IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
November 29, 2022 Session

MICHAEL CACKOWSKI, ET AL. v. JASON DRAKE

Appeal from the Circuit Court for Washington County
No. 40598 Jean A. Stanley, Judge

No. E2022-00700-COA-R3-CV

This appeal involves a breach of contract action filed against the agent of an undisclosed principal. The trial court entered an order granting judgment against the agent. The agent appeals. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

CARMA DENNIS MCGEE, J., delivered the opinion of the court, in which D. MICHAEL SWINEY, C.J., and THOMAS R. FRIERSON, II, J., joined.

Mark S. Dessauer, Kingsport, Tennessee, for the appellant, Jason Drake.

David N. Darnell, Kingsport, Tennessee, for the appellees, Michael Cackowski and wife, Patricia Cackowski.

OPINION

I. FACTS & PROCEDURAL HISTORY

Mr. Jason Drake incorporated Professional Appliance Direct, Inc. ("the Corporation") in October 2012. Mr. Drake was the sole shareholder, the sole officer, and the president of the Corporation. However, the Corporation was administratively dissolved by the Tennessee Secretary of State in August 2013. Mr. Drake later testified that he was unaware that the Corporation had been administratively dissolved at the time of its dissolution.

In February 2015, Mr. Michael Cackowski and his wife, Mrs. Patricia Cackowski, communicated with Mr. Drake by email for the purpose of purchasing appliances for their new home. Ultimately, the Cackowskis wired funds in the amount of $25,116.40 to the

Corporation's account at the direction of Mr. Drake for the purchase of the appliances. In March 2015, however, Mr. Drake considered putting the Corporation into bankruptcy. He consulted with an attorney, who informed him that the Corporation had been administratively dissolved. Thereafter, Mr. Drake applied for and obtained the Corporation's reinstatement. In April 2015, the Corporation filed a petition for Chapter 7 bankruptcy in the United States Bankruptcy Court for the Eastern District of Tennessee. The Cackowskis later learned that their appliance order was never made by Mr. Drake and that the Corporation had filed for bankruptcy. The Cackowskis filed a proof of claim in bankruptcy court in June 2015. In their proof of claim, they noted the total amount of the claim was $25,116.40, but they were entitled to a priority claim of up to only $2,775.00 pursuant to 11 U.S.C. § 507(a)(7). Through the bankruptcy proceedings, the Corporation's assets were liquidated, and the Cackowskis recovered their priority claim in the amount of $2,408.33. However, they did not recover the remainder of their funds. The Corporation was then administratively dissolved in August 2016.

In March 2021, the Cackowskis filed a complaint against Mr. Drake alleging breach of contract. Mr. Drake subsequently filed an answer to the complaint. Following a trial on the matter, the court entered its order in May 2022. The court did not state its findings of fact or conclusions of law in its order. Instead, the court's order specifically stated that "the Court made the ruling as attached hereto and the Findings of fact are adopted as if set forth herein." In the attached ruling, the court found as follows:

> So the first question for the Court is whether there was, in fact, a contract. And if there was, who was it between. So it's very clear to the Court that the contract was between the Plaintiffs and [Mr.] Drake and/or Professional Appliance Direct. There's absolutely no proof in this record that these Plaintiffs had any reason whatsoever to know that Professional Appliance Direct was a corporation . . . . It was not on any of Mr. Drake's paperwork. It was not on any of his emails. It was not affixed to a signature line on a contract or any other document. So who was the contract with? Was there a meeting of the minds? There was a very clear meeting of the minds. The Cac[k]owskis were buying appliances from [Mr.] Drake. Who, to them, looked like [Mr.] Drake doing business as Professional Alliance [sic] Direct. I don't see any other way that you can look at this.
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> So I do believe this should be treated as a contract action. Certainly, with a few tweeks [sic], it could have more of the flavor of a tortious action, we might be dealing with a different statute of limitations. I do not believe that to be the case here. I do not think there's a statute of limitations issue. I absolutely do not find that there is a statute of frauds issue. The parties were very clear and very concise in their communications about what was being asked for, what was being offered, what was finally accepted, what amount the payment was, and then that payment was made. So the statute of frauds

