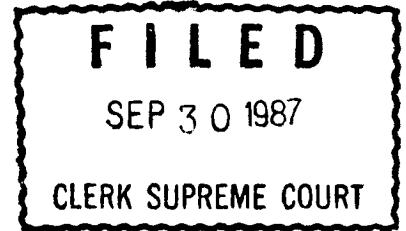


IN THE COURT OF APPEALS OF IOWA



TERENCE C. PEARSON,)

Plaintiff-Appellee,)

vs.)

HETTINGA EQUIPMENT, INC.,)

Defendant-Appellant.)

Filed September 30, 1987

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7-252
86-1765

Appeal from the Iowa District Court for Polk County (No. CL057 33777),
Gene L. Needles, Judge.

The plaintiff, formerly a manufacturer's representative for the defendant, sued to recover a commission on a sale. The district court awarded the plaintiff the relief he sought. Defendant has appealed, challenging the sufficiency of the evidence. **AFFIRMED.**

William J. Schadle, Des Moines, for defendant-appellant.

Raymond J. Gazzo, Des Moines, for plaintiff-appellee.

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

DONIELSON, P.J.**192**

The plaintiff, formerly a manufacturer's representative for the defendant, sued to recover a commission on a sale. The district court awarded the plaintiff the relief he sought. The defendant has appealed, challenging the sufficiency of the evidence to support the district court's conclusion that the plaintiff had performed his obligations under his employment contract. We affirm.

The plaintiff, Terence Pearson, a resident of Cheshire, England, is a manufacturer's representative in the plastics business. The defendant, Hettinga Equipment, is an Iowa corporation which manufactures molding equipment for the plastics industry.

In approximately 1976 Hettinga Equipment hired Pearson on an informal basis to serve as a manufacturer's representative. On September 7, 1979, the parties entered into a written representation agreement. Pearson's non-exclusive territory embraced all countries outside of the United States, Canada, and Europe. The agreement called for Pearson to locate customers who would purchase Hettinga equipment and would operate the equipment under a joint venture arrangement with Hettinga. (The point of joint venture arrangements apparently was to permit Hettinga to continue to receive licensing fees for technology it had developed.) The agreement called for Pearson to receive commissions on sales to these joint ventures. The agreement also imposed various time restrictions on Pearson's cultivation of joint venture sales. Insofar as it is relevant here, the agreement called upon Pearson to submit correspondence confirming a party's positive interest in a joint venture or licensing arrangement within six months of the execution of the representation agreement and to complete a sale within twelve months of initial correspondence.

Five days after the agreement was signed, Pearson introduced Hettinga representatives to a potential purchaser, Arabian International Commercial

Corporation (AICC), a Saudi Arabian firm. Pearson submitted the appropriate correspondence to Hettinga to evidence the prospect. In December 1979 Sadiq, AICC's managing director, met with Hettinga in Des Moines. On July 7, 1980, Hettinga signed an agreement of intent to form a joint venture with Sadiq and a third party, Sheikh Kamal Ibrahim Adham. On June 12, 1981, a memorandum of understanding was signed by Hettinga and Sadiq concerning the purchase of machinery from Hettinga by Sadiq.

On July 28, 1981, Hettinga terminated Pearson's representative status, to be effective three months later on October 28, 1981. In February 1982 a binding agreement for the sale of equipment worth \$497,000 was executed by Hettinga and Sadiq. In 1983, another machine was sold to Sadiq by Hettinga for \$285,000. In the years between the initial AICC contact and the final sale, Hettinga had abandoned its interest in joint venture transactions and therefore had made a straight sale to Sadiq.

Upon learning of the equipment sale to Sadiq, Pearson filed the present suit against Hettinga to recover a five percent commission under the 1979 representation agreement. The trial court ruled in favor of Pearson. Hettinga has appealed from the trial court's judgment, challenging the sufficiency of the evidence to establish that Pearson had performed his obligations under the 1979 representation agreement in order to entitle him to a commission. Hettinga argues that the sale to AICC was not the type of transaction contemplated by the 1979 agreement and was not completed within the time contemplated by that agreement.

