IN THE COURT OF APPEALS OF IOWA

No. 2-598 / 91-1939

AGRA SEEDS, INC.,

Appellee,

vs.

JERALD E. JORGENSEN and HILLTOP FEEDERS OF IOWA,

Appellants.

Appeal from the Iowa District Court for Winneshiek County, Peter Van Metre, Judge.

Defendants appeal a district court judgment for plaintiff in this action to collect payment for seed corn. **AFFIRMED AS MODIFIED.**

Thomas P. Jorgensen of Duncan, Jones, Riley & Finley, P.C., Des Moines, for appellants.

Wythe Willey of the Tom Riley Law Firm, P.C., Cedar Rapids, for appellee.

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

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HAYDEN, J.

Plaintiff Agra Seeds, Inc. is an Iowa corporation involved in the production and sale of seed corn. Defendant Jerald Jorgensen is a farmer. Hilltop Feeders of Iowa is a partnership which operates a feedlot operation. Jerald is the managing partner of Hilltop Feeders.

In the spring of 1989, Jerald entered into an oral agreement, on behalf of himself and Hilltop Feeders, with Rick Engelby, the president of Agra, to purchase seed corn at the dealer price of thirty-five dollars per bag. Agra recognized Jerald would probably sell some of the seed to others, including his brothers, Harris Jorgensen and Jim Jorgensen. The retail price of seed corn at the time was between fifty-five to sixty dollars per bag.

Agra stored the seed at the Cenex in Cedar Falls. Jorgensens and representatives of Hilltop Feeders picked up 301 bags of seed from the Cenex. Agra never received payment for the seed, although it sent letters demanding payment to Jorgensens and Hilltop Feeders.

Agra filed a petition on an open account on February 8, 1990. Agra claimed defendants had received 386 bags of seed and sought a judgment for $13,505 plus interest at eighteen percent from Jerald and Hilltop Feeders. Jerald admitted he had received the seed and Harris and Jim had paid him for the seed they used. However, he claimed the price charged by Agra was excessive for the quality of seed received.

On April 18, 1991, defendants filed a motion for continuance of trial and a motion to compel. Defendants claimed they needed additional time to conduct discovery to determine the quality of the seed and the reasonableness of the price. Defendants also requested the court to compel Agra to produce certain documents. The court denied the motions because the motions were filed too late. Trial in the case was held on May 1, 1991.

The district court issued its decision on November 12, 1991. The court found Agra and Jerald were equally knowledgeable about seed types and maturity rates. Jerald planted the seeds and did not complain about the yield. In fact, there was evidence he was pleased with the crop. The court concluded defendants did not raise an adequate defense. The court found defendants had received 301 bags of seed and thirty-five dollars per bag was a reasonable price for the seed. The court rendered judgment for Agra for $10,535 plus interest of eighteen percent from May 2, 1989, until the date of the court's decision. Interest thereafter is to be calculated at the legal rate. Defendants have appealed.

I. This action on an open account was tried to the court as an action at law. The findings of the trial court have the effect of a special verdict. Novak Equip., Inc. v. Hartl, 168 N.W.2d 924, 926 (Iowa 1969). If there is substantial basis in the record for such findings, they are binding on us. Id.

II. Defendants contend the district court abused its discretion in overruling their motion for a continuance. They claim they were not able to put on an adequate defense because they needed additional time to conduct discovery on the quality of seed received.

A district court has broad discretion to grant or deny continuances. Hawkeye Bank & Trust v. Baugh, 463 N.W.2d 22, 26 (Iowa 1990). We will reverse only when the district court's discretion is abused. Id.

In this case we find no abuse of discretion. The suit had been filed in February 1990. Defendants waited until April 18, 1991, shortly before the trial scheduled for May 1, 1991, to seek a continuance due to their failure to complete discovery. We affirm the district court on this issue.

III. Defendants also contend the district court decision is not supported by substantial evidence. They claim the evidence showed the price of thirty-five dollars per bag of seed corn was neither reasonable nor reflective of current market prices.

In an action on an open account plaintiff has the burden of proving the account. Team Cent., Inc. v. Teamco, Inc., 271 N.W.2d 914, 920 (Iowa 1978). In other words, plaintiff must prove how much defendant owes. Id. Included in this, plaintiff must show the prices charged were fair and reasonable. Id.

Rick Engelby, president of Agra, and Terry Boydstun, vice president in charge of production and sales at Agra, both testified the price of thirty-five dollars per bag was fair and reasonable. James Stenland, defendant's expert, testified the different types of seed corn had different values. He testified the 301 bags of seed had a value of $5,970, not $10,535 as claimed by plaintiff.

Thus, there is conflicting evidence in the record concerning the fair and reasonable value of the seed corn. We note Stenland admitted he was biased against Agra due to another lawsuit between himself and Agra. We conclude there is substantial evidence in the record to support the district court's conclusion the price of thirty-five dollars per bag was fair and reasonable.

IV. Finally, defendants contend the district court erred in ordering them to pay interest of eighteen percent on the judgment from May 2, 1989, until the date of the court's order. They state there is no evidence to support the imposition of this rate of interest.

Under Iowa Code section 535.2(1):

> [T]he rate of interest shall be five cents on the hundred by the year in the following cases, unless the parties shall agree in writing for the payment of interest at a rate not exceeding the rate permitted by subsection 3:
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> * * *
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> f. Money due upon open accounts after six months from the date of the last item.

This statute governs the allowance of interest on money due upon open accounts. Des Moines Bank & Trust Co. v. Iowa S. Util. Co., 245 Iowa 186, 191, 61 N.W.2d 724, 728 (1953).

Plaintiff must present evidence of a written agreement to charge interest other than the rate allowed by statute. See In re Estate of Zimmerman, 160 N.W.2d 502, 505 (Iowa 1968). Agra presented no evidence defendants had agreed to pay interest at the rate of eighteen percent. We conclude defendants should pay interest at the rate required by section 535.2(1), which is five percent, from May 2, 1989, until the date of the trial court's judgment order, November 12, 1991, and the legal rate of interest thereafter.

We affirm the decision of the district court, except as we have modified the calculation of interest. Costs of this appeal are assessed to Jerald Jorgensen and Hilltop Feeders.

AFFIRMED AS MODIFIED.