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IN THE
COURT OF APPEALS OF INDIANA

WARRUM CONSTRUCTION INC., JAMES B. WARRUM, and JANICE BARFIELD,	)	
Appellants,	)	
vs.	)	No. 49A05-1011-CC-722
YELLOW BOOK SALES AND DISTRIBUTION CO., INC.,	)	
Appellee.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Thomas J. Carroll, Judge
Cause No. 49D06-1003-CC-10882

June 13, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Warrum Construction Inc. ("Warrum Construction"), James B. Warrum, and Janice Barfield (collectively, the "Warrum Parties") appeal the trial court's ruling granting summary judgment in favor of Yellow Book Sales and Distribution Co., Inc. ("Yellow Book"). The Warrum Parties raise one issue, which we revise and restate as whether the trial court erred in granting Yellow Book's motion for summary judgment. We affirm.

The relevant facts follow. Warrum was the owner and president of Warrum Construction, and Barfield was an employee of Warrum Construction. In November 2005, at the site of Warrum Construction, Warrum signed an advertising contract ("Contract No. 1") for the purchase of advertising services from Yellow Book on behalf of Warrum Construction. Pursuant to the terms of Contract No. 1, Warrum agreed to pay Yellow Book $251 per month for a period of twelve months. Warrum signed Contract No. 1 on the signatory line identified as "Authorized Signature Individually and for the Company." Appellee's Appendix at 5. Yellow Book's designated statement of account dated January 25, 2010, shows that Warrum Construction still owed $24.00 to Yellow Book under Contract No. 1.

In November 2006, at the site of Warrum Construction, Barfield and Warrum signed a second advertising contract ("Contract No. 2") with Yellow Book on behalf of Warrum Construction. Under Contract No. 2, Warrum Construction agreed to pay Yellow Book $281 per month for a period of twelve months. Both Warrum and Barfield signed Contract No. 2 on the signatory line for an authorized signature. In addition, in a box labeled "Contract Name," the names of Warrum and Barfield were listed, and

Barfield was identified as "Bookkeeper." Id. at 7. Yellow Book's statement of account shows that Warrum Construction still owed $1,811.45 to Yellow Book under Contract No. 2.

In March 2008, at the site of Warrum Construction, Barfield signed another advertising contract ("Contract No. 3") with Yellow Book. Contract No. 3 indicated that Warrum Construction would pay Yellow Book $352 per month for a period of twelve months. Only Barfield signed Contract No. 3 on the signatory line for an authorized signature, and below the signature and above a line which stated "Print Signer's Name," Barfield's name was printed and she was identified as "ofc mgr." Id. at 9. In the box labeled "Contract Name," the names of Warrum and Barfield were listed, and Barfield was identified as "ofc. manager." Id. Yellow Book's statement of account shows that Warrum Construction still owed $4,242.00 to Yellow Book under Contract No. 3. Yellow Book provided to Warrum Construction the services it agreed to provide pursuant to the terms of all three contracts including Contract No. 3, namely, providing advertising for twelve months. Each of the advertising contracts provided for the assessment of late charges and that Yellow Book could recover certain costs and attorney fees in connection with any nonpayment.

On March 10, 2010, Yellow Book filed a complaint against the Warrum Parties seeking payment from Warrum Construction of the balance owed under Contract Nos. 1, 2, and 3. The complaint further alleged that Warrum personally guaranteed payment under Contract No. 1, that Warrum and Barfield guaranteed payment under Contract No. 2, and that Barfield guaranteed payment under Contract No. 3. The Warrum Parties filed

an answer and affirmative defenses, which included a defense that Barfield lacked the authority to enter into and/or bind Warrum Construction with respect to Contract No. 3.

On May 25, 2010, Yellow Book filed a motion for summary judgment and designation of evidentiary matters. The Warrum Parties filed a response to the summary judgment motion in which they argued in part that Barfield lacked the authority to bind Warrum Construction and that Contract No. 3 was unenforceable against Warrum Construction. Following a hearing, the court granted Yellow Book's motion for summary judgment on October 1, 2010, and entered judgment against the Warrum Parties on Yellow Book's complaint. On October 28, 2010, the Warrum Parties filed a motion to correct errors, which the court denied.[1]

The sole issue is whether the trial court erred in granting Yellow Book's motion for summary judgment. When reviewing a grant of a motion for summary judgment, we apply the same standard applicable to the trial court. Wagner v. Yates, 912 N.E.2d 805, 808 (Ind. 2009). Summary judgment is proper only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Id. Summary judgment should be granted only if the evidence sanctioned by Indiana Trial Rule 56(C) shows that there is no genuine issue of material fact and the moving party deserves judgment as a matter of law. Freidline v. Shelby Ins. Co., 774 N.E.2d 37, 39 (Ind. 2002). All factual inferences must be construed in favor of the non-moving party, and all doubts as to the existence of a material issue must be resolved against the moving party. Kovach v. Midwest, 913 N.E.2d 193, 197 (Ind. 2009), reh'g denied.

[1] A copy of the motion to correct errors is not included in the record.

