

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

THOMAS HUSKIN, et al.,	:	O P I N I O N
Plaintiffs-Appellants,	:	
- VS -	:	CASE NO. 2011-T-0048
TODD A. HALL, d.b.a. HALL HAULING,	:	
d.b.a. HOUSE MEDIC HANDYMAN	:	
SERVICE, et al.,	:	
Defendant-Appellee.	:	

Civil Appeal from the Court of Common Pleas, Case No. 2008 CV 1762.

Judgment: Reversed and remanded.

John P. Lutseck, 762 Youngstown-Kingsville Road, P.O. Box 49, Vienna, OH 44473
(For Plaintiffs-Appellants).

Randil J. Rudloff, Guarnieri & Secrest, P.L.L., 151 East Market Street, P.O. Box 4270,
Warren, OH 44482 (For Defendant-Appellee).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellants, Thomas Huskin, et al. (“Huskins”), appeal from the judgment of the Trumbull County Court of Common Pleas, entering summary judgment in favor of Appellee-Todd A. Hall. We reverse the judgment of the trial court and remand the matter for further proceedings.

{¶2} Appellee-Todd A. Hall is the managing member and authorized representative of “House Medic Handyman Service,” the registered fictitious name of

Hall Hauling, Ltd., an Ohio LLC. On June 12, 2007, the Huskins entered into a written construction contract for home remodeling. The letterhead of the contract reads “House Medic Handyman Service.” Moreover, a provision in the contract captioned “Notice of Buyer’s Rights” provides:

{¶3} “You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the notice of cancellation form provided by your House Medic representative for an explanation of this right.”

{¶4} The contract further indicated that offers contained therein “MAY BE WITHDRAWN BY HOUSE MEDIC HANDYMAN SERVICE IF NOT ACCEPTED WITHIN 10 DAYS.” (Emphasis sic.)

{¶5} The body of the contract provides various job estimates and a sum total for all work and materials. Immediately below the job estimates, the contract states: “WE PROPOSE hereby to furnish material and labor – complete in accordance with the above specification for the sum of: * * *” (Emphasis sic.) And, immediately below this statement is a signature line under which the words “AUTHORIZED SIGNATURE” appear. On the authorized signature line, the individual signature of Appellee-Todd A. Hall appears.

{¶6} The Huskins accepted the proposals set forth in the contract and the home improvement project commenced. The Huskins made several payments under the contract but, due to disagreements regarding the quality of the work being performed, they refused to pay the final balance. As a result, Hall Hauling, Ltd., filed a mechanic’s lien against the Huskins’ property.

{¶7} In December 2010, the Huskins filed a complaint in the Trumbull County Court of Common Pleas alleging, inter alia, a violation of Consumer Sales Practices Act and breach of contract. The complaint named “Todd A. Hall, dba Hall Hauling, dba House Medic Handyman Service” as the sole defendant. The Huskins later amended their complaint to separately name Hall Hauling, Ltd. as an independent defendant.

{¶8} Appellee moved the trial court for summary judgment, asserting Appellee-Todd A. Hall could not be held personally liable on the complaint because he signed the contract in a representative capacity. Attached to the motion was an affidavit in which Hall averred that, when negotiating a contract, he “always” advises potential clients that he is acting as an agent of House Medic Handyman Service. The motion only challenged Hall’s liability, however, and did not address the potential liability of Hall Hauling, Ltd. vis-à-vis the Huskins’ allegations.

{¶9} In their response memorandum, the Huskins alleged Appellee-Todd A. Hall failed to disclose the corporation of which he was an agent and the contract, on its face, failed to establish he was acting in a representative capacity as an authorized signatory. In support, Appellant-Deborah Huskin averred Hall at no time indicated he was acting on behalf of a corporation.

{¶10} After considering appellee’s motion and appellants’ response memorandum, the trial court entered summary judgment in appellee’s favor. In concluding there was no genuine issue of material fact as to Appellee-Todd A. Hall’s personal liability on the contract, the court reasoned:

{¶11} Mr. Hall clearly signed the proposal in question in a representative capacity. The court does not agree with the Plaintiffs that Mr. Hall

signed the proposal in question on his own behalf. Furthermore, having reviewed this contract, the Court finds that the disagreement between the parties as to whether or not Mr. Hall ever told the Huskins that he represented House Medic Handyman Service is immaterial to this Court's conclusion because it is clear by viewing the proposal itself that it came from House Medic Handyman Service. There is no reason why an individual would sign as the "authorized signature" on behalf of themselves [sic]. Rather, the Court agrees with the Defendant that the signature of Mr. Hall was authorized by and on behalf of House Medic Handyman Service, the fictitious name registered by Hall Hauling, Ltd., which is also the name at the top of the proposal in the large, bold lettering. Furthermore, under the plain terms of the proposal, the power to rescind the proposal did not lie with Mr. Hall, but with House Medic Handyman Service. It is clear that this was [a] contract with House Medic Handyman Service, not Mr. Hall.

