IN THE COURT OF APPEALS OF IOWA

No. 1-312 / 90-1681

KOHLMEYER, INC.,

Appellee,

vs.

GARY JOHANNINGMEIER,

Appellant.

GARY JOHANNINGMEIER,
Counterclaimant-Appellant,

vs.

KOHLMEYER, INC.,
Defendant to Counterclaim-Appellee.

GARY JOHANNINGMEIER,
Third Party Plaintiff-Appellant,

vs.

WOLVERINE TECHNOLOGIES, INC.,
Third Party Defendant-Appellee.

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Appeal from the Iowa District Court for Chickasaw County, John Bauercamper, Judge.

Defendant appeals from an adverse judgment which requires him to pay the balance of the purchase price for vinyl siding which was installed on his home. **AFFIRMED.**

Gaylen V. Hassman of Engelbrecht, Ackerman & Hassman, Waverly, for appellant.

Michael K. Kennedy of Kennedy & Kennedy, New Hampton, for appellee Kohlmeyer, Inc.

James F. Kalkhoff of Mosier, Thomas, Beatty, Dutton, Braun & Staack, Waterloo, for appellee Wolverine Technologies, Inc.

Considered by Oxberger, C.J., and Schlegel and Hayden, JJ.

OXBERGER, C.J.

Gary Johanningmeier and Linda Johanningmeier contacted Kohlmeyer, Inc. to install siding for their house. The house is located on a farm in Chickasaw County, and is a large two-story Victorian. Johanningmeier wished to remodel the home both inside and out.

On November 11, 1987, Kohlmeyer, Inc. and Johanningmeier entered into a written agreement under which Kohlmeyer would install siding on the house at a total cost of $10,976. Johanningmeier paid $734 down and the balance was due upon completion.

Kohlmeyer purchased the siding used on the Johanningmeier house from Wolverine Technologies, Inc. The siding selected was vinyl which Wolverine advertised as a product which resisted the ordinary grit of city life and could be cleaned easily with just a garden hose.

Kohlmeyer installed the siding in the spring of 1988. On August 23, Johanningmeier paid an additional $8,000 on the account, but was very unhappy about the siding because there were fly specks on it which were very difficult to remove. He had to use a power washer and a cleaning compound to remove the fly specks. Johanningmeier refused to pay the balance due under the contract, and claimed the siding was defective and not as warranted. Representatives from both Kohlmeyer and Wolverine had inspected the house and claimed there were no manufacturing defects in their siding.

On October 26, 1988, attorney Michael Kennedy wrote to Johanningmeier on behalf of Kohlmeyer requesting payment of the balance. Because the balance was never paid, Kohlmeyer instituted a small claims action on May 31, 1989, seeking $2,000 in damages. Johanningmeier filed a counterclaim against Kohlmeyer and a cross-petition against Wolverine. He claimed damages based on breach of warranty in the amount of $20,000. The matter was transferred to district court which tried the case without a jury. The court found the siding was not defective, was fit for its intended purposes, and complied with all warranties given. Accordingly, the court entered judgment against Johanningmeier for $2,167 and denied his counterclaims. Johanningmeier appeals.

SCOPE OF REVIEW: The scope of review in a law action is well settled in Iowa. On an appeal, we are bound by facts established by the trial court's findings in law actions tried without jury and do not weigh evidence but only decide if there is a proper basis upon which the trial court could find as it did. Arbie Mineral Feed Co., Inc. v. Nissen, 179 N.W.2d 593, 595 (Iowa 1970). We do not weigh evidence or pass on the credibility of witnesses. Manson State Bank v. Diamond, 227 N.W.2d 195, 199 (Iowa 1970). In determining whether a verdict is supported by substantial evidence, we must construe evidence in a light most favorable to the trial court's judgment. See Whewell

v. Dobson, 227 N.W.2d 115, 117 (Iowa 1975). In evaluating whether the verdict is supported by the evidence, we must view the evidence in the light most favorable to the prevailing party. Gore v. Smith, 464 N.W.2d 865, 868 (Iowa 1991).

APPLICATION OF UNIFORM CONSUMER CREDIT CODE: Johanningmeier asserts the trial court erred in failing to adhere to the requirements provided for in Iowa Code section 537.5111, and concluding there was no violation of sections 537.5110 and 537.5201. They further argue the trial court should have dismissed the action without prejudice as provided for in section 537.5110(7). We disagree. We find the agreement between Johanningmeier and the plaintiff is in the nature of a contract. The agreement between Johanningmeier and Kohlmeyer called for a downpayment and the balance upon completion. The provisions in the agreement include no notion of "payable in installments" as defined in 537.1301(30). That provision provides:

> "Payable in installments" means that payment is required or permitted by agreement to be made in more than four periodic payments, excluding a down payment. If any periodic payment other than the down payment under an agreement requiring or permitting two or more periodic payments is more than twice the amount of any other periodic payment excluding the down payment, a transaction is "payable in installments." (emphasis added).

The statutory definition of a consumer credit sale, section 537.1301(12)(b), consumer lease under section

537.1301(13) and consumer loan under section 537.1301(14), require the transaction to be "payable in installments" as provided for in section 537.1301(30). We therefore find Johanningmeier's argument inapplicable to the facts of this case.

BREACH OF WARRANTY: The trial court, by its order, determined Johanningmeier failed to establish the necessary elements for either a breach of expressed or implied warranty. We agree and affirm the trial court action in this case.

Johanningmeier relies upon representations in advertising literature printed by Wolverine Technologies which state:

> Restoration products resist the ordinary grit of city life. Of course, over time, Restoration can become dirty like any other product exposed to the elements. But an occasional clean-up is easy with just a garden hose. (emphasis added)

Another brochure prepared by Wolverine which represented another product of the companies stated:

> FINALLY, HOME MAINTENANCE IS EASY TO LIVE WITH. There's no peeling paint to scrape; no scratches or dents to repair. With Vinal-side, soil and grim simply wash away with the help of your garden hose and bucket of soapy water. The tough vinyl surface resists most common stains like oil and grease. And for really tough spots, you can use an abrasive cleanser, steel wool, or even sandpaper.

Johanningmeier lives in a rural setting. The home is bordered by secondary roads and a hog yard. Although it may not be common knowledge elsewhere, it is certainly

understood in Iowa that flies often accompany the production of hogs. It can hardly be said that this scenario is the "ordinary grit of city life." We have considered all other issues and affirm the trial court.

Both parties shall pay their own attorney's fees. Costs are taxed to Johanningmeier.

AFFIRMED.