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IN THE COURT OF APPEALS OF INDIANA

MORGAN MANUFACTURING AND ENGINEERING CO., INC.,	)	
Appellant-Plaintiff,	)	
vs.	)	No. 10A04-0807-CV-407
THE DALLAS GROUP OF AMERICA, INC.,	)	
Appellee-Defendant.	)	

APPEAL FROM THE CLARK SUPERIOR COURT
The Honorable Cecile A. Blau, Judge
Cause No. 10D01-0602-PL-000025

SEPTEMBER 8, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Plaintiff-Appellant Morgan Manufacturing and Engineering Co. ("Morgan Manufacturing") appeals the trial court's judgment on the evidence in favor of Defendant-Appellee The Dallas Group of America (the "Dallas Group"). We affirm.

Morgan Manufacturing raises one issue for our review, which we restate as: Whether the trial court erred in granting judgment on the evidence with regard to Morgan Manufacturing's breach of contract, quasi-contract, and fiduciary relationship claims.

The Dallas Group owns and operates a plant in Jeffersonville, Indiana, where it manufactures filter pads used by fast-food restaurants to purify cooking oils. The filter pads consist of materials patented by the Dallas Group, and before the pads are shipped to the Dallas Group's customers, a sheet of paper is sown to the back of each pad. The paper makes a pocket that holds the filter screen.

Morgan Manufacturing operates a business in Jeffersonville near the Dallas Group's plant. As part of its business, Morgan Manufacturing owns industrial sewing machines, and in 1998 representatives from the Dallas Group approached Morgan Manufacturing's owner, Wade Morgan ("Morgan"), about sewing the backing paper onto the filter pads. Morgan, whose company was then engaged in sewing draperies and manufacturing machines for sewing and processing drapery-related items, agreed to the proposal, and the Dallas Group began paying Morgan Manufacturing a set amount for each pad sewn.

Initially, Morgan used manual sewing machines to sew the paper onto the pads. Morgan later purchased automated, programmable sewing machines that allowed Morgan Manufacturing to sew more efficiently. In December of 1999, Morgan, who had previously developed machines for his own and other companies' use, informed the Dallas Group that he was going to develop a machine that would efficiently sew the backing papers onto the pads and lower labor costs in doing so. Over a long time period, Morgan developed the machine and began using it to do the sewing jobs for the Dallas Group. The machine lowered Morgan Manufacturing's labor costs; however, Morgan Manufacturing increased its per-pad charge to the Dallas Group.

The Dallas Group developed concerns about the quality of Morgan Manufacturing's work product and about the cleanliness of Morgan Manufacturing's factory. By early 2005, the Dallas Group decided to move the sewing function in-house to ensure quality and lower costs, and it informed Morgan that it would not be using his company after 2005. In order to implement this plan, the Dallas Group purchased a nearby abandoned factory and ordered its own sewing machine from a company known as Atlanta Attachment. Morgan testified that his machine was not perfected until the end of 2005, which was six years after he informed the Dallas Group that he was going to build a machine and after the Dallas Group had moved the majority of the sewing in-house.

Upset at the loss of the Dallas Group's business, and having lost most of its drapery business because of its emphasis on the sewing contract with the Dallas Group, Morgan Manufacturing filed suit. In the suit, Morgan Manufacturing alleges that the parties entered into an oral contract that called for Morgan to develop an automated machine that would lower costs. Morgan Manufacturing further alleges that in exchange for the development of the machine, the Dallas Group would (1) buy the machine at a price that reflects the costs in creating the machine plus a reasonable profit; (2) allow Morgan Manufacturing to continue sewing as long as the Dallas Group was selling pads to Wendys, its major customer; or (3) allow Morgan Manufacturing to continue sewing work until it could recoup its costs for developing the machine and make a reasonable profit. Morgan Manufacturing also alleged that it had a written contract with the Dallas Group, and that the Dallas Group committed conversion by stealing knowledge gleaned from its relationship with Morgan Manufacturing. The trial court entered summary judgment in the Dallas Group's favor on these last two claims, and they are not part of this appeal.

Additional facts are discussed below.

