

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Aftermath, Inc., :  
 :  
 Plaintiff-Appellee, :  
 :  
 v. : No. 09AP-410  
 : (M.C. No. 2006 CVF 035841)  
 Nancy Buffington, : (REGULAR CALENDAR)  
 :  
 Defendant-Appellant. :

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D E C I S I O N

Rendered on January 7, 2010

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*Weltman, Weinberg & Reis Co., L.P.A., Rosemary Taft Milby  
and Matthew G. Burg, for appellee.*

*Stanley L. Myers LLC, and Stanley L. Myers, for appellant.*

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APPEAL from the Franklin County Municipal Court.

McGRATH, J.

{¶1} Defendant-appellant, Nancy Buffington ("appellant"), appeals from the judgment of the Franklin County Municipal Court awarding plaintiff-appellee, Aftermath, Inc. ("appellee"), damages in the amount of \$6,189.36 on appellee's breach of contract claim against appellant.

{¶2} Appellant's father died in his home located at 3054 Columbus Street, Grove City, Ohio, on November 10, 2005. The decedent's body was discovered one-and-a-half to two days after his death. Approximately one week later, the personal belongings were

removed from the home and it was listed for sale. Appellee is an Ohio corporation that provides biological remediation and cleanup services. On January 14, 2006, appellant contracted for appellee's services. According to the contract, appellant agreed to pay for cleanup services concerning an unattended death in a home located at 3054 Columbus Street, Grove City, Ohio. The complaint alleges that after appellee rendered services, appellant refused to pay the amount due under the contract. Therefore, appellee filed this action to recover the costs associated with the services it provided. After a trial to the bench, the trial court concluded that a valid written contract existed between the parties and that appellee was entitled to payment for the services rendered in accordance with the contract.

{¶3} Appellant appeals and brings the following assignment of error for our review:

THE COURT ERRED, AS A MATTER OF LAW, IN FINDING THAT EXHIBIT A WAS AN ENFORCEABLE CONTRACT OBLIGATING APPELLANT TO AFTERMATH FOR BIOLOGICAL REMEDIATION SERVICES.

{¶4} In her assignment of error, appellant contends the trial court erred in finding a valid and enforceable contract existed between the parties. A contract is a promise or set of promises for the breach of which the law gives a remedy, or the performance of which the law recognizes as a duty. *NetJets, Inc. v. Binning*, 10th Dist. No. 04AP-1257, 2005-Ohio-3934, ¶8, citing *Episcopal Retirement Homes, Inc. v. Ohio Dept. of Indus. Relations* (1991), 61 Ohio St.3d 366, overruled on other grounds. In order for a party to be bound, the party must consent to its terms, the contract must be certain and definite, and there must be a meeting of the minds. *Id.* The meeting of the minds is generally

manifested by an offer and acceptance. *Id.*, citing *Dalicandro v. Morrison Rd. Dev. Co., Inc.* (Apr. 17, 2001), 10th Dist. No. 00AP-619. "Thus, the signing of an agreement and acquiescence in its effect generally demonstrates the existence of a 'meeting of the minds.' " *Id.*, citing *Cuyahoga Cty. Hosps. v. Price* (1989), 64 Ohio App.3d 410. Questions regarding the existence of a contract and its meaning are questions of law subject to de novo review. *NetJets* at ¶7; *Saunders v. Mortensen*, 101 Ohio St.3d 86, 2004-Ohio-24, ¶9.

{¶5} In this case, appellant signed the "Site Clean Up Agreement" on January 14, 2006, thereby accepting the terms of the offer. Nonetheless, appellant contends no valid contract was formed because she did not know the meaning of the terms "biological remediation business" or "biohazard remediation." Appellant also contends that because an essential term of the contract was missing, i.e., that biohazard services were being provided, there was no meeting of the minds. Whether there is a meeting of the minds is a factual determination, and a party's unilateral declaration that his perception varied from the other's is not sufficient to upset a trial court's determination on the issue if that determination is supported by sufficient evidence to the contrary. *Goal Systems Internatl. Inc. v. Klouda* (Oct. 10, 1985), 10th Dist. No. 84AP-168.

{¶6} The Site Clean Up Agreement provided that appellant was retaining appellee "to provide the biological remediation services described on the reverse side hereof." On the reverse it states, "Special Instructions: Clean walls, floors, bathroom thresholds & window-sills" and "Description of work to be performed: Unattended Death clean-up. Customer removed all personal property." Because there was no description on the reverse of the contract of what *specific* biohazard services were to be provided,

appellant suggests an essential term of the contract was missing rendering this contract unenforceable.<sup>1</sup> Appellant further argues there is no evidence that she understood or agreed to biological remediation of her father's home. We do not find appellant's position well-taken.

