

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

CROSSFIRE NEWSPAPER GROUP, INC.,	:	O P I N I O N
	:	
Plaintiff-Appellee,	:	CASE NO. 2010-L-056
	:	
- VS -	:	
	:	
RANDY V. HETRICK, d.b.a. AMERICAN FINANCIAL SOLUTIONS,	:	
	:	
Defendant-Appellant.	:	

Civil Appeal from the Willoughby Municipal Court, Case No. 09 CVF 00415.

Judgment: Affirmed.

Egon P. Singerman, 3681 Green Road, #410, Beachwood, OH 44122 (For Plaintiff-Appellee).

Bradley Hull, IV, Bradley Hull, IV Esq., L.L.C., 100 North Main Street, #130, Chagrin Falls, OH 44022 (For Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} Appellant, Randy V. Hetrick, d.b.a. American Financial Solutions, appeals from the trial court’s judgment adopting the magistrate’s decision and entering judgment in favor of appellee, Crossfire Newspaper Group, Inc., against Hetrick, individually, in the amount of \$14,781. For the reasons that follow, we affirm.

{¶2} Crossfire filed a complaint alleging that Hetrick received services from Crossfire and that \$15,000 remains due and owing. Hetrick, then unrepresented, sent a

letter to the court, construed as an answer. Hetrick denied having any personal agreement or arrangement with Crossfire and also claimed that he was not aware of any agreement that American Financial Solutions, Inc., a corporation, has with Crossfire. Subsequently, Hetrick obtained counsel and a trial ensued.

{¶3} At trial, John W. Sheppard, President of Crossfire, and Gary Wachs, Chief Financial Officer of Crossfire, testified on behalf of Crossfire. Sheppard explained that Crossfire provides newspapers with telemarketing services to obtain subscriptions. Crossfire also provides telemarketing collections for past due accounts.

{¶4} Sheppard testified that he knew Hetrick for many years through business interactions. Sheppard testified that Hetrick is also in the business of obtaining subscribers on behalf of newspapers but that he conducts his business either through kiosk sales in malls or door-to-door.

{¶5} Sheppard testified that Hetrick called him sometime in 2007 and made inquiry about the telemarketing services that Crossfire supplies to various accounts. Sheppard was under the impression that Hetrick was exploring the possibility of providing telemarketing services to some of his clients. Although only Sheppard's opinion, he believed that after making inquiry, Hetrick came to the conclusion that it would be too costly to set up his own telemarketing services. Sheppard testified that in the fourth quarter of 2007, Sheppard worked out an arrangement with Hetrick in which Crossfire would provide Hetrick with telemarketing services for some of Hetrick's accounts. Sheppard could not recall whether the billing was to be done on an hourly or per unit basis, but Hetrick was billed weekly. There was no writing to memorialize the agreement.

{¶6} Sheppard testified that he and Hetrick would have conversations off and on regarding the services Crossfire was providing. While Sheppard and Hetrick would discuss, at times, issues such as ways that Crossfire could improve its services, for the most part things were “smooth sailing most of the time.” Sheppard testified there was no reason for Hetrick not to pay Crossfire and Hetrick never said he would not pay Crossfire. Both Sheppard and Wachs testified that Crossfire did receive payments initially. Sheppard testified that he entered into the contract with Hetrick himself and denied entering into an agreement with Natalie Gronner of American Financial Solutions, Inc. Sheppard testified that he primarily dealt with Hetrick on this issue and not Gronner. When pushed on cross-examination, Sheppard said that he dealt with Hetrick 98% of the time and Gronner 2% of the time.

{¶7} Wachs is the Chief Financial Officer of Crossfire and is responsible for accounts receivable. Wachs explained that generally, after an account gets two weeks behind he starts getting involved in collections. Hetrick was behind on payment; however, Sheppard advised Wachs to hold off on collections and, therefore, collection efforts were delayed longer than normal. Wachs testified that he was under the impression that Crossfire’s agreement was with Hetrick, individually, doing business as American Financial Solutions. Wachs identified Crossfire’s exhibit one which was a summary of Hetrick’s accounts that were billed but never collected with attached invoices. Crossfire’s exhibit one demonstrated that Hetrick owed \$14,781. The face of the invoices indicates they were sent to American Financial Solutions and to the attention of Gronner. Wachs testified that the billing was sent to Gronner because, according to Hetrick, she was handling this for him.

{¶8} Hetrick testified that he is an investor with American Financial Solutions, Inc., a corporation. He testified that Gronner was primarily involved with the day to day operations of American Financial Solutions, Inc. He testified that American Financial Solutions, Inc. was registered with the Alabama Secretary of State since September 7, 2007. The articles of the incorporation demonstrating this were admitted without objection. Hetrick testified that he did not enter into an agreement with Crossfire either personally or as an agent of American Financial Solutions, Inc., and he assumes that if any contract was entered into with Crossfire it was with Gronner on behalf of American Financial Solutions, Inc.

{¶9} Appellant assigns the following error:

{¶10} “The trial court abused its discretion in adopting Magistrate Harry E. Field’s Decision finding that Defendant-Appellant Randy V. Hetrick entered into a legally-binding contract with Plaintiff-Appellee Crossfire Newspaper Group, Inc.”

{¶11} Hetrick essentially argues that Crossfire failed to prove its breach of contract claim and that he is not individually liable.

{¶12} “In order to be successful on a breach of contract claim, the plaintiff must provide evidence of the following: (1) the existence of a contract; (2) performance by the plaintiff; (3) breach by the defendant; and (4) damages.” *Huffman v. Kazak Bros., Inc.* (Apr. 12, 2002), 11th Dist. No. 2000-L-152, 2002 Ohio App. LEXIS 1660, at *11, citing *Doner v. Snapp* (1994), 98 Ohio App.3d 597, 600.

