

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 11, 2016 Session

**ACE DESIGN GROUP, INC. v. GREATER CHRIST TEMPLE CHURCH,
INC.**

**Appeal from the Chancery Court for Davidson County
No. 15405-I Claudia Bonnyman, Chancellor**

No. M2016-00089-COA-R3-CV – Filed December 8, 2016

Appellant/Church appeals the trial court’s entry of default judgment against it and the trial court’s award of damages for breach of contract in favor of Appellee, an architectural and design firm. Appellee served its complaint for breach of contract on Appellant’s registered agent at an address other than the one listed with the Secretary of State. The trial court found that service was proper and entered default judgment against Appellant for failure to appear. Thereafter, the trial court entered judgment in favor of Appellee for the alleged balance on the contract price, lost profits, and interest. We conclude that the default judgment was proper. However, as to the type and measure of damages, we vacate and remand.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Affirmed in Part, Vacated in Part, and Remanded**

KENNY ARMSTRONG, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and ANDY D. BENNETT, J., joined.

David Matthew Rich, Nashville, Tennessee, for the appellant, Greater Christ Temple Church, Inc.

Timothy W. Burrow, Nashville, Tennessee, for the appellee, Ace Design Group, LLC.

OPINION

I. Background

On or about July 1, 2013, Ace Design Group, LLC (“Appellee”), an architectural

design and engineering firm, submitted a Design Fee Proposal (“Proposal”) to Greater Christ Temple Church, Inc. (“Church” or “Appellant”). The Proposal was for architectural and engineering design services for construction of a sanctuary and connecting gathering area for the Church. The Proposal stated that the design fee for the project was \$280,000.00, and the total cost of the project was \$3.5 million. The Proposal included a “break down with approximate timeframes,” including the following price schedule:

Deposit: Remuneration for the preliminary work and retainer to get the project started.

\$28,000 (start of project)

Schematic Design: Further preliminary design based on the needs of the church and discussions with key personnel, including floor plans.

\$25,200 (4 weeks)

Design Development: Further development of the Schematic Design to include elevations, dimensions and details.

\$63,000 (6 weeks)

Construction Documents: Final detailed drawings used for bidding, construction and permit approval.

\$126,000 (10 weeks)

Bidding: Solicitation, procurement and review of bids from selected contractors.

\$12,600 (3 weeks)

Construction Administration: Observation of the construction process and review of the work performed. Also, review of submitted pay request from the contractor.

\$25,200 (1 year)

The Proposal did not contain a signature line for a Church representative, and no one signed the Proposal on behalf of the Church. However, on October 29, 2013, the Church tendered a \$25,000 check to Appellee.

On October 30, 2013, Appellee presented the Church with a document titled “American Institute of Architects Standard Form of Agreement between Owner and Architect” (“Agreement”). The Agreement outlined specific terms concerning dates for completion, insurance coverage, civil engineering requirements, dispute resolution forum (in Kentucky), and compensation. Importantly, neither party signed the Agreement. Appellee alleges that it began design work and expended travel costs to complete the work set out in both the Proposal and Agreement. After tendering the \$25,000 check, Appellant made no further payment to Appellee.

On March 31, 2015, Appellee filed a complaint in the Chancery Court of Davidson County (“trial court”), averring that Appellant: (1) orally entered into a contract

to pay for the work set out in the Proposal; (2) accepted the Proposal in writing by tendering a check for \$25,000 to Appellee; (3) orally entered into a contract comporting with the terms set out in the Agreement and promised to have Appellant's trustees sign the Agreement but failed to do so; (4) met with Appellee for "progress meetings with representatives of the Church on August 20, 2013, September 19, 2013, October 2, 2013, October 29, 2013, December 17, 2013, February 11, 2014, and June 5, 2014;" (5) provided its approval of Appellee's work and requested that Appellee "proceed with moving forward based on the work done to date;" and (6) failed to pay when Appellee requested payment of \$40,000 on December 16, 2013, and \$35,000 on April 18, 2014. In its complaint, Appellee sought damages for breach of contract, promissory estoppel, and quantum meruit.

