

STATE OF OHIO            )  
                                  )ss:  
COUNTY OF LORAIN    )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

CIRCUIT SOLUTIONS, INC.

C. A. No.    07CA009139

Appellant

v.

MUELLER ELECTRIC COMPANY

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF LORAIN, OHIO  
CASE No.    03CV135192

Appellee

DECISION AND JOURNAL ENTRY

Dated: June 23, 2008

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Per curiam.

{¶1} Plaintiff-Appellant, Circuit Solutions, Inc. (“Circuit Solutions”), has appealed from the judgment of the Lorain County Court of Common Pleas, finding in favor of Defendant-Appellee, Mueller Electric, Co. (“Mueller”). This Court affirms.

I

{¶2} Mueller, an electrical clip manufacturer, initially approached Circuit Solutions with an interest in outsourcing some of its assembly work. As a result of Mueller’s interest, Circuit Solutions sent Mueller multiple quotations and representatives of the two companies engaged in ongoing discussions. Although Circuit Solutions continually expressed an interest in entering into a long-term arrangement with Mueller, Mueller refused. The parties never signed a written contract providing for a long-term agreement. Instead, Mueller simply submitted purchase orders to Circuit Solutions, indicating the number of clips that Mueller needed Circuit Solutions’ workers to assemble. Mueller also delivered several of its assembly machines to

Circuit Solutions along with the unassembled parts that its workers would need to perform these “electric clip manufacturing assembly services.” Mueller continually submitted purchase orders to Circuit Solutions, indicating the number of clips Mueller needed and the deadlines by which the clips had to be assembled. Each time Circuit Solutions received a new purchase order, it stopped working on the previous order, set that order aside, and commenced work on the new order. So as to avoid a gap in production, Mueller always sent its new purchase orders to Circuit Solutions before the old purchase order expired.

{¶3} Once Circuit Solutions familiarized itself with the assembly process related to Mueller’s clips, it moved Mueller’s machines to Mexico and began to assemble the clips remotely. Mueller eventually outsourced additional stages of its clip assembly production to Circuit Solutions as a result of its increased efficiency. For instance, while Mueller initially provided Circuit Solutions with turned springs to use in the assembly process, Circuit Solutions started having its own workers turn springs so as to relieve Mueller of that additional stage of assembly.

{¶4} Mueller eventually indicated that it was no longer interested in outsourcing work to Circuit Solutions and stopped submitting its purchase orders. Without the assembly work from Mueller, Circuit Solutions had to close its facility in Mexico. Believing that Mueller wrongfully cancelled a long-term agreement that the two companies shared, Circuit Solutions filed suit against Mueller for breach of contract on May 30, 2003.<sup>1</sup> The trial court held a bench trial and ultimately awarded judgment in Mueller’s favor. Circuit Solutions appealed from that judgment on May 11, 2005.

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<sup>1</sup> Although the complaint also included several other causes of action, Circuit Solutions never appealed from those causes of action.

{¶5} On August 21, 2006, this Court issued a decision in this matter, finding that the trial court had applied the wrong burden of proof to Circuit Solutions' claim. We remanded the matter for the trial court to apply the correct standard. See *Circuit Solutions, Inc. v. Mueller Elec. Co.*, 9th Dist. No. 05CA008775, 2006-Ohio-4321. On remand, the trial court once again awarded judgment to Mueller. The trial court determined that: (1) Circuit Solutions failed to prove that the parties had a written contract; (2) without a written contract, the parties' course of conduct controlled; and (3) Mueller was entitled to judgment given the parties' conduct. The court specified that Circuit Solutions was not entitled to damages because those damages depended upon the court finding that the parties had a long-term agreement. Since the parties had no such agreement, Circuit Solutions had no valid claim to damages.

{¶6} On March 30, 2007, Circuit Solutions filed its second notice of appeal in this matter, raising three assignments of error for our review. For ease of analysis, we rearrange and consolidate several of the assignments of error.

## II

### Assignment of Error Number Two

“THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN DETERMINING, CONTRARY TO THE MANIFEST WEIGHT OF THE EVIDENCE, THAT PURCHASE ORDERS ON WHICH [CIRCUIT SOLUTIONS] SOUGHT LOSS OF PROFITS DAMAGES DID NOT CONSTITUTE A CONTRACT BETWEEN THE PARTIES.”