{¶13} “To have a valid and enforceable contract there must be an offer by one party and an acceptance of the offer by another.” *Huffman* at *11-12, citing *Camastro v. Motel 6 Operating, L.P.* (Apr. 27, 2001), 11th Dist. No. 2000-T-0053, 2001 Ohio App.

LEXIS 1936, at *9. A proper offer and acceptance requires a meeting of the minds. *Huffman* at *12, citing *Gall v. Trumbull Mem. Hosp.* (July 7, 2000), 11th Dist. No. 99-T-0102, 2000 Ohio App. LEXIS 3053, at *7. “The party claiming that there was a meeting of the minds may show this by “the surrounding circumstances which make it inferable that the contract exists as a matter of tacit understanding.”” *Huffman* at *12, citing *Gall* at *8, quoting *Biddle v. Warren Gen. Hosp.* (Mar. 27, 1998), 11th Dist. No. 96-T-5582, 1998 Ohio App. LEXIS 1273. In determining whether there is a meeting of the minds, courts consider the objective manifestations of the parties. *Huffman* at *13, citing *Nilavar v. Osborn* (1998), 127 Ohio App.3d, 1, 12.

{¶14} In addition to the meeting of the minds, an enforceable contract must also be definite and certain with respect to essential terms. *Huffman* at *13, citing *Episcopal Retirement Homes, Inc. v. Ohio Dept. of Indus. Relations* (1991), 61 Ohio St.3d 366, 369. Essential terms typically include the identity of the parties to the contract, the subject matter of the contract, and consideration. *Huffman* at *13, citing *McMillian v. Haueter* (Apr. 30, 1999), 11th Dist. Nos. 98-G-2124 and 98-G-2125, 1999 Ohio App. LEXIS 2019, at *11. “(T)he terms of a contract are sufficiently certain if they “provide a basis for determining the existence of a breach and for giving an appropriate remedy.”” *Huffman* at *13-14, quoting *Nilavar* at 13, quoting *Mr. Mark Corp. v. Rush, Inc.* (1983), 11 Ohio App.3d 167, 169. Moreover, “if the court can determine that the parties intended to be bound, it may fashion those less essential terms that were omitted in order to reach a fair and just result.” *Huffman* at *14, citing *Gurich v. Janson* (Nov. 17, 2000), 11th Dist. No. 99-A-0006, 2000 Ohio App. LEXIS 5369, at *12.

{¶15} The testimony on whether there was a contract between Crossfire and Hetrick was conflicting to say the least. However, the testimony of Sheppard and Wachs, if believed, establish the existence of a contract between Crossfire and Hetrick and all the essential terms. Both Sheppard and Wachs testified that they believed they were dealing with Hetrick in his individual capacity. Moreover, there was sufficient evidence to establish the essential terms of the contract. Crossfire performed telemarketing services on behalf of Hetrick. Hetrick never complained about the services or said he would not pay. Initially, Crossfire received payments. Crossfire's exhibit one established the units billed and the price per unit. Wachs testified that \$14,781 was due and owing from Hetrick for services performed.

{¶16} Regarding whether Hetrick entered into the contract in his individual capacity or on behalf of the corporation, the magistrate held as follows: "In this case, the evidence revealed that at no time did [Hetrick] clearly indicate to [Crossfire] that the services were to be rendered in favor of any organizational entity. Irrespective of [Hetrick's] intent or the fact that a corporation existed for which services were provided, the Court finds that it is the obligation of an individual party to disclose his agency relationship. ***"

{¶17} The above demonstrates that the magistrate carefully considered whether Hetrick entered into the contract in his individual capacity or on behalf of the corporation.

{¶18} "It is well-settled in the law of agency that an agent who discloses neither the existence of the agency nor the identity of the principal is personally liable in his or her contractual dealings with third parties. See, e.g., 1 Mechem, The Law of Agency (2

Ed.1914) 1039-1041, Section 1410. See, generally, *Davis v. Harness* (1882), 38 Ohio St. 397; and *James G. Smith & Assoc., Inc. v. Everett* (1981), 1 Ohio App.3d 118, 120-121, *** (where the existence of the agency and the identity of the principal are unknown to the third party, the dealing is held to be between the agent and the third party and the agent is liable). The reason for this rule is simple. The third party who deals with an agent while unaware of the existence of the principal and the agency relationship intends to deal with the agent, and relies upon the agent's ability to perform." *Dunn v. Westlake* (1991), 61 Ohio St.3d 102, 106. (Parallel citation omitted.)

{¶19} The trial court's decision to adopt or reject a magistrate's decision is reviewed on appeal under an abuse of discretion standard. The term "abuse of discretion" is one of art, connoting judgment exercised by a court which does not comport with reason or the record. *Caudill v. Thomas*, 11th Dist. No. 2009-P-0087, 2011-Ohio-524, at ¶17, citing *Gaul v. Gaul*, 11th Dist. No. 2009-A-0011, 2010-Ohio-2156, at ¶24. A trial court's decision will be affirmed if its judgment is supported by some competent, credible evidence going to all essential elements of the case. *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, syllabus; *In re Edgell*, 11th Dist. No. 2009-L-065, 2010-Ohio-6435, at ¶50.

{¶20} We find that the record supports the magistrate's factual conclusions and that the law was properly applied in concluding that Hetrick has personal liability under the contract. We also find that the record supports the trial court's conclusion that there was a valid and enforceable contract: Crossfire performed; Hetrick breached; and \$14,781 is owed.

{¶21} Based on the foregoing, the judgment of the Willoughby Municipal Court is affirmed.

TIMOTHY P. CANNON, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.