[Cite as *Am. Outdoor Advertising Co., L.L.C. v. P&S Hotel Group, Ltd.* , 2009-Ohio-4662.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

American Outdoor Advertising Company, LLC,	:	
	:	
Plaintiff-Appellee,	:	No. 09AP-221
v.		(C.P.C. No. 07CVH-05-6058)
	:	
P&S Hotel Group, Ltd. et al.,		(REGULAR CALENDAR)
	:	
Defendants-Appellants.	:	

D E C I S I O N

Rendered on September 8, 2009

Robbins, *Kelly*, *Patterson & Tucker*, *Richard T. Laurer*, and *Jarrod M. Mohler*, for appellee.

Sanjay K. Bhatt, for appellants P&S Hotel Group, Ltd. and Alice Tackett.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Defendants-appellants, P&S Hotel Group, Ltd. ("P&S") and Alice Tackett ("Tackett"), appeal from the judgment of the Franklin County Court of Common Pleas granting summary judgment in favor of plaintiff-appellee, American Outdoor Advertising

Company, LLC ("American"). For the reasons that follow, we reverse the judgment of the trial court.

{¶2} The evidentiary materials submitted in support of and in opposition to American's motion for summary judgment establish the following facts. In December 2006, Kristi Kneece ("Kneece"), American's Marketing Director, met with Alice Tackett, P&S's Operations Manager, offering advertising on billboards owned by American. (Tackett affidavit at ¶5, attached to P&S's March 14, 2008 memorandum contra American's motion for summary judgment.) Tackett advised Kneece that she did not have the authority to make financial or contractual decisions on behalf of P&S. (Tackett affidavit at ¶5.) Tackett further informed Kneece that P&S's General Manager, the only individual authorized to make such decisions, was out of the country. (Tackett affidavit at ¶3, 5.)

{¶3} On January 11, 2007, Kneece again approached Tackett offering billboard advertising. (Tackett affidavit at ¶6.) Kneece averred that advertising space was limited and urged Tackett to sign two agreements for the limited purpose of holding advertising space open and locking in current rates. (Tackett affidavit at ¶6, 7.) Kneece assured Tackett that signing the agreements would not obligate P&S in any way. (Tackett affidavit at ¶6.) Kneece further asserted that American would immediately commence work on the design in the event the General Manager approved the project. (Tackett affidavit at ¶6.)

{¶4} Upon Kneece's assurances, Tackett signed the agreements. (Tackett affidavit at ¶7.) Although Tackett did not designate her title, her signature appears above the words "Authorized Signature/Advertiser." (Affidavit of Christopher Neary, American's General Manager and owner, Exhibits 1 and 2, attached to American's motion for

summary judgment.) The agreements identify P&S as the "Advertiser." (Neary affidavit, Exhibits 1 and 2.) Each agreement states that P&S will pay American a one-time production fee and monthly rent for a period of 12 months. (Neary affidavit, Exhibits 1 and 2.) In addition, each agreement states that P&S could pay for its production costs by transferring "credits" from its account at IMS, a wholesale shopping club, to American. (Neary affidavit, Exhibits 1 and 2.)

{¶5} After signing the agreements, Tackett and Heather Sanislo, American's Vice President of Operations, corresponded by e-mail over a two-month period regarding production of the advertising to be utilized on the billboards. (Neary affidavit, Exhibit 3.) In particular, on January 30, 2007, Tackett sent Sanislo an e-mail discussing, among other things, the logo and colors to be used on the billboards, the address and telephone number to be displayed on the billboards, hotel amenities to be described on the billboards, and the tag line to be utilized on the billboards. (Neary affidavit, Exhibit 3.) Later that day, Tackett sent Sanislo another e-mail questioning when the billboards would be ready. (Neary affidavit, Exhibit 3.) On February 16, 2007, Tackett advised Sanislo that the proofs created for the billboards were "excellent." (Neary affidavit, Exhibit 3.) On February 20, 2007, Tackett sent Sanislo another e-mail designating the location of each of the proofs. (Neary affidavit, Exhibit 3.) Tackett thanked Sanislo for her help "in getting this going" and again asked when the billboards would be ready. (Neary affidavit, Exhibit 3.) The following day, Sanislo advised Tackett that the billboards would be ready approximately two weeks later. (Neary affidavit, Exhibit 3.)

{¶6} On February 26, 2007, American received $7,800 in merchandise credits from appellant's IMS account. (Neary affidavit at ¶13.)