{¶7} In its second assignment of error, Circuit Solutions argues that the trial court's finding, that the parties' purchase orders “did not constitute a contract,” was against the manifest weight of the evidence. Specifically, Circuit Solutions argues that: (1) the trial court was bound by the law of the case doctrine because this Court already determined in the first appeal that the parties had an “agreement,” and (2) Mueller's purchase orders constituted an acceptance of

Circuit Solutions' quotation, which contained specific cancellation terms to which Mueller failed to adhere. We disagree.

{¶8} This Court applies the standard of review set forth in *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, syllabus, when analyzing a civil manifest weight argument. *Huntington Nat'l. Bank v. Chappell*, 9th Dist. No. 06CA008979, 2007-Ohio-4344, at ¶4, citing *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, at ¶24. “Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence.” *Wilson* at ¶24, quoting *C.E. Morris* at syllabus. When applying the aforementioned standard, a reviewing court “has an obligation to presume that the findings of the trier of fact are correct.” *Wilson* at ¶24, quoting *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 80-81. This is because the trier of fact is in the best position “to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.” *Seasons Coal*, 10 Ohio St.3d at 80. While “[a] finding of an error in law is a legitimate ground for reversal, [ ] a difference of opinion on credibility of witnesses and evidence is not.” *Id.* at 81. Thus, in a civil manifest weight of the evidence analysis a reviewing court may not simply “reweigh[] the evidence and substitute[] its judgment for that of the [trier of fact].” *Wilson* at ¶40. Compare *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387 (describing the reviewing court's role in analyzing a criminal manifest weight of the evidence argument as that of the “thirteenth juror”).

{¶9} Circuit Solutions argues that this Court already determined that the parties had an “agreement” in its first appeal, so the trial court was bound by the law of the case. The law of the case doctrine prohibits a lower court from disregarding the mandate of a superior court

absent extraordinary circumstances. *Nolan v. Nolan* (1984), 11 Ohio St.3d 1, syllabus. The doctrine provides that “the decision of a reviewing court in a case remains the law of that case \*\*\* at both the trial and reviewing levels” and, upon remand, a trial court “is bound to adhere to the appellate court’s determination of the applicable law.” *Id.* at 3. Circuit Solutions points to this Court’s use of the term “agreement” in the prior appeal to argue that, upon remand, the trial court could not disregard our determination that the parties did in fact have an “agreement.” Circuit Solutions misconstrues this Court’s decision in the prior appeal.

{¶10} In its initial decision, the trial court applied a clear and convincing burden of proof to Circuit Solutions’ breach of contract claim. On appeal, this Court reversed and remanded the matter for the trial court to apply a preponderance of the evidence standard instead. See *Circuit Solutions, Inc. v. Mueller Elec. Co.*, 9th Dist. No. 05CA008775, 2006-Ohio-4321. Additionally, the Court reversed on two errors of law that the trial court made in its initial decision. *Id.* at ¶9-16 (noting that terms of an agreement take precedence over evidence relating to a course of dealing and noting the proper test to apply to analyze a lost profits claim). While these additional findings were meant to provide guidance to the trial court upon remand, they were not binding. We specifically held that “[a]s to all three of [Circuit Solutions’] assignments of error we reverse and remand the case based on the trial court’s incorrect application of the burden of proof.” *Id.* at ¶16. Our determination that the trial court applied the incorrect standard of proof concluded the binding portion of our analysis. It would have been impossible for this Court to remand the case on the threshold matter of burden of proof while simultaneously holding that the parties in fact had a binding contract. The remainder of the opinion, which included the “agreement” language Circuit Solutions relies upon, was not strictly necessary to the disposition of the appeal. See *Board of Ed. of City Sch. Dist. of Cincinnati v. Walter* (1979),

58 Ohio St.2d 368, 384 (noting that dictum is not law of the case). Thus, the only portion of our initial opinion to which the law of the case doctrine applied was the portion instructing the lower court to employ a preponderance of the evidence standard. The lower court was not bound by the law of the case as to the issue of whether the parties had a binding contract.

{¶11} Next, Circuit Solutions argues that the parties had an overarching agreement embodied in the quotation Circuit Solutions sent to Mueller on April 14, 2000 and the purchase orders that Mueller sent to Circuit Solutions in return. Circuit Solutions' quotation included a cancellation provision, which provided as follows:

“Purchase orders, shall remain in force, in whole or in part, unless written cancellation notice is provided by [Mueller], and [Circuit Solutions] accepts said cancellation by written consent to [Mueller].”

Circuit Solutions argues that its quotation was an offer, which Mueller accepted by submitting a purchase order. Hence, Circuit Solutions claims that Mueller accepted its cancellation terms and breached their contract when Mueller terminated their arrangement without providing written notice of cancellation. The trial court determined that the parties did not have a written contract, so their course of conduct controlled the terms of their arrangement. Based on the parties' conduct, the court determined that Mueller was entitled to judgment. We find that the record contains competent, credible evidence to support this judgment.