In evaluating Morgan Manufacturing's claim, we must be cognizant of the standard of review for a judgment on the evidence. A trial court's decision to grant or deny a motion for judgment on the evidence is a matter within the broad discretion of the trial court. *Stowers v. Clinton Central School Corp.*, 855 N.E.2d 739, 747 (Ind. Ct. App. 2006), *trans. denied.* Therefore, on appeal, the trial court's determination will be reversed only for an abuse of discretion. *Id*. However, our standard of review is also the same as the standard governing the trial court making the decision. *State Farm Mutual Automobile Insurance Co. v. Noble*, 854 N.E.2d 925, 931 (Ind. Ct. App. 2006), *trans. denied.* Judgment on the evidence is proper only where all or some of the issues are not supported by sufficient evidence. *Id*. This court looks to the evidence, and the reasonable inferences drawn therefrom, that are most favorable to the nonmovant, and a motion for judgment as a matter of law should be granted only where there is no substantial evidence supporting an essential issue. *Id.*. If there is evidence that would allow reasonable jury members to differ as to the result, judgment on the evidence is improper. *Id.*; Indiana Trial Rule 50(A). Stated differently, a motion for judgment on the evidence should be granted "only where there is a complete failure of proof because there is no substantial evidence or reasonable inference to support an essential element of the claim." *Dahli v. Amoco Oil Corp.*, 567 N.E.2d 806, 810 (Ind. Ct. App. 1991), *trans. denied*.

I.

The elements of a contract are (1) the existence of a contract; (2) the defendant's breach thereof; and (3) damages arising from the breach. *See Rice v. Hulsey*, 829 N.E.2d 87, 89 (Ind. Ct. App. 2005). As noted above, Morgan Manufacturing claims, through Morgan, that it entered into an oral contract that required the Dallas Group to (1) buy Morgan's machine;[1] (2) allow Morgan Manufacturing to continue sewing as long as Wendy's was a customer of the Dallas Group; or (3) allow Morgan to continue sewing until Morgan recouped his costs and made a reasonable profit.

One of the key tenets of the common law is that a contract is not enforceable unless its essential terms are reasonably definite and certain. *Wenning v. Calhoun*, 827 N.E.2d 627, 629 (Ind. Ct. App. 2005), *trans. denied*. Such definite and certain terms are necessary to facilitate ascertainment of the parties' intentions. *Id*. A contract must

[1] The parties do not discuss the effect of the Indiana Uniform Commercial Code's Statute of Frauds upon the alleged oral contract as it pertains to the sale of an arguably "specially manufactured good. *See* Ind. Code 26-1-2-105(1); Ind. Code § 26-1-2-204. Because the parties neither proceeded under the UCC below nor discuss the application of UCC principles on appeal, and because the trial court's resolution of this matter follows the parties' lead, we will address this case under the common law of contracts.

provide a basis for determining the existence of a breach and for giving an appropriate remedy. *Id.*

The alleged oral contract in the present case refers to a specially manufactured machine without defining the acceptable size, speed, or error rate of the machine. In addition, the alleged contract does not specify the number of operators that would be required to oversee its operation or the required timeframe for completion of the machine. Indeed, Morgan Manufacturing suggests that there is an oral contract for a specialty machine where the Dallas Group is conditionally bound to buy a machine that had no cost ceiling, no timeframe for completion, and no specifications other than that it would "work" and that it would reduce "production costs."

Furthermore, the alleged oral contract also lacks an essential understanding of how many pads the Dallas Group was obligated to purchase from Morgan Manufacturing if it decided not to purchase the machine. In other words, there was no meeting of the minds on the requisite production requirements. Such an agreement, commonly termed "an indefinite quantities contract," is an agreement "under which the buyer [the Dallas Group] agrees to purchase and the seller [Morgan Manufacturing] agrees to supply whatever quantity of goods the buyer chooses to purchase from the seller" but does not obligate the buyer to purchase anything from the seller. *See Berkel & Co. Contractors v. Palm & Associates, Inc.*, 814 N.E.2d 649, 655 (Ind. Ct. App. 2004). Such "agreements" are illusory and are unenforceable under Indiana law. *Id.*

Because there is no evidence regarding essential elements in the alleged oral agreement between the parties, and because the agreement is, in part, illusory, we cannot say that the trial court abused its discretion in determining, based solely upon evidence introduced by Morgan Manufacturing, that no oral contract was formed.

II.

A quasi-contract is a legal fiction imposed by law without regard to assent of the parties; it arises by reason, law, and natural equity, and is clothed with the semblance of contract for the purpose of a remedy. *Roberts v. Alcoa, Inc.*, 811 N.E.2d 466, 474-75 (Ind. Ct. App. 2004). No action can lie in quasi-contract unless one party is wrongfully enriched at the expense of another. *Id*. Thus, the plaintiff must show that it conferred a measurable benefit on the defendant such that it would be unjust to allow the defendant to retain this benefit. *Truck City of Gary, Inc. v. Schneider National Leasing*, 814 N.E.2d 273, 280 (Ind. Ct. App. 2004).

