

FILED

FEB 26 1985

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

SPERRY CORPORATION,

)

Plaintiff-Appellant,

)

Filed February 26, 1985

vs.

)

HANS P. JORGENSEN,

)

4-520

84-262

Defendant-Appellee.

)

Appeal from the Iowa District Court for Audubon County - Keith E. Burgett,
Judge.

Plaintiff appeals from a judgment resulting from the trial court's finding that the resale of a repossessed combine was not done in a "commercially reasonable" manner and had not been preceded by adequate notice to the defendant.
AFFIRMED.

Donald H. Capotosto of Morrow, Allen & Capotosto, Onawa, for plaintiff-appellant.

James M. Richardson of Barron & Richardson, Audubon, for defendant-appellee.

Heard by Oxberger, C.J., and Donielson and Snell, JJ.

PER CURIAM

In 1980, Hans Jorgensen purchased a new combine from the Sperry Corporation for \$98,000.00 on installment contract. Jorgensen defaulted on the contract in November, 1981. Notice to cure was sent in December and on February 24, 1982, Sperry repossessed the equipment. On that same day, Sperry sent Jorgensen a letter advising him: "Unless payment is made within 15 days of the date of this letter, the above equipment will be sold at public or private sale. You will be liable for any deficiency resulting from said sale."

Jorgensen did not redeem the property and in April Sperry began circulating advisories among all its dealers in Iowa, Nebraska, Kansas, and Missouri. These advisories described the equipment and solicited offers from interested buyers.

On October 26, 1982, Sperry negotiated a private sale to Mr. Thomas Haly of the combine to one of its dealers for the sum of \$45,000.00. Haly was previously employed at Sperry and was a close friend of Sperry's credit manager.

On December 8, 1982, Sperry sent a letter to Jorgensen advising him that the combine was sold at public sale and requesting a deficiency of \$33,213.60. Other than the letter of February 24, 1982, advising him of his right to redeem the property within 15 days, Jorgensen received no other notice of the sale until the December letter.

Sperry sued Jorgensen for the deficiency. The trial court, as finder of fact, concluded that Sperry could not prevail because its resale of the combine had not been done in a "commercially reasonable" manner and had not been preceded by adequate notice to Jorgensen. Sperry has appealed from the resulting judgment for Jorgensen.

Sperry contends the trial court erred by holding: it had not given adequate notice to Jorgensen that the combine would be offered for sale privately to dealers; and that its resale of the combine was not "commercially reasonable." We affirm the trial court's ruling on both grounds.

Iowa Code section 554.9504(3) requires that: ". . . reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor" Iowa Code § 554.9504(3).

The purpose of the 554.9504(3) notice requirement is to provide the debtor with the opportunity to bid at the sale or to protect himself from an inadequate sales price. Federal Deposit Insurance Corporation v. Farrar, 231 N.W.2d 602, 605 (Iowa 1975).

The notice given in this case was too vague and general to provide Jorgensen the opportunity to protect his interest. The February letter advising Jorgensen of his right to redeem stated only "Unless payment is made within 15 days of the date of this letter, the above equipment will be sold at public or private sale." Jorgensen was never advised whether it would be public or private, or where he could submit a bid. This notice is inadequate.

We also find that the sale was not commercially reasonable. Section 554.9504(3) also states that: "Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable." Iowa Code § 554.9504(3) (Iowa 1983) (emphasis added). The sale in this case was made to a dealer for Sperry eight months after the repossession. Notice of the sale was in the form of flyers sent around to select Sperry dealers in a four-state area. These flyers contained descriptions of not just the Jorgensen piece of equipment but of all equipment Sperry was seeking to sell. The wholesale value of the combine at the time of repossession was \$55,000.00 or \$60,000.00, and the retail value was approximately \$73,000.00. The combine was sold wholesale to a dealer for \$45,000.00. While a low sales price does not conclusively establish that the sale was commercially unreasonable, it is one factor to be examined in determining whether the sale is commercially

reasonable. Beneficial Finance Co. v. Reed, 212 N.W.2d 454, 458 (Iowa 1973). When all of the facts surrounding the sale are considered, we must conclude that the sale was commercially unreasonable.

Because Sperry failed to give adequate notice and because the sale was in a commercially unreasonable manner, we find that plaintiff is not entitled to the deficiency judgment. See, Herman Ford-Mercury, Inc. v. Betts, 251 N.W.2d 492, 496 (Iowa 1977).

The findings of the trial court are affirmed.

AFFIRMED.