

No. 1-12-3181

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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ALLINIE, LLC, an Illinois	)	
Limited Liability Company,	)	Appeal from the Circuit Court,
	)	Cook County, Illinois
Plaintiff-Appellant-	)	
Cross-Appellee,	)	No. 11 L 6511
	)	
v.	)	
	)	Honorable Sidney A. Jones, III,
ALBERTI GLOBAL SUPPLY &	)	Judge Presiding.
PACKAGING, INC., an Illinois	)	
corporation and TONY J. ALBERTI,	)	
an Individual,	)	
	)	
Defendant-Appellees-	)	
Cross-Appellants.	)	

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PRESIDING JUSTICE HYMAN delivered the judgment of the court.  
Justices Neville and Mason concurred in the judgment.

ORDER

¶ 1 *Held:* When an appellant fails to include a trial transcript or report of the proceedings in the record on appeal, this court must presume, under *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984), that the trial court's ruling after a bench trial was in conformity with the law and had a sufficient factual basis.

¶ 2 Plaintiff, Allin1e, LLC, appeals from a circuit order entering judgment in favor of defendant, Alberti Global Supply & Packaging Inc. on plaintiff's breach of contract claim. Defendants cross-appeal, arguing the trial court erred in entering judgment in favor of plaintiff on defendants' counterclaim for breach of contract. We affirm. The record on appeal does not

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contain a transcript or a bystander's report of the bench trial. The common law record, which was provided, is an insufficient record for determining the factual issue presented by appellant – that "the trial court erred when it found, against the manifest weight of the evidence" for defendants on a breach of contract count. Similarly, the common law record is an insufficient record for determining, under a manifest weight of the evidence standard, the factual issue presented by cross-appellant – that defendants "properly completed delivery of the shipment and are entitled to the final, remaining amount due on the contract..."

¶ 3

### BACKGROUND

¶ 4 Plaintiff, Allin1e, LLC, manufactures, distributes, and sells a portable smoking device called the Allin1e. Defendants Alberti Global Supply & Packaging, Inc. and its owner, Tony J. Alberti, manufacture and package custom-made specialty items. In February 2011, plaintiff and defendants entered into a contract for defendants to manufacture 10,000 Allin1e smoking devices and 20,000 ceramic cigarettes according to specifications provided by plaintiff. The contract required plaintiff to pay 50% of the invoice price upon receipt, with the balance due at the time of delivery on April 1, 2011. Plaintiff paid defendants \$35,000 for tooling charges and as a deposit for the purchase order. According to defendants, during the manufacturing process, plaintiff made several design changes to the products, which prevented them from finishing production by the April 1, 2011 deadline. On April 29, 2011, defendants delivered to plaintiff 50 samples of the products. Plaintiff contends it informed defendants that the products did not meet its specifications and were therefore rejected. Defendants acknowledge there was a problem with the products that required an adjustment but asserts the parties mutually agreed defendants could

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have time to make the adjustment before delivery. Defendants also contend the plaintiff never gave them a notice of rejection of the production samples and instead sold all 50 samples.

¶ 5 Over the next month, the parties tried to resolve their dispute regarding conformity, payment, and delivery of the products, but when they could not come to a resolution, plaintiff filed a three-count complaint against defendants on June 11, 2011, alleging breach of contract, fraud, and conversion. In October 2011, defendants had the products shipped from China to the Chicago area, but in November 2011, they were detained by the United States Customs and Border Patrol as suspected drug paraphernalia. Defendants notified plaintiff of the detainment and investigation of the products.

¶ 6 On June 7, 2012, plaintiff filed a first amended complaint, retaining the breach of contract claim and dropping the fraud and conversion allegations. Plaintiff alleged defendants breached the contract by failing to deliver conforming products on time and sought a return of the \$35,000 deposit plus costs and attorney's fees. Defendants filed an answer denying plaintiff's allegations and raising three affirmative defenses, asserting that: (1) under the contract the \$35,000 payment by plaintiff was nonrefundable, (2) defendants completed their obligations under the contract by delivering the product to an Illinois warehouse, and (3) under the contract, the risk of loss due to seizure was with the plaintiff. Defendants also made a counterclaim, alleging breach of contract by plaintiff in failing to pay the remaining \$34,850 owed on the contract. Alternatively, defendants alleged if the contract was deemed terminated, they retained the right to keep the \$35,000 payment.