Morgan Manufacturing argues that when the trial court considers only the evidence favorable to Morgan Manufacturing's version of this issue, it must conclude that there is sufficient evidence to establish a question of fact on whether the Dallas Group was unjustly enriched through its relationship with Morgan and his company. Specifically, Morgan Manufacturing reasons that the Dallas Group's intimate contact with Morgan Manufacturing's methods and processes for sewing the filter pads gave the Dallas Group knowledge of what worked and what did not, from stitches to pad materials. Morgan Manufacturing further reasons that this knowledge made the idea of in-house sewing much more palatable to the Dallas Group. Morgan Manufacturing insists that the Dallas Group "had all of [its] success because [Morgan Manufacturing] had perfected how to sew the filter pad unit and make it in production, along with the learning curve that the pad material needed to be reformulated and related." (Appellant's Brief at 28). Morgan Manufacturing concludes that "[s]chooled in the machines and production processes, Wendy's in tow, [the Dallas Group] was unjustly enriched at [Morgan Manufacturing's] expense, because it directly or indirectly led Morgan to believe this was a long-term relationship." *Id.*

We have reviewed the testimony of Morgan Manufacturing's witnesses and have evaluated both the evidence and the inferences therefrom in a manner favorable to Morgan Manufacturing. Our review discloses no evidence or reasonable inference that the Dallas Group was unjustly enriched by its relationship with Morgan Manufacturing or its owner. The evidence indicates that a machine was built to help decrease Morgan Manufacturing's labor/production costs and increase its production. Even though it was not perfected at the time that the Dallas Group took its sewing in-house, the machine allowed Morgan Manufacturing to make more money by sewing more pads. There is no indication that the Dallas Group was unjustly enriched by gaining knowledge from the machine; indeed, the Dallas Group purchased an arguably less efficient machine from another company. Furthermore, there is no indication that the Dallas Group gained any knowledge from Morgan Manufacturing that was related to the Dallas Group's later development of a pad that emitted less dust during the sewing process.

Morgan Manufacturing asks us to engage in supposition, not to evaluate evidence and reasonable inferences. There is no unjust enrichment here; thus, there is no quasi contract.

III.

In order to prove the presence and breach of a fiduciary relationship, Morgan Manufacturing must show either that the alleged dominant party, the Dallas Group, dealt with superior knowledge of the matter derived from a fiduciary relationship with Morgan Manufacturing or that the Dallas Group dealt from a position of overpowering influence over the subordinate party, Morgan Manufacturing. *See Carlson v. Warren*, 878 N.E.2d 844, 852 (Ind. Ct. App. 2007). Only when Morgan Manufacturing has shown this and that "the result was an unfair advantage to the dominant party" will the burden of proof shift to the Dallas Group. *Id*. Stated differently, Morgan Manufacturing must show that the dominant party wrongfully abused the trust and confidence of the weaker party by exerting improper influence in order to gain an unconscionable advantage. *See Kreighbaum v. First National Bank & Trust*, 776 N.E.2d 413, 419 (Ind. Ct. App. 2002).

Morgan Manufacturing emphasizes that at the formation and during the continuation of the sewing contract, the Dallas Group was a much larger corporation, with plants in two states and a world-wide client base, than Morgan Manufacturing, with a single plant and a limited number of clients. While Morgan Manufacturing succeeds in showing that the Dallas Group is a larger operation than Morgan Manufacturing, it fails to show that the Dallas Group was the dominant entity during the formation and continuation of the sewing agreement. In fact, Morgan testified that he had built machines for other corporations under a contract, including Boeing. There is no indication that the Dallas Group exerted any dominance over a smaller corporation that had done work for other larger entities. Indeed, the evidence shows that the parties entered into a sewing contract that was mutually beneficial. Such contracts do not give rise to a fiduciary relationship. *See Morgan Asset Holding Corp. v. CoBank, ACB*, 736 N.E.2d 1268, 1273 (Ind. Ct. App. 2000).

Morgan Manufacturing also asserts that the Dallas Group took what it learned from the relationship and left Morgan Manufacturing in the lurch. As we discussed above, there is no evidence or inference therefrom to show that the Dallas Group violated any duty owed to Morgan Manufacturing or that the Dallas Group used Morgan Manufacturing to gain knowledge for its advantage. As the trial court undoubtedly recognized, there must be evidence from which a reasonable inference of a breach of fiduciary duty can be drawn. Mere supposition is not enough.

Affirmed.

VAIDIK, J., and BROWN, J., concur.