

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2004-CA-001629-MR

RITZERT COMPANY, INC.

APPELLANT

v. APPEAL FROM HENDERSON CIRCUIT COURT  
HONORABLE STEPHEN A. HAYDEN, JUDGE  
ACTION NO. 03-CI-00839

WEDDLE BROTHERS CONSTRUCTION COMPANY, INC.

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DYCHE AND SCHRODER, JUDGES; ROSENBLUM, SENIOR JUDGE.<sup>1</sup>

DYCHE, JUDGE: Ritzert Co., Inc., appeals the denial of its motion to compel arbitration against Weddle Brothers Construction, Inc.

This case arises from contracts concerning the construction of the Henderson County Judicial Center. After a bidding process, Henderson County hired Weddle Brothers as the general contractor for the project. Weddle Brothers had a

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<sup>1</sup> Senior Judge Paul W. Rosenblum sitting as Special Judge by Assignment of the Chief Justice pursuant to Section 110 (5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

subcontract with Ritzert for the performance of mechanical work. Disputes over additional labor and payment arose throughout the project. The contracts are to be interpreted by Indiana law.

On November 14, 2003, Ritzert filed a demand for arbitration with the American Arbitration Association (AAA) to arbitrate disputes it had with Weddle Brothers. Weddle Brothers protested arbitration and filed an action in Henderson Circuit Court against Ritzert and other defendants seeking a declaration of rights and money damages.

The trial court found that Weddle Brothers could not be compelled to arbitrate under Indiana law because there was no enforceable agreement to arbitrate disputes. The court also found that certain representations made by Weddle did not amount to a modification of the contract nor was Weddle estopped from denying the terms of the original agreement. This appeal follows.

Ritzert admits that there was no written agreement with Weddle Brothers to arbitrate. Instead, it argues that Weddle Brothers should be estopped from denying arbitration because of certain representations Weddle Brothers made through correspondence.

Under Indiana law, equitable estoppel requires the establishment of four factors: "(1) a representation or concealment of a material fact, (2) made by a person with

knowledge of the fact and with the intention that the other party act upon it, (3) to a party ignorant of the fact, (4) which induces the other party to rely or act upon to his detriment." Clark v. Crowe, 778 N.E.2d 835, 840 (Ind.Ct.App. 2002)(citation omitted). However, "the law will not protect [people] who fail[] to use common sense and judgment" when there is a deal at arm's length and no fiduciary relationship. Id.

We have reviewed the contract and correspondence and agree with the trial court that there was neither an agreement to arbitrate in the contract nor any modification thereafter. We also find that Ritzert should not have reasonably relied on Weddle Brothers' apparent misapprehension of the contract. Although Ritzert argues that it did not sign the general contract which contained the dispute resolution provisions, it did sign the subcontract which incorporated all the terms of the general contract by reference. Parties to a contract are presumed to understand and assent to the terms of the contract that they sign. Sanford v. Castleton Health Care Center, LLC, 813 N.E.2d 411, 418 (Ind.Ct.App. 2004)(citation omitted). We cannot say that Ritzert was ignorant of the facts of the general contract. Therefore, equitable estoppel is not appropriate.

The order of the Henderson Circuit Court is affirmed.

ALL CONCUR.

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