> does not apply. . . .
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> As to whether . . . Mr. Drake was protected by his corporate entity, I have to make a comment here that this corporation was about one-half of a baby step away from being a total complete sham. He never conducted it as a corporation -- he incorporated, he almost immediately let it lapse, never put it on his business stationery, door, car, or anything else, as far as I can tell. And then to claim that just because, I had my corporation reinstated at the last minute so I could file bankruptcy would give him protection in a situation like this is simply, absolutely inequitable. Absolutely 100% to this Court.
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> Now, the Plaintiffs did receive some payment in bankruptcy from the corporation. So it's clear that the corporation considered itself to be a party to the contract. It is clear to this Court that Mr. Drake was individually a party to this contract and/or an agent of a completely undisclosed corporate entity.

Thus, the trial court granted judgment in favor of the Cackowskis and against Mr. Drake. The trial court found that the amount owed for Mr. Drake's breach of contract was $22,708.07. Additionally, the court noted that the parties had agreed to the computation of prejudgment interest in the amount of $5,079.92. The total amount of judgment awarded against Mr. Drake was $27,787.99. Thereafter, Mr. Drake timely filed an appeal.

II. ISSUES PRESENTED

Mr. Drake presents the following issues for review on appeal, which we have slightly restated:

1. Whether the trial court erred in finding or concluding that an enforceable contract existed between the Cackowskis and Mr. Drake;
2. Whether the trial court erred in misapplying the agency principle creating contractual liability for Mr. Drake, as the agent of an undisclosed principal, the Corporation, given that in this case, the Cackowskis previously sued and/or sought recovery from the Corporation, the principal of the agency relationship;
3. Whether the trial court erred in creating or "carving out" an equitable exception to Tennessee Code Annotated section 48-24-203(c); and
4. Whether the trial court erred in failing to find that Mr. Drake was not liable to the Cackowskis on the contract at issue based on his affirmative defense of the Statute of Frauds.

For the following reasons, we affirm the decision of the trial court.

III. STANDARD OF REVIEW

In a non-jury civil case, a trial court's findings of fact are reviewed de novo with a presumption of correctness unless the evidence preponderates otherwise. *Morrison v. Allen*, 338 S.W.3d 417, 425-26 (Tenn. 2011) (citing Tenn. R. App. P. 13(d); *Langschmidt v. Langschmidt*, 81 S.W.3d 741, 744 (Tenn. 2002)). Questions of law, however, are reviewed de novo with no presumption of correctness. *Id.* at 426 (citing *Seals v. H & F, Inc.*, 301 S.W.3d 237, 241 (Tenn. 2010); *Colonial Pipeline Co. v. Morgan*, 263 S.W. 3d 827, 836 (Tenn. 2008)).

IV. DISCUSSION

A. Personal Liability

Mr. Drake's first issue is whether the trial court erred in finding or concluding that an enforceable contract existed between the Cackowskis and Mr. Drake. The trial court concluded "that Mr. Drake was individually a party to this contract and/or an agent of a completely undisclosed corporate entity." Counsel for Mr. Drake clarified at oral argument that Mr. Drake is not contending that there was no contract at all; rather, Mr. Drake contends that the contract was between the Cackowskis and the Corporation.

In regard to this issue, the venerable common law rule in Tennessee is that an agent for an undisclosed principal is personally liable on a contract. *Certain Interested Underwriters at Lloyd's, London, England v. Layne*, 26 F.3d 39, 43 (6th Cir. 1994) (citing *Anderson v. Durbin*, 740 S.W.2d 417, 418 (Tenn. Ct. App. 1987)); *see Amison v. Ewing*, 42 Tenn. 366, 368 (1865) (An agent may "withhold his agency from the person with whom he deals, so as thereby to make himself personally responsible."). In order for an agent to avoid personal liability on a contract negotiated on behalf of the agent's principal, the agent must disclose both the fact of the agency and the identity of the principal. *ICG Link, Inc. v. Steen*, 363 S.W.3d 533, 550 (Tenn. Ct. App. 2011) (citing *Siler v. Perkins*, 149 S.W. 1060, 1061 (Tenn. 1912); *Remote Woodyards, LLC v. Neisler*, 340 S.W.3d 411, 416 (Tenn. Ct. App. 2009)). Our Supreme Court has explained as follows:

> [A]n agent who makes a contract in his own name, without disclosing the identity of his principal, renders himself personally liable, even though the person with whom he deals knows that he is acting as agent, unless it affirmatively appears that it was the mutual intention of the parties to the contract that the agent should not be bound.
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> . . .
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> But as a matter of course, when a third person contracts with an agent with knowledge of that fact, and also with knowledge of the principal for whom the contract is made, then the contract, if it be within the scope of the powers

> of the agent, is in law the contract of the principal, and on such a contract the agent is not bound, unless in making the contract the third party gave credit expressly and exclusively to the agent, and it was clearly the intention of the agent to become liable in person.

