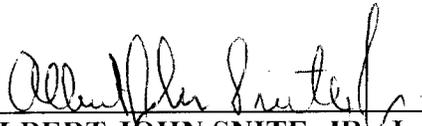


BY THE COURT:



ALBERT JOHN SNITE, JR., J.

**THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

PHILADELPHIA MEDIA	:	MAY TERM 2011
NETWORK (NEWSPAPERS),	:	
LLC,	:	
Plaintiff,	:	
	:	
v.	:	No. 2293
	:	
REACH COMMUNICATIONS	:	
SPECIALISTS, INC.,	:	
JAMES R. DAVIS, JR.,	:	Commerce Program
And SHERIFF OF PHILADELPHIA:	:	
COUNTY,	:	Control Number 13040847
Defendants.	:	
	:	

OPINION

I. Factual and Procedural History.

This motion for summary judgment arises from several years' worth of advertisements for Sheriff's sales, published in the *Philadelphia Inquirer*, a periodical of daily circulation published by Plaintiff Philadelphia Media Network, LLC ("PMN"). PMN brought suit against the Defendants the Sheriff of Philadelphia County ("Sheriff"), Reach Communications Specialists, Inc. ("Reach"), and James R. Davis, Jr., ("Davis"), the treasurer and vice president of Reach, for breach of contract and unjust enrichment, over unpaid invoices for publication of these advertisements.

Payments for the advertisements went directly from the Office of the Sheriff to PMN for many years. However, in 1989 then-Sheriff John Green came to an agreement with Defendant Reach, that Reach would handle certain aspects of the Sheriff's sale ads. On January 9, 1989, Reach, through its officers James Cassell (now deceased) and Defendant James R. Davis, Jr., submitted an Application for Credit to the publisher of the *Inquirer*, because Reach would be

placing the ads on credit. The Application for Credit contained a statement that if credit were extended, Reach would “pay all bills.” The Application also contained a “Guarantee” signed by Defendant Davis.

The Inquirer did not want to extend credit based only upon Reach’s agreement and Davis’ guarantee. It additionally required that the Sheriff verify the agency relationship and guarantee the payment. On January 29, 1989, then-Sheriff John Green sent a letter to PMN confirming that Reach was “now the advertising agency of record for the Sheriff’s Office of the City of Philadelphia.” The letter concluded by stating that Reach had “full authority to place ads coming from this office,” and that the Sheriff would “honor all costs resulting from the placement of ads by [Reach].”

Since 1989, payments from the Office of the Sheriff to PMN for publication of these advertisements has gone through Reach. PMN would submit invoices to Reach, who would submit its own invoices to the Sheriff. Invoices from 2010 and 2011, totaling \$309,892.60, submitted to Reach by PMN, went unpaid; these are the subject of this lawsuit.

II. Discussion.

a. Summary judgment is granted for Plaintiff against the Sheriff, Reach, and Davis for breach of contract.

Once the relevant pleadings have closed, any party may move for summary judgment.¹

“Pennsylvania law provides that summary judgment may be granted only in those cases in which the record clearly shows that no genuine issues of material fact exist and that the moving party is entitled to judgment as a matter of law.”² Summary judgment is

¹ Pa. R.C.P 1035.2.

² Rausch v. Mike-Meyer, 783 A.2d 815, 821 (Pa. Super. 2001).

appropriate when the evidentiary record shows the material facts are undisputed.³

The Court finds as a matter of law a contract existed between PMN and the Office of the Sheriff, and that the Sheriff has a duty to pay the money in question to PMN. Further, the Court finds that Reach and Davis independently agreed to be bound, and are accordingly also liable.

b. The office of the Sheriff is liable.

It is undisputed that PMN published the notices of Sheriff's sales in the Philadelphia *Inquirer*, that the Sheriff agreed to honor the costs of this publication in a letter dated January 25, 1989, and that PMN did not receive funds for a number of these publications. The City Solicitor argues that the Sheriff had no authority to make these contracts without the approval of the City Solicitor or the Finance Director. This argument is without merit.

The Sheriff is under an independent legal obligation to place notices of Sheriff's sale in the newspapers; consequently, this contract does not have to be approved by the Solicitor. The costs of advertising are pre-collected; there is no need to pass this contract by the Finance Director. The Sheriff, as a fiduciary for these funds, cannot absolve itself from responsibility for them by hiring an agent.

