

RENDERED: MAY 4, 2018; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-000314-MR

GARY L. LAMB, SR.

APPELLANT

v.

APPEAL FROM SCOTT CIRCUIT COURT
HONORABLE PAUL F. ISAACS, JUDGE
ACTION NO. 09-CI-00282

LIGHT HEART, INC., d/b/a
LIGHT HEART LAND HOLDINGS
AND COLLEEN LONDON

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, JOHNSON AND TAYLOR, JUDGES.

JOHNSON, JUDGE: Gary Lamb, Sr. (“Lamb”), appeals from the February 7, 2017 order of the Scott Circuit Court, holding that no contract exists between him and either Light Heart, Inc. (“Light Heart”), or Colleen London (“London”).

After reviewing the record in conjunction with the applicable legal authorities we AFFIRM.

BACKGROUND

On January 20, 2006, Lamb and London signed a document, prepared by Lamb, which purported to establish a cost-plus agreement between the two concerning a remodeling of an old house. The alleged agreement called for an hourly rate of pay for Lamb, Walter G. Lamb, and additional general laborers, and states:

COST PLUS, AFTER WE COMPLETE THE WORK ASKED OF US TO DO MR GARY L. LAMB SR. OF LAMB'S ODDS AND ENDS WILL RECEIVE 10% OF THE TOTAL COST OF THE WORK DONE. THIS INCLUDES LABOR AND MATERIALS. THIS COVERS BUILDING PERMITS, TRIPS TO PICK UP MATERIALS[WITHIN GEORGETOWN AREA, AND TIME SPENT CONCERNING THIS JOB.

The only description in the agreement as to the work to be performed is to "Remodle (sic) house and turn into art center." The agreement specifies that time will be turned in and paid on a weekly basis, but gives no additional details concerning the project.

In April 2006, Janna Gingras ("Gingras"), a principal in Light Heart, came to visit with her daughter, London. During this visit Gingras was introduced to Lamb. While it was Light Heart that had been paying for Lamb's work each week, Gingras and Light Heart were unaware that London had signed an agreement with Lamb. Gingras let it be known to Lamb that Light Heart actually owned the property which was the subject of the renovations. In addition, Gingras

learned that London and Lamb had begun a romantic relationship in addition to their work relationship.

When Gingras returned in November 2006, she became aware of the signed agreement between London and Lamb, objected to the cost-plus provision, and ejected Lamb from the job. However, after discussions with London, Gingras agreed that Lamb could return to the job, but only under specified conditions. Gingras stated in a letter to Lamb that she might be willing to pay the 10% for some of the work done, but not on any future work. The terms of work were rejected by Lamb. Instead, Lamb prepared a new “agreement” for London’s signature specifying that he would conduct business only with London. In addition, in the same document, Lamb attempted to ratify the January 6, 2006 agreement. Both London and Lamb signed the new “agreement” on November 15, 2006, again without the knowledge or consent of Light Heart or Gingras.

It appears from the record that Lamb’s work on the project ended on or about January 2007. Sometime in early 2008, London and Lamb broke off their relationship. While all parties acknowledge that Lamb was paid for all labor, material and supplies for the work he had done, Lamb began making demands for the payment of the additional 10%, which he defined as the cost-plus amount. After failing to receive his requested final payment, on March 27, 2009, Lamb filed suit against London and Light Heart, seeking \$27,000, the 10% profit he claimed due under the cost-plus provision. On March 31, 2008, Lamb filed a Mechanics and Materialman’s Lien against the property. The matter was tried to

the court in a three-day bench trial. On February 7, 2017 the court issued its Findings of Fact and Conclusions of Law. On February 20, 2017, Lamb filed a Motion for Amendment of Findings, Additional Findings on Essential Issues of Fact and Motion for Judgment Notwithstanding the Verdict or Reopen Judgment in Lieu of New Trial. On February 22, 2017, Lamb filed a Notice of Withdrawal of Motion, and on February 22, 2017, Lamb filed a Notice of Appeal.

STANDARD OF REVIEW

The court conducted a bench trial in this action. Accordingly, our review is based upon the clearly erroneous standard set forth in Kentucky Rules of Civil Procedure (“CR”) 52.01. CR 52.01 requires that the findings of fact not be set aside “unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.”

The interpretation of a contract is a question of law and thus is subject to *de novo* review. *Cantrell Supply, Inc. v. Liberty Mutual Ins. Co.*, 94 S.W.3d 381, 385 (Ky. App. 2002).

ANALYSIS

This lawsuit, which began more than eight years ago has generated a great deal of anger and animosity among the parties. While we recognize the heightened emotions due to underlying relationships of the parties, we suggest that

everyone adhere to the wisdom of “Blessed is he that blesseth thee, and cursed is he that curseth thee.”¹

Lamb alleges numerous issues on appeal but all relate to whether or not he had a valid contract with either London, Light Heart, or Gingras. Therefore, the first issue to be addressed on appeal is whether a valid contract exists between Lamb and any of the other parties. The document on which Lamb relies consists of two pages and reads as follows:

THIS IS A CONTRACT BETWEEN LAMB’S ODDS AND ENDS, P.O. BOX 751 GEORGETOWN, KY 40324. AND Colleen London, (signature). THIS AGREEMENT IS A COST PLUS AGREEMENT. THE FOLOWING (sic) IS A BREAK DOWN OF HOW IT WORKS.