On March 31, 2015, Appellee attempted to serve the summons and complaint on Harvey Hoskins, Appellant's registered agent listed with the Secretary of State. The record indicates that Appellee first attempted to serve Mr. Hoskins at 1900 West End Avenue, Nashville, Tennessee. This is the address on file for Mr. Hoskins with the Tennessee Secretary of State. The summons was returned unserved on April 15, 2015, because service was attempted at an incorrect address. On the same day, April 15, 2015, Appellee conducted research and determined that Mr. Hoskins' address was 1900 Church Street, Suite 200, Nashville, Tennessee. Appellee then re-issued its summons and achieved service on Mr. Hoskins at the Church Street address on April 22, 2015.

The Church did not answer or appear before the trial court, and on June 23, 2015, Appellee moved for default judgment against the Church. Also on June 23, 2015, Appellee submitted a default judgment certificate, listing \$113,680.00 as the amount allegedly owed by the Church. On June 22, 2015, the Church was served with the motion for default judgment and default judgment certificate.¹ Nonetheless, the Church failed either to answer or appear before the trial court. Accordingly, on August 7, 2015, the trial court entered an order of default judgment in favor of Appellee and against Appellant for breach of contract. The Church was subsequently mailed a copy of the order of default judgment.

The hearing on damages was held on August 24, 2015. Despite having been served with the default judgment, the Church did not appear at the hearing. On August 25, 2015, the trial court entered an order on damages, which states, in relevant part, that:

¹ Due to a scanning error in the record, the clerk of the trial court hand wrote a page number on the second page of the motion for default judgment in the technical record transmitted to this Court. Because the clerk's notation was on the certificate of service page of the motion, Appellant contested the validity of the page and argued that it was not properly in the record before this Court. However, by notice filed in this Court on November 23, 2016, Appellant conceded that this page was properly in the technical record. Accordingly, we will consider all pages of the technical record in our review.

Greater Christ Church defaulted under its contract with Ace Design to pay the contract price of \$250,000; Greater Christ Church promised to pay the contract price; Ace completed \$100,000 of the \$250,000 contract; Greater Christ Church paid \$25,000, leaving a balance due of \$75,000; and interest on the \$75,000 due totaled \$12,750. The Court further finds the following based on the evidence presented at the hearing: Ace Design is entitled to profits it would have made on the \$150,000 balance of the work had Greater Christ Church not breached the contract; Mr. Perry sufficiently proved that profits on the remaining \$150,000 of work would have been 30%, which equates to \$45,000, and that 30% represents the net profit after paying all costs, including consultants and overhead.

On August 25, 2015, the Church was served with the judgment.

On September 4, 2015, the Church filed a motion to vacate the judgment pursuant to Tennessee Rule of Civil Procedure 60.02, arguing that:

The judgment entered in this action, and all subsequent proceedings thereon, should be vacated and set aside as [Appellant] was not served pursuant to Rule 5.02 with any previously filed pleadings in this action. Specifically, [Appellant] would state that its agent for service of process is registered with the Tennessee Secretary of State at the following address:

Mr. Harvey Hoskins
1900 West End Avenue
Nashville, Tennessee 37203

[Appellee] in this action attempted to serve Defendant GCTC via at the incorrect address of:

Mr. Harvey Hoskins
1900 Church Street, Suite 200
Nashville, Tennessee 37203

The incorrect service address is identified on the Judgment Order lodged by [Appellee's] counsel on August 25, 2015. As a result of [Appellee's] error in serving its Complaint and subsequent pleadings on the wrong address GCTC never received any pleadings in this matter and service was not effective pursuant to Rule 5.02 of the Tennessee Rules of Civil Procedure. (It should also be noted that no pleadings filed in this action, nor the Judgment Order lodged by [Appellee], were ever sent to GCTC's principal address where [Appellee] claims it performed the construction/renovations claimed in its Complaint.)

BASIS FOR VACATING JUDGMENT PURSUANT TO RULE 60.02[]

[Appellant] GCTC is a non-profit Church having a principal address of 2400 10th Avenue South, Nashville, Tennessee 37204-2540. GCTC should be allowed to file and serve an answer and defend on such terms as may be just, on the ground of excusable neglect, mistake, inadvertence, surprise, and other reasons justifying relief from the operation of the judgment all of which more clearly appears in the affidavit of M[r]. Sherman Merritt of GCTC, annexed hereto as Exhibit A.

