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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-531

JULY TERM, 2006

Independent Rehabilitation Resources, Inc.	}	APPEALED FROM:
	}	
v.	}	Windsor Superior Court
	}	
Norman Watts	}	
	}	DOCKET NO. 176-4-05 Wrcv

Trial Judge: William D. Cohen

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

Defendant Norman Watts, Esq., appeals from the trial court=s order granting summary judgment to plaintiff Independent Rehabilitation Resources, Inc. (IRR), in this breach-of-contract dispute. Mr. Watts argues that the trial court erred in concluding that he, rather than his law firm, was liable for a debt under the terms of the parties= agreement. We reverse and remand.

IRR provided professional services to Mr. Watts and his client Jeffrey Sullivan. IRR was not paid for its work and it sued Mr. Watts for breach of contract. The parties filed cross-motions for summary judgment, and the court granted judgment to IRR. The court derived the undisputed facts from IRR=s statement of material facts, which were supported by citations to the evidence. Mr. Watts, in contrast, did not submit his own

separate statement of facts, nor did he respond to IRR=s statement with citations to the record. Thus, under V.R.C.P. 56(c)(2), the facts as set forth by IRR were deemed admitted by Mr. Watts.

The court found that the most significant document at issue was a letter of agreement from Myron Smith of IRR addressed to Norman Watts, Esq., dated September 9, 2003 and signed by Norman E. Watts, Esq., on September 16, 2003. This letter and its attachments set forth the terms of a contract for professional services. The letter stated that Mr. Watt=s signature and return of the letter, along with an initial case retainer of $1000, would confirm his retention of IRR to perform various services. Mr. Watts paid the $1000 retainer and sent it to IRR with a cover letter dated September 17, 2003. The heading on the cover letter was AWatts Law Firm.@ The check was drawn on an account with the name ANorman E. Watts, Jr., P.C.@ The signature on both the letter and the check appeared to be ANorman E. Watts.@

Mr. Watts argued that the contract was actually between IRR and his client, Jeffrey Sullivan, because the services were performed for Mr. Sullivan=s benefit. The court rejected this argument. It also rejected Watts=s alternative suggestion that the contract was actually between IRR and the corporate entity ANorman E. Watts, Jr., P.C.@ The court explained that the express terms of the written documents, including the letter of agreement, determined the parties to the contract. Here, Mr. Watts signed all correspondence between himself and IRR as ANorman E. Watts@ or ANorman E. Watts, Esq.@ without any indication that he was signing only as an agent for Jeffrey Sullivan or only as an agent for a corporate entity. Although the $1000 retained was drawn from an account in the name of ANorman E. Watts, Jr., P.C.,@ the court found that Mr. Watts did not explain to IRR that he intended to act only as an agent of the corporation. The court noted that although Mr. Watts suggested that there was additional evidence to show a different understanding by the parties as to who the contracting parties were, he failed to provide a clear explanation of exactly what that evidence was or what it might show. Under the circumstances, therefore, the court found that Mr. Watts could not claim protection of the corporate shield. The court thus concluded that the undisputed facts supported IRR=s claim that Mr. Watts owed it money under the contract. This appeal followed.

On appeal, Mr. Watts challenges the court=s summary judgment decision. He asserts that the court erred

in imposing an affirmative duty on him to explain to IRR that he was acting on behalf of his client in order to avoid personal liability. According to Mr. Watts, once a corporate entity is involved in a transaction, there is a presumption that the corporation is a party to the dealings unless affirmatively stated otherwise. Mr. Watts also argues that by focusing solely on the letter of agreement, the trial court essentially ignored other communications between the parties that composed the whole agreement. He maintains that the evidence shows that his law firm was the contracting party, and it was contracting on behalf of its client.

We review a grant of summary judgment using the same standard as the trial court. Richart v. Jackson, 171 Vt. 94, 97 (2000). Summary judgment is appropriate when, taking all allegations made by the nonmoving party as true, there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. Id.; V.R.C.P. 56(c). The undisputed facts do not support Mr. Watts= assertion that his client was the contracting party, and the trial court appropriately rejected this argument. It is not apparent from the undisputed facts, however, that Mr. Watts, rather than his firm, was the contracting party. Thus, summary judgment should not have been granted to IRR.

In construing a contract, the court seeks to ascertain the parties= intent. In re Verderber, 173 Vt. 612, 615 (2002) (mem.). AUnless it is ambiguous, the construction of a contract is for the court as a matter of law.@ Morrisseau v. Fayette, 164 Vt. 358, 366 (1995). Whether a contract is ambiguous is also question of law. Id. If an ambiguity exists, it is for the trier of fact to determine the parties= intent. Ianelli v. Standish, 156 Vt. 386, 389 (1991).

We explained in Douglas v. O=Connell, 139 Vt. 427, 429 (1981), that,

> [a]s a general rule, . . . an agent must disclose the fact of his agency and the identity of his principal if he is to escape personal liability. If he acts as the agent of another when he signs a contract, he is personally liable thereon if at the time of the signing of the contract he fails to disclose the fact of his agency and the identity of his principal.

In Costa v. Katsanos, 163 Vt. 586, 588 (1995), we recognized that the parties to a contract, by the express terms of their agreement, defined by and against whom a particular claim could be brought. In that case, a corporation entered into a lease agreement and then refused to vacate the premises at the expiration of the lease. The landlords sued the individual officers of the corporation, seeking to hold them personally liable for wrongful holdover even though they were not parties to the agreement. We upheld the trial court=s dismissal of the action, concluding that the individuals were not personally liable to landlords because they had never assumed any personal obligations under the lease and were under no individual duty to landlords to return possession of the property. Id. at 588-89.

In this case, one cannot tell from the undisputed facts whether Mr. Watts or his firm was the contracting party, and thus whether Mr. Watts assumed a personal obligation under the contract. Although Mr. Watts signed the letter of agreement with IRR in his own name without any reference to his professional corporation, he also included a cover letter with his law firm=s name clearly at the top. The retainer paid to IRR, which was necessary to accept the contract, was drawn from an account labeled ANorman Watts, P.C.@ A factfinder should determine whether, based on the evidence, the parties intended the contract to be between IRR and the Watts law firm or between IRR and Mr. Watts personally. Because a material factual dispute exists on this issue, summary judgment should not have been granted to IRR. We therefore reverse and remand the trial court=s order granting summary judgment to IRR.

Reversed and remanded.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice