[Cite as *Reif v. Wagenbrenner*, 2011-Ohio-3597.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Barbara Reif,	:	
Plaintiff-Appellant,	:	
		No. 10AP-948
v.	:	(C.P.C. No. 09CVH08-12012)
Michael Wagenbrenner et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on July 21, 2011

Robert C. Paxton & Associates and *Robert C. Paxton, II*, for appellant.

Schottenstein Legal Services Co., LPA, and *James M. Schottenstein*, for appellees.

APPEAL from the Franklin County Court of Common Pleas.

DORRIAN, J.

{¶1} Plaintiff-appellant, Barbara Reif ("appellant"), appeals from a judgment of the Franklin County Court of Common Pleas granting defendants-appellees, Michael Wagenbrenner, Jeffrey Wagenbrenner, Angela Zeigler, and Accent on Nature, LLC's ("appellees"), motion for summary judgment and denying appellant's cross-motion for summary judgment. For the following reasons, we affirm.

{¶2} This matter arises out of a disagreement regarding the ownership of the retail store, Accent on Nature, LLC. In order to provide a historical framework regarding the parties' business relationship, we set forth the following statement of relevant facts. In

2005, appellant worked at Douglas Hall's ("Hall") retail store, known as Accent on Wild Birds. Hall rented a retail space located at 1390 Grandview Avenue, Columbus, Ohio 43212 ("1390 Grandview Avenue") from Wagbros Company, Ltd., d.b.a. Wagbros Company ("Wagbros"). Hall unexpectedly passed away on September 17, 2005.

{¶3} According to the record, Hall owed Wagbros $220,000 in unpaid rent at the time of his death. In 2006, appellees, Michael Wagenbrenner, a member of Wagbros, Angela Zeigler ("Zeigler"), Chief Operating Officer of Wagenbrenner Management Company, and Jeffrey Wagenbrenner, Michael Wagenbrenner's son ("the members"), formed Accent on Nature, LLC, in order to purchase Accent on Wild Birds' assets from Hall's estate. Per the asset purchase agreement, appellees terminated Accent on Wild Birds' lease. In addition, Wagbros advanced $77,600 to Accent on Nature, LLC, which included a $20,000 payment to Hall's estate and a $57,600 payment to the state of Ohio for delinquent taxes. Wagbros also advanced $20,000 to Accent on Nature, LLC, for a line of credit. Further, Zeigler advanced $5,000 to Accent on Nature, LLC. In order to secure the repayment of these advances, Accent on Nature, LLC drafted three promissory notes in favor of Wagbros and Zeigler. In addition, Accent on Nature, LLC, entered into a new lease agreement with Wagbros at 1390 Grandview Avenue.

{¶4} The members agreed to hire appellant as the store manager of Accent on Nature, LLC, and paid her an annual salary of $33,000. On February 8, 2006, the members entered into an operating agreement ("operating agreement"), drafted by Todd Collis, Esq. ("Collis"), wherein each member received five membership interests, totaling 15 membership interests. The operating agreement also contained an option for appellant

to become a member of Accent on Nature, LLC, if certain conditions were satisfied at the time the option ripened.

{¶5} Section 8.9(a) of the operating agreement states, in relevant part, that:

> [U]pon repayment by the Company of 40% of the principal and interest of (i) that certain Promissory Note in the principal amount of $77,600.00 made by the Company to Wagbros Company, Ltd[.], * * * and (ii) that certain Promissory Note in the amount of $5,000.00, made by the Company to Angela J. Zeigler * * * to the holders of said promissory notes, and further provided (iii) that the Company has repaid all principal and interest due and payable in connection with that certain Promissory Note in the principal amount of $20,000.00 made by the Company to Wagbros Company * * * (iv) that the Company is not then in default under the terms and conditions of the Company's Lease Agreement with Wagbros Company * * * and [v] that all Company bills, invoices, and other amounts due and payable are paid current, [appellant] * * * shall have the option to become a Member of the Company and to receive without additional consideration two Member Interests in the Company.

