

IN THE COURT OF APPEALS OF IOWA

No. 1-503 / 10-1921
Filed July 27, 2011

CASTLE INTERIORS, INC.,
Plaintiff-Appellant,

vs.

AC INVESTMENTS, L.L.C.
and CHAD DEUTSCH,
Defendants-Appellees.

Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Judge.

Castle Interiors, Inc. appeals from dismissal of its breach of contract action against asserted undisclosed principals, AC Investments, L.L.C., and Chad Deutsch. **AFFIRMED.**

Peter C. Riley of Tom Riley Law Firm, P.L.C., Cedar Rapids, for appellant.

Thomas C. Verhulst of Gallagher, Langlas & Gallagher, P.C., Waterloo, for appellees.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

DANILSON, J.

Castle Interiors, Inc. appeals from dismissal of its breach of contract action against asserted undisclosed principals, AC Investments, L.L.C., and Chad Deutsch. Because the plaintiff failed to establish a contract existed between these parties or the existence of an undisclosed principal, we affirm.

I. Background Facts and Proceedings.

In 2006, Duane and Darlene Briggeman were purchasing a parcel of real estate (107 W. Central Street, Raymond, Iowa) from AC Investments, L.L.C. and its principal, Chad Deutsch (collectively referred to as "AC"). The Briggemans were having a dwelling constructed on the real estate that would be their homestead upon completion. AC was providing financial backing to the Briggemans for their purchase. The sale was not finalized until after the events in question here.

In February 2006, realtor Rick Schoulte contacted Castle Interiors, Inc. stating he had some clients who would be coming to Castle's office to look at interior products for their new home. The Briggemans did go to Castle's office and negotiated with Castle for labor and materials for the interior of a dwelling under construction.¹ Castle then learned from Schoulte that AC was the financial backer of the house. Schoulte indicated AC had to be placed on the invoice.

¹ Castle agreed to furnish and install cabinetry, countertops, carpeting (including padding), ceramic tile (including the subflooring), and a corn stove. After negotiations, the final agreement for materials and installation was reflected in an invoice (#438) dated March 16, 2006, (with a handwritten note "faxed 4-25-06") in the amount of \$29,112.95. In the "Bill to" section the invoice is addressed to "AC Investments LLC . . . , Briggeman, Duane & Darlene." Marcie Breitbach, a Castle employee, indicated AC was added at the request "from somebody calling in and asking for the name on it to be changed." Castle's owner and president, Jody Wilson, testified the invoice "Bill to" section was changed when Schoulte informed Castle that AC had to be placed on the invoice before Castle would receive a down payment.

Thereafter, a check in the amount of \$11,656 was received by Castle from Chad and Amy Deutsch, dated March 24, 2006; the memo line states "Raymond House, Inv. #438." This was the first time Jody Wilson, Castle's president, had heard of Deutsch.

Castle did provide labor and materials from April 17 through April 26. The Briggemans were on site daily. On April 26, 2006, Chad Deutsch appeared on site and was critical of the materials used by Castle, as well as the quality of workmanship. Deutsch and Wilson exchanged words. Wilson stated Deutsch ordered Castle off the job, "saying it was his house and he can do what he wants and he's kickin' us off the job." Castle employees Wilson, Randy Jensen, Butch Dodd, and Steve Wirtz loaded up their equipment and tools and left the site. Wilson later contacted Briggeman and offered to come back to the jobsite. Castle did not return to the jobsite, but Wilson did deliver a countertop to "try to make peace."

On August 3, 2006, Castle filed a petition to enforce a mechanic's lien against the Briggemans for labor and materials Castle furnished to 107 W. Central Street from April 17 to May 3, 2006. In their answer, the Briggemans admitted they contracted with Castle to pay for labor and materials furnished by Castle to the Briggemans' home at 107 W. Central Street. That suit settled and, on September 21, 2007, Castle and the Briggemans filed a joint dismissal with prejudice.

On November 12, 2008, Castle brought this suit against AC for breach of contract. AC denied any contract with Castle and later filed a motion for summary judgment. The court noted:

Under Castle's theory . . . Defendant acted as the general contractor and the Briggemans acted as agents or representatives of Defendant to enlist subcontractors such as Castle to complete work on the home. Castle suggests that Defendants were an undisclosed principal, and that the act of sending the down payment bound them to the proposal negotiated by their agent.

The court opined the "primary consideration in determining whether an agency relationship exists is whether the principal has the right of control over the agent's actions." See *Benson v. Webster*, 593 N.W.2d 126, 130 (Iowa 1999). The court denied the motion for summary judgment, concluding there remained a genuine issue of material fact as to the relationship between the Briggemans and AC.

At the bench trial, Wilson testified all his negotiations were with the Briggemans and the only time he met Chad Deutsch was the last day Castle was on the jobsite. He, as well as two other Castle employees, testified Deutsch ordered him off the premises that last day. Wilson stated the Briggemans "said that Chad owned the house and the property."

