[Cite as *R.C. H. Co. v. Classic Car Auto Body & Frame, Inc.*, 2004-Ohio-6852.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 83697

R.C.H. COMPANY, et al.	:	
	:	
Plaintiffs-appellees	:	
	:	JOURNAL ENTRY
vs.	:	and
	:	OPINION
CLASSIC CAR AUTO BODY & FRAME, INC., et al.	:	
	:	
Defendants-appellants	:	
	:	

DATE OF ANNOUNCEMENT OF DECISION	:	DECEMBER 16, 2004
CHARACTER OF PROCEEDING	:	Civil appeal from Cuyahoga
	:	County Common Pleas Court
	:	Case No. CV-449724
JUDGMENT	:	REVERSED IN PART;
	:	AFFIRMED IN PART.
DATE OF JOURNALIZATION	:	

APPEARANCES:

For plaintiffs-appellees: FRANK J. GROH-WARGO
Attorney at Law
Powers & Groh-Wargo
2 Berea Commons, Suite 215
P.O. Box 1059
Berea, Ohio 44017

For defendants-appellants: JOHN H. WEST

Attorney at Law
6650 Pearl Road, Suite 202
Parma Heights, Ohio 44130

KENNETH A. ROCCO, J.:

{¶ 1} Defendants Classic Car Auto Body & Frame, Inc. and Jerry Moore appeal from a common pleas court judgment finding them jointly and severally liable for unpaid rent from March to June 2000 plus unpaid utilities and attorney's fees. They raise four assignments of error. First, they argue that the court abused its discretion by admitting and relying upon the terms of a lease, even though the plaintiffs' claim was based upon a subsequent settlement agreement. They further assert that the court erred by finding defendant Jerry Moore personally liable. They contend the court erred by awarding attorney's fees to the plaintiffs, and that the court abused its discretion by denying the defendants leave to file a counterclaim. We find the court erred by awarding attorney's fees to plaintiffs. Therefore, we reverse this portion of the court's judgment. We affirm the remainder of the judgment.

Procedural History

{¶ 2} This action was originally filed in the Berea Municipal Court on August 20, 1999. The complaint alleged that defendants had defaulted on their obligation to pay rent pursuant to a 1998 lease, and sought restitution of the premises as well as rent due for June, July and August 1999, unpaid utilities, late fees, interest, attorney's fees and costs. Defendants answered and counterclaimed, urging that plaintiffs had not maintained the premises and had overcharged them for utilities.

{¶ 3} The court issued a writ of restitution on September 13, 1999. On March 10, 2000, the defendants moved the court to quash and dismiss the writ because the parties had settled their dispute after the writ was issued.

{¶ 4} The Berea Municipal Court judge recused himself and this matter was reassigned to the Parma Municipal Court. On May 24, 2000, a magistrate held a hearing on the motion to quash the writ. The magistrate determined that the parties had reached a settlement on September 29, 1999 under the terms of which the writ would be stayed pending the defendants' payment of past-due rent. If the defendants failed to make those payments, the writ would be executed. By the terms of the settlement, the defendants could continue to occupy the premises through October 1999.

{¶ 5} An amended settlement agreement was then executed in November 1999. In the amended agreement, the defendants were given a month-to-month tenancy at the rate of $5003 per month. They agreed to vacate the premises as of April 30, 2000, and to be bound by the terms of the writ of restitution.

{¶ 6} The magistrate determined that defendants had agreed to be bound by the writ of restitution until they vacated the premises or the writ was exercised, and therefore overruled the motion to quash. The court overruled the defendants' objections and adopted the magistrate's decision.

{¶ 7} On May 9, 2001, plaintiffs filed an "amended second cause of action" which alleged that defendants had breached the amended settlement agreement by failing to pay rent in March and April 2000, by holding over their lease term for May and June 2000, and by failing to pay utilities. Plaintiffs sought damages for these amounts plus attorney's fees. This matter was transferred to the common pleas court because the damages claimed exceeded the municipal court's jurisdiction.

{¶ 8} Defendants requested leave to file a counterclaim on March 28, 2003. The court denied this motion. A bench trial was conducted on September 30, 2003, after which the court entered judgment for plaintiffs for the rent due, utilities, and attorney's fees.

