IN THE COURT OF APPEALS OF IOWA

No. 9-017 / 98-28
Filed June 23, 1999

MINCKS AGRI CENTER, INC.,
Appellee,

vs.

BELL FARMS, INC.,
Appellant.

Appeal from the Iowa District Court for Louisa County, John G. Linn, Judge.

Bell Farms, Inc. appeals the district court judgment entered upon a jury verdict in favor of Mincks Agri Center on plaintiff's claim that defendant breached a contract for the sale of grain. **REVERSED AND REMANDED.**

Bruce L. Walker and Michael J. Pugh of Phelan, Tucker, Mullen, Walker, Tucker & Gelman, L.L.P., Iowa City, for appellant.

William Scott Power of Aspelmeier, Fisch, Power, Warner & Engberg, P.L.C., Burlington, for appellee.

Heard by Huitink, P.J., and Vogel and Zimmer, JJ.

HUITINK, P.J.

Bell Farms, Inc. appeals the district court judgment entered upon a jury verdict in favor of Mincks Agri Center on plaintiff's claim that defendant breached a contract for the sale of grain. We reverse and remand.

I. Background Facts and Procedure.

Mincks Agri Center, Inc. (Mincks) contracted with Bell Farms, Inc. (Bell) for the purchase of corn and soybeans. The written contracts were executed in the spring of 1995 with terms requiring delivery of specified quantities at a specified price in October, November, and December 1995.

Mincks voluntarily surrendered its grain dealer's license on September 1, 1995. Because the contracts were assignable only by mutual consent, Mincks sought Bell's consent to assign these contracts to another dealer. Bell declined and sold the contracted grain to someone else.[1]

Mincks sued Bell in 1996 asserting multiple theories of recovery. Bell's motion for summary judgment citing Mincks's inability to perform without a grain dealer's license was denied. The district court submitted Mincks's breach of contract claim with a resulting $98,700 jury verdict against Bell.

On appeal Bell raises several issues including its entitlement to summary judgment for the reasons earlier noted. Because we find this issue dispositive, we limit our consideration to whether Bell's contract with Mincks was enforceable.

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[1]The assignability or Bell's refusal to consent to assignment is not at issue on appeal.

II. Standard of Review.

A motion for summary judgment is reviewed for correction of errors at law. Iowa R. Civ. P. 237(c). We will uphold a summary judgment order when the movant shows there are no genuine issues of material fact and it is entitled to judgment as a matter of law. *C-Thru Container Corp. v. Midland Mfg. Co.*, 533 N.W.2d 542, 544 (Iowa 1995). We review the record in the light most favorable to the nonmoving party. *Id.*; *Hoffnagle v. McDonald's Corp.*, 522 N.W.2d 808, 811 (Iowa 1994).

III. Enforceability of Grain Contracts.

The essential facts and dispositive claims of the parties are best summarized by reference to the district court's summary judgment ruling. In its ruling the court stated:

> Reduced to its appropriately bare essentials, this case is based on seven written grain purchase contracts entered into between the parties during the time period from February 6 to May 24, 1995. Defendant was to deliver certain loads of grain to GPC and Continental in Muscatine. The delivery was to take place some time between October and December of 1995 However, such delivery never took place. Defendant argues that it could not have executed the deliveries agreed upon because Plaintiff had surrendered his grain dealer's license on September 1, 1995, and thus, under Chapter 203 of the Code of Iowa, Plaintiff was not legally authorized to handle grain operations. Defendant concluded that it could not have made the deliveries because its agreement with Plaintiff was deemed void and illegal especially after Plaintiff surrendered its grain dealing license.

We have, in similar circumstances, held that the absence of a grain dealer's license does not automatically void an executory sales contract if the contract was valid at its inception and may be valid at the time of performance. *S & S, Inc. v.*

Meyer, 978 N.W.2d 857, 861 (Iowa App. 1991). Here, as in *S & S*, Mincks held the requisite grain dealer's license when the contracts were made, and there is no dispute concerning the validity of the contracts at the time of formation. The issue then is not whether the contracts are illegal or void; rather, the issue is whether they are unenforceable. *See* Restatement (Second) of Contracts §§ 7 and 8 (1981) (defining and distinguishing void, voidable, and unenforceable contracts).

The gist of Bell's argument is that enforcement of a grain contract by an unlicensed dealer contravenes public policy requiring grain dealers to obtain a license. Enforcement of contracts in violation of public policy was addressed in *Wunschel Law Firm, P.C. v. Clabaugh*, 291 N.W.2d 331, 335 (Iowa 1980) In *Wunschel*, the court stated:

> A contract which contravenes public policy will not be enforced by the courts. *See, e.g., Rowen v. Le Mars Mutual Insurance Co.*, 282 N.W.2d 639, 650 (Iowa 1979); *Tschirgi v. Merchants Nat'l Bank*, 253 Iowa 682, 789-90, 113 N.W.2d 226 230 (1962. This is a delicate power which "should be exercised only in cases free from doubt." *Richmond v. Dubuque & Sioux City R.R.*, 26 Iowa 191, 202 (1868). One ground for invalidating a contract on policy grounds is its contravention of "any established interest of society." *Liggett v. Shriver*, 181 Iowa 260, 265, 164 N.W. 611, 612 (1917). It is not necessary that the contract actually cause the feared evil in a given case; its tendency to have that result is sufficient. *Jones v. American Home Finding Assoc.*, 191 Iowa 211, 213, 182 N.W. 191, 192 (1921).

