

IN THE COURT OF APPEALS OF IOWA

FILED

FEB 26 1980

CLERK SUPREME COURT

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A.M.F., INC.,

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Plaintiff-Appellee,

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Filed February 26, 1980

vs.

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ROBERT F. CRAWFORD,

)

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2-63305

Defendant-Appellant.

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Appeal from Bremer District Court - Ray E. Clough, Judge.

Defendant appeals from a judgment for plaintiff for moneys owed from the lease of automatic bowling pinsetting machines. AFFIRMED.

Ralph E. Laird of Laird & Carney, Waverly, Iowa, for defendant-appellant.

L. A. Nelson of Charles City, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

## PER CURIAM

Defendant appeals from a judgment for plaintiff for moneys owed from the lease of automatic bowling pinsetting machines. The sums at issue relate to a minimum yearly rental charge for each machine provided in the written agreement between the parties. The action below is tried as a law action. As a result, under Iowa R. App. P. 4, our review is only for the correction of errors. The trial court's findings have the effect of a special verdict. Id.

The period of time involved covers October, 1963 through October, 1971. The written agreements in force between the parties provided that from October, 1963 through August, 1965, defendant was to pay ten cents per line for the lease of plaintiff's pinsetting machines with a minimum annual rental of \$800 per machine. Commencing in September of 1965, these charges were amended to six and one-half cents per line with a minimum annual rental of \$600 per machine.

During the period in question, defendant remitted to plaintiff the per line charges under the lease agreement. To the extent that such remittances did not equal the minimum annual rental, no additional payments were made. The representative of the plaintiff testified that statements for delinquencies in minimum rentals were printed out annually by computer and, in the ordinary course of plaintiff's business, would have been mailed to the defendant. Defendant at first denied receiving any notice of plaintiff's intent to assert claim for delinquent minimum rentals until the filing of this action in July of 1973. On cross-examination, however, defendant conceded that plaintiff began to assert such delinquencies as early as 1966.

I. Defendant's first ground for reversal on appeal is his claim that plaintiff's agent affirmatively represented to him at the inception of the contract that he would only be required to pay the per line rental and that no attempt would be made to collect the minimum annual rental if the per line charges did not meet those requirements. Defendant asserts that plaintiff is now estopped to collect the minimum rental charges as a result of such representation.

The problem with this argument of the defendant is that the evidence is sharply in dispute on this claim. Plaintiff's representatives denied making such representations and asserted that defendant was billed annually for such charges. The trial court found that while defendant probably believed he was not liable for such charges, such belief was not justified and that no such representation was made to him by plaintiff's

representatives. Because defendant's estoppel argument is premised on facts contrary to those found by the trial court, we cannot accept it. Gordon v. Pfab, 246 N.W.2d 283, 286 (Iowa 1976); Farmers Insurance Group v. Merryweather, 214 N.W.2d 184, 186 (Iowa 1974) ("we view the evidence in the light most favorable to the judgment whether contradicted or not").

II. We next consider defendant's contention that plaintiff's claim should be barred by laches. This argument is premised not upon the delay in notifying defendant that it was expecting payment of minimum rentals, but rather on the delay in bringing suit. In deciding this issue, we are faced with the principle expressed in Moser v. Thorp Sales Corp., 256 N.W.2d 900, 908 (Iowa 1977), that "ordinarily laches cannot be claimed against one bringing an action within the statute of limitations, absent some special detriment to another." The only special detriment which defendant seeks to show in support of his claim of laches is that he continued to do business with plaintiff in the belief that the minimum annual rental charge in the contract would not be enforced. The trial court found that such reliance by defendant was not justified. Because that finding has support in the evidence, the trial court did not err in failing to impose the equitable defense of laches.

III. Lastly, we consider and reject plaintiff's claim on cross-appeal that the trial court erred in computation of interest on the sums allowed plaintiff.

We have considered all issues presented and find no grounds for reversal.

AFFIRMED.