

JUSTIN FORD,)
 Plaintiff,)
 vs.)
 ARMFIELD AG REPAIR, LLC)
 Defendant.)

JANET PARSONS
 CLERK AND EX-OFFICIO RECORDER

Case No. 18GE-AC00038-01

JUDGMENT

NOW on the 19th day of February, 2019, this matter came on for hearing. Plaintiff appeared with his attorney, and Defendant appeared with his attorney. The parties announce ready for trial and evidence heard on Plaintiff’s Petition and Defendant’s Counter-Petition, after which the Court takes the matter under advisement. The case is now taken up for further consideration.

I. Factual Background

Plaintiff and Defendant entered into a verbal agreement in September 2017. The agreement was that Defendant was going to build Plaintiff a custom build pulling tractor for \$20-\$25,000, and it was to be completed by May 1, 2018. Plaintiff then made a \$5000 payment to the Defendant on September 25, 2017. Plaintiff made a second payment of \$5000 to the Defendant on or about October 5, 2017; a third payment of \$5000 to the Defendant on or about November 29, 2017 and a fourth payment of \$5000 to the Defendant on or about December 5, 2017.

Multiple disputes arose between the Plaintiff and Defendant between October 2017 and February 12, 2018, and Plaintiff asked the Defendant to write-up an agreement on paper. Defendant did this and emailed the written, signed agreement to the Plaintiff on or about February 12, 2018. Defendant received that written agreement, signed it and sent it back to Plaintiff on or about February 15, 2018. That agreement states in part:

Armfield Ag Repair agrees finish the production of a 9600 open/hotfarm tractor to be completed for pickup by Justin Ford on May 1 of 2018. Armfield Ag will provide progress updates as often as possible to Justin Ford to see how the project is progressing. Justin Ford has the option of paying installments as progress is completed or pay upon pickup of tractor. This letter will be a binding agreement between both Armfield Ag Repair and Justin Ford and shall be in effect upon receipt of signatures of both parties. Both parties agree that the max price tag will be \$350000.00 or less upon final tally. Let it be known that Armfield Ag Repair and Justin Ford acknowledge that \$20,000.00 has been received by Armfield Ag Repair from Justin Ford prior to this draft. This will leave a balance not to exceed \$15,000 on May 1, 2018 unless a separate written agreement as outlined in the addendum is reached prior to May 1, 2018.

On or about February 23, 2018, another dispute arose between the Plaintiff and Defendant, and Plaintiff asked for his money back. Defendant then created another written agreement, signed it and sent it to the Plaintiff for signature on or about February 23, 2018. This agreement states:

Armfield Ag Repair and Justin Ford jointly agree to nullify the previous contract and addendum that was put in place February 12, 2018. Armfield Ag Repair agrees to reimburse Justin Ford \$20,000.00 by May 1, 2018 for his interest in a 9600 Ford tractor project.

When Plaintiff received the agreement, he initially marked out May 1, 2018 and wrote April 1, 2018. He then initialed next to April 1, 2018, signed the agreement and sent a photograph of the amended agreement via text to the Defendant. Later, on or about February 28, 2018, Plaintiff signed another a copy of the agreement with the May 1, 2018 date still showing and sent it to Defendant's counsel.

II. Discussion

A. Plaintiff's Claim

Plaintiff's claim is that the Defendant breached this last contract because he failed to pay Plaintiff \$20,000.00 on May 1, 2018. Defendant argues that this contract was not valid because Plaintiff had changed the date on the contract, thus there was no meeting of the minds in "mirror image" such that each party agreed to the same terms.

To determine whether there has been a meeting of the minds, courts look to "the intention of the parties as expressed or manifested in their words or acts." *Smith v. Hammons*, 63 S.W.3d

320, 325 (Mo. Ct. App. 2002). In this case, we have the parties' expressions reduced to writing and duly executed by each. Specifically, the Defendant sent a signed agreement to Mr. Ford on or about February 23, 2018 wherein he agreed to nullify the previous contract and addendum (that was put in place February 12, 2018) and to reimburse the Plaintiff his \$20,000.00 by May 1, 2018; and we have the Plaintiff accepting this offer on or about February 28, 2018.