In an attached affidavit, filed in support of the Church's Rule 60 motion, the Bishop of the Church, Sherman Merritt, stated that, due to Appellee's service of process on Mr. Hoskins, he was not aware of the lawsuit until September 2, 2015, which was after the entry of the default judgment. Appellant also filed Mr. Hoskins' affidavit on September 8, 2015. Mr. Hoskins' affidavit provides that

[a]s a result of [counsel for Appellee] sending information and other materials regarding this lawsuit to the incorrect service address at my offices on Second Avenue in Nashville, Tennessee, Greater Christ Temple Church, Inc[.], did not receive the documents related to this lawsuit.

On September 21, 2015, Appellee filed a response to Appellant's motion, attaching documents from the Tennessee Secretary of State, showing that Mr. Hoskins was Appellant's registered agent as of March 6, 2015, which was prior to the date that the complaint was filed. Further, Appellee provided proof that Mr. Hoskins remained Appellant's registered agent at least through September 17, 2015. Appellee also included affidavits from Appellee's counsel and their staff, explaining that internet research revealed that Mr. Hoskins' address listed with the Secretary of State was incorrect, thus necessitating service on Mr. Hoskins at another address.

On October 16, 2015, the trial court denied the Church's motion to vacate or to alter or amend the judgment, finding that Mr. Hoskins conceded that he received the complaint and all documents filed in the case. Specifically, the trial court found:

The Court must consider the Rule 60.02 factors in deciding whether a final default judgment should be set aside. First, as to willfulness, to the extent that Mr. Hoskins did not notify [Appellant] of the lawsuit, the motions and the orders, such failure to notify was willful. To the extent that Mr. Hoskins did notify [Appellant] that a complaint had been served upon him as registered agent, [Appellant] failed to respond to the lawsuit for no reason and such was willful. Because Mr. Hoskins and [Appellant] acted willfully, the failure to respond to the complaint and the motions and the

hearings dates, cannot be excusable neglect. For completeness, the Court will address the requirement that [Appellant] present a meritorious defense to [Appellee]’s claims in order to set aside a default judgment. [Appellant] did not present or state a meritorious defense. It is not sufficient that [Appellant] state that it has defenses but rather [Appellant] has the burden to show why it is unfair to leave the judgment as it is. Last, [Appellee] has not been able to show that setting aside the judgment will prejudice [Appellee].

The Court decided [Appellant]’s motion based upon affidavits as allowed under the Tennessee Rules of Civil Procedure.

Based upon all of the above, the Court respectfully declines to set aside the default judgment. The amount of the judgment for the design fee is not out of proportion to the \$3.4 million dollar building project addressed in [Appellee]’s proposal. [Appellant] was simply not able to show that its neglect was excusable or that it had defenses with merit.

II. Issues

The Church appeals and states the issues as follows in its brief:

1. Whether Plaintiff-Appellee effected valid service upon Defendant-Appellant, pursuant to Term. R. Civ. P. 4.04(4)(b).
2. Whether the Trial Court abused its discretion in failing to set aside the default judgment entered against Defendant-Appellant pursuant to Tenn. R. Civ. P. Rule 59.04 and 60.02.
3. Whether the Trial Court’s August 31, 2015 Judgment Order makes required findings and meets the evidentiary requirements of Tenn. R. Civ. P. 55.01.
4. Why does ACE not respond in its Brief to the Church’s seminal argument on appeal that the trial court abused its discretion in founding the Judgment Order upon the existence of a written contract between the parties when no such contract exists and the only “contract” in the record is an unsigned document.
5. Whether Plaintiff-Appellee effected valid service upon Defendant-Appellant pursuant to Tenn. R. Civ. P. 4.04(4)(b) after Harvey Hoskins informed ACE he was no longer the agent for service of process.
6. Whether the Church’s failure to answer ACE’s lawsuit was willful.
7. A meritorious defense exists to ACE’s claims set forth in the lawsuit pursuant to Tenn. R. Civ. P. 59.04 and 60.02.