{¶7} At some point, presumably in late February or early March 2007, Tackett informed Darshan Shah, P&S's General Manager, that she had reserved two spaces for billboard advertising. (Shah affidavit at ¶4.) Shah instructed Tackett to inform American that P&S was not interested in the advertising spaces. (Shah affidavit at ¶4.) Pursuant to Shah's directive, Tackett, by letter dated March 8, 2007, informed American that P&S was terminating "any/all business dealings with your company immediately." (Neary affidavit at ¶7, Exhibit 4.) In response, American notified P&S by letter dated March 26, 2007 that P&S was in breach of the agreements and demanded payment of all amounts currently due thereunder. (Neary affidavit at ¶8, Exhibit 5.) American's letter also advised P&S that if American did not receive payment within 30 days, American would elect to accelerate the remaining balance owed under both agreements and pursue a claim for that amount. (Neary affidavit, Exhibit 5.)

{¶8} Following P&S's refusal to make payment, American, on May 3, 2007, filed a complaint against P&S alleging breach of contract. P&S responded with an answer filed on June 12, 2007, specifically denying that it owed American payment under the agreements. P&S also asserted several affirmative defenses, including, as pertinent here, that Tackett was without authority to execute the purported agreements and that such fact was communicated to Kneece prior to the execution thereof.

{¶9} In addition, P&S asserted counterclaims for fraud and unjust enrichment. P&S first alleged that Kneece fraudulently induced Tackett into signing the agreements by representing that she understood Tackett did not have the requisite authority to enter into the agreements and that Tackett's execution of the agreements was solely for the purpose of reserving billboard space until P&S's authorized agent could approve the

agreements. P&S also alleged that American was unjustly enriched by American's improper withdrawal of $7,800 in merchandise credits from P&S's IMS trade account. American responded to the counterclaim on July 17, 2007, asserting several affirmative defenses.

{¶10} Thereafter, on July 30, 2007, American filed an amended complaint adding Tackett as a defendant. American specifically alleged that Tackett's actions led Kneece to believe she had the authority to bind P&S to the agreements. American requested that Tackett be held individually liable in the event the court found that she did not have authority to bind appellant to the agreements. American demanded judgment against P&S and Tackett, jointly and severally. On October 5, 2007, P&S and Tackett (hereinafter "defendants") filed a joint answer to the amended complaint asserting essentially the same denials and affirmative defenses set forth in P&S's original answer. Defendants did not assert any additional counterclaims.

{¶11} On February 8, 2008, American moved for summary judgment on its complaint and the counterclaims originally asserted by P&S, which American referred to as "defendants' " counterclaims. American first argued it was entitled to summary judgment on its breach of contract claim because the undisputed evidence established that P&S and American entered into the agreements, that American performed its duties under the agreements, that P&S breached the agreements by failing to pay American for its services, and that American suffered damages in excess of $57,400 as a result of the breach.

{¶12} American further asserted it was entitled to summary judgment on defendants' counterclaims. American first argued that defendants abandoned the

counterclaims because they failed to assert them in response to American's amended complaint. American next averred it was entitled to summary judgment on defendants' unjust enrichment counterclaim because American cancelled the transfer of merchandise credits after P&S terminated the agreements; accordingly, American never received any payment from P&S and was therefore never unjustly enriched. Finally, American maintained it was entitled to summary judgment on defendants' fraudulent inducement counterclaim because the parol evidence rule barred defendants from introducing evidence of any prior oral statements made by Kneece or Tackett which contradicted the terms of the written agreements.

{¶13} On March 14, 2008, defendants filed a memorandum contra American's motion for summary judgment. Defendants first contended American was not entitled to summary judgment on its breach of contract claim. Defendants argued the agreements were invalid and unenforceable because: (1) there was no meeting of the minds as to the contracts' terms and conditions, as portions of both agreements were illegible; (2) Kneece fraudulently induced Tackett into signing the agreements based upon representations that the agreements were solely to reserve billboard space and lock in rates; and (3) Tackett expressly communicated to Kneece that she did not have the requisite authority to bind P&S to any agreement other than one to reserve billboard space and lock in rates.

{¶14} Defendants also argued that American was not entitled to summary judgment on the counterclaims for unjust enrichment and fraudulent inducement. Defendants first disputed American's claim that they abandoned the counterclaims by failing to assert them in response to American's amended complaint. Defendants argued such was not required because the claims had already been asserted in response to

American's original complaint and American had filed an answer to those counterclaims. As to the unjust enrichment counterclaim, defendants disputed American's assertion that it cancelled the transfer of credits from P&S's IMS trade account. Defendants further asserted the parol evidence rule did not bar their counterclaim for fraudulent inducement.