¶ 7 On August 29, 2012, the trial court conducted a bench trial and entered judgment for

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defendants on plaintiff's breach of contract claim and in favor of plaintiffs on defendants' counterclaim. The record on appeal does not contain any transcripts from the bench trial. Defendants were permitted to retain the plaintiff's \$35,000 deposit but could not recover for the remaining \$34,850 owed on the contract, and both parties were responsible for their own costs. It appears the products were never recovered from U.S. Customs.

¶ 8 Plaintiff filed a notice of appeal of the trial court's judgment on September 25, 2012, arguing the trial court's finding that defendants did not breach the contract was against the manifest weight of the evidence because defendants failed to timely deliver conforming goods under the contract. Plaintiff seeks reversal and a return of the \$35,000 deposit. In response, defendants argue their duty to perform under the contract was discharged by plaintiff's "acts of prevention" including multiple requests to change mold specifications, design changes, and a failure to timely pay the deposit so that defendants could commence manufacturing the products. Defendants further assert that despite plaintiff's acts of prevention, they performed the contract within a reasonable time and therefore, are due the remainder of the payment under the contract. Defendants contend the contract did not specify a place of delivery, so by having the products delivered to the Chicago area, they complied with the terms of the contract. Alternatively, defendants assert they are excused from performing under the contract because the products to be manufactured and delivered were illegal drug paraphernalia seized by U.S. Customs. Defendants also cross-appealed, arguing that because they performed under the contract, the trial court's finding that plaintiff did not breach the contract by failing to pay the remainder of the contract price, \$34,850 was against the manifest weight of the evidence.

¶ 9

ANALYSIS

¶ 10 We will reverse the trial court's findings following a bench trial if they are against the manifest weight of the evidence. *Reliable Fire Equipment Co v. Arrendondo*, 2011 IL 111871 ¶ 12. “A decision is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence. *Eychaner v. Gross*, 202 Ill. 2d 228 252 (2002). A reviewing court should not overturn a trial court's findings merely because it does not agree with the lower court or because it might have reached a different conclusion had it been the trier of fact. [Citations.]” (Internal quotation marks omitted.) *Martinez v. River Park Place, LLC*, 2012 IL App (1st) 111478 ¶ 14.

¶ 11 As previously noted, the record on appeal does not contain a transcript or bystander's report of the bench trial for our review. Appellants bear the burden of providing a sufficiently complete record to support their claim or claims of error, and in the absence of that record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Moreover, any doubt arising from the incompleteness of the record will be resolved against the appellants. *Id.* at 392. Here, both parties appeal the trial court's judgment, with the plaintiff asserting the trial court erred in finding defendants did not breach the contract by failing to timely deliver the products in compliance with its specifications and defendants appealing the trial court's finding that plaintiff did not breach the contract by failing to pay the full purchase price for the products. Therefore, both parties had an obligation to provide a sufficiently complete record to support their claims of error. Neither party did so.

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¶ 12 Our "primary consideration is whether the trial court's decision was informed, based on valid reasoning, and flows logically from the facts." *Technology Innovation Center, Inc. v. Advanced Multiuser Technologies Corp.*, 315 Ill. App. 3d 238, 244 (2000). Without the transcripts or a bystander's report of the bench trial, we are unable to assess whether the trial court's judgments on both sides' claims were against the manifest weight of the evidence. Since the burden is on the appellants to provide a complete record on appeal, we must presume that the trial court properly found in favor of defendants on plaintiff's breach of contract claim and in favor of plaintiff on defendants' counterclaim.

¶ 13 CONCLUSION

¶ 14 Based on the reasons set forth above, we affirm the decision of the circuit court.

¶ 15 Affirmed.