

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

PROFESSIONAL LOGISTICS & TRAINING, INC.,	:	APPEAL NO. C-070078 TRIAL NO. 06CV-5781
Plaintiff-Appellee,	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
ALEXEI VIDMICH,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Plaintiff-appellee, Professional Logistics & Training, Inc. (“PLT”), filed a complaint for breach of contract against defendant-appellant, Alexei Vidmich. The trial court granted summary judgment in favor of PLT. Vidmich has filed a timely appeal from that judgment.

The record shows that Global Consulting Group, Inc. (“Global”) recruited Vidmich to come to the United States from the Ukraine, his native country, to work in the field of information technology. Global helped him obtain a visa and a work-authorization permit. PLT provided training and logistical support to information-technology workers who came from foreign countries to the United States to work for PLT’s clients. Its services included lodging, meals, language training, job-assignment training, and

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

transportation. PLT had had other clients in the past, but Global was its only client when Global recruited Vidmich.

Vidmich arrived in the United States on May 10, 2004. He lived in an apartment in Cincinnati leased by PLT. In May 2004, Global informed him that he had successfully landed a position in Massachusetts. On May 18, 2004, Vidmich signed a “Logistics and Training Agreement” with PLT. The agreement stated that PLT would provide various services for Vidmich until he obtained a work assignment in the United States. It further stated that, in return for the services provided, Vidmich would pay PLT a fee of \$15,000, to be paid in monthly installments of \$416.67. As long as Vidmich was employed on an assignment through Global, Global would pay the monthly fees. Consequently, to have Global pay the entire \$15,000, Vidmich would have had to remain in his Global assignment for three years.

Vidmich worked at his assignment in Massachusetts for approximately a year. During that time, Global paid the monthly fee to PLT. In May 2005, Vidmich obtained another position and quit his Global job. Consequently, Global quit paying the monthly fee to PLT.

PLT filed suit against Vidmich alleging breach of contract and seeking \$9,861.06 in damages for the remainder of the monthly payments. Both PLT and Vidmich filed motions for summary judgment. The trial court denied Vidmich’s motion and granted summary judgment to PLT. This appeal followed

In his sole assignment of error, Vidmich contends that the trial court erred in granting PLT’s motion for summary judgment. First, he argues that PLT is seeking to enforce a liquidated-damages provision that is really an unenforceable penalty. He relies

upon *Lake Ridge Academy v. Carney*,<sup>2</sup> which sets forth a three-part test for determining whether a liquidated-damages provision is an unenforceable penalty. We need not discuss this test in detail because we hold that the clause in the agreement is not a liquidated-damages provision. It does not set the amount of damages in the event of a breach of contract because the actual damages would be uncertain or difficult to prove.<sup>3</sup>

Instead, the \$15,000 fee, payable in monthly installments, is the consideration for an installment contract.<sup>4</sup> By the terms of this contract, PLT provided services and received the monthly payment. As long as Vidmich remained in his assignment with Global, Global paid the fees on his behalf. But once he left that assignment, he became liable for the remainder of the monthly fees. The \$15,000 fee is not punitive, as evidenced by the fact that PLT sought to collect only the fees it had not been paid, not the entire \$15,000.

The agreement's language is clear and unambiguous, and therefore, we cannot go beyond the plain language of the agreement to determine the rights and obligations of the parties.<sup>5</sup> Since Vidmich ended his Global assignment before the \$15,000 fee was paid, he was required to pay the remaining amount himself.

Next, Vidmich argues that PLT's material breaches of the contract excused him from his monthly payment obligations. He argues that, although he arrived in the United States on May 10, 2004, he did not sign the Logistics and Training Agreement until May 18, 2004. He claims that PLT provided many of the required services before the contract was signed, and that because the agreement stated that "PLT *will* provide services \* \* \*,"

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<sup>2</sup> (1993), 66 Ohio St.3d 376, 613 N.E.2d 183.

<sup>3</sup> See *id.*; *Security Fence Group, Inc. v. Cincinnati*, 1st Dist. No. C-020827, 2003-Ohio-5263.

<sup>4</sup> See *O'Brien v. Ravenswood Apts., Ltd.*, 169 Ohio App.3d 233, Ohio-2006-5264, 862 N.E.2d 549; *Weissenberger v. Central Acceptance Corp.* (1940), 64 Ohio App. 398, 28 N.E.2d 794.

<sup>5</sup> *Aultman Hosp. Assn. v. Community Mut. Ins. Co.* (1989), 46 Ohio St.3d 51, 544 N.E.2d 920; *Blazic v. Blazic*, 1st Dist. Nos. C-040414 and C-040440, 2005-Ohio-4417.

PLT could only have complied with the contract by performing the services after the contract was signed.<sup>6</sup> We disagree.

Vidmich had stated during his deposition that he had been aware before coming to the United States that he would be required to sign a contract obligating him to pay reimbursement for the services he would receive. Further, the Logistics and Training Agreement specifically stated that “PLT shall provide said service during any period in which Candidate is actively conducting an assignment search.” Vidmich had been searching for an assignment during the time between his arrival in the United States and the signing of the contract. Therefore, PLT had to provide services during that time.

The record shows that Vidmich knew that he would be responsible for some type of payment for the services rendered to him while he was searching for an assignment. Therefore, we are not persuaded by his argument that PLT had to perform the required services after the contract was signed. Otherwise, the necessary “meeting of the minds” between the parties would not have occurred.<sup>7</sup> We further note that Vidmich conceded during his deposition that he had received the services the contract had required, although he questioned the quality of those services.

We find no issues of material fact. Construing the evidence most strongly in Vidmich’s favor, we hold that reasonable minds could come to but one conclusion—that Vidmich had breached the contract, and that he was liable to pay the remainder of the fees due. PLT was entitled to judgment as a matter of law, and the trial court did not err in granting its motion for summary judgment and in overruling Vidmich’s motion.<sup>8</sup> We overrule Vidmich’s first assignment of error and affirm the trial court’s judgment.

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<sup>6</sup> Emphasis added.

<sup>7</sup> See *Progressive Preferred Ins. Co. v. Hammerlein Helton Ins.*, 170 Ohio App.3d 154, 2006-Ohio-4601, 866 N.E.2d 521; *Nilaver v. Osborn* (1998), 127 Ohio App.3d 1, 711 N.E.2d 726.

<sup>8</sup> *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 375 N.E.2d 46; *Stinespring v. Natorp Garden Stores, Inc.* (1998), 127 Ohio App.3d 213, 711 N.E.2d 1104.

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A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App. R. 27. Costs shall be taxed under App.R. 24.

**PAINTER, P.J., HENDON and DINKELACKER, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on December 28, 2007  
per order of the Court \_\_\_\_\_.  
Presiding Judge