[Cite as *Haman Ents., Inc. v. Sharper Impressions Painting Co.*, 2015-Ohio-4967.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Haman Enterprises, Inc.,	:	
Plaintiff-Appellant,	:	
		No. 15AP-50
v.	:	(C.P.C. No. 11CV-11284)
Sharper Impressions Painting Co.,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on November 19, 2015

McGrath & Foley, LLP, and *J. Edward Foley*, for appellant.

Arenstein & Andersen Co., Nicholas I. Andersen, and *Eric R. McLoughlin*, for appellee.

APPEAL from the Franklin County Court of Common Pleas

HORTON, J.

{¶ 1} Plaintiff-appellant, Haman Enterprises, Inc. ("Haman"), appeals from a judgment of the Franklin County Court of Common Pleas adopting a magistrate's decision finding that Haman and defendant-appellee, Sharper Impressions Painting Co. ("Sharper"), had mutually breached their contract. Because the trial court did not abuse its discretion in adopting the magistrate's decision and concluding that (1) the parties' mutual breach demonstrated their mutual assent to rescission, and (2) that Sharper's failure to pay sales tax did not amount to a breach of contract, we affirm.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} Haman filed a complaint against Sharper on September 8, 2011, asserting a claim for breach of contract. Haman filed an amended complaint on October 12, 2011, additionally asserting a claim of anticipatory repudiation. Sharper filed an answer and a counterclaim for breach of contract on November 4, 2011.

{¶ 3} Sharper is an Ohio painting company with offices in major cities throughout the United States. Sharper markets its residential painting services via direct mailings to potential customers. Haman is a commercial printing company located in Worthington, Ohio. Geoff Sharp is the president of Sharper. Tod Haman is the president of Haman; Scott Haman is the general manager of Haman.

{¶ 4} The parties entered into an agreement, titled the "Print and Mail Service Agreement" ("contract"), on February 22, 2011. (Complaint, exhibit A.) Haman agreed to print all of Sharper's postcards, to acquire carrier route data for Sharper, to inkjet addresses on to Sharper's postcards, and to deliver the postcards to the United States Postal Service ("USPS") per Sharper's schedule. Haman charged a per piece price of twenty cents per postcard for its services. The contract stated that this rate was "all inclusive," except for "[s]ubsequent USPS postage increases * * * and any applicable taxes." (Contract, 2.) In exchange, Sharper agreed to "order a minimum of 5,500,00 * * * postcards" from Haman during the 2011 calendar year, and to "pay for all ordered postcards prior to each order's shipment to the USPS." (Contract, 2.)

{¶ 5} The contract was to remain in effect until December 31, 2011, but either party could "terminate the Agreement, with or without cause, at any time, upon at least ninety (90) days advance written notice to the other party hereto." (Contract, 3.) The contract also contained a credit card authorization provision, which authorized Haman to "initiate entries to [Sharper's] credit card account and, if necessary, initiate adjustments for any transactions credited/debited in error." (Contract, 5.) The credit card authorization was to remain "in effect until HAMAN [was] notified by [Sharper] in writing to cancel it in such time as to afford HAMAN a reasonable opportunity to act on it." (Contract, 5.)

{¶ 6} The parties established a course of performance under the contract. Haman would prepare the postcards with Sharper's artwork, and Sharper would provide Haman with a list of cities that were to receive postcards on a specific date. Haman would inkjet the addresses on the postcards, and send Sharper an e-mail detailing the total number of postcards that were about to be shipped and the total cost. Sharper would send a return e-mail confirming the information. Haman would then charge Sharper's credit card and ship the postcards to their intended destinations. (Tr. Vol. I, 40, 195-96.)

{¶ 7} The parties had several issues arise during the course of the contract. Initially, Sharper told Haman it was tax exempt, and Haman set up Sharper's credit card account as tax exempt. Haman told Sharper that it would need Sharper's tax exempt certificate. Haman made eight different requests for Sharper's tax exempt certificate, and there was "[s]ilence on all eight accounts." (Tr. Vol. I, 199.) Sharper never produced a tax exempt certificate to Haman.