In addition, Section 8.9(b) states, in relevant part, that:

> [U]pon repayment by the Company of 80% of the principal and interest of (i) the Wagbros Company $77,600.00 Promissory Note, and (ii) the Angela J. Zeigler $5,000.00 Promissory Note, to the holders of said promissory notes, and further provided that the Company is not then in default under the terms and conditions of the Company Lease Agreement and that all Company bills, invoices, and other amounts due and payable are paid current, [appellant] shall have the option to receive without additional consideration two additional Member Interests in the Company.

Further, Section 8.9(c) states, in relevant part, that:

> [U]pon repayment by the Company of 100% of the principal and interest of (i) the Wagbros Company $77,600.00 Promissory Note, and (ii) the Angela J. Zeigler $5,000.00 Promissory Note, to the holders of said promissory notes, and further provided that the Company is not then in default under the terms and conditions of the Company Lease Agreement

> and that all Company bills, invoices, and other amounts due and payable are paid current, [appellant] shall have the option to receive without additional consideration eleven additional Member Interests in the Company and Angela J. Zeigler shall have the option to receive without additional consideration ten additional Member Interests in the Company.

{¶6} Collis attested that the members of Accent on Nature, LLC intended to present appellant with this option as an "incentive" to run a successful business. (See Collis affidavit ¶8.) Further, Collis indicated that "the triggering event for § 8.9(a) would be the payment of 40% of the loans that are set out therein; whereupon, [appellant] would either have the option * * * to become a Member of [Accent on Nature, LLC] or not depending whether [Accent on Nature, LLC] was current in its Lease and other obligations to creditors at such time." (Collis affidavit ¶12.) Collis also attested that he read and explained Section 8.9 of the operating agreement to appellant and that, to the best of his knowledge, neither he, nor any member of Accent on Nature, LLC, made any additional representations regarding appellant becoming a member of the company.

{¶7} On January 17, 2009, a fire destroyed 1390 Grandview Avenue, and appellees received insurance proceeds totaling $587,800. (See Michael Wagenbrenner affidavit ¶33; Notice of Compliance with Court Ordered Discovery, June 28, 2010, Exhibit D.) On June 23, 2009, the members amended Accent on Nature, LLC's operating agreement and, in so doing, eliminated appellant's option to become a member and replaced it with Zeigler's option to purchase the Wagenbrenners' membership shares. The members also agreed that, because the option set forth in Section 8.9(a) of the prior operating agreement never ripened, appellant had no right to acquire any membership interest in Accent on Nature, LLC. On June 24, 2009, Zeigler became the sole member

of Accent on Nature, LLC. On July 31, 2009, Zeigler terminated appellant from her managerial position at Accent on Nature, LLC.

{¶8} On August 10, 2009, appellant filed a complaint alleging (1) breach of contract; (2) entitlement to ownership in, and insurance proceeds for, Accent on Nature, LLC; (3) entitlement to salvaged inventory from Accent on Nature, LLC; (4) conversion; (5) estoppel; (6) quantum meruit; and (7) intent to deceive. Based upon these allegations, appellant prayed for damages in excess of $350,000. On August 18, 2009, Michael Wagenbrenner, Zeigler, and Accent on Nature, LLC, filed an answer and counterclaim alleging (1) conversion; (2) destruction of property/records; and (3) breach of "at will" employment agreement. Based upon these allegations, appellees prayed for damages in excess of $25,000.

{¶9} On September 22, 2009, appellant filed an amended complaint adding several defendants, including The Hartford Financial Services Group, Inc., Members 1st Credit Union, Grandview Center, LLC, and John Doe's 1 through 3. In her amended complaint, appellant incorporated the allegations set forth in the original complaint and also requested a declaratory judgment (1) voiding all actions of Accent on Nature, LLC, "as of the date that Defendants, Michael Wagenbrenner and Jeffrey Wagenbrenner, 'forfeited back' their ownership in Accent on Nature, LLC"; (2) declaring appellant's ownership rights as per the operating agreement; and (3) reimbursing appellant for attorney fees, expenses and other damages incurred due to defendants' failure "to carry out the terms of the Operating Agreement." (See Sept. 22, 2009 Amended Complaint ¶24-27.) In response to the amended complaint, appellees, Michael Wagenbrenner, Jeffrey Wagenbrenner, Zeigler, and Accent on Nature, LLC, filed their amended answer

