

IN THE COURT OF APPEALS OF IOWA

No. 6-947 / 05-1700
Filed January 18, 2007

JOSEPH J. CANCELLIERE II,
Plaintiff-Appellant,

vs.

**PROFESSIONAL BUILDING SERVICES
OF THE QUAD CITIES, INC.,**
Defendant-Appellee.

Appeal from the Iowa District Court for Scott County, C.H. Pelton, Judge.

Joseph Cancelliere II appeals from a district court ruling denying his petition for payment of wages pursuant to Iowa Code chapter 91A (2003).

AFFIRMED.

Robert S. Gallagher of Gallagher, Millage & Gallagher, P.L.C., Davenport,
for appellant.

Jennie Clausen and Catherine Zamora Cartee of Cartee & Clausen Law
Firm, P.C., Davenport, for appellee.

Heard by Sackett, C.J., and Huitink and Vogel, JJ.

HUITINK, J.

Joseph Cancelliere II appeals from a district court ruling denying his petition for payment of wages pursuant to Iowa Code chapter 91A (2003).

I. Background Facts and Proceedings

Cancelliere was hired as a window washer and carpet cleaner by Professional Building Services of the Quad Cities, Inc. (PBS) on June 24, 2003. At the time of his hire, PBS required Cancelliere to fill out an "Employee Building and Status" form for his personnel file. The form provided PBS with personal information so Cancelliere could be entered into the payroll system. Cancelliere's form indicated he was hired as a window washer with a start date of June 24, 2003; he was to receive a training wage of nine dollars per hour for the first two weeks of his employment; and he would become part of the thirty-seven-percent commission program thereafter. The document was signed by Cancelliere and a receptionist, and initialed by Chad Johnson, president of the company.

On October 21, 2003, Cancelliere sought a letter from PBS regarding his wages in order to receive governmental assistance for his pregnant wife. The company's bookkeeper, Janet Lindstrom, typed a letter verifying Cancelliere's employment and describing generally the manner in which Cancelliere was paid:

He is paid 37% commission of the billing for each window washing job that he does. Joe also has accepted the position of carpet cleaning and is paid a 30% commission of the billing for each carpet cleaning job that he does.

Cancelliere wrote a letter to Jeff Johnson, his direct supervisor, and Chad Johnson on October 27, 2003. In the letter, Cancelliere expressed concerns with his pay. He stated, "It is my understanding that I am to make 100% of the

possible commission on jobs that I'm training new employees. I believe that this has not happened." He recounted a conversation with Jeff Johnson during which he told Jeff, "I'm not interested in doing the inside of these buildings because the other workers had already used to [sic] much of the time and haven't got enough done."

Upon receipt of the letter, Chad Johnson advised Cancilliere that the bookkeeper, Lindstrom, was out of the office until November 3, 2003, and the issues would be investigated upon her return. The morning of November 3, Cancilliere arrived at Lindstrom's office and demanded pay information, arguing with Lindstrom about her calculations. Chad Johnson arrived and advised Cancilliere that Lindstrom had not had an opportunity to review the calculations. When Cancilliere continued arguing, Johnson demanded he immediately leave the office. Johnson terminated Cancilliere on November 4, 2003, based on his belligerent behavior and violations of PBS policy. Cancilliere refused to sign an exit review written by Johnson, detailing the events leading up to Cancilliere's termination.

Cancilliere filed a petition claiming PBS violated the Iowa Wage Payment Collection Law. See Iowa Code ch. 91A. Following a bench trial, the district court entered a written ruling, entering judgment in favor of PBS. The court found the terms of an oral contract between PBS and Cancilliere were those set forth in exhibit 10, a description of the pay program for commission workers at PBS typed by Chad Johnson on November 5, 2003, and attached to Cancilliere's exit review. The document indicated the commission paid after a new hire completes the two-week training period

is paid at a 37% of the gross billing of the project. Due to the size and time frame of these projects, most jobs require more than one worker to complete. For that reason, the 37% payout is split among all workers involved. The payout is derived in the following manner:

Gross Billing

(Less equipment rental)

(Less any damages/repairs, if applicable)

Remaining balance

37% of remaining balance

(Less any hours worked at the \$9.00/hr training rate plus payroll taxes if applicable.)

Balance after hourly workers

The balance after hourly workers is then split among the remaining commission workers. Payout is determined by the amount of hours each commission worker had spent on the project and paid accordingly. The payout of each commission worker divided by the hours spent by that worker determines the hourly rate received.

Johnson testified at the hearing that the document reiterated terms of the program utilized since the company began employing window washers. The court found that Cancilliere “essentially understood” the terms of the thirty-seven-percent commission. The court further found Cancilliere’s interpretation of the contract terms was unreasonable and that the testimony of Janet Lindstrom and Chad Johnson was more credible than that of Cancilliere. The court continued,

Thus, the court finds that PBS performed their terms of the employment contract and that Cancilliere has failed to prove by a preponderance of the evidence that PBS breached the terms of the oral employment contract.

. . . .

Therefore, the court concludes that the wage claim under Iowa Code chapter 91A is not triggered

Cancilliere appeals, arguing the district court erred in (1) determining there was not a written employment agreement between PBS and Cancilliere, (2) allowing PBS to introduce parole evidence to interpret the parties’ written employment agreement, (3) determining the terms of the oral employment

agreement, and (4) determining that chapter 91A is not triggered in this case. Cancilliere also requests an award of appellate attorney fees.

II. Standard of Review

We review actions filed at law for correction of errors at law. Iowa R. App. P. 6.4; *Business Consulting Servs., Inc. v. Wicks*, 703 N.W.2d 427, 429 (Iowa 2005). The district court's findings of fact "have the effect of a special verdict and are binding if supported by substantial evidence." *Business Consulting Servs.*, 703 N.W.2d at 429. Evidence is substantial "when a reasonable mind would accept it as adequate to reach a conclusion." *Id.*

III. Discussion

Upon application of our limited standard of review, we find no legal error requiring reversal in this case. Substantial evidence supports the district court's conclusion that no written contract of employment existed between PBS and Cancilliere. "In order to be bound, contracting parties must manifest a mutual assent to the terms of the contract, and this assent usually is given through the offer and acceptance." *Kristerin Dev. Co. v. Granson Inv.*, 394 N.W.2d 325, 331 (Iowa 1986). The document Cancilliere argues formed a written employment agreement, the "Employee Building and Status" form, did no more than assure Cancilliere was properly entered into the PBS payroll system. Because there was no written agreement, the parole evidence rule was not implicated; accordingly, Cancilliere's second assignment of error is without merit. See *Hubbard v. Marsh*, 241 Iowa 163, 173, 40 N.W.2d 488, 494 (1950) (parole evidence rule applies "[w]here a written contract is complete and its terms are neither ambiguous or uncertain" (emphasis added)).

As for Cancilliere's remaining assignments of error, the arguments Cancilliere raises are based solely on the district court's findings of fact. "The questions of whether an oral contract existed and whether it was breached are ordinarily for the trier of fact." *Bowser v. PMX Indus., Inc.*, 545 N.W.2d 898, 899 (Iowa Ct. App. 1996). Substantial evidence supports the district court's findings related to the terms of an oral employment agreement, and we will not disturb its ruling on appeal.

Similarly, the district court's determination that chapter 91A was not triggered is supported by substantial evidence. PBS paid Cancilliere the reasonable value of his services during his employment; Cancilliere failed to prove otherwise. Thus, he was not entitled to recover under chapter 91A.

Cancilliere's request for appellate attorney fees is denied. We affirm the judgment of the district court.

AFFIRMED.