

NO. 4-07-1029  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

**FILED**  
AUG 20 2008  
Clerk of the  
Appellate Court, 4th Dist.

WILLIS SOLUTIONS, INC.,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
NONA, INC.,	)	No. 06SC2897
Defendant-Appellant.	)	
	)	Honorable
	)	Roger W. Holmes,
	)	Judge Presiding.

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ORDER MODIFIED ON DENIAL OF REHEARING

In June 2006, plaintiff, Willis Solutions, Inc. (Solutions), filed a small-claims complaint against defendant, Nona, Inc. (Nona), seeking the \$7,068.47 balance Nona owed Solutions for computer equipment. In August 2006, Solutions filed an amended complaint, requesting the same relief. In March 2007, Nona filed an answer to the amended complaint and a counterclaim that asserted Solutions breached the parties' contract and sought the \$7,000 Nona had already paid Solutions for the computer equipment. After an October 2007 bench trial, the trial court found in favor of Solutions on both the complaint and counterclaim and ordered Nona to pay Solutions \$6,084.65 plus costs.

Nona appeals, arguing the trial court (1) failed to apply a relevant rule of contract construction in determining if the requirement of real-time operation of the computer system was part of the parties' oral contract and (2) should have rescinded the parties' contract due to either misrepresentation or mutual mistake. We reverse and remand with directions.

## I. BACKGROUND

During the relevant time period, Nona operated three Car-X Auto Service locations in Central Illinois. Parham Parastaran was Nona's president and the person responsible for decisions regarding the computer system at Nona's three retail locations. Jamie Clements was a sales representative for Bumper to Bumper, an auto-parts retailer. In early 2005, Clements suggested Parastaran should meet with Guy Willis (Guy), the president of Solutions, to discuss the Mitchell1 Computer System. Guy was also a Mitchell1 software representative. Parastaran agreed, and Guy contacted Parastaran and set up a meeting at Parastaran's home. In addition to Guy and Parastaran, Clements attended the meeting at Parastaran's home.

At a later meeting, Guy and Parastaran met with Nathan Blauvelt, a network installation specialist for Perfect Services Organization, Inc. (PSO). In February 2005, Blauvelt visited Nona's retail locations three times and developed a network diagram for Nona's computer system. Solutions submitted an estimate dated February 28, 2005, to Parastaran. The estimate was for the computer hardware and software other than the Mitchell1 software and listed a total cost of \$14,047.51.

Parastaran never signed the estimate, but the parties entered into an oral contract. Parastaran signed a written contract directly with the Mitchell1 software company for that software. Guy purchased the hardware and software for Nona from PSO as depicted in an invoice dated April 26, 2005. Guy in-

stalled the hardware and software, including the Mitchell11 software, at Nona's retail locations. Blauvelt oversaw the installation. Nona made an initial payment of \$7,000. When the computer system did not operate at real time, Parastaran refused to make any more payments to Solutions and offered to return the computer system. Guy refused to accept the system.

In June 2006, Solutions filed a small-claims complaint against Parastaran, doing business as Nona. Solutions sought the balance of Nona's account, which was \$7,068.40. In August 2006, Solutions filed an amended complaint, which changed the defendant from Parastaran to Nona.

In March 2007, Nona answered the amended complaint and asserted a counterclaim. The counterclaim asserted that, in 2005, Nona entered into a contract with Solutions for computer equipment and networking software that would form the basis of Nona's computer-system network to encompass its separate business locations. Solutions asserted the proposed computer system could network Nona's separate business locations using software and systems that were compatible with Nona's needs and current computer usage. Nona relied upon Solutions' assertion regarding the proposed system's ability to network the separate retail locations and entered into a contract with Solutions for the computer system. Nona paid \$7,000 toward the contractual price. The computer system was installed but was unable to network the separate retail locations as the contract required. As a result of the computer system's failure, Nona had to purchase \$8,000 of

equipment and software to obtain a properly functioning computer network for its separate business locations. Nona sought \$7,000 in damages for the payment it had made on the failed computer system.

On October 24, 2007, the trial court held a bench trial on the amended complaint and counterclaim. An amended bystander's report of that proceeding was certified in accordance with Supreme Court Rule 323(c) (210 Ill. 2d R. 323(c)) and included in the record on appeal. The amended bystander's report stated the following pertinent information.

