

FILED

MAY 30 1980

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IN THE COURT OF APPEALS OF IOWA SUPREME COURT

CRAFTLINE FURNITURE
COMPANY, INC.

Plaintiff-Appellee,

vs.

JO ANN JOHNSON, BEEBE AND
RUNYAN COMPANY, FURNITURE
FINANCE CORP., AND JERRY
COSGROVE,

Defendants-Appellants.)

Filed May 30, 1980

0-81
2-62849

Appeal from Polk District Court - Anthony M. Critelli, Judge.

Defendants appeal judgment for plaintiff in contract action. - AFFIRMED.

Jerry Foxhoven and Glen Pille, of Critelli & Foxhoven, Des Moines, and George F. Heiden, Omaha, Nebraska, for defendants-appellants.

David Sheetz, Des Moines, for plaintiff-appellee.

Heard by Oxberger, C.J., and Snell, Carter and Johnson, JJ. Donielson, J., takes no part.

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PER CURIAM

Defendants, Beebe and Runyan Company and Furniture Finance Corporation, appeal judgment in contract action for plaintiff, Craftline Furniture Company, Inc. We affirm.

Craftline and Beebe and Runyan are furniture wholesalers who had supplied inventory to defendant, JoAnn's Home Decor, a retail outlet. Both retained security interests in the inventory they supplied JoAnn's; Beebe and Runyan's interest ranged from \$25,000 to \$40,000 while Craftline's was between \$1310 and \$3440.50. When JoAnn's encountered financial difficulties, a close-out sale was held. Because of its high stake in the sale, Beebe and Runyan assumed control of the close-out and at issue here is the purported obligation of Beebe and Runyan to reimburse Craftline for its items sold in the sale. The trial court awarded Craftline damages of \$1310. Beebe and Runyan appealed and the trial court certified the case for appeal. Our review of Beebe and Runyan's claims is on errors assigned. Iowa R. App. P. 4.

Beebe and Runyan first contends the alleged oral agreement to reimburse Craftline for its inventory sold lacks consideration. The trial court did not rule on the question of consideration nor did Beebe and Runyan request the court to expand its findings. However, existence of consideration for the parties' agreement is clear from the record. Craftline initially objected to the close-out sale because it desired to make arrangements to protect its inventory. While Craftline could have interrupted the sale, it allowed the sale to proceed when it received assurances from Beebe and Runyan. Thus, Craftline gave up its right to protest the sale and its forbearance provided consideration for the contract. In addition, this forbearance was to the benefit of Beebe and Runyan since it reasonably may be inferred it needed to proceed with the sale to recover its \$40,000 interest. See Riegel v. Ormsby, 111 Iowa 10, 16, 82 N.W. 432, 434 (1900). Beebe and Runyan's challenge on consideration grounds is without merit.

Beebe and Runyan next asserts the contract of the parties is invalid because it violates the Statute of Frauds. The company claims the contract involved an assumption of the debt of JoAnn's by another and therefore, is governed by section 622.32, The Code 1977. However, we do not find the contract was one whereby Beebe and Runyan was substituted for JoAnn's as the obligor. Rather, the contract created an

obligation independent of JoAnn's in that Beebe and Runyan promised to protect Craftline's inventory. This promise does not fall under the claimed portion of the Statute of Frauds and thus, the trial court correctly rejected Beebe and Runyan's contention on the issue.

Beebe and Runyan also alleges the damages were too speculative. While Craftline claimed more than that awarded by the trial court, we find the evidence was adequate to establish that the amount awarded was the dealer cost of the seven items shown to be within the contract. Accordingly, the damage award is affirmed.

Finally, Beebe and Runyan claims the trial court erred by admitting into evidence a transcribed recording of a telephone conversation between Craftline's attorney and an officer of Beebe and Runyan. The attorney reviewed the transcript and testified it was accurate. The company officer did not dispute the accuracy of the transcript. We find the trial court correctly overruled the "best evidence" objection of Beebe and Runyan and acted within its discretion by admitting the exhibit. See Shinrone, Inc. v. Tasco, Inc., 283 N.W.2d 280, 287 (Iowa 1979).

We have reviewed the contentions of Beebe and Runyan and find the trial court judgment should be affirmed.

AFFIRMED.