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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

MICHAEL J. WRIGHT,	)	
Plaintiff-Appellant,	)	Filed November 26, 1985 548
vs.	)	
THE HOTSY CORPORATION,	)	5-541 85-272
Defendant-Appellee,	)	
and WILLIAM KLOTZ, d/b/a HOTSY OF EASTERN IOWA,	)	
Defendant.	)	

Appeal from the Iowa District Court for Marshall County - Paul W. Riffel, Judge.

Plaintiff appeals from judgment for defendant corporation in an action for breach of an implied and/or express warranty. **AFFIRMED.**

Barry S. Kaplan of Fairall, Fairall & Kaplan, Marshalltown, Iowa, for plaintiff-appellant.

Michael J. Moon of Cartwright, Druker & Ryden, Marshalltown, Iowa; and Sheldon E. Friedman of Cortex & Friedman, Englewood, Colorado; for defendant-appellee.

Considered by Donielson, P.J., Hayden, and Sackett, JJ.

HAYDEN, J.

In 1980, plaintiff commenced an action asserting that defendant corporation breached an implied and/or express warranty with regard to its sale of an industrial cleaning machine. He was personally present when his attorney initially discussed the possibility of settlement with opposing counsel and he subsequently discussed the matter with his attorney. He did not sign the settlement agreement executed by his attorney and later testified that he was not told of it and did not consent to it. He did, however, bring the machine in for repair in the manner contemplated by the agreement. The trial court found that the action was barred by the agreement, releasing the corporation from liability, regardless of whether the alleged breach of warranty occurred before or after the repair attempt.

We do not agree with plaintiff's claim that the evidence was insufficient to support the trial court's finding that plaintiff consented to a settlement agreement executed by his attorney and that the action is therefore not bared by the agreement.

Our scope of review is for corrections of errors at law, and findings of fact in jury-waived cases shall have the effect of a special verdict. Iowa R. App. P. 4. Findings of fact in a law action, which means generally any action triable by ordinary proceedings, are binding upon the appellate court if supported by substantial evidence. Iowa R. App. P. 14(f)(1).

The document upon which this controversy is based provides that plaintiff "releases, acquits, and forever discharges Hotsy, and only Hotsy, from any and all liabilities whatsoever, from all claims, demands, damages, and causes of action of every nature against Hotsy, which Wright now has, or may ever claim to have against Hotsy."

The pivotal and fighting issue here is—did Wright's attorney have the authority to sign the stipulation on his behalf.

An attorney employed to defend a suit cannot enter into a stipulation of settlement without the knowledge and consent of his client, and any judgment or decree entered upon such a stipulation is not binding on the client. Nothem v. Vonderharr, 189 Iowa 43, 175 N.W. 967 (1920).

There is evidence in the record that plaintiff's attorney, Peterson, discussed with the plaintiff on December 29, 1980, the possibilities of settling his client's case as to defendant, The Hotsy Corporation only, preliminary discussions were held in the office of plaintiff's attorney following a deposition of the defendant. Also there is evidence in the record that following a subsequent conversation with defendant's counsel, Attorney Peterson contacted his client and had a conference with him on February 26, 1981, during which the proposed settlement was discussed for 8/10th's of one hour. Peterson discussed with plaintiff the effect the settlement would have on his right to proceed against The Hotsy Corporation. We recite some of his testimony as follows:

> Q. All right. Did you discuss with your client at that time the effect of the settlement with Hotsy, that is the legal ramification of releasing Hotsy?
>
> A. That was the substantial part of that discussion because it was significant that we preserve our rights against Hotsy of Eastern Iowa. At that time, we were—we had filed a default against Hotsy of Eastern Iowa, and his default had been entered of record back in November. And we were quite sure we had a substantial basis for going against Hotsy of Eastern Iowa because at that time we understood he was a big operator in Eastern Iowa.
>
> Mike had seen his operation there, and he was quite impressed with the amount of work he was doing, and he apparently built—let me rephrase that. Bill Klotz, who is Hotsy of Eastern Iowa, had given him quite an indication that he was making lots of money.
>
> Q. In your opinion, did Mike Wright understand that if he reached an agreement, settlement with Hotsy,

> that he would after that time be precluded or barred from bringing any further action against Hotsy?
>
> A. No doubt in my mind that he knew that.

There is evidence that Attorney Peterson prepared a proposed settlement agreement entitled "Stipulation of Settlement, Compromise of Claims and Covenants." He signed it and delivered it to defendant's attorney. He advised Wright of its substance and effect.

On the other hand, Wright claims that Attorney Peterson signed the agreement without his knowledge, consent, or authority; that he did not receive a copy of it; that he never saw the document before it was signed by Peterson and did not discuss it with him; and that he never intended to release defendant-appellee from any responsibility by taking the machine to be repaired by defendant-appellee.

The evidence before the trial court was conflicting and controverted. Where the trial court sits as a trier of fact, its factfindings have the effect of a special verdict and are equivalent to a jury verdict, and if supported by substantial evidence and justified as a matter of law, judgment will not be disturbed on appeal. Baker v. Beal, 225 N.W.2d 106, 109 (Iowa 1975). When the trial court denies recovery because of a party's failure to carry his burden on the issue, the Supreme Court will not interfere on appeal unless it finds that that party carried his burden as a matter of law. Roland A. Wilson v. Forty-O-Four Grand Corp., 246 N.W.2d 922, 925 (Iowa 1976). The evidence in the party's favor must be so overwhelming that only one reasonable inference could be drawn. Id., at 925. In determining whether plaintiff was entitled to judgment as a matter of law, defendant is entitled to have the evidence and inferences to be drawn therefrom viewed in the light most favorable to it. Harper v. Cedar Rapids Television Co., Inc., 244 N.W.2d 782, 787 (Iowa 1976) (citations omitted).

We find and hold that there was substantial evidence upon which the trial court made its findings and judgment and that plaintiff did not carry his burden as a matter of law.

AFFIRMED.