Law and Analysis

{¶ 9} Defendants first argue that the court abused its discretion by relying upon the 1998 lease agreement even though the plaintiffs' claims at this point are based upon the November 1999 amended settlement agreement. The third assignment of error claims the court abused its discretion by awarding attorney's fees to plaintiff. These claims are related because the judgment entry indicates the court awarded attorney's fees "pursuant to the terms of the lease."

{¶ 10} We agree with defendants that plaintiffs' claim for rent and utilities from March through June 2000 arose under the amended settlement agreement, not under the lease. Therefore, the lease provisions concerning attorney's fees were irrelevant. The amended settlement agreement did not contain any provision for an award of attorney's fees.

{¶ 11} Ohio follows the "American Rule," which generally requires that an award of attorney fees as costs to a prevailing party in a civil action or proceeding must be based upon either the express authorization of the General Assembly or a finding that the losing party has acted in "bad faith, vexatiously, wantonly, obdurately, or for oppressive reasons." *Sorin v. Board of Edn.* (1976), 46 Ohio St.2d 177. Attorney fees are also allowable as damages in breach-of-contract cases where the parties have bargained for this result and the breaching party's wrongful conduct has led to the legal fees being incurred. Here, there was neither a contractual nor a statutory basis for an award of

fees, nor was there any finding of bad faith. Therefore, the court erred by awarding attorney's fees to plaintiffs.

{¶ 12} In their second assignment of error, defendants argue that the court erred by finding Jerry Moore personally liable and rendering judgment against him. Moore contends that he signed the amended settlement agreement solely in his capacity as president of Classic Car Auto Body & Frame, and not individually.

{¶ 13} "Whether a corporate officer is personally liable upon a contract depends upon the form of the promise and the form of the signature." *Spicer v. James* (1985), 21 Ohio App.3d 222, 223. The amended settlement agreement was, by its terms, "entered into by and between R.C.H. Co., and Robert Huge, hereinafter jointly referred to as 'Robert Huge' and Classic Car Auto Body & Frame, Inc. and Jerry Moore hereinafter jointly referred to as 'Classic Car.'" Separate signature lines were provided for Moore and Classic Car Auto Body & Frame, Inc. The clear intent of this agreement was that Moore was a party to the contract and would be indidually liable. He cannot defeat this obvious intent by writing the word "president" above his signature on the line marked with his name individually. Therefore, the second assignment of error is overruled.

{¶ 14} Defendants finally argue that the court erred by denying their motion for leave to file a counterclaim. While leave to amend the pleadings should be freely granted, the court did not abuse its discretion in this case because the motion was untimely filed only six days before the scheduled bench trial. Therefore, the fourth assignment of error is overruled.

{¶ 15} The common pleas court's judgment is reversed to the extent the court awarded plaintiffs attorney's fees in the amount of $3550.00. We affirm the remainder of the court's judgment.

This cause is reversed in part and affirmed in part consistent with this opinion.

It is, therefore, considered that said appellants recover of said appellees their costs herein.

It is ordered that a special mandate be sent to the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

JUDGE
KENNETH A. ROCCO

TIMOTHY E. McMONAGLE, J. CONCURS

DIANE KARPINSKI, P.J. DISSENTS &
CONCURS WITH SEPARATE DISSENTING
AND CONCURRING OPINION

R.C.H. COMPANY, et al.	:	
	:	
	:	
Plaintiff-appellees	:	
	:	DISSENTING &
v.	:	
	:	CONCURRING
CLASSIC CAR AUTO BODY & FRAME INC., et al.	:	OPINION
	:	
	:	
Defendant-appellant	:	

DATE: DECEMBER 16,2004

KARPINSKI, J., DISSENTING:

{¶ 16} I concur with the majority opinion on defendants' fourth assignment of error.[1]

{¶ 17} I dissent, however, with the majority opinion on defendants'

{¶ 18} assignments of error one,[2] two[3] and three[4] because it fails to consider the threshold issue of whether the record contains the complete contract in this case. The majority ignores the

[1] "IV. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION BY FAILING TO GRANT DEFENDANTS-APPELLANTS' LEAVE TO FILE A COUNTERCLAIM."