The effect of a contracting party's failure to comply with state regulatory licensing requirements is specifically addressed by Restatement (Second) of Contracts section 181 (1981). Section 181 provides:

> If a party is prohibited from doing an act because of his failure to comply with a licensing, registration or similar requirement, a promise in consideration of his doing that act or of his promise to do it is unenforceable on grounds of public policy if
>
> (a) the requirement has a regulatory purpose, and
>
> (b) the interest in the enforcement of the promise is clearly outweighed by the public policy behind the requirement.

The factors the court considers in assessing the public policy interest implicated include the administrative or criminal penalty for violation of the applicable statute, the degree of harm involved, and moral quality of the parties' conduct. *Beneficial Finance of Waterloo v. Lamos*, 179 N.W.2d 573, 580 (Iowa 1970). The Restatement (Second) of Contracts section 178 also provides a comprehensive list of factors weighed in determining the enforceability of such an agreement. That section provides:

> (1) A promise or other term of an agreement is unenforceable on grounds of public policy if legislation provides that it is unenforceable or the interest in its enforcement is clearly outweighed in the circumstances by a public policy against the enforcement of such terms.
>
> (2) In weighing the interest in the enforcement of a term, account is taken of
>
> (a) the parties' justified expectations,
>
> (b) any forfeiture that would result if enforcement were denied, and
>
> (c) any special public interest in the enforcement of the particular term.

> (3) In weighing a public policy against enforcement of a term, account is taken of
>
> (a) the strength of that policy as manifested by legislation or judicial decisions,
>
> (b) the likelihood that a refusal to enforce the term will further that policy,
>
> (c) the seriousness of any misconduct involved and the extent to which it was deliberate, and
>
> (d) the directness of the connection between that misconduct and the term.

Grain dealing in Iowa is a regulated business. *S & S, Inc.*, 473 N.W.2d at 860. With few exceptions, grain dealers are required to hold a license permitting them to engage in the business of a grain dealer. Iowa Code § 203.3 (1995). Violation of this licensing provision is a serious misdemeanor. Iowa Code § 203.11.

After weighing all of these factors, we conclude Mincks's contract with Bell should not be enforced. Section 203.3, *et seq.*, is intended to protect Bell and others similarly situated from insolvent or otherwise financially irresponsible grain dealers. Although the criminal penalty provided for failure to comply with section 203.3's licensing requirements is not alone dispositive, it nevertheless suggests the strength of the legislature's regulatory objectives. *See Beneficial Finance*, 179 N.W.2d at 580.

The undisputed summary judgment record indicates Mincks surrendered its grain dealer's license because it was insolvent and unable to perform its contractual obligations. There is nothing in the record to suggest Mincks had done anything by way of preparation or performance. Moreover, there is no dispute Mincks's renewed

interest in enforcement followed favorable changes in the grain market offering an opportunity for a financial windfall. We, under the limited circumstances of this case, hold enforcement of these contracts contradicts rather than advances the public policy expressed in Iowa Code section 203.3, *et seq.* In the absence of a legislative provision for the unenforceability of contracts by an unlicensed grain dealer, however, we decline to adopt a bright line rule of unenforceability.

Bell's motion for summary judgment should have been granted. We reverse and remand for entry of judgment dismissing Mincks's petition.

REVERSED AND REMANDED.

No. 98-28. [9-17] **MINCKS AGRI CENTER, INC. v. BELL FARMS, INC.**
Appeal from the Iowa District Court for Louisa County, John G. Linn, Judge. **REVERSED AND REMANDED.** Heard by Huitink, P.J., and Vogel and Zimmer, JJ. Opinion by Huitink, P.J. (7 pages $2.80)

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No. 98-28. [9-17] MINCKS AGRI CENTER v. BELL FARMS (continued)
contravenes public policy requiring grain dealers to obtain a license. The factors the court considers in assessing the public policy interest implicated include the administrative or criminal penalty for violation of the applicable statute, the degree of harm involved, and moral quality of the parties' conduct. After weighing all of these factors, we conclude Mincks's contract with Bell should not be enforced. Section 203.3, *et seq.*, is intended to protect Bell and others similarly situated from insolvent or otherwise financially irresponsible grain dealers. The undisputed summary judgment record indicates Mincks surrendered its grain dealer's license because it was insolvent and unable to perform its contractual obligations. We, under the limited circumstances of this case, hold enforcement of these contracts contradicts rather than advances the public policy expressed in Iowa Code section 203.3. In the absence of a legislative provision for the unenforceability of contracts by an unlicensed grain dealer, however, we decline to adopt a bright line rule of unenforceability.