[Cite as *Fine Line Communications, Inc. v. Schumann & Co.*, 2010-Ohio-1438.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93512

FINE LINE COMMUNICATIONS, INC.

PLAINTIFF-APPELLEE

vs.

I. SCHUMANN & COMPANY

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Bedford Municipal Court
Case No. 08CVF02382

BEFORE: Sweeney, J., Kilbane, P.J., and Blackmon, J.

RELEASED: April 1, 2010

JOURNALIZED:

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JAMES J. SWEENEY, J.:

{¶ 1} Defendant-appellant, I. Schumann & Company ("Schumann"), appeals from the Bedford Municipal Court's order awarding plaintiff-appellee, Fine Line Communications, Inc. ("Fine Line"), $6,794 plus interest and costs for communication services performed by Fine Line at Schumann's facility.[1] For the reasons that follow, we affirm.

{¶ 2} Fine Line commenced this action against Schumann for breaches of contract, account stated, and unjust enrichment. Fine Line, among other requested relief, sought judgment in the amount of $6,794, plus accrued interest from the date of breach. Schumann filed a counterclaim for fraudulent inducement of contract and promissory estoppel. Schumann prayed for judgment in the amount of all sums adjudged against it on Fine Line's claim(s) in excess of $4,500. The matter proceeded to trial in the Bedford Municipal Court.

{¶ 3} According to the evidence presented, Fine Line's business, among other things, included the installation of cable wiring for communication services. Fine Line had performed various services for Schumann over the years, including pulling cable for their telephone and data networks. Generally, Fine Line would perform the services and then send an invoice to Schumann for payment. Fine Line would generate the invoices from the technicians' work order and they were always paid hourly. Exhibit D, presented at trial, contains work orders performed by Fine Line for Schumann between January 6, 2007 through December 28, 2007.

[1] The Municipal Court also denied Schumann's counterclaim, which is not contested in this appeal.

{¶ 4} In 2007, Schumann decided to upgrade its security system. Schumann contracted with Noble Security for the needed equipment. In part due to its pre-existing relationship with Fine Line and Fine Line's knowledge of its facility, Schumann hired Fine Line to install the cabling for the new system. From this point, the parties' recollection of events begins to differ critically.

{¶ 5} Meetings were held in June and July 2007 about the project. Among those present were Scott Schumann, president of Schumann, Mark Noble, and Rich Leissa ("Leissa"), an employee of Fine Line. Leissa had been in the cabling business for over 20 years and had provided services to Schumann prior to his employment with Fine Line. Leissa recalled that they were discussing the installation of eight cameras when he was asked how much time he thought it would take Fine Line to install the cabling. "Off the top of [his] head," Leissa guessed it would take about three days. Nothing was reduced to writing and no formal proposal was ever submitted for the work until after it was completed. Leissa further testified that as time went on, the project changed significantly from what was discussed at the initial meetings. The changes included installation of cabling to 22 cameras, with four feeds and required laying cable under scales. To accomplish this, Fine Line had to perform some of the installation on Saturday, which involved overtime.

{¶ 6} Schumann testified that he repeatedly asked Leissa how much time it would take Fine Line to install the cabling and was always told it would take two men, three days, working eight hours a day. He admitted that he had asked his

purchasing agent to secure a written proposal but none was ever received until after the work was performed. When he followed up with the purchasing manager he was told that they had not received a written agreement from Fine Line before or during performance of the job.

{¶ 7} Schumann said he presented a "cut-sheet" to Leissa at the June meeting, which had a listing of between 16 and 20 cameras that were additional. According to Schumann, Leissa's estimate remained "three days, two guys, eight hours a day." Under cross-examination, it was established that the cut-sheet was for the July 2007 meeting rather than June. Schumann also acknowledged that his notes from the initial meeting do not reference any amount of money being discussed for the job. His notes from the June meeting indicate that there was no underground wiring. Schumann explained that this "was in reference to [their] back house." He also made notations to the effect that they had yet to get a print and agreement done as to "how many cameras they were going to put in and exactly at which locations." From June 2007, he believed the amount of cameras increased by two. He had no notations to substantiate his claim that installation of a camera was contemplated in June 2007 that would require running the cables under scales after business hours. Schumann testified that he discussed the estimated $3,000 cost with Leissa at the July meeting and a third meeting. He did not know that Leissa was not an officer of Fine Line or whether he had authority to enter into contracts on behalf of Fine Line. He just assumed it.