{¶ 8} In March 2011, Sharper confirmed an order for a mailing to the Denver, Colorado, market. Haman charged Sharper's credit card and shipped the mailer. After Haman shipped the order, Sharper sought to delay the postcards from being mailed, as Sharper's Denver manager had been injured in a hockey game. Paul Baronda, Haman's production manager, stated that he contacted the distribution hub in Denver, and employees there informed him that the postcards would be placed on hold. However, another distribution hub employee "saw the mail sitting there, * * * [and] took the mail and delivered it to the post office." (Tr. Vol. I, 141.)

{¶ 9} Next, in May 2011, after Sharper ordered and confirmed an order for the Indianapolis, Indiana market, Haman mistakenly printed Columbus market addresses on an undetermined number of Indianapolis postcards. Because the postcards for each market contained market specific information, such as local addresses and local telephone numbers, the mishap resulted in Columbus residents receiving postcards containing Sharper's Indianapolis information. Baronda explained that he went back and counted the postcards in the warehouse and concluded that "it had to be a handful" of incorrect cards as he "did not have missing product to justify anything else." (Tr. Vol. I, 145.) In an effort to mend relations, Haman offered to waive the re-inkjetting costs. Sharper accepted Haman's concession and continued to do business with Haman.

{¶ 10} In August 2011, however, there was a break down in the parties' relationship. On August 22, 2011, Baronda sent Sharp an e-mail detailing the amount of pre-printed postcards Haman had for each market, and the mailings Haman expected to send out in August, September, and October. The e-mail listed a number of cities with mailing dates scheduled for either August 25 or 29. Sharp explained that "all 8-29 dates had been moved up because of Labor Day. * * * And that was confirmed and that was ordered and authorized." (Tr. Vol. I, 72.) Thus, on August 25, 2011, Haman was

supposed to mail postcards to "Chicago, Indy, Columbus, Dallas, Atlanta, [and] Nashville." (Tr. Vol. I, 72-73.) In the August 22, 2011 e-mail, Baronda asked Sharp for an "idea as to how many mailing[s] [Haman would] do to each market?" (Haman Depo., exhibit No. 14.)

{¶ 11} Sharp sent a response e-mail on August 23, 2011, containing his estimates regarding the number of postcards each market would receive in September and October. After seeing these estimates, Haman determined that Sharper would be "in the ballpark of a million pieces short" of the 5,500,000 minimum order provided for in the contract. (Tr. Vol. II, 57.) Haman's sales representative, Mike Oldfield, called Sharp that day, and confirmed Sharp's estimates. After confirming these numbers, Oldfield sent Sharp an e-mail detailing some options to accommodate the reduced overall order, including increasing the per piece price, or printing the entire 5.5 million and placing the unused cards in storage for the following year.

{¶ 12} Sharp did not respond to Oldfield's e-mail. Oldfield sent Sharp another e-mail on the 23rd stating that Haman would not ship the August 25th mailer until the parties addressed the contract. Sharp did not respond to that e-mail. Haman then initiated two charges to Sharper's credit card on August 23, 2011: one for $56,391.76 in unused inventory and another for $16,978.29 in unpaid sales tax. Scott Haman explained that Sharp's "silence coupled with the non-responsive sales tax shenanigan that had drug out all year indicated that this guy was going to stick us with this sales tax liability." (Tr. Vol. I 221-22.) Prior to initiating the charges on August 23rd, Haman changed Sharper's credit card account from tax exempt to taxable and, in doing so, manually turned off the e-mail receipt function. Sharp noted that, because he didn't receive an e-mail receipt on August 23rd like he had for all of the prior transactions between the parties, he "had no idea what the $73,000 charge was" for on August 23rd. (Tr. Vol. I, 78.)

{¶ 13} The parties had a face-to-face meeting on August 26th. At that meeting, Sharp confirmed that its total order for the year would be about one million short from the 5.5 million obligation. Sharp stated that he "begged" Haman to print and deliver the postcards scheduled to go out on August 25th, and told Haman to keep the $73,000 and "apply it towards this mailer and then the next." (Tr. Vol. I, 87-88.) Haman refused to ship the August 25th mailer. Sharp then shut off Haman's authorization to charge

Sharper's credit card, without notifying Haman first. On September 8, 2011, Sharper sent Haman a letter stating that it was exercising its right to terminate the contract, effective December 7, 2011. Sharp disputed the August 23rd credit card charges and, one year later, Mastercard reversed the charges.

