

No. 1-16-0555

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

J.C. RESTORATION, INC.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 2014 M4 002570
)	
ANGELO RUGGIERO,)	Honorable
)	James J. Gavin,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

ORDER

Held: We reverse the grant of summary judgment in favor of plaintiff-appellee on its breach of contract action and remand for further proceedings where genuine issues of material fact existed regarding the existence of the oral contract and the material terms thereof, and where plaintiff-appellee failed to show it was entitled to judgment as a matter of law.

¶ 1 Defendant-appellant, Angelo Ruggiero, appeals the order of the circuit court's granting of the motion for summary judgment of plaintiff-appellee, J.C. Restoration, Inc., on its breach of contract action against him. We reverse and remand for further proceedings.

¶ 2 Defendant's home sustained water damage in December 2012, and he contacted plaintiff in March 2013 to estimate the repairs. On March 2, 2013, Michael Herbst, a project manager for plaintiff, visited defendant's home and prepared a written estimation of the repairs at a cost of

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\$10,462.97. The written estimate explicitly stated that it excluded "content cleaning/manipulation." Content manipulation is also called "pack out" and "pack back," because it involves the removal of the furniture and other contents of the room where the restoration work is to be done and the return of those contents when the work is completed.

¶ 3 On March 11, 2013, Josh Bachman, an estimator for plaintiff, prepared a written estimate that the pack out charges were expected to be \$1,928.22, and the pack back charges were expected to be \$1,272.29, for a total of \$3,200.51.

¶ 4 On April 16, 2013, plaintiff submitted a written contract to defendant to perform the restoration work for \$10,462.97, which was consistent with the March 2, 2013, estimate, which excluded the pack out and pack back charges. The April 16 written contract contained no provision for providing pack out and pack back services and no charges therefor. The contract provided for work covered by insurance to be paid directly to plaintiff by the insurance company, and for the customer to be personally responsible for charges not covered by insurance. Defendant signed the contract on April 26, 2013.

¶ 5 Plaintiff performed the restoration work and received payment from defendant's insurance company. On November 12, 2014, plaintiff filed a complaint against defendant, alleging he had breached a "part written and part oral" contract by failing to pay the \$3,200.51 in pack out and pack back charges.

¶ 6 On September 16, 2015, plaintiff filed a motion for summary judgment on its complaint. Plaintiff argues that it had performed the pack out and pack back services pursuant to the parties' contract, and that defendant and his wife, Gina Ruggiero, indicated they were completely satisfied with plaintiff's job performance, but had not paid for the pack out and pack back services provided. Plaintiff attached to the summary judgment motion a "certificate of

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completion" prepared by plaintiff, which stated that the restoration work on defendant's house had been completed on August 6, 2013. The form contained six questions, asking the recipient to rate on a scale of 1 to 5 whether plaintiff had: promptly scheduled the appointment; communicated effectively throughout the restoration work; begun work promptly on the assigned date; completed the work in the agreed-upon time frame; performed the work satisfactorily; and satisfactorily treated the home and all family members. All six questions were rated a "five," meaning 100% agreement. The bottom of the form contained Gina Ruggiero's printed name (but no signature) and was dated August 6, 2013.

Plaintiff also attached an "acceptance of contents delivery" form, which stated: "I/We, the Owners or a representative I/we assigned have accepted the delivery of the contents by J.C. Restoration, Inc. (JCR). I/We were encouraged to be present at the time of the delivery to verify that all furniture and boxes were delivered. (Area rug & pad)." The bottom of the form contains Gina Ruggiero's printed name (but no signature) and is dated August 6, 2013.

¶ 7 Plaintiff alleged in its summary judgment motion that defendant's insurer had issued two checks totaling \$10,547.87 that had been paid to plaintiff for the restoration work, and had also issued a check for \$4,010.51 representing the pack out and pack back charges and a cleaning charge, but that defendant failed to turn over the \$4,010.51 check to plaintiff.

¶ 8 In response to plaintiff's summary judgment motion, defendant filed an answer and attached his signed, notarized affidavit. In his affidavit, defendant attested that he "was never told of any charge for removal of furniture or contents and he never had a conversation with anyone from JCR with respect to contents." Defendant also attested that neither he nor Gina had seen the "certificate of completion" or "acceptance of contents delivery" forms prior to the

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summary judgment motion, and that Gina Ruggiero had not printed her name on either form, nor had responded to the six questions in the certificate of completion form.

