IN THE COURT OF APPEALS OF IOWA

No. 8-304 / 97-2047

WALTER REINHOLDT,

Plaintiff-Appellant,

vs.

CENEX SUPPLY & MARKETING, INC.,

Defendant-Appellee.

FILED
JUN 24 1998

Appeal from the Iowa District Court for Woodbury County, John D. Ackerman, Judge.

Plaintiff appeals a district court ruling dismissing his conversion claims against defendant. **AFFIRMED.**

Hilary E. Johnson of Corbett, Anderson, Corbett, Poulson, Flom & Vellinga, Sioux City, for appellant.

Maurice B. Neiland and Matthew T.E. Early of Rawlings, Nieland, Probasco, Killinger, Ellwanger, Jacobs & Mohrhauser, Sioux City, for appellee.

Heard by Sackett, P.J., and Huitink and Mahan, JJ.

SACKETT, P.J.

Plaintiff-appellant Walter Reinholdt, an Iowa farmer, sued defendant-appellee Cenex Supply and Marketing, Inc., contending he sold edible red kidney beans to defendant and defendant wrongfully withheld payment of approximately $35,000 from the sale of the beans for a debt McCrea Food Products Co.[1] owed defendant. The trial court held at the time of the sale of the beans to defendant, the beans had been sold by plaintiff to McCrea, and dismissed plaintiff's claim. Plaintiff appeals contending: (1) the trial court should have found McCrea was plaintiff's agent, not the owner of the beans; and (2) the trial court erred in applying the elements of agency. We affirm.

The parties disagree on our scope of review on this issue. Plaintiff contends it is at law because the trial court applied the incorrect law. Defendant contends our review is to determine whether substantial evidence supports the trial court's finding, contending there is substantial evidence in the record to support a finding the beans had been sold to McCrea prior to the sale to defendant.

Plaintiff correctly advances we are not bound by factual findings resulting from the application of an erroneous rule of law. *See Gere v. Council Bluffs Community School Dist.*, 334 N.W.2d 307, 309 (Iowa 1983). On our review, we find plaintiff has failed to show the trial court misapplied the law. Consequently, we

---

[1] McCrea Food Products Co. is not a party to this litigation.

review to determine whether substantial evidence supports the trial court's factual findings. *Vaughan v. Must, Inc.*, 542 N.W.2d 533, 538 (Iowa 1996).

The first issue is whether the trial court correctly found there was a contract between plaintiff and McCrea to sell the beans to McCrea and a separate contract between McCrea and defendant to sell the beans to defendant. Plaintiff contends there was an agency, not a sale contract, between plaintiff and McCrea.

The kidney beans represented a 1991 crop.[2] In 1991, the beans were shipped to the Chippewa Valley Bean Company warehouse in Wisconsin. Plaintiff's beans were commingled with beans of his son-in-law, not a party to this suit. On April 12, 1993, plaintiff received a warehouse receipt from Chippewa Valley for the beans delivered earlier.

A written contract dated April 13, 1995, showed Cenex Food Brokers buying 750,000 pounds of beans at 18-1/2 cents per pound for $138,750. The contract provided McCrea provide the beans F.O.B. to a Wisconsin railroad shipping point. The beans were shipped to defendant on May 20, 1995.

A written purchase contract dated April 14, 1995, showed plaintiff selling 7500 CWT of dark red kidney beans to McCrea, the price F.O.B. Elk Mound, Wisconsin, loaded into a box car, with payment upon receipt of government tender payment.

---

[2] The kidney beans ultimately were shipped to New Orleans.

On April 20, 1995, Chippewa Valley wrote plaintiff and his son-in-law advising them they would bag and recondition the beans for $59,965.65. Chippewa Valley's statement showed 3377.2 CWT of the son-in-law's beans and 4726.93 CWT of plaintiff's beans. The evidence would indicate the son-in-law's warehouse receipt was held by Farm Credit Services, who held a lien on all of his beans.[3] Chippewa Valley stated it would release the beans upon receipt of the endorsed warehouse receipts and payment of the $59,965.65. It also advised it needed shipping instructions for the beans. Plaintiff's warehouse receipts were subsequently endorsed and delivered to Chippewa Valley. Plaintiff also gave shipping instructions for the beans.

Before paying McCrea for the beans, defendant deducted from the purchase price in the contract (1) a shortage of $344.10; (2) cleaning and rehandling expenses of $52,098.20; (3) transportation costs to the point of delivery of $2604.91; (4) $35,460.57 to satisfy a lien on the beans for debt owed by plaintiff's son-in-law; and (5) $34,990.21 for amounts McCrea owed defendant. As a result, defendant paid McCrea $12,190.11. McCrea kept $7424 and paid plaintiff $4766.11.

