

**THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

**ALM MEDIA, LLC,
D/B/A/ THE LEGAL
INTELLIGENCER,**

Plaintiff,

v.

**REACH COMMUNICATIONS
SPECIALISTS, INC., THE CITY
OF PHILADELPHIA, AND
JOHN D. GREEN, SHERIFF,**

Defendants.

MARCH TERM 2011

No. 2607

Commerce Program

Control Number 12112732

DOCKETED

JUN 21 2013

**C. HART
CIVIL ADMINISTRATION**

ORDER

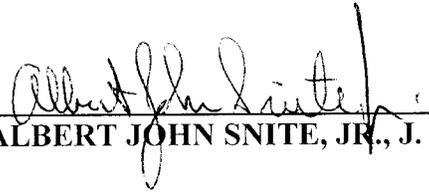
AND NOW, this 20th day of June, 2013, upon consideration of Plaintiff's Motion for Summary Judgment, Defendants' opposition thereto, and the memoranda in support and in opposition, it is hereby **ORDERED** as follows:

1. Plaintiff ALM's Motion for Summary Judgment is **GRANTED IN PART**. Summary judgment is granted for Plaintiff against Defendants City of Philadelphia and Sheriff John D. Green ("Sheriff") on Plaintiff's breach of contract claim.
2. Damages are awarded in the amount of \$719,875.56, plus prejudgment interest of \$97,630.50, calculated at 6% per annum from the day of demand, March 18, 2011, for a total judgment of \$817,506.06. An assessment of damages hearing will take place on July 10 at 1:30 pm in courtroom 696, regarding the disputed invoice of \$13,275.94.
3. Plaintiff's claim for unjust enrichment is **DISMISSED AS MOOT** with regard to City and Green, due to the grant of Summary Judgment for breach of contract.
4. Plaintiff's Motion for Summary Judgment is **DENIED** with respect to Defendant Reach.

Alm Media, Llc Vs City Of Philadelphia C/O L-ORDOP



BY THE COURT:


ALBERT JOHN SNITE, JR., J.

advertisements has gone through Reach; ALM would submit invoices to Reach, who would submit its own invoices to the Sheriff. Several invoices from 2010 and 2011 submitted to Reach by ALM went unpaid; these are the subject of this lawsuit.

This Court initially granted partial summary judgment on behalf of Plaintiff ALM against the office of the Sheriff and Reach for breach of contract; upon a motion for reconsideration, the Court vacated this grant of summary judgment and requested further briefing on the legal relationship of the City Defendants to each other.

II. Discussion.

a. The Court's prior Order granting summary judgment to Plaintiffs is REINSTATED AS MODIFIED. Summary judgment is granted for Plaintiff against the City and Sheriff for breach of contract, but denied against Reach.

Once the relevant pleadings have closed, any party may move for summary judgment.¹

“Pennsylvania law provides that summary judgment may be granted only in those cases in which the record clearly shows that no genuine issues of material fact exist and that the moving party is entitled to judgment as a matter of law.”² Summary judgment is appropriate when the evidentiary record shows the material facts are undisputed.³

The Court finds as a matter of law a contract existed between ALM and the Office of the Sheriff, that City defendants have a duty to pay the money in question to ALM, and that Reach, as an agent of a disclosed principal, the Sheriff, is not a party to the contract.

b. The City and Sheriff are liable.

¹ Pa. R.C.P 1035.2.

² Rausch v. Mike-Meyer, 783 A.2d 815, 821 (Pa. Super. 2001).

³ McCarthy v. Dan Lepore & Sons Co., Inc., 724 A.2d 938, 940 (Pa. Super. 1998).

On March 8, 2013, this Court directed counsel for the City and Sheriff (“City Defendants”) to provide further briefing on the question of whether there is any legal or practical difference between the City and the Sheriff concerning liability in this matter. In response, counsel filed a brief on March 18, 2013, stating that “the answer to the Court’s inquiry is an emphatic ‘No’ twice”⁴ and that “official capacity suits – legally and practically – represent an action against the Office of which the officer is an agent. . . . As such, it is no different from a suit against the government entity itself, here the City.”⁵ Based on this admission, the Court finds both City Defendants liable to ALM.

It is undisputed that ALM published the notices of Sheriff’s sales in the Legal Intelligencer, that the Sheriff agreed to honor the costs of this publication in a letter dated August 30, 1989, and that ALM did not receive funds for this publication. The City Defendants’ argument that the Sheriff had no authority to make these contracts without the approval of the City Solicitor and the Finance Director is without merit. The Sheriff is under an independent legal obligation to place notices of Sheriff’s sale in the newspapers; consequently, this contract does not have to be approved by the Solicitor. The costs of advertising are pre-collected; there is no need to pass this contract by the Finance Director.

As the Sheriff received the benefit of the contract for years, this Court holds that the contract was ratified by the City Defendants’ inaction.⁶ The City argues “[a]s a successor to Sheriff Green, Sheriff Deeley may lawfully disavow any “contract” made by her predecessor.” However, the case relied upon by the City for that proposition, Lobolito v. North Pocono School

⁴ Supplemental Brief of City Defendants, p.2.

