**Ace Design Grp., Inc. v. Greater Christ Temple Church, Inc., 2016 Tenn. App. LEXIS 939**

Court of Appeals of Tennessee, At Nashville

October 11, 2016, Session; December 8, 2016, Filed

No. M2016-00089-COA-R3-CV

**Reporter**

2016 Tenn. App. LEXIS 939 * | 2016 WL 7166408

**Prior History:**

Tenn. R. App. P. 3 **[*1]** Appeal as of Right; Judgment of the Chancery Court Affirmed in Part, Vacated in Part, and Remanded. Appeal from the Chancery Court for Davidson County. No. 15405-I. Claudia Bonnyman, Chancellor.

**Disposition:**

Judgment of the Chancery Court Affirmed in Part, Vacated in Part, and Remanded.

**Counsel:** David Matthew Rich, Nashville, Tennessee, for the appellant, Greater Christ Temple Church, Inc.

Timothy W. Burrow, Nashville, Tennessee, for the appellee, Ace Design Group, LLC.

**Judges:** KENNY ARMSTRONG, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and ANDY D. BENNETT, J., joined.

**Opinion by:** KENNY ARMSTRONG

**OPINION**

**I. Background**

On or about July 1, 2013, Ace Design Group, LLC ("Appellee"), an architectural design and engineering firm, submitted a Design Fee Proposal ("Proposal") to Greater Christ Temple Church, Inc. ("Church" or "Appellant"). The Proposal was for architectural and engineering design services for construction of a sanctuary and connecting gathering area for the Church. The Proposal stated that the design fee for the project was $280,000.00, and the total cost of the project was $3.5 million. The Proposal included a "break down with approximate timeframes," including the following price schedule:

> Deposit: Remuneration for the preliminary work and retainer to get the project started.
> $28,000 (start of project)
> Schematic Design: Further preliminary design based on the needs of the church and discussions with key personnel, including floor plans.

$25,200 (4 weeks)
Design Development: Further development of the Schematic Design to include elevations, dimensions and details.
$63,000 (6 weeks)
Construction Documents: Final detailed drawings used for bidding, construction [*3] and permit approval.
$126,000 (10 weeks)
Bidding: Solicitation, procurement and review of bids from selected contractors.
$12,600 (3 weeks)
Construction Administration: Observation of the construction process and review of the work performed. Also, review of submitted pay request from the contractor.
$25,200 (1 year)

The Proposal did not contain a signature line for a Church representative, and no one signed the Proposal on behalf of the Church. However, on October 29, 2013, the Church tendered a $25,000 check to Appellee.

On October 30, 2013, Appellee presented the Church with a document titled "American Institute of Architects Standard Form of Agreement between Owner and Architect" ("Agreement"). The Agreement outlined specific terms concerning dates for completion, insurance coverage, civil engineering requirements, dispute resolution forum (in Kentucky), and compensation. Importantly, neither party signed the Agreement. Appellee alleges that it began design work and expended travel costs to complete the work set out in both the Proposal and Agreement. After tendering the $25,000 check, Appellant made no further payment to Appellee.

On March 31, 2015, Appellee filed a complaint in the Chancery [*4] Court of Davidson County ("trial court"), averring that Appellant: (1) orally entered into a contract to pay for the work set out in the Proposal; (2) accepted the Proposal in writing by tendering a check for $25,000 to Appellee; (3) orally entered into a contract comporting with the terms set out in the Agreement and promised to have Appellant's trustees sign the Agreement but failed to do so; (4) met with Appellee for "progress meetings with representatives of the Church on August 20, 2013, September 19, 2013, October 2, 2013, October 29, 2013, December 17, 2013, February 11, 2014, and June 5, 2014;" (5) provided its approval of Appellee's work and requested that Appellee "proceed with moving forward based on the work done to date;" and (6) failed to pay when Appellee requested payment of $40,000 on December 16, 2013, and $35,000 on April 18, 2014. In its complaint, Appellee sought damages for breach of contract, promissory estoppel, and quantum meruit.

On March 31, 2015, Appellee attempted to serve the summons and complaint on Harvey Hoskins, Appellant's registered agent listed with the Secretary of State. The record indicates that Appellee first attempted to serve Mr. Hoskins at 1900 West End Avenue, [*5] Nashville, Tennessee. This is the address on file for Mr. Hoskins with the Tennessee Secretary of State. The summons was returned unserved on April 15, 2015, because service was attempted at an incorrect address. On the same day, April 15, 2015, Appellee conducted research and determined that Mr. Hoskins' address was 1900 Church Street, Suite 200, Nashville, Tennessee. Appellee then re-issued its summons and achieved service on Mr. Hoskins at the Church Street address on April 22, 2015.