{¶12} “[T]o prove a breach of contract claim a plaintiff must demonstrate by a preponderance of the evidence that: (1) a contract existed, (2) the plaintiff fulfilled his obligations, (3) the defendant failed to fulfill his obligations, and (4) damages resulted from this failure.” *Second Calvary Church of God in Christ v. Chomet*, 9th Dist. No. 07CA009186, 2008-Ohio-1463, at ¶9, citing *Lawrence v. Lorain Cty. Community College* (1998), 127 Ohio App.3d 546, 548-49. The elements necessary to form a contract “include an offer, acceptance,

contractual capacity, consideration[,] \*\*\* a manifestation of mutual assent and legality of object and of consideration.” *Kostelnik v. Helper*, 96 Ohio St.3d 1, 2002-Ohio-2985, at ¶16, quoting *Perlmutter Printing Co. v. Strome, Inc.* (N.D. Ohio 1976), 436 F.Supp. 409, 414. While a true offer vests an offeree with the power of acceptance, an invitation to make an offer simply requests that the recipient of the invitation make a true offer. See *Ace Precision Indus., Inc. v. Van Dorn Co.* (May 5, 1982), 9th Dist. No. 10339, at \*3-4. “Offers” that do not contain reasonably certain terms will be construed as invitations to offer that “suggest the terms of a possible future bargain.” *Id.* at \*3, quoting 1 Williston on Contracts, Section 26-27 (3d Ed., Walter H.E. Jaeger, 1957).

{¶13} Circuit Solutions argues that the price quotation that it submitted to Mueller on April 14, 2000 constituted an offer. Even if we were to agree that this quotation constituted an offer instead of an invitation to make an offer, however, the record supports the trial court’s conclusion that Mueller never agreed to Circuit Solutions’ written terms. Richard Stone, the president of Circuit Solutions, testified that the April 14, 2000 quotation was just one of several quotations that Circuit Solutions submitted to Mueller in an attempt to secure Mueller’s business. He testified that Circuit Solutions amended and resubmitted their quotation several times. For instance, Circuit Solutions submitted another quotation with different terms on May 22, 2000. Consequently, even if the April 14, 2000 quotation constituted an offer, its subsequent revisions support the trial court’s conclusion that Mueller never accepted Circuit Solutions’ written proposal containing the cancellation provision upon which Circuit Solutions’ argument depends.

{¶14} After failing to find a written contract, the trial court looked to the parties’ course of conduct and determined that Circuit Solutions was not entitled to judgment based on Mueller’s purchase orders because over time the parties “chang[ed] the terms of the prices of the

product, the terms of payment, and the amount of the product ordered[.]” The record contains competent, credible evidence to support this conclusion.

{¶15} Much like an express contract, an implied contract “will be enforced if an offer, an acceptance, and consideration are established.” *Collins v. Flowers*, 9th Dist. No. 04CA008594, 2005-Ohio-3797, at ¶53, quoting *Brown v. Gen. Tire, Inc.* (Feb. 28, 1996), 9th Dist. No. 17161, at \*2. The facts and circumstances that give rise to the implicit terms of implied contracts include the customs and course of dealing amongst the parties. *Collins* at ¶53, citing *Brown* at \*1. The record reflects that Mueller submitted purchase orders to Circuit Solutions over an extended period of time. Christopher Franklin, Mueller’s former materials manager, testified that each purchase order was meant to cover a specific time period. He explained that Mueller intended each subsequent order to replace the previous order, such that Circuit Solutions would stop working on the previous order each time and begin on the new order. Franklin testified that Mueller would not have continued to submit purchase orders if it knew that Circuit Solutions was retaining the old purchase orders with the intent of holding Mueller responsible for the unfilled amounts on each order. David Stone, Circuit Solutions’ vice president, testified that Circuit Solutions’ prices increased over the course of its performance. He testified that he would orally relay these price increases to Mueller for approval as they occurred. Finally, Circuit Solutions’ administrative accounting assistant, Karla Lobatos Avila, testified that each time Mueller submitted a new purchase order she would begin using the new purchase order number and disregard the prior order number.