{¶15} In its reply to the memorandum contra, American asserted that defendants waived the affirmative defense of fraudulent inducement because they failed to plead it in their answer to American's amended complaint. In addition, American reiterated its argument that the parol evidence rule barred defendants' fraudulent inducement claim. American further argued that even if Tackett informed Kneece that she did not have authority to bind P&S to a contract, P&S's actions in designating Tackett as Operations Manager, coupled with Tackett's conduct following execution of the agreements, led American to conclude that Tackett had apparent authority to enter into the agreements.

{¶16} In a decision rendered May 21, 2008, the trial court granted summary judgment in favor of American on its claim and defendants' counterclaims. The court first addressed American's claim for breach of contract. The court determined that defendants waived the affirmative defense of fraudulent inducement by failing to plead it in their answer. The court further found, however, that even if defendants had properly pled fraudulent inducement, the parol evidence rule barred such defense. More particularly, the court found that Kneece's statements regarding the purpose of the agreements, that is, to reserve billboard space and lock in rates, were not false, as the agreements do, in fact, reserve billboard space for P&S's advertising and lock in the rates P&S agreed to pay for that advertising. The court construed defendants' argument to assert that Tackett believed the agreements were not binding and could be cancelled at P&S's option; the

court determined that such belief was directly contradicted by the express terms of the agreements, which obligate P&S to rent the billboards for a 12-month period at a set price. The court accordingly found that the parol evidence rule barred defendants from introducing evidence of an alleged oral agreement between Kneece and Tackett regarding whether the agreements would actually bind P&S.

{¶17} In addition, the court rejected defendants' contention that a genuine issue of material fact existed as to whether Tackett had the authority to enter into a binding agreement on behalf of P&S. The court found that the evidence demonstrated that Tackett had apparent authority to sign the agreements on behalf of P&S. In so finding, the court noted that Tackett signed the agreements in the space reserved for "authorized signature/advertiser" and that Tackett's conduct subsequent to signing the agreements led American to believe that P&S intended to honor the agreements. The court further found that P&S's designation of Tackett as Operations Manager implied that she had authority to manage, direct and control P&S's business affairs, and that such authority included signing contracts on behalf of P&S. In addition, the court found there was no evidence establishing that P&S acted to alert anyone that Tackett, as Operations Manager, did not have the authority to bind P&S to a contract.

{¶18} The court also rejected defendants' "meeting of the minds" argument, finding both agreements to be legible. The court noted that defendants failed to present any evidence that defendants requested more legible copies and that Tackett's failure to read the agreements prior to signing them did not excuse liability.

{¶19} As to defendants' unjust enrichment counterclaim, the court, citing the affidavits of Neary and Shah, found a genuine issue of material fact regarding whether the

$7,800 in merchandise credit was returned to P&S. The court concluded, however, that even if the credits were transferred, such payment would only serve as an offset to defendants' liability under the contracts. Finally, the court found that the parol evidence rule precluded defendants' fraudulent inducement claim.

{¶20} By entry filed September 15, 2008, the court granted summary judgment in favor of American against defendants on its claims and on defendants' counterclaims and referred the matter to a magistrate for a damages hearing. Based upon the evidence adduced at that hearing, the magistrate, by decision rendered January 7, 2009, recommended that judgment be entered in favor of American and against defendants in the amount of $57,400, plus $13,518.46 in attorney fees and expenses, plus costs. Pursuant to the magistrate's recommendation, by entry filed February 3, 2009, the court entered judgment for American against P&S and Tackett, jointly and severally, in the amount of $70,918.46 plus post-judgment interest at the statutory rate from the date of judgment.

{¶21} Defendants appeal, assigning four errors, as follows:

> [1]. The trial court erred in finding that appellants waived the affirmative defense of fraudulent inducement.
>
> [2]. The trial court erred in finding that parol evidence precludes the defense of fraudulent inducement.
>
> [3]. The trial court erred in finding that appellee [sic] Tackett had apparent authority to sign the contract on behalf of appellee [sic] P&S Hotel.
>
> [4]. The trial court erred in holding appellants P&S Hotel Group and Alice Tackett jointly and severally liable.