It is undisputed that Plaintiff paid \$20,000 to Defendant for a custom tractor and he has not received a custom built tractor (or any part thereof), nor has he received any of his \$20,000 back. Where a seller fails to deliver goods to a buyer, the buyer may recover "so much of the price as has been paid." *Bowen v. Foust*, 925 S.W.2d 211, 215 (Mo. App. S.D. 1996), V.A.M.S. Sec 400.2-711(1). The Plaintiff wherefore has established its case for breach of contract and is entitled to damages in the amount of \$20,000.

B. Defendant's Counterclaims

Defendant's counterclaims are threefold. First, Defendant claims that he has been damaged by the Plaintiff's failure to purchase the custom built tractor and that his damages are \$18,050.81 in parts assembled and \$5,225.00 in labor to assemble those parts in a tractor. Second, Defendant claims Plaintiff insisted and demanded that Defendant open an account for him in which Plaintiff agreed to make progress payments and Plaintiff failed to make the promised payments. Third, Defendant claims that he has been damaged both reputationally, in the eyes of his existing customers, and any future customers who read the statements that Plaintiff posted about the Defendant on public websites in February 2018. Defendant's counterclaims are denied for the following reasons.

On Defendant's breach of contract claim, the Defendant failed to meet its burden on the element of breach. First, Defendant claims he spent \$18,050.81 to purchase parts for the tractor and \$5,225.00 in labor to assemble those parts in the tractor, however, no documents were

produced at trial documenting either one of these claims. Second, Defendant acknowledges receipt of \$20,000 from the Plaintiff and remains in possession of the alleged \$18,050.81 in parts, assembled with its labor. For Defendant to keep both, the payment and the parts, Defendant would be recovering twice from any alleged breach.

On Defendant's open account claim, the Defendant failed to meet its burden on this claim. Defendant claims Plaintiff insisted and demanded that Defendant open an account for him in which Plaintiff agreed to make progress payments and Plaintiff failed to make the promised payments. This claim fails because under the first verbal agreement, the Defendant agreed to build Plaintiff a custom build pulling tractor for \$20-\$25,000, and the Plaintiff then paid Defendant \$20,000. Under the second agreement (first written agreement), the parties acknowledged that the maximum price for the tractor would be no more than \$35,000, therefore a balance not to exceed \$15,000 would be due on May 1, 2018. Defendant delivered no goods or services to the Plaintiff on May 1, 2018 or any date thereafter; and therefore Defendant cannot establish that any amount (for non-delivered) items were due and owing.

On Defendant's defamation claim, the Defendant failed to meet its burden on this claim because there was no evidence presented to prove reputational harm. The Defendant's testimony as to its own reputational harm is insufficient to establish damage to reputation. Proof of actual harm to the Plaintiff's reputation is an absolute pre requisite in a defamation action. There must be testimony of third parties or extrinsic evidence. *The Fireworks Restoration Co., LLC v. Hosto*, 371 S.W. 3d 83, (Mo. Ct. App. E.D. 2012).

IT IS HEREBY ORDERED that judgment is granted for the Plaintiff in the amount of \$20,000.

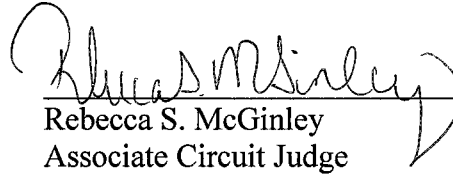
IT IS FURTHER ORDERED that Plaintiff is awarded prejudgment interest on the \$20,000 commencing on May 1, 2018 but no attorney fees are awarded.

IT IS FURTHER ORDERED that Defendant's counterclaims are denied.

IT IS FURTHER ORDERED that costs are assessed to Defendant.

4-2-19

Date


Rebecca S. McGinley
Associate Circuit Judge