

2014 IL App (2d) 120208-U  
No. 2-12-0208  
Order filed March 31, 2014

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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PNL ENTERPRISES, INC. and ROYAL HEATING AND COOLING, INC.,	)	Appeal from the Circuit Court of Du Page County.
	)	
Plaintiffs and Counterdefendants-Appellees,	)	
	)	
v.	)	No. 09-CH-4055
	)	
MARIO RIZZI and RIZZI AND DAUGHTERS REAL ESTATE DEVELOPMENT, INC.,	)	
	)	
Defendants and Counterplaintiffs-Appellants	)	
	)	
(Michael Corrado, Counterdefendant-Appellee).	)	Honorable Bonnie M. Wheaton, Judge, Presiding.

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JUSTICE HUTCHINSON delivered the judgment of the court.  
Justices Birkett and Spence concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court's determination that Corrado was not authorized to enter into a contract on PNL's behalf was consistent with Laris' testimony. Thus, the trial court's judgment was not against the manifest weight of the evidence and we, therefore, affirmed.
- ¶ 2 In 2009, plaintiffs, PNL Enterprises, Inc. (PNL) and Royal Comfort Heating & Cooling, Inc. (Royal Comfort), brought an action for a mechanics lien foreclosure and for breach of

contract against defendants Mario Rizzi and Rizzi & Daughters Real Estate Development, Inc. (the Rizzi defendants). Plaintiffs alleged that they had entered into a contract with Rizzi to perform HVAC work, they performed that labor, and Rizzi owed them \$4,360 for their work. In 2010, in a separate proceeding, the Rizzi defendants filed an action for breach of contract against PNL, Royal Comfort, and Michael Corrado. The Rizzi defendants alleged that PNL, Royal Comfort, and Corrado had failed to complete their HVAC work pursuant to the contract and that the Rizzi defendants suffered damages as a result. The cases were consolidated.

¶ 3 Following a bench trial, the trial court found in favor of the Rizzi defendants with respect to PNL's and Royal Comfort's mechanics lien and breach-of-contract case. The trial court also found in favor of the Rizzi defendants with respect to their breach-of-contract action and entered a judgment against Royal Comfort for \$22,735. The trial court, however, found that neither PNL nor Corrado were liable to the Rizzi defendants for breach of contract. The Rizzi defendants now appeal, contending that the trial court erred by (1) finding that a contract did not exist between Rizzi and PNL; (2) finding that PNL was not contractually obligated to pay damages; and (3) denying the Rizzi defendants' posttrial motion. We affirm.

¶ 4 The record reflects that defendant Rizzi & Daughters Real Estate Development, Inc., is a real estate development company that owned real property in the Village of Bartlett, which it intended to develop (the project). Defendant Rizzi owns the company. Corrado owns Royal Comfort, an HVAC company. Peter Laris owns PNL. Laris is also Corrado's father-in-law.

¶ 5 In August 2008, the Rizzi defendants and Corrado entered into an oral contract for Royal Comfort to install HVAC systems on a number of units located within the project. Corrado used PNL's village license and insurance to work on the project. Rizzi made checks payable to "PNL Enterprises."

¶ 6 On December 5, 2008, Rizzi and Corrado executed a written contract. The contract provided:

“I Mike Corrado of PNL ENTERPRISES INC. and or [sic] of [ROYAL COMFORT] agree to do complete [sic] heating and air condition systems \*\*\* at [the project] in Bartlett[,] IL.”

¶ 7 On September 14, 2009, PNL and Royal Comfort filed a complaint for a mechanics lien and breach of contract against the Rizzi defendants. Corrado signed the complaint; Laris did not. In 2010, in a separate proceeding, defendants filed an action for breach of contract against PNL, Royal Comfort, and Michael Corrado. The Rizzi defendants alleged that PNL, Royal Comfort, and Corrado had failed to complete their HVAC work pursuant to the contract. The cases were consolidated.

