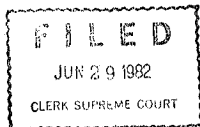


IN THE COURT OF APPEALS OF IOWA

GARNER PUBLISHING COMPANY,)
Plaintiff-Appellee,)
vs.)
NU-SASH OF IOWA, INC.,)
Defendant-Appellant.)



Filed June 29, 1982

2-173
2-67195

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Appeal from Polk District Court, Ray Hanrahan, Judge.

Defendant appeals from a judgment for plaintiff in a contract action contending the trial court erred in concluding a valid contract existed and in determining the amount of damages. AFFIRMED IN PART AND MODIFIED IN PART.

David L. Brodsky, Des Moines, for defendant-appellant.

Eli J. Wirtz of Ahlers, Cooney, Dorweiler, Haynie & Smith, Des Moines, for plaintiff-appellee.

Considered by Snell, P.J., and Carter, and Johnson, JJ.

Defendant appeals from a judgment for plaintiff in a contract action contending the trial court erred in concluding a valid contract existed and in determining the amount of damages. We find substantial evidence to support the trial court's conclusion the parties entered into an enforceable contract. The court's award of damages, however, is not supported by the evidence and is modified.

Plaintiff, Garner Publishing Co., is an Iowa corporation engaged in the business of commercial printing and publishing. Defendant, Nu-Sash of Iowa, Inc., sells replacement windows and kitchen cabinet fronts. In 1978 Garner began printing some advertisement circulars for Nu-Sash. By May 1, 1979, plaintiff had printed and delivered 4,077,500 circulars for defendant. Defendant refused to accept or pay for those circulars. Defendant claimed the circulars contained several mistakes and failed to comply with certain postal regulations.

The plaintiff then filed the present lawsuit, alleging defendant had breached a contract between the parties by failing to accept and pay for circulars already printed and also by refusing to order more circulars on a continuing basis. The contract alleged by plaintiff, dated October 10, 1978, provided for the delivery of ten to twelve million circulars at a base price of one and one-tenth cents per circular. Defendant denied that a valid contract existed. Defendant asserted that the 1978 document signed by the parties did not represent a meeting of the minds because the defendant's president had signed after being assured by the plaintiff's employee that the document was meaningless and was intended only to reassure nervous executives of the plaintiff.

After trial, the court concluded a valid contract existed and defendant was in breach. The court awarded the plaintiff \$12,200.10 as compensation for work already done by the plaintiff but not accepted by the defendant, \$5200 for

prospective lost profits, and \$2706.60 for the plaintiff's purchase of special paper which was useless for any client other than the defendant.

The defendant has appealed, contending the trial court erred in concluding that a valid contract existed and also in determining the amount of damages.

I. Scope of Review

This case was tried at law. Our review is limited to corrections of errors of law. Iowa R. App. P. 4; Connie's Construction Company, Inc. v. Fireman's Fund Insurance Company, 227 N.W.2d 207, 209 (Iowa 1975). The court's findings of fact will not be disturbed unless there is no substantial support for them in the record. Id. A finding of fact is supported by substantial evidence if the finding may be reasonably inferred from the evidence. Briggs Transportation Company v. Starr Sales Company, 262 N.W.2d 895, 899 (Iowa 1978). In evaluating the sufficiency of evidence, we view it in the light most favorable to sustaining the court's judgment. Id. Furthermore, we need only consider evidence favorable to the judgment, whether or not the evidence is contradicted. Id.; Grefe v. Ross, 231 N.W.2d 863, 865 (Iowa 1975).

II. Existence of a Contract

Defendant claims the trial court erred in finding sufficient evidence to establish a contract. Defendant's principal argument is there was no meeting of the minds because plaintiff induced defendant's agent to sign the contract by assuring her that no obligation would arise from the document. Defendant also claims the contract was too ambiguous and indefinite to be enforced.