Solutions called Parastaran as an adverse witness. Parastaran testified that, during the meeting at his home, he emphasized the necessity of real-time network capability between Nona's separate retail locations. Guy never suggested at any time the Mitchell1 computer system was incapable of real-time communication between retail locations. Parastaran confirmed he received the estimate that was admitted as Solutions' exhibit No. 2. The estimate was not signed, and the parties never entered into a written agreement. Parastaran believed Guy was a representative of Mitchell1 and did not pay attention to the name at the top of the estimate. According to Parastaran, Guy was not a part of the contract he directly entered into with the Mitchell1 software company, and that contract was not in evidence. The computer system did not work from the beginning in real time. Due to that failure, Parastaran did not pay Solutions in full. Within two months of the installation being finalized, Parastaran

offered to return the computer software and hardware to Guy, but he refused.

Solutions also presented Blauvelt's testimony. At an early meeting with Parastaran and Guy, Parastaran repeatedly indicated the importance of real-time communication. Blauvelt felt Parastaran made it clear the computer system needed to communicate at all locations in real time. At the meeting, Guy never indicated the Mitchell1 computer system could not network all of Nona's retail locations in real time. The network diagram Blauvelt developed was admitted into evidence as Nona's exhibit No. 1. According to Blauvelt, Guy intended to use PCAnywhere software to network each of Nona's retail locations. PCAnywhere was incapable of allowing a user to compare separate retail location in one window; rather, a user had to open several windows to make a comparison. Blauvelt confirmed PCAnywhere was not the real-time network Parastaran expected.

Blauvelt further testified Solutions contracted with PSO to purchase the equipment for Nona's locations. Blauvelt verified the invoice for the purchase, which was Solutions' exhibit No. 3. Blauvelt also verified Solutions' exhibit No. 2, which he described as a list of the hardware and software purchased by Nona from Solutions. Solutions' exhibit No. 2 is titled as an "estimate." Other than the pricing contained in Solutions' exhibit No. 2 and Parastaran's emphasis on real-time communication, Blauvelt had no other knowledge about the parties' oral contract.

Guy also testified and explained the Nona computer system was one of Solutions' first installations. He acknowledged he never denied the capability of the Mitchell1 computer system to network all of Nona's retail locations in real time as Parastaran requested. Solutions contracted with Nona to provide the hardware and software unrelated to the Mitchell1 computer system. Guy confirmed the February 2005 estimate contained several software items but did not list a charge for the Mitchell1 software. He further confirmed the estimate indicated he was responsible for the network connection of all of Nona's retail locations.

Moreover, Guy testified he did not sign and was not a party to the contract between Mitchell1 and Nona. However, he believed the contract was executed around the same time as the parties' oral contract. Guy did receive a commission for the sale of the Mitchell1 software to Nona but later had to return it. Guy also acknowledged the network administrator manual for Mitchell1 software, which was admitted as Nona's exhibit No. 6, did not contain any statements with regard to connecting several separate retail locations in real time because the Mitchell1 software was incapable of doing so. He also indicated Mitchell1 software was still only a computer system for a single-site retailer.

In May 2005, Parastaran first refused to pay the outstanding balance and told Guy that Solutions would be paid when the computer system worked properly. Thereafter, Guy

engaged in several telephone conversations with Parastaran, during which Parastaran refused to pay and noted the computer system was not networking all the retail locations in real time as requested. In June 2005, Guy offered to train Nona's managers to use the new system, but Parastaran refused. In August 2005, Guy made one last demand for payment, and Parastaran refused to pay.

Guy also testified Nona's exhibit No. 2 was Blauvelt's notes from his first meeting with the parties. Nona's exhibit No. 4 was an invoice prepared by Solutions that contained handwritten notes by Blauvelt. According to Guy, Nona's exhibit No. 5 was an invoice from PSO that also contained handwritten notes by Blauvelt. Nona's exhibit No. 5 is titled as a "customer quotation."

Nona presented the testimony of Parastaran, Clements, and Brian Reynolds and David Peters, who were managers of two of Nona's retail locations.

