



297

IN THE COURT OF APPEALS OF IOWA

DENNY DUELLO,

Appellee,

vs.

JOHN R. SHOUP, JR., and
SHOUP FARMS, INC.,

Appellant.

Filed August 31, 1978

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2-60183

Appeal from Grundy District Court - Carroll E. Engelkes, Judge.

Appeals by plaintiff and defendant from damage award to plaintiff in breach of contract action arising out of the sale of registered cattle. - Affirmed in part, reversed in part and remanded.

Robert W. Thompson & Michael W. Rickert, of Rickert & Thompson, Reinbeck,
for Appellant.

C. A. Frerichs, of Fulton, Frerichs & Nutting, Waterloo, for Appellee.

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

PER CURIAM

Defendants John Shoup, Jr., and Shoup Farms, Inc., appeal the trial court's decree awarding plaintiff Denny Duello \$30,510.14 in damages in an action for breach of contract due to the defendant corporation's failure to timely deliver registration certificates for the 18 head of recordable one-half blood Simmental cattle purchased by plaintiff. On appeal, defendant corporation alleges the trial court erred in admitting testimony of an alleged expert witness, in computing damages and in abusing its discretion in failing to allow for filing of briefs. Plaintiff cross-appeals alleging there was sufficient evidence of bad faith on the part of John Shoup to justify piercing the corporate veil and holding Shoup personally liable for the damages incurred by plaintiff.

Defendant's first complaint is that the trial court erred in admitting into evidence over defendant's objection, the testimony of Richard Meyers, a farmer and livestock auction barn proprietor, concerning the value of average size bred heifers and above average quality of commercial grade cows during the time period plaintiff made his purchase from defendant. Defendant objected on the grounds Meyers' testimony lacked foundation and was irrelevant to any issue of the case, in that the issue before the court was the market value of unrecorded half-blood Simmental cattle.

The general guidelines for admitting expert testimony into evidence are contained in *Ganrud v. Smith*, 206 N.W.2d 311, 314-15 (Iowa 1973). The testimony must be such as it will aid the finder of fact and that is based upon some special training, experience or knowledge of the witness. The opinion must be more than mere conjecture and the witness must be qualified to answer the particular question propounded. 206 N.W.2d at 314. Finally, the trial court is vested with wide discretion on the question of the admissibility or exclusion of expert testimony. *Ruden v. Hansen*, 206 N.W.2d 713, 717 (Iowa 1973); *Ganrud*, supra.

In the instant case, Meyers was properly qualified to testify concerning the general market values of cattle during the time period in issue. He was asked to testify only as to the values of average size, above average quality bred heifers of commercial grade. He was not asked the value of the unrecorded Simmental cattle

of which he had no knowledge. Cf. 31 Am. Jur. 2d Experts and Opinion Evidence 3139 (1967). The trial court found from other testimony that the unrecorded Simmentals had only a comparable market value to grade bred heifers of average to above average size and quality. We find no abuse of discretion in admitting Meyers' testimony. Ganrud, supra.

The second and third errors raised by defendant are related. Defendant alleges the trial court applied the incorrect measure of damages in assessing damages and erred in allowing feed costs, veterinary costs, interest and insemination costs as a measure of plaintiff's damages. The proper measure of damages for a breach of contract arising out of a non-conforming tender is "the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted." Section 554.2714(2), The Code. Consequential damages resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know, are also recoverable. Sections 554.2714(3), 2715(2)(a), The Code.

In the instant case, the proper measure of damages was the difference in value between the Simmental cattle as warranted and the value of the cattle as unrecorded Simmental cattle. Section 554.2714(2), The Code. The trial court found their unrecorded value as comparable to grade bred heifers of average to above average size and quality. Findings of fact in a law action are binding upon the appellate court on review if supported by substantial evidence. Rule 14(f)(1), Rules of Appellate Procedure. A review of the evidence indicates there is substantial evidence in the record to support the trial court's finding even though defendant attempts to argue the only difference in value was the \$100 per head cost of recording the previously unrecorded cattle.