{¶22} Appellate review of summary judgment is de novo. *Helton v. Scioto Cty. Bd. of Commrs.* (1997), 123 Ohio App.3d 158, 162. "When reviewing a trial court's ruling on summary judgment, the court of appeals conducts an independent review of the record and stands in the shoes of the trial court." *Mergenthal v. Star Banc Corp.* (1997), 122 Ohio App.3d 100, 103. Summary judgment is appropriate only when the party moving for summary judgment demonstrates that (1) no genuine issue of material facts exists, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence construed most strongly in that party's favor. Civ.R. 56(C); *State ex rel. Grady v. State Emp. Relations Bd.*, 78 Ohio St.3d 181, 183, 1997-Ohio-221.

{¶23} The party seeking summary judgment bears the initial burden of informing the trial court of the basis for the motion and identifying portions of the record demonstrating an absence of genuine issues of material fact as to the essential elements of the non-moving party's claims. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107. The moving party may not fulfill its initial burden simply by making a conclusory assertion that the non-moving party has no evidence to prove its case. Id. Rather, the moving party must support its motion by pointing to some evidence of the type set forth in Civ.R. 56(C) which affirmatively demonstrates the non-moving party has no evidence to support the non-moving party's claims. Id.

{¶24} If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied. Id. However, once the moving party discharges its initial burden, the non-moving party bears the burden of offering specific facts demonstrating a

genuine issue for trial. Id. The non-moving party may not rest upon the mere allegations and denials in the pleadings but instead must point to or submit some evidentiary material that demonstrates a genuine dispute over a material fact. Id.; Civ.R. 56(E).

{¶25} By their first assignment of error, defendants contend the trial court erred in finding they waived the affirmative defense of fraudulent inducement by failing to plead it in their answer to American's amended complaint. Civ.R. 8(C) generally requires a defendant to plead any defense constituting an affirmative defense. Fraudulent inducement is an affirmative defense. *First Financial Servs., Inc. v. Cross Tabernacle Deliverance Church, Inc.,* 10th Dist. No. 06AP-404, 2007-Ohio-4274, ¶36; *Good Samaritan Hosp. v. Frenchman Napier* (July 11, 1984), 1st Dist. No. C-830722. Affirmative defenses other than those listed in Civ.R. 12(B) are waived if not raised in the pleadings. *Jim's Steak House, Inc. v. Cleveland*, 81 Ohio St.3d 18, 20, 1998-Ohio-440.

{¶26} Defendants contend the trial court should have treated their counterclaim alleging fraudulent inducement as stating an affirmative defense based on fraudulent inducement. In making this claim, defendants rely upon the last sentence of Civ.R. 8(C) which reads as follows: "[w]hen a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court, if justice so requires, shall treat the pleading as if there had been a proper designation." This provision was intended to permit trial courts to forgive clerical errors made in designating affirmative defenses and counterclaims; it was not designed as a means by which a party could correct a substantive error in pleadings long after the time for amendment to those pleadings had passed. *Canty v. Vandegrift* (Mar. 23, 1993), 10th Dist. No. 92AP-1317, citing *Millar v. Bowman* (1983), 13 Ohio App.3d 204, 206.

{¶27} Here, the record supports defendants' contention that they mistakenly designated as a counterclaim that which they intended to raise as an affirmative defense. As this court noted in *Canty*:

> "[A] party who has been fraudulently induced to enter into a contract has the option of rescinding the contract [and avoiding his obligations thereunder] or retaining the contract [with all attendant rights and obligations] and suing for damages * * *. An election is imposed because it is inconsistent to allow the defrauded party to [avoid his obligations under] the contract and yet at the same time receive the benefits of the contract." Id., quoting *Mid-America Acceptance Co. v. Lightle* (1989), 63 Ohio App.3d 590, 599.

{¶28} Defendants clearly elected to rescind the contracts and avoid their obligation to pay the debts incurred thereunder as a result of their affirmative defense of fraudulent inducement. Accordingly, the trial court erred in failing to treat defendants' counterclaim as an affirmative defense.

{¶29} In so finding, we reject American's contention that defendants waived the affirmative defense because they presented it in the counterclaim filed with P&S's original answer but did not refile the counterclaim in response to American's amended complaint. The trial court correctly held that the counterclaims P&S filed with its original answer survived and remained pending before the court even though they were not reasserted with the amended answer. This court has held that a defendant who does not wish to make changes to a counterclaim is under no compulsion to refile the counterclaim in response to an amended complaint. *Abram & Tracy, Inc. v.* Smith (1993), 88 Ohio App.3d 253, 263-64. The first assignment of error is sustained.

