[Cite as *Debney v. Lancaster*, 2009-Ohio-6121.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Christopher S. Debney et al.,	:	
Plaintiffs-Appellees,	:	
		No. 09AP-417
v.	:	(M.C. No. 2008 CVI 014121)
Ebony Lancaster et al.,	:	(REGULAR CALENDAR)
Defendants-Appellants.	:	

D E C I S I O N

Rendered on November 19, 2009

Ebony Lancaster, pro se.

APPEAL from the Franklin County Municipal Court.

BROWN, J.

{¶1} Ebony Lancaster and Jean P. Ulysse, defendants-appellants, appeal from a judgment of the Franklin County Municipal Court, in which the court overruled appellants' objections to the magistrate's decision and issued judgment in favor of Christopher S. Debney and Robert Conley, Jr., plaintiffs-appellees. Appellees have not filed an appellate brief.

{¶2} This court has not been provided a transcript from the proceedings below. The following general facts have been culled from the record. Appellants are homeowners. Appellees have a home repair business, apparently doing business as

"Americas Colors." Appellants hired appellees to complete painting and flooring inside their home. Apparently a dispute arose regarding the work, and some tasks were not completed or fully completed. On March 28, 2008, appellees filed a complaint, and then filed an amended complaint on July 7, 2008. In the amended complaint, appellees asserted a claim for breach of contract and requested $1,370, plus filing fees, court fees, and interest, for work completed or partially completed. Appellees claimed they were owed $1,500 for paint labor, $300 for paint materials, and $170 for flooring related tasks, minus $600 for appellants' deposit. Appellants filed a counterclaim for $3,000, the total of which included carpet replacement, vinyl flooring, laminate flooring, paint labor refund, unfinished paint labor, and repair cost.

{¶3} On October 20, 2008, a trial was held before a magistrate. The parties represented themselves. On February 26, 2009, the magistrate issued a decision in favor of appellees and against appellants, jointly and severally, for $1,284.28, plus court costs and interest, and dismissed appellants' counterclaim. On March 10, 2009, appellants filed objections to the magistrate's decision. On April 8, 2009, the trial court issued an entry denying appellants' objections without further explanation. Appellants, pro se, appeal the judgment of the trial court, asserting the following assignments of error:

> [I.] THE FRANKLIN COUNTY MUNICIPAL COURT ERRED BY FAILING TO DISMISS THE APPELLEE COMPLAINT BECAUSE THE ACTION WAS PRECLUDED BY OHIO REVISED CODE 1329.10 ALLOWING CHRISTOPHER DEBNEY TO BRING SUIT AGAINST EBONY LANCASTER, WHILE ENTERING INTO CONTRACT AS AMERICAS COLORS[.]
>
> [II.] THE COURT ALSO ERRED BY RULING THAT EBONY LANCASTER BREACHED THE CONTRACT WHILE THE BUSINESS WAS OPERATING UNDER AN

> UNREGISTERED FICTI[TI]OUS NAME AND NOT ALLOWED TO BRING SUIT.

{¶4} We will address appellants' assignments of error together, as the issues raised in each are dispositive on the same ground. Appellants argue in their first assignment of error that the trial court erred by allowing appellees to bring suit against them because "Americas Colors," the business name under which appellees did business with her, was not a registered fictitious name, as required by R.C. 1329.10; thus, appellees did not have capacity to sue them on the contract. Appellants argue in their second assignment of error that the trial court erred when it ruled that they had breached the contract with appellees while appellees were operating under an unregistered fictitious name. Appellants allege that, because appellees were operating under an unregistered fictitious name, the contract was entered into under false pretenses.

{¶5} R.C. 1329.01(D) provides that any person doing business under a fictitious name shall "report" the use of the name to the secretary of state. A fictitious name is defined as "a name used in business or trade that is fictitious and that the user has not registered or is not entitled to register as a trade name." R.C. 1329.01(A)(2). The user of a trade name may "register" the name with the secretary of state along with general information about the user and the nature of the business or trade. R.C. 1329.01(B). A "trade name" is "a name used in business or trade to designate the business of the user and to which the user asserts a right to exclusive use." R.C. 1329.01(A)(1).