Our scope of review is for correction of errors at law. Iowa R. App. P. 4. The trial court's findings of fact are equivalent to the special verdict of a jury. Fort Dodge Country Club v. Iowa-Illinois Gas and Electric Company, 231 N.W.2d 595, 596 (Iowa 1975). If supported by substantial evidence, they will not be

disturbed. Id. We view evidence in its light most favorable to the judgment, whether contradicted or not. Id. The findings of the trial court are to be broadly construed, rather than narrowly or technically, and in case of ambiguity, they will be construed to uphold rather than defeat the judgment. Id.

Hettinga argues that there was not substantial evidence from which the trial court could conclude that Pearson had fully performed all of the terms and conditions of the 1979 representation agreement between Pearson and Hettinga. It first alleges that Pearson failed to develop business dealings leading to the successful creation of any joint venture or licensing arrangement as required by the agreement. Hettinga points out the many instances in the agreement with reference to Pearson's procuring joint ventures. What Hettinga chooses to ignore are the numerous references in the same agreement to Pearson's selling of equipment. We find that although it was perhaps Hettinga's intent to form joint ventures, it was also imperative that machinery be sold in connection therewith.

We also note that Hettinga's sales manager wrote Pearson on July 29, 1981, stating he was interested in making an amendment to the contract "so as to cover commission on the Pakistan [AICC] sale." Furthermore, the executive vice president of Hettinga Equipment (Hettinga's wife) testified that Pearson would have received a commission if Sadiq had purchased a machine prior to the contract termination date.

In accord with the foregoing evidence, we find that Pearson was to be paid a commission on the sale of equipment, as well as for procuring joint ventures. The contract is clear on this point; the testimony corroborates this conclusion.

Hettinga's second contention is that Hettinga is not liable for a commission to Pearson because the sale did not occur within the time requirements of

Pearson's 1979 representation agreement and because Pearson was no longer employed by Hettinga at the time of the sale.

Pearson had six months from the effective date of the agreement (September 7, 1979) to provide correspondence confirming a positive interest in a joint venture or licensing arrangement with Hettinga. Pearson complied with this provision on September 12, 1979, when he notified Hettinga of his contact with AICC. Pearson then had twelve months from the date of the prospect's correspondence to conclude a sale.

We briefly address the fact that Pearson's employment was terminated before the expiration of the twelve-month period. Hettinga's argument that because of Pearson's contract termination he is not entitled to a commission is without merit. This fact alone is insufficient to deny a commission to Pearson if a sale was procured because of Pearson's efforts prior to his contract terminating. In addition, the contract stated that termination of the agreement would be without prejudice to any vested rights.

We further find that the twelve-month time frame given Pearson to solidify a sale is not dispositive of the problem posed. We do not need to determine whether a commission needs to be paid on a sale of equipment made in February 1982 when the alleged twelve-month period ended September 12, 1980. The contract is clear: the twelve-month grace period given Pearson was to procure a joint venture. Here, for whatever reason, the joint venture idea was abandoned between Hettinga and Sadiq. The record discloses there was some discord between Hettinga and Sadiq, perhaps precipitating the abandonment of the joint venture. Nonetheless, two pieces of equipment were sold to Sadiq (AICC).

The representation agreement involved in this case stated under "Duration of Agreement":

(a) Relative to machines purchased by entities showing interest for the first time through representative efforts subsequent to this Agreement being entered into. This Agreement shall have a duration of five (5) years from the date of this Agreement.

* * *

(b) Termination [of this Agreement] shall be without prejudice to the rights and obligations of the parties hereto that have vested prior to the effective date of termination.

The "Remuneration" paragraph stated in pertinent part as follows:

Provided Representative within six months of the date of this Agreement submits to Company copies of correspondence confirming a positive interest in a Joint Venture or Licensing arrangement with Company on the part of a new entity and provided an Agreement for a Joint Venture or License is concluded within twelve months of the date of said letter or correspondence expressing positive interest Provided completion of such agreement shall not be unreasonably delayed by the Company, Representative is to receive a five (5%) per cent commission on all machines ordered by said Joint Venture or License for a period of five (5) years from and after the date of such Joint Venture Agreement or License Agreement beforementioned.

As has been stated, the joint venture concept with AICC never materialized, largely through no fault of Pearson. Based on the foregoing contract provisions, we find that the twelve-month period applied only to joint venture agreements and not sales of equipment. Thus, we find Hettinga's second contention to be without merit.

We find there was substantial evidence presented for the trial court's determination that Pearson was warranted in receiving his 5 percent commission on the sale of equipment to AICC and therefore affirm the trial court's decision.

AFFIRMED.