on October 7, 2009. The record shows a dismissal entry filed in favor of The Hartford Financial Services Group, Inc., on January 20, 2010, Members 1st Credit Union on November 25, 2009, and Grandview Center, LLC, on February 19, 2010. Further, on September 14 and 15, 2009, a magistrate of the trial court heard appellant's preliminary injunction motion to freeze all of Accent on Nature, LLC's assets, and to judicially recognize appellant's alleged ownership rights. On September 17, 2009, the magistrate issued a decision denying appellant's motion. On October 1, 2009, appellant filed objections to the magistrate's decision and, on November 12, 2009, the trial court overruled appellant's objections.

{¶10} On April 15, 2010, appellees filed a motion for summary judgment as to the allegations set forth in appellant's amended complaint. Appellant filed a memorandum contra on May 3, 2010, and appellees filed a reply memorandum on May 11, 2010. Further, on May 17, 2010, appellant filed a cross-motion for summary judgment on the sole issue of appellant's membership interest in Accent on Nature, LLC. Appellees filed a memorandum contra on June 1, 2010, and appellant filed a reply memorandum on June 9, 2010. Upon obtaining the trial court's leave, appellant filed a supplemental memorandum contra and a supplemental reply memorandum on July 9, 2010, and appellees filed a supplemental reply memorandum on July 23, 2010. On September 7, 2010, the trial court granted appellees' motion for summary judgment and denied appellant's motion for summary judgment. In addition, appellees dismissed their counterclaims on August 30, 2010.

{¶11} On October 4, 2010, appellant filed a timely notice of appeal, raising the following assignments of error for our consideration:

> [1.] THE TRIAL COURT ERRED WHEN IT HELD, BY OPERATION OF LAW, THAT APPELLANT FAILED TO PRESENT EVIDENCE TO OVERCOME APPELLEES' MOTION FOR SUMMARY JUDGMENT.
>
> [2.] THE TRIAL COURT ERRED WHEN IN FINDING, AS A MATTER OF LAW, THAT THE OPERATION AGREEMENT WAS UNAMBIGUOUS AND EXPRESSED THE INTENT TO EXCLUDE APPELLANT'S MEMBERSHIP INTEREST IN ACCENT ON NATURE.
>
> [3.] THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO APPELLEES BASED ON THE DOCTRINE OF PROMISSORY ESTOPPEL.
>
> [4.] APPELLANT WAS DENIED DUE PROCESS OF LAW WHEN DEFENDANTS REFUSED TO PRODUCE DISCOVERY AND THE TRIAL COURT RELIED UPON THE LIMITED DISCOVERY PRODUCED IN SUSTAINING APPELLEE'S MOTION FOR SUMMARY JUDGMENT.
>
> [5.] THE TRIAL COURT ERRED IN NOT FINDING APPELLANT TO BE A THIRD PARTY BENEFICIARY OF THE OPERATING AGREEMENT.
>
> [6.] THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO DEFENDANTS AND NOT FINDING, BASED ON ALL THE EVIDENCE, AN ORAL CONTRACT.
>
> [7.] THE TRIAL COURT ERRED IN OVERRULING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT BASED ON THE EVIDENCE BEFORE IT.

{¶12} Prior to addressing appellant's assignments of error on the merits of this case, we will discuss appellant's fourth assignment of error regarding discovery. In her fourth assignment of error, appellant contends that she was denied due process because appellees refused to produce discovery, and the trial court relied upon limited discovery in sustaining appellees' motion for summary judgment. (See appellant's brief at 21.)

{¶13} It is well-settled that trial courts have great latitude in determining discovery abuses and in crafting sanctions to fit those abuses. See *Nakoff v. Fairview Gen. Hosp.*, 75 Ohio St.3d 254, 256, 1996-Ohio-159, see also *Hahn v. Satullo*, 10th Dist. No. 03AP-259, 2004-Ohio-1057, ¶79. As such, we review the trial court's resolution of discovery matters under an abuse-of-discretion standard. *State ex rel. Keller v. Columbus*, 164 Ohio App.3d 648, 2005-Ohio-6500, ¶39; "An abuse of discretion 'connotes an unreasonable, arbitrary, or unconscionable decision.' " Id., quoting *State ex rel. The V. Cos. v. Marshall* (1998), 81 Ohio St.3d 467, 469.