{¶ 14} The matter proceeded to a bench trial before a magistrate on May 7, 8, and September 3, 2013. The magistrate issued a decision on January 9, 2014, containing findings of fact and conclusions of law. Sharper asserted that Haman breached the contract through the Denver incident in March, and again in May when it printed Columbus addresses on Indianapolis postcards. The magistrate concluded that neither incident amounted to a material breach of the contract. The magistrate did conclude, however, that a mutual breach of the contract occurred in August 2011, when "Sharp shut down the credit card access in violation of the contract terms," and when Haman "did not complete, nor freight, the August 25, 2011 direct mailer that [Sharper] ordered and confirmed." (Magistrate's Decision, 10-11.) The magistrate found that "the parties' mutual failure to perform gave rise to a mutual assent to a rescission of their contract and a return to the status quo." (Magistrate's Decision, 13.) As such, the magistrate determined that neither party was entitled to damages. Regarding the unpaid sales tax issue, the magistrate concluded that Haman failed to present sufficient evidence "to substantiate that the sales tax was due and owing, or that [Haman] actually paid, or was liable for, any sales tax on [Sharper's] behalf." (Magistrate's Decision, 11.)

{¶ 15} Haman filed objections to the magistrate's decision on January 23, 2014. Sharper filed objections to the magistrate's decision on February 3, 2014. On December 24, 2014, the trial court overruled the parties' objections, and adopted the magistrate's decision as its own. The trial court determined that "[n]either parties' Objections provide[d] additional evidence that could not have been produced for consideration by the Magistrate, nor do they suggest that the evidence that was relied upon by the Magistrate was not credible." (Decision and Entry, 2.)

II. ASSIGNMENTS OF ERROR

{¶ 16} Haman appeals, assigning the following errors for our review:

> [I.] The trial court erred in concluding, as a matter, of law, that a mutual breach of the Print and Mail Services Agreement occurred.

> [II.] The trial court erred when it ruled that Haman Enterprises was not entitled to collect sales tax from Sharper Impressions Painting Co. for work performed when no Sales Tax Exemption Certificate was provided.

III. FIRST ASSIGNMENT OF ERROR – MUTUAL BREACH

{¶ 17} In its first assignment of error, Haman contends that the trial court erred by adopting the magistrate's decision and finding that a mutual breach of the contract occurred. If a party files objections to a magistrate's decision, a trial court undertakes a de novo review of a magistrate's decision. *Wells Fargo Bank, N.A. v. Rahman*, 10th Dist. No. 13AP-376, 2013-Ohio-5037, ¶ 11. " 'However, the appellate standard of review when reviewing a trial court's adoption of a magistrate's decision is an abuse of discretion.' *Id.* Therefore, we will only reverse a trial court's adoption of a magistrate's report if the trial court acted in an unreasonable or arbitrary manner." *Id.*, quoting *Mayle v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 09AP-541, 2010-Ohio-2774, ¶ 15.

{¶ 18} In order to "prove a breach of contract claim, a plaintiff must show 'the existence of a contract, performance by the plaintiff, breach by the defendant, and damage or loss to the plaintiff.' " *Powell v. Grant Med. Ctr.*, 148 Ohio App.3d 1, 10 (10th Dist.2002), quoting *Nilavar v. Osborn*, 137 Ohio App.3d 469, 483 (2d Dist.2000). The magistrate concluded that the parties mutually breached the contract, and that the parties' mutual failure to perform gave rise to a presumption of mutual assent to rescission of the contract.

{¶ 19} " 'Rescission is an equitable remedy that invalidates an agreement.' " *State ex rel. BDFM Co. v. Ohio Dept. of Transp.*, 10th Dist. No. 11AP-1094, 2013-Ohio-107, ¶ 64, quoting *Areawide Home Buyers, Inc. v. Manser*, 7th Dist. No. 04 MA 154, 2005-Ohio-1340, ¶ 24. The primary purpose of rescission is to restore the status quo and return the parties to their respective positions had the contract not been formed. *Id.* Rescission may occur "even though one or both parties have partly performed their duties or one or both have a claim for damages for partial breach," and a party's assent to rescission may be implied from the party's conduct. Restatement of the Law 2d, Contracts, Section 283 (1981). *See also Reiter Dairy, Inc. v. Ohio Dept. of Health*, 10th Dist. No. 01AP-944, 2002-Ohio-2402, ¶ 15 (noting that a "contract may be terminated by the mutual consent

and consideration of the parties at any time"). Whether the parties agreed to change or abandon the contract is a question of fact for the trier of fact. *Id*.

