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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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LADDIE NACHAZEL and LINDA NACHAZEL,	)	
Plaintiffs-Appellees,	)	Filed May 31, 1988
vs.	)	7-425
MIRACO MFG.,	)	87-146
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Poweshiek County (2443-61-397), Robert Bates, Judge.

Defendant-seller appeals a judgment for plaintiff-buyers on their claim that the defendant breached an express warranty concerning pig houses known as Mirahuts. **REVERSED AND REMANDED.**

John F. Bierman, III, of Bierman, Bierman & Stewart, Grinnell, for defendant-appellant.

Robert A. Hutchison of Brown, Winick, Graves, Donnelly, Baskerville & Schoenebaum, Des Moines, for plaintiffs-appellees.

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

SCHLEGEL, J. 199

Defendant, Miraco Manufacturing, appeals the judgment for plaintiffs, Laddie and Linda Nachazel, for breach of an express warranty and for strict liability. Miraco claims that the court erred in overruling its motion for directed verdict, claiming there was: (1) insufficient evidence to generate a jury question on the issue of causation; (2) insufficient evidence of damages to raise the issue of damages above speculation; and (3) error in submitting, as an element of damages, the costs of installation and the cost of interest incurred in purchasing the equipment at issue here. Because we find the court was in error in submitting consequential damages, we reverse and remand for a new trial.

The Nachazels purchased from Miraco, certain farrowing houses, known as "Mirahuts," and certain pig nurseries. By statements made by company representatives and by literature furnished by the company, certain warranties were made. Among those warranties was an express statement that if the Nachazels' pigs ever experienced scours in the huts, their money would be refunded.

After using the equipment for approximately two years, the Nachazels stopped using the Mirahuts and nurseries and filed this action. Upon trial, the court submitted the case to the jury on the theories of express warranty, implied warranty of merchantability, and strict liability. By special interrogatories, the jury returned a verdict, allowing damages for breach of express warranty and for strict liability. The Nachazels have waived their right to the strict liability damage award. This appeal, therefore, is limited to the propriety of the jury verdict on the theory of breach of an express warranty.

Miraco first claims that the court was in error in failing to sustain its motion for directed verdict. Miraco claims that there was insufficient evidence

to generate a jury question on the issue of causation, and insufficient evidence on the issue of damages. In considering the propriety of a motion for directed verdict, we view the evidence in a light most favorable to the party against whom the motion was made. Iowa R. App. P. 14(f)(2). Miraco does not contend there is no evidence of express warranties. Consequently, the jury's finding in this respect is supported by uncontroverted evidence.

Since there was sufficient evidence to submit to the jury the existence of an express warranty, we must examine whether there was sufficient evidence in the record to justify the submission of the claimed breach of that warranty. Where there is a claim for damages arising from a breach of an express warranty, the plaintiff has the burden of proving that due to defects in the product warranted, a breach of the warranty occurred. See State Farm Mut. Auto. Ins. Co. v. Anderson-Weber, Inc., 252 Iowa 1289, 1302, 110 N.W.2d 449, 456 (1961). Plaintiff has the burden to prove that claimed defects were the proximate cause of the breach of warranty, and the damages arising therefrom. See Durant Elevator v. S.J. Hoffman & Sons, 259 Iowa 500, 505, 145 N.W.2d 25, 27-28 (1966).

In this case, Laddie sought to prove the breach of warranty by circumstantial evidence. He testified that fewer pigs were weaned from the Mirahut operation than were weaned from the other farrowing and nursery operations of his swine operation. He estimated that the shortage in the Mirahut operation was an average of one to two pigs more than his losses in his confinement operation. He testified in detail concerning observations of pigs having health problems, of conditions of standing water in the huts leading to problems in the little pigs, and he testified that some little pigs developed scours and other health problems from the conditions in the huts.

Miraco complains that Laddie offered no expert evidence to prove causation. The only testimony concerning the health problems of the pigs came from Laddie. That testimony was allowed into the record without objection. He was allowed to give his opinions as to the cause of the pigs' health problems without challenge as to his qualifications to give such testimony. We therefore need not decide whether expert evidence was required to generate a jury question on the proximate causation of the excessive death losses testified to by Laddie. We hold that it was not error for the court to refuse to grant a directed verdict on the issue of proximate cause.

Miraco next complains that the court was in error in refusing to direct a verdict, since the evidence of damages provided by the Nachazels was merely speculative and not sufficient to prove the loss of pigs. Once again, Laddie was permitted to testify, almost completely without objection, to the loss of pigs in the farrowing and weaning process carried on within the Mirahuts, as compared with the losses sustained in his other facilities. The record contains ample evidence to support a finding that damages were sustained. While there may not be evidence which would allow a determination of the amount of damages with precision, there was a reasonable basis from which the amount could be inferred or approximated. Under that record, it is proper for the jury to determine the amount of damages suffered. See Poulsen v. Russell, 300 N.W.2d 289, 295 (Iowa 1981); Quade v. Heiderscheit, 391 N.W.2d 261, 264 (Iowa App. 1986). There was no error in overruling defendant's motion for directed verdict.

Finally, Miraco complains that the court erred in including the costs of installing the Mirahuts and the costs of interest incurred in purchasing the Mirahuts as items of consequential damages to be considered by the jury. We agree. It is generally accepted that:

> A critical requirement, in order for incidental or consequential damages to be recoverable under the Code, is that the buyer's losses result from the seller's breach. As the various courts have frequently stated, it must be shown that the seller's breach was the proximate cause of the buyer's injury or loss. . . .

67A Am. Jur.2d Sales § 1319 (1985). Furthermore, this court has stated that consequential damages may include:

> [I]nterest payments to third persons which are reasonably foreseeable and proximately caused by the defaulting party's breach.

Metropolitan Transfer v. Design Structures, Inc., 328 N.W.2d 532, 536 (Iowa App. 1982) (emphasis added). The interest payments made by the Nachazels and the installation costs made by the Nachazels were all made prior to the breach, and therefore were not "caused by" or did not "result from" the breach by Miraco. Therefore, those costs are not recoverable in this action.

Because there was a general verdict in this case, it is not possible for us to determine what amount was allowed by the jury for consequential damages, consisting of interest costs and installation expense. Consequently, there is no choice but to remand this case to the district court for a new trial.

We reverse and remand for new trial on the issue of damages only.

REVERSED AND REMANDED.