⁵ Id. at 7.

⁶ Punxsutawney Municipal Airport Auth. v. Lellock, 754 A. 2d 666, 671 (Pa. Super. 2000).

District, clearly distinguishes between contracts with respect to governmental functions, and business or proprietary functions.⁷ As the contract in question relates to a business function, this argument is irrelevant.

Furthermore, the contract in question has been performed. It is undisputed that the notices were published in the Legal Intelligencer. For a governmental entity to disavow a contract after it has received the benefit would not be in the interests of justice. The Sheriff is a fiduciary who law allows to pre-collect costs from lien/judgment holder; it cannot absolve itself from responsibility for these funds by hiring an agent.

Further, in contrast to the City Defendants' argument, the City can be bound by the actions of the Sheriff. In Bartholomew v. Lehigh County, the sheriff who contracted to publish election announcements in county newspapers went beyond his statutory authority by publishing in more than four newspapers.⁸ Here, in contrast, the notices were published in the legal publication, and in a newspaper of general circulation, in accordance with the Sheriff's authority bestowed by Pa. R. C. P. 3129.2 (d) and Phila. County Court Rule 430.2. The Sheriff was performing within the scope of his duties. Accordingly, the Court will enter summary judgment against both the City and the Sheriff.

c. Summary Judgment is Denied as to Defendant Reach.

An agent of a disclosed principal is not a party to a contract between the principal and a third party, unless the agent and the third party agree otherwise.⁹ Although the Court finds that

⁷ 562 Pa. 380, 384-5 (19 (“In the performance of sovereign or governmental, as distinguished from business or proprietary, functions, no legislative body, or municipal board having legislative authority, can take action which will bind its successors.”) See also Commonwealth ex rel. Fortney v. Bartol, 342 Pa. 172, 174-5 (1941) (Portion of contract was invalid that obligated a municipal governing body to pass ordinances in the future).

⁸ 148 Pa. 82,85; 23 A. 1122 (1892).

⁹ Revere Press, Inc., v. Blumberg, 431 Pa. 370, 373; 246 A.2d 407, 409 (1968).

Reach acted as the agent of the Sheriff; it cannot find as a matter of law that Reach independently agreed to be liable for the payments to ALM.¹⁰ ALM's argument that the long-standing history of payments from Reach to ALM constitute a contract implied-in-fact is without merit; "[a]contract implied in fact is an actual contract arising when there is an agreement, but the parties intentions are inferred from their conduct in light of the circumstances."¹¹ No circumstances or facts have been alleged that Reach intended to be bound to ALM in the matter of these payments. The Court takes judicial notice of the different behavior exhibited by Reach in similar circumstances; in its interactions with PMN, the publisher of the *Inquirer*, Reach signed an Application for Credit and Guarantee, indicating its intention to be responsible for payment independently. This did not occur here, and the Court cannot find that Reach's actions indicated such an intent. Accordingly, summary judgment is denied as to Reach.

d. Plaintiff's claim for unjust enrichment is DISMISSED AS MOOT.

Because the Court has granted Plaintiff's claim for breach of contract against the City Defendants, its unjust enrichment claim is dismissed as moot against the City Defendants.

e. Prejudgment Interest

The parties disagree as to the day on which prejudgment interest should start accruing. The Sheriff claims that interest should start accruing at the commencement of the lawsuit on March 24, 2011, or at the meeting of the parties on March 18, 2011, in which the past due amounts were discussed. The plaintiff claims that prejudgment interest should be calculated based on the days outstanding for each individual invoice.

¹⁰ However, Reach may be liable to the City Defendants.

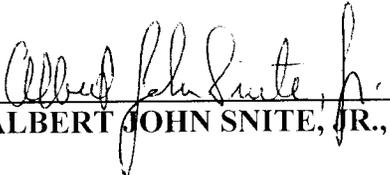
¹¹ Birchwood Lakes Cmty. Ass'n, Inc. v. Comis, 296 Pa. Super. 77, 86, 442 A.2d 304, 308 (1982)

ALM consistently billed Reach for the Sheriff's advertising by sending invoices each month. Of the unpaid invoices, excluding the disputed invoice, only one invoice on its face stated that the payment was due upon receipt and that past due balances would be charged a 1.5% per month service charge (18% per annum). However, historically, when Reach did not pay the balance of the invoices, ALM neither made an indication on later invoices that there was an outstanding balance, nor applied late payment charges.

Since ALM did not enforce or reiterate any type of deadline with regard to payments from Reach, and because they did not apply any penalties or interest charges to subsequent invoices after nonpayment, the court rules as a matter of law that prejudgment interest in this case should start accruing on the date on which ALM formally demanded the outstanding payments.

The earliest meeting between the Sheriff's office and ALM regarding the unpaid invoices took place on March 18, 2011. This was the first demand for payment by ALM from the Sheriff's office. The law states, in the absence of a formal due date that is expected to be followed, the demand date is the day that prejudgment interest should begin accruing.

BY THE COURT,


ALBERT JOHN SNITE, JR., J