{¶16} Circuit Solutions’ assembly work progressed over the course of its relationship with Mueller as its prices changed and it added additional steps to the work it performed for Mueller. This evidence supports the trial court’s conclusion that the parties’ relationship evolved



over time such that their conduct controlled their implied agreements. See *Collins* at ¶53. Rather than one cohesive, implied contract, the parties engaged in a series of separate, implied contracts, each of which replaced the previous one. The trial court noted this when it cited to the parties many different “terms of the prices of the product, \*\*\* of payment, and [of] the amount of the product ordered[.]” There was no evidence that Circuit Solutions ever intended to completely fill all of Mueller’s prior orders, many of which Mueller submitted when Circuit Solutions’ costs of labor were less expensive. Mueller simply requested Circuit Solutions to perform work as needed, and Circuit Solutions performed. The parties never entered into a contract that required Mueller to cancel in a certain manner in order to avoid a breach. The trial court’s decision that Mueller was entitled to judgment was not against the manifest weight of the evidence. Circuit Solutions’ second assignment of error is overruled.

Assignment of Error Number One

“THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN DETERMINING, CONTRARY TO THE MANIFEST WEIGHT OF THE EVIDENCE, THAT [CIRCUIT SOLUTIONS] WAS NOT ENTITLED TO RECOVERY FOR ITEMS THAT IT PROVIDED TO MUELLER FOR WHICH IT WAS NOT PAID.”

Assignment of Error Number Three

“THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN DETERMINING, CONTRARY TO THE MANIFEST WEIGHT OF THE EVIDENCE, THAT [CIRCUIT SOLUTIONS] HAD NOT PROVEN BY A PREPONDERANCE OF THE EVIDENCE WHAT IT WOULD HAVE RECOVERED UNDER THE PURCHASE ORDERS IT WAS PREVENTED FROM PERFORMING AND WHAT SUCH PERFORMANCE WOULD HAVE COST.”

{¶17} In its first assignment of error, Circuit Solutions argues that the trial court’s decision that Mueller did not have to reimburse it for certain unpaid billing and tooling expenses was against the manifest weight of the evidence. In its third assignment of error, Circuit

Solutions argues that the trial court's decision not to award it lost profits was against the weight of the evidence. We disagree.

{¶18} The trial court concluded that Circuit Solutions was not entitled to seek damages because it failed to prove its breach of contract claim. Since we have already concluded that the trial court's decision regarding the existence of a contract was not against the manifest weight of the evidence, we similarly conclude that its decision not to award damages on this basis was supported by competent, credible evidence. See *Wilson* at ¶24. Without a proven breach of contract, Circuit Solutions was not entitled to seek damages on that basis.<sup>2</sup> See *Second Calvary Church of God in Christ* at ¶9 (listing the elements a party must prove to recover damages in a breach of contract action). Circuit Solutions' first and third assignments of error lack merit.

### III

{¶19} Circuit Solutions' assignments of error are overruled. The judgment of the Lorain County Court of Common Pleas is affirmed.

Judgment affirmed.

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<sup>2</sup> We note that Circuit Solutions brought a single breach of contract claim against Mueller and appealed solely on that basis. While Circuit Solutions' suit against Mueller also involved claims of promissory estoppel and fraudulent conversion, Circuit Solutions never appealed those claims. See *Circuit Solutions, Inc. v. Mueller Elec. Co.*, 9th Dist. No. 05CA008775, 2006-Ohio-4321, at ¶6. To the extent that Circuit Solutions attempts to seek damages for unpaid billing and tooling under a separate contractual theory or cause of action, those claims are barred by res judicata and cannot be raised on this appeal. See *Ohio Patrolmen's Benevolent Ass'n. v. Munroe Falls*, 9th Dist. No. 23898, 2008-Ohio-659, at ¶13-14.

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The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

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BETH WHITMORE  
FOR THE COURT

CARR, J.  
WHITMORE, P. J.  
CONCUR

DICKINSON, J.  
CONCURS IN PART AND DISSENTS IN PART, SAYING:

#### INTRODUCTION

{¶20} Seeking to reduce its costs, Mueller Electric Company outsourced part of its electrical clip assembly work to Circuit Solutions Inc., which had a facility in Mexico. When Mueller stopped placing orders with Circuit Solutions and moved its work to China, Circuit Solutions sued Mueller for breach of contract, promissory estoppel, and fraudulent

misrepresentation. Following a bench trial, the trial court concluded that Circuit Solutions had failed to establish its claims by clear and convincing evidence. Circuit Solutions appealed its breach of contract claim, and this Court reversed, concluding that the trial court had not applied the correct burden of proof. *Circuit Solutions Inc. v. Mueller Elec. Co.*, 9th Dist. No. 05CA008775, 2006-Ohio-4321, at ¶8. On remand, the trial court applied the correct burden of proof and concluded that Circuit Solutions had not established its breach of contract claim by a preponderance of the evidence. Circuit Solutions has again appealed, this time arguing that the trial court's decision on remand violated the law of the case and was against the manifest weight of the evidence. The majority has correctly overruled Circuit Solutions' second and third assignments of error because this Court's prior decision did not conclusively establish Circuit Solutions' breach of contract claim and because the trial court's decision of that claim was not against the manifest weight of the evidence. This Court should sustain Circuit Solutions' first assignment of error, however, because the trial court's decision regarding Circuit Solutions' tooling charges and under-billing claims was not supported by competent and credible evidence.

