IN THE COURT OF APPEALS OF IOWA

No. 0-402 / 99-1167
Filed December 13, 2000

FILED
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CLERK SUPREME COURT

MERVIN ANDERSON,
Plaintiff-Appellee,

vs.

ROBERT J. BECKER and ROBERT J. BECKER, d/b/a ADVANCED MARKETING SERVICES,
Defendants,

FARMERS COOPERATIVE ELEVATOR, Woden, Iowa,
Defendant-Appellant.

FARMERS COOPERATIVE ELEVATOR, Woden, Iowa,
Counterclaimant-Appellant,

vs.

MERVIN ANDERSON,
Defendant to Counterclaim-Appellee.

Appeal from the Iowa District Court for Cerro Gordo County, Jon S. Scoles, Judge.

Farmers Cooperative Elevator, Woden, appeals the district court's order dismissing its counterclaim against Mervin Anderson. **AFFIRMED.**

David J. Siegrist of Siegrist & Jones, Britt, for appellant.

Mark A. Newman of Newman Law Office, Forest City, for appellee.

Considered by Vogel, P.J., and Miller and Hecht, JJ.

HECHT, J.

Farmers Cooperative Elevator, Woden, Iowa, appeals from the dismissal of its counterclaim against Mervin Anderson. We affirm.

I. **Factual Background and Proceedings.** Mervin Anderson farms near Joice in Worth County, Iowa. He sought crop marketing advice and assistance from Advance Trading, Inc. ("ATI"), a commodity futures brokerage and consulting company principally located in Bloomington, Illinois. A "Farmer Marketing Advisory Program" agreement was executed by Anderson and ATI on February 22, 1989. ATI agreed to provide grain marketing recommendations including "pricing alternatives as well as hedging and use of futures options." Anderson agreed to maintain a futures trading account with ATI's commission merchant, Farmers Commodity Corporation and to pay an annual fee for ATI's services. The 1989 agreement established a "co-management" relationship in which grain marketing decisions were jointly made by Anderson and ATI.

Anderson eventually became dissatisfied with the business relationship because he believed the cost of ATI's services exceeded their value. On July 1, 1992, he met with ATI's representative, Bob Becker, to discuss a new arrangement. Anderson orally agreed to trade his futures positions in an account maintained by Farmers Cooperative Elevator, Woden, Iowa ("Woden"). It is undisputed Anderson gave Becker the sole discretion to trade Anderson's grain on the futures market.

Becker took positions for Anderson on the Chicago Board of Trade through Woden. Anderson held his 1992 corn in storage throughout 1993. After

harvesting a poor corn crop in 1993, he elected to mix his 1992 corn with the 1993 crop and sold virtually all of it against Becker's advice in January of 1994. The low sale price received by Anderson for the grain compared to the positions taken by Becker through Woden on the Chicago Board of Trade resulted in a deficit. In June of 1994, Anderson received a printout from Becker showing a 1992 corn deficit of $9,642.08 and a 1993 corn deficit of $6,371.47.

In March of 1993, ATI had entered into an "origination support services agreement" with Woden. ATI agreed to provide Woden[1] with marketing strategies and training and assistance with regard to hedging its grain contracts with producers. Woden agreed to hire the "marketing advisor/originator(s)" who would work directly with the elevator's customers. An "originator bonus agreement" between Woden and ATI identified Bob Becker as Woden's agent responsible for the generation of hedge contracts with the elevator's customers. In furtherance of its agreement with ATI, Woden provided Becker office space and telephone access on its premises. Becker came to the elevator once or twice during each two week period to transact business. He filed Woden's grain marketing contracts on the elevator's premises.

Anderson testified the deficits shown on the printouts were not of great concern to him because he believed his agreement with ATI required payment of fees only if his futures transactions were profitable. Woden did not demand payment of the deficits from Anderson in 1992 or 1993, and carried them forward

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[1] ATI had similar contractual relationships with several other grain elevators as well.

into 1994.[2] In fact, Becker continued to trade on the 1992 and 1993 corn until 1994 as part of the "marketing strategy." In December of 1994, Anderson received a printout showing a deficit of $16,834.94 "from old positions."

On June 6, 1995, Becker contacted Anderson and strongly urged him to sell grain. Although he was not otherwise inclined to sell at that time, Anderson elected to follow Becker's advice and sold 38,000 bushels of corn to the Hanlontown Cooperative Elevator. Becker faxed instructions to the elevator directing $21,304.41 be withheld from Anderson's sale proceeds. The elevator was further instructed by Becker to draw a check in that amount to Woden. After being informed of these instructions by the buyer, Anderson countermanded them because he had a government loan on the grain that was due upon delivery.