{¶ 20} "Mutual breach can give rise to a situation where rescission is appropriate," and "the mutual failure to perform can give rise to a presumption of mutual assent to rescission." *Areawide Home Buyers, Inc.* at ¶ 24, 29, citing *G/GM Real Estate Corp v. Susse Chalet Motor Lodge of Ohio, Inc.*, 3d Dist. No. 9-88-39 (June 4, 1999)*; Reed v. BDS Holdings*, 3d Dist. No. 14-92-41 (June 4, 1993). When rescission is imposed due to mutual breach, "the parties should be restored to status quo as much as possible." *Areawide Home Buyers, Inc.* at ¶ 30. *See also Mazur v. Young*, 507 F.3d 1013, 1020 (6th Cir.2007) (noting that "[t]here can be no liability for breach of contract under a contract that has been rescinded").

{¶ 21} Haman asserts that only Sharper breached the contract. Haman contends that Sharper initially breached the contract by failing to pay sales tax on each sale. Sharper's failure to pay sales tax is the subject of Haman's second assignment of error and, for the reasons stated below, we do not find that the failure to pay sales tax amounted to a breach of the contract.

{¶ 22} Haman next asserts that Sharper anticipatorily repudiated the contract in August 2011 when Sharp "indicated that he would not be fulfilling his contract obligation to order 5,500,000 postcards." (Appellant's Brief, 15.) Haman asserts that Sharper's communication "caused Haman to demand assurance from Sharper regarding its future performance," and that "[a]ll of these requests went unanswered." (Appellant's Brief, 16.) The magistrate did not find an anticipatory repudiation.

{¶ 23} " 'An anticipatory breach of contract by a promisor is a repudiation of the promisor's contractual duty before the time fixed for performance has arrived.' " *Metz v. Amer. Elec. Power Co., Inc.*, 172 Ohio App.3d 800, 2007-Ohio-3520, ¶ 35 (10th Dist.), quoting *McDonald v. Bedford Datsun*, 59 Ohio App.3d 38, 40 (8th Dist.1989). To prevail on a claim of anticipatory breach of contract, a plaintiff must establish that there was a contract containing some duty of performance not yet due and, by word or deed, the defendant refused future performance, causing damage to the plaintiff. *Id*. Thus, "[t]he repudiation must be expressed in clear and unequivocal terms." *Metz* at ¶ 35. A mere request for a change in terms or for cancellation does not constitute a repudiation.

Sunesis Trucking Co., Inc. v. Thistledown Racetrack, L.L.C., 8th Dist. No. 100908, 2014-Ohio-3333, ¶ 31. Similarly, a " 'mere expression of doubt as to willingness or ability to perform is insufficient to constitute repudiation of a contract.' " *Id*., quoting *Farmers Comm. Co. v. Burks*, 130 Ohio App.3d 158, 172 (3d Dist.1998).

{¶ 24} If a party has reasonable grounds to believe that the other party will not perform under the contract, that party may demand adequate assurance of performance from the other; the failure to provide such assurance is treated as a repudiation of the contract. *Id*. at ¶ 32. Anticipatory repudiation does not rescind a contract, but, rather, constitutes a breach of contract. *Am. Bronze Corp. v. Streamway Prods.*, 8 Ohio App.3d 223, 228 (8th Dist.1982).

{¶ 25} Sharp's August 23, 2011 e-mail did not amount to a clear and unequivocal statement of repudiation. Sharp's reply to Baronda's e-mail stated "[w]e will mail Nashville, Atlanta and Dallas a full two zones in Sept. We will also mail in October. How big a list is TBD. But it will probably be full lists or at least similar in size to the slightly reduced summer lists." (Haman Depo., exhibit No. 14.) The e-mail further stated that Columbus and Indianapolis would get a full mailer two zones in September, then maybe one more best zip code zone mailer in October. The e-mail also stated that Haman "MAY need about 30,000 more pieces for [Portland and Seattle] at the MOST." (Haman Depo., exhibit No. 14.)

{¶ 26} Although Sharp agreed that, if the estimates in his August 23rd e-mail were all he was going to order for the rest of the year, he would not reach 5.5 million, Sharp also stated that he had "a history of running [postcards] in October, November, [and] December." (Tr. Vol. I, 69.) Additionally, Haman interpreted Sharp's August 23rd e-mail as a request for a modification of the contract, and Haman responded by proposing two different modification options, including increasing the per piece price, or printing the entire 5.5 million and extending the contract into 2012.

{¶ 27} Haman contends that Sharper's silence in response to Haman's demands for assurances amounted to an anticipatory repudiation. As noted, Oldfield sent Sharp two e-mails on August 23, 2011. The first contained options to accommodate the decreased total order number, and the second stated "Geoff, wanted to let you know

ASAP I can't ship out anymore postcards until the contract is addressed. Thanks. Mike." (Tr. Vol. I, 75.) Sharp did not respond to these e-mails.

{¶ 28} Sharp noted that while he did not respond to these e-mails, as of the morning of August 23rd, he "was confirming more mailers that were * * * supposed to go out on 8-25. At 9:29 a.m., [he] was letting Paul [Baronda], the production manager, know what was scheduled out." (Tr. Vol. I, 75.) Sharp stated that as of August 23rd, he was still "placing production orders for the rest of the fall season." (Tr. Vol. I, 78.) Sharp also noted that, even if he wasn't responding to e-mails, he was talking to Oldfield over the phone. On the morning of August 25, 2011, Scott Haman sent Sharp another e-mail saying "Geoff, are we going to try to work something out or are you walking away?" (Tr. Vol. I, 212.) Sharp did not respond to that e-mail, and noted at trial that the August 25th e-mail came "two days after [Sharper's] card had been run for $73,000. And then [he] had called the office repeatedly." (Tr. Vol. I, 71.) These events do not amount to the clear and unequivocal statements of an intention not to perform that are necessary to support a finding of anticipatory repudiation.

{¶ 29} Moreover, even if the lower court had found an anticipatory repudiation, Haman did not exercise its allowed options. If an anticipatory breach of contract is found to occur, the injured party has the option of (1) terminating the contract and suing the breaching party immediately, or (2) continuing the contract and suing the breaching party for damages after the time for performance has passed. *Sunesis Trucking Co., Inc.* at ¶ 33, citing 18 Ohio Jurisprudence 3d, Contracts, Section 238 (2011). *See also Southeast Land Dev. Ltd. v. Primrose Mgt., L.L.C.*, 193 Ohio App.3d 465, 2011-Ohio-2341, ¶ 7. Haman did not terminate the contract and file an immediate action for damages. Rather, Haman charged Sharper's card for the unused inventory and unpaid sales tax and refused to perform. Although the parties dispute whether the contract gave Haman the authority to charge Sharper's card for the unused inventory, Haman believed it was acting under the contract in initiating the unused inventory charges to Sharper's credit card. (*See* Contract, 2.) Thus, rather than terminating the contract and suing for breach, Haman acted under the contract and charged Sharper's credit card, but ceased its own performance. Accordingly, even if Sharper had anticipatorily repudiated the contract, Haman did not exercise its allowed options. *Compare W.O.M.*,

Ltd. v. Willys-Overland Motors, Inc., 6th Dist. No. L-05-1201, 2006-Ohio-6997, ¶ 35 (noting that, where the "appellee has elected to treat appellants' repudiation as a total breach of the contract," the appellee was "under no obligation to revive any portion of the contract").

{¶ 30} Haman contends that it did not breach the contract by failing to mail the August 25th mailer, as Sharper did not pay for that mailer in advance. The contract obligated Sharper to "pay for all ordered postcards prior to each order's shipment to the USPS." (Contract, 2.) Sharp noted that it was his "goal to pay for" the August 25th mailer, and that he had a "$73,000 charge on [his] credit card, so [he] would have assumed that they were mailing [his] * * * postcards as scheduled on 8-25 for those markets." (Tr. Vol. I, 76.) Notably, the parties arranged their relationship so that Haman had the authority to initiate charges to Sharper's credit card. Sharp testified that he had ordered and confirmed the August 25th mailer, and the magistrate found this testimony to be competent and credible. (*See* Tr. Vol. I, 72; Magistrate's Decision, 6.) As Sharp had confirmed the mailer for August 25th, it was up to Haman to charge Sharper's card and ship the postcards as directed. As such, Haman did breach the contract by failing to ship the August 25th mailer that Sharp had ordered and confirmed.

