IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

SECURITY FIRST ALARM, INC.,
a Florida Corporation,
Appellant,

v.

RICHARD CELENZA and
BUNNY CELENZA,

Appellees.

_____/

CASE NO.: 2012-CV-59-A-O
LOWER COURT CASE NO. 2011-SC-9164-O

DATE: September 24, 2013

Appeal from the County Court,
in and for Orange County, Florida,
Judge Faye Allen.

Christopher H. Morrison, Esquire,
for Appellant.

Jill M. Hampton, Esquire,
for Appellee.

Before MCDONALD, LAUTEN, and ARNOLD, J.J.

PER CURIAM.

FINAL ORDER AND OPINION AFFIRMING TRIAL COURT'S FINAL JUDGMENT

Appellant, Security First Alarm, Inc. ("Security First") brought an action to recover unpaid monies, resulting from security benefits rendered to Richard and Bunny Celenza ("the Celenzas"), allegedly parties to a contract for security monitoring. Security First filed a timely appeal of the trial court's Final Judgment, which granted the Celenzas' motion for involuntary dismissal. This Court has jurisdiction pursuant to section 26.012(1), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(1)(A).

On August 10, 1989, Richard and Bonita[1] Celenza entered into a contract with Alert Security for security monitoring. The caption and paragraphs of the contract only mentioned Richard Celenza, while the signature block included space for both Richard Celenza and Bonita Celenza. When the contract was signed, Richard Celenza was not present, and he did not authorize Mrs. Celenza to sign his name to the contract. A representative of Alert Security told Bonita Celenza to sign his name to the contract, which she did, ultimately signing her and her husband's name to the contract. Mr. Celenza at no time paid the bills to the security monitoring company; both he and Mrs. Celenza indicated that Mrs. Celenza was the sole person who paid bills.

Before or around January 2000,[2] Security First, another security monitoring company, purchased Alert Security. The original contract between Alert Security and the Celenzas did contain a clause indicating that the contract was assignable to another monitoring company. Over the course of the contract, Security First raised the rates of the contract three times. Mrs. Celenza continued to pay what was owed on the contract after each increase. In September 2010, she stopped making payments.

On June 21, 2012, a bench trial was held to determine whether Security First was entitled to the payments in arrears under the contract. Both Mr. and Mrs. Celenza testified at trial, as well as Wayne Dickerson, the owner of Security First. After Security First rested, the Celenzas made a motion for involuntary dismissal, arguing that Security First provided no documentation that there was a valid assignment of Alert Security's contracts, and thus Security First lacked

[1] The defendant that was captioned in the case below was Bunny Celenza. At trial, Bonita Celenza testified, and she was not asked if she was also known as Bunny Celenza. Because no testimony was taken as to whether Bunny Celenza and Bonita Celenza were one and the same, the trial court declined to address that issue.

[2] The record is vague as to when Security First acquired Alert Security. Security First's representative, Wayne Dickerson, testified regarding a new accounting system that was put in place prior to Y2K, so presumably Security First acquired Alert Security before or around 2000.

standing to sue the Celenzas. The Celenzas also requested a dismissal of the case against Mrs. Celenza, as there was no testimony that Bonita Celenza was in fact the same person as Bunny Celenza, who was named as a defendant. Security First, in turn, argued ratification on the part of the Celenzas as to both arguments. Based upon the testimony at trial and the arguments heard regarding to the motion for involuntary dismissal, the trial court granted the Celenzas' motion for dismissal, citing that Security First neither provided evidence of assignment, nor that Mr. Celenza was a signatory on the contract. The trial court also declined to address the question of whether Mrs. Celenza was bound to the contract because there was no testimony as to whether Bonita Celenza and Bunny Celenza was the same person. Ultimately, on July 11, 2012, the trial court entered a final judgment in favor of the Celenzas. Security First timely filed its notice of appeal from the final judgment.

The central issue in this case is whether the trial court erred in granting a directed verdict for the Celenzas. The standard of review for a directed verdict is *de novo.* *Widdows v. State Farm Florida Ins. Co.*, 920 So. 2d 149, 150 (Fla. 5th DCA 2006). Accordingly, this Court "must view the evidence and all reasonable inferences therefrom in the light most favorable to Appellant." *Id*.

On appeal, Security First makes three arguments: 1) that the trial court erred in granting the motion for involuntary dismissal as to its standing to bring suit, thereby determining that there was no evidence of a valid assignment of the contract; 2) that the trial court erred in granting the motion for involuntary dismissal as to Richard Celenza's signature on the contract and as to the named Defendant "Bunny" Celenza; and 3) that the trial court erred in granting the motion for involuntary dismissal as to the Defendant's approval of the assignment of the contract from Alert Security to the Plaintiff. Conversely, the Celenzas argue that the trial court correctly

found that Security First failed to provide evidence that it was the assignee of the agreement. Additionally, the Celenzas contend that the trial court properly ruled that Richard Celenza did not sign the original contract, and as a result, he did not ratify as assignment of the agreement to Security First.