The City Solicitor cites Bartholomew v. Lehigh County to argue that the Sheriff did not have the authority to make this contract; however, this case undermines the Sheriff's position rather than supporting it. In Bartholomew, the sheriff who contracted to publish election announcements in county newspapers went beyond his statutory authority by publishing in more than four newspapers.⁴ Here, in contrast, the notices were published in the legal publication, and in a newspaper of general circulation, in accordance with the Sheriff's authority bestowed by Pa.

³ McCarthy v. Dan Lepore & Sons Co., Inc., 724 A.2d 938, 940 (Pa. Super. 1998).

⁴ 148 Pa. 82,85; 23 A. 1122 (1892).

R. C. P. 3129.2 (d) and Phila. County Court Rule 430.2. There is no allegation that the ads that ran were improper ads.

The City Solicitor seems to argue, as an independent basis for disavowing the invoices, that Sheriff Green's assurance of payment for them ended when he vacated the office. However, it is incorrect that this contract is, as the Sheriff mistakenly describes, a contract relating to government functions. A contract for publication of advertisements is clearly a business function, despite the fact that the Sheriff placed the advertisements in obedience to Court Rules. Lobolito v. North Pocono School District, which the Sheriff relies upon to support its position, clearly distinguishes between contracts with respect to governmental functions, and business or proprietary functions.⁵ As the contract in question relates to a business function, this argument is irrelevant.

Furthermore, the contract in question has been performed. It is undisputed that the notices were published in the Inquirer, and it is undisputed that the City of Philadelphia was aware that the Sheriff publishes notices of Sheriff's sales in local papers. For a governmental entity to disavow a contract after it has received the benefit would not be in the interests of justice.

Accordingly, the Court will enter summary judgment against the office of the Sheriff.

c. Defendant Reach is liable.

An agent of a disclosed principal is not a party to a contract between the principal and a

⁵ 562 Pa. 380, 384-5 (19 (“In the performance of sovereign or governmental, as distinguished from business or proprietary, functions, no legislative body, or municipal board having legislative authority, can take action which will bind its successors.”) See also Commonwealth ex rel. Fortney v. Bartol, 342 Pa. 172, 174-5 (1941) (Portion of contract was invalid that obligated a municipal governing body to pass ordinances in the future).

third party, unless the agent and the third party agree otherwise.⁶ Reach, in its dealings with PMN, acted as an agent of a disclosed principal – the office of the Sheriff.

The Sheriff attempts to differentiate between an “advertising agency” and a “legal agent” and cites cases discussing the difference. This is an attempt to absolve the Sheriff of legal responsibility for the contract; and, instead, place the responsibility solely on Reach. However, the cases cited are irrelevant, because Reach is a legal agent of the Sheriff, as well as an advertising agency. The advertising agency cases speak of responsibility on the part of the agent because the agent is taking an active role in formulating the content and structure of the advertisements. Here, the Sheriff submitted all the information to Reach, Reach formatted it as needed by the newspaper and submitted it to the *Inquirer*, with little to no creative or intellectual control or input. The facts that establish agency – that the Sheriff informed PMN that Reach was working on its behalf, that the changes to advertisements had to be approved by the Sheriff before being submitted for publication, and that Reach did not have the ability or discretion to modify the advertisements – are not disputed by the Defendants.

In addition, Reach submitted an Application for Credit and Guarantee as part of the negotiations with PMN. Davis also signed a personal guarantee for the payment. The application for credit has as the requesting party “The Philadelphia Inquirer and Daily News.” These are the same newspapers suing herein.⁷

Counsel for Davis and Reach cite Stearns, *The Law of Suretyship*, referenced in Pure Oil

⁶ Revere Press, Inc., v. Blumberg, 431 Pa. 370, 373; 246 A.2d 407, 409 (1968).

⁷ Counsel for Davis suggests that the Inquirer never relied upon the personal guarantee of Davis, citing to the deposition of Anthony Gifford taken on August 28, 2012. However, in no sense did the Inquirer’s demand for an additional guarantee remove or cancel Davis’ personal guarantee. Although the personal guarantee was insufficient for the plaintiff, it remained part of the consideration for the deal and was not withdrawn as part of Plaintiff’s need to have the same guarantee from the Sheriff.