[2] "I. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION BY ADMITTING INTO EVIDENCE AND RELYING UPON EXHIBIT L."

[3] "II. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION BY FINDING THAT JERRY MOORE WAS PERSONALLY LIABLE AND BY RENDERING A JUDGMENT AGAINST HIM."

[4] "III. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION BY GRANTING ATTORNEY FEES TO PLAINTIFF-APPELLEE."

legal import and effect of the parties' September 29, 1999 settlement agreement and mutual release of claims.

{¶ 19} A court interprets a contract so that the intent of the parties can be ascertained and given effect. *Aultman Hosp. Ass'n. v. Community Mut. Ins. Co.* (1989), 46 Ohio St.3d 51, 53, 544 N.E.2d 920; *Willard Constr. Co. v. City of Olmsted Falls*, Cuyahoga App. No. 81551, 2003-Ohio-3018. The parties' intent "is presumed to reside in the language they chose to employ in the agreement." *Foster Wheeler Enviresponse, Inc. v. Franklin Cty. Convention Facilities, Auth.*, 78 Ohio St.3d 353, 367, 1997-Ohio-202, 678 N.E.2d 519, 526. That intent is gleaned from considering the contract as a whole. Id.

{¶ 20} If the contract is clear and unambiguous, then its interpretation is a matter of law. On appeal, the reviewing court's standard of review is de novo. *Nationwide Mut. Fire Ins. Co. v. Guman Bros. Farm* (1995), 73 Ohio St.3d 107, 108, 1995-Ohio-214, 652 N.E.2d 684.

{¶ 21} After reviewing of the trial transcript and the exhibits appended, I agree with defendants that plaintiffs never produced all the controlling documents in this case.

{¶ 22} The plain language of the Amended Settlement Agreement in the instant case states, in relevant part, as follows:

> **{¶ 23}** This agreement is intended to *amend* the original settlement agreement entered into by the parties on or about September 29, 1999.
>
> **{¶ 24}** ***
>
> **{¶ 25}** This Agreement *and* the original Agreement executed on or about September 29, 1999 shall constitute the entire agreement as there are no oral agreements modifying the herein Agreement. (Emphasis added).

{¶ 26} According to its express terms, the Amended Settlement Agreement does not replace but merely amends; that is, it either adds to or deletes something from the September 29th document.

The Amended Settlement Agreement, therefore, as a complete and binding contract, consists of all the terms set forth in that document (Nov. 15, 1999), along with whatever terms are included in the September 29, 1999 document. The trial record, however, does not include the earlier September 29th settlement agreement. Nor is there testimony describing the terms of that agreement. Therefore, the Amended Settlement Agreement is only half of the contract controlling this case.

{¶ 27} Neither the trial court nor the majority can determine the effect of the 1998 Lease document and the terms contained therein, without being able first to review the later September 29, 1999 settlement agreement, along with the Amended Settlement Agreement of November 15.

{¶ 28} Because plaintiff has failed, as a threshold matter, to produce the entire contract, the trial court erred by finding a breach of contract and entering judgment against defendants. I would therefore sustain defendants' first assignment of error.

{¶ 29} As to defendants' second assignment of error, I also disagree with the majority opinion, which held that defendant was personally liable for Classic's debts. The majority decision rests on how the signature lines of the contract are construed.

{¶ 30} This court has explained that:

> **{¶ 31}** [a] contract is a promise or a set of promises, the breach of which the law provides a remedy, or the performance of which the law in some way recognizes a duty. *Ford v. Tandy Transp. Inc.* (1993), 86 Ohio App. 3d 364, 620 N.E.2d 996, 1006. In order for a party to be bound to a contract, the party must consent to its terms, the contract must be certain and definite, and there must be a meeting of the minds of both parties. *Episcopal Retirement Homes, Inc. v. Ohio Dept. Of Indus. Relations* (1991), 61 Ohio St.3d 366, 369, 575 N.E.2d 134, 137; *Cleveland Builders Supply Co. v. Farmers Ins. Group of Cos.* (1995), 102 Ohio App.3d 708, 657 N.E.2d 851.

