

FIRST DIVISION  
September 28, 2012

No. 1-11-3482

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  
FIRST JUDICIAL DISTRICT

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|------------------------|---|-------------------|
| JOHN E. DAVIS,         | ) | Appeal from the   |
|                        | ) | Circuit Court of  |
| Plaintiff-Appellant,   | ) | Cook County       |
|                        | ) |                   |
| v.                     | ) | No. 08 L 052380   |
|                        | ) |                   |
| HOWARD BROOKINGS, JR., | ) | Honorable Barbara |
|                        | ) | McDonald and Joan |
| Defendant-Appellee.    | ) | Powell,           |
|                        | ) | Judge Presiding.  |

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JUSTICE KARNEZIS delivered the judgment of the court.  
Justices Cunningham and Rochford concurred in the judgment.

ORDER

- ¶ 1 *HELD:* The trial court's order granting summary judgment for defendant was proper where plaintiff failed to establish the existence of an oral agreement.
- ¶ 2 Plaintiff John E. Davis appeals from the circuit court's order granting summary judgment in favor of defendant Howard Brookins, Jr. On appeal, plaintiff contends that

the court erred in granting summary judgment. For the following reasons, we affirm the circuit court's judgment.

¶ 3

### Background

¶ 4 This case arose as a result of a dispute about plaintiff's compensation as a media consultant for defendant. In 2008, defendant was a candidate for the Democratic nomination for Cook County State's Attorney. Plaintiff filed a two-count amended complaint against defendant on December 1, 2008. Count I was for breach of contract and Count II was for unjust enrichment. According to the complaint, plaintiff and defendant entered into a verbal agreement on August 1, 2007, to hire plaintiff as a media consultant. Plaintiff attached a copy of a "Professional Services Agreement" (the Agreement) to the complaint as evidence of his agreement with defendant. The Agreement was only signed by plaintiff. Plaintiff claimed that he was owed \$122,000 for his services to defendant, but had only been paid \$50,242.56. Plaintiff sought judgment against defendant for \$71,757.44, plus costs of this suit.

¶ 5 Defendant filed a motion for summary judgment against the breach of contract claim and a subsequent motion for summary judgment against the unjust enrichment claim. Defendant alleged the following facts in his initial motion. Defendant established a not-for-profit corporation called the Friends of Howard B. Brookins, Jr. (the campaign) as his campaign organization. Holly Hankinson was the campaign manager as well as an attorney who represented the campaign in negotiating plaintiff's employment with the campaign. Several drafts of the Agreement went back and forth between plaintiff and

the campaign. No version of the document was ever signed by defendant individually or by the campaign. In August 2007, plaintiff was paid a retainer by the campaign and all subsequent checks paid to plaintiff were issued by the campaign. Plaintiff was never paid by defendant personally. Defendant argued in his motion essentially that if plaintiff had a claim for unpaid wages, his claim should be directed against the campaign rather than against defendant individually. Specifically, defendant argued that there was no oral or written contract or agreement between plaintiff and defendant individually. The court agreed and granted defendant's initial motion on August 3, 2010.

¶ 6 Defendant argued in his subsequent motion for summary judgment against the unjust enrichment claim that plaintiff was paid for the services he rendered to the campaign and there was no evidence indicating that plaintiff was owed more than what he was already paid. The court granted the motion finding that plaintiff was estopped from arguing that defendant, rather than the campaign, was his employer.

¶ 7 Analysis

¶ 8 On appeal, plaintiff first contends that the court erred in granting summary judgment on the breach of contract claim because there was a question of fact as to whether an oral agreement existed.

¶ 9 Summary judgment is proper if the pleadings, depositions, affidavits, admissions, and other matters on file demonstrate that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *Smith v. Armor Plus Co., Inc.*, 248 Ill. App. 3d 831, 839 (1993). The court should construe the evidence strictly

against the movant and liberally in favor of the opponent. *Richter v. Burton Investment Properties, Inc.*, 240 Ill. App. 3d 998, 1001 (1993). If reasonable persons could draw different inferences from undisputed facts, an issue of fact exists. *Armor*, 248 Ill. App. 3d at 839. Appellate review of an order granting summary judgment is *de novo*.

*Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992).

¶ 10 An oral contract will be binding and enforceable if its terms are definite and certain. *Trittipio v. O'Brien*, 204 Ill. App. 3d 662, 672 (1990). When the record indicates that the language used or the terms proposed are understood differently by the parties, there is no meeting of the minds and no contract exists between the parties. *Martin v. State Farm Mutual Automobile Insurance Co.*, 348 Ill. App. 3d 846, 855 (2004). The existence of a valid and enforceable contract is necessary for a breach of contract claim. *Klem v. Mann*, 279 Ill. App. 3d 735, 740-41 (1996).

¶ 11 Here, according to plaintiff's deposition, plaintiff gave defendant's father a copy of the Agreement and defendant's father told plaintiff that he would give it to defendant. Plaintiff stated that this communication was the sole evidence he had to support his contention that defendant agreed to be personally liable to plaintiff for plaintiff's fees. Plaintiff further stated in his deposition that he received paychecks from the campaign and a W-2 from the campaign. Plaintiff also filed a claim for unemployment compensation after the campaign ended and indicated to the Illinois Department of Employment Security that his employer was the campaign.

¶ 12 According to defendant's deposition, defendant specifically told plaintiff in August

2007 that he would not sign a contract that made him personally liable for any of plaintiff's fees. Defendant further stated in an affidavit that he never verbally agreed to be individually bound by the terms of any proposed agreement with plaintiff.

¶ 13 Here, we find that an oral contract was not formed because there was no meeting of the minds. Plaintiff argued that he and defendant individually entered into an agreement for his services, however, defendant stated that he told plaintiff that he would not enter into an agreement that made him personally liable for plaintiff's fees. Plaintiff and defendant disagreed as to the very existence of an agreement with each other. Plaintiff's only evidence of an agreement with defendant is defendant's father's statement that he would give the Agreement to defendant. This is insufficient to form a contract. Therefore, there is no question of fact as to whether an oral agreement existed and the court's order granting summary judgment as to the breach of contract claim was proper.

¶ 14 Next, plaintiff contends that the court erred in granting summary judgment as to the unjust enrichment claim because there was a question of fact as to whether defendant was unjustly enriched by plaintiff's services. Plaintiff then argues in his brief how his services benefitted defendant. However, plaintiff's argument does not address the court's basis for granting summary judgment, i.e. that plaintiff was estopped from contending that defendant, rather than the campaign, was his employer. Points not argued are waived. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). Plaintiff has failed to argue on appeal why the court erred in granting summary judgment on the basis that

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plaintiff was estopped from contending that defendant was his employer. Therefore, we find that the court's order granting summary judgment was proper.

¶ 15 Conclusion

¶ 16 Accordingly, we affirm the judgment of the circuit court.

¶ 17 Affirmed.