#### FACTS

{¶21} Mueller manufactured a variety of electrical clips in Cleveland, Ohio. Because of increased foreign competition, it sought to lower its costs by outsourcing its labor-intensive hand-assembly work. Mueller contacted Circuit Solutions, a contract manufacturer that it knew had production capabilities in Mexico. In April 2000, Circuit Solutions sent Mueller a quotation. Although Mueller did not accept Circuit Solutions' quotation, it did deliver some of its machines to Circuit Solutions and begin submitting purchase orders to it.

{¶22} At first, Circuit Solutions assembled Mueller's electrical clips at its North Ridgeville, Ohio, facility. Mueller delivered unassembled parts to Circuit Solutions and Circuit

Solutions assembled the clips. Once Circuit Solutions learned how to assemble the clips efficiently, it transported Mueller's machines to its facility in Mexico and began assembling the clips there. Over time, Mueller outsourced additional stages of its production to Circuit Solutions. To accommodate Mueller's extra machinery, Circuit Solutions expanded its facility in Mexico. Representatives of Mueller visited Circuit Solutions' Mexican facility as it was expanding and approved the expansion.

{¶23} Although the parties never signed a written agreement, they developed an understanding regarding Mueller's purchase orders. Mueller would issue a blanket purchase order for a number of clips over a specific period of time. As that order reached fulfillment, Mueller would issue a new purchase order, even if there were clips left to be assembled on the previous order. When Circuit Solutions received the new purchase order, it would set aside the old purchase order and begin using the new one. This ensured that Circuit Solutions never stopped assembling clips.

{¶24} In the fall of 2001, Mueller stopped submitting purchase orders and stopped supplying unassembled parts to Circuit Solutions. Although production briefly resumed, Mueller soon began outsourcing its assembly work to a company in China. Circuit Solutions, therefore, had to close its Mexican facility.

{¶25} Circuit Solutions sued Mueller for breach of contract, promissory estoppel, and fraudulent misrepresentation, seeking to recover its lost profits on all the purchase orders that Mueller replaced with new purchase orders before all of the clips called for on the replaced orders were assembled. The trial court, however, concluded that it had not proven its claims by clear and convincing evidence. Circuit Solutions appealed its breach of contract claim, and this Court reversed, concluding that the trial court had not applied the correct burden of proof. On

remand, the trial court concluded that Circuit Solutions had not proven breach of contract or its damages by a preponderance of the evidence. Circuit Solutions has appealed, assigning three errors.

#### CANCELLED PURCHASE ORDERS

{¶26} Circuit Solutions’ second assignment of error is that the trial court ruled against the manifest weight of the evidence when it concluded that the purchase orders Mueller submitted to it did not constitute a contract between the parties. Circuit Solutions has argued that it submitted a quotation to Mueller to assemble clips on specific terms and conditions, that Mueller placed purchase orders with it in response to that quotation, that it partially filled those purchase orders, and that Mueller unilaterally cancelled the purchase orders without submitting a written cancellation as required under the quotation.

{¶27} “A contract is generally defined as a promise, or a set of promises, actionable upon breach. Essential elements of a contract include an offer, acceptance, contractual capacity, consideration (the bargained for legal benefit and/or detriment), a manifestation of mutual assent and legality of object and of consideration.” *Kostelnik v. Helper*, 96 Ohio St. 3d 1, 2002-Ohio-2985, at ¶16 (quoting *Perlmutter Printing Co. v. Strome Inc.*, 436 F. Supp. 409, 414 (N.D. Ohio 1976)). “A meeting of the minds as to the essential terms of the contract is a requirement to enforcing the contract.” *Id.* (citing *Episcopal Retirement Homes Inc. v. Ohio Dept. of Indus. Relations*, 61 Ohio St. 3d 366, 369 (1991)).