The Church did not answer or appear before the trial court, and on June 23, 2015, Appellee moved for default judgment against the Church. Also on June 23, 2015, Appellee submitted a default judgment certificate, listing $113,680.00 as the amount allegedly owed by the Church. On June 22, 2015, the Church was served with the motion for default judgment and default judgment certificate.1 Nonetheless, the Church failed either to answer or appear before the trial court. Accordingly, on August 7, 2015, the trial court entered an order of default judgment in favor of Appellee and against Appellant for breach of contract. The Church was subsequently mailed a copy of the order of default judgment.

The hearing on [*6] damages was held on August 24, 2015. Despite having been served with the default judgment, the Church did not appear at the hearing. On August 25, 2015, the trial court entered an order on damages, which states, in relevant part, that:

> Greater Christ Church defaulted under its contract with Ace Design to pay the contract price of $250,000; Greater Christ Church promised to pay the contract price; Ace completed $100,000 of the $250,000 contract; Greater Christ Church paid $25,000, leaving a balance due of $75,000; and interest on the $75,000 due totaled $12,750. The Court further finds the following based on the evidence presented at the hearing: Ace Design is entitled to profits it would have made on the $150,000 balance of the work had Greater Christ Church not breached the contract; Mr. Perry sufficiently proved that profits on the remaining $150,000 of work would have been 30%, which equates to $45,000, and that 30% represents the net profit after paying all costs, including consultants and overhead.

On August 25, 2015, the Church was served with the judgment.

On September 4, 2015, the Church filed a motion to vacate the judgment . . . .

**II. Issues**

. . . .

We perceive that there are two dispositive issues, which we restate as follows:

> 1. Whether the trial court erred in entering default judgment against [*12] the Church?
>
> 2. Whether the trial court erred in its award of damages to Appellee?

**III. Standard of Review**

We review the trial court's findings of fact *de novo* on the record of the trial court, accompanied by a presumption of the correctness of these findings, unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d); ***Langschmidt v. Langschmidt***, 81 S.W.3d 741, 744 (Tenn. 2002). With respect to the trial court's conclusions of law, however, our review is *de novo*, and the trial court's conclusions of law are "accorded no presumption of correctness." ***Brunswick Acceptance Co., LLC v. MEJ, LLC***, 292 S.W.3d 638, 642 (Tenn. 2008).

**IV. Analysis**

. . . .

**B. Damages**

Tennessee Rule of Civil Procedure 54.03 provides that damages on a default judgment must be determined as follows:

> Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered **is entitled**, even if the party has not demanded such relief in the party's pleadings; but the court shall not give the successful party relief, though such party may be entitled to it, where the propriety of such relief was not litigated and the opposing party had no opportunity to assert defenses to such relief.

***Id.*** (emphasis added). In other words, the mere entry of a default judgment in favor of a party does not, *ipso facto*, entitle that party to carte blanche damages. Rather, a trial court may only award those damages to which the party is legally entitled. In determining damages on the entry of [*18] a default judgment, the trial court is required "to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter the court may conduct such hearings or order such references as it deems necessary and proper." Tenn. R. Civ. P. 55.01.

As an initial matter, Appellee is only entitled to breach of contract damages if there was, in fact, a valid and enforceable contract. To put a finer point on it, the trial court must first determine whether a valid contract exists. If so, the court must next determine whether the Church is in breach. If so, the court must determine the damages to which Appellee is entitled. If, on the other hand, there is no valid contract, the court must determine whether Appellee is entitled to quasi-contract damages. As discussed above, the trial court found that "Greater Christ Church defaulted under its contract with Ace Design." However, our ability to review the trial court's finding of breach of contract is limited because our record contains no transcript or statement of evidence adduced at the damages hearing. More problematic is the fact that the trial court's order on damages contains no **[*19]** findings of fact from which this Court may glean a basis for its finding that the parties had a valid contract and that the Church breached that contract. Tennessee Rule of Civil Procedure 52.01 provides, in relevant part: "In all actions tried upon the facts without a jury, the court shall find the facts specially and shall state separately its conclusions of law and direct the entry of the appropriate judgment."

Although the trial court's order is insufficient insofar as it does not contain findings concerning the trial court's grounds for finding a valid contract, from the record before us, this Court has some concern as to whether the prima facie elements for contract formation were met in this case. Specifically, we have doubt as to the element of mutual assent and, if mutual assent exists, whether the contract falls within the Statute of Frauds.

