



IN THE COURT OF APPEALS OF IOWA

NOX-CRETE CHEMICALS, INC.,)

Plaintiff-Appellant,)

vs.)

ALTER & SONS, INC.,)

Defendant-Appellee.)

286

9-75
88-812

Appeal from the Iowa District Court for Scott County
(72997), John A. Nahra, Judge.

Plaintiff appeals the district court ruling challenging
the conclusion that no distributorship contract existed
with defendant. **AFFIRMED.**

Michael J. McCarthy, Davenport, for plaintiff-
appellant.

Robert A. Hutchison and Robert D. Andeweg, Des Moines,
for defendant-appellee.

Heard by Oxberger, C.J., and Schlegel and Hayden, JJ.

HAYDEN, J.**287**

The plaintiff, a manufacturer, and the defendant, a seller of construction products, entered into a written distributorship agreement. However, disagreements arose and the manufacturer eventually sued to recover sums allegedly due under the agreement. The district court held no distributorship contract existed, in spite of the written agreement, because the parties had never reached a meeting of the minds on crucial points. We affirm.

I.

Plaintiff, Nox-Crete Chemicals, is a manufacturer of chemical products used in construction work involving concrete. Defendant, Alter & Sons, Inc., is a seller of supplies used in the construction business.

In 1985, Alter began to serve as a distributor for Nox-Crete products on a consignment basis. In 1986, the parties entered into discussions regarding an exclusive distributorship agreement. Eventually, on June 30, 1986, the parties signed a written agreement. The agreement called for Alter to maintain an \$18,000 inventory of Nox-Crete products, and allowed Nox-Crete to bill Alter for this inventory upon delivery. However, a disagreement arose almost immediately over whether this agreement allowed Nox-Crete to bill Alter for products already received under the old consignment arrangement. Nox-Crete sent a bill for those products, and Alter refused to pay.

Further disagreements arose over alleged delays by Alter in making payments to Nox-Crete.

Nox-Crete filed the present suit against Alter to recover amounts allegedly due under the June 30 agreement. The district court declined to award Nox-Crete all the money it sought. The district court ruled that in spite of the signed document of June 30, the parties had never formed a completed distributorship contract. The court concluded they had not reached a meeting of the minds on such issues as whether Alter could be billed for products received under the old consignment arrangement. The court commented it could only guess what the parties contemplated because it did not appear the parties had reached a "mutual contemplation."

In spite of its holding no distributorship contract existed, the court ordered Alter to pay Nox-Crete for certain Nox-Crete products which Alter had already sold.

Nox-Crete has appealed from the district court's ruling, challenging the conclusion that no distributorship contract existed. Nox-Crete contends the parties had reached a meeting of the minds, as reflected in the written distributorship agreement signed on June 30, 1986.

II.

Nox-Crete contends it was error for the court to determine the parties had not reached a "meeting of the minds" to form a contract. Nox-Crete urges evidence

clearly established the parties had executed a comprehensive written agreement which governed their products distribution relationship.

Findings of fact in a law action are binding upon the appellate court if supported by substantial evidence. Iowa R. App. P. 14(f)(1). The trial court's findings of fact have the effect of a special verdict. Byers v. Contemporary Industries Midwest, 419 N.W.2d 396, 397 (Iowa 1988). These findings are broadly and liberally construed to uphold rather than defeat, the judgment. Id. However, this court is not bound by findings of fact resulting from the application of erroneous rules at law or by the trial court's determination of law. Farmers Insurance Group v. Merryweather, 214 N.W.2d 184, 187 (Iowa 1974).

In the construction of a written contract, the cardinal principle is the intent of the parties must control. Chariton Feed and Grain v. Harden, 369 N.W.2d 777, 785 (Iowa 1985). Therefore, in order for a contract to be formed, there must be mutual assent to the terms of the contract or a "meeting of the minds." See, e.g., Fairway Center Corp. v. UIP Corp., 502 F.2d 1135, 1141 (8th Cir. 1974). Whether a "meeting of the minds" has occurred depends on the intention of the parties as determined from words and actions viewed within the context at the situation and surrounding circumstances. Fairway, 502 F.2d at 1141.

We determine there was substantial evidence in the record to support the district court's decision that there was no meeting of the minds regarding the consignment stock.

Not surprisingly, testimony at trial was conflicting. Evidence indicated Alter was under the belief it would be able to return the consignment stock. Alter president Victor Rothbardt testified Alter has approximately twenty other distributorship agreements. Other evidence indicated Alter, as a matter of practice, always issues purchase orders under the other agreements and had no reason to believe this situation would be any different. Nox-Crete, on the other hand, was under the assumption Alter would not return the consignment stock under the distribution agreement.

Based on the conflicting testimony, we find there was substantial evidence to support the trial court's finding that there was no meeting of the minds. Consequently, we affirm the decision of the district court.

IV.

In light of our disposition of the foregoing issue, we do not find it necessary to address Alter's arguments found in divisions I and III of its brief.

AFFIRMED.