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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

PAULETTE JOBE,)

Plaintiff-Appellee,) Filed January 25, 1979

vs.)

STOYER MOTORS, INC.,) 778
2-61789

Defendant-Appellant.)

Appeal from Lee District Court - Thomas E. Tucker, Judge.

Defendant automobile dealer appeals from judgment in suit for rescission of contract of sale for a used car. Affirmed.

George E. Wright, of Napier, Wright & Wolf, of Fort Madison, counsel for appellant.

Kent Hutcheson, of Fort Madison, counsel for appellee.

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

DONIELSON, J.

Defendant Stoyer Motors, Inc. appeals from a non-jury judgment entered against it for rescission of a contract of sale for a used automobile. On appeal, defendant asserts that it substantially complied with a contract clause requiring it to make some repairs to the car, and that even if it did not, the failure was not substantial enough to justify rescission. We affirm the trial court.

Petitioner Jobe purchased a 1970 Lincoln Continental Mark III from defendant on approximately January 17, 1977, paying the purchase price of $3,129.10 in cash less $600 allowed for a trade-in. Defendant's representatives wrote "Iowa inspect. Take care of repairs per list of repairs brought in by customer" on the contract. At defendant's request, Jobe provided an original list of repairs, and three subsequent lists during the following month. Many items were repetitions from previous lists which had not been repaired. The trial court found that from January 29, 1977, until July 5, 1977, Jobe had the vehicle in her possession a total of only 24 days. The balance of the time defendant auto dealer had the car in its possession for needed repairs, which, in each instance, were extensive and for the most part not completed.

The various lists of repairs and problems with the car are too numerous to repeat here. For example, on one trip, Jobe was required to cut away a portion of the frame of the car to be able to drive it further. On that same trip, she was forced to drive the entire distance from Davenport to Fort Madison in first gear. During another trip, Jobe was traveling on Lakeshore Drive in Chicago, at approximately 1:00 a.m., when the car backfired and ceased to run at all. This occurred after defendant had the car in its shop for repairs for some four months.

We review this action on errors assigned. Findings of fact by the trial court have the effect of a special verdict and if supported by substantial evidence are binding on us and will not be disturbed. Nora Springs Co-op Co. v. Brandau, 247 N.W.2d 744, 747 (Iowa 1976). Furthermore, we view the evidence in a light most favorable to the judgment and in case of ambiguity construe to uphold, rather than defeat the judgment. Sand Seed Service, Inc. v. Bainbridge, 246 N.W.2d 911 (Iowa 1976).

We recognize that not every breach of a contract affords a ground for rescission. It will not be granted for a mere breach not so substantial so as to defeat the object of

the parties in making the contract. The Maytag Co. v. Alward, 253 Iowa 455, 464, 112 N.W.2d 654 (1962). Further, we recognize that parties to a valid contract may rescind or abandon it or substitute another in its place or by conduct inconsistent with the continued existence of the original contract to estop themselves from asserting any right thereunder. Morse v. Slocum, 192 Iowa 1080, 1094, 186 N.W. 22, 28 (1922). The burden of establishing that one of these events occurred is on the party raising such claim. It may be evidenced by both words and conduct. When the evidence is susceptible to differing inferences, the issue whether the claim has been proven is for the trier of fact. Siebring Manufacturing Co. v. Carlson Hybrid Corn Co., 246 Iowa 923, 70 N.W.2d 149 (1955). See Severson v. Elberon Elevator, Inc., 250 N.W.2d 417, 421 (Iowa 1977).

In the case before us, defendant failed to adequately meet terms of the contract prepared by it. After attempting numerous repairs with a notable lack of success, defendant finally indicated to Jobe that she must take the car as it was because it was too expensive for defendant to continue its repairs. The mere fact that performance becomes economically burdensome or unattractive does not excuse performance, unless the increased cost is due to some unforeseen contingency which alters the essential nature of the performance. Nora Springs Co-op Co. v. Brandau, supra at 748. A careful review of the record leads us to the conclusion that the trial court's findings were more than amply supported by the evidence, and quite correctly applied against its conclusions of law. We therefore affirm the trial court in its entirety.

AFFIRMED.