{¶28} In its judgment entry, the trial court wrote that it had “found, by a preponderance of the evidence that there was no contract between the parties.” This was incorrect because it was undisputed that Mueller submitted purchase orders to Circuit Solutions and Circuit Solutions assembled clips based on those orders. Accordingly, there was at least an implied contract

between the parties. See *Hollis Towing v. Greene*, 155 Ohio App. 3d 300, 2003-Ohio-5962, at ¶8 (“An implied contract is a contract inferred by a court from the circumstances surrounding the transaction, making a reasonable or necessary assumption that a contract exists between the parties by tacit understanding.”). The trial court, however, later clarified its finding, writing that it found “by a preponderance of the evidence that there was no written contract between the parties.” The trial court, therefore, concluded that the parties’ course of conduct controlled the terms of their agreement.

{¶29} Circuit Solutions has argued that, even though the parties did not have a written contract, the cancellation provision from the quotation it sent Mueller was incorporated into their agreement. The quotation that Circuit Solutions sent to Mueller in April 2000 provided that cancellations had to be in writing. It also contained an “exclusivity of terms” provision stating that “[b]uyer’s purchase order will constitute an acceptance of the terms stated herein, irrespective of contrary terms in any Buyer’s forms.” Since Mueller submitted purchase orders to Circuit Solutions after receiving its quotation, Circuit Solutions has argued that the cancellation term became part of their agreement.

{¶30} “Typically, a price quotation is considered an invitation for an offer, rather than an offer to form a binding contract . . . [A] buyer’s purchase agreement submitted in response to a price quotation is usually deemed the offer.” *L.B. Trucking Co. Inc. v. C.J. Mahan Constr. Co.*, 10th Dist. No. 01AP-1240, 2002-Ohio-4394, at ¶39 (quoting *Dyno Constr. Co. v. McWane Inc.*, 198 F.3d 567, 572 (6th Cir. 1999)). A price quotation, however, “may be deemed an offer to form a binding contract if it is sufficiently detailed, and if it appears from the terms of the quotation that all that is needed to ripen the offer into a contract is the recipient’s assent.” *SST Bearing Corp. v. MTD Consumers Group Inc.*, 1st Dist. No. C-040267, 2004-Ohio-6435, at ¶15.

“While the inclusion of a description of the product, price, quantity, and terms of payment may indicate that the price quotation is an offer rather than a mere invitation to negotiate, the determination of the issue depends primarily upon the intention of the person communicating the quotation as demonstrated by all of the surrounding facts and circumstances.” *Dyno Constr. Co.*, 198 F.3d at 572.

{¶31} Even if Circuit Solutions’ quotation constituted an offer, Mueller did not accept it. The quotation listed prices for assembly of twenty different kinds of clips, specifying quantities that ranged from five thousand to over five hundred thousand. There was no indication that Mueller could accept only part of the quotation; to the extent that Mueller wanted to assent to the quotation, it would have had to have accepted the price and quantity quoted for each clip. Mueller did not simply accept the quotation as it was; instead, it submitted a series of purchase orders in response to the quotation. Accordingly, it was Mueller’s purchase orders, not Circuit Solutions’ quotation, that formed the basis of the parties’ agreement. Circuit Solutions accepted Mueller’s purchase orders and began assembling clips under them, without obtaining Mueller’s consent to the terms and conditions set forth in its quotation. Circuit Solutions’ cancellation term, therefore, was not part of the parties’ agreement.

{¶32} Mueller’s purchase orders did not include any terms regarding cancellation. Mueller’s former purchasing manager testified that, when it sent Circuit Solutions a new purchase order, Circuit Solutions would close the previous order and begin working from the new one. An accounting assistant who worked at Circuit Solutions’ Mexican facility agreed that, when she received a new purchase order from Mueller, she would begin using the numbers from the new order. Accordingly, there was competent and credible evidence in the record to support the trial court’s conclusion that the cancellation term from Circuit Solution’s quotation was not



incorporated into the parties' agreement and, therefore, that Mueller did not owe Circuit Solutions for the quantities remaining on its cancelled purchase orders.

#### LAW OF THE CASE

{¶33} Circuit Solutions has also argued that this Court “already determined that there was an agreement between the parties that related to the terms for cancellation of purchase orders.” It has noted that, in this Court’s previous decision, it wrote that, “[p]ursuant to the terms of the agreement, in order to cancel a purchase order [Mueller] needed to provide [Circuit Solutions] with written notice and [Circuit Solutions] had to accept the cancellation in writing to [Mueller].” *Circuit Solutions Inc. v. Mueller Elec. Co.*, 9th Dist. No. 05CA008775, 2006-Ohio-4321, at ¶11. This Court also wrote that, “[a]s the terms of the agreement and the parties’ course of dealing were inconsistent with each other, the terms of the agreement govern.” *Id.* at ¶12.

