



finalized. Where restaurant did not file brief seeking return of security deposit paid to venue, reviewing court would not act as advocate for restaurant-appellee, and judgment for venue on security deposit was affirmed.

¶ 2 In this breach of contract and promissory estoppel action, Chateau Del Mar, Incorporated (Chateau) alleges in its brief that the trial court erred in denying it damages, other than a \$3,000 security deposit, from Grand Dukes Eatery Restaurant (Dukes) for Dukes' alleged breach of contract with Chateau. Chateau also alleges in its brief that the trial court erred in awarding Dukes, on a promissory estoppel theory, a \$4,000 down payment it made to a Lithuanian band to obtain their services for a planned formal ball and dinner to be held at Chateau's banquet hall.

¶ 3 Dukes has not filed an appellee's brief in this case, but we determine that we may still consider this appeal on Chateau's brief alone. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976); *Ely v. Sheahan*, 361 Ill. App. 3d 605, 611 (2005). There was also apparently no transcript made of this bench trial, but the parties have agreed to a bystander's report, which sets out the following.

¶ 4 Andrius Bucas, one of Dukes' owners, testified that in 2006 and 2007 the parties contracted for Dukes to hold a formal ball and dinner at Chateau's ballroom on New Year's Eve. Those events did take place, pursuant to written contracts, although Bucas did not believe he received all he had contracted for in terms of liquor and dessert. In 2008 the parties entered into negotiations for a 2008 New Year's Eve ball and dinner. Bucas testified that in reliance on the promises made by Steve Gianakas, Chateau's owner, he entered into a contract with a Lithuanian band, as he did "every year previous," to provide the entertainment for the 2008 New Year's Eve event at Chateau. The contract price was \$9,000 plus travel, of which Bucas paid \$4,000 in advance pursuant to a June 7, 2008 signed contract with the Lithuanian band, known as Alanas Chosnau. The terms of the contract called for the band to play at Chateau beginning at 9 p.m. on December 31, 2008.

¶ 5 Bucas testified that he entered into extensive negotiations in the spring and summer of 2008 with Gianakas over the contract for the 2008 event. Among the changes he attempted to make to the written proposed contract were to decrease the number of guests from 500 to 300. In April 2008, Bucas paid deposits totaling \$3,000 to Chateau. The proposed contract stated that all deposits were nonrefundable, specifically in the event of cancellation. However Bucas testified that no final contract was entered into because while negotiating final terms in late summer of 2008, at Gianakas' office, Gianakas called the police and had him escorted from the building. After that incident Bucas repeatedly attempted to telephone Gianakas, but Gianakas refused to speak to him. Gianakas finally faxed a cancellation of the event to Bucas on August 1, 2008.

¶ 6 According to Bucas, he then contracted with the Lithuanian World Center in Lemont to host the event. Bucas testified that this venue was not on par with Chateau, being essentially a gymnasium which could host public events for a rental fee but which did not have a liquor license. The Lithuanian band refused to play at this venue for reasons not specified in the record and refused to refund any of Bucas' money, although they did offer him a \$1,000 credit towards another event, which he had not used by the time of trial. As a result, Bucas eventually hired two Lithuanian women to sing at the event. Bucas testified that he lost an unspecified amount of money on the event.

¶ 7 Testifying as an adverse witness, Gianakas admitted that he had faxed a cancellation of the event on August 1, 2008. He also testified that the parties had negotiations on the possibility of lowering the number of guests at the event but raising the price, however the parties never agreed on any such modifications. Gianakas admitted that he knew that Bucas had hired an "internationally famous musical group" to perform at the event. He also admitted that although there was no contract in force, he refused to refund any money to Bucas. Gianakas testified that

by refusing to enter into a contract with Bucas he did not lose any money on service providers, food and alcohol.

¶ 8 Gianakas testified in Chateau's case in chief that no New Year's event was held at Chateau in 2008 although that date was kept open on its books and others could have booked that date. He conceded that there were no specific marketing efforts made to re-book that date, although the booking staff knew that it was available. Gianakas claimed that if Bucas had given him one week's notice he would have still been willing to book Chateau for Dukes' New Year's event under the proposed contract terms.