Siler, 149 S.W. at 1061-62 (internal citations omitted); *see Bailey v. Galbreath Bros.*, 47 S.W. 84, 84-85 (Tenn. 1898). Consequently, "a contract with a known agent for a disclosed principal is the contract of the principal unless circumstances show that the agent intended to be bound or assumed the obligations under the contract." *Holt v. Am. Progressive Life Ins. Co.*, 731 S.W.2d 923, 925 (Tenn. Ct. App. 1987) (citing *Hammond v. Herbert Hood Co.*, 221 S.W.2d 98, 102-03 (Tenn. Ct. App. 1948)). "[W]hether an agent is personally liable for contracts executed on behalf of his or her principal depends on whether and to what extent the agent discloses the existence and identity of the principal." *Sheets v. Kyle*, No. 03A01-9510-CH-00380, 1996 WL 198228, at *4 (Tenn. Ct. App. Apr. 25, 1996).

We begin by noting that the principal-agency relationship between the Corporation and Mr. Drake is clear. He was the sole shareholder, the sole officer, and the president of the Corporation. Mr. Cackowski initiated the email exchange between the Cackowskis and Mr. Drake regarding the purchase of appliances. He asked, "How long have you been in business with Professional Appliance?" Some of Mr. Drake's emails included "Professional Appliance" below his name, and he used "jason@proappliancedirect.com" as his email address. He sent one email attaching a quote of the appliances that included the logo for "Professional Appliance Direct," but the logo did not indicate that the business was incorporated. Additionally, the Cackowskis wired their funds to the account for "Professional Appliance Direct" at the direction of Mr. Drake. After doing so, Mr. Cackowski sent an email to Mr. Drake stating, "The money was wired to the business account, Professional Appliance Direct . . . ." Mr. Cackowski testified at trial he had no idea that he was dealing with a corporation; he believed he was only dealing with Mr. Drake who was doing business as "Professional Appliance." He said he learned that "Professional Appliance" was a corporation when it filed for bankruptcy. Mr. Drake, on the other hand, testified that the transaction was between the Cackowskis and the Corporation. He testified that he did not intend to enter into a contract with the Cackowskis personally. However, Mr. Drake admitted that there was no way for the Cackowskis to know that he was acting on behalf of the Corporation "unless they asked."

At no time during the email exchanges did Mr. Drake "affirmatively disclose" his capacity as an agent of the Corporation. *Maryville Utils. Bd. v. Rice*, Blount Law No. 130, 1986 WL 7607, at *3 (Tenn. Ct. App. July 9, 1986). He admitted that he provided no documents to the Cackowskis that indicated that he was acting on behalf of the Corporation. He stated that the Corporation's logo did not indicate that it was a corporation. Additionally, the Corporation's name in the emails was not followed with

"Inc." so the Cackowskis were unaware of the corporate status of the Corporation.[1] The Cackowskis were under the impression that they were dealing with Mr. Drake and were unaware that they were dealing with a corporation. As such, we find that Mr. Drake rendered himself personally liable as an agent of an undisclosed principal and that the contract is therefore enforceable against him. We conclude that the trial court did not err in finding an enforceable contract existed between the Cackowskis and Mr. Drake.