{¶ 31} Based on the foregoing, we find no error in the magistrate's conclusion that there was a mutual breach of the contract. As such, the trial court did not abuse its discretion in adopting the magistrate's decision and finding that the contract was rescinded by the parties' mutual breach. Haman's first assignment of error is overruled.

IV. SECOND ASSIGNMENT OF ERROR – SALES TAX

{¶ 32} Haman's second assignment of error asserts that the trial court erred in adopting the magistrate's conclusion that Haman was not entitled to collect sales tax from Sharper. Initially, we note that Haman has failed to argue this assignment of error separately in its brief, in violation of App.R. 12(A) and 16(A). *See* App.R. 12(A)(2) (noting that this court may "disregard an assignment of error presented for review if the party raising it * * * fails to argue the assignment separately in the brief, as required under App.R. 16(A)"). Nevertheless, in the interest of justice, we will briefly address this assigned error.

{¶ 33} The contract provided that the "per piece rate shall not include: * * * any applicable taxes." (Contract, 2.) Sharper initially told Haman that it was tax exempt and, despite Haman's requests, Sharper never provided Haman with a tax exempt certificate. Haman has not paid any money to the state of Ohio for the tax Haman claims Sharper owes, and the state has neither issued an assessment against Haman for the tax nor stated an intention to do so. (*See* Tr. Vol. II, 152.) Haman nevertheless asserts that Sharper's "failure to pay the tax was a breach of the contract by the defendant, and he is liable to [Haman] for the 6.75% Sales Tax on the price of his purchased postcards." (Appellant's Brief, 15.)

{¶ 34} When a sale in Ohio is subject to tax, the tax "shall be paid by the consumer to the vendor, and each vendor shall collect from the consumer, as a trustee for the state of Ohio, the full and exact amount of the tax payable on each taxable sales." R.C. 5739.03(A). If a consumer claims that a particular sale is tax exempt, "the consumer must provide to the vendor, and the vendor must obtain from the consumer, a certificate specifying the reason that the sale is not legally subject to the tax." R.C. 5739.03(B)(1)(a). "If no certificate is provided or obtained within ninety days after the date on which such sale is consummated, it shall be presumed that the tax applies." R.C. 5739.03(B)(4). *See also* R.C. 5739.13(A).

{¶ 35} Haman contends that, "[w]hether or not the product sold by the vendor, in this case direct mailers, produced by Haman, ultimately turns out to be taxable or not is irrelevant," because without the tax exemption certificate, "sales tax applies." (Appellant's brief, 23.) We disagree. Although R.C. 5739.03(B)(4) states that a sale is presumed taxable if a consumer does not produce a tax exempt certificate within 90 days, Haman claims that the failure to pay the tax was a breach of the contract. The contract states that the per piece rate does not include applicable taxes. Thus, Haman had to demonstrate that sales tax applied to these sales, which it failed to do. Moreover, R.C. 5739.03(B)(5) states that tax exemption "[c]ertificates need not be obtained nor provided where the identity of the consumer is such that the transaction is never subject to the tax imposed, or where the item of tangible personal property sold or the service provided is never subject to the tax imposed, regardless of use, or when the sale is in interstate commerce." Thus, the mere absence of a tax exempt certificate does not render a particular sale

taxable. R.C. 5739.02(B) also sets forth 53 different transactions to which "tax does not apply." *See, e.g.* R.C. 5739.02(B)(10) (11); *Gen. Mills Fun Group, Inc. v. Lindley*, 1 Ohio St.3d 27, 30 (1982) (noting that under "R.C. 5739.02(B)(10), property sold in Ohio is exempted from taxation if the vendor shows that the property was delivered outside of Ohio").

{¶ 36} Furthermore, as Haman has not paid the tax over to the state, and the tax commissioner has not issued an assessment against Haman for the tax, Haman has suffered no damage. The trial court properly rescinded the contract due to the parties' mutual breach and, as rescission returns the parties to their status quo, ordering Sharper to pay $16,483.78 in taxes to Haman would not accomplish a return to status quo.

{¶ 37} Accordingly, the trial court did not abuse its discretion in adopting the portion of the magistrate's decision addressing the sales tax issue. Haman's second assignment of error is overruled.

V. DISPOSITION

{¶ 38} Having overruled Haman's first and second assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

KLATT and BRUNNER, JJ., concur.