{¶ 8} Schumann claimed that although he was present at the plant, monitoring the project through Noble and noticed progress being made, he did not recognize the fact that Fine Line was there more than three days. He could not recall whether he had seen Fine Line employees as he walked through the plant. Schumann confirmed that Fine Line started the project around October 1, 2007. When asked if he realized that Fine Line did not finish the job until November 19th — over a month and a half later, he said, "I don't know what the end date was of their work." When pressed, Schumann estimated "it would probably be in like two weeks" and speculated that Fine Line might have been doing other work at the facility. But, Schumann ultimately conceded that to his knowledge, and being president of the company, that as far as he knew Fine Line was there at that time for only one project — the installation of the cabling for the cameras.

Schumann did, however, dispute the amount of hours reflected in Fine Line's invoice and proposal. After checking time records, Schumann believed some of the hours were wrong but he could not specifically remember. He did not supply any time loss records to Fine Line's counsel in this matter.

{¶ 9} Schumann insisted that he "most assuredly would ask for an estimate or proposal before the job would be done" on a "sizable job." However, his testimony indicated that the work Leissa had historically performed for Schumann did not require a prior estimate, as it was "repair work."

{¶ 10} Schumann received a proposal and invoice from Fine Line after the work was finished. The invoice was for $11,000 instead of the approximately

$3,000 bill he was expecting for the job. Schumann calculated the $3,000 by using an hourly rate of $65 an hour. However, when he had asked Leissa if that was the proper hourly rate, Leissa said he did not really know.

{¶ 11} Schumann's purchasing manager contacted Fine Line to discuss the matter and spoke with Kurt Hoover or Mike Deterra. In 2008, a meeting was held, after which Schumann decided to pay the hourly rate of $85 but only for a total of 48 man hours. Schumann voluntarily paid $4,400 for the job. Fine Line, through its counsel, sent a demand for payment of the balance owed on the invoice.

{¶ 12} Leissa denied quoting any figures to Schumann to do the work, explaining, "I can't quote prices."

{¶ 13} The court issued its journal entry of judgment and denied Schumann's counterclaim and entered judgment in favor of Fine Line in the amount of $6,794, plus costs and interest at 5% from November 6, 2007. Schumann now appeals presenting the following error for our review:

{¶ 14} "I. The trial court erred in finding for appellee in the amount of $6,794.00 plus interest at 5% per annum."

{¶ 15} When reviewing the evidence in a civil case to determine whether the judgment is against the manifest weight of the evidence, this Court must consider whether there is some competent, credible evidence going to all the essential elements of the case. *Bryan-Wollman v. Domonko* (2007), 115 Ohio St.3d 291, 2007-Ohio-4918, 874 N.E.2d 1198; *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578. In applying this standard, we must presume that

the trial court's findings are correct and will not reverse the trial court based solely upon a different evaluation of the credibility of the witnesses at trial. *Seasons Coal, Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 80-81, 461 N.E.2d 1273. This presumption arises because the trial judge had an opportunity "to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." Id. A reviewing court should not reverse a decision simply because it holds a different opinion concerning the credibility of the witnesses and evidence submitted before the trial court. Id. at 81, 461 N.E.2d 1273.

{¶ 16} Schumann asserts that the judgment is not supported by the facts and was erroneous under any of the causes of action pled against it, which included breach of contract, action on account, and unjust enrichment. Fine Line counters that there was competent, credible evidence to support the judgment on its breach of contract claim. Alternatively, and to the extent no contract existed for lack of mutual assent, Fine Line maintains the evidence supported the judgment on the theory of unjust enrichment.

{¶ 17} "'A contract is generally defined as a promise, or a set of promises, actionable upon breach. Essential elements of a contract include an offer, acceptance, contractual capacity, consideration * * *, a manifestation of mutual assent and legality of object and of consideration.'" *Kostelnik v. Helper*, 96 Ohio St.3d 1, 2002-Ohio-2985, 770 N.E.2d 58, ¶16, quoting, *Perlmuter Printing Co. v. Strome, Inc*. (N.D.Ohio 1976), 436 F.Supp. 409, 414. "A meeting of the minds as

to the essential terms of the contract is a requirement to enforcing the contract." Id., citing, *Episcopal Retirement Homes, Inc. v. Ohio Dept. of Indus. Relations* (1991), 61 Ohio St.3d 366, 369, 575 N.E.2d 134.

