

**IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI
ASSOCIATE DIVISION**

AC,)	
	Plaintiff,)	
)	Case No.
vs.)	
)	Division No. 34
DJ,)	
	Defendant.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter is before the Court after a bench trial on May 11, 2017. The Court having considered the evidence presented, the credibility of the witnesses, the arguments of counsel at trial and having taken judicial notice of the Court's own file, hereby makes the following findings of fact and conclusions of law. Any finding denominated as a finding of fact that should be considered a conclusion of law shall be considered a conclusion of law. Any finding denominated as a conclusion of law that should be considered a finding of fact shall be considered a finding a fact.

FINDINGS OF FACT

1. Plaintiff AC is the owner of Custom Homes, a custom home builder.
2. Defendant D [REDACTED] J [REDACTED] is the owner of a [REDACTED] Carpentry, LLC, a carpentry company.
3. DJ started working as a carpentry subcontractor for AC's home building company in July 2012.

4. In November 2013 DJ became the superintendent and operations manager for Custom Homes.

5. DJ's annual payment for his role as superintendent and operations manager for Custom Homes was \$50,000 per year.

6. In September 2014, C [REDACTED] transferred \$6,500.00 from his [REDACTED] Custom Homes account to [REDACTED] Carpentry, LLC.

7. At the time of the transfer of funds, witness KK was present, heard DJ thank AC for the funds and heard AC state "No problem, brother."

8. There was no writing documenting any alleged loan contract or obligation for DJ to repay \$6,500 to AC

9. DJ continued to work for AC for 18 months after the transfer of funds, until March 2016.

10. In January 2015, shortly after the transfer of funds, AC increased DJ's compensation for his superintendent/operations manager services from \$50,000 per year to \$75,000 per year.

11. AC never attempted to set off the \$6,500 against this increase in compensation.

12. Despite the parties working closely together, AC never asked DJ for repayment of the \$6,500, or stated that the transfer of the funds was a loan or that he expected repayment.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over this matter and the parties.
2. Venue is appropriate in the Associate Circuit Court for the St. Louis County.

3. The essential elements of an enforceable contract are: (1) competency of the parties to contract; (2) subject matter; (3) legal consideration; (4) mutuality of agreement; and (5) mutuality of obligation. *Zipper v. Health Midwest*, 978 S.W.2d 398, 416 (Mo. App. 1998).

4. The parties' intentions with respect to the \$6,500 are manifested by reviewing the parties' actions and words. *See White v. Pruiett*, 39 S.W.3d 857, 862 (Mo. App. 2001) ("Whether a contract is made and, if so, what the terms of the contract are, depend upon what is actually said and done and not upon the understanding or supposition of one of the parties.").


5. A loan agreement requires not only a definite offer, but an unequivocal acceptance. *See Fenberg v. Goggin*, 800 S.W.2d 132, 134 (Mo. App. 1984).

6. This Court finds that Plaintiff AC has failed to meet his burden of proof that the parties entered into a loan contract pursuant to which Plaintiff AC agreed to loan Defendant DJ \$6,500, and Defendant DJ agreed to repay \$6,500 to Plaintiff AC

ORDER AND JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is hereby entered in favor of Defendant DJ and against Plaintiff AC on Plaintiff's Petition. Costs to be taxed against Plaintiff.

SO ORDERED:



The Honorable Renee D. Hardin-Tammons

06-01-17
Date