We perceive that there are two dispositive issues, which we restate as follows:

1. Whether the trial court erred in entering default judgment against the Church?
2. Whether the trial court erred in its award of damages to Appellee?

III. Standard of Review

We review the trial court's findings of fact *de novo* on the record of the trial court, accompanied by a presumption of the correctness of these findings, unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d); *Langschmidt v. Langschmidt*, 81 S.W.3d 741, 744 (Tenn. 2002). With respect to the trial court's conclusions of law, however, our review is *de novo*, and the trial court's conclusions of law are "accorded no presumption of correctness." *Brunswick Acceptance Co., LLC v. MEJ, LLC*, 292 S.W.3d 638, 642 (Tenn. 2008).

IV. Analysis

A. Default Judgment

Tennessee Rule of Civil Procedure 4.04 outlines the proper method for service of process on an in-state corporate defendant, as follows:

Service shall be made as follows:

(4) Upon a domestic corporation, or a foreign corporation doing business in this state, by delivering a copy of the summons and of the complaint to an officer or managing agent thereof, or to the chief agent in the county wherein the action is brought, or by delivering the copies to any other agent authorized by appointment or by law to receive service on behalf of the corporation.

Tennessee Code Annotated Section 48-15-101 requires a Tennessee corporation, such as the Church, to maintain an agent for service of process:

- (a) Each corporation must continuously maintain in this state:
 - (1) A registered office that may be the same as any of its places of business; and
 - (2) A registered agent, who may be:
 - (A) An individual who resides in this state and whose business office is identical with the registered office;
 - (B) A domestic corporation or not for profit domestic corporation whose business office is identical with the registered office; or
 - (C) A foreign corporation or not for profit foreign

corporation authorized to transact business in this state whose business office is identical with the registered office.

(b) If a registered agent resigns or is unable to perform the registered agent's duties, the designating corporation shall promptly designate another registered agent to the end that it shall at all times have a registered agent in this state.

Tennessee Code Annotated Section 48-15-104(a) provides that “[a] corporation’s registered agent is the corporation’s agent for service of process, notice, or demand required or permitted by law to be served on the corporation.”

In this case, the parties do not dispute the following: (1) Mr. Hoskins was served with the complaint; (2) the Church listed Mr. Hoskins as its registered agent with the Secretary of State; and (3) Mr. Hoskins was personally served with all documents in the instant appeal at an address different than that listed with the Secretary of State. The Church contends that service on Mr. Hoskins was not proper because process was returned unserved due to a service attempt at an incorrect address, i.e., the address listed with the Secretary of State. However, it is undisputed that Mr. Hoskins was subsequently personally served at his business address. In serving process, it is not the address or location where service is achieved that is paramount; rather, it is whether the proper party is served that establishes compliance with the process requirements. “Personal service of written notice **within the jurisdiction** is the classic form of notice always adequate in any type of proceeding.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950) (emphasis added). The trial court correctly found that service was proper on Mr. Hoskins, stating that “[Appellee] carried its burden to show that service of process and service of other court papers on [Appellant]’s registered agent were valid in accordance with Tennessee law.” Contrary to the Church’s argument that Appellee should have attempted service at the Church’s physical address, the Church’s status as a Tennessee corporation required it to have “a registered agent in this state” to receive service of process. Tenn. Code Ann. § 48-15-101. Mr. Hoskins was the Church’s registered agent and was, in fact, served. Having undisputedly served Mr. Hopkins, Appellant’s registered agent, service was proper and provided constitutional notice to the Church, no matter the physical location where service was achieved. Therefore, the trial court properly found that Appellant received proper service, pursuant to Tennessee Rule of Civil Procedure 4.04.

Having determined that the Church was properly served with the complaint for breach of contract, the question is whether the trial court erred in entering a default judgment against it. Tennessee Rule of Civil Procedure 55.01 provides, in relevant part, that:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact

is made to appear by affidavit or otherwise, judgment by default may be entered as follows:

The party entitled to a judgment by default shall apply to the court. Except for cases where service was properly made by publication, all parties against whom a default judgment is sought shall be served with a written notice of the application at least five days before the hearing on the application, regardless of whether the party has made an appearance in the action.... If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter the court may conduct such hearings or order such references as it deems necessary and proper...