{¶ 18} In *Legros v. Tarr* (1989), 44 Ohio St.3d 1, 6, 540 N.E.2d 257, the Court explained, "there are three classes of simple contracts: express, implied in fact, and implied in law. 'In express contracts the assent to its terms is actually expressed in offer and acceptance. In contract implied in fact the meeting of the minds, manifested in express contracts by offer and acceptance, is shown by the surrounding circumstances which made it inferable that the contract exists as a matter of tacit understanding. In contracts implied in law there is no meeting of the minds, but civil liability arises out of the obligation cast by law upon a person in receipt of benefits which he is not justly entitled to retain and for which he may be made to respond to another in an action in the nature of assumpsit. Contracts implied in law are not true contracts; the relationship springing therefrom is not in a strict sense contractual but quasi-contractual or constructively contractual. In truth, contracts implied in law are often called quasi contracts or constructive contracts.'" Id., quoting *Columbus, Hocking Valley & Toledo Ry. Co. v. Gaffney* (1901), 65 Ohio St. 104, 61 N.E. 152, internal citations omitted.

{¶ 19} "The facts and circumstances that give rise to the implicit terms of implied contracts include the customs and course of dealing amongst the parties." *Circuit Solutions, Inc. v. Mueller Elec. Co.,* Lorain App. No. 07CA009139, 2008-Ohio-3048, ¶15.

{¶ 20} In this case, evidence was presented that established a custom and course of dealing between Schumann and Fine Line, whereby Fine Line would perform services at an hourly rate and send an invoice to Schumann for payment upon completion of the job.

{¶ 21} There was also conflicting evidence as to material terms of the oral agreement alleged by Schumann. Specifically, Schumann maintained Leissa told him the job would be a "three-day job" entailing a total of 48 man hours. Leissa, however, denied providing a price quote and testified that he was not authorized to quote prices. This fact was corroborated by the testimony of other Fine Line representatives. Schumann admittedly assumed the contract rate would be $65 an hour and relied on Leissa's alleged time estimate. In any case, it did not take two men, three days, but rather took Fine Line about a month and half to complete the work. There is no dispute that Fine Line finished the job. No one disputes that Fine Line had to work at the facility during non-business hours to run cable underneath the scales as part of the project. It is unclear whether this was discussed or anticipated at the initial meetings. While Schumann, the president of the company, denied being aware of the amount of time it took to finish the job (despite his presence at the facility throughout the project), his own testimony was that it took "probably like two weeks." Further, Schumann said he instructed his purchasing manager to obtain a written estimate. Although he was aware that no written estimate was received as Fine Line worked on the project, he allowed Fine Line to continue working and never obtained any price in writing until the job was

completed. Accordingly, the trial court did not err by determining that the evidence failed to establish a valid oral contract on the terms alleged by Schumann.

{¶ 22} Finally, the trial court did not err by excluding the price quote Schumann allegedly received from a different party to perform the job. A trial court's decision to exclude evidence is not grounds for reversal unless the record clearly demonstrates that the trial court abused its discretion and that the complaining party has suffered a material prejudice. *Columbus v. Taylor* (1988), 39 Ohio St.3d 162, 164, 529 N.E.2d 1382. An abuse of discretion connotes more than an error of law or judgment, it implies that the trial court's attitude was unreasonable, arbitrary, or unconscionable. *Tracy v. Merrell Dow Pharmaceuticals, Inc*. (1991), 58 Ohio St.3d 147, 152, 569 N.E.2d 875. There was no testimony as to the scope or terms of the job quoted by the third party. Nor can we assume that the third party would not have made changes to the price quote upon commencing the work should the circumstances have required it. Stated differently, we have no way to determine that the price quote adequately reflects the value of services that Fine Line ultimately performed for Schumann on this project.

{¶ 23} Based on the evidence, the record contains competent, credible evidence supporting the trial court's judgment for breach of an implied contract based on the course of dealings between these parties. To the extent mutual

assent is lacking on any material term such that no contract existed, the judgment was proper under a contract implied by law under the theory of unjust enrichment.

{¶ 24} Schumann's sole assignment of error is overruled.

{¶ 25} Judgment affirmed.

It is ordered that appellee recover from appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Bedford Municipal 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.

JAMES J. SWEENEY, JUDGE

MARY EILEEN KILBANE, P.J., and
PATRICIA A. BLACKMON, J., CONCUR