Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2009-296

MAY TERM, 2010

New England Rail Service, Inc.	}	APPEALED FROM:
	}	
v.	}	Orange Superior Court
	}	
Daniel F. Braman	}	DOCKET NO. 238-11-03 Oecv
		Trial Judge: Mary M. Teachout

In the above-entitled cause, the Clerk will enter:

New England Rail Service, Inc. (NERS) appeals from the trial court's order granting judgment to Daniel Braman in this contract dispute. It argues that the court erred in determining the terms of the parties' agreement. We affirm.

The parties entered into an agreement concerning the construction of a model railroad car in 2002. Problems arose, and in November 2003, NERS sued Braman for breach of contract. Following a trial, the court denied NERS's claim for damages. It found as follows. NERS supplies model trains and parts to hobbyists, and Donald Valentine is the president and sole shareholder of NERS. In 2002, Valentine sought to create a certain railroad car and contacted a plastic injection molding company. The company referred him to Braman, a toolmaker. Braman had not made tools for a model railroad car before, but he had extensive tool-making experience. The parties agreed in December 2002 that Braman would create a tool that would be flat-molded. In other words, there would be molds for five different pieces to create a rail-car body. These pieces would be assembled as part of a kit for the floor of the car and four sides. Five molds were needed. The agreed-upon price was $14,000, although Valentine knew that changes might be needed and the price could rise to $15,000. Braman later contacted Valentine and told him that he could create a four-slide mold for $4,000 more, or $18,000. This would be a single mold that would create a car body consisting of the base and four sides all in one piece. It would not require assembly by hobbyists, and it would be more marketable. Valentine agreed to this, and following a meeting, the parties agreed on a total project cost of $18,000 for the four-slide mold. Plaintiff gave Braman $2500 toward the contract.

Thereafter, Valentine began writing letters to Braman. The first letter, dated December 11, 2002, summarized the agreed-upon terms of $18,000, and acknowledged that the price could be as high as $20,000. The court found that, at that time, the agreement for the contract price was for a one-mold car body only. At trial, Valentine claimed that this price was for the entire kit, including multiple parts that needed to be assembled. The court found that the evidence, including the content of the letters, did not support Valentine's position. Plaintiff made a second $2,500 payment on the contract in January. Braman was never given clear specifications for the mold he was to make. Instead, he was given materials, such as blueprints, to help him understand the project. The design work required by the project was much more extensive than Braman had anticipated. The work continued, however, and in February 2003, Braman received another check for $10,000.

Because of the evolution of the project, in March 2003, the parties began discussing details of additional work that Braman might do to create all of the components for the kit. The parties engaged in discussions, but the court found insufficient evidence to show that they ever reached an agreement to modify and extend the contract for these additional components. It found that Braman made clear that he did not want to continue with the modification and extension of the project.

Based on these and other findings, the court concluded that the parties had a contract to make a mold for a car body and five pieces for $14,000, which was modified to make a car body in one piece and to make a four-slide mold for that purpose at a fixed price of $18,000. Braman had received $15,000 of the $18,000 owed, and he completed the work that was required within the scope of the parties' contract. Valentine had the mold and he was free to use it as he chose. The parties engaged in discussions about modifying and extending the contract, but never reached an agreement. There was no meeting of the minds or an acceptance of Valentine's proposal, nor was there any partial performance of such work that would support the existence of a modified and extended contract. The only evidence was that, even before the four-slide mold was completed, Braman told Valentine that he did not agree to a second modification. Thus, the court concluded that Valentine was not entitled to any damages. The court did, however, order Braman to return blueprints and other materials that had been furnished to him by Valentine. This appeal followed.

NERS argues that the court should have credited its position, and found that Braman agreed to produce a "total railroad car," apparently for $26,000. According to NERS, Braman abandoned the project and kept $15,000 for work that was of no value to NERS. As support for its position, NERS points to the evidence that it presented at trial. It suggests that a contract was formed for additional work because Braman failed to respond to letters sent to him by Valentine that described additional work.

We find no error. Plaintiff simply challenges the court's evaluation of the evidence and its assessment of the credibility of witnesses. These matters are reserved exclusively for the trial court. Cabot v. Cabot, 166 Vt. 485, 497 (1997) ("As the trier of fact, it [is] the province of the trial court to determine the credibility of the witnesses and weigh the persuasiveness of the evidence."). NERS fails to show that any of the court's findings are clearly erroneous. See Mullin v. Phelps, 162 Vt. 250, 260 (1994) (Supreme Court will not disturb the trial court's factual findings unless they are clearly erroneous, meaning there is no credible evidence in the record to support them). Braman testified that the contract did not include the additional work testified to by Valentine. He stated that the agreement, as modified, was for the production of a four-slide tool at the price of $18,000. This tool would produce the car in one unit, with the floor, the two ends, and two slides all attached. Braman indicated that there was much more design development that he had anticipated, which he performed at no additional charge. The project began to mushroom, however, and Braman decided that he did not want to continue working with Valentine after finishing the mold. He received $15,000 by the time of trial and he stated that Valentine was happy with the mold that he produced.

Braman explained that after that mold was completed and tested, Valentine indicated that he wanted him to do additional work. Braman provided an $8,000 estimate for the additional work because he did not have specific information from Valentine as to what exactly Valentine was requesting. Braman did not obtain any product prints for additional parts or specifications or measurements, however. Braman stated that he did not intend the $8,000 estimate to be part of a flat fee for the remaining work, nor did he tell Valentine that he would do all of the remaining work for $8,000. He acknowledged receiving Valentine's letters about additional work, but did

not feel he was obligated to respond to them. Braman reiterated that under the terms of the parties' agreement he was not expected to create anything more than the four walls and the floor of the model railroad car.

The trial court credited Braman's testimony, finding additional support for it in Valentine's initial letter to Braman. As stated above, it found that the parties did not reach any agreement as to further extension and modification of the contract for the four-slide mold. The court rejected the argument that Valentine's letters to Braman in March 2003 demonstrated the necessary "meeting of the minds." See Starr Farm Beach Campowners Ass'n v. Boylan, 174 Vt. 503, 505 (2002) (mem.) ("An enforceable contract must demonstrate a meeting of the minds of the parties: an offer by one of them and an acceptance of such offer by the other."). The court's findings are supported by the record, and they must stand on appeal. Town of Rutland v. City of Rutland, 170 Vt. 87, 90 (1999) (noting that "existence of an agreement is ordinarily a question of fact for the trier"); see also Housing Vt. v. Goldsmith & Morris, 165 Vt. 428, 430 (1996) (explaining that "where the meaning of a contract is uncertain, the intent of the parties becomes a question of fact," which this Court reviews for clear error only). We find no grounds to disturb the court's decision.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Geoffrey W. Crawford, Superior Judge,
Specially Assigned