¶ 9 Defendant also attached Gina Ruggiero's purported affidavit, which was not signed or notarized. In the purported affidavit, Ms. Ruggiero stated that she did not "insert, print or write anything" on either the "certificate of completion" or "acceptance of contents delivery" form, and did not instruct plaintiff to prepare those forms. Ms. Ruggiero further stated that she "did not approve any work," and did not indicate to plaintiff that she was completely satisfied with the work.

¶ 10 Plaintiff filed the signed, notarized affidavit of Carlos Carmona, who attested that, on August 6, 2013, he was employed by plaintiff and visited the home of defendant and Ms. Ruggiero in furtherance of plaintiff's performance of the contract. Upon arriving, he was greeted by Ms. Ruggiero and he "redelivered her personal property." Mr. Carmona then requested that Ms. Ruggiero sign the certificate of completion form and rate her satisfaction with plaintiff's performance. Ms. Ruggiero "executed/signed" the certificate of completion form in Mr. Carmona's presence on August 6, 2013.

¶ 11 On November 23, 2015, plaintiff filed a motion to file a second-amended complaint to add Ms. Ruggiero as a party defendant. Plaintiff alleged it had recently discovered that, on or about January 8, 2013, and April 10, 2013, defendant's insurance carrier issued, respectively, checks for \$4,786.29 and \$5,761.15 for plaintiff's labor and services which were accepted by Ms. Ruggiero, who "converted the [p]laintiff's funds in contradiction to the contract with [defendant]."

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¶ 12 On January 20, 2016, the circuit court granted plaintiff's motion for summary judgment and awarded it \$5,292.80. The order further stated that the motion to add Ms. Ruggiero as a party defendant "is a moot issue and withdrawn."

¶ 13 Defendant timely appeals from the January 20 order granting summary judgment in favor of plaintiff.

¶ 14 Initially, we note that plaintiff filed a motion to strike defendant's appellant's brief, or portions thereof, arguing that the brief improperly relies on Ms. Ruggiero's, which was not signed or notarized. Plaintiff contends that defendant's statement of facts and arguments in his appellant's brief should be struck or, at least, we should strike any references or arguments defendant makes in his appellant's brief as to what Ms. Ruggiero "did or did not know or do."

¶ 15 We deny plaintiff's motion to strike defendant's appellant's brief, but we disregard Ms. Ruggiero affidavit which was not signed or notarized and, thus, was "not a valid affidavit and was not sufficient to raise a genuine issue of material fact for purposes of summary judgment." *Sacramento Crushing Corp. v. Correct/All Sewer, Inc.*, 318 Ill. App. 3d 571, 575 (2000).

¶ 16 We proceed to address defendant's appeal. Plaintiff did not file an appellee's brief. However, since the record is simple and the case can be decided without an appellee's brief, we will review the case on the appellant's brief alone. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 17 Summary judgment is proper where the pleadings, depositions, admissions and affidavits on file, viewed in the light most favorable to the nonmoving party, show no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Express Casino Joliet Corp. v. W.E. O'Neil Construction Co.*, 2016 IL App (1st) 151166, ¶ 58. Review of an order granting summary judgment is *de novo*. *Id.*

¶ 18 The circuit court here granted plaintiff's motion for summary judgment on its complaint for breach of contract, based on defendant's failure to pay for the "pack out" and "pack back" services. Review of the written contract, and of the March 2, 2013, estimate on which it was based, reveals no provisions therein related to "pack out" and "pack back" services; therefore, plaintiff's claim for breach of contract can only survive if there was an oral contract providing for the provision of those services.

¶ 19 An oral agreement is binding when there is an offer and acceptance, and a meeting of the minds regarding the terms of the agreement. *Szafrański v. Dunston*, 2015 IL App (1st) 122975-B, ¶ 67. For the oral contract to be enforceable, the material terms must be definite and certain. *Id.* A contract is sufficiently definite and certain when " 'a court is able to ascertain what the parties have agreed to, using proper rules of construction and applicable principles of equity.' " *Id.* (quoting *Bruzas v. Richardson*, 408 Ill. App. 3d 98, 105 (2011)). "The parties' intent in forming an oral contract and the terms of the contract are questions of fact to be determined by the trier of fact." *Id.*

¶ 20 In its summary judgment motion, plaintiff argued that on March 11, 2013, it prepared a detailed estimate for pack out and pack back charges and "submitted it to the [d]efendant and the [d]efendant's designated insurance adjuster which was approved as well," and that defendant's insurance carrier paid a check in the amount of \$4,010.51, which represented the \$3,200.51 pack out and pack back charges, as well as an \$810 cleaning charge. Plaintiff contended defendant never turned over to him the \$4,010.51 check.