{¶7} The Site Clean Up Agreement expressly provided that appellant was retaining appellee "to provide *the biological remediation services described* on the reverse side hereof." (Emphasis added.) Thus, the special instructions and description on the reverse of the document necessarily were referring to cleaning that would be done in accord with biological remediation services concerning an unattended death and not merely general cleaning as suggested by appellant. Appellant also agreed to pay appellee "for its services and materials" and "for all services rendered and all materials provided regardless of any estimates given" by appellee. The agreement further provided that appellant was fully obligated to appellee pursuant to the agreement regardless of the status of any insurance coverage and that in "no event will [appellee's] obligation be limited in any way due to any denial or refusal of insurance carrier to satisfy a claim." Appellant also signed a "Fee Sheet – Non Insurance Clean Ups" disclosing an hourly rate of \$155 and various disposal charges. The Fee Sheet also stated as follows:

By signing below, I understand Aftermath, Inc.'s billing rate. I also understand that after the technicians leave the job site there will be an additional 2-4 hours of work to be completed per technician. The additional work consists of unloading bio-waste and the decontamination of the truck and equipment

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<sup>1</sup> Appellant also suggests the words "unattended death clean up" did not appear on the document when she signed it but must have been added at a later time. This argument, however, is belied by the evidence in the record. The only contract testified about at trial contains the description "unattended death cleanup" and other than appellant's speculative testimony, there is no evidence whatsoever that the description was added at a later time. Moreover, witness credibility determinations fall within the province of the trier of fact.

used. I also understand that no estimate has been given to me before the job has been started.

(Emphasis sic.)

{¶8} In addition, appellant signed the "Payment Guidelines" which stated, in part "Aftermath, Inc. does not bill insurance companies. **We bill families for our charges.**"

(Emphasis sic.) The "Payment Responsibility" form states the following:

This intent of this form is to inform customers that some homeowners or business insurance policies DO NOT cover this type of service. The customer is responsible for contacting their insurance carrier to determine coverage eligibility. In the event the policy does not cover this process for any reason, the insured is responsible for payment in full of the invoice.

\* \* \*

By signing below, the person signing acknowledges the payment responsibility as stated above[.]

(Emphasis sic.)

{¶9} Also, a number of the documents signed by appellant contain the letterhead "Aftermath, Inc. specialists in crime scene & tragedy cleanup."

{¶10} As the trial court found, appellant testified that the heat in the home had been left on very high and there was an odor in the home. When appellant hired appellee to clean the home, Mr. Gary Allen, a certified technician of appellees, testified he met with appellant and explained the process to her, which included a "biowash" of all the walls and floors in the entire home. According to Mr. Allen, a "biowash" is standard for an unattended death cleanup. The trial court found Mr. Allen testified credibly that he explained to appellant the work involved in an unattended death cleanup and the work that would be performed. A reviewing court must accord great deference to a trial court's

findings of fact, and determinations of a witness's credibility fall squarely within the province of the trier of fact. See, e.g., *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77; *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279.

{¶11} Moreover, as noted by the trial court, appellant's stated failure to read the documents prior to signing them is of no consequence as it is well-established that the failure to read the terms of a contract is not a valid defense to enforcement of the contract. *Haller v. Borrer Corp.* (1990), 50 Ohio St.3d 10, 14. Further, appellant's argument that she was "mistaken" equally fails because "relief for a unilateral mistake of material fact will not be provided where such mistake is the result of the negligence of the party seeking relief." *Hikmet v. Turkoglu*, 10th Dist. No. 08AP-1021, 2009-Ohio-6477, ¶62, quoting *Marshall v. Beach* (2001), 143 Ohio App.3d 432, 437.

{¶12} Given the record, including the clear language of the contract at issue, we are unable to conclude the trial court's determination, that appellant was aware and understood the services for which she contracted such that there was a meeting of the minds, is against the manifest weight of the evidence. Upon our review of the record, we find no error in the trial court's determination that an enforceable contract existed between the parties. Therefore, we overrule appellant's single assignment of error and hereby affirm the judgment of the Franklin County Municipal Court.

*Judgment affirmed.*

BROWN and CONNOR, JJ., concur.

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