LABOR: GARY L. LAMB SR. \$25.00 PER HR. {LICENSED BUSINESSOWNER AND ELECTRICIAN]

LABOR: WALTER G. LAMB \$25.00 PER HR. {LICENSED BUSINESS OWNER AND ELECTRICIAN.

LABOR:NOTE: ADDITIONAL GENERAL LABORER[S] @ \$10.00 -\$15.00 PER HR.

DEFINITION :COST PLUS, AFTER WE COMPLETE THE WORK ASKED OF US TO DO .MR GARY L. LAMB SR. OF LAMB’S ODDS AND ENDS WILL RECEIVE 10% OF THE TOTAL COST OF THE WORK DONE .THIS INCLUDES LABOR AND MATERIALS. THIS COVERS BUILDING PERMITS, TRIPS TO PICK UP MATERIALS[WITHIN GEORGETOWN AREA,AND TIME SPENT CONCERNING THIS JOB.

NOTE: THIS CONTRACT DOES NOT COVER THE ELECTRICAL.IT WILL BE A SEPARATE(sic) CONTRACT. HOUSE LOCATION: 216 North Broadway Georgetown, Ky 40324(handwritten in)

¹ Numbers 24:9.

WORK DISCRIPTION(sic): REMODLE(sic) HOUSE AND
TURN INTO ART CENTER.

PAY SCEDUAL(sic): TIME WILL BE TURNED IN
WEEKLY.

GARY L. LAMB SR

Gary L. Lamb Sr (signature) 1-20-06

DATE:

Colleen London (signature)

MRS.

DATE:

1/20/06

For a contract to exist the following elements must be present: there must be an offer and acceptance, full and complete terms outlining the basis of the contract, and consideration. *Cantrell* at 384 (Ky. App 2002). The document which both Lamb and London signed on January 20, 2006, constitutes an offer for work and states the amount of consideration to be paid on a per hour basis.

However, the one element missing from that document is the actual terms of the contract. The document contains no beginning date, ending date, definition of what work is to be done, amount of the contract, or when the terms of the contract are complete. For a contract to be valid, it must set forth the promises of performance to be rendered by each party, and the terms of the contract must be sufficiently complete and definite to enable a court to determine the measure of damages in the event of breach. *Kovacs v. Freeman*, 957 S.W.2d 251, 254 (Ky. 1997).

In this case, the court found and we concur, that the document in question is devoid of the essential elements of a contract. At most, the original document outlines an hourly, week to week agreement setting out the rate of pay per hour for Lamb's work. Yet, the document doesn't specify what work is due nor does it impose an obligation on Lamb to perform any specified work. All parties agreed that Lamb turned in his timesheet weekly and was paid weekly. Since the document has no actual terms telling us what work was to be performed, when it is to be considered complete or who is to determine if the work is satisfactory, there was no agreement on the project. At best, the document presents an open-ended agreement for work to be performed at an hourly rate, week to week. Not every agreement or understanding rises to the level of a legally enforceable contract. *Kovacs* at 254. The fact that one party may have intended different results, however, is insufficient to construe a contract at variance with its plain and unambiguous terms. *Cantrell* at 387. In this case, Lamb drafted the document, and while he thought he drafted a valid contract, this document fails to satisfy the basic requirements of a contract. Thus, we find that the court was correct as a matter of law in its ruling that no actual contract existed between Lamb and any of the other parties.

The second issue presented on appeal is whether London acted as an agent for Light Heart or Gingras. While we find absolutely no evidence in the record to support that Light Heart had authorized London to act on its behalf in this matter, since we have determined that the contract on which Lamb is basing his

claim is invalid, this issue is moot. This is further demonstrated by Lamb's attempt to negotiate a new agreement with London in November, specifically excluding Gingras and Light Heart. That act alone demonstrates that he was aware no contract existed between him and any of the parties. Since there was no contract, Lamb's claim for the 10% cost plus also fails.

We concur with the court that Lamb failed to establish that a valid contract existed between him and any of the other parties. Since we concur that the original document upon which Lamb relied to claim his 10% cost plus money is an invalid contract, we agree with the court that the mechanics' lien which he filed against Light Heart's property must also be released. We find no error in the court's ruling.

As to Lamb's arguments that the court failed to make findings on essential issues pursuant to CR 52.04, we point out that Lamb failed to bring to the attention of the trial court a written request for such findings. Instead, he chose to withdraw his initial motion and proceed with an appeal. CR 52.04 requires that in order to preserve the issue Lamb was required to file a motion asking for additional findings, and having failed to do so, has not preserved that issue on appeal.

CONCLUSION

Based upon the foregoing, we hereby AFFIRM the February 7, 2017 Order of the Scott Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Gayle E. Slaughter
Lexington, Kentucky

BRIEF FOR APPELLEE, LIGHT
HEART, INC.:

Charles M. Perkins
Georgetown, Kentucky

BRIEF FOR APPELLEE, COLLEEN
LONDON:

Neil E. Duncliffe
Georgetown, Kentucky