As noted above, on June 23, 2015, Appellee moved for default judgment against Appellant. It is undisputed that Appellant was served with the motion for default judgment and the attached affidavit of Appellee's counsel, stating that Appellant had been served but had failed either to make an appearance or to file any responsive pleading in the case. The motion included the following language, which provided notice to Appellant of the default judgment motion hearing:

This motion is expected to be heard on Friday, July 10, 2015, at 9 a.m. If no response is timely filed and served, the motion shall be granted and counsel or pro se litigant need not appear in court at the time and date scheduled for the hearing.

Neither party disputes that the Church failed to appear at the July 10, 2015 hearing. Therefore, pursuant to Tennessee Rule of Civil Procedure 55.01, Appellee was entitled to a default judgment against Appellant. Accordingly, we find no error with the entry of default judgment in favor of Appellee and against Appellant. That being said, the question remains whether the trial court awarded the proper type and measure of damages. We now turn to address this issue.

B. Damages

Tennessee Rule of Civil Procedure 54.03 provides that damages on a default judgment must be determined as follows:

Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered **is entitled**, even if the party has not demanded such relief in the party's pleadings; but the court shall not give the successful party relief, though such party may be entitled to it, where the propriety of such relief

was not litigated and the opposing party had no opportunity to assert defenses to such relief.

Id. (emphasis added). In other words, the mere entry of a default judgment in favor of a party does not, *ipso facto*, entitle that party to carte blanche damages. Rather, a trial court may only award those damages to which the party is legally entitled. In determining damages on the entry of a default judgment, the trial court is required “to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter the court may conduct such hearings or order such references as it deems necessary and proper.” Tenn. R. Civ. P. 55.01.

As an initial matter, Appellee is only entitled to breach of contract damages if there was, in fact, a valid and enforceable contract. To put a finer point on it, the trial court must first determine whether a valid contract exists. If so, the court must next determine whether the Church is in breach. If so, the court must determine the damages to which Appellee is entitled. If, on the other hand, there is no valid contract, the court must determine whether Appellee is entitled to quasi-contract damages. As discussed above, the trial court found that “Greater Christ Church defaulted under its contract with Ace Design.” However, our ability to review the trial court’s finding of breach of contract is limited because our record contains no transcript or statement of evidence adduced at the damages hearing. More problematic is the fact that the trial court’s order on damages contains no findings of fact from which this Court may glean a basis for its finding that the parties had a valid contract and that the Church breached that contract. Tennessee Rule of Civil Procedure 52.01 provides, in relevant part: “In all actions tried upon the facts without a jury, the court shall find the facts specially and shall state separately its conclusions of law and direct the entry of the appropriate judgment.”

Although the trial court’s order is insufficient insofar as it does not contain findings concerning the trial court’s grounds for finding a valid contract, from the record before us, this Court has some concern as to whether the prima facie elements for contract formation were met in this case. Specifically, we have doubt as to the element of mutual assent and, if mutual assent exists, whether the contract falls within the Statute of Frauds.

A valid, enforceable contract requires consideration and mutual assent, manifested in the form of an offer and an acceptance. Restatement (Second) of Contracts §§ 17, 22. In Tennessee, “[t]he legal mechanism by which parties show their assent to be bound is through offer and acceptance.” *Moody Realty Co., Inc.*, 237 S.W.3d 666, 675 n.8 (Tenn. Ct. App. 2007). An enforceable contract “must result from a meeting of the minds, must be based upon sufficient consideration, and must be sufficiently definite to be enforced.” *Peoples Bank of Elk Valley v. ConAgra Poultry Co.*, 832 S.W.2d 550, 553 (Tenn. Ct. App. 1991) (citing *Johnson v. Cent. Nat’l Ins. Co. of Omaha*, 356 S.W.2d 277, 281

(Tenn. 1962)). The meeting of the minds requirement is explained as follows:

“Under general principles of contract law, a contract must result from a meeting of the minds of the parties in mutual assent to the terms.” *Sweeten v. Trade Envelopes, Inc.*, 938 S.W.2d 383, 386 (Tenn. 1996) (citation omitted)... “Courts determine mutuality of assent by assessing the parties’ manifestations according to an objective standard.” [*Moody Realty Co., Inc. v. Huestis*, 237 S.W.2d 666, 674 (Tenn. Ct. App. 2007).]