Defendant also alleges the trial court erred in its award of consequential damages. The trial court awarded consequential damages in the amount of \$1,231.20 for feeding and \$1,260.00 for interest incurred over a six month period which the trial court found to be a reasonable time for plaintiff to wait before proceeding to mitigate his damages. Under Iowa law, special items such as

veterinary services and cost of feed and labor, if it appears these were wasted because of a breach of warranty of quality, are recoverable if shown by competent evidence. *Turner v. Kunde*, 256 Iowa 835, 842, 128 N.W.2d 196 (1964). See also *W & W Livestock Enterprises, Inc. v. Dennler*, 179 N.W.2d 484, 488 (Iowa 1970).

However, in the instant case there is no showing that the \$1,231.20 feed costs were wasted. Even though the trial court found plaintiff would not have purchased the bred cows as grade livestock without the certificates of registration, there is no evidence that his feeding costs were proportionately higher as a result of the breach of contract. Accordingly, plaintiff's judgment shall be reduced by \$1,231.20 together with interest at the rate of seven percent per annum from September 23, 1974, to September 28, 1976, the date of the trial court's decree.

This leaves only the question of the award of \$1,260.00 in interest incurred by plaintiff for the six-month period the trial court found it was reasonable for plaintiff to hold the cattle. The court found plaintiff's expense would not have been as great had he not intended to purchase the bred cows as grade livestock. Therefore, it concluded the interest expense was attributable to defendant corporation's breach of contract. See *Turner, supra*. The trial court then awarded interest on the entire cost of the cattle at eight percent per annum interest for six months. Interest should have been computed on the difference between the value of the cattle as warranted and as delivered (8% of \$24,750 for 6 months) equalling \$990. We affirm this finding as corrected. See *Briggs Transp. Co. v. Starr Sales Co.*, 262 N.W.2d 805, 811 (Iowa 1978).

Defendant's final contention which is also raised by plaintiff in his cross-appeal is that the trial court erred when it failed to allow the parties to submit written briefs on certain points of law on their respective positions in the case. The trial court specifically stated it would request written briefs and argument on specific issues if it found certain aspects of the case to be particularly troublesome. Otherwise, it would take the case under advisement.

The decision of the trial court not to request written briefs was within its own discretion. Absent an abuse of that discretion, this court will not reverse an exercise of discretion. We find the trial court was well apprised of the issues and

the parties were not prejudiced by the trial court's not requesting written briefs. There was no abuse of discretion.

Plaintiff's final contention in his cross-appeal is that the trial court erred in finding the evidence failed to support the allegations of bad faith in an attempt to pierce the corporate veil and hold defendant John Shoup personally liable for plaintiff's loss. In order for the plaintiff to show fraud, he is required to establish the elements set out in *Grefe v. Ross*, 231 N.W.2d 863 (Iowa 1975). Our review of the record indicates the trial court was correct when it found defendant Shoup was not guilty of fraud.

Nevertheless, in certain instances the corporate veil may be pierced and personal liability imposed even in the absence of fraud, to prevent an injustice. See *Briggs Transp. Co. v. Starr Sales Co.*, 262 N.W.2d 805, 809-10 (Iowa 1978); *Newberry v. Barth, Inc.*, 252 N.W.2d 711, 714 (Iowa 1977). The factors to be considered in determining whether to pierce the corporate veil of limited liability in favor of personal liability are set out in *Briggs Transp.*, supra. See also *Lakota Girl Scout C., Inc. v. Havey Find-Rais. Man., Inc.*, 519 F.2d 634, 638 (8th Cir. 1975); 1 W.M. Fletcher, *Cyclopedia of the Law of Private Corporations*, § 41.3 (1974). In the instant case, the trial court was correct in holding the evidence did not justify piercing the corporate veil and holding John Shoup personally liable for plaintiff's loss under the criteria set forth in *Briggs*.

Affirmed in part, reversed in part and remanded.