{¶ 32} *Zab v. Goforth*, (Sept. 10, 1998), Cuyahoga App. No. 73050, 1998 Ohio App. LEXIS 4225, at *5-6. "The parties must have a distinct and common intention which is communicated by

each party to the other." *Moore v. Johnson*, (Dec. 11, 1997), Franklin App. Nos. 96APE11-1579, 96APE12-1638, and 96APE12-1703, 1997 Ohio App. LEXIS 5603, at *25-26, citing *McCarthy, Lebit, Crystal & Haiman Co., L.P.A. v. First Union Mgt., Inc.* (1993), 87 Ohio App.3d 613, 620, 622 N.E.2d 1093.

{¶ 33} In 1934, the Supreme Court of Ohio ruled:

{¶ 34} *** where a promissory note is signed by the proper officer of a corporation in the corporate name, and underneath the corporate name he signs his own name, affixing thereto his appropriate official title as an officer of said corporation, in the absence of anything in the body of the instrument requiring a different construction, such note will be construed and held to be the note of the corporation only, and not the note of the officer so signing, or the joint note of such officer and the corporation.

{¶ 35} *Cannon v. Miller Rubber Products Co.* (1934), 128 Ohio St. 72, 75-76, citing *Aungst v. Creque*, 72 Ohio St. 551, syllabus.

{¶ 36} The face of the agreement's signature page in this case, however, is different from that in *Cannon* and, therefore, requires a different construction. Here, that page unambiguously includes two separate lines: one for Classic, the corporation, and one for Moore, as an individual. Each of those signature lines has Jerry Moore's signature. "Jerry Moore" is typewritten under the first line. The second line has "Classic Car Auto Body & Frame, Inc." typewritten beneath it. Moore signed both lines with his own name and then added in his own hand the word "President" next to both of his signatures.

{¶ 37} From the form of the document before it was signed, it was plaintiffs' intention for Moore to sign the line above his name, "Jerry Moore," as an individual and thus for Moore to agree in his individual capacity.

{¶ 38} Moore testified, however, he signed both lines in his corporate capacity as president of Classic because it was not his intention to be held personally liable for Classic's debts to plaintiff. His adding "President" to both lines demonstrates that intent.

{¶ 39} Defendants have stated, on the other hand, when Moore signed the document twice in the same capacity, he "was attempting in bad faith to circumvent the intent of the agreement without any indication that he was doing so *** in entering into the settlement agreement." Plaintiffs' appellate brief at 11. Plaintiffs position is unpersuasive in light of its duty to read and accept or reject what Moore signed.

{¶ 40} Plaintiffs use the November 1999 document as proof of its agreement with defendants. Plaintiffs cannot argue that defendants must be held to the express provisions of that agreement and then simultaneously claim that the document does not demonstrate the parties' intent when it comes to the issue of Moore's personal liability.

{¶ 41} Plaintiffs' position can be distilled into one claim: the parties had orally agreed that Moore would accept personal liability. The agreement, however, unambiguously contradicts plaintiffs' claim.

{¶ 42} The purported and conflicting intention of the parties are not relevant to a reading of this particular document (the 1999 Amended Agreement) because in itself it is not ambiguous, although it is incomplete. Because on its face, the signature lines are unambiguous, there is no need to reach to the intent of the parties on that point.

{¶ 43} Moreover, the agreement expressly states that "there are no oral agreements modifying the herein Agreement." To permit plaintiffs to prevail on their claim of an oral agreement

which contradicts the written signed document is a blatant violation of the parol evidence rule. *Marion Production Credit Association v. Cochran* (1988), 40 Ohio St.3d 265, 533 N.E.2d 325.

{¶ 44} I would sustain defendants' second assignment of error.

{¶ 45} I also dissent from the majority opinion on defendants' third assignment of error. The trial court stated it awarded attorney fees "pursuant to the terms of the lease." In determining that plaintiffs are entitled to attorney fees, the trial court again erroneously ignored that it did not have the September 29, 1999 document in evidence. Without the parties' entire contract in evidence, the trial court did not know whether that contract included any terms related to fees. The trial court erred, therefore, in using the 1998 Lease to accept plaintiffs' claim for attorney's fees, because the lower court did not know whether such fees were bargained for by the parties in their later agreement in September 1999.[5] I would sustain defendants' assignment of error three.

[5]I note that the Amended Agreement in November does not provide for attorney fees.