

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Bud Runyon,	:	
	:	
Plaintiff-Appellee/ [Cross-Appellant],	:	
	:	
v.	:	No. 12AP-180
	:	(M.C. No. 2009 CVF 051796)
Daniel G. Nolan [dba BoCha Services, LLC],	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant/ [Cross-Appellee].	:	

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D E C I S I O N

Rendered on November 15, 2012

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*Clement W. Pyles*, for appellee/cross-appellant.

*Mills, Mills, Fiely & Lucas, LLC*, and *John Sherrod*, for appellants/cross-appellees.

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APPEAL from the Franklin County Municipal Court

SADLER, J.

{¶ 1} Defendant-appellant/cross-appellee, Daniel Nolan ("Nolan"), appeals from a judgment entered in favor of plaintiff-appellee/cross-appellant, Bud Runyon ("Runyon"), in the Franklin County Municipal Court following a bench trial. For the following reasons, we affirm.

## **I. BACKGROUND**

{¶ 2} In December 2009, Runyon filed a complaint against Nolan seeking damages for breach of oral contract and violations of the Ohio Consumer Sales Practices Act ("CSPA"). According to the allegations in the complaint, Runyon and Nolan entered into an oral agreement whereby Runyon paid Nolan \$4,332 for the purchase of a "whole house standby electric generator." Complaint, at ¶ 1. Runyon alleged that the generator was insufficient to safely operate all appliances and other electrical devices in Runyon's residence, and that Nolan refused to accept a return of the generator without a substantial fee.

{¶ 3} Nolan filed an answer and a counterclaim seeking a judgment against Runyon in the amount of \$10,000 for allegedly defamatory statements made by Runyon. Nolan then moved for summary judgment on the grounds that he could not be personally liable for the alleged breach of contract because he was acting as an agent of BoCha Services, LLC ("BoCha"). Runyon filed a motion to join BoCha as a defendant, which the trial court granted. The trial court denied Nolan's motion for summary judgment after determining that a material question of fact exists as to whether Nolan was a proper party. The trial court scheduled the matter for a trial.

{¶ 4} The record indicates that a bench trial was held, after which the parties were instructed to submit proposed findings of fact and conclusions of law. On January 30, 2012, after the submission of the proposed findings and conclusions, the trial court filed a decision and judgment entry. In its decision, the trial court determined that Runyon was permitted to sue Nolan individually because Nolan did not purport to act as an agent of BoCha. The trial court went on to conclude that Runyon was entitled to fully rescind the oral agreement because there was no meeting of the minds between the parties as to the meaning of "whole house generator." Decision, at 3. In addressing Runyon's CSPA claim against Nolan, the court determined that Nolan did not engage in any unfair or deceptive practices because Nolan sold the generator to Runyon in good faith. Finally, the court found no evidence supporting Nolan's counterclaim alleging defamation.

## **II. ASSIGNMENTS OF ERROR**

{¶ 5} Nolan appeals from the trial court's judgment and Runyon cross-appeals. In his appellate brief, Nolan identified the following three assignments of error:

1. The trial court erred in determining that Appellant Daniel Nolan was personally liable to Appellee.
2. The trial court erred in determining Appellant had no right to limit Appellee's right to rescind.
3. The trial court erred in failing to consider Appellee's complete and total failure to mitigate damages.

{¶ 6} Runyon's cross-appeal advances the following two assignments of error:

I. THE TRIAL COURT ERRED IN FAILING TO GRANT JUDGMENT TO PLAINTIFF-APPELLEE/CROSS-APPELLANT ON PLAINTIFF-APPELLEE/CROSS-APPELLANT'S CLAIM FOR TRIPLE DAMAGES AND ATTORNEY FEES UNDER THE OHIO CONSUMER SALES PRACTICES ACT ("CSPA").

II. THE TRIAL COURT ERRED IN DISMISSING PLAINTIFF'S CLAIMS AGAINST DEFENDANT, BOCHA ELECTRIC, LLC, IF AND ONLY IF THIS COURT REVERSES THE JUDGMENT AGAINST DEFENDANT DANIEL NOLAN INDIVIDUALLY.

{¶ 7} At oral argument, counsel for Nolan withdrew Nolan's first assignment of error challenging the trial court's determination that Nolan was the proper defendant to the action rather than BoCha. This renders moot the second assignment of error in Runyon's cross-appeal. Accordingly, our analysis will proceed to address Nolan's second and third assignments of error and Runyon's first cross-assignment of error.

{¶ 8} First, we must highlight the failure of both parties to provide this court with a transcript of the bench trial or any of the proceedings below. "The duty to provide a transcript for appellate review falls upon the appellant." *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199 (1980). This is so because it is the appellant's burden to demonstrate error by reference to matters in the record. *Id.*, citing *State v. Skaggs*, 53 Ohio St.2d 162 (1978). "When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm." *Knapp* at 199.

{¶ 9} Without a transcript, we must overrule Nolan's second and third assignments of error as well as Runyon's first cross-assignment of error, as all of them dispute whether the trial court's findings are either contradicted or unsupported by the record below. Because neither party has provided this court with a transcript or with any alternative form of the record permitted by App.R. 9, we find nothing to support the assertions underlying their assignments of error, and we must presume the regularity of the proceedings as well as the validity of the trial court's rulings. *See Charlot v. Desinor*, 10th Dist. No. 12AP-76, 2012-Ohio-3921, ¶ 7; *Columbus v. McCash*, 10th Dist. No. 11AP-1118, 2012-Ohio-3167, ¶ 17; and *Williams v. AutoZone*, 10th Dist. No. 11AP-134, 2011-Ohio-4985, ¶ 8. While Runyon claims that his first cross-assignment of error is reviewable as it presents a legal challenge to the trial court's application of the CSPA to the evidence presented, without a transcript, we are unable to review the validity of the evidence that the trial court relied upon to support this conclusion. Accordingly, we overrule Nolan's second and third assignments of error, as well as Runyon's first cross-assignment of error.

### III. CONCLUSION

{¶ 10} Nolan's first assignment of error has been withdrawn from our consideration. Nolan's second and third assignments of error and Runyon's first cross-assignment of error are overruled and Runyon's second cross-assignment of error is rendered moot. Accordingly, the judgment of the Franklin County Municipal Court is affirmed.

*Judgment affirmed.*

BROWN, P.J., and CONNOR, J., concur.

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