¶ 9 Dukes sued Chateau for breach of contract. Chateau brought a counterclaim for breach of contract. But both parties were permitted by the trial court to also argue theories of promissory estoppel. The court in its final order granted Dukes the \$4,000 it had paid the Lithuanian band, under a theory of promissory estoppel. It entered judgment against Chateau on its counterclaim. However, according to the bystander's report, the court did award Chateau Dukes' \$3,000 security deposit.

¶ 10 Chateau first contends that Dukes failed to prove a case for promissory estoppel against Chateau as to the \$4,000 Dukes gave the Lithuanian band, which the band refused to return. To establish a case for promissory estoppel a plaintiff must prove that the defendant made an unambiguous promise to plaintiff; that plaintiff relied on that promise; that plaintiff's reliance was expected and foreseeable; and that plaintiff's reliance was to its detriment. *Newton Tractor Sales, Inc. v. Kubota Tractor Corp.*, 233 Ill. 2d 46, 51 (2009). The existence of the elements of promissory estoppel are questions of fact for the trial court's determination. *First National Bank of Cicero v. Sylvester*, 196 Ill. App. 3d 902, 911 (1990). We will not reverse the trial court's determination of these matters unless that determination is contrary to the manifest weight of the evidence. *In re Estate of Pawlinski*, 407 Ill. App. 3d 957, 964 (2011).

¶ 11 Here, we find that the trial court's finding of promissory estoppel was contrary to the manifest weight of the evidence. We therefore agree with Chateau that Dukes failed to prove it was entitled to the \$4,000 under a theory of promissory estoppel. At the time Dukes signed its contract with the band, in June of 2008, negotiations between Dukes and Chateau for the use of Chateau were ongoing. Thus there was no unambiguous promise by Chateau to Dukes that Chateau would be available for the event, and it was unreasonable for Dukes to rely upon the mere possibility that an agreement would be reached to conclude a booking contract with the band. Furthermore, it is unreasonable to expect a band to refuse to play merely because a venue has been changed, especially where the dates and times apparently remained the same. Moreover, the contract between the band and Dukes does not state that any payments made are non-refundable. Dukes may have a cause of action against the band for breach of contract, but it has no cause of action against Chateau based upon promissory estoppel. For these reasons we reverse the trial court's judgment in favor of Dukes for the \$4,000 paid in advance to the band.

¶ 12 Chateau next contends that it was entitled to damages from Dukes for breach of contract. The elements of such a cause of action are: offer and acceptance; consideration; definite and certain contractual terms; plaintiff's performance of its contractual obligations; defendant's breach of its contractual obligations; and damages resulting from that breach. *Green v. Trinity International University*, 344 Ill. App. 3d 1079, 1085 (2003). Where the facts are not in dispute, the existence of a contract presents a question of law, which this court reviews *de novo*. *Mid-Century Insurance Co. v. Founders Insurance Co.*, 404 Ill. App. 3d 961, 967 (2010).

¶ 13 The bystander's report in this case contains testimony from both parties establishing that there was no contractual agreement between the parties. Representatives of both parties testified that negotiations were ongoing as to matters such as the minimum number of people who would attend and the cost per guest. Negotiations came to an abrupt halt when Chateau's owner, Steve

Gianakas, had one of Dukes' owners, Andrius Bucas, thrown out of his office during contract negotiations. Subsequently, Gianakas refused to return any telephone calls from Bucas and ultimately Gianakas faxed a "cancellation of contract" to Bucas on August 1, 2008. Under these circumstances we find as a matter of law that there were no definite and certain contractual terms to be breached and therefore no breach of contract was possible.

¶ 14 As we have noted, the trial court's written final order makes no mention of an award of Dukes' \$3,000 security deposit to Chateau, but the bystander's report of the parties states that such an award was made. Absent any indication in the record of the court's theory for granting this relief and absent any brief from Dukes seeking the return of these funds, we find no basis for overturning the trial court's determination of this issue and consequently affirm the award of \$3,000 to Chateau. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976) (court of review is not required to serve as an advocate for the appellee).

¶ 15 For the reasons set forth in this order, we affirm the circuit court's judgment in favor of Chateau for \$3,000, but reverse the circuit court's order awarding Dukes \$4,000 based on a theory of promissory estoppel.

¶ 16 Affirmed in part and reversed in part.