¶ 8 A bench trial commenced on August 16, 2011. Rizzi testified first. Rizzi identified the contract dated December 5, 2008, and testified that either he or his superintendant drafted it. Rizzi testified that he had already paid Corrado \$18,000 for HVAC work and paid him an additional \$9,000 on that date. Rizzi testified that he paid Corrado \$9,000 on December 5th because Corrado had requested that money to buy materials to finish the HVAC work. On cross-examination, Rizzi testified that Corrado did not finish the work that he agreed to perform in the December 5, 2008, contract, and that Rizzi had to place bids with other contractors to finish the work that Corrado left uncompleted.

¶ 9 Laris testified that he had been a general contractor since 1975 and that he is an owner of PNL. Laris testified that Corrado is his son-in-law. Laris testified that PNL supplied the insurance certificates and “may have also supplied the village business license” for Royal Comfort to work on the project. Laris testified that he met with Rizzi and Corrado in February

2009 to discuss the project. Laris testified that the parties agreed that Royal Comfort would complete the HVAC work and would be paid on a unit-by-unit basis.

¶ 10 On cross-examination, Laris acknowledged that Corrado had worked for PNL as both an employee and an independent contractor. Laris testified that he let Corrado and Royal Comfort use PNL's business certificate and certificate of insurance in Bartlett for work on the project. Laris acknowledged that, in July 2007, Corrado told him about work that Royal Comfort would be performing on the project. Laris clarified that he let Corrado use PNL's insurance for Royal Comfort's work on the project, but that he could not recall whether he let Corrado also use PNL's business license for the project. Laris testified that Corrado did not have authority to enter into contracts on behalf of PNL. Laris testified that he did not remember seeing the December 5, 2008, contract before Corrado signed it. Regarding the February 2009 meeting between the parties, Laris testified that there was an understanding that Corrado would not be paid until Royal Comfort completed its work.

¶ 11 Corrado testified next. Corrado testified that he had been an HVAC contractor for 25 years. Corrado testified that, as of December 5, 2008, he had completed 80% of the work on the project. On cross-examination, Corrado acknowledged that he used PNL's license and bond to work on the project. Corrado acknowledged that, on December 5, 2008, the Rizzi defendants paid him \$9,000, which was in addition to \$18,000 previously paid to him. The \$9,000 check was made to "PNL Enterprises."

¶ 12 Mike Kuykendall testified next. Kuykendall testified that he was a superintendant for the Rizzi defendants. Kuykendall testified that, when discussing the project with Corrado, Corrado advised that he intended to use PNL to work on the project because PNL was a non-union company. Kuykendall did not object to Corrado using PNL. Kuykendall testified that he met

with Rizzi and Corrado on December 5, 2008. Kuykendall testified that he and Rizzi agreed to pay Corrado \$9,000 for Corrado's work on one of the units.

¶ 13 Following the close of evidence, the trial court found that the December 5, 2008, contract was an agreement between Royal Comfort and the Rizzi defendants. The trial court concluded that "[Laris'] testimony was that he did not authorize any of the parties to enter into the agreement, nor to his knowledge did his wife, so I believe that the fact that PNL's name is on [the contract] is really meaningless. PNL has no responsibility for this." The trial court further found that PNL and Royal Comfort were not entitled to recover under their mechanics lien and that the Rizzi defendants incurred \$22,735 in damages. The trial court entered judgment in favor of the Rizzi defendants in PNL's and Royal Comfort's mechanics lien and breach of contract action. The trial court further entered a judgment in favor of the Rizzi defendants and against Royal Comfort in the Rizzi defendants' case for breach of contract; however, that judgment was not entered against PNL or Corrado individually. The Rizzi defendants timely appealed after the trial court denied their motion for a judgment notwithstanding the verdict.