Chad Deutsch testified that "technically, you know, since we were doing the financing of it or writing the checks and getting the lien waivers, in many ways we could be considered" the general contractor. He stated, however, that "we weren't actually choosing contractors, negotiating any deals" that was being done by Dave Frank Construction and Rick Schoulte. Deutsch was asked if the Briggemans had "authority from AC construction to make decisions as to the selection of contractors or subcontractors and the specifications and what those contractors or subcontractors would provide." Deutsch responded, "Yeah, the Briggemans pretty much called the shots on the whole thing" and that AC

“stepped in primarily as a financial aid to them, somebody to manage the paperwork so far as lien waivers and that sort of thing.”

When Castle rested, AC moved for a directed verdict contending Castle had failed to prove a contract existed between the parties upon which a claim could be based. The district court agreed: “I don’t find any credible evidence here to indicate that there was a contractual relationship, either disclosed or undisclosed, between the plaintiff and this defendant.” The court dismissed the suit.

On appeal, Castle contends an undisclosed principal is liable on a contract and the trial court erred in finding no contract existed between Castle and AC.

II. Standard of Review.

Our supreme court has recently summarized the applicable scope and standard of review in stating:

We review a trial court’s ruling on a motion for directed verdict for correction of errors of law. A directed verdict is required only if there was no substantial evidence to support the elements of the plaintiff’s claim. Evidence is substantial when reasonable minds would accept the evidence as adequate to reach the same findings. Where reasonable minds could differ on an issue, directed verdict is improper and the case must go to the jury.

Deboom v. Raining Rose, Inc., 772 N.W.2d 1, 5 (Iowa 2009) (internal quotations and citations omitted).

III. Discussion.

Our supreme court has also explained “[a]n agency relationship exists where there is ‘(1) a manifestation of consent by one person that another shall act on the former’s behalf and subject to the former’s control and (2) the consent of the latter to so act.’” *Benson v. Webster*, 593 N.W. 2d 126, 130 (Iowa 1999)

(citation omitted). For example, in *Strohmeier v. Anderson*, 195 Iowa 828, 829, 192 N.W. 811, 812 (1923), the plaintiff sought to recover for repairs he made to a car, but the owner of the car insisted she did not direct that repairs be made and therefore she was not liable. The court found that the repairs were made at the request of her agent, her husband, and as an undisclosed principal she was liable. *Strohmeier*, 195 Iowa at 830, 192 N.W. at 813. The *Strohmeier* court noted that evidence was presented that the repairs placed upon the car on the orders of her husband were necessary to put the car in running order after an accident, that the wife made inquiry as to when the repairs would be completed, and she had previously accompanied her husband when he brought the car to the garage. *Id.* at 830-31, 192 N.W. at 813. This evidence, though “somewhat close on the fact question as to whether the agency of an undisclosed principal was established,” was found sufficient to sustain the trial court’s finding that the husband had authority to contract for repairs on behalf of the wife so as to render her liable. *Id.* at 831, 192 N.W. at 813.

Here, Castle has the burden of proving the existence of an agency relationship. See *Benson*, 593 N.W.2d at 129. “The primary consideration in determining whether an agency relationship exists is the principal’s right of control.” *Id.* The fundamental problem for the plaintiff here is that to impose liability upon AC, Castle must prove *the Briggemans* were the agents of the asserted principal, AC, and not the converse. Castle was required to prove “(1) a manifestation of consent [by AC] that [the Briggemans] shall act on [AC’s] behalf and subject to [AC’s] control and (2) the consent of [the Briggemans] to so act.” See *id.*

We conclude there is no substantial evidence to support the conclusion that the Briggemans were agents of AC. See, e.g., *Cryder Well Co. v. Stangl*, 257 Iowa 1255, 1259-60, 136 N.W.2d 519, 522 (1965) (rejecting claim that realtor was acting on behalf of sellers in contracting to have a well drilled on property, rather was acting for himself to procure the commission on subsequent sale). The trial court could reasonably conclude the Briggemans were acting for themselves. No evidence establishes AC consented to the Briggemans acting on AC's behalf and subject to AC's control or that the Briggemans consented to act on AC's behalf and subject to AC's control.

Castle argues Deutsch exercised “control by ordering Castle off the job.”² However, Deutsch was acting at the behest of Briggemans by complaining regarding the quality of Castle's work. This evidence does not provide any support that Deutsch or AC was acting as the principal rather than as Briggemans' agent.

In sum, Castle failed to present substantial evidence that the Briggemans were agents of an undisclosed principal—AC, or were otherwise contractually liable for labor or products provided by Castle. We therefore affirm.

AFFIRMED.

² Castle also argues that “[w]hen Wilson called Briggeman to see if he could return, Briggeman told him the matter was out of his control and in the hands of Deutsch.” In support of this statement, Castle provides no citation to evidence. Rather, Castle cites to counsel's statement, which is not evidence. See Iowa Civil Jury Instr. 100.4. In any event, the statement equally supports a finding that Deutsch was an agent for the Briggemans as it does a finding that the Briggemans acted as agents of Deutsch.