{¶12} The court affixed the necessary Civ.R. 54(B) language to its order and this appeal followed.

{¶13} Appellants allege one assignment of error for our review:

{¶14} The Trial Court committed prejudicial error in granting Defendant-Appellee, Todd A. Hall's Motion for Summary Judgment based upon its opinion that Defendant-Appellee, Todd A. Hall was barred from any personal liability because he

signed the contract as an authorized representative even though he did not disclose the name of any corporate entity that he was representing.

{¶15} Summary judgment is a procedural tool that terminates litigation and thus should be entered with circumspection. *Davis v. Loopco Industries, Inc.* 66 Ohio St.3d 64, 66, 1993-Ohio-195. Keeping this in mind, an award of summary judgment is proper where (1) there is no genuine issue of material fact remaining to be litigated; (2) the movant is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing the evidence in the non-moving party's favor, that conclusion favors the movant. See, e.g., Civ.R. 56(C).

{¶16} When considering a motion for summary judgment, the trial court may not weigh the evidence or select among reasonable inferences. *Dupler v. Mansfield Journal Co.* (1980), 64 Ohio St.2d 116, 121. Rather, all doubts and question must be resolved in the non-moving party's favor. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 359 (1992). In effect, a trial court is required to overrule a motion for summary judgment where conflicting evidence exists and alternative reasonable inferences can be drawn. *Pierson v. Norfolk Southern Corp.*, 11th Dist. No. 2002-A-0061, 2003-Ohio-6682, at ¶36. On appeal, we review a trial court's entry of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996).

{¶17} The Huskins assert the trial court erred in concluding that, because the agreement identified House Medic Handyman Service as a party to the contract, Appellee-Todd. A. Hall could not be liable. We agree that the trial court erred in entering summary judgment in Hall's favor.

{¶18} It is well settled that an agent may be personally liable to a third party even though he or she acted on behalf of a purported principal. First, personal liability will attach where an agent only partially discloses the principal, i.e., where an agency relationship is apparent to a third party, but the identity of the principal is not known. *Tim Covert & Electrolite v. Kanieski*, 11th Dist. No. 2010-G-2993, 2011-Ohio-4170, at ¶26, citing *James G. Smith & Associates, Inc. v. Everett*, 1 Ohio App.3d 118, 121 (10th Dist.1981). An agent will also be personally liable where the principal is completely undisclosed, i.e., where the third party is neither aware of the principal's identity or the existence of an agency relationship. *Crossfire Newspaper Group, Inc. v. Hetrick*, 11th Dist. No. 2010-L-056, 2011-Ohio-1451, ¶18, citing *Everett, supra*; see also *Kanieski, supra*.

{¶19} Finally, an agent is liable where he or she purports to act on behalf of a fictitious or non-existent principal. *Kanieski, supra*, at ¶27, citing *James G. Smith & Associates, Inc., supra*; see also *Stryker Farms Exch. v. Mytcynskyj*, 129 Ohio App.3d 338, 341-342 (6th Dist.1998); *C-Z Constr. Co. v. Russo*, 7th Dist. No. 02 CA 148, 2003-Ohio-4008. By purporting to act on behalf of a fictional construct, one is simply acting on behalf of oneself. Put simply, “there is no agency.” *Everett, supra*.

{¶20} Applying these rules to the facts in this case, it is clear that Appellee-Todd A. Hall can be held personally liable to the Huskins if they prevail on the merits of their allegations. The record is undisputed that House Medic Handyman Service was a fictitious “dba” of Hall’s Hauling, Ltd. Nothing in the record, however, indicates that Hall disclosed that Hall’s Hauling, Ltd. was the actual principal for which Hall was acting as

an agent. The contract only references a fictitious principal and Hall did not sign the agreement as an agent of Hall's Hauling, dba House Medic Handyman Service.

{¶21} Moreover, in his affidavit, Hall specifically averred he routinely notifies clients that they are "dealing with" House Medic Handyman Service. He further asserted that the contract in question was entered on behalf of the Huskins and House Medic Handyman Service. As indicated above, a fictitious name has no legal status. As a result, a third party cannot legally "deal with" a fiction and, similarly, a fictitious name can neither enter into nor be bound by a contract. Although the trial court acknowledged that House Medic Handyman Services was simply a fictitious name, it mistakenly assumed the fictitious name possessed the legal capacity and standing of a legal entity for which Hall could act as an agent.

{¶22} Because there can be no agency relationship between a person and a fiction *and* the actual principal for whom Hall could have been an agent was not disclosed, the trial court erred, as a matter of law, when it entered summary judgment in Appellee-Todd A. Hall's favor.

{¶23} The Huskins' sole assignment of error is well-taken.

{¶24} For the reasons discussed in this opinion, the judgment of the Trumbull County Court of Common Pleas is reversed and the matter remanded for further proceedings.

DIANE V. GRENDALL, J.,

THOMAS R. WRIGHT, J.,

concur.