

FILED

AUG 26 1980

CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

F. S. CREDIT CORPORATION,

)

Plaintiff-Appellant,

)

vs.

)

Filed August 26, 1980

WESTERN BUYERS, A Limited

)

Partnership, N. S. BANGS,

)

General Partner,

0-153

2-63546

Defendant-Appellee.

Appeal from Black Hawk District Court - Frank D. Elwood, Judge.

Plaintiff appeals judgment for defendant on claim of wrongful appropriation of livestock contrary to provisions of security agreement. - AFFIRMED.

Lindeman & Yagla, Waterloo, for plaintiff-appellant.

David J. Dutton & James E. Gritzner, of Mosier, Thomas, Beatty, Dutton, Braun & Staack, Waterloo, for defendant-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

Plaintiff, F. S. Credit Corporation, appeals from the judgment in favor of defendant, Western Buyers, in plaintiff's suit to recover damages for defendant's alleged wrongful appropriation of certain livestock in which plaintiff had a secured interest. Plaintiff contends the trial court erred in considering evidence of usage of trade and course of dealing, and in considering plaintiff's alleged failure to supervise, check, or follow up on its security. Plaintiff asserts that if the judgment is reversed and it is entitled to damages, those damages should include interest at the rate specified in the promissory notes that accompanied the security agreements. We affirm.

The trial court found that defendant is engaged in the purchase of hogs, and that during 1976, defendant purchased hogs from Chris Ridder, a farmer. The hogs were collateral covered by a security agreement between Ridder and Butler Grundy Farm Services. Ridder and Butler Grundy had been involved in several dealings in the past, although none of their prior dealings had been covered by a security agreement. The security agreement contained a provision requiring Ridder to obtain written consent from the secured party prior to selling any of the collateral covered, although prior dealings between Ridder and Butler Grundy were not covered by security agreements, and no such consent was required or expected. Butler Grundy assigned the security agreement to plaintiff along with several promissory notes executed between Ridder and Butler Grundy. Ridder subsequently sold the hogs, listed as "market hogs" on the security agreement, to defendant. Ridder did not obtain written consent to that sale from plaintiff or Butler Grundy, since Ridder was apparently not aware of the provision in the security agreement requiring such consent, and since in all prior dealings with Butler Grundy, Ridder had sold collateral without obtaining prior consent. Subsequent to the sale of the hogs, Ridder petitioned for an adjudication of bankruptcy and plaintiff brought this action against defendant for wrongful appropriation of the hogs since Ridder sold them to defendant without plaintiff's consent. After considering, *inter alia*, evidence regarding usage of trade, course of dealing, and the plaintiff's failure to supervise, check, or follow up on the status of collateral that plaintiff should have known would be sold by reason of the designation, "market hogs," the trial court concluded that there was an implied authorization of the sale that rendered the provision requiring written consent prior to sale of collateral inapplicable. The trial

court consequently found in favor of defendant, and plaintiff appeals from that judgment.

Our review of this law action is for correction of errors at law. Iowa R. App. P. 4. Since this action was tried to the court without a jury, the trial court's findings of fact have the effect of a special verdict, *id.*, and are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1).

I. Plaintiff contends the trial court erred in admitting and considering evidence on usage of trade since defendant did not provide plaintiff with sufficient notice of the introduction of that evidence pursuant to section 554.1205(6), The Code 1979. However, plaintiff did not base its objection to the introduction of that evidence on that ground at trial. Plaintiff's objection was based on relevancy. We think the trial court could have properly determined that evidence of usage of trade was relevant to a determination of whether there was an implied authorization of the sale. See U.C.C. § 9-306, Comment 3. Since plaintiff's objection based on insufficient notice pursuant to section 554.1205(6) was not sufficiently brought to the trial court's attention, but rather is asserted for the first time on appeal, it cannot constitute a ground for reversal. See Pastour v. Kolb Hardware, Inc., 173 N.W.2d 116, 124 (Iowa 1969).

II. Plaintiff contends the trial court erred in admitting and considering evidence of course of dealing. Evidence of course of dealing is relevant to a determination of whether there was implied authorization to sell collateral despite an express provision to the contrary. Hedrick Savings Bank v. Myers, 229 N.W.2d 252, 256 (Iowa 1975). Plaintiff argues, however, that since there had been no course of dealing established between plaintiff and Ridder, but rather between Butler Grundy and Ridder, evidence of a course of dealing between Butler Grundy and Ridder was irrelevant. We disagree. Ridder and Butler Grundy had been involved in a prior course of dealing by which there was no limitation or restriction on Ridder's sale of collateral. In the transaction at issue in the case at bar, the initial dealings were between Ridder and Butler Grundy. While it is true that this was the first transaction covered by a security agreement rather than an open account, and that Butler Grundy assigned the security agreement to plaintiff, who had no prior dealings with Ridder, we do not think these facts render the prior course of dealing between Ridder and Butler Grundy irrelevant. Ridder could have

reasonably believed that the only difference between this transaction and his prior dealings with Butler Grundy was the amount and means of financing. The provision on the back of the standard form security agreement requiring the consent of the secured party prior to a sale of the collateral was not pointed out to Ridder prior or subsequent to the execution of the agreement. Ridder had no reason to expect that his sale of collateral was any more limited or restricted than under his prior dealings with Butler Grundy. In this context, we think the trial court properly admitted and considered the evidence of course of dealing pursuant to the rule of Hedrick.

III. Plaintiff contends the trial court erred in considering plaintiff's failure to supervise, check, or follow up on its security. We think the trial court could have properly considered such evidence as a factor in determining whether plaintiff exhibited any acquiescence or gave implied authorization to the sale of the collateral. We do not think the trial court erred in exercising its discretion by admitting and considering that evidence.

Since we conclude that none of plaintiff's assertions constitutes a ground for reversal, we need not address plaintiff's contention regarding the proper interest rate to be applied.

AFFIRMED.