B. The Rule of Election

We now address Mr. Drake's second issue regarding whether the trial court erred in misapplying the agency principle. Tennessee has long followed the principle sometimes referred to as the rule of election, *Hill v. Hill*, 241 S.W.2d 865, 870 (Tenn. Ct. App. 1951), which is summarized as follows: "If a person deals with another who has not disclosed that he is acting as an agent, the person may elect to hold either the previously undisclosed principal or the agent liable, but not both." 1 Lawrence A. Pivnick, *Tennessee Circuit Court Practice* § 5:4 (2022) (footnote omitted). Indeed, the Tennessee Supreme Court has stated this rule as far back as 1868:

> When a purchase is made by an agent, in the name, and on the credit of the agent, for a principal not disclosed to the seller, the latter may, upon discovering the principal, treat the sale as a contract with the principal, and hold him responsible for the price. The seller may have his action for the price, at his election, against the agent, or the principal.

Davis v. McKinney, 46 Tenn. 15, 17 (1868); *cf. Ahrens v. Cobb*, 28 Tenn. 643, 645 (1849) ("[I]f a party dealing with an agent knows who the principal really is, and not withstanding such knowledge chooses to make the agent his debtor, he cannot afterwards, on the failure of the agent, . . . charge the principal, having once made his election, when he had the power of choosing between one and the other."). Nearly fifty years after the *Davis* case, the Tennessee Supreme Court reiterated that "either the principal or the agent is to be held liable, but not both." *Phillips v. Rooker*, 184 S.W. 12, 14 (Tenn. 1916). Tennessee courts, as well as the Sixth Circuit, have continued to conclude that Tennessee follows the rule of election.[2]

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[1] One court has held that "[t]he failure to use the 'Inc.' notation in correspondence between the agent and third party or in the contract itself is often critical in the determination of whether there was adequate disclosure of corporate status." *Benjamin Plumbing, Inc. v. Barnes*, 470 N.W.2d 888, 894 (Wis. 1991); *see, e.g., Delaware Valley Equipment Co., Inc. v. Granahan*, 409 F. Supp. 1011, 1014 (E.D. Pa. 1976); *Lagniappe of New Orleans, Ltd. v. Denmark*, 330 So. 2d 626, 626-27 (La. Ct. App. 1976).

[2] *See, e.g., Layne*, 26 F.3d at 43 ("A party who deals with . . . an agent [of an undisclosed principal] may sue either the principal or the agent, but not both."); *Berry v. Chase*, 146 F. 625, 626 (6th Cir. 1906) ("But one who has dealt with an agent cannot upon discovery of an undisclosed principal hold both the agent and the principal liable. He must choose between the two, and an election once made he must abide by it."); *Holt*, 731 S.W.2d at 925 ("Even in a situation involving an *undisclosed* agency, the third party may

In the case at bar, Mr. Drake contends that the trial court committed error in concluding that he was liable in contract to the Cackowskis, as the agent of an undisclosed principal, when the Cackowskis made a clear election to sue the principal by filing a claim in bankruptcy court. However, it appears from the record that Mr. Drake failed to raise the issue of election in the trial court. "It is axiomatic that parties will not be permitted to raise issues on appeal that they did not first raise in the trial court." *Powell v. Cmty. Health Sys., Inc.*, 312 S.W.3d 496, 511 (Tenn. 2010) (citing *Barnes v. Barnes*, 193 S.W.3d 495, 501 (Tenn. 2006); *City of Cookeville ex rel. Cookeville Reg'l Med. Ctr. v. Humphrey*, 126 S.W.3d 897, 905-06 (Tenn. 2004)); *see also* Tenn. R. App. P. 3, adv. comm'n cmt., subdiv. (e) (noting that "[f]ailure to present an issue to the trial court . . . will typically not merit appellate relief"). Therefore, we conclude that Mr. Drake has waived this issue, and we will not address it in this appeal.

C. Reinstatement

Mr. Drake's third issue concerns Tennessee Code Annotated section 48-24-203, which covers reinstatement of an administratively dissolved corporation. He specifically argues that the trial court erred in creating or "carving out" an equitable exception to Tennessee Code Annotated section 48-24-203(c). "Once a corporation has been administratively dissolved, it 'may not carry on any business except that necessary to wind up and liquidate its business affairs . . . and notify claimants . . . .'" *KHB Holdings, Inc. v. Duncan*, No. E2002-02062-COA-R3-CV, 2003 WL 21488268, at *2 (Tenn. Ct. App. June