In re Estate of Josephson, No. M2011-01792-COA-R3-CV, 2012 WL 3984613, at *2 (Tenn. Ct. App. Sept. 11, 2012). Thus, the crux of the “meeting of the minds” is mutual assent to a contract. Here, our record does not contain a signed agreement. As noted above, the “Agreement” was not signed by either party; the Proposal was signed by Appellee’s employee, Kevin Perry, but lacked a signature line for the Church and was not signed by an agent or representative of the Church.

In addition to the mutual assent requirement, it is undisputed that the building project could not have been completed within one year. Appellee’s Proposal states that the five phases of the project would respectively require four weeks, six weeks, ten weeks, three weeks, and one year; Appellee’s Agreement lists a commencement date for construction and a completion date for construction that span fifteen months. Accordingly, this Court questions whether the alleged contract falls under the purview of the Statute of Frauds. Tennessee’s Statute of Frauds provides as follows, in relevant part:

(a) No action shall be brought:

* * *

(5) Upon any agreement or contract which is not to be performed within the space of one (1) year from the making of the agreement or contract;

unless the promise or agreement, upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and **signed by the party to be charged therewith**, or some other person lawfully authorized by such party.

* * *

(c) For purposes of this section, a writing, or some memorandum or note thereof, includes a record.

Tenn. Code Ann. § 29-2-101 (emphasis added). Accordingly, on remand, the trial court should determine whether the Statute of Frauds is applicable in this case.

However, even if the trial court determines that the Statute of Frauds applies, there are certain equitable doctrines that may operate to excuse failure to comply with the Statute of Frauds. For example, partial performance may allow for “an otherwise unenforceable oral contract [to] be the basis of an action if one of the parties has performed.” *Id.*

[T]he doctrine of part performance does not require merely that the plaintiff performed services under the contract sued upon. The doctrine additionally requires that the plaintiff, in performance or pursuance of the contract, altered his position in such a way that it would be unjust and unconscionable not to enforce the contract.

Lomax v. Jackson-Madison Cnty. Gen. Hosp. Dist., No. 02A01-9706-CH-00116, 1997 WL 33760893, at *2 (Tenn. Ct. App. Oct. 31, 1997). The doctrine of partial performance “is purely an equitable doctrine and is a judicial interpretation of the acts of the parties to prevent frauds” and, if applied, can take a verbal contract out of the Statute of Frauds. *Blasingame v. Am. Materials, Inc.*, 654 S.W.2d 659, 663 (Tenn. 1983). Urging caution when finding an exception to the Statute of Frauds, this Court has stated “if the doctrine is too liberally applied, it could easily result in the exception of partial performance swallowing the rule of the Statute of Frauds, and allowing the proliferation of those very evils that the Statute was created to guard against.” *Shedd v. Gaylord Ent.*, 118 S.W.3d 695, 698 (Tenn. Ct. App. 2003).

Here, the only act that could be considered a partial performance pursuant to the contract would be the Church’s \$25,000 payment. However, the \$25,000 amount is not contemplated in either the Proposal or the Agreement. Until a valid contract and breach are specifically determined by the trial court, there is no basis for breach of contract damages. Because the trial court’s order provides no basis for its determination that the parties had a valid contract that the Church breached, we vacate the order insofar as it finds a valid contract and breach of that contract. We further vacate the trial court’s award of damages for breach of contract. We remand the case for further proceedings on the questions of contract formation, breach, and the proper type and measure of damages.

V. Conclusion

For the foregoing reasons, we affirm the default judgment entered in favor of Appellee. We vacate the trial court’s order in all other respects. The case is remanded for such further proceedings as may be necessary and are consistent of this opinion, including, but not limited to, determination of whether Appellee is entitled to breach of contract damages. Costs of the appeal are assessed one-half to Appellant, Greater Christ

Temple Church, Inc. and its surety, and one-half to Appellee, Ace Design Group, Inc., for all of which execution may issue if necessary.

KENNY ARMSTRONG, JUDGE