A valid, enforceable contract requires consideration and mutual assent, manifested in the form of an offer and an acceptance. Restatement (Second) of Contracts §§ 17, 22. In Tennessee, "[t]he legal mechanism by which parties show their assent to be bound is through offer and acceptance." ***Moody Realty Co., Inc.***, 237 S.W.3d 666, 675 n.8 (Tenn. Ct. App. 2007). An enforceable contract "must result from a meeting of the minds, must be based upon sufficient consideration, and must be sufficiently **[*20]** definite to be enforced." ***Peoples Bank of Elk Valley v. ConAgra Poultry Co.***, 832 S.W.2d 550, 553 (Tenn. Ct. App. 1991) (citing ***Johnson v. Cent. Nat'l Ins. Co. of Omaha***, 210 Tenn. 24, 356 S.W.2d 277, 281 (Tenn. 1962)). The meeting of the minds requirement is explained as follows:

> "Under general principles of contract law, a contract must result from a meeting of the minds of the parties in mutual assent to the terms." ***Sweeten v. Trade Envelopes, Inc.***, 938 S.W.2d 383, 386 (Tenn. 1996) (citation omitted).... "Courts determine mutuality of assent by assessing the parties' manifestations according to an objective standard." [***Moody Realty Co., Inc. v. Huestis***, 237 S.W.3d 666, 674 (Tenn. Ct. App. 2007).]

***In re Estate of Josephson***, No. M2011-01792-COA-R3-CV, 2012 Tenn. App. LEXIS 629, 2012 WL 3984613, at *2 (Tenn. Ct. App. Sept. 11, 2012). Thus, the crux of the "meeting of the minds" is mutual assent to a contract. Here, our record does not contain a signed agreement. As noted above, the "Agreement" was not signed by either party; the Proposal was signed by Appellee's employee, Kevin Perry, but lacked a signature line for the Church and was not signed by an agent or representative of the Church.

In addition to the mutual assent requirement, it is undisputed that the building project could not have been completed within one year. Appellee's Proposal states that the five phases of the project would respectively require four weeks, six weeks, ten weeks, three weeks, and one year; Appellee's Agreement lists a commencement date for construction and a completion date for construction that span fifteen **[*21]** months. Accordingly, this Court questions whether the alleged contract falls under the purview of the Statute of Frauds. Tennessee's Statute of Frauds provides as follows, in relevant part:

> (a) No action shall be brought:
> * * *
> (5) Upon any agreement or contract which is not to be performed within the space of one (1) year from the making of the agreement or contract; unless the promise or agreement, upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and **signed by the party to be charged therewith**, or some other person lawfully authorized by such party.
> * * *
> (c) For purposes of this section, a writing, or some memorandum or note thereof, includes a record.

Tenn. Code Ann. § 29-2-101 (emphasis added). Accordingly, on remand, the trial court should determine whether the Statute of Frauds is applicable in this case.

However, even if the trial court determines that the Statute of Frauds applies, there are certain equitable doctrines that may operate to excuse failure to comply with the Statute of Frauds. For example, partial performance may allow for "an otherwise unenforceable oral contract [to] be the basis of an action if one of the parties has performed." ***Id.***

> [T]he doctrine **[*22]** of part performance does not require merely that the plaintiff performed services under the contract sued upon. The doctrine additionally requires that the plaintiff, in performance or pursuance of the contract, altered his position in such a way that it would be unjust and unconscionable not to enforce the contract.

***Lomax v. Jackson-Madison Cnty. Gen. Hosp. Dist.***, No. 02A01-9706-CH-00116, 1997 WL 33760893, at *2 (Tenn. Ct. App. Oct. 31, 1997). The doctrine of partial performance "is purely an equitable doctrine and is a judicial interpretation of the acts of the parties to prevent frauds" and, if applied, can take a verbal contract out of the Statute of Frauds. ***Blasingame v. Am. Materials, Inc.***, 654 S.W.2d 659, 663

(Tenn. 1983). Urging caution when finding an exception to the Statute of Frauds, this Court has stated "if the doctrine is too liberally applied, it could easily result in the exception of partial performance swallowing the rule of the Statute of Frauds, and allowing the proliferation of those very evils that the Statute was created to guard against." ***Shedd v. Gaylord Ent.***, 118 S.W.3d 695, 698 (Tenn. Ct. App. 2003).

Here, the only act that could be considered a partial performance pursuant to the contract would be the Church's $25,000 payment. However, the $25,000 amount is not contemplated in either the Proposal or the Agreement. Until a valid contract **[*23]** and breach are specifically determined by the trial court, there is no basis for breach of contract damages. Because the trial court's order provides no basis for its determination that the parties had a valid contract that the Church breached, we vacate the order insofar as it finds a valid contract and breach of that contract. We further vacate the trial court's award of damages for breach of contract. We remand the case for further proceedings on the questions of contract formation, breach, and the proper type and measure of damages.

**V. Conclusion**

For the foregoing reasons, we affirm the default judgment entered in favor of Appellee. We vacate the trial court's order in all other respects. The case is remanded for such further proceedings as may be necessary and are consistent of this opinion, including, but not limited to, determination of whether Appellee is entitled to breach of contract damages. Costs of the appeal are assessed one-half to Appellant, Greater Christ Temple Church, Inc. and its surety, and one-half to Appellee, Ace Design Group, Inc., for all of which execution may issue if necessary.

KENNY ARMSTRONG, JUDGE