¶ 14 The gravamen of this appeal is whether PNL can be held contractually liable pursuant to the December 5, 2008, written contract between the Rizzi defendants and Royal Comfort. The Rizzi defendants contend that the trial court erred in finding that PNL was not a party to that contract, and therefore, PNL was not liable for breaching that agreement. In support of this contention, the Rizzi defendants argue that the language contained in the December 5, 2008, contract was "facially ambiguous" and expressly provided that Corrado was acting on behalf of PNL when it entered into that contract; that the parties' conduct indicates that PNL intended to enter into a contract with the Rizzi defendants; and that PNL ratified the contract by its actions

and accepting benefits from the contract. As a result, the Rizzi defendants maintain, the trial court erred in ruling that PNL was not contractually obligated to pay damages.

¶ 15 Before addressing the merits, we note that Corrado, Royal Comfort, and PNL failed to file a response brief. However, the absence of an appellee brief does not prevent us from addressing the issues raised because the record is simple and we can review the claimed errors without the assistance of an appellee brief. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 16 The Rizzi defendants contention on appeal requires this court to review the sufficiency of the trial court's factual findings. The standard of review we apply when a challenge is made to a trial court's ruling following a bench trial is whether the trial court's judgment was against the manifest weight of the evidence. *Bazydlo v. Volant*, 164 Ill. 2d 207, 215 (1995); *Wildman, Harrold, Allen & Dixon v. Gaylord*, 317 Ill. App. 3d 590, 598 (2000). A trial court's judgment will be found to be against the manifest weight of the evidence when its findings appear to be unreasonable, arbitrary, or not based on evidence. *Wildman, Harrold*, 317 Ill. App. 3d at 599. This court must resolve questions of testimonial credibility in favor of the prevailing party and draw from the evidence all reasonable inferences in support of the trial court's judgment. *Wildman, Harrold*, 317 Ill. App. 3d at 599 (citing *H&H Press, Inc. v. Axelrod*, 265 Ill. App. 3d 670, 679 (1994)). We will not reverse a trial court's decision if differing conclusions can be drawn from conflicting testimony unless an opposite conclusion is clearly apparent. *Wildman, Harrold*, 317 Ill. App. 3d at 599 (citing *Buckner v. Causey*, 311 Ill. App. 3d 139, 144 (1999)). Ill. 2d 128, 133 (1976).

¶ 17 Moreover, this court gives great deference to the trial court's findings because the trial court, as the trier of fact, is in an optimum position to observe the demeanor of witnesses while

testifying, to judge their credibility, and to determine the weight their testimony and other evidence should receive. *Habitat Co. v. McClure*, 301 Ill. App. 3d 425, 440-41 (1998). We may affirm the trial court's decision on any basis supported by the record. *Reedy Industries, Inc. v. Hartford Insurance Co.*, 306 Ill. App. 3d 989, 997 (1999).

¶ 18 Initially, we reject the Rizzi defendants' argument that PNL is bound by the December 5, 2008, contract pursuant to the contract's plain and unambiguous contractual language. Although the Rizzi defendants attempt to phrase this argument as one involving contractual interpretation, the relevant inquiry is whether Corrado had the authority to bind PNL to that contract. In other words, although Corrado signed the contract as "of PNL Enterprises, Inc.," Corrado's signature could not bind PNL absent PNL giving Corrado authority to enter the December 5, 2008, contract on its behalf. See generally *Amcore Bank N.A. v. Hahnaman-Albrecht, Inc.*, 326 Ill. App. 3d 126, 129, 138-39 (2002) (discussing whether the person who signed a loan guaranty had authority to bind the individual guarantors to that agreement, and concluding that the trial court's determination that the signatory did not have such authority was not against the manifest weight of the evidence).

¶ 19 In this case, the trial court noted that Laris testified that he did not authorize Corrado to enter into the December 5, 2008, contract on PNL's behalf. The trial court's finding was consistent with Laris' testimony. Thus, the trial court's finding that Corrado was not authorized to enter into the December 5, 2008, contract on PNL's behalf was not against the manifest weight of the evidence. See *id.* at 134-38 (holding that the trial court's finding that an agency relationship did not exist between the person who signed the loan guaranty and the individual guarantors was not against the manifest weight of the evidence).

