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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

GROVE AUTOMOTIVE MACHINE, INC.,)
Plaintiff-Appellee,)
vs.)
GARY OLIVER d/b/a TRI-CITY BUGGY,)
Defendant-Appellant.)

Filed November 30, 1983

3-319
83-260

Appeal from Dubuque District Court - R. J. Curnan, Judge.

Defendant appeals from a judgment for plaintiff in this action for breach of an oral contract. AFFIRMED.

Paul J. Kaufman of Kaufman, Lange, Hodge & Neuhaus, Dubuque, Iowa, for defendant-appellant.

Chadwyn D. Cox of Reynolds, Kenline, Breitbach, McCarthy, McKay & Nigg, Dubuque, Iowa, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel, Hayden, and Sackett, JJ.

PER CURIAM

Defendant appeals from a judgment for plaintiff in this action for breach of an oral contract. Defendant claims that (1) there was not substantial evidence to support the trial court's finding that he breached the contract, (2) his counterclaims for breach of implied and express warranties were established as a matter of law, and (3) the court awarded excessive damages. We affirm.

Since this is an action at law, our review is on assigned error only. Iowa R. App. P. 4; Metropolitan Transfer Station, Inc. v. Design Structures, Inc., 328 N.W.2d 532, 535 (Iowa Ct. App. 1982). The trial court's findings of fact have the force of a special verdict and are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1); R.E.T. Corporation v. Frank Paxton Company, Inc., 329 N.W.2d 416, 419 (Iowa 1983). Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. City of Davenport v. Public Employment Relations Board, 264 N.W.2d 307, 311 (Iowa 1978). We view the evidence in the light most favorable to the judgment. Muchmore Equipment, Inc. v. Grover, 315 N.W.2d 92, 101 (Iowa 1982).

I. Defendant first asserts that there was not substantial evidence to support the trial court's finding that he breached the oral contract. Defendant claims the court was not justified in finding that defendant was obligated by the oral contract to purchase another racing engine from the plaintiff if the first racing engine was sold. He also claims that trial court was not justified in finding that the engines were not given adequate tests or trials nor reasonable opportunity to show their competitiveness as new racing engines, and that plaintiff did not receive the advertising of his racing engines agreed to by the parties.

We believe the evidence justified a finding that plaintiff delivered two engines to defendant, as required under the contract, and that plaintiff furnished the required parts and labor. There were certain tests carried out to determine the capacity of the engines, but the trial court was justified in finding that the

engines were not tested or used in such a manner as to determine their competitiveness or lack of it. The court was also justified in finding that defendant breached the contract by failing to properly test or use the engines, and selling them without carrying out the agreement. There is ample evidence in the record to justify a finding that upon sale of the engines during the racing season, defendant was obligated to purchase a replacement engine from plaintiff at normal retail price; and the evidence is conclusive that no such purchase was made following the sale of the two engines during the racing season. Likewise, the trial court was justified in finding that plaintiff did not receive the advertising that was contemplated in the oral agreement.

On the record as a whole, there was substantial evidence to support the finding by the trial court that defendant breached the contract.

II. Defendant next asserts that the trial court erred as a matter of law in dismissing defendant's counterclaims. These claims are based upon alleged breaches of express or implied warranties in failing to provide the engines contracted for by the defendant. To be sure, there was evidence in the record that may have supported defendant's claims that the engines provided by the plaintiff were not those contracted for, but the trial court found to the contrary. The court, in its findings, stated: "Neither the cast iron nor aluminum engines, under the evidence, were given sufficient test or trials to conclude that they were not competitive. The evidence reflects that the Plaintiff provided the motors contracted for." There was substantial evidence in the record to support that finding. Although we are not bound by the trial court's conclusions of law, the finding by the trial court that plaintiff provided the motors contracted for precludes our finding as a matter of law a breach of warranty, either express or implied. See Metropolitan Transfer Stations, Inc. v. Design Structures, Inc., 328 N.W.2d at 537.

III. Finally, defendant complains that the trial court's assessment of damages was excessive. The sole argument seems to be that the court failed to consider the value of the advertising defendant provided plaintiff.

The trial court found that "[p]laintiff did not receive the advertising agreed to and contemplated by the parties." The court, having found that fact, assessed damages on the basis of plaintiff's out-of-pocket costs, and the labor expended on the engines. The total for these elements came to $9,274.54, the amount awarded plaintiff. It is obvious from the record that the trial court found whatever defendant classifies as advertising to have been valueless. The trial court's assessment of damages for out-of-pocket costs and for labor was supported by substantial evidence. Accordingly, we approve the award.

IV. Defendant-appellant is directed to Iowa Rule of Appellate Procedure 15(d), concerning the arrangement and contents of the appendix. The failure to include the name of each witness in the list of contents, the failure to indicate the name of each witness whose testimony is included at the place in the appendix where such testimony begins, and the failure to identify the stage of such witness's testimony, caused the appendix in this case to be confusing and nearly impossible to follow.

The findings and judgment of the trial court being supported by substantial evidence, the judgment rendered herein is affirmed.

AFFIRMED.