While Security First makes several arguments on appeal, the Court finds that the dispositive issue is whether the trial court correctly found that Security First had standing to bring suit because it failed to provide evidence of a valid assignment. The Court agrees with the trial court and the Celenzas that Security First failed to provide any evidence to support a finding of a valid assignment, and as a result, Security First lacked standing to bring suit. "In its broadest sense, standing is no more than having, or representing one who has, 'a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy.'" *Kumar Corp. v. Nopal Lines, Ltd.*, 462 So. 2d 1178, 1183 (Fla. 3d DCA 1985) (quoting *Sierra Club v. Morton*, 405 U.S. 727, 731 (1972)). "Generally, one has standing to sue when he or she has a sufficient interest at stake in the controversy which will be affected by the outcome of the litigation." *Provence v. Palm Beach Taverns, Inc.*, 676 So. 2d 1022, 1024 (Fla. 4th DCA 1996).

Here, Security First failed to prove that it had a sufficient stake in the controversy that would be affected by the outcome of the trial because it failed to prove a valid assignment. Security First did not show that Alert Security assigned its contracts to it; rather, the only evidence that Security First presented to prove that it purchased Alert Security was testimony from Mr. Dickerson. A copy of the original contract was presented as evidence at trial. However, the only thing that the original contract proves to this issue is that it included a valid assignment clause, not to whom the contract was assigned, if anyone. In fact, Security First provided no evidence of a purchase agreement between itself and Alert Security, nor did it show any intent

from Alert Security to assign those existing contracts to Security First. This does not prove that there was a valid assignment of contractual interest from Alert Security to Security First. *Compare Protection House, Inc. v. Daverman and Associates*, 167 So. 2d 65, 66 (Fla. 3d DCA 1964) (determining that there was evidence of a valid assignment when evidence was presented showing that there was an oral agreement of assignment between the assignor and the assignee); *with BAC Funding Consortium Inc. ISAOA/ATIMA v. Jean-Jacques*, 28 So. 3d 936, 939 (Fla. 2d DCA 2010) (determining that the plaintiff was not entitled to judgment in its favor when it failed to prove "evidence of a valid assignment, proof of purchase of the debt, or evidence of an effective transfer"). As a result, the trial court was correct in its finding that Security First failed to prove that it had standing to sue on the contract.

Even if Security First did have standing, this Court determines that the trial court did not err in its finding there was no evidence to show that Richard Celenza was a signatory on the contract, or that his wife, Bonita Celenza, was authorized to sign the contract on his behalf. In order for a party to be bound to a contract, there must be some evidence that the party assented to the contract. *See Lepisto v. Senior Lifestyle Newport Ltd. Partnership*, 78 So. 3d 89, 91 (Fla. 4th DCA 2012) (determining that a contract did not bind a resident or his wife to a contract where the resident's wife signed the contract only in her individual capacity, and there was no evidence that the resident assented to the contract). Here, the testimony at trial indicates that Mr. Celenza was not present at the time the contract was signed, and he did not authorize Mrs. Celenza to sign his name to the contract. Furthermore, as the trial court indicated when it gave its ruling, it appears as if there was an intent to contract with Richard Celenza, as evidenced by his mention

in the caption and opening paragraph to the contract.[3] As a result, Security First has failed to prove Mr. Celenza's assent to be a signatory to the contract; he therefore cannot be bound.

Finally, Security First argues ratification of the contract on the part of the Celenzas in an attempt to circumvent the standing requirement and the absence of Mr. Celenza's signature on the contract. However, "[r]atification of an agreement occurs where a person expressly or impliedly adopts an act or contract entered into his or her behalf by another without authority." *Deutsche Credit Corp. v. Peninger*, 693 So. 2d 57, 58 (Fla. 5th DCA 1992) (continuing on to note that "[a]n agreement is deemed ratified where the principal has full knowledge of all material facts and circumstances relating to the unauthorized act or transaction at the time of the ratification"). There also must be "[a]n affirmative showing of the principal's intent to ratify the act in question." *Id*. Here, the testimony given at the bench trial does not indicate ratification from Mr. Celenza. There was no act that either expressly or impliedly indicated that Mr. Celenza affirmatively ratified the contract. In fact, Mr. Celenza testified that he did not discuss with his wife whether Mrs. Celenza could sign the contract on his behalf, nor did he pay any of the bills owed under the contract. These facts tend to show that there was no express or implied adoption from Mr. Celenza to ratify the contract. As a result, the trial court was correct in determining that Security First failed to prove ratification.

Accordingly, it is hereby **ORDERED AND ADJUDGED** the trial court's Final Judgment is **AFFIRMED.**

[3] It should be noted that, as mentioned previously in fn. 1, *supra*, the trial court properly declined to rule on the enforceability of the contract against Mrs. Celenza, as there was an ambiguity as to whether Bonita Celenza, who signed the contract, was the same person as Bunny Celenza, who was a named defendant in this case. *See Florida Emergency Physicians-Kang and Associates, M.D., P.A. v. Parker*, 800 So. 2d 631, 636 (Fla. 5th DCA 2001) (stating that "[i]t is the function of the appellate court to review errors allegedly committed in the trial court, not to entertain for the first time on appeal, issues which the complaining party could have, and should have, but did not, present to the trial court").

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished via U.S. mail and/or electronic mail to **Christopher H. Morrison, Esq.,** Pratt and Morrison, P.A., 1215 Louisiana Avenue, Suite 200, Winter Park, Florida 32789, cmorrison@prattandmorrison.com, dbarnett@prattandmorrison.com; and **Jill M. Hampton, Esq.,** Private Counsel, L.L.C., 733 West Colonial Drive, Orlando Florida 32804, jh@attorneyhampton.com on the 25th day of September, 2013.

/S/_____
Judicial Assistant