-vs-

RT SERVICES, L.L.C., ET AL.

Defendants-Appellees

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. Julie A. Edwards, J.

Hon. Patricia A. Delaney, J.

Case No. 2008CA00246

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,
Case No. 2007CV03840

JUDGMENT:

Affirmed/Reversed in Part & Remanded

DATE OF JUDGMENT ENTRY:

August 31, 2009

APPEARANCES:

For Plaintiff-Appellant

For Defendants-Appellees

PERICLES G. STERGIOS
2859 Aaronwood Avenue, NE
Suite 102
Massillon, OH 44646-2371

JAY E. KRASOVEC
1350 Euclid Avenue
Suite 1400
Cleveland, OH 44115

Farmer, P.J.

{¶1} On September 20, 2007, appellant, Glenn Medical Systems, Inc., filed a complaint against appellees, RT Services, L.L.C. and its President, Katherine Daly, for money due and owing on the rental of oxygen concentrators by appellees from appellant. A trial before a magistrate commenced on April 28, 2008. The sole issue was whether appellee Daly signed the rental agreement with a personal guarantee. By decision filed May 13, 2008, the magistrate found appellee Daly did not personally guarantee the agreement as the agreement was ambiguous. Appellant filed objections. By judgment entry filed September 26, 2008, the trial court overruled the objections and adopted the magistrate's decision.

{¶2} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶3} "WHETHER THE TRIAL COURT ERRED IN APPROVING AND ADOPTING THE MAGISTRATE'S DECISION WHICH DETERMINED THAT PLAINTIFF WAS NOT ENTITLED TO JUDGMENT AGAINST DEFENDANT, KATHERINE A. DALY IN HER PERSONAL AND INDIVIDUAL CAPACITY."

II

{¶4} "WHETHER THE TRIAL COURT ERRED IN APPROVING THE MAGISTRATE'S DECISION WHICH FAILED TO GRANT JUDGMENT IN FAVOR OF PLAINTIFF AGAINST DEFENDANT, R.T. SERVICES, L.L.C., IN THE AMOUNT OF ONE HUNDRED EIGHTY THREE THOUSAND FOUR AND 27/100 DOLLARS

(\$183,004.27) WITH INTEREST AS STIPULATED TO BY COUSEL (SIC) FOR THE PARTIES BY WRITTEN STIPULATION FILED APRIL 28, 2008."

I

{¶5} Appellant claims the trial court erred in finding appellee Daly did not personally guarantee the contract. We disagree.

{¶6} A judgment supported by some competent, credible evidence will not be reversed by a reviewing court as against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279. A reviewing court must not substitute its judgment for that of the trial court where there exists some competent and credible evidence supporting the judgment rendered by the trial court. *Myers v. Garson*, 66 Ohio St.3d 610, 1993-Ohio-9.

{¶7} "A general rule of contract interpretation is that if language in the contract is ambiguous, the court should construe the language against the drafting party. *Central Realty Co. v. Clutter* (1980), 62 Ohio St.2d 411, 413, 406 N.E.2d 515. However, when interpreting a contract, the court must first examine the plain language of the contract for evidence of the parties' intent. *Gottlieb & Sons, Inc. v. Hanover Ins. Co.* (April 21, 1994), Cuyahoga App. No. 64559. If the language of the contract is ambiguous a court should consider extrinsic evidence to determine the parties' intent. *Id.* A court should only resort to construing an ambiguous contract against the drafter when the court is unable to determine the intent of the parties. *Id.*" *Klug v. Klug*, Montgomery App. No. 19369, 2003-Ohio-3042, ¶13.

{¶8} At the center of the dispute is the signature page of the rental agreement. Appellant argues it binds appellee Daly personally and conversely, appellee Daly argues it only binds the company, appellee RT Services.

{¶9} The trial court found the wording of the contract was ambiguous and as a result, should be construed against the drafter, appellant herein. The wording is as follows:

{¶10} "GLENN MEDICAL LEASING, INC.

{¶11} "By: Garry Clevinger (Typed and Signature)

{¶12} "Its: PRESIDENT

{¶13} "By: RT SERVICES (Dealer's Name)

{¶14} "Its: KATHY DALY PRESIDENT (Typed and [OWNER PERSONALLY] Signature)"

{¶15} From the undisputed testimony, we find the parties never discussed a personal guarantee by appellee Daly. T. at 15, 22. Garry Clevinger, appellant's President, testified appellees were to fill in the blanks on the first page and the signature page. T. at 13. Mr. Clevinger did not dispute the fact that appellant drafted the agreement. T. at 17. It was Mr. Clevinger's testimony that he required a personal guarantee, but admitted as the document reads, appellee Daly was not listed personally. T. at 14, 18-19.

{¶16} Upon review, we find the trial court did not err in finding from the evidence presented that the pre-printed words (owner personally) and the method in which appellee Daly's signature was offered created an ambiguity. The evidence supports the finding for appellee Daly.

{¶17} Assignment of Error I is denied.

II

{¶18} Appellant claims the trial court erred in failing to award it judgment as against appellee RT Services. We agree.

{¶19} On April 28, 2008, the parties journalized the following stipulation:

{¶20} "1. Plaintiff is hereby granted Judgment against Defendant, RT Services, L.L.C., in the amount of One Hundred Eighty-Three Thousand Four and 27/100 Dollars (\$183,004.27) with interest from the date of Judgment and costs as prayed for in the Complaint."

{¶21} Based on this joint stipulation, we find the trial court should have entered judgment for appellant as against appellee RT Services in the amount of \$183,004.27 plus interest and costs.

{¶22} Assignment of Error II is granted.

{¶23} The judgment of the Court of Common Pleas of Stark County, Ohio is hereby affirmed in part and reversed in part.

By Farmer, P.J.

Edwards, J. and

Delaney, J. concur.

s/ Sheila G. Farmer

s/ Julie A. Edwards

s/ Patricia A. Delaney

JUDGES

SGF/jbp 0729

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

GLENN MEDICAL SYSTEMS, INC.	:	
	:	
Plaintiff-Appellant	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
RT SERVICES, L.L.C., ET AL.	:	
	:	
Defendants-Appellees	:	CASE NO. 2008CA00246

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Stark County, Ohio is affirmed in part and reversed in part. The matter is remanded to said court for further proceedings consistent with this opinion. Costs to be divided equally between appellant and appellees, one-half by appellant and one-half by appellees.

s/ Sheila G. Farmer

s/ Julie A. Edwards

s/ Patricia A. Delaney

JUDGES