Reynolds and Peters testified the computer system before the one installed by Solutions was capable of real-time communications between retail locations. Prior to the agreement with Solutions, they had emphasized to Parastaran the need for real-time communications. Nona encouraged competition between retail locations, and the inventory and pricing systems between retail locations allowed for a more efficient operation and the sharing of necessary information. Before any relationship with Solutions, Parastaran had indicated to them he understood real

time would be an integral factor in any decision to replace the computer system. The Mitchell1 computer system could not communicate inventory levels, sales information, or pricing information in real time. Nona replaced the Mitchell1 computer system with an Omnique computer system that could generate reports in real time.

Clements testified that, at the initial meeting between Parastaran and Guy, Parastaran emphasized the importance of real-time networking, and Guy never indicated the Mitchell1 computer system could not perform as requested.

Parastaran also testified on behalf of Nona. He confirmed the testimony he gave as an adverse witness, and like Nona's managers, explained why real-time communication was important to Nona's business operations. Parastaran was looking for a new computer system, not computer hardware. The oral contract was for a computer system, not just computer hardware. He never would have purchased the hardware at issue if the computer system could not network all of Nona's locations in real time.

Nona's managers repeatedly contacted Solutions about issues related to the computer system, and Parastaran quickly realized the Mitchell1 computer system would not work as Guy had represented. The PCAnywhere software could not produce the real-time reports that the prior and subsequent computer systems could. Nona's managers complained to Parastaran about the lack of real-time communication and Solutions' ability to respond to

their needs. Parastaran became frustrated and offered to return the computer system to Guy. Guy refused, and Nona had not used the equipment since late summer 2005. Parastaran incurred about \$8,000 in expenses to replace the Mitchell1 computer system. Parastaran simply wanted to get his \$7,000 back since the Mitchell1 computer system did not work as Guy had promised and was still willing to return the equipment to Solutions.

After the October 24, 2007, trial, Nona filed a memorandum of law since its counsel was not allowed to make a closing argument as the result of a comment made by Parastaran. On November 8, 2007, the trial court entered a memorandum opinion, finding in favor of Solutions and against Nona on both the amended complaint and counterclaim. The court found \$983.25 of the contract price was for networking software, and thus, the court reduced the amount of Solutions' recovery to \$6,084.65.

On December 7, 2007, Nona filed a timely notice of appeal from the trial court's November 8, 2007, judgment in accordance with Supreme Court Rule 303 (210 Ill. 2d R. 303).

## II. ANALYSIS

While Nona frames its assertion of error regarding the trial court's bifurcation of the hardware and software as a question of law that is subject to de novo review (see Gallagher v. Lenart, 226 Ill. 2d 208, 219, 874 N.E.2d 43, 50 (2007)), Nona is essentially challenging the court's determination of the terms of the parties' oral contract. Generally, the existence, terms, and conditions of an oral contract as well as the parties' intent

are factual questions for the trier of fact. Yorke v. B.F. Goodrich Co., 130 Ill. App. 3d 220, 222-23, 474 N.E.2d 20, 22 (1985); see also Kemp v. Bridgestone/Firestone, Inc., 253 Ill. App. 3d 858, 865, 625 N.E.2d 905, 910 (1993). However, those questions may become questions of law "if the facts are undisputed and there can be no difference in the judgment of reasonable men as to the inferences to be drawn from them." Yorke, 130 Ill. App. 3d at 223, 474 N.E.2d at 22.

In this case, the parties' dispute the oral contract's terms. Solutions argued the oral contract concerned only the hardware, not the computer system as a whole. Nona asserted the oral contract was for the computer system as a whole, not just the computer hardware. Thus, this issue involves a question of fact, and we review factual issues under the manifest-weight-of-the-evidence standard of review (Samour, Inc. v. Board of Election Commissioners of the City of Chicago, 224 Ill. 2d 530, 544, 866 N.E.2d 137, 145 (2007)). "A factual finding is against the manifest weight of the evidence when the opposite conclusion is clearly evident or the finding is arbitrary, unreasonable, or not based in evidence." Samour, Inc., 224 Ill. 2d at 544, 866 N.E.2d at 145.