On June 25, 1997, Anderson sued Becker, ATI, and Woden claiming damages arising from the numerous grain transactions. Woden counterclaimed seeking judgment against Anderson for $35,128.34. Anderson denied liability on the counterclaim, asserting defenses of fraudulent misrepresentation and breach of fiduciary duty. The matter came on for trial on February 23, 1999, after all claims against Becker and ATI had been dismissed. The district court found Becker was a dual agent for Anderson and Woden. The court ruled Woden could not recover on its counterclaim because its agent, Becker, had breached

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[2] The record suggests Anderson was not the only customer of Woden permitted to carry marketing positions forward. Woden permitted several other grain producers to carry forward 1992 and 1993 marketing positions into 1994 and 1995. In March of 1995, the company notified producers they would be charged eight percent per month on outstanding 1992 and 1993 positions.

his fiduciary duty toward Anderson by: (1) failing to disclose the nature and extent of his relationship with Woden; (2) failing to advise Anderson of his debt to Woden when corn was sold in January of 1994; (3) attempting to intercept payment from the Hanlontown elevator in June of 1995 without advance notice to Anderson. Woden appeals.

II. Contentions on Appeal. Woden claims the district court erred: (1) in finding Becker was Woden's agent; (2) in finding the agency between Becker and Woden was undisclosed; and (3) in finding a conflict interest between Anderson and Woden in the formation of the marketing contracts. Anderson asserts the district court's findings are supported by substantial evidence.

III. Standard of Review. We review law actions tried to the district court for correction of errors at law; and the court's findings of fact have the effect of a special verdict. Iowa R. App. P. 4; *Data Documents, Inc. v. Pottawattamie County*, 604 N.W.2d 611, 614-15 (Iowa 2000). Thus, all findings of fact are binding if supported by substantial evidence. Iowa R. App. P. 14(f)(1); *Data Documents*, 604 N.W.2d at 614-15. "Evidence is substantial if a reasonable mind could accept it as adequate to reach the same findings." *Bluffs Dev. Co. v. Board of Adjustment*, 499 N.W.2d 12, 14 (Iowa 1993). In applying this standard, we view the evidence in a light most favorable to upholding the district court's judgment. *Data Documents*, 604 N.W.2d at 615. We construe the findings of the trial court liberally to uphold, rather than defeat, the result reached. *Claus v. Whyle*, 526 N.W.2d 519, 523 (Iowa 1994).

IV. Did an agency relationship exist between Woden and Becker?

Woden asserts the district court's finding of an agency between it and Becker cannot stand because it did not pay him. W-2 and 1099 forms disclose Becker received compensation from ATI in 1992, 1993, and 1994, and there is no documentary evidence in the record tending to prove Woden directly compensated him. The fact Becker was paid by ATI does not, as a matter of law, defeat the district court's finding he acted as agent for Woden. An agency relationship may be proven not only by direct evidence of an agreement between the parties, but also by circumstantial evidence, such as their words and conduct. *Menzel v. Morse*, 362 N.W.2d 465, 475 (Iowa 1985). An agent may act as agent for two principals while receiving payment from only one. *Id.* The "originator bonus agreement" between Woden and ATI authorized ATI, as a convenience to Woden, to pay bonuses directly to Becker for generation of business under the Woden commodity contracts. Thus, the fact compensation was not directly paid by Woden to Becker did not require, as a matter of law, the district court to find no agency relationship between them.

Woden also asserts, and the district court found, Woden did not exercise independent judgment in connection with the formation of the contracts between the elevator and Anderson. Woden contends it served only as a market outlet for transactions formed between Anderson and ATI or Becker, and took no part in the producer's decision to sell grain or in the negotiation of the sale price for the commodity. In other words, Woden asserts its role was merely to agree to buy at the prevailing market price any grain producers agreed to sell consistent with ATI

strategies. An agency relationship exists where there is: (1) a manifestation of consent by one person that another shall act on the former's behalf and subject to the former's control; and (2) the consent of the latter to so act. *Benson v. Webster*, 593 N.W.2d 126, 130 (Iowa 1999). Becker prepared the futures contracts that are the subject of this case. After obtaining the signature of a Woden representative on the documents, he filed them at the elevator. In addition, Woden had authorized Becker to initiate corresponding trades on its behalf through its broker on the Chicago Board of Trade.

There is substantial evidence of Woden's control over Becker in this case. In June of 1995, Woden held a meeting to formulate a plan to collect accounts receivable owed by customers who participated in ATI's program. Becker was in attendance. The "action plan" generated at the meeting called for Becker to arrange for legal counsel to pursue collection of delinquent accounts on behalf of Woden. There is evidence in the record tending to prove Becker also arranged for counsel to represent Woden in its efforts to collect the account receivable owed by Anderson. Becker testified he considered it his responsibility to make sure producers honored their contracts with Woden. A reasonable fact finder could find Woden exercised sufficient control over Becker to induce him to arrange for collection proceedings to be instituted against his customer, Anderson. *See* Restatement (Second) of Agency § 1 cmt. b. (1958) (an agency relation "is an understanding between the parties which . . . creates a fiduciary relation in which the fiduciary is subject to the directions of the one on whose account he acts.") Thus, there is substantial evidence of Becker's actions on

behalf of Woden and Woden's control over such actions to support the district court's finding of an agency relationship in this case.