¶ 21 The record on appeal contains the March 11, 2013, written estimate of the pack out and pack back charges prepared by plaintiff's estimator, Josh Bachman. The written estimate is for \$3,200.51, but it does not contain a signature from defendant indicating his receipt thereof. The

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record also contains a copy of the \$4,010.51 check from defendant's insurance company. Said check is made out to plaintiff and contains no indication (such as on the memo line) indicating the purpose of the check. In his affidavit, defendant specifically attested he was never told of any charge for pack out and pack back services and never had a conversation regarding those services with plaintiff. Defendant further attested: "This whole matter as to the work performed and payment was done directly between [plaintiff] and the insurance company."

¶ 22 The record shows that the parties dispute whether defendant was ever shown plaintiff's written estimate of the pack out and pack back charges, and whether he orally agreed to pay those charges. Genuine issues of material fact therefore exist regarding: (1) whether there was an offer and acceptance and, thus, a binding oral agreement between the parties for defendant to pay plaintiff for pack out and pack back services; and (2) whether there was a meeting of the minds regarding the material terms of any such agreement.

¶ 23 In its summary judgment motion, plaintiff cited in support to the attached "certificate of completion" prepared by plaintiff, which stated that the restoration work on defendant's house had been completed on August 6, 2013, and which also provided answers to a questionnaire indicating that the recipient thereof was in agreement that plaintiff had timely and satisfactorily completed the work. Plaintiff also attached the "acceptance of contents delivery" form that stated the recipient had accepted the delivery of the contents (furniture and boxes) on August 6, 2013. The bottom of both forms contain only Gina Ruggiero's printed name, but no signature.

¶ 24 The "certificate of completion" and "acceptance of contents delivery" forms indicate that Ms. Ruggiero thought plaintiff satisfactorily performed the restoration work and redelivered the contents of the house, but neither form contains any reference to an oral agreement by which defendant agreed to pay plaintiff for pack out and pack back services.

¶ 25 Further, a genuine issue of material fact exists regarding whether Ms. Ruggiero ever saw the "certificate of completion" and "acceptance of contents delivery" forms and printed her name thereon. Carlos Carmona, plaintiff's employee, attested that Ms. Ruggiero "executed/signed" her name on the "certificate of completion" form in his presence, but defendant attested that neither he, nor Ms. Ruggiero saw the "certificate of completion," or "acceptance of contents delivery" forms prior to the summary judgment motion, and that Ms. Ruggiero had not printed her name on either form, nor responded to the questionnaire in the certificate of completion form.

¶ 26 Also, even if Ms. Ruggiero did print her name on the "certificate of completion" and "acceptance of contents delivery" forms and, even if her printed name somehow signified her agreement to pay for the pack out and pack back charges pursuant to the oral contract, defendant and not Ms. Ruggiero was alleged to be the person obligated to the oral contract. Therefore plaintiff had the burden of proving Ms. Ruggiero was defendant's agent for purposes of accepting the work and agreeing to pay the additional pack out and pack back charges. However, plaintiff presented no evidence as to the existence of such an agency relationship, and we note that the status of defendant and Ms. Ruggiero, as husband and wife, does not create an agency relationship. See *Curto v. Illini Manors, Inc.*, 405 Ill. App. 3d 888, 891 (2010). Thus, in the absence of any evidence of an agency relationship between defendant and Ms. Ruggiero which would allow her to contract with plaintiff on defendant's behalf, plaintiff has failed to show its entitlement to judgment, as a matter of law, on its breach of contract action against defendant based on Ms. Ruggiero's alleged acceptance of plaintiff's work and her alleged agreement to pay the additional pack out and pack back charges.

¶ 27 As genuine issues of material fact exist regarding the existence of the oral contract and the material terms thereof and, as plaintiff has not shown its entitlement to judgment as a matter

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of law, we reverse the order granting summary judgment in favor of plaintiff and remand for further proceedings.

¶ 28 Reversed and remanded.