

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1987-10T2

McCOURT MANUFACTURING,

Plaintiff-Appellant,

v.

ATLANTIC CITY SPECIAL EVENTS,  
a/k/a AC PARTY RENTALS;  
LISA WIDELL and GARY WIDELL,  
Individually and EVDEL, INC.,

Defendants-Respondents.

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Submitted November 7, 2011 - Decided November 22, 2011

Before Judges Grall and Skillman.

On appeal from Superior Court of New Jersey,  
Law Division, Atlantic County, Docket  
No. L-62-09.

Saldutti, L.L.C., attorneys for appellant  
(Thomas B. O'Connell, on the brief).

Carl N. Tripician, attorney for respondents.

PER CURIAM

Plaintiff McCourt Manufacturing appeals from a final judgment entered on January 3, 2010, which dismissed its complaint seeking recovery under a book account of \$47,160.53 for three thousand white chairs it allegedly sold to defendant

Atlantic City Special Events. Defendant admitted ordering and receiving delivery of 1,000 white chairs, for which it paid \$14,226. However, defendant denied either ordering or receiving delivery of the additional 3,000 chairs for which plaintiff sought recovery in this action.

The case was tried in a bench trial. The threshold issue at trial was whether plaintiff had proven the existence of a "writing" which satisfied the statute of frauds contained in N.J.S.A. 12A:2-201(2). At the conclusion of the trial, the trial court issued an oral opinion which found that plaintiff had failed to demonstrate the existence of such a writing. In making this finding, the court gave the following explanation:

. . . When I consider the testimony of both these gentlemen I can't conclude in my mind that it was more likely than not that Mr. Widell [defendant's principal] received P-2, P-3, P-4 [the documents plaintiff relied upon to support the existence of a contract that satisfied N.J.S.A. 12A:2-201(2)] and did nothing. . . . [T]he problem I have is that the documents that [plaintiff] point[s] to as the basis for the existence of a contract, . . . [t]he proofs are at best in equipoise with respect to whether or not this gentleman [Widell] received them. Your client [plaintiff's principal Mark McCourt] says that he did, he says that he did not. I don't know where I go from there in terms of, you know, being able to find your client met the burden of proof. I find your client has not met the burden of proof with respect to the existence of a contract and as a result plaintiff's complaint must be dismissed.

In reviewing the factual findings of a trial court, our role is limited to determining whether those findings "are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 484 (1974) (quoting Fagliarone v. Twp. of N. Bergen, 78 N.J. Super. 154, 155 (App. Div. 1963)).

The trial court's finding that plaintiff failed to prove defendant's receipt of the writings required for plaintiff to demonstrate its compliance with the statute of frauds was directly supported by the testimony of defendant's principal, Gary Widell, who stated that he never received the quote (P-2), sales order (P-3), and invoice (P-4) plaintiff relied upon as the writings that satisfied the statute of frauds. Widell also testified that he only ordered 1,000 white chairs from plaintiff's salesman, Terry Clark, and plaintiff did not present Clark as a witness or produce any other evidence to dispute this part of Widell's testimony. In addition, defendant presented the testimony of its warehouse manager, Carlos Rivera, who stated that he received a delivery of only 1,000 white chairs from plaintiff. Thus, the record contains ample evidence to support not only the trial court's finding that plaintiff failed to show compliance with the statute of frauds but also that

defendant did not order or receive the additional 3,000 white chairs for which plaintiff sought payment by defendant.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION