



ATTORNEY FOR APPELLANT

P. Frederick Pfenninger
Pfenninger & Associates
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

PointOne Recruiting Solutions,
Inc.,
Appellant-Plaintiff,

v.

Omen USA, Inc. d/b/a Omen
Casting Group,
Appellee-Defendant.

September 14, 2021

Court of Appeals Case No.
21A-CC-518

Appeal from the Marion Superior
Court

The Honorable Ian L. Stewart,
Magistrate

Trial Court Cause No.
49D05-2005-CC-17624

Najam, Judge.

Statement of the Case

- [1] PointOne Recruiting Solutions, Inc. (“PointOne”) appeals the trial court’s judgment in favor of Omen USA, Inc. d/b/a Omen Casting Group (“Omen”) on PointOne’s complaint alleging breach of contract. PointOne presents a

single issue for our review, namely, whether the trial court erred when it entered judgment in favor of Omen.

[2] We reverse and remand with instructions.

Facts and Procedural History

[3] In March 2019, PointOne submitted to Omen for approval a written “confirmation of [their] agreement” that PointOne would provide employee recruiting services for Omen. Appellant’s App. Vol. 2 at 12. Pam Solo, Omen’s human resources manager at the time, signed the agreement, which provided in relevant part as follows:

As we have stated, our service fee is on a contingency basis. It would be payable only if a candidate enters into a service relationship with you or your affiliate within one year after our most recent communication relating to the candidate. Our service fee is equal to (25%) of the candidate’s first year’s base salary.

* * *

Our service fee, which will be invoiced when you and the candidate agree to enter into the service relationship, will be due in full within 45 days after the date of the invoice. . . .

* * *

The following definitions are applicable to this Agreement: “Candidate” means a person referred to you by us directly or indirectly. . . . “Refer” means the communication by us of the identity of a candidate by any means, orally, in writing or electronically. “Service relationship” means your engagement of

the services of the candidate in any capacity, including as an employee, independent contractor, consultant, or other representative. . . .

Id.

- [4] In early April 2019, Jared Smerchek, a recruitment manager with PointOne, contacted Solo by email regarding two candidates for employment with Omen, including Serleaf Barry. At that time, Omen had an opening for a die cast engineer. Solo reviewed Barry’s resume and, in a follow up email, she asked Smerchek whether Barry “want[ed] to move north[.]” Plaintiff’s Ex. 11. Smerchek responded and stated that Barry was originally from Grand Rapids, Michigan, and that he was looking to move either to Michigan or Indiana. Smerchek also stated that Barry was looking for an annual salary of around \$125,000. Smerchek sent Solo another email asking her whether she wanted to talk to Barry, and she responded that she had not seen Smerchek’s answers to her prior questions. In a subsequent phone call on April 9 between Smerchek and Solo, Solo stated that she was not interested in hiring Barry.
- [5] In September, Omen needed to hire someone to fill the position of Senior Manager of Engineering. At that time, Solo was in contact with Matt Williams, a recruiter for Movement Search and Delivery. Williams submitted Barry’s resume to Solo, and Williams scheduled an interview for Barry with Solo. Solo did not remember that Smerchek had previously referred Barry to her for employment. Omen ultimately hired Barry in December and offered him an annual salary of \$120,000. After Smerchek found out that Omen had

hired Barry within one year after Smerchek had recommended Barry for a position with Omen, Smerchek sent Omen an invoice for \$30,000.

- [6] When Omen did not pay the \$30,000, PointOne filed a complaint alleging breach of contract. Following a bench trial, the trial court entered a general judgment for Omen. This appeal ensued.

Discussion and Decision

- [7] PointOne contends that the trial court erred when it entered judgment for Omen. A party who had the burden of proof at trial appeals from a negative judgment and will prevail only if it establishes that the judgment is contrary to law. *Helmuth v. Distance Learning Sys. Ind., Inc.*, 837 N.E.2d 1085, 1089 (Ind. Ct. App. 2005). A judgment is contrary to law when the evidence is without conflict and all reasonable inferences to be drawn from the evidence lead to only one conclusion, but the trial court reached a different conclusion. *Id.* When a trial court enters a general judgment, as is the case here, the judgment will be affirmed if it can be sustained upon any legal theory consistent with the evidence. *Id.* “In making this determination, we neither reweigh the evidence nor judge the credibility of witnesses.” *Id.* “Rather, we consider only the evidence most favorable to the judgment together with all reasonable inferences to be drawn therefrom.” *Id.*

- [8] Initially, we note that Omen has not filed an appellee’s brief.

When an appellee fails to file a brief, we apply a less stringent standard of review. We are under no obligation to undertake the

burden of developing an argument for the appellee. We may, therefore, reverse the trial court if the appellant establishes prima facie error. “Prima facie” is defined as “at first sight, on first appearance, or on the face of it.”

Deckard v. Deckard, 841 N.E.2d 194, 199 (Ind. Ct. App. 2006) (citations omitted).

[9] PointOne asserts that, under the clear terms of the parties’ agreement, PointOne is entitled to judgment in its favor. To resolve this issue on appeal, we must interpret the agreement. It is well settled that the

[c]onstruction of the terms of a written contract generally is a pure question of law. The goal of contract interpretation is to determine the intent of the parties when they made the agreement. This court must examine the plain language of the contract, read it in context and, whenever possible, construe it so as to render every word, phrase, and term meaningful, unambiguous, and harmonious with the whole. If contract language is unambiguous, this court may not look to extrinsic evidence to expand, vary, or explain the instrument but must determine the parties’ intent from the four corners of the instrument.

Layne v. Layne, 77 N.E.3d 1254, 1265 (Ind. Ct. App. 2017) (citations omitted).¹

¹ We note that the agreement includes a choice-of-law provision stating that Wisconsin law would apply to resolve any dispute. However, on appeal, PointOne cites only Indiana law in support of its argument. And, in any event, Wisconsin law on this issue is identical to Indiana law. *See Betz v. Diamond Jim’s Auto Sales*, 849 N.W.2d 292, 320 (Wis. 2014) (holding interpretation of unambiguous contract looks to four corners and not to extrinsic evidence).

[10] PointOne maintains that the parties' agreement is unambiguous and plainly states that Omen owes PointOne twenty-five percent of Barry's first-year base salary, and we agree. The agreement's terms are simple. Omen promised to pay PointOne if Omen hired any candidate referred to Omen by PointOne within one year "after [their] most recent communication relating to the candidate." Appellant's App. Vol. 2 at 12. It was undisputed at trial that Barry was a candidate under the terms of the agreement, that PointOne had communicated with Omen about Barry in April 2019, and that Omen hired Barry in December 2019 with an annual salary of \$120,000.

[11] At trial, Omen argued that, because PointOne's communication with Solo in which it identified and referred Barry was about a different position than the one for which he was ultimately hired, Omen was not liable to PointOne. However, the agreement does not include any such exception to Omen's duty to pay. To the contrary, the agreement states that Omen would pay PointOne if Omen hired a candidate referred by PointOne "in any capacity" within one year of the referral. *Id.*

[12] We hold that PointOne has established prima facie error. Accordingly, we reverse the trial court's judgment for Omen. We remand and instruct the trial court to enter judgment for PointOne in the amount of \$30,000 plus reasonable attorney's fees.²

² The parties' agreement includes a provision for attorney's fees in the event of nonpayment.

[13] Reversed and remanded with instructions.

Riley, J., and Brown, J., concur.