The Warrum Parties focus their arguments on appeal on the trial court's ruling related to Contract No. 3.[2] Specifically, the Warrum Parties argue that there is a genuine issue of material fact regarding whether a principal/agent relationship existed between Warrum and Barfield. The Warrum Parties argue there was no "actual agency" and point to Warrum's affidavit which states that Barfield was not an agent. Appellant's Brief at 5. The Warrum Parties also argue that there is a question regarding whether "apparent agency" existed and point to Warrum's affidavit, in which he states that he signed Contract No. 2 "because [he] walked in after [Barfield] signed the contract and told the Yellow[Book] representative that [he] was the person that needed to sign it," id. at 7 (citing Appellant's Appendix at 22), and that this statement "suggests evidence that Yellowbook had actual knowledge that Barfield was not an authorized agent." Id.

Yellow Book argues that Barfield possessed apparent authority to bind Warrum Construction to Contract No. 3. Yellow Book points to designated evidence that Barfield was identified as bookkeeper on Contract No. 2 and office manager on Contract No. 3, that Barfield signed two contracts on behalf of Warrum Construction, and that a Yellow Book representative spoke with Barfield at Warrum Construction's place of business on at least two separate occasions. Yellow Book argues that Warrum signed next to Barfield on Contract No. 2 and did not cross out Barfield's signature and, despite having knowledge that Barfield signed Contract No. 2, left Barfield "in a position to do so all over again fifteen months later with respect to Contract 3." Appellee's Brief at 10.

[2] The Warrum Parties do not challenge the trial court's ruling with respect to Contract Nos. 1 and 2.

Yellow Book further argues that Warrum Construction ratified Contract No. 3. Specifically, Yellow Book argues that Contract No. 3 "was signed by Barfield for the primary benefit of Warrum Construction," that Warrum Construction "knew, or reasonably should have known, that the contract had been renewed and new advertising services were being provided under it," and that "Warrum Construction accepted the benefits of the advertising without objection." Id. at 13.

Ratification is the adoption of that which was done for and in the name of another without authority. American Heritage Banco, Inc. v. Cranston, 928 N.E.2d 239, 249 (Ind. Ct. App. 2010), reh'g denied; Quality Foods, Inc. v. Holloway Assoc. Prof'l Engineers and Land Surveyors, Inc., 852 N.E.2d 27, 33 (Ind. Ct. App. 2006). Typically, ratification is a question of fact. Cranston, 928 N.E.2d at 249. Ratification is based on the existence of three essential elements: (1) an unauthorized act performed by an individual for and on behalf of another and not on account of the actor himself; (2) knowledge of all material facts by the person to be charged with said unauthorized act; and (3) acceptance of the benefits of said unauthorized act by the person charged with the same. Id.

This court has stated:

> Ratification means the adoption of that which was done for and in the name of another without authority. It is in the nature of a cure for [lack of] authorization. When ratification takes place, the act stands as an authorized one, and makes the whole act, transaction, or contract good from the beginning. . . . Corporations act only by and through their officers and agents, and ratification may be inferred from affirmation, or from passive acquiescence or from the receipt of benefits with knowledge. Knowledge, like other facts, need not be proved by any particular kind or class of evidence, and may be inferred from facts and circumstances . . . .

Heritage Dev't of Ind., Inc. v. Opportunity Options, Inc., 773 N.E.2d 881, 889-890 (Ind. Ct. App. 2002) (quoting State ex rel. Guar. Bldg. & Loan Co. v. Wiley, 100 Ind. App. 438, 196 N.E. 153, 154 (1935)), reh'g denied, trans. dismissed; see Quality Foods, 852 N.E.2d at 33.

Here, the designated evidence shows that Yellow Book provided to Warrum Construction all of the services/advertising space it agreed to provide under Contract No. 3. In addition, although Barfield signed Contract No. 3, the agreement was between Yellow Book and Warrum Construction, Warrum Construction was identified in the agreement as the customer, the advertisement services/listings were for Warrum Construction, and Warrum Construction received all of the benefit of Yellow Book's performance under Contract No. 3. Contract No. 3 indicated that its payment terms would be "12 Mo" rather than "Paid In Full" or "On Pub." Appellant's Appendix at 20; Appellee's Appendix at 9. Section 6 of the Terms and Conditions of Contract No. 3 provided in part that "[f]or print advertising, [Yellow Book] will bill [Warrum Construction] monthly for the issue period of each Directory." Appellee's Appendix at 10. The Warrum Parties do not challenge the trial court's ruling with respect to Contract Nos. 1 and 2 on appeal, and Warrum Construction received the benefit and was aware of the benefit it received from Yellow Book under the advertisement contracts. See Opportunity Options, 773 N.E.2d at 889-890 (noting that ratification may be inferred from affirmation, or from passive acquiescence or from the receipt of benefits with knowledge).

Based upon the designated materials, even if Barfield did not have actual or apparent authority to sign Contract No. 3 on behalf of Warrum Construction, under the circumstances we conclude that Warrum Construction ratified the agreement when it accepted Yellow Book's performance. See Quality Foods, 852 N.E.2d at 31-34 (holding that even if Warriner did not have apparent authority, DPI and QFI were aware that Holloway was performing work and accepted the benefits of the work). The trial court did not err in granting summary judgment in favor of Yellow Book.

For the foregoing reasons, we affirm the trial court's grant of summary judgment in favor of Yellow Book.

Affirmed.

FRIEDLANDER, J., and BAILEY, J., concur.