{¶6} R.C. 1329.10(B) provides:

> No person doing business under a trade name or fictitious name shall commence or maintain an action in the trade name or fictitious name in any court in this state or on account of any contracts made or transactions had in the trade name

> or fictitious name until it has first complied with section 1329.01 of the Revised Code and, if the person is a partnership, it has complied with section 1777.02 of the Revised Code, but upon compliance, such an action may be commenced or maintained on any contracts and transactions entered into prior to compliance.

Thus, a person places himself in a precarious position when he operates under a fictitious name, as a person doing business under an unregistered, fictitious name lacks the legal capacity to sue. *Thomas v. Columbus* (1987), 39 Ohio App.3d 53, 55-56.

{¶7} However, we are unable to reach the full merits of appellants' claims. The unfortunate hurdle this court is confronted with is that, even if we were to assume that the transaction was entered into under appellees' trade name or fictitious name, we have no evidence that appellees failed to register "Americas Colors" as a trade name or report it as a fictitious name to the secretary of state. As quoted supra, R.C. 1329.10(B) only prohibits commencing or maintaining an action on a contract made in an unreported fictitious name or unregistered trade name until the person operating there under complies with R.C. 1329.01. If appellees complied with R.C. 1329.10 at any time prior to the entry of final judgment, they would have had the capacity to maintain this action despite the fact that the fictitious name had not been reported, or the trade name had not been registered, at the time the contract was made.

{¶8} The only indication in the record on this issue comes from appellants' objections to the magistrate's decision, in which appellants state that "Americas Colors" was not reported to the secretary of state as a fictitious name or registered as a trade name. This unsworn allegation, with no other evidence, is insufficient. It is possible that appellees registered or reported "Americas Colors" prior to the trial court's ruling on

appellants' objections and its entering of a final judgment. Furthermore, although appellants reiterate this claim in their appellate brief, along with the additional claim that the magistrate specifically instructed appellees to register or report "Americas Colors," there is nothing in the record to reflect such. With no authenticated documentary evidence or transcript from the trial, we are simply without sufficient evidence to determine whether appellees, in fact, failed to report or register "Americas Colors."

{¶9} A similar situation arose in *Café Miami v. Domestic Uniform Rental*, 8th Dist. No. 87789, 2006-Ohio-6596. In *Café Miami*, a restaurant filed an action against a uniform company in small claims court, claiming the uniform company breached its contract with the restaurant to provide linen service. A small claims trial was held before a magistrate. No transcript of the proceeding was taken; however, the evidence submitted at the trial was part of the court's file. The court issued a magistrate's decision in the restaurant's favor, and the trial court entered judgment thereon.

{¶10} On appeal, the uniform company raised the issue of jurisdiction, arguing the trial court erred by allowing the restaurant to maintain an action in the name of an unregistered fictitious name. However, the appellate court found nothing in the record before it demonstrated that the restaurant was an unregistered, non-entity or an entity operating under a fictitious name. The court found that the magistrate's decision contained no finding that the restaurant was not licensed or registered within Ohio, and the uniform company failed to present any documentation at the hearing demonstrating that the restaurant was unregistered. The court also noted that, although it appeared from the brief that the issue may have been raised at the hearing before the magistrate, no transcript of the proceeding existed. The court held that, when no report of the evidence

or proceedings at a hearing is made or if a transcript is unavailable, the appellant can prepare an App.R. 9(C) statement. The uniform company failed to provide the court with such a statement. Therefore, the court concluded, it could not address the issue because the uniform company did not properly preserve the record or create a sufficient record for the court's review.

{¶11} Likewise, in the present case, there is no evidence in the record to demonstrate "Americas Colors" was an unregistered trade name or unreported fictitious name. Appellants have provided this court with no transcript of the proceedings before the magistrate and failed to prepare an App.R. 9(C) statement in lieu of such. Furthermore, although the exhibits presented at trial are included in the record, we find nothing to suggest appellants filed any proof of appellees' failure to register or report "Americas Colors." We also note neither the magistrate's decision nor the trial court's judgment overruling appellants' objections to the magistrate's decision contains any findings of fact or conclusions of law to establish this fact. Therefore, as we have no evidence that appellees failed to register "Americas Colors" as a trade name to, or report it as a fictitious name with, the secretary of state, we must overrule appellants' first and second assignments of error.

{¶12} Accordingly, appellants' two assignments of error are overruled, and the judgment of the Franklin County Municipal Court is affirmed.

Judgment affirmed.

McGRATH and CONNOR, JJ., concur.

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