{¶30} Defendants' second and third assignments of error are interrelated and will be considered jointly. In these assignments of error, defendants contend the trial court

erred in concluding that the parol evidence rule barred the affirmative defense of fraudulent inducement and that Tackett had apparent authority to sign the agreements on behalf of P&S.

{¶31} "A claim of fraudulent inducement arises when a party is induced to enter into an agreement through fraud or misrepresentation." *ABM Farms, Inc. v. Woods,* 81 Ohio St.3d 498, 502, 1998-Ohio-612. " 'The fraud relates not to the nature or purport of the [contract], but to the facts inducing its execution * * *.' " Id., quoting *Haller v. Borror Corp.* (1990), 50 Ohio St.3d 10, 14. To prove fraudulent inducement, defendants must establish that American made a knowing, material misrepresentation with the intent of inducing defendants' reliance, and that defendants relied upon that misrepresentation to their detriment. Id., citing *Beer v. Griffith* (1980), 61 Ohio St.2d 119, 123.

{¶32} As previously noted, defendants base their claim of fraudulent inducement upon four contentions in Tackett's affidavit: (1) Tackett told Kneece she did not have the authority to contract on behalf of P&S; (2) Tackett told Kneece the person with such authority was out of the country; (3) understanding that Tackett did not have the authority to contract on P&S's behalf, Kneece urged Tackett to execute the agreements for the limited purpose of reserving billboard space and locking in rates; and (4) Kneece and Tackett agreed that American would collaborate with Tackett on the design process until P&S's authorized representative approved the project. American provided no evidence contradicting Tackett's affidavit.

{¶33} The parol evidence rule is a rule of substantive law developed centuries ago to protect the integrity of written contracts. *Ed Schory & Sons, Inc. v. Soc. Natl. Bank*, 75 Ohio St.3d 433, 440, 1996-Ohio-194. Pursuant to this rule, " 'absent fraud, mistake or

other invalidating cause, the parties' final written integration of their agreement may not be varied, contradicted or supplemented by evidence of prior or contemporaneous oral agreements, or prior written agreements.' " *Galmish v. Cicchini*, 90 Ohio St.3d 22, 27, 2000-Ohio-7, quoting 11 Williston on Contracts (4th ed.1999) 569-70, Section 33:4. "By prohibiting evidence of parol agreements, the rule seeks to ensure the stability, predictability, and enforceability of finalized written instruments." Id.

{¶34} The parol evidence rule does not, however, prohibit a party from introducing parol evidence for the purpose of proving fraudulent inducement. Id., citing *Drew v. Christopher Constr. Co., Inc.* (1942), 140 Ohio St. 1, paragraph two of the syllabus. The rule may not be avoided, however, " 'by a fraudulent inducement claim which alleges that the inducement to sign the writing was a promise, the terms of which are directly contradicted by the signed writing. Accordingly, an oral agreement cannot be enforced in preference to a signed writing which pertains to exactly the same subject matter, yet has different terms.' " Id., quoting *Marion Prod. Credit Assn. v. Cochran* (1988), 40 Ohio St.3d 265, paragraph three of the syllabus. In other words, " '[t]he Parol Evidence Rule will not exclude evidence of fraud which induced the written contract. But, a fraudulent inducement case is not made out simply by alleging that a statement or agreement made prior to the contract is different from that which now appears in the written contract. Quite to the contrary, attempts to prove such contradictory assertions is exactly what the Parol Evidence Rule was designed to prohibit.' " Id., quoting Shanker, Judicial Misuses of the Word Fraud to Defeat the Parol Evidence Rule and the Statute of Frauds (With Some Cheers and Jeers for the Ohio Supreme Court) (1989), 23 Akron L.Rev. 1, 7.

{¶35} A review of the record demonstrates that defendants have provided evidence to support a claim of fraudulent inducement. A review of the alleged oral promises at issue, when compared to the written agreements signed by Tackett, demonstrates a genuine issue of material fact exists as to whether the terms of the alleged oral agreement between Tackett and Kneece contradict or vary the terms of the written agreements. Accordingly, as a genuine issue of material fact remains with respect to defendants' allegations that American, through its agent Kneece, fraudulently induced Tackett into signing the agreements, this matter may not be resolved, as a matter of law, by summary judgment. The trial court erred in granting American summary judgment on this issue.