Plaintiff then commenced this suit against defendant for the approximately $35,000 deducted for the debt of McCrea, claiming McCrea was merely his agent, not

---

[3] Defendant and McCrea were advised the receipts would be released because defendant had agreed to disburse the funds from the sale of the son-in-law's beans.

the owner of the beans, and defendant, being aware of that fact, should not have deducted the $34,990.21 from the sale proceeds.

The trial court found although plaintiff testified McCrea was only a broker [4] defendant testified to the contrary. Defendant's employees testified at trial they were never advised McCrea was a broker or agent and not an independent buyer and seller of the beans. Defendant's employees contended had it been a brokered sale, the paperwork and ultimate payment from the beans would have been handled in a different manner. They further testified in prior transactions with McCrea that McCrea was the seller and not a broker for an undisclosed seller.

The trial court specifically found defendant did not know of the existence of plaintiff and his son-in-law prior to the beans being shipped to defendant. The court went on to find from documents and testimony McCrea was not an agent or broker for either plaintiff or his son-in-law when the beans were sold to defendant. The court then specifically found McCrea purchased the beans from plaintiff for its own benefit to cover the sale of beans it had entered into with defendant on its own account.

Plaintiff contends certain evidence supports his contentions that (1) McCrea as an agent of plaintiff never held title to the beans; and (2) defendant was not a good

---

[4] We note, though contrary to trial testimony, plaintiff in his affidavit in support of his motion for summary judgment specifically referred to his April 14, 1995 contract with McCrea as a "purchase contract."

faith purchaser for value and had notice of the defects in title and failed to act in good faith.

Plaintiff specifically advances the following evidence supports his position: (1) the price differential of one dollar per 100-pound unit between his contract with McCrea and McCrea's contract with defendant represents the commission charged by McCrea for agency services; (2) plaintiff and his son-in-law agreed to deliver to Chippewa Valley an endorsed warehouse receipt and allow payment to be deducted from payment to them, and defendant had a letter evidencing this agreement; (3) his son-in-law's lien was paid by making a check to the lienholder and his son-in-law; and (4) on May 9, 1995, plaintiff talked to an employee of defendant attempting to change the shipping point, but the proposed change was not accepted.

Defendant contends there is substantial evidence supporting the trial court, specifically: (1) the fact there were two separate written purchase contracts and neither mentioned any brokerage agreement; (2) the only evidence of a brokerage contract is plaintiff's testimony his son-in-law told him he had contacted McCrea to be a broker for both of them; (3) plaintiff had not done any previous business with McCrea; (4) defendant had previously dealt with McCrea as a buyer or seller, but never as a broker; (5) the transaction was not handled as a brokered transaction by defendant; and (6) there was not specific evidence as to the date, duration, or rights and obligations of the alleged agency or broker agreement.

Under this record, the question of whether an agency or broker relationship existed is a fact question. *See C.F. Sales, Inc. v. Amfert, Inc.*, 344 N.W.2d 543, 553 (Iowa 1983); *Smith v. Air Feeds, Inc.*, 519 N.W.2d 827, 831 (Iowa App. 1994). There was no showing of privity of contract between plaintiff and defendant. *See Tomka v. Hoechst Celanese Corp.*, 528 N.W.2d 103, 107 (Iowa 1995). The goods sold to McCrea had been identified in the April 14, 1995 contract and they were delivered in accord with the terms of the contract. No additional documents were necessary to transfer title. *See Estate of Schomer v. Piggot*, 439 N.W.2d 190, 192 (Iowa 1989).

The question is not whether we would have made a different finding on the given facts, but rather whether there is substantial evidence supporting the trial court's factual conclusions. Where a trial court sits at law as a fact finder, the trial court's findings have the effect of a jury verdict and bind this court if substantial evidence supports those factual findings. *See Papenheim v. Lovell*, 530 N.W.2d 668, 671 (Iowa 1995); *Meyers v. Delaney*, 529 N.W.2d 288, 289-90 (Iowa 1995). There is substantial evidence in the record to support these factual findings.

Plaintiff next contends the law does not support the trial court's finding that an agency agreement did not exist between plaintiff and McCrea.

Again, plaintiff advances he testified McCrea was a broker and the price differential was a commission for McCrea. Plaintiff further contends McCrea never

had physical possession of the beans and never held the warehouse receipts. Plaintiff further advances McCrea is licensed in the State of Minnesota as a food broker, it acted only as an intermediary arranging the sale, and McCrea could not deliver title to defendant. While we agree with plaintiff certain of these factors can be evidence of a broker or agency contract, there also are facts supporting an opposite conclusion.

AFFIRMED.