{¶14} In the present matter, the record shows that on June 15, 2010, the trial court issued an order granting appellant's first motion to compel discovery. The trial court determined the relevance of certain requested documents, holding that appellees must produce: "(1) Payment histories for the three Notes held by Michael Wagenbrenner, Wagbros Co. and Angela Zeigler; (2) the financial records of Accent starting from January 17, 2008 (one year prior to the fire) through June 23, 2010 (the date the Amended Operating Agreement was signed); and (3) Copies of the insurance checks paid in regards to the fire damage claim as well as records as to how said funds were disbursed." (See June 15, 2010 Decision and Entry at 4.)

{¶15} Further, the record indicates that appellees produced the required documents by June 28, 2010, in compliance with the trial court's order. On July 9, 2010, appellant filed a second motion to compel discovery, claiming that appellees failed to comply with the trial court's order because the documents provided were in the form of a spreadsheet without "any backup documentation whatsoever." (See appellant's July 9, 2010 Second Motion to Compel Discovery.) In addition, appellant contended that the trial

court denied her due process by limiting discovery. On August 12, 2010, the trial court denied appellant's second motion to compel, stating "[p]laintiff recently filed a Second Motion to Compel Discovery because she believes that Defendants have not complied with the Court's discovery order concerning her original Motion to Compel. The Court believes that Defendants have fully complied with the Court's previous order and therefore, Plaintiff's Second Motion to Compel Discovery is hereby DENIED."

{¶16} In *Midland Steel Prods. Co. v. U.A.W. Loc. 486* (1991), 61 Ohio St.3d 121, 131, quoting *Weatherford v. Bursey* (1977), 429 U.S. 545, 559, 97 S.Ct. 837, 846, the Supreme Court of Ohio stated that " '[t]here is no general constitutional right to discovery.' " Further, " 'to establish a procedural due process violation, it must be shown that the conduct complained of deprived plaintiff of a liberty or property interest without adequate procedural safeguards. * * * As such, it is not the deprivation itself that is actionable, it is the deprivation without due process of law.' " *Hahn* at ¶83, quoting *Edwards v. Madison Twp*. (Nov. 25, 1997), 10th Dist. No. 97APE06-819.

{¶17} Here, the record clearly indicates that appellant had the opportunity to litigate her discovery issues and that the trial court "afforded adequate procedural safeguards" in granting appellant's first motion to compel discovery and ordering appellees to produce evidence relevant to this matter. See *Hahn* at ¶84. Further, appellees produced the court-ordered documents in a timely manner. Therefore, we find that (1) no due process violation occurred regarding the limiting of discovery to these documents, and (2) the trial court did not abuse its discretion in denying appellant's second motion to compel discovery because appellees complied with the previous court order.

{¶18} Appellant's fourth assignment of error is overruled.

{¶19} We now address appellant's remaining assignments of error.

{¶20} We review a summary judgment de novo. *Koos v. Cent. Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 588, citing *Brown v. Scioto Cty. Bd. of Commrs.* (1993), 87 Ohio App.3d 704, 711. When an appellate court reviews a trial court's disposition of a summary judgment motion, it applies the same standard as the trial court and conducts an independent review, without deference to the trial court's determination. *Maust v. Bank One Columbus, N.A.* (1992), 83 Ohio App.3d 103, 107; *Brown* at 711.

{¶21} Pursuant to Civ.R. 56(C), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Accordingly, summary judgment is appropriate only under the following circumstances: (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can come to but one conclusion, that conclusion being adverse to the nonmoving party. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66. Because summary judgment is a procedural device to terminate litigation, courts should award it cautiously after resolving all doubts in favor of the nonmoving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358-59, 1992-Ohio-95, citing *Norris v. Ohio Std. Oil Co.* (1982), 70 Ohio St.2d 1, 2.

{¶22} For ease of discussion, we will discuss the remaining assignments of error out of order. First, we focus our discussion on appellant's first, seventh and second assignments of error, regarding issues specifically addressed within the trial court's decision. Second, we focus our discussion on appellant's fifth, sixth and third assignments of error, regarding issues that were not specifically addressed in the trial court's decision.