{¶36} Similarly, we find that a genuine issue of material fact exists as to whether Tackett possessed the requisite authority to bind P&S to the agreements. As noted, the court determined that the evidence demonstrated that Tackett had apparent authority to sign the agreements on behalf of P&S. Specifically, the court noted that Tackett signed the agreements in the space reserved for "authorized signature/advertiser" and that Tackett's conduct subsequent to signing the agreements led American to believe that P&S intended to honor the agreements. The court further found that P&S's designation of Tackett as Operations Manager implied that she had authority to manage, direct and control P&S's business affairs, and that such authority included signing contracts on behalf of P&S. In addition, the court found there was no evidence establishing that P&S alerted American that Tackett, as Operations Manager, did not have the authority to bind P&S to a contract.

{¶37} In concluding the agreements were binding upon P&S, the trial court applied the rule that a principal may be bound by a contract entered into by its agent, even though the agent was not authorized to so contract, where the agent had apparent authority because of words, acts or conduct of the principal upon which the party claiming the contract reasonably relied. A principal may be liable to a third party for the acts of the principal's agent, even though the agent had no actual authority, where the principal has by his words or conduct caused the third party to reasonably believe that the agent had the requisite authority to bind the principal. *Miller v. Wick Bldg. Co.* (1950), 154 Ohio St. 93, 95-96. A party claiming apparent authority must affirmatively show (1) that the principal held the agent out to the public as possessing sufficient authority to embrace the particular act in question or knowingly permitted him to act as having such authority, and (2) that the person dealing with the agent knew of the facts and acting in good faith had reason to believe and did believe that the agent possessed the necessary authority. *Master Consol. Corp. v. BancOhio Natl. Bank* (1991), 61 Ohio St.3d 570, syllabus.

{¶38} "Under an apparent-authority analysis, the acts of the principal, rather than the agent, must be examined. * * * For the principal to be liable, the principal's acts must be found to have clothed the agent with apparent authority." *Groob v. Keybank,* 108 Ohio St.3d 348, 2006-Ohio-1189, ¶56. "The apparent power of an agent is to be determined by the act of the principal and not by the acts of the agent; a principal is responsible for the acts of an agent within his apparent authority only where the principal himself by his acts or conduct has clothed the agent with the appearance of the authority and not where the agent's own conduct has created the apparent authority." *Logsdon v. Main-Nottingham Invest. Co.* (1956), 103 Ohio App. 233, 242. See also *Universal Bank v.*

McCafferty (1993), 88 Ohio App.3d 556, 558 (the conduct of an agent alone cannot create apparent authority; only the acts of the principal can "cloak the agent with apparent power to bind the principal"). "Whether or not an agent has apparent or actual authority is an issue of fact." *Arnett v. Midwestern Ents., Inc.* (1994), 95 Ohio App.3d 429, 434.

{¶39} Thus, considering whether Tackett had apparent authority to bind P&S requires us to look at P&S's conduct, not Tackett's. Tackett testified by affidavit that prior to signing the documents, she informed Kneece that she did not have the authority to contract on behalf of P&S and that the person with such authority was out of the country. Tackett further testified that Kneece acknowledged and understood the situation. American presented no evidence to dispute this testimony. Further, once informed of the potential contracts with American, Shah, P&S's General Manager, immediately instructed Tackett to notify American that it would not purchase its advertising. However, P&S's designation of Tackett as Operations Manager might reasonably have suggested to American that Tackett had authority to manage, direct and control P&S's business affairs, and that such authority included signing contracts on behalf of P&S. This evidence creates a genuine issue of material fact as to whether P&S held Tackett out to the public as possessing sufficient authority to contract on its behalf, as well as whether American could reasonably and in good faith believe that Tackett possessed the necessary authority to bind P&S to the agreements. As a genuine issue of material fact remains with regard to Tackett's apparent authority to bind P&S to the agreements, this matter may not be resolved, as a matter of law, by summary judgment, and the trial court erred in doing so. The second and third assignments of error are sustained.

{¶40} Defendants' fourth assignment of error contends the trial court erred in holding P&S and Tackett jointly and severally liable. Our disposition of the aforementioned assignments of error subsume, in effect, the issue raised by the fourth assignment of error. Accordingly, the fourth assignment of error is overruled as moot.

{¶41} For the foregoing reasons, defendants' first, second, and third assignments of error are sustained, and the fourth assignment of error is overruled as moot. Therefore, we reverse the judgment of the Franklin County Court of Common Pleas, and remand this matter to that court for further proceedings in accordance with law and consistent with this decision.

Judgment reversed;
cause remanded.

BRYANT and CONNOR, JJ., concur.

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