IN THE COURT OF APPEALS OF IOWA

No. 1-628 / 91-600

274

THE ERTL COMPANY,

Appellant,

vs.

EMPIRE SCREEN PRINTING, INC.,

Appellee.

Appeal from the Iowa District Court for Dubuque County, Alan Pearson, Judge.

The plaintiff appeals a judgment of the district court dismissing the plaintiff's petition against the defendant for breach of implied warranties of merchantability and fitness. **AFFIRMED.**

Steven M. Schneebaum of Patton, Boggs & Blow, Washington, D.C.; and Gary L. Robinson and Kimberly A. Ten Eick of Klinger, Robinson & McCuskey, Cedar Rapids, for appellant.

Thomas L. Horvath of Hale, Skemp, Hanson & Skemp, La Crosse, Wisconsin; and Jeffrey L. Walters of Reynolds and Kenline, Dubuque, for appellee.

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

DONIELSON, J.

The plaintiff, The Ertl Company, manufactures and distributes die cast plastic, steel and electronic toys. The defendant, Empire Screen Printing, is a Wisconsin corporation which manufactures screen printed decals. Ertl has purchased decals from Empire since the early 1970s for use on its toy products.

In early 1987, Ertl initiated an overall program designed to monitor compliance with appl able safety standards for the lead content of it toys. On February 18, 1987, Ertl sent a letter to Empire, asking for a warranty that goods sold to Ertl containe no more than .05 percent by weight of lead, and specified maximum quantities of other heavy metals. Empire refused to send a guarantee, but did forward to Ertl a letter from its ink supplier, K.C. Coating. The letter stated that K.C. had been advised by its suppliers that the ink contained less than .06 percent lead, but that there was no guarantee of any amount in a particular batch. In subsequent conversations between officials of Ertl and Empire, Empire informed Ertl that no testing would be done due to the high cost. In response, Ertl expressed the certification process was not a high priority.

In July 1987, Empire was awarded a contract to make decals for a new model bulldozer to be manufactured by Ertl. The finished toys were exported to the United Kingdom, and while there, the toys were tested for lead content. The tests showed the lead content was 100 times the .06 percent limit imposed by law. As a result, Ertl spent over $35,000 returning the toys to the United States, removing the defective decals, and installing new ones. The decals had originally cost $2,976.24.

Ertl ultimately filed the present action against Empire to recover damages as a result of the tainted decals. Following a one-day trial on March 18, 1991, the district court concluded there had never been an express term in any contract between the parties which dealt with the lead content of the decals. The court also held the implied warranties of merchantability and fitness for a particular purpose had been disclaimed by oral and written statements by Empire which clearly apprised Ertl they were not guaranteeing or warranting the lead content. Finally, the district court held Empire did not knowingly violate the Consumer Product Safety Code, and the court dismissed Ertl's petition. Ertl has appealed, asserting numerous assignments of error.

Our scope of review in this law action is for the correction of errors at law. Iowa R. App. P. 4. Because Ertl failed to file a motion pursuant to Iowa Rule of Civil Procedure 179(b) its grounds for appeal are limited to challenging the trial court's judgment based on the sufficiency of the evidence in the record.

The challenge is narrowed further by the fact that this action was a law action before the trial court. In such a case we will not interfere on appeal unless we find the party bearing the burden of proof carried that burden as a matter of law. Anthony v. State, 374 N.W.2d 662, 664 (Iowa 1985). The evidence in Ertl's favor must be so overwhelming that only one reasonable inference can be drawn, and the trial court drew the wrong one. Id. We find the evidence in the record insufficient to hold Ertl met its burden of proof as a matter of law.

The costs of this appeal are taxed to the appellant.

AFFIRMED.