IN THE COURT OF APPEALS OF IOWA

FILED
JUN 24 1987
CLERK SUPREME COURT

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GENE COOPER,

Plaintiff-Appellant,

vs.

LIFE INVESTORS INSURANCE COMPANY OF AMERICA,

Defendant-Appellee.

Filed June 24, 1987

7-131
86-1080

Appeal from the Iowa District Court for Warren County (No. 20069) - Thomas S. Bown, Judge.

Plaintiff appeals from judgment for defendant in action to recover profits generated from insurance sales. **AFFIRMED.**

Robert M. Benton, of Schooler, Stuyvesant & Benton, Carlisle, for plaintiff-appellant.

Timothy J. Walker, of Whitfield, Musgrave, Selvy, Kelly & Eddy, Des Moines, for defendant-appellee.

Considered by Snell, P.J., and Hayden, and Sackett, JJ.

PER CURIAM

Plaintiff Gene Cooper appeals from judgment for Defendant Life Investors Insurance Company in an action to recover a share of profits generated from insurance sales. Cooper contends the trial court erred (1) in not finding Cooper had a contract with Life Investors for vested rights to profits or a lifetime agency, (2) in determining Cooper's claim was barred by the statute of limitations, and (3) in failing to award Cooper damages on the basis of unjust enrichment. We affirm.

Cooper worked as an insurance salesperson for Life Investors. He was paid a salary plus a bonus. In 1976, Cooper moved to Texas to operate Southwest Marketing Organization for Life Investors. Correspondence confirming the agreement between Life Investors and Cooper provided the following compensation and bonus arrangement for 1977:

1. $1 per application paid weekly;
2. $1 per application paid quarterly;
3. $20,000 base salary plus 50 percent of all profits made by the marketing unit.

The correspondence was silent as to termination of the agreement and further stated Life Investors would review the bonus per application at year-end to determine compensation for 1978.

Southwest did not generate profits until after Cooper's termination from the marketing unit on September 30, 1977, and until after his termination with Life Investors in March, 1978. Subsequent to Cooper's termination, Southwest began to generate profits based on renewals.

Cooper filed the instant action on April 8, 1983, approximately five and one-half years after his termination from Southwest. The trial court determined the profits which would have accumulated to the date of trial were in the amount of $140,833.37. The trial court entered judgment for Life Investors finding

Cooper's right to share profits from Southwest terminated when his employment terminated in September, 1977. The trial court further found Cooper's action was barred both by statutes of limitation applicable to wages, Iowa Code §614.1(8) (1985) (two-year limitation), and to oral contracts, (Iowa Code §614.1(4) (1985) (five-year limitation). This appeal followed.

This is an action at law. Our scope of review is for correction of errors at law. Iowa R. App. P. 4.

The trial court's findings of fact have the full force of a special verdict and are binding on us if supported by substantial evidence and justified as a matter of law. Chariton Feed and Grain Inc. v. Harder, 369 N.W.2d 777, 782 (Iowa 1985); Keith v. Community School District of Wilton, 262 N.W.2d 249, 255 (Iowa 1978); H&S Ltd. v. Andreola, 363 N.W.2d 592, 595 (Iowa App. 1984). We review the evidence in the light most favorable to the judgment. Blunt, Ellis & Loewi, Inc. v. Ingram, 319 N.W.2d 189, 192 (Iowa 1982). The findings are broadly and liberally interpreted and in the case of ambiguity are construed to uphold rather than defeat the judgment. Murray v. Conrad, 346 N.W.2d 814, 817 (Iowa 1984); Farmers Ins. Group v. Merryweather, 214 N.W.2d 184, 186 (Iowa 1974).

The only right an agent has to renewal commissions is that which is acquired through the terms of the contract. Mopper v. Circle Key Life Insurance Co., 172 N.W.2d 118, 124 (Iowa 1969); McPherren v. Sun Life Assurance Co., 219 Iowa 159, 161, 257 N.W. 316, 317 (1935). See Madsen v. Travelers Insurance Co., 52 F.2d 75, 79 (8th Cir. 1931). In Madsen, the court stated:

> That appellant's right to commissions on undue and unpaid renewal premiums was an unaccrued, prospective, and contingent one is at once apparent from the fact that the right, by the inherent character of the thing to which it is attached, could not possibly ripen into an absolute right, unless and until the renewal premiums were paid by the insured to the company, a contingency which might

> or might not happen. The right of the parties to stipulate that other contingencies would also prevent such a right from ripening into an absolute one seems so clear and elemental that further discussion seems useless.