{¶34} “Absent extraordinary circumstances, such as an intervening decision by the Supreme Court, an inferior court has no discretion to disregard the mandate of a superior court in a prior appeal in the same case.” *Nolan v. Nolan*, 11 Ohio St. 3d 1, syllabus (1984). The “law of the case” doctrine “provides that the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels.” *Id.* at 3. “[T]he doctrine functions to compel trial courts to follow the mandates of reviewing courts.” *Id.* “Thus, where at a rehearing following remand a trial court is confronted with substantially the same facts and issues as were involved in the prior appeal, the court is bound to adhere to the appellate court’s determination of the applicable law.” *Id.*

{¶35} “[T]he law of the case is applicable to subsequent proceedings in the reviewing court as well as the trial court. Thus, the decision of an appellate court in a prior appeal will

ordinarily be followed in a later appeal in the same case and court.” *Id.* at 4. The doctrine, however, “is considered to be a rule of practice rather than a binding rule of substantive law and will not be applied so as to achieve unjust results.” *Id.* at 3.

{¶36} In its original decision, the trial court found that “there was a meeting between the parties at which a proposed long-term contract was summarily rejected by [Mueller].” It found that “[a]n agreement about price for some work was later reached, and [Circuit Solutions] did work for [Mueller].” It also noted that “there was evidence of a course of conduct wherein the parties substituted new purchase orders for old ones.” The trial court denied Circuit Solutions’ claims because it “did not meet its burden of proof by clear and convincing evidence.”

{¶37} On appeal, this Court concluded that the trial court had not applied the correct burden of proof to Circuit Solutions’ claims. *Circuit Solutions Inc. v. Mueller Elec. Co.*, 9th Dist. No. 05CA008775, 2006-Ohio-4321, at ¶8. This Court also concluded that, “when the terms of [an] agreement and the parties’ course of dealing are contrary to one another, then the terms of the agreement govern.” *Id.* at ¶10 (citing R.C. 1301.11(D)). This Court remanded the case “based on the trial court’s incorrect application of the burden of proof” and “based on the trial court’s misapplication of the law” for “further proceedings consistent with this decision.” *Id.* at ¶16-17.

{¶38} On remand, the trial court reweighed the evidence, and found “by a preponderance of the evidence that there was no written contract between the parties.” Because there was no written contract incorporating the cancellation terms from Circuit Solutions’ quotation, the Court concluded that “the course of conduct of both parties in changing the terms of the prices of the product, the terms of the payment, and the amount of the product ordered is controlling.”

{¶39} The trial court’s decision was not inconsistent with this Court’s mandate. Although Circuit Solutions has argued that “[t]his Court has already determined that there was an agreement between the parties that related to the terms for cancellation of purchase orders,” “courts serving in an appellate capacity . . . are not permitted to make factual findings or to determine the credibility of witnesses.” *Irvine v. State Unemployment Compensation Bd. of Review*, 19 Ohio St. 3d 15, 18 (1985). It was for the trial court to determine whether there was a contract between the parties and whether their agreement incorporated a cancellation term. The sentence from this Court’s earlier opinion, relied upon by Circuit Solutions, was dicta. The trial court found that there was no written contract and that the parties’ implied contract did not incorporate the cancellation term from Circuit Solutions’ written quotation. It, therefore, concluded that Circuit Solutions had not proved its breach of contract claim by a preponderance of the evidence. That decision was not inconsistent with this Court’s mandate and was not against the manifest weight of the evidence. The majority has correctly overruled Circuit Solutions’ second assignment of error.

#### UNPAID EXPENSES

{¶40} Circuit Solutions’ first assignment of error is that the trial court ruled against the manifest weight of the evidence when it concluded that Circuit Solutions could not recover for some expenses that Mueller did not pay. Circuit Solutions has argued that Mueller owes it for tooling charges and for assembly of some clips for which Circuit Solutions under-billed it. Circuit Solutions has noted that Mueller did not dispute the tooling charges at trial or present any evidence that it had paid the under-billed amounts.

{¶41} In *State v. Wilson*, 113 Ohio St. 3d 382, 2007-Ohio-2202, at ¶24, the Ohio Supreme Court held that the test for whether a judgment is against the weight of the evidence in

civil cases is different from the test applicable in criminal cases. According to the Supreme Court in *Wilson*, the standard applicable in civil cases “was explained in *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279.” *Id.* The “explanation” in *C.E. Morris* was that “[j]udgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence.” *Id.* (quoting *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St. 2d 279, syllabus (1978)); but see *Huntington Nat’l Bank v. Chappell*, 9th Dist. No. 06CA008979, 2007-Ohio-4344, at ¶17-75 (Dickinson, J., concurring).

