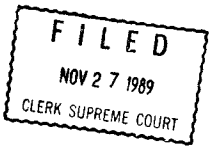
IN THE COURT OF APPEALS OF IOWA

No. 9-297 / 88-1720



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MAJOR DISTRIBUTING,

Appellant,

vs.

CONIFER CORPORATION,

Appellee.

Appeal from the Iowa District Court for Des Moines County, Thomas R. Brown, District Associate Judge.

Plaintiff sued for breach of an alleged oral contract. The district court granted defendant a summary judgment on the ground plaintiff had failed to make any showing of consideration. Plaintiff has appealed from this summary judgment. Plaintiff contends there are genuine issues of material fact supporting the existence of consideration. **AFFIRMED.**

Gary L. Robinson, of Klinger, Robinson & McCuskey, Cedar Rapids, for the plaintiff-appellant.

Betty J. Ratekin, of Aspelmeier, Fisch, Power, Warner & Engberg, Burlington, for the defendant-appellee.

Considered by Donielson, P.J., and Schlegel and Sackett, JJ.

DONIELSON, P.J. 279

A sales representative of Conifer Corporation (Conifer) visited one of Conifer's past customers, Major Distributing (Major). During this visit the sales representative told Major of a sales promotion in which Conifer would offer its customers discounts or credits on future purchases. Major Distributing made only a few minor purchases after this conversation, but it interpreted the conversation to be an offer of cash credits on its past purchases. Based on this belief, Major Distributing made a claim against Conifer for some $3700 in cash credits on Major's past purchases. When Conifer failed to pay such credits, Major filed the present suit alleging breach of an oral contract. The district court granted Conifer a summary judgment on the ground Major had alleged no facts constituting consideration for the alleged oral contract.

Major has appealed from the summary judgment in favor of Conifer. Major contends summary judgment was unwarranted because there are genuine issues of material fact supporting the existence of consideration. Major suggests consideration exists because Conifer offered credits in order to obtain a benefit for itself, namely the increased likelihood of future purchases by Major.

A summary judgment is properly granted only when there is no issue as to any material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ.

P. 237; Froning & Deppe v. South Story Bank & Trust, 327 N.W.2d 214, 215 (Iowa 1982). A court must examine the entire record (i.e. pleadings, motions, affidavits and testimony) to determine if it discloses a genuine issue as to any material fact. City of Ankeny v. Armstrong Co. Inc., 353 N.W.2d 864, 867 (Iowa App. 1984).

The burden is upon the moving party to establish the absence of any genuine issue of material fact. Colton v. Branstad, 372 N.W.2d 184, 188 (Iowa 1985). The court must view the record in the light most favorable to the party against whom summary judgment is sought. Id. Every legitimate inference that reasonably can be deduced from the evidence should be afforded the nonmoving party, and a fact question is generated if reasonable minds can differ on how the issue should be resolved. Knapp v. Simmons, 345 N.W.2d 118, 121 (Iowa 1984).

Once the moving party has met its burden, the opposing party may not rest on the mere allegations or denials of its pleading. It must set forth specific facts showing there is a genuine issue. Bauer v. Stern Finance Co., 169 N.W.2d 850, 853 (Iowa 1969), cert. denied, 396 U.S. 1008 (1970).

In reviewing the grant or denial of a summary judgment motion, this court is guided by the same principles utilized by a trial court in making that determination. Adam v. Mt. Pleasant Bank & Trust Co., 355 N.W.2d 868, 872

(Iowa 1984). Our task on appeal is to determine only whether a genuine issue of material fact exists and whether the law was correctly applied. Id.

Major alleges it had an oral contract with Conifer in which Conifer promised to give it $100 for each unit of merchandise purchased from Conifer that was still in Major's inventory. Conifer claims summary judgment was appropriate because Major never presented any specific facts demonstrating any consideration existed for this alleged contract. Consideration is essential to the validity of a contract. Des Moines Blue Ribbon Distributors, Inc. v. Drewrys Limited, U.S.A., Inc., 256 Iowa 899, 906, 129 N.W.2d 731, 736 (1964). Either a benefit to a promisor or a detriment to a promisee constitutes consideration. Doggett v. Heritage Concepts, Inc., 298 N.W.2d 310, 311 (Iowa 1980).

From a review of the record, it is evident Major did nothing more than allege the mere existence of consideration; it never set forth specific facts showing there was a genuine issue as to the existence of consideration. In its "Statement of Material Facts in Dispute" Major states "[i]t would be Plaintiff's position that consideration is clearly evident based on the actions of the plaintiff in reliance upon the oral assertions of Defendant's representative." Yet, at no point does Major demonstrate what actions it took in reliance upon Conifer's

alleged offer. The trial court judge presented a thoughtful analysis of this issue at the summary judgment hearing. He noted several examples of detrimental reliance Major could have alleged in support of its claim that consideration existed. However, Major failed to substantiate this claim

If Conifer's offer was for a $100 credit against future purchases (as Conifer claims), Major has offered no evidence that it actually made such purchases but was denied the credit. If the offer was as Major contends, that in November 1985 Conifer offered to give Major $100 for each unit of Conifer merchandise it had in its inventory, then Major has still failed to prove the existence of its consideration. Such a gratuitous offer for past purchases involves no consideration on Major's part. Without any facts demonstrating some type of detriment to Major, or benefit to Conifer, no consideration exists for the alleged contract. The trial court appropriately granted summary judgment in this matter.

AFFIRMED.