

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

ROBERT HALF INTERNATIONAL,
INC., d.b.a. THE CREATIVE GROUP,

Plaintiff-Appellant,

vs.

ROGER W. ACH II

and

CAROL MEINHARDT,

Defendants-Appellees.

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APPEAL NO. C-090239
TRIAL NO. A-0810380

JUDGMENT ENTRY.

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

Plaintiff-appellant, Robert Half International, Inc., d.b.a. The Creative Group (“The Creative Group”), appeals the judgment of the Hamilton County Court of Common Pleas in favor of defendants-appellees, Roger W. Ach II and Carol Meinhardt, in an action alleging breach of contract.

The Creative Group was in the business of providing employment services for other companies. In 2008, it filed a complaint against Ach and Meinhardt “d.b.a. The Lottery Corporation,” asserting that Ach and Meinhardt had failed to pay The Creative Group for staffing services.

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

Ach and Meinhardt filed motions to dismiss, asserting that they were not individually liable for the alleged debt because they had merely been acting in their capacities as officers of a corporation.

In response to the motions to dismiss, The Creative Group submitted documents purporting to indicate that the alleged corporation did not exist or that it was not licensed to do business in Ohio.

Ach and Meinhardt then replied, filing documents purporting to demonstrate the existence of a corporation that had formerly been known as “The Lottery Corporation” but that at the time of the complaint had been named “InQBate Systems, Inc.” Those documents were attached to the reply memorandum but were not authenticated.

In March 2009, the trial court journalized a “Final Entry Dismissing All Claims.” In a single assignment of error, The Creative Group now argues that the trial court erred in dismissing the claims.

A motion to dismiss under Civ.R. 12(B)(6) is to be granted only when the plaintiff can prove no set of facts that would entitle it to relief.² Under this standard, the allegations in the complaint must be taken as true.³

Here, the claims were not subject to dismissal under Civ.R. 12(B)(6). The complaint alleged facts that, if accepted as true, established that Ach and Meinhardt owed The Creative Group for its services. Ach and Meinhardt did not contend that the complaint failed to state a claim for relief; instead, they argued that the alleged debts had been incurred not by them but by their corporate employer.

² *Gator Dev. Corp. v. VHH, Ltd.*, 1st Dist. No. C-080193, 2009-Ohio-1802, ¶15.

³ *Id.*

So it is apparent that the trial court had converted the motion to dismiss into a motion for summary judgment and that it had entered judgment under Civ.R. 56. That judgment was erroneous for two reasons.

First, under Civ.R. 12(B), the trial court must notify the parties of the conversion to summary judgment and allow the parties a reasonable opportunity to present evidentiary materials pertinent to the converted motion. In this case, there was no such notice.

Second, there was no competent evidentiary material upon which the trial court could have held that Ach and Meinhardt were entitled to the protection of a corporation. The documents purporting to show the existence of the corporation were not supported by affidavits and were not otherwise authenticated. Therefore, they would not have been admissible in a trial on the merits and should not have been considered by the trial court in summary-judgment proceedings.⁴

If Ach and Meinhardt had been acting only in their capacity as corporate officers or employees, they could not be held individually liable for the breach of contract alleged in The Creative Group's complaint.⁵ But absent competent evidence in the record demonstrating the existence of the corporation, the trial court's grant of summary judgment was erroneous.

We sustain the assignment of error, reverse the judgment of the trial court, and remand the cause to permit the parties to present evidence concerning the existence of a corporation and for further proceedings consistent with this judgment entry.

⁴ See *Great Seneca Fin. v. Felty*, 170 Ohio App.3d 737, 2006-Ohio-6618, 869 N.E.2d 30, ¶11.

⁵ See, e.g., *Winegar v. Creekside Crossing Homes Sales*, 5th Dist. No. 08CA001, 2008-Ohio-5835, ¶19.

OHIO FIRST DISTRICT COURT OF APPEALS

Further, 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.

HILDEBRANDT, P.J., SUNDERMANN and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on December 16, 2009
per order of the Court _____.
Presiding Judge