

**IN THE COURT OF CLAIMS OF OHIO**

MELVIN OTTERBACHER

Plaintiff

v.

OHIO EXPOSITIONS COMMISSION

Defendant

Case No. 2024-00017AD

Deputy Clerk Holly True Shaver

MEMORANDUM DECISION

{¶1} On January 12, 2024, Melvin Otterbacher (“plaintiff”)<sup>1</sup> filed a complaint against the Ohio Expositions Commission (“defendant” or “OEC”) alleging that defendant arbitrarily and unjustifiably removed three of his concession stands from the 2023 Ohio State Fair (“the fair”) on July 26, 2023, at the end of the first day of the fair. Plaintiff requests relief in the amount of \$7,800.00, the deposits he was required to pay for three concession stands, three campers, and a golf cart. Plaintiff paid the \$25.00 filing fee.

{¶2} Defendant filed an investigation report denying liability in this case. Defendant stated that while it does not dispute that OEC removed plaintiff’s concession stands from the fair, OEC was justified in doing so.

{¶3} Plaintiff did not file a response to defendant’s investigation report.

{¶4} The following facts were derived from defendant’s investigation report and exhibits, which plaintiff failed to dispute. On March 7, 2023, plaintiff and his business associates signed three contracts permitting Otterbacher Concessions to operate three concession stands at the fair providing various foods.<sup>2</sup> These contracts incorporated the “2023 Ohio State Fair Exhibits, Concessions, and Attractions Manual” (“the manual”) into their terms. Defendant’s Ex. D-1, contracts 403-405 at ¶ (2). The manual states that

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<sup>1</sup> Plaintiff conducts business under the name and entities of Otterbacher, Otterbacher Bros. Concessions, and/or Otterbacher Concession (collectively hereinafter “Otterbacher Concessions”), in conjunction with Dean Otterbacher, Kurt Otterbacher, and Shawn Rawlins.

<sup>2</sup> These contracts are attached to defendant’s investigation report as Exhibit D-1 and numbered 403, 404, and 405.

plaintiff, as a “percentage contractor” providing outside concessions, must pay 15% of gross sales, minus sales tax to defendant. Defendant’s Ex. D-2, page 17, ¶ 46. The manual requires all percentage contractors to use the Clover Point of Sale System (“Clover”) for all transactions and provide a receipt for every transaction. *Id.*, page 18. Percentage contractors must allow OEC to access daily sales reports, which must be an accurate account of all transactions. *Id.* Further, such contractors must use a cash drawer that is connected to Clover which will automatically open the drawer with every transaction; vendors must close that drawer after every transaction; and the manual prohibits contractors from using the cash drawer key at any point in the transaction. *Id.*, p. 19. The manual also states that there must be a Clover connected drawer at each ordering window. *Id.* The manual states that failure to adhere to these rules will result in removal from the fair and forfeiture of all deposits and fees. Defendant’s Ex. D-2, page 18-19. The procedure for violations states that OEC:

{¶5} will issue verbal warnings to Contractors to correct a situation \* \* \* Contractors must correct the violation immediately. Any Contractor who refuses to immediately make the necessary corrections will be expelled from the Ohio State Fair, and if expelled, Contractor’s Space Rental Contract will be cancelled without refund of rental fees.

{¶7} Defendants Ex. D-2, page 27.

{¶8} According to the affidavit of Shawn Brunk, a concessions auditor for the fair, on July 26, 2023, sometime after 8:00 p.m., he witnessed plaintiff’s workers commit several violations of the manual rules. Defendant’s Exhibit A. Brunk averred that he saw an Otterbacher Concessions cashier hold the cash drawer open, so he stopped and observed the concession stand. Brunk Affidavit at ¶ 7. Brunk stated that there were three windows from which the cashiers were selling concessions but there was only one Clover device. *Id.* Brunk stated that he witnessed the cashiers at the windows without a Clover device hand cash to the man operating the window with a Clover device, who then put cash in the drawer without closing it or entering any cash transactions into the Clover device. *Id.* at ¶ 8. Brunk attested that after viewing transactions like this for approximately ten minutes, he contacted Doug Smalley, OEC Assistant General Manager and Finance Director, who came to the concession stand and observed the same behavior. *Id.* at ¶ 9.

Doug Smalley averred that he observed cashiers making transactions out of at least two windows, and that the stand only had one Clover device. Smalley Affidavit at ¶ 6. Further, Smalley stated that Shawn Rawlins, an Otterbacher Concessions Principal, was one of the cashiers in the stand at this time. *Id.* Brunk averred that after video recording a transaction, he and Smalley approached the stand and asked to see the Clover record of transactions; the record showed only three or four transactions for the previous twenty minutes despite the stand having nonstop customers. Brunk Affidavit at ¶ 10-11. Brunk stated that he and Smalley went up to the concession stand and told the workers that they needed to enter each transaction into the Clover device, but the workers denied making cash transactions without the Clover device. *Id.* at ¶ 12. Brunk asserted that the workers continued to make cash transactions without using the Clover device after he and Smalley stepped away. *Id.* Smalley averred that he called Rhonda Lawson and asked her to return to the fair to assess the situation and determine the appropriate action. Smalley Affidavit at ¶ 8.

{¶9} Rhonda Lawson, Fair Rental Director, averred that she communicated and negotiated with Otterbacher Concessions for the fair. Lawson Affidavit at ¶ 3. Lawson stated that on July 26, 2023, she was at home when she received a call from Doug Smalley regarding the cash transactions conducted by Otterbacher Concessions cashiers without using a Clover device. *Id.* at ¶ 6. Lawson relayed that after Smalley and Brunk told her that plaintiff's cashiers were bypassing the Clover devices, she determined that Mr. Rawlins and the Otterbacher Concessions cashiers were in violation of the contract and that she should demand that Otterbacher Concessions remove all of their units from the fair. *Id.* at ¶ 7-8. Lawson stated that she approached the trailer, informed plaintiff that Mr. Rawlins and the cashiers had been observed bypassing the Clover device for cash transactions and told him that he must remove all of his units from the fair that night; plaintiff removed all units that night. *Id.* at ¶ 9.

{¶10} Plaintiff's claim sounds in contract law. To prove a claim for breach of contract, a plaintiff must prove the following: (1) a contract existed; (2) the plaintiff performed his obligations under the contract; (3) the defendant breached the contract; and (4) plaintiff suffered damages or loss due to the breach. *Jarupan v. Hanna*, 173 Ohio App.3d 284, 2007-Ohio-5081, 878 N.E.2d 66, ¶ 18 (10th Dist.), citing *Powell v. Grant*

*Med. Ctr.*, 148 Ohio App.3d 1, 10, 771 N.E.2d 874 (10th Dist.2002). “Under contract law, a breach occurs when a party fails, without legal excuse, to perform a promise that forms a whole or part of a contract.” *Landis v. William Fannin Builders, Inc.*, 193 Ohio App.3d 318, 2011-Ohio-1489, 951 N.E.2d 1078, ¶ 26 (10th Dist.). In this case, plaintiff is unable to prove that he was performing his obligations under the contract.

{¶11} The weight of the evidence shows that plaintiff’s cashiers were conducting cash transactions without using the Clover device, in violation of the contract, and failed to correct the behavior after a verbal warning. Under the terms of the contract, which plaintiff failed to dispute, OEC was within its rights to require all of plaintiff's concession stands to be removed from the fair and to retain all fees and deposits.

{¶12} Therefore, judgment is rendered in favor of defendant.

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v.

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ENTRY OF ADMINISTRATIVE  
DETERMINATION

{¶13} Having considered all the evidence in the claim file, and for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff.

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HOLLY TRUE SHAVER  
Deputy Clerk