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No. 3-10-0657

Order filed May 23, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

THOMS-PROESTLER COMPANY, LLC,)	Appeal from the Circuit Court
a Delaware limited liability company,)) of the Fourteenth Judicial Circuit
f/d/b/a Thoms Proestler Company, an)	Rock Island County, Illinois,
Iowa corporation,)	
)	
Plaintiff-Appellant,)	
)	
v.)	No. 10-SC-1103
)	
KNOCKOUTS SPORTS BAR & GRILL,)	
INC., an Illinois corporation, d/b/a)	
Knockouts Sports Bar & Grill,)	The Honorable
)	Greg G. Chickris,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices O'Brien and Lytton concurred in the judgment.

ORDER

Held: Where trial court's determination of damages depended on credibility of witness's testimony that plaintiff's salesperson gave defendant credit against purchase, but the court failed to award interest on the judgment, the trial court's judgment in favor of plaintiff and awarding damages to reflect the credit was affirmed in part and reversed in part.

Plaintiff, Thoms-Proestler Company, LLC, (TPC) filed a complaint against defendant,

Knockouts Sports Bar & Grill (Knockouts), to recover money damages for unpaid invoices on the sale of food products. The circuit court of Rock Island County granted judgment in plaintiff's favor and awarded damages reflecting the amount of the unpaid invoices, less a credit defendant allegedly received from plaintiff's salesperson because some of the food products defendant purchased were spoiled. For the reasons that follow, we affirm in part, reverse in part, and remand with instructions.

BACKGROUND

The parties entered a written agreement for TPC to sell Knockouts food products on credit terms. TPC filed a small claims complaint against Knockouts to recover \$8,172.49 of unpaid invoices. The complaint also sought interest at 18% per annum, plus attorney fees and costs. Knockouts did not dispute the credit purchases of food products totaling \$8,172.49, but asserted that TPC's representative granted Knockouts a credit of \$6,744.70 for spoiled food. Knockouts incurred additional costs to remove the spoiled food. Knockouts' exhibit B is a document titled "CREDIT COUPON" issued by TPC. The document contains the handwritten entry "6.744.70" in a blank labeled "Invoice #." A TPC employee testified that the representative did not have authority to give Kncokouts the purported credit.

The circuit court of Rock Island County entered a judgment in TPC's favor for \$1,733.79. The court's judgment represented the \$8,172.49 sought, less the \$6,744.70 "credit," plus fees and costs. The court did not award TPC interest or attorney fees.

This appeal followed.

ANALYSIS

TPC seeks entry of a judgment in the full amount requested in its complaint on the grounds Knockouts' testimony that the representative gave it the credit is not credible, the "Credit Coupon" itself is insufficient to prove that it gave Knockouts a credit against purchases, and the salesman did not have apparent authority to give the credit.

The trial court did not rely on the "Credit Coupon" document itself to determine the appropriate amount of damages. In denying TPC's motion to reconsider, the trial court specifically stated as follows:

"The credit coupon was and is suspicious, and perhaps it was not intended for the purpose that it was used *** but the fact of the matter was there was testimony, credible testimony *** that there was a substantial amount of spoiled food. That was corroborated. ***

* * *

And the testimony was that was the amount of the credit that was worked out, and the credit coupon was corroborative evidence of that fact. And that's why I ruled the way I did."

The trial court found that TPC's salesman had apparent authority to give Knockouts the credit.

"In the absence of actual authority, a principal can be bound by the acts of a purported agent when that person has apparent authority to act on behalf of the principal. [Citation.] Apparent authority arises when a principal creates a reasonable impression to

a third party that the agent has the authority to perform a given act. [Citation.] To prove apparent authority, the proponent must show that (1) the principal consented to or knowingly acquiesced in the agent's exercise of authority, (2) based on the actions of the principal and agent, the third party reasonably concluded that the agent had authority to act on the principal's behalf, and (3) the third party justifiably relied on the agent's apparent authority to his detriment. [Citation.] *** [Citation.] An agent's authority may be presumed by the principal's silence if the principal knowingly allows another to act for him as his agent. [Citation.]” *Curto v. Illini Manors, Inc.*, 405 Ill. App. 3d 888, 895 (2010).

TPC does not dispute that it delivered Knockouts spoiled food, or the value of the spoiled food. TPC's argument that its salesman did not have apparent authority to give Knockouts a credit against its purchases is that the evidence does not support finding that Knockouts relied to its detriment on the salesman's apparent authority to issue a \$6,744.70 credit for spoiled food, and there is no evidence that TPC consented to or knowingly acquiesced in the salesman's alleged exercise of authority to give the credit.

“The scope of an agent's purported authority is a question of fact; therefore, we will reverse the court's finding on the issue only if it is against the manifest weight of the evidence. [Citation.] Only when an opposite conclusion is apparent or the finding appears unreasonable, arbitrary or not based on the evidence will a

finding be deemed against the manifest weight of the evidence.”
Career Concepts, Inc. v. Synergy, Inc., 372 Ill. App. 3d 395, 404
(2007).

On the issue of the salesman’s apparent authority, the trial court found that:

“there was also credible evidence from the defendant that the only person he really ever dealt with, the salesman, was apprised of the spoiled food situation. They sat down and they worked out a credit and the credit coupon was evidence of that agreement *** [and] was presented by the salesman and the salesman *** actually *** worked for your company on that day ***. [T]o me, the salesman had the apparent authority to bind the principal. And he did.”