{¶42} Circuit Solutions claimed that its price quotations for two products included separate tooling charges because it had to construct special fixtures at its facility before it could produce those products. Circuit Solutions’ president testified that Mueller accepted its terms, but never paid the tooling charges. Circuit Solutions’ president also testified that, when he reviewed the invoices his company had sent Mueller, he discovered that it had undercharged for one of its products. Circuit Solutions, therefore, sought to recover the tooling charges and the amount it claimed to have under-billed, for a total of \$10,197.90.

{¶43} Mueller has argued that it contested the alleged tooling charges at trial, but it has not cited, and I have not found, anything in the record that supports its argument. Mueller did not cross-examine Circuit Solutions’ president about the unpaid tooling charges and under-billed amounts and did not introduce any evidence rebutting his testimony about those claims. While Mueller has argued that overhead charges are usually included in the per-unit cost of a product, it did not present any evidence supporting that argument at trial or tending to prove that that was done in this case.

{¶44} The trial court determined that Circuit Solutions “did not meet its burden of proof on its claim as to breach of contract by a preponderance of the evidence” and that it “failed to meet its burden of proof . . . as to the damages also.” Presumably, the trial court did not believe Circuit Solutions’ president’s testimony about the tooling charges and claimed under-billing. It has generally been recognized that a trier of fact is free to reject testimony even if that testimony is unrebutted. See *Ace Steel Baling Inc. v. Porterfield*, 19 Ohio St. 2d 137, 138 (1969). Under the civil manifest-weight-of-the-evidence standard adopted in *Wilson*, however, this apparently is no longer true. See *Huntington Nat’l Bank v. Chappell*, 9th Dist. No. 06CA008979, 2007-Ohio-4344, at ¶51-54 (Dickinson, J., concurring). Under *Wilson*, if a finder of fact rejects unrebutted evidence presented by the party with the burden of proof, that rejection will result in a decision against the manifest weight of the evidence. Inasmuch as there was no evidence rebutting Circuit Solutions’ tooling charges and under-billing claims, the trial court’s decision regarding those claims could not have been supported by “competent, credible evidence.” *State v. Wilson*, 113 Ohio St. 3d 382, 2007-Ohio-2202, at ¶24 (quoting *C.E. Morris Co.*, 54 Ohio St. 2d 279, syllabus (1978)). The trial court’s denial of those claims, therefore, was against “the manifest weight of the evidence.” *Id.* Circuit Solutions’ first assignment of error should be sustained.

#### PREVENTED PERFORMANCE

{¶45} Circuit Solutions’ third assignment of error is that the trial court ruled against the manifest weight of the evidence when it concluded that Circuit Solutions did not prove what its profits would have been on the replaced purchase orders. In this Court’s prior decision, it concluded that the trial court should have applied the two-prong test set forth in *Allen, Heaton & McDonald Inc. v. Castle Farm Amusement Co.*, 151 Ohio St. 522 (1949). Under that test, Circuit Solutions had the burden of proving, “not only (a) what [it] would have received under the

contract from the performance so prevented, but also (b) what such performance would have cost.” *Id.* at paragraph three of the syllabus.

{¶46} The trial court concluded that, because there was no written contract between the parties, their course of conduct “in changing . . . the amount of the product ordered” controlled. The parties’ course of conduct established that, when Mueller submitted a new purchase order, Circuit Solutions treated the previous order as cancelled or closed. Inasmuch as that finding was not against the manifest weight of the evidence, the trial court’s conclusion that Circuit Solutions failed to prove that it was entitled to recover for prevented performance was also not against the manifest weight of the evidence. The majority has correctly overruled Circuit Solutions’ third assignment of error.

#### CONCLUSION

{¶47} The trial court’s decision was against the manifest weight of the evidence regarding Circuit Solutions’ tooling charges and under-billing claims. Circuit Solutions’ first assignment of error should be sustained. The trial court’s decision was not against the manifest weight of the evidence and did not violate the law of the case regarding Circuit Solutions’ lost profits claims. Circuit Solutions’ second and third assignments of error are correctly overruled. The judgment of the Lorain County Common Pleas Court should be affirmed in part and reversed in part, and this matter should be remanded for a new trial on Circuit Solutions’ alleged tooling charges and under-billing claims.

#### APPEARANCES:

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JOHN SWANSINGER, Attorney at Law, for Appellee.