Woden contends the origination support services agreement did not establish an employment relationship between Woden and Becker. The elevator asserts the agreement itself was not proved because there is no evidence the document was ever signed by Woden's authorized representative or approved by its board of directors. When asked whether the agreement was "followed," Woden described performance as "abbreviated." And, as noted by Woden, several of the Woden contracts were entered into by Becker before the OSS agreement was reached on March 13, 1993, between Woden and ATI. We acknowledge there is evidence in the record tending to prove Becker did not become Woden's employee or its agent. Becker denied he was an employee or agent of Woden, and as noted above, received his compensation directly from ATI. However, direct evidence of an agency relationship is not required. "An agency may be proven not only by direct evidence of an agreement between the parties, but also by circumstantial evidence, such as their words and conduct, from which an intention to create an agency may be fairly implied. *Walnut Hills Farms, v. Farmers Coop. Co.*, 244 N.W.2d 778, 781 (Iowa 1976). As noted above, we conclude there is substantial evidence of the agency relationship found by the district court to exist between Woden and Becker. The applicable standard of review dictates we must affirm the district court's findings of fact under such circumstances.

Woden asserts even if Becker's efforts to induce Anderson to sell grain in June of 1995 in furtherance of a plan to collect the amount owed by Anderson to the elevator evidenced a conflict of interest, any such conflict did not affect the formation of the futures contracts in question. Such a conflict of interest would affect only the performance of a contract rather than its formation. This assertion must fail, however, because there is also substantial evidence of a conflict of interest in the formation of the contracts. Under the originator bonus agreement, Woden was obligated to pay bonuses of $.0015 per bushel to Becker for generation of customers who would contract to sell grain through Woden. A reasonable fact finder could find this financial incentive extended by Woden to Becker and unknown to Anderson created a conflict of interest between Becker's two principals. Each time Becker contracted to sell Anderson's grain to Woden, Becker received a bonus and Woden received a service fee whether or not the sale was in Becker's interest. Thus, we reject Woden's contention there is no substantial evidence in the record tending to prove the claimed conflict was confined to performance and could not have affected formation of the contracts.

V. Was the dual agency undisclosed? Woden contends the dual agency defense must fail because Anderson knew all material facts of the commodity contracts. He knew his grain would be sold by Becker to Woden and the elevator would receive a fee for each transaction. However, we find substantial evidence in the record supporting the district court's finding Becker's divided loyalty caused him to fail to disclose to Anderson material information about the debt owed to Woden. There is evidence in the record tending to prove

Becker represented Anderson would not owe Woden transactional fees unless a profit was achieved. A rational fact finder could conclude the debit balance information periodically mailed to Anderson was not adequate disclosure. Woden's decision to carry the balances from 1992 and 1993 forward into 1994 with no efforts to collect them could be seen as consistent with Anderson's claim Woden would be paid fees only from profits derived from the futures transactions. As noted above, there is also evidence in the record establishing Becker received bonuses indirectly from Woden for each contract sale generated, but this information was not disclosed to Anderson. Finally, the district court's finding Becker did not disclose his relationship with Woden would cause him to assist Woden in the collection of accumulated debit balances from Anderson. Thus, we conclude there is substantial evidence supporting the district court's finding Becker breached his duty of undivided loyalty by concealing the nature and extent of his relationship with Woden.

VI. Were the dual interests of Anderson and Woden conflicting? Woden claims it had common interests with Anderson in the marketing of grain in accordance with ATI strategies. The elevator notes Becker had complete authority from Anderson to form the commodity contracts that called for sales at market prices not subject to the control of Becker or Woden. The district court nonetheless found Becker's loyalty was divided. Anderson's interest was in maximizing profit from the sale of his commodities. As noted above, substantial evidence in the record demonstrates Woden's and Becker's interests were in maximizing the number of sales and bushels of grain it handled whether or not

Becker profited from the transactions. This differentiation of the motivations and interests of the parties was present both at the time of the formation of the contracts and at the time of their performance. Substantial evidence of the conflict resulting from Becker's divided loyalty is most vividly shown in Becker's 1995 efforts to assist Woden in the collection of the debit balance claimed against Anderson. We find no prejudicial error on this issue.

VII. Conclusion. The district court's findings of fact are supported by substantial evidence. We have considered all contentions presented by Woden and have found no reversible error in this case. Accordingly, we affirm.

AFFIRMED.