We find the trial court’s findings that the salesman actually worked for TPC when he and Knockouts negotiated the credit, and that Knockouts’ only contact with TPC was with this salesman, are sufficient evidence to support the trial court’s finding that TPC knowingly allowed the salesman to act as its agent when he issued Knockouts a credit for the spoiled food. Therefore, his authority to issue the credit could be presumed. *Curto*, 405 Ill. App. 3d at 895. Further, the trial court specifically found that TPC failed to produce evidence to refute Knockouts’ reasonable conclusion that the salesman had authority to issue the credit. The court expressly found that TPC “had absolutely no evidence whatsoever to refute that other than the internal regulations of the company.” TPC failed to produce evidence of Knockouts’ knowledge of those specific regulations.

Finally, the evidence is sufficient to find that Knockouts relied on the salesman’s

apparent authority to its detriment. Relying on the credit for food it had to throw away, Knockouts failed to seek compensation for the lost food by other means. See, e.g., *Cullen Distributing, Inc. v. Petty*, 164 Ill. App. 3d 313, 320 (1987) (discussing detrimental reliance as an element of promissory estoppel) (“ ‘That the proof of detrimental reliance is somewhat conjectural does not defeat the defense. It is not necessary to prove that the steps taken would have been successful. Rather, ‘It is enough if the party has been induced to refrain from using such means or taking such action as lay in his power, by which he might have retrieved his position and saved himself from loss.’ [Citation.]’ [Citation.]”).

The trial court’s finding that there was sufficient evidence to prove apparent authority to issue the credit is based on the evidence and is neither arbitrary or unreasonable. Accordingly, the trial court’s judgment that TPC is bound by the credit its salesman gave to Knockouts is affirmed.

Next, TPC argues that the trial court erred in failing to award it attorney fees and interest pursuant to the parties’ contract. The trial court denied TPC attorney fees and interest under the terms of the parties’ credit application. The court found that TPC “failed to prove that the defendant signed or anyone in authority signed the credit application.” On appeal, TPC asserts that each invoice for deliveries of food products was a separate contract between it and Knockouts, and that the invoices specifically provide that interest shall accrue on all unpaid balances exceeding established credit terms, and that the buyer agrees to pay all collection costs and attorney fees in the event legal action is taken to collect a past due account. Knockouts responds TPC similarly failed to prove who signed the invoices.

“Whether a writing constitutes a binding contract, even

though it is not signed, as is the situation presented in the present case, usually depends upon the intention of the parties.” *Hedlund and Hanley, LLC v. Board of Trustees of Community College District No. 508 376*, Ill. App. 3d 200, 206 (2007).

TPC has failed to cite any evidence that the parties intended the invoices for the deliveries to create individual contracts between the parties.

“Whether a contract exists, its terms and the intent of the parties are questions of fact to be determined by the trier of fact. [Citation.] A trial court's findings of fact will not be reversed unless they are against the manifest weight of the evidence.” *Hedlund and Hanley, LLC*, 376 Ill. App. 3d at 205.

TPC failed to prove who signed the credit application that it initially alleged entitled it to recover attorney fees and interest. The trial court refused to award attorney fees and interest pursuant to that agreement. Now, on appeal, TPC argues it is entitled to recover under a contract, without any evidence that a contract was ever formed. The evidence does not support finding that the parties entered into *any* contract for the payment of attorney fees and interest on unpaid balances. The trial court’s judgment that TPC is not entitled to attorney fees or interest under any written agreement between the parties is not against the manifest weight of the evidence and is affirmed.

Alternatively, TPC argues that the court erred in failing to award it interest pursuant to section 2 of the Interest Act. Section 2 of the Interest Act reads, in pertinent part, as follows:

“Creditors shall be allowed to receive at the rate of five (5)

per centum per annum for all moneys after they become due on any bond, bill, promissory note, or other instrument of writing ***.”

815 ILCS 205/2 (West 2010).

Knockouts argues that the refusal to award prejudgment interest pursuant to the Interest Act was within the trial court’s discretion, and its judgment should not be set aside absent an abuse of that discretion.

“This court generally accords deference to a trial court's decision on a request for interest on a judgment. [Citation.] *** [T]he Act mandates prejudgment interest, as a matter of right, when the creditor seeks payment of a fixed sum on an instrument of writing. [Citation.] This court will not disturb the trial court's findings of fact pertinent to prejudgment interest unless those findings are contrary to the manifest weight of the evidence. [Citation.] *** [W]hen the parties have not disputed facts showing a fixed debt on a written instrument, this court has not deferred to the trial court's denial of interest.” *Milligan v. Gorman*, 348 Ill. App. 3d 411, 415-16 (2004).

In this instance, whether the parties intended to enter into a contract is irrelevant.

“[N]umerous cases have construed the term ‘instrument in writing’ to include a variety of written documents. [Citations.] *** That those things which were specifically enumerated in the statute might also technically fit the definition of commercial paper is by

happenstance. [T]he critical similarity shared by the specifically enumerated things in the statute, *i.e.*, bonds, bills, and promissory notes, is that the writings evince the creation of an indebtedness or of a creditor-debtor relationship.” *New Hampshire Insurance Co. v. Hanover Insurance Co.*, 296 Ill. App. 3d 701, 708 (1998).

Here, the invoices are writings that evince the creation of an indebtedness between TPC and Knockouts. We find that TPC was entitled to interest under the Interest Act as a matter of right. *Milligan*, 348 Ill. App. 3d at 415-16. That portion of the trial court’s judgment refusing TPC’s claim for interest on the judgment is reversed, and the cause is remanded with instructions to the trial court to enter an order awarding TPC interest on the judgment pursuant to the Interest Act.

CONCLUSION

The circuit court of Rock Island County’s judgment in the amount of \$1,427.79 is affirmed. The judgment refusing interest on the judgment is reversed, and the cause is remanded with instructions.

Affirmed in part, reversed in part, remanded with instructions.