The contract is clear and definite. It provided for the delivery of ten to twelve million circulars between October of 1978 and September of 1979. The document provided for certain price variances for format changes and paper price fluctuations. A base price of one and one-tenth cents per circular was established as was the restriction that each order placed by defendant had to be

quantity of at least 200,000 circulars. We concur with the trial court's finding the contract was definite and certain in all material respects.

Defendant's argument there was no meeting of the minds because defendant's agent signed the document without the intention of creating any obligation and only as an accommodation to plaintiff is also without merit. To become contractually bound, the parties must mutually manifest assent to the document's terms. McCarter v. Uban, 166 N.W.2d 910, 913 (Iowa 1969). Whether there has been mutual assent to the terms of a contract is determined on an objective basis from all the attendant circumstances. Id. The parties' subjective intent does not control. Rotterman v. General Mills, 245 Iowa 229, 237, 61 N.W.2d 718, 722-23 (Iowa 1953). As a general proposition "a party is usually bound by the documents he signs even though [he] has not expressly accepted all of the contract provisions. . . ." Joseph L. Wilmotte & Co. v. Roseman Bros., 258 N.W.2d 317, 323 (Iowa 1977). The proposition stated in Roseman Brothers is merely a restatement of the general rule that a person, by conduct, may accept or assent to contractual provisions. Siebring Manufacturing Co. v. Carlson Hybrid Corn Co., 246 Iowa 923, 930, 70 N.W.2d 149, 153 (Iowa 1955). That general proposition is not, as defendant argues, unique to "arbitration awards or choice of law rules."

We conclude there is certainly sufficient evidence to establish defendant's objective assent to the terms of the contract. The trial court's findings of fact relevant to the establishment of a contract between plaintiff and defendant are affirmed.

III. Damages

Defendant claims the trial court erred in awarding plaintiff damages for the circulars printed, the remaining supplies and prospective lost profits.

In Part II of this opinion, we concluded defendant contracted with plaintiff for the purchase of ten to twelve million circulars for advertisement purposes.

Plaintiffs established they performed under the contract to the extent 4,077,500 circulars had been printed on special-order paper and had been delivered to defendant. There is substantial evidence the circulars were ordered to be printed by an agent of defendant with at least apparent, if not actual authority. Plaintiff also established a willingness and ability to fully perform the balance of the contract. As such, plaintiff is entitled "to be placed, insofar as this can be done by money, in the same financial position he would have occupied if the contract had been performed." De Wany v. Muhr, 160 N.W.2d 454, 459(Iowa 1968). Damages may include those amounts, calculated on a basis of prospective margin on sales, plaintiff would have received had defendant performed the contract. Des Moines Blue Ribbon Distributors, Inc. v. Drewrys Limited, U.S.A., Inc., 256 Iowa 899, 908, 129 N.W.2d 731, 737 (Iowa 1964).

Applying those general principles, we conclude there was substantial evidence to permit the trial court to award plaintiff \$12,200.10 for the circulars actually printed and delivered to defendant and \$5200 for expected profits plaintiff lost because defendant failed to perform under the contract. We find the trial court erred, however, in awarding plaintiff \$2706.60 for the paper supplies plaintiff purchased but was unable to use because of defendant's breach. The \$5200 lost profit awarded by the trial court, calculated upon plaintiff's anticipated profit margin, necessarily reflects the net amount plaintiff would have received, after all costs had been deducted from gross receipts. Thus, the cost of the paper had already been factored into the determination of expected profits. Similarly, the cost of the paper had been factored into plaintiff's recovery for the circulars actually printed. Plaintiff recovered all of its supply costs and profits on the 4,077,500 circulars actually printed when plaintiff was awarded the contract price for the circulars produced. Therefore, the trial court's award of \$2706.60 for purchase of the special paper constituted duplicative damages and for that reason we reduce the trial court's award by \$2706.60.

AFFIRMED IN PART AND MODIFIED IN PART.