

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000457-MR

CHARLES DISTRIBUTION, INC.

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GEOFFREY P. MORRIS, JUDGE
ACTION NO. 04-CI-001874

DEREK HALLIBURTON AND
SANDRA HALLIBURTON

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: TACKETT¹ AND TAYLOR, JUDGES; EMBERTON, SENIOR JUDGE.²

TACKETT, JUDGE: Charles Distribution, Inc., d/b/a The Window Company, appeals from a summary judgment of the Jefferson Circuit Court finding that no contract existed between Derek and Sandra Halliburton and The Window Company for windows used in the Halliburtons' home. The circuit court found that the

¹ This opinion was completed and concurred in prior to Judge Julia K. Tackett's retirement effective June 1, 2006. Release of the opinion was delayed by administrative handling.

² Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

contract that existed was between the builder and the window dealer alone, and not the home buyer. The Window Company argues on appeal that summary judgment was inappropriate because the Halliburtons allegedly agreed to be bound by the terms of the contract. We disagree and affirm.

The Halliburtons agreed with Brady Built Construction, Inc., to build a home in Simpsonville, Kentucky. The contract between the Halliburtons and Brady specified that Brady was to be responsible for furnishing materials and labor to complete the residence. Under the contract, the Halliburtons had a \$30,000 allowance for windows for their home, but a bid in excess from another potential supplier caused Brady to recommend that the Halliburtons contact The Window Company to fill an order. Sandra Halliburton selected the windows she wanted, and the proposal ultimately listed Brady as the customer, changing The Window Company's initial designation of Halliburton as the customer. The document attached to the Appellant's brief as exhibit "F" is the quote from Weather Shield Mfg., Inc., maker of the windows, to The Window Company for their customer. The document includes the following language on its cover page, and again on the final page: "The dealer's placement of an order pursuant to this quote creates an agreement between the dealer and Weather Shield Mfg., Inc. Weather Shield is not a party to any agreement between the dealer and its customer for the sale

of these items." The document then details all the windows ordered for the Halliburtons' home. The last page has a space for a signature designated "APPROVED BY:" with Sandra Halliburton's signature and the date.

After the windows were supplied, The Window Company sent an invoice requesting payment to Brady. When no payment was forthcoming, The Window Company contacted the Halliburtons who attempted to get Brady to pay the invoice. At some point during the proceedings, Brady filed for bankruptcy after removing funds from a bank account containing the proceeds from a home construction loan received by the Halliburtons. The money removed was equal to the amount owed to The Window Company, yet the invoice was never paid. Meanwhile, Sandra Halliburton ordered an additional window for the home. This time, the order listed her as the customer and she paid the resulting invoice. The Window Company filed suit against the Halliburtons seeking payment for the original order of windows. The Halliburtons requested summary judgment.

The circuit court found that the document did not create a contract between Sandra Halliburton and The Window Company. Specifically, the court relied on the designation of Brady, not the Halliburtons, as the customer, and that The Window Company was on notice that Brady was responsible for paying for the windows, while the Halliburtons would choose what

she wanted. As the court noted, this practice is not unusual, and it is logical for the home buyer to be involved in choosing such an important feature of the home. The court ruled that there was no legal effect binding the Halliburtons to pay for the windows when she signed off on the quote, approving it as reflective of the order. In its order, the trial court opined that The Window Company should have taken steps to be listed as a creditor in Brady's bankruptcy proceeding. This appeal followed.

The Window Company argues on appeal that contract formation is a question to be determined by the jury and that a genuine issue of material fact existed to be submitted to a jury. Appellants do not specify exactly what facts are in dispute to be resolved by the jury, instead relying on Hickey v. Glass, 149 S.W.2d 535 (Ky. 1941), and Audiovox Corp. v. Moody, 737 S.W.2d 468 (Ky. App. 1987) for the proposition that whether a contract was formed is a question for the jury to decide. Hickey involved a contract for the publication of opinions of the Kentucky Court of Appeals, and the defendant generally denied the existence of the contract. Obviously, where the contract's very existence is denied, a question for the jury is created. This hardly stands for the proposition that whether a contract was formed between particular parties must always be submitted to a jury, particularly where the facts are not

disputed. Audiovox involved a faulty jury instruction and very unusual facts, where an employee informed Audiovox's credit managers of suspected diversion of company money by her immediate supervisor, and an alleged assurance that she would not be discharged for revealing that information. She was, in fact, discharged, and she filed suit against both the corporation and her former supervisor. The instructions did not require the jury to consider whether Audiovox's assurance to Moody created a binding agreement, and this Court ruled that the trial court should have done so. Again, this hardly stands for the broad proposition that Appellant asserts is the law in Kentucky. Neither case has application here.

Instead, we have a fact situation that is not disputed in any meaningful way. Clearly, a contract exists between the Window Company and someone to pay for the windows it supplied. Halliburton's agreement with Brady specified that Brady would pay for the materials. Sandra Halliburton then specified to The Window Company that Brady would be paying for the materials, and The Window Company changed its quote to reflect that Brady, and not Halliburton, was the customer. The evidence shows that Appellant knew that Brady was responsible for payment for the windows supplied, not the Halliburtons. Appellant cites O'Bryan v. Massey Ferguson, Inc., 413 S.W.2d 891 (Ky. 1966) for the proposition that a contract will be enforced where contract

language is clear. Indeed, the circuit court did nothing less by the terms of the document. Contrary to Appellant's assertion, the document it claims represents a binding contract with the Halliburtons plainly states that it is intended to bind Appellant to buy windows from its supplier, and that no contract exists between its supplier and its customer. Much is made by Appellant of Sandra Halliburton's involvement in negotiating and selecting the windows, but there is nothing at all in the document that binds the Halliburtons and not Brady to pay the Appellant for its performance under the contract. From all the facts before it, the only conclusion permissible for the circuit court to make was that Brady was the Appellant's customer and subcontractor, and the only party liable to Appellant. For Appellant to recover anything, it must proceed in bankruptcy court against Brady.

The Appellant also argues that even if the contract is not enforceable against the Halliburtons, it should recover from Halliburton on an unjust enrichment theory. We disagree that equity requires Halliburton to pay The Window Company directly, since the evidence showed that Brady withdrew money from the Halliburtons' account to pay for the windows, but never paid the Appellant. The Halliburtons are clearly not unjustly enriched under these undisputed facts, as equity also requires that

Appellant recover only from Brady, the party ultimately at fault for non-performance.

For the foregoing reasons, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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