

The State of South Carolina

In the Court of Appeals

Appeal from Richland County
Robert Hood, Circuit Court Judge
Case number 2015CP40-4319

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NOV 29 2018

SC Court of Appeals

JK Trading Inc.,

Vs.

Karl & Sasha, Inc.,

Appellant

Respondent

Brief of Appellant

Trace Dillon

Attorney for Appellant JK Trading, Inc.

P.O. Box 1207

Buford Ga 30515

770-513-6400

trace@dillonlawfirmpe.com

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II. Statement of Issues on Appeal

Whether the trial court erred in granting judgment to Karl & Sasha when no evidence was introduced contradicting the testimony of JK Trading, Inc. that Karl & Sasha owed \$57,809.01 for unpaid product.

III. Statement of the Case

This case concerns the appeal of a judgment rendered in the Circuit Court of Richland County on June 20, 2017. A notice of appeal was filed on July 20, 2017. The underlying case was filed on July 17, 2015 and concerned a debt allegedly owed by Karl & Sasha, Inc. to JK Trading, Inc. The complaint alleges an account stated, a breach of contract and a claim for quantum meruit. A judgment was rendered in favor of Karl and Sasha after a bench trial of the case.

IV. Argument

a. Statement of Facts

JK Trading Inc. filed suit to collect on hair products sold to Karl & Sasha. At trial, the only testimony offered was from the Chief Financial Officer of JK Trading, Ms. Chung. There was no testimony offered to contradict this testimony. Ms. Chung testified that various items were ordered from JK Trading and delivered to Karl & Shasha. See Record at pg. 31. Ms. Chung testified that items were shipped Cash on Delivery or COD with an invoice. R. at 54. Each time the items were shipped, an invoice was attached that included terms for interest and restocking fees. R. at 41. With each shipment, a check was tendered by Karl & Sasha. Some of these checks bounced. When JK Trading sought payment, some items were returned. Ms. Chung testified that the Statements tendered into evidence represented the unpaid invoices that were still due. R. at 42. Ms. Chung also testified to receiving a letter from Karl & Sasha that admitted a balance was still due. R. at 50. After JK Trading rested its case, Karl & Sasha moved for a directed verdict. Karl & Sasha's motion for a directed verdict was denied. R. at 101. Karl & Sasha attempted to call an undisclosed witness at trial. The Court did not allow this witness and Karl & Sasha offered no testimony at trial. R. at 101. After the close of the evidence, JK Trading moved for a directed verdict. R. at 101. For the legal reasons that follow, JK Trading Inc.'s directed verdict motion should have been granted and judgment should have been issued to JK Trading in the amount of \$57,809.01.

b. The court erred in granting judgment to Karl and Sasha, when the testimony of JK Trading, Inc. was not contradicted.

In this case, the uncontradicted testimony of Ms. Chung is that the amount owed from Karl & Sasha is \$57,809.01. In deed, correspondence from Karl & Sasha admits a balance is owed. Although Ms. Chung was cross examined about the documents produced in discovery, there is no evidence in the record contradicting the balance testified as due from Ms. Chung. These invoices and records were introduced at trial, and no one testified that the balance was incorrect. Where evidence is full upon the matter of proof of an account by the books of original entry, and there is no evidence to the contrary, a circuit judge should be justified in assuming the proof of the account. W.T. Rawleigh Co. v. Thompson 122 S.C. 43 (1922). When relevant and competent testimony is introduced, the inference of law is that it tends to prove the fact to which it is directed. Wingo v. New York Life Ins. Co., 155 S.C. 206 (1919).

In this case, evidence was presented that the balance due on the account was \$57,809.01 based on unpaid invoices. There was no evidence from Karl & Sasha that this amount was incorrect. At trial, Karl & Sasha 's counsel cross examined JK Trading's witness about invoices for product shipped and paid for, indicating these invoices and payments were not listed in the statements. The uncontradicted testimony of Ms. Chung was that the invoices paid were not listed in the statements presented. See R. at 41. Since this evidence was uncontradicted, the trial court erred in failing to infer the balance was proven.

c. JK Trading, Inc.'s Directed Verdict Motion should have been granted.


A court, on a directed verdict motion, must determine whether any evidence existed on each element of a cause of action. If the evidence as a whole is susceptible to more than one

reasonable inference, a jury issue is created and a motion should be denied. However, a directed verdict should be granted when the evidence raises no issue for a jury as to a defendant's liability. Fay v. Grand Strand Reg'l Med Ctr., 412 SC 185 (2015). In this case, Ms. Chung's testimony was not contradicted by any opposing testimony. Although opposing counsel raised the issue of paid invoices not being included in the statements presented at trial, her testimony was uncontradicted that those invoices were paid and payments were credited to the missing invoices, and thus not included in the suit to collect unpaid amounts. As such, the court should have directed a verdict in JK Trading's favor.

V. Conclusion

Given the uncontradicted testimony of JK Trading, this court should reverse the trial court and remand this case to enter judgment on behalf of JK Trading in the amount of \$57,809.01.

Submitted this 29 day of November, 2018.

BY 
TRACE DILLON
Bar No. 16857
P.O. Box 1207
Buford, GA 30515
770/513-6400(Office)

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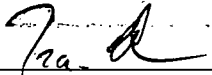
Respondent

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing Brief of Appellant by First Class mail to:

Tucker Player
1415 Broad River Road
Columbia SC 29210

Dated this 29 day of November, 2018.

BY 
TRACE DILLON
Bar No. 16857
P.O. Box 1207
Buford, GA 30515
770/513-6400(Office)

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