{¶23} Appellant's first and seventh assignments of error allege that, based upon the evidence, the trial court erred in granting appellees' motion for summary judgment and in denying appellant's motion for summary judgment. In her first assignment of error, appellant merely reiterates her version of the facts and speculates regarding appellees' alleged motives to deny her an ownership interest in Accent on Nature, LLC, without pointing to any specific evidence in the record. In addition, appellant contends that the trial court "ignored" her affidavit, other documents, and the transcript of the preliminary injunction hearing on September 14 and 15, 2009. (See appellant's brief at 11.) The record, however, does not support appellant's allegations that the trial court ignored evidence in this matter. Further, the full transcript of the preliminary injunction hearing on September 14 and 15, 2009 has not been filed in this case, and, therefore, it is not part of the record. We note that appellant's seventh assignment of error sets forth no additional legal arguments and, therefore, we decline to further address it.

{¶24} In her second assignment of error, appellant argues that the trial court erred in finding the language in Sections 8.9(a), (b), and (c) of the operating agreement unambiguous. Appellant contends that Section 8.9(c) of the operating agreement should have contained a forfeiture provision precluding appellant's right to ownership. (See

appellant's brief at 15.) In response, appellees correctly assert that appellant did not raise the issue of ambiguity before the trial court and, therefore, it must not be raised for the first time on appeal. (See appellees' brief at 7.) However, because the trial court addresses this issue at length in its decision, we commence with our discussion regarding the same.

{¶25} In its decision, the trial court stated that the "key to the present dispute is the interpretation of §8.9 of the Operating Agreement and whether [appellant] met the provisions contained within it." (Aug. 12, 2009 Decision at 7.) In interpreting Section 8.9 of the operating agreement, the trial court cited *Cleveland Constr., Inc. v. Kent State Univ.*, 10th Dist. No. 09AP-822, 2010-Ohio-2906, ¶29. In *Cleveland Constr., Inc*., this court stated that "[i]f a court is able to determine the intent of the parties from the plain language of the contract, then the court must apply the language as written and refrain from further contract interpretation." Further, we stated that, if the language of a contract is unambiguous, "courts will not in effect create a new contract by finding an intent not expressed in the clear language employed by the parties." Id.

{¶26} In determining whether appellant's rights under the operating agreement vested, the trial court referenced the following evidence: (1) Section 8.9 of the February 8, 2006 operating agreement; (2) records delineating the payoff histories of the Wagbros and Zeigler notes; and (3) calculations contained in Accent on Nature, LLC's asset and liability balance sheets showing outstanding debt owed to Wagbros and other creditors. (See Decision at 8.) The trial court reasoned that, because Section 8.9(a) sets forth conditions precedent to appellant exercising her membership options, and Accent on Nature, LLC, "was behind on its rent and in default on the Lease Agreement," at the time

in which 40 percent of the Wagbros and Zeigler notes were paid, the conditions for appellant to become a member of Accent on Nature, LLC, were never met. (See Decision at 8.) Further, the trial court found that, on June 23, 2009, the members executed a valid amended operating agreement that removed appellant's membership option and replaced it with Zeigler's option to purchase the Wagenbrenners' interests. (See Decision at 9.)

{¶27} Upon review of Section 8.9(a), we agree that the conditions for appellant to become a member of Accent on Nature, LLC, were never met. Section 8.9(a) plainly sets forth the following requirements to trigger the option: (1) 40 percent of the Wagbros note, in the amount of $77,600, plus interest, and 40 percent of the Zeigler note, in the amount of $5,000, plus interest, must be paid; (2) 100 percent of the Wagbros note, in the amount of $20,000, plus interest, must be paid; (3) Accent on Nature, LLC must not then be in default on its lease agreement with Wagbros; and (4) Accent on Nature, LLC, must be current in all of its bills, invoices, and other amounts due and payable.