Madsen, 52 F.2d at 178.

The courts are prone to hold against the theory that a contract infers a perpetuity of right or imposes a perpetuity of obligation. Lewis v. Minnesota Mutual Life Insurance Co., 240 Iowa 1249, 1257, 37 N.W.2d 316, 321 (1949) (quoting James Maccalum Printing Co. v. Graphite Compendius Co., 150 Mo. App. 383, 391-92, 130 S.W. 836, 838 (1910)). A contract will be construed to impose an obligation in perpetuity only when the language of the contract compels such construction. Lewis, 240 Iowa at 1257, 37 N.W.2d at 321. A contract for life will be upheld only where the intention the contract's duration is for life is clearly expressed in unequivocal terms. Thompson v. Miller, 100 N.W.2d 410, 412 (Iowa 1960); Lewis, 240 Iowa at 1257, 37 N.W.2d at 321. To determine what compensation is to be paid to an agent under contract of employment requires construing the contract as a whole and the intention of the parties is to be collected from the entire instrument and not detached portions thereof. Mopper, 172 N.W.2d at 124.

On appeal Cooper contends he has a contractual right to 50 percent of the profits from renewal premiums produced over the years by Southwest insurance sales. Cooper alleges language in correspondence from Life Investors confirming his oral contract adequately supports his claim. Cooper first points to a letter from William McDonald, executive vice president and national marketing director of Life Investors, as establishing his vested right to the profits. That letter, dated August 5, 1976, confirmed the oral agreement regarding Cooper's compensation arrangement as an agent for Southwest:

> I'd like to have you on a program of 50-50 sharing in the eventual profits which will come from your unit. (emphasis added).

Cooper also contends a letter from Life Investors Vice President William Busler dated December 15, 1976, as supporting his right to one-half of Southwest's profits. Cooper himself actually authored the letter for Busler's signature to confirm Cooper's agreement with Life Investors for his 1977 compensation arrangement:

> Your base salary and 50% of profits shall continue to be part of your compensation over the years. (emphasis added).

There is substantial evidence to support the trial court's finding Cooper did not have an agreement with Life Investors for a vested right to the profits or a lifetime agency. See Lewis, 240 Iowa 1249, 37 N.W.2d 316. The two pieces of correspondence confirming Cooper's compensation for 1976 and 1977 do not amount to conclusive intimations of lifetime agency. The fact Cooper authored the Busler letter also means it must be construed strictly as against Cooper rather than against Life Investors. Village Supply Co., Inc. v. Iowa Fund, Inc., 312 N.W.2d 551, 555 (Iowa 1981). Moreover, a vested right to the profits or lifetime agency may not be presumed merely because correspondence presented at trial did not set forth a termination date or conditions warranting termination. See Wolfe v. Graether, 389 N.W.2d 643, 652 (Iowa 1986) (Agreement for lifetime employment or appointment is no more than indefinite general hiring terminable at will of either party in the absence of some executed consideration in addition to the services rendered).

We also find there is other evidence suggesting Cooper knew he was entitled only to a share of those profits realized during the pendency of his employment and that his right to the profits terminated when his employment arrangement ended. Shortly before his termination from Life Investors, Cooper wrote to

McDonald acknowledging the company's right to terminate his employment arrangement at any time and stated:

> It is hardly fair to assume a long-term sharing in the renewal profits but I feel 18 months is reasonable.

Cooper was entitled to profits arising out of his employment contract. However, while his employment was in force Southwest realized no profits. Cooper's contract as an agent with Southwest terminated in 1976. Southwest did not realize profits until 1978. At that time Cooper did not have an employment contract with Life Investors and was not contractually entitled to any profits.

Because we find substantial evidence to support the trial court's determination that the oral agreement between Cooper and Life Investors was not a lifetime contract of employment or agency, we need not address the issues of unjust enrichment and the statute of limitations.

AFFIRMED.