¶ 20 The Rizzi defendants next argue that the parties' conduct reflects PNL's intent to enter into a contract with the Rizzi defendants. The Rizzi defendants argue that PNL was "actively involved" in both the project and the negotiations leading up to the contract, and again emphasize that PNL accepted money under the contract.

¶ 21 The Rizzi defendants cite *Midland Hotel Corp. v. The Reuben H. Donnelly Corp.*, 118 Ill. 2d 306 (1987) in support of their argument. In *Midland*, our supreme court considered whether two parties reached "a meeting of the minds" with respect to an oral contract. *Id.* at 309, 313. The *Midland* Court noted that, in order for two parties to have a meeting of the minds, or mutual assent, it is not necessary for the parties to share the same subjective understanding as to the contractual terms. *Id.* at 313. Rather, it is sufficient if the contracting parties' conduct indicates an agreement to the contractual terms. *Id.* at 313-14. "Otherwise," the supreme court noted, "a party would be free to avoid his contractual liabilities by simply denying that which his course of conduct indicates." *Id.* at 314. The supreme court went on to conclude that the jury had found that the parties had reached a meeting of the minds, and that the defendant's subjective intent was "simply irrelevant." *Id.*

¶ 22 We are cognizant of the language in *Midland* that a party's conduct can demonstrate mutual assent to enter into a contract. Nonetheless, as the supreme court indicated, whether the parties intended to enter into a contract is a question to be resolved by the trier of fact. See *id.* (noting that the jury resolved whether the parties had a meeting of the minds). Here, the record reflects that the trial court was aware of PNL's conduct with respect to the project, as well as Laris' testimony that Corrado was not authorized to enter into contracts on PNL's behalf. The trial court, as the trier of fact, was free to credit Laris' testimony over the other evidence presented regarding PNL's conduct. See *id.* at 313. Therefore, the trial court's determination

that PNL was not bound by the December 5, 2008, contract was not against the manifest weight of the evidence.

¶ 23 Moreover, we reject the Rizzi defendants' argument that PNL ratified the contract by accepting a \$9,000 check from the Rizzi defendants after they and Corrado entered into the December 5, 2008, contract. In *Amcore Bank*, the plaintiff argued that one defendant, the trustee of a trust, had ratified the execution of a guaranty that was signed by the son of the person who created a trust, noting that the trustee had accepted a dividend payment from another party and had not repudiated the guaranty. *Amcore Bank*, 326 Ill. App. 3d at 139-40.

¶ 24 The reviewing court rejected the plaintiff's argument. In doing so, the court noted that a principal can ratify his agent's actions by either not repudiating the acts or by accepting benefits from them. *Id.* at 140. However, the reviewing court cautioned that "[a] ratification requires that the principal has full knowledge of the facts and the choice to either accept or reject the benefit of the transaction. *Id.* (citing *Lydon v. Eagle Food Centers, Inc.*, 297 Ill. App. 3d 90, 95-96 (1998)). The court found that, because the parties introduced "[s]cant evidence" on the ratification issue at trial, the plaintiff had not demonstrated that the trial court's judgment was against the manifest weight of the evidence. *Amcore Bank*, 326 Ill. App. 3d at 140. The court further noted that the plaintiff had failed to point to any authority that the trustee "could ratify" the son's actions. (Emphasis in original.) *Id.* The court noted that the son was his father's agent "for certain purposes" and not the trustee's agent. Thus, the reviewing court concluded that "[a]bsent any legal authority or evidence that [the son] was [the trustee's] agent, we cannot say that the trial court's finding that [the trustee] did not ratify [the son's] actions was against the manifest weight of the evidence." *Id.*