{¶28} According to the record, 40 percent of the Wagbros note, in the amount of $77,600, was paid as of March 31, 2008, 40 percent of the Zeigler note, in the amount of $5,000, was paid as of July 1, 2008, and no advances were ever taken on the Wagbros note in the amount of $20,000. Therefore, if all of the requirements had been met, appellant's option would have ripened as of July 1, 2008. (See June 28, 2010 Notice of Compliance with Court Ordered Discovery, Exhibits A and B.) (See Collis affidavit at ¶10.) However, as of that same date, the company owed $85,587 in rent. (See M. Wagenbrenner affidavit at ¶31; Zeigler affidavit at ¶31, 32, 36 and 37.) In his affidavit, Collis averred that "[i]n accordance with the provisions of §8.9(a) of the Operating

Agreement, if the Company was not current in its bills and lease payment at the time that 40% of the loans were paid, then [appellant] was not to have the option to obtain any interest in the Company." (Collis affidavit at ¶11.) Further, Collis stated that "the triggering event for §8.9(a) would be payment of the loans that are set out therein; whereupon, [appellant] would either have the option to obtain [sic] to become a Member of the Company *or not* depending whether the Company was current in its Lease and other obligations to creditors at such time." (Collis affidavit at ¶12.) (Emphasis added.) Finally, Collis explained that "[o]nce the foregoing event was triggered, it was not intended that the option could be reviewed again in the event that at some future date, the Company then became current in its bills and payables." (Collis affidavit at ¶13.) Therefore, pursuant to Section 8.9(a) of the operating agreement, appellant's membership option never ripened and, as such, appellant cannot enforce the operating agreement.

{¶29} Appellant's first, seventh, and second assignments of error are overruled.

{¶30} Prior to addressing appellant's fifth, sixth and third assignments of error, we note that the trial court's decision did not specifically address whether (1) appellant is a third-party beneficiary of the operating agreement; (2) whether an oral contract existed between the parties; or (3) whether appellees are bound by the doctrine of promissory estoppel. However, in a footnote at the end of its decision, the trial court stated that "[p]laintiff had made other claims against Defendants in her Complaint. These claims, however, all stem from Plaintiff's assertion that she is a member of Accent. Since she is not, the Court is rendering Summary Judgment as to all claims made by Plaintiff." (See Decision at 12.) Therefore, because we review a summary judgment de novo, we will

now address whether the evidence in the record supports appellant's fifth, sixth, and third assignments of error.

{¶31} In her fifth assignment of error, appellant claims that she is a third-party beneficiary of the operating agreement. It is well-settled that "[u]nder Ohio law, only a party to a contract or an intended third-party beneficiary may bring an action on the contract." *Maghie & Savage, Inc. v. P.J. Dick, Inc*., 10th Dist. No. 08AP-487, 2009-Ohio-2164, ¶40. According to the record, appellant is not a party to the operating agreement.

{¶32} "A third party beneficiary is one for whose benefit a promise has been made in a contract but who is not a party to the contract." Id., quoting *Chitlik v. Allstate Ins. Co.* (1973), 34 Ohio App.2d 193, 196. An "intended beneficiary" is " '[a] third-party beneficiary who is intended to benefit from a contract and thus acquires rights under the contract as well as the ability to enforce the contract once those rights have vested.' " *Sowers v. Heidler*, 12th Dist. No. CA2003-02-002, 2003-Ohio-6787, ¶11, quoting Black's Law Dictionary (1999, 7th Ed.) 149. "For a third party to be an intended beneficiary of a contract, the contracting parties *must enter into the contract with the intent to benefit the third party*." *Maghie & Savage, Inc.* at ¶41. (Emphasis added.)

{¶33} Here, the record is void of any evidence proving that appellees entered into the operating agreement with the *intent* to benefit appellant. First, per Section 8.9 of the operating agreement, certain conditions had to be met prior to appellant deriving any benefits or rights. Second, in their affidavits, appellees attest that they intended to offer the option to appellant as an incentive for her to run a successful business. (See Zeigler affidavit at ¶29; Collis affidavit at ¶8; M. Wagenbrenner affidavit at ¶24; J. Wagenbrenner affidavit at ¶11.) Third, Section 11.6 of the operating agreement states, in relevant part,

that "this Agreement is binding upon and inures to the *benefit* of the Members and their successors, personal representatives, heirs, devises, guardians, and assigns." (Emphasis added.) In viewing the evidence in a light most favorable to appellant, we find that appellant is not an intended third-party beneficiary of the operating agreement.