Co. v. Shlifer, for the proposition that once the ownership of the Inquirer and/or Daily News changed, the application for credit should be deemed as extinguished due to a new party becoming the owner of the newspapers.⁸ Although it may be posited as a general proposition that when parties to a contract are replaced, the law should generally be predisposed to finding that the contractual duties would cease, the Court declines to accept that it applies in this case.

Counsel provides two citations for this proposition. First, Pure Oil Co. contains a set of facts which, on their face, provide next to no guidance for the case at bar. Pure Oil stands for the proposition that a significant change to a contract that was not originally contemplated upon the creation of said contract releases a surety who does not consent to such a change.⁹ Second, The Law of Suretyship cited by counsel for Reach and Davis refers to a substitution of one party to the contract by another. In contrast, the case at bar deals with the same parties and, in essence, is only a change in ownership.

If the change in ownership of the newspapers had altered the obligations of the parties involved in any way, the Court would be constrained to accept counsel's argument. However, the change in ownership of the newspaper did not in any way modify the obligations of the parties or how their business was to be conducted. Reach was still placing advertisements into the newspapers on behalf of the Sheriff as law required, and such ads were always on credit.

The general relationship between the Sheriff of Philadelphia and the local newspapers in this city with respect to advertisements for sale of real property extends far backwards in time. Simply changing ownership of the local newspapers in what otherwise is a continuing undertaking, should not relieve a party, which is under contract, from performing the exact same duties that have continued without interference or change in scope or liability.

Accordingly, both are independently liable to PMN along with the Office of the Sheriff.

⁸ 115 Pa. Super. 319;175 A. 895 (1934).

⁹ Id. at 324-5; 897.

d. Prejudgment Interest

The parties disagree as to the day on which prejudgment interest should start accruing. The Sheriff claims that interest should start accruing on the day that the lawsuit was filed. The plaintiff claims that prejudgment interest should start accruing on November 30, 2010.

It is apparent from the available invoices that Reach consistently made partial payments to PMN each month, resulting in a substantial ongoing balance. Each invoice from PMN to Reach stated on its face that each payment was due on the fifteenth of the month after the advertising was placed. The invoices also indicated that delinquent accounts are subject to reasonable collection charges. Reach stopped paying altogether starting with the January 2011 invoice.

Despite the fact that all of the invoices stated that delinquent accounts were subject to reasonable collection charges, it is clear from the invoices that PMN never applied such charges to Reach's account in reaction to Reach's inconsistent payments. Due to the fact that PMN never enforced nor billed its supposed payment deadline against Reach, the court rules as a matter of law that prejudgment interest in this case should start accruing on the date on which PNM formally demanded the outstanding payments.

On February 11, 2011, Anthony Clifford first contacted Chief Deputy Sheriff Joe Vignola regarding Reach's unpaid invoices. This was the first contact between PMN and the Sheriff's office. The law states, in the absence of a formal due date that is expected to be followed, the demand date is the day that prejudgment interest should begin accruing.

III. Conclusion

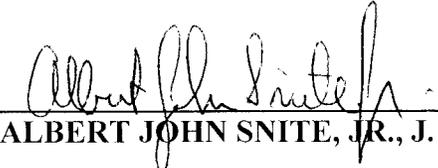
The Sheriff of Philadelphia is legally responsible for conducting Sheriff's sales. Pursuant to that power, the Sheriff is permitted under law to require judgment creditors / lien-holders to

pre-pay sale costs. Once the Sheriff collects the pre-payment for the sale cost of the advertising, he is under a legal and fiduciary duty to ensure that the ads are placed and paid for. The Sheriff may not chose an agent, assure the newspaper that he stands behind his agent, have legally required ads actually run in the newspapers, and then claim that it is his agents' fault that the newspapers were not paid. The Sheriff is liable.

With regard to Reach and Davis, they were required to apply for the capability to place ads on credit. Reach and Davis agreed that all invoices would be paid. This working relationship existed for over twenty years between Reach and Davis on one side, and the owner of the Inquire and Daily News on the other side. Reach and Davis are liable.

Accordingly, summary judgment is entered for Plaintiff against all Defendants.

BY THE COURT:


ALBERT JOHN SNITE, JR., J.