

**MISSOURI CIRCUIT COURT  
TWENTY-SECOND JUDICIAL CIRCUIT  
(St. Louis City)**

MICHAEL J. HAAS, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 THOMAS W. McGRATH AND )  
 THOMAS W. McGRATH, TRUSTEE, )  
 )  
 Defendants. )

Cause Nos. 1422-SC00505,  
506, 507, 525.

Division No. 29

**FILED**  
DEC 23 2015  
22<sup>ND</sup> JUDICIAL CIRCUIT  
CIRCUIT CLERK'S OFFICE  
BY \_\_\_\_\_ DEPUTY

**ORDER AND JUDGMENT**

This is an action by Plaintiff Michael J. Haas to recover the face value of certain checks issued to Plaintiff by Defendant Thomas W. McGrath<sup>1</sup>. Plaintiff alleges that "[i]n return for advancement of cash to his friend, I accepted checks that have now been either NSF or stop payment. He refuses to make checks good or negotiate." The petition identified eight (8) specific checks that failed to clear his bank. Plaintiff's original petition was filed in Small Claims Court and was later consolidated with three other actions also against Defendant. A total of twelve (12) checks are at issue. The checks were drawn on the Gateway Metro Federal Credit Union and are check numbers 5663 in the amount of \$600, 5675 for \$1,300, 5668 for \$1,500,

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<sup>1</sup> The checks at issue here were drawn on an account that shows "Thomas W. McGrath, Trustee" as the payor. For the sake of simplicity, the Court will refer to Defendants in the singular.

5674 for \$1,200, 5657 for \$1,500, 5650 for \$1,000, 5661 for \$1,000, 5658 for \$1,500, 5670 for \$2,000, 5662 for \$1,500, 5659 for \$1,500 and 5677 for \$1,800. On November 9, 2015, the day of trial of this matter, the Court denied as untimely Defendant's motion for continuance and motion for leave to file an amended counterclaim. The matter was tried to the Court and submitted for a ruling along with Defendant's motion for directed verdict at the close of Plaintiff's case. For the reasons set forth below, the Court finds that Defendant's motion for directed verdict should be granted.

Both Plaintiff and Defendant testified at trial and the following exhibits were entered into evidence: a document purporting to show the number of times a Mr. Stanley Atherton called Plaintiff over a three day period regarding money transfers between Defendant and Mr. Atherton; photocopies of four (4) check (5677, 5671, 5673, and 5679); the stop-payment request Defendant filed with the Credit Union; and a letter from the St. Louis Circuit Attorney's Office to Defendant regarding certain unpaid checks. The Court finds that Defendant's testimony was credible, and that Plaintiff's testimony generally was not credible.

The evidence established the following. In the fall of 2011, Defendant entered into a personal relationship with Mr.

Atherton. In 2012, Mr. Atherton sought to obtain money from Defendant purportedly to pay for certain legal problems and other costs Mr. Atherton was faced with. Defendant agreed to assist Mr. Atherton, and over the course of several months Defendant transferred substantial money to Mr. Atherton directly, and because Mr. Atherton had no bank accounts with which to process checks, eventually with the assistance of Plaintiff. Defendant testified that Plaintiff and Mr. Atherton were friends and that Plaintiff agreed to assist Defendant in conveying the funds to Mr. Atherton by accepting post-dated checks made out to Plaintiff; Plaintiff would then give cash in that same amount to Mr. Atherton. Defendant testified after learning that Plaintiff was keeping a large part of the money intended for Mr. Atherton, Defendants stopped payment on the checks not yet cashed by Plaintiff. Among those are the checks at issue here.

Plaintiff testified that the arrangement was this: Mr. Atherton would get Defendant to agree to give Mr. Atherton money in the form of a check. The check would be made out to Plaintiff, who typically would purchase pre-paid cash cards of up to \$500 each, which he then gave to Mr. Atherton. Plaintiff testified that he usually kept for himself half the amount of each check. Plaintiff further testified that the total value of

the checks processed in this way exceeded \$50,000 and that he kept more than \$25,000 of that. When asked whether he told Defendant he was keeping some of the money for himself, Plaintiff's answer was vague at best:

Q: On that date that we are talking about, in January of 2014, you told him that you were charging Mr. Atherton for your services in cashing the checks?

A: Not particularly that I remember, . . . .

The only other evidence presented with respect to any agreement to pay Plaintiff for his part in making the transfers was the following testimony by Plaintiff:

And Mr. McGrath would occasionally make a comment to the effect: Thank you, Michael Haas, for doing this. I guess you are being taken care of, aren't you. And I would say: Yes.

Plaintiff did not present any evidence that he conveyed any funds to Mr. Atherton at any specific time or with respect to any specific check. In fact, counsel for Plaintiff repeatedly objected to the introduction of any such testimony or evidence, arguing that it was irrelevant. Counsel for Plaintiff insisted that the only issue before the Court was whether Defendant made good on the checks. Plaintiff testified that he did not keep a log book or any other writing to keep track of his payments to Mr. Atherton; all he had were the checks themselves.

Counsel for Plaintiff has characterized this case as a simple application of Section 570.123 RSMo. Plaintiff would

apply the statute to mean that for Plaintiff to prevail against Defendant he need only establish that the checks were made payable to Plaintiff and that they were not honored by Defendant's bank. Plaintiff is incorrect for two reasons. First, Plaintiff's petition did not seek relief under the statute, and second, the statute does not apply to this case. The last sentence of Section 570.123 states that "[t]he provisions of this section will not apply in cases where there exists a bona fide dispute over the quality of goods sold or services rendered." In this case there is indeed a bona fide dispute over the quality of the services rendered by Plaintiff. More specifically, Defendant disputes that the arrangement they had entitled Plaintiff to any part of the money intended for Mr. Atherton.

As written, Plaintiff's petition asserts a claim for breach of contract. Plaintiff testified that the agreement between the parties was an oral one. "A contractual relationship may be established without a written contract where the circumstances and the acts and conduct of the parties support a reasonable inference of a mutual understanding and agreement that one party perform and that the other party compensate for such performance." Follman Properties Co. v. Henty Const. Co., Inc., 664 S.W.2d 248 (Mo.App.E.D. 1983). A court will enforce an

oral contract if (1) the contract is definite; (2) it is proved as pleaded; (3) it is established by recent, definite conversations; (4) it is fair; (5) the proof leaves no reasonable doubt that the contract was made and full performance, as far as possible, has been had; (6) the performance is referable solely to the contract; (7) the contract is based upon adequate consideration; and (8) a real contract, rather than a mere disposition to agree, is shown.

Asbury v. Crawford Elec. Co-op, Inc., 51 S.W.3d 152, 157

(Mo.App. S.D. 2001). "A breach of contract action includes the following essential elements: (1) the existence and terms of a contract; (2) that plaintiff performed or tendered performance pursuant to the contract; (3) breach of the contract by the defendant; and (4) damages suffered by the plaintiff." Keveney v. Missouri Military Acad., 304 S.W.3d 98, 104 (Mo. 2010).

The Court finds that Plaintiff failed to make a prima facie case for breach of an oral contract for several reasons. First, Plaintiff did not prove the existence of an enforceable contract. The essential elements of a contract are: (1) competency of the parties to contract; (2) subject matter; (3) legal consideration; (4) mutuality of agreement; and (5) mutuality of obligation. Bellemere v. Cable-Dahmer Chevrolet, Inc., 423 S.W.3d 267, 273 (Mo.App. W.D. 2013). The Court finds


there was no meeting of the minds on key aspects of the purported contract. In particular, there was no agreement as to whether or how much Plaintiff would be compensated by Defendant for assisting Defendant and Mr. Atherton in transferring the funds. Plaintiff presented no evidence of any agreement that Plaintiff could keep 50% and more of the funds being conveyed.

Plaintiff also failed to present any evidence that he performed his obligations under the purported contract, i.e., that he conveyed any money to Mr. Atherton with respect to the specific checks at issue. As noted above Plaintiff made the conscious decision to not present that evidence. Nor did Plaintiff present any evidence that he sustained any damages. There was no evidence that Plaintiff did anything as part of his duties under the purported contract or suffered any loss in relation to the checks at issue.

Plaintiff's theory of the case—that Section 570.123 governed—is reflected in his proposed order in which he states that "The only legal issues before the Court is did the Defendant make a promise to pay via checks abovementioned, and did he fail to pay as agreed." That theory is rejected, and, Plaintiff not having proved any other theory for recovery, Defendant's motion for directed verdict at the close of Plaintiff's case is well taken, and is hereby granted.

THEREFORE, it is Ordered and Decreed that judgment is hereby entered in favor of Defendants Thomas McGrath and Thomas McGrath, Trustee, and against Plaintiff Michael J. Haas. Costs are taxed against Plaintiff.

SO ORDERED:

  
Nicole Colbert-Botchway, Judge

Dated:

12/23/15