Despite Solutions' argument the parties' contract was only for hardware and its installation, its witnesses' testimony and the exhibits admitted at trial show the contract was for more than just that. First, the evidence shows the parties' contract also included the sale of software. Solutions' exhibit No. 3,

which is PSO's April 2005 customer quotation to Solutions for the Nona job, includes Norton Antivirus and PCAnywhere software. Blauvelt, who worked for PSO and not Mitchell1, confirmed Solutions' exhibit No. 2 was the list of the hardware and software purchased by Nona from Solutions. Solutions' exhibit No. 2 listed "3-Pak Symantic 1CD 3 Lic." and "Host & Remote 5-Pack." Solutions' exhibit No. 3 listed "3PK Symantec Norton Antivirus 2005 1CD, 3 Licenses" and "Symantec 5 PK PCANYWHERE 11.5 Host & Remote Retail." Additionally, Nona's exhibit No. 4 that Guy described as an invoice prepared by Solutions with Blauvelt's handwritten notes also lists PCAnywhere and Norton Antivirus software. Further, Guy confirmed Solutions' exhibit No. 2 contained several software items. Thus, a reading of Solutions' two exhibits together and in light of the other evidence at trial indicates "3-Pak Symantic 1CD 3 Lic." referred to the Norton Antivirus software and "Host & Remote 5-Pack" referred to the PCAnywhere software.

Moreover, the parties' oral contract included the installation of a computer system that included the Mitchell1 software. Guy testified the Mitchell1 software was installed on the computer system supplied by Solutions. Blauvelt also testified he oversaw the installation of a computer system. Blauvelt's notes from his initial meeting with Guy and Parastaran show a drawing of a computer system with computers at four separate locations networked together (Nona's exhibit No. 2). Blauvelt's network diagram prepared after visiting Nona's retail

locations (Nona's exhibit No. 1) also shows a computer system. Additionally, the evidence demonstrated the computer system to be set up by Solutions included the networking of computers between Nona's retail location. Solutions' estimate for Nona (Solution's exhibit No. 2) stated it included all networking of computers and printers. Guy testified Solutions was responsible for the network connection of Nona's retail locations.

We note the trial court's reduction of the networking software costs from Solutions's recovery is inconsistent with its finding the oral contract was just for hardware. If the contract was just for hardware and its installation, then Solutions' invoice to Nona would not have contained software costs. Here, the evidence shows the parties' oral contract was for a computer system that included the purchase of hardware and some software; the installation of all hardware and software, including the Mitchell1 software; and the networking of all of the computers. Since under the contract Solutions was responsible for installing a computer system that included the Mitchell1 software and the networking of all of Nona's computers, the court's separate treatment of the hardware and software was contrary to the evidence presented at trial.

Moreover, even if the Mitchell1 software is considered separately from the rest of Solutions' computer system, the evidence did not show the real-time defect was the result of only the Mitchell1 software. The evidence showed Solutions sought to meet Nona's real-time communication needs with the PCAnywhere

software. Blauvelt, who drafted the network diagram for Nona's computer system (Nona's exhibit No. 1), testified Solutions intended to network each of Nona's retail locations with the PCAnywhere software. Blauvelt's notes from his initial meeting with the parties (Nona's exhibit No. 2) states PCAnywhere for real-time communication. Blauvelt confirmed PCAnywhere was not the real-time network Parastaran expected. Blauvelt was Solutions's witness, and his testimony was not refuted by Solutions. Thus, the undisputed evidence clearly shows the real-time inadequacies were in part related to the PCAnywhere software and attributable to Solutions' computer system. Accordingly, the evidence establishes it was Solutions who breached the parties' oral contract.

The trial court's judgment in favor of Solutions on its complaint and Nona's counterclaim is against the manifest weight of the evidence. The evidence shows Solutions breached the parties' oral contract, and thus judgment should be entered in Nona's favor on both Solution's complaint and Nona's counterclaim. In its counterclaim, Nona sought the return of the \$7,000 it had already paid for the failed computer system and the costs of the suit. On remand, the revised judgment should award Nona its requested relief.

### III. CONCLUSION

For the reasons stated, we reverse the trial court's judgment and remand for a revised judgment consistent with this order.

Reversed and remanded with directions.

TURNER, J., with MYERSCOUGH and COOK, JJ., concurring.