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sue either the principal or the agent, but not both."); *Wescon, Inc. v. Morgan*, 699 S.W.2d 556, 559 (Tenn. Ct. App. 1985) ("If an officer or agent of a corporation enters into a contract without disclosing the fact that he is acting for the corporation, . . . the other party may, at his election, either hold the corporation on the contract, or hold the officer personally liable, but he cannot hold both . . . ."); *Sparkman v. Phillips*, 371 S.W.2d 162, 167 (Tenn. Ct. App. 1962) ("It is settled that after a disclosure of the relation of agency, a creditor or claimant may at his option hold either the agent or his undisclosed principal liable."); *Hammond*, 221 S.W.2d at 103 ("[T]he law usually looks upon either the principal or the agent liable, but not ordinarily both."); *Brummitt Tire Co. v. Sinclair Refining Co.*, 75 S.W.2d 1022, 1029 (Tenn. Ct. App. 1934) ("[W]hen an agent acts for an undisclosed principal, the plaintiff has an election to sue either the agent or the principal, but he cannot sue both."); *Jurgensmeyer v. Prater*, No. M2000-02986-COA-R3-CV, 2003 WL 1923826, at *8 (Tenn. Ct. App. Apr. 24, 2003) ("A party who deals with . . . an agent [of an undisclosed principal] may sue either the principal or the agent, but not both."); *Sheets*, 1996 WL 198228, at *5 ("[I]f an agent does not disclose that he or she is contracting for another, the general rule is that the party with whom the agent contracted, upon discovering the existence of the principal, may elect to hold either the principal or the agent liable, but not both."); *Domincovitch v. Wilson*, No. 01A-01-9108-CV-00310, 1992 WL 9442, at *5 (Tenn. Ct. App. Jan. 24, 1992) ("Where an agent makes a contract in his own name for an undisclosed principal, upon discovery of the agency, the other party to the contract may, at his election hold either the agent or the principal, but not both."); *Warrior Transp., Inc. v. Thompson*, Blount Circuit, C.A. No. 152, 1989 WL 9561, at *3 (Tenn. Ct. App. Feb. 10, 1989) ("In this jurisdiction, a principal is liable for debts incurred by an authorized agent even where the creditor was unaware at the time of contracting that the signer was acting as an agent."); *Maryville Utils. Bd.*, 1986 WL 7607, at *3 ("[T]he creditor may elect to hold either the agent or the formerly undisclosed principal liable but not both.").

25, 2003) (quoting Tenn. Code Ann. § 48-24-202(c)). However, "[a] corporation administratively dissolved under § 48-24-202 may apply to the secretary of state for reinstatement." Tenn. Code Ann. § 48-24-203(a). "When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the corporation resumes carrying on its business as if the administrative dissolution had never occurred." Tenn. Code Ann. § 48-24-203(c). As such, reinstatement validates the corporate acts during the period of an administrative dissolution. *Kerney v. Cobb*, 658 S.W.2d 128, 131 (Tenn. Ct. App. 1983); *Tiger Enters., Inc., v. Hampton*, No. 03A01-9301-CV-00016, 1993 WL 134072, at *2 (Tenn. Ct. App. Apr. 29, 1993).

In this case, the Corporation was administratively dissolved by the Tennessee Secretary of State in August 2013. The Corporation remained so until Mr. Drake applied for the Corporation's reinstatement in March 2015, and the Corporation was reinstated. Thus, the Corporation was administratively dissolved when the contract at issue was entered into in February 2015. Yet, as previously stated, the Corporation's reinstatement validated the corporate acts during the period of administrative dissolution. *Kerney*, 658 S.W.2d at 131; *Hampton*, 1993 WL 134072, at *2. It was as if the Corporation had never been dissolved. *Hampton*, 1993 WL 134072, at *2. Therefore, we agree with Mr. Drake that the Corporation was in existence when the contract at issue was entered into because the reinstatement was effective as of the date of the administrative dissolution in August 2013.

