STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1229

Diversified Industries, Inc., d/b/a Payroll Control Systems,
Appellant,

vs.

Captains of the Guard, Inc.,
Defendant,

Jonathan Beecham,
Respondent.

Filed May 6, 2008
Affirmed
Harten, Judge*

Hennepin County District Court
File No. 27-CV-06-2330

Paul W. Chamberlain, Ryan R. Kuhlmann, Chamberlain Law Firm, 1907 Wayzata Boulevard, Suite 130, Wayzata, MN 55391 (for appellant)

Jonathan Beecham, 9 West 14th Street, Suite C, Minneapolis, MN 55403 (pro se respondent)

Considered and decided by Willis, Presiding Judge; Shumaker, Judge; and Harten, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

HARTEN, Judge

Appellant Diversified Industries, Inc., d/b/a Payroll Control Systems (PCS), challenges the summary judgment dismissing all appellant's claims against respondent Jonathan Beecham, CEO of respondent Captains of the Guard, Inc. (CG).[1] Because we see no genuine issue of material fact and respondents are entitled to judgment as a matter of law, we affirm.

FACTS

In 2005, CG issued PCS an order for withdrawal of $21,038.16 so that PCS could perform payroll services and pay CG's employees. The withdrawal order was rejected because of insufficient funds in CG's account. In response to PCS's demands for payment, CG issued three checks. One, for $7,038.16, was honored; CG stopped payment on the other two, each for $7,000. CG later paid PCS $3,000, reducing the debt on the checks to $11,000.

In December 2005, PCS brought this action against CG and Beecham, alleging breach of contract and fraud, and seeking damages of $11,000. In February 2006, PCS moved to amend its complaint to add a count for issuing worthless checks under Minn. Stat. § 604.113 (2006) (providing that the issuer of a worthless check is liable for both the value of the check and a civil penalty in that amount). On 31 March 2006, CG signed a confession of judgment for $22,000.

[1] Before the notice of appeal was filed, counsel for respondents withdrew and notified the court of respondents' last known address. Two notices sent by this court to that address were returned as undeliverable, and respondents have taken no part in this appeal.

Beecham and CG then moved for dismissal of all claims against Beecham and the fraud claim remaining against CG. On 30 August 2006, the district court issued an order granting PCS's motion to amend the complaint and dismissing all claims against Beecham and the fraud claim against CG. PCS requested reconsideration, arguing that the district court had considered only the checks and not the order for withdrawal.[2] After a hearing, judgment dismissing the claims was entered.

PCS challenges the dismissal of its claims against Beecham.

D E C I S I O N

On an appeal from summary judgment, this court asks whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990).

PCS argues that Beecham is personally liable because he signed the checks on which CG stopped payment. The district court relied on the Uniform Commercial Code comment to Minn. Stat. § 336.3-402(c) (2006) to conclude that Beecham is not liable

[2] We hold as a matter of law that the three checks, all of which respondent issued to satisfy the obligation created by the withdrawal order and one of which appellant successfully cashed and accepted, together with a further $3,000, constituted a novation of the order for withdrawal. *See Black's Law Dictionary 1091* (7th ed. 1999) (defining novation as "The act of substituting for an old obligation a new one that . . . replaces an existing obligation with the new obligation . . . . A novation may substitute (1) a new obligation between the parties . . . ."). Moreover, the record does not include a copy of the withdrawal order, and there is no evidence that the district court addressed it. "An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below." *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988). Nor may an appellate court generally consider matters not presented to and considered by the trial court. *Id.* at 582. We therefore restrict our review to the issues relating to the checks, not to the withdrawal order.

because, although he signed the checks, he did so in his representative capacity. Section 336.3-402(c) provides:

> If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

The U.C.C. comment specifies:

> Subsection c . . . states that if the check identifies the represented person the agent who signs on the signature line does not have to indicate agency status. Virtually all checks used today are in personalized form[s] which identify the person on whose account the check is drawn. In this case, nobody is deceived into thinking that the person signing the check is meant to be liable.

U.C.C. § 3-402(c) cmt. 3 (2004). The checks here were printed with "Captains of the Guard" and its address and signed "J. Beecham." Under the statute and the comment, Beecham's failure to indicate his agency status is irrelevant; PCS would have known that CG, not Beecham, was liable for the check. *See also St. Croix Eng'g Corp. v. McLay*, 304 N.W.2d 912, 914-15 (Minn. 1981) (upholding district court's finding that parol evidence indicating parties knew person signing the check was doing business as corporation was "sufficient proof of representative capacity"). As the district court noted, "While the Court is granting [PCS's] motion to amend the Complaint [by adding a count of issuing worthless checks] Beecham would still not be liable because he did not sign the check in his personal capacity."

Moreover, to be guilty of issuing a dishonored check, the issuer must intend that the check not be paid. Minn. Stat. § 609.535, subd. 2 (2004) ("Whoever issues a check

which, at the time of issuance, the issuer intends shall not be paid, is guilty of issuing a dishonored check . . . ."). Beecham asserted in his affidavit that he expected a receivable from another client to be deposited in CG's account before the checks were presented; therefore, when the checks were issued, he did not intend that they would not be paid.

Appellant relies on Minn. Stat. § 609.535, subd. 3 (2004), to argue that Beecham is liable for the checks. The statute provides three examples of "evidence sufficient to sustain a finding that the person at the time the person issued the check intended it should not be paid"; among these is "proof that, at the time of issuance, the issuer did not have sufficient funds or credit [and] failed to pay the check within five business days after mailing of notice of nonpayment or dishonor . . . ." Minn. Stat. § 609.535, subd. 3(2). But Beecham provided his affidavit as evidence that he *did intend* the checks to be paid. The district court applied Minn. Stat. § 336.3-402(c) as a matter of law because that statute fit the facts presented. Applying Minn. Stat. § 609.535, subd. 3(2) so the affidavit becomes evidence to the contrary leads to an absurd result, and, in applying statutes, it is presumed that the legislature did not intend absurd results. *See* Minn. Stat. § 645.17(1) (2006) (courts may presume that "the legislature does not intend a result that is absurd"); *see also Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 233 (Minn. 2008) (rejecting application of statute of limitations because it would lead to an absurd result).

The judgment dismissing all claims against Beecham is affirmed.

Affirmed.