{¶34} In arguendo, if appellees did intend for appellant to benefit from the operating agreement, appellant's rights in the operating agreement never vested. Therefore, even if a third-party beneficiary, appellant could not enforce the operating agreement.

{¶35} In her sixth assignment of error, appellant contends that the trial court erred in not finding that an oral contract existed between the parties. The formation of a contract requires an offer, acceptance of the offer, and consideration. See *Hoyt v. Nationwide Mut. Ins. Co.*, 10th Dist. No. 04AP-941, 2005-Ohio-6367, ¶40. "However, an offer must be specific enough to form the basis for a meeting of the minds." Id. In addition, " 'a contract must also be definite and certain with respect to its essential terms.' " *Callander v. Callander*, 10th Dist. No. 07AP-746, 2008-Ohio-2305, ¶15, citing *Bliss v. Chandler*, 11th Dist. No. 2006-G2742, 2007-Ohio-6161, ¶57, quoting *Biddle v. Warren Gen. Hosp.* (Mar. 27, 1998), 11th Dist. No. 96-T-5582. Further, in *Litsinger Sign Co., Inc. v. Am. Sign Co., Inc.* (1967), 11 Ohio St.2d 1, 14, the Supreme Court of Ohio stated that "if the parties' manifestations taken together as making up the contract, when reasonably interpreted in the light of all the circumstances, do not enable the court to determine what the agreement is and to enforce it without, in effect, 'making a contract for the parties,' no enforceable obligation results."

{¶36} In *Callander*, this court faced a similar issue regarding an alleged oral contract between a father and son, stemming from two alleged promises. The appellant-son worked for his father's dry-cleaning business, Callander Cleaners, from 1976 through 1986, and then again from 1998 through 2002. Id. at ¶3. In 2002, the appellant developed a medical condition and ceased working; however, he continued receiving paychecks until 2004. Id. at ¶4. The appellant claimed that his father made the following two promises: (1) "if appellant stayed and proved himself, and did not pursue other business opportunities, [the appellee-father] would convey ownership of the business to appellant and his siblings as equal partners," and (2) if the appellant did not file a worker's compensation claim, the appellee would "continue to pay appellant's wages and benefits." Id. at ¶5-6.

{¶37} The appellant filed a complaint for breach of contract, promissory estoppel, and other causes of action not relevant to the present appeal. Id. at ¶7. At his deposition, the appellant stated that these conversations took place "on a routine basis"; however, the appellee never specifically disclosed a time frame in which he would retire and transfer ownership. Id. at ¶17. The trial court granted summary judgment in favor of the appellees, and we affirmed the trial court's decision. Id. at ¶8. In affirming the trial court's decision, we found the statements regarding ownership of the dry-cleaning business "insufficient to constitute a meeting of the minds and form a binding contract." Id. at ¶19.

{¶38} In the present matter, appellant alleges that Michael Wagenbrenner told her, after he was paid in full for the monetary advance made to purchase Hall's inventory, she would become an owner of Accent on Nature, LLC. In her affidavit, appellant states that "[i]n October, Michael Wagenbrenner told affiant, as follows: '[y]ou will be one of the

owners when I get paid back. I don't want to be running a retail store.' " (Reif affidavit ¶6.) However, appellant provides no additional evidence regarding this alleged conversation between herself and Michael Wagenbrenner. In response, appellees argue that, if an oral contract existed at all between the parties, it occurred when Collis apprised appellant of the relevant terms of the operating agreement through the reading of Section 8.9. (See appellees' brief at 19.)

{¶39} In viewing the evidence in a light most favorable to appellant, we simply cannot find that Michael Wagenbrenner's alleged statement regarding "getting paid back" and "not wanting to run a retail store" constitutes an oral contract regarding the future ownership of Accent on Nature, LLC. Similar to the statement in *Callander*, Michael Wagenbrenner's alleged statement is vague and does not set forth a definite time frame in which a transfer of ownership would occur. Further, the statement does not indicate the monetary amount in which Michael Wagenbrenner should be "paid back" before appellant becomes an owner of Accent on Nature, LLC. As such, Michael Wagenbrenner's alleged statement is insufficient to constitute a meeting of the minds and form a binding contract.

{¶40} Further, we also find that Collis's reading of the operating agreement does not constitute an oral contract. As stated above, in order for a valid contract to be formed, there must be an offer, acceptance of the offer, and consideration. Even if the reading of the operating agreement could conceivably be construed as an offer, and appellant's employment as manager of Accent on Nature, LLC, could conceivably be construed as an acceptance of that offer, we fail to find evidence in the record of valid consideration either mentioned in the purported oral contract or exchanged between the parties.

{¶41} In *Kostelnik v. Helper*, 96 Ohio St.3d 1, 2002-Ohio-2985, ¶16, the Supreme Court of Ohio defined consideration as a "bargained for legal benefit and/or detriment." "Consideration may consist of either a detriment to the promisee or a benefit to the promisor. A benefit may consist of some right, interest or profit accruing to the promisor, while a detriment may consist of some forebearance, loss, or responsibility given, suffered, or undertaken by the promise." *Lake Land Emp. Group of Akron, LLC v. Columber*, 101 Ohio St.3d 242, 247, 2004-Ohio-786. Here, a review of the record reveals no evidence of a bargained for legal detriment on appellant's behalf. Appellant received a salary for her work as a manager of Accent on Nature, LLC, and, therefore, did not suffer a loss in that respect. In addition, although appellant claims that, in managing Accent on Nature, LLC, she overlooked other job opportunities that potentially paid a higher salary, the record contains no evidence of any actual job opportunities or forebearance on appellant's part. Therefore, consideration is lacking, and this alleged oral contract fails as a matter of law.

{¶42} In her third assignment of error, appellant contends that the trial court erred in granting summary judgment to appellees based upon the doctrine of promissory estoppel. A claim of promissory estoppel involves the following four elements: " '(1) a clear and unambiguous promise, (2) reliance by the party to whom the promise was made, (3) the reliance is reasonable and foreseeable, and (4) the party relying on the promise must have been injured by the reliance.' " *Callander* at ¶33, quoting *Patrick v. Painesville Commercial Properties, Inc.* (1997), 123 Ohio App.3d 575, 583.

{¶43} Appellant claims that "[b]ased on the representations of all Defendants and, most particularly, Defendant Michael Wagenbrenner and Collis, on behalf of Accent on

Nature, and further due to all of the Plaintiff's hard work at Accent on Nature from 2006 through the present, all Defendants, particularly Zeigler, are estopped from denying Plaintiff's contractual interest in the company and her right to the $350,000 inventory settlement and to all of the salvage." (See appellant's brief at 19.) In response, appellees argue that "the only promise ever made to Appellant was contained in the Operating Agreement and explained to her at or near the time of her employment." (See appellees' brief at 12-13.)

{¶44} Again, in viewing the evidence in a light most favorable to appellant, this court does not find in the record a "clear and unambiguous promise," made by any of the appellees. See *Callander* at ¶33. Even if Michael Wagenbrenner told appellant "[y]ou will be one of the owners when I get paid back. I don't want to be running a retail store," his statement does not satisfy the first element required to establish promissory estoppel. (See Reif affidavit, ¶6.) Further, if appellant did establish that (1) a clear and unambiguous promise existed, (2) appellant relied upon that promise, and (3) appellant's reliance was reasonable and foreseeable, the record is void of any evidence proving that appellant's reliance caused any injury. In fact, the record reveals that during appellant's employment as manager of Accent on Nature, LLC, she received a yearly salary of $33,000 for her "hard work and commitment." (See appellant's brief at 19.) Appellees cannot be held liable for appellant's own failure to negotiate a higher salary or venture toward a different career path.

{¶45} Therefore, based upon the evidence in the record, this court finds that (1) appellant is not a third-party beneficiary of the operating agreement; (2) an oral contract

did not exist between the parties; and (3) appellees are not bound by the doctrine of promissory estoppel.

{¶46} Appellant's fifth, sixth and third assignments of error are overruled.

{¶47} Having overruled all seven of appellant's assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN and FRENCH, JJ., concur.

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