Nevertheless, we disagree that the trial court erred in carving out an equitable exception to Tennessee Code Annotated section 48-24-203(c) because the court did not do so. The court merely made "a comment" regarding the inequitable nature of the circumstances allowing for the Corporation's reinstatement just before filing for bankruptcy. The trial court ultimately based its decision on its finding that Mr. Drake was individually liable as an agent of an undisclosed corporate entity. Mr. Drake argues that he is entitled to the protections afforded to him by acting on behalf of the Corporation since it was reinstated. However, he is not entitled to those protections because the Corporation's reinstatement does not remedy the disclosure issue in this case. Like the *Hampton* case, the issue here is whether the Cackowskis believed they were transacting business with Mr. Drake rather than with the Corporation. *Id.* On that issue, we have already determined that Mr. Drake failed to disclose that he was acting as an agent on behalf of the Corporation and/or the identity of the Corporation. Therefore, Mr. Drake is personally liable for those reasons.

D. Statute of Frauds

Mr. Drake's final issue is whether the trial court erred in failing to find that Mr. Drake was not liable to the Cackowskis on the contract at issue based on his affirmative defense of the Statute of Frauds. His argument for this issue is twofold. He first contends that he is not personally liable because he did not personally guarantee to pay the debt of

the Corporation. Again, we have already determined that Mr. Drake failed to disclose that he was acting as an agent on behalf of the Corporation and/or the identity of the Corporation. He is personally liable for those reasons. Therefore, we need not address the particular issue of whether he personally guaranteed to pay the debt of the Corporation.

In addition to the argument above, Mr. Drake contends that there was no signed writing sufficient to indicate a contract for the sale of goods. For this argument, he relies on Tennessee Code Annotated section 47-2-201, which governs the Statute of Frauds requirements for this transaction:

> Except as otherwise provided in this section, a contract for sale of goods for the price of five hundred dollars ($500) or more is not enforceable by way of action or defense unless there is some writing or record sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. . . .

Tenn. Code Ann. § 47-2-201(1). The "three definite and invariable requirements" of this subsection are that the memorandum in question must evidence a contract for the sale of goods, must be signed, and must specify a quantity. Tenn. Code Ann. § 47-2-201 cmt. 1. Nevertheless, the section setting forth the Statute of Frauds requirements for this transaction provides exceptions to the rule:

> (3) A contract that does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable:
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> . . .
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> (b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or
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> (c) with respect to goods for which payment has been made and accepted or which have been received and accepted (§ 47-2-606).

Tenn. Code Ann. § 47-2-201(3). As explained in the comments for this section, "[r]eceipt and acceptance either of goods or of the price constitutes an unambiguous overt admission by both parties that a contract actually exists." Tenn. Code Ann. § 47-2-201 cmt. 2.

The parties communicated by email for the purpose of the transaction which is now at issue in this case. At oral argument, counsel for Mr. Drake admitted that there was a contract. Likewise, Mr. Drake admitted that there was an agreement during his testimony

at trial. He also admitted that the terms of the agreement were the Cackowskis would pay him and he would supply the appliances. Furthermore, the Cackowskis made a payment for the purchase of the appliances, and Mr. Drake accepted that payment. Thus, regardless of the sufficiency of the contract documents, it is enforceable because Mr. Drake admitted the existence of a contract, which demonstrates that this contract falls within the exception of subsection (3)(b). *Off Road Performance/Go Rhino v. Walls*, No. W2001-02563-COA-R3-CV, 2002 WL 31259436, at *2 (Tenn. Ct. App. Sept. 16, 2002). Additionally, payment for the appliances was made and accepted, which demonstrates that this contract falls within the exception of subsection (3)(c). *Austin v. A-1 Used Rest. Equip., Inc.*, No. E2011-02323-COA-R3-CV, 2012 WL 12932566, at *2 (Tenn. Ct. App. Sept. 13, 2012); *Tipton v. Burr*, No. 01-A-01-9707-CH-00363, 1998 WL 467101, at *2 (Tenn. Ct. App. Aug. 12, 1998); *Williams Cattle Co., Inc. v. McClanahan Livestock Co.*, No. 03A01-9205-CV-00159, 1992 WL 195957, at *2 (Tenn. Ct. App. Aug. 17, 1992). As such, this contract is enforceable despite any noncompliance with section 47-2-201(1). We therefore conclude that the trial court did not err in its findings with respect to the Statute of Frauds.

V. CONCLUSION

For the aforementioned reasons, we affirm the decision of the trial court. Costs of this appeal are taxed to the appellant, Jason Drake, for which execution may issue if necessary.

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CARMA DENNIS MCGEE, JUDGE