¶ 25 We find the holding in *Amcore Bank* instructive to this case. Based on our review of the record, it is unclear whether the trial court considered the specific issue of whether Corrado was PNL's agent. In any event, as we discussed above, the trial court relied on Laris' testimony that Corrado was not authorized to execute contracts on PNL's behalf in finding that PNL was not liable to the Rizzi defendants. Laris further testified that he was not aware of the December 5, 2008, contract until the legal proceedings had commenced. Based on this evidence, the trial court's finding that PNL was not liable under the December 5, 2008, contract was not against the manifest weight of the evidence. See *id.*

¶ 26 With respect to the Rizzi defendants' motion for a judgment notwithstanding the verdict, the Rizzi defendants' argument that PNL's complaint, answer, responses to discovery, and statements by PNL's counsel during trial constitute judicial admissions that a contract existed between PNL and the Rizzi defendants is not persuasive. Our supreme court has defined judicial admissions:

“as deliberate, clear, unequivocal statements by a party about a concrete fact within that party's knowledge. [Citation.] Where made, a judicial admission may not be contradicted in a motion for summary judgment [citation,] or at trial [citation]. The purpose of the rule is to remove the temptation to commit perjury. [Citation.]” *In re Estate of Rennick*, 181 Ill. 2d 395, 406-07 (1998).

Allegations contained in a complaint are generally considered judicial admissions and are conclusive against the pleader. *Roti v. Roti*, 364 Ill. App. 3d 191, 200 (2006). Nonetheless, allegations in a complaint must be construed in the context in which they are found before they can be deemed a judicial admission. *Casati v. Aero Marine Management Co.*, 90 Ill. App. 3d 530, 534-35 (1980) (holding that a party's allegation in a complaint that it “fully performed” was

not a judicial admission). In addition, an alleged judicial admission must be considered in relation to the other testimony and evidence presented, and “[t]he doctrine of judicial admissions requires thoughtful study for its application so that justice not be done on the strength of a chance statement made by a nervous party.” *Smith v. Pavlovich*, 394 Ill. App. 3d 458, 468 (2009). How a trial court treats a judicial admission is subject to an abuse-of-discretion standard of review, which is found where no reasonable person would take the position adopted by the trial court. *Id.*

¶ 27 Here, giving thoughtful study to the statements in the context in which they were given, we conclude that they did not amount to a judicial admission that PNL entered into a contract with the Rizzi defendants. We note that the Rizzi defendants have not directed us to any statement by Laris that a contract existed between PNL and the Rizzi defendants, or that Corrado had authority to enter into a contract on PNL’s behalf. Rather, the complaint, answer, and discovery responses claimed to be judicial admissions were signed by Corrado. Similarly, Royal Comfort’s attorney did not make any statement that Corrado had authority to enter into the December 5, 2008, contract on PNL’s behalf. Thus, in light of Laris’ testimony at trial that Corrado had no such authority, we believe that it was for the trier of fact to resolve whether a contract existed between the Rizzi defendants and PNL. Therefore, the trial court did not err in denying the Rizzi defendants’ postjudgment motion. See *Thomas v. Northington*, 134 Ill. App. 3d 141, 138 (1985) (holding that the trial court did not err in denying a motion for a judgment notwithstanding the verdict because conflicting evidence prevented the defendant’s testimony from being a judicial admission).

¶ 28 Finally, our holding that the trial court’s determination that PNL was not bound by the December 5, 2008, contract obviates our need to address the Rizzi defendants’ remaining issues

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on appeal. As a reviewing court, we “ ‘will not issue advisory opinions merely to set precedent or guide future litigation.’ ” *In re John Doe Investigation*, 2011 IL App (2d) 091355, ¶ 7 (quoting *Segers v. Industrial Comm’n*, 191 Ill. 2d 421, 428 (2000)).

¶ 29 For the reasons stated, the judgment of the circuit court of Du Page County is affirmed.

¶ 30 Affirmed.