IN THE COURT OF APPEALS OF IOWA

No. 1-436 / 00-1104
Filed November 28, 2001

FILED
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CLERK SUPREME COURT

MAYNARD COOPERATIVE COMPANY,
an Iowa Cooperative,
Plaintiff-Appellee,

vs.

DALE RECKER,
Defendant-Appellant.

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

Dale Recker appeals the district court's judgment entered upon a jury verdict in favor of Maynard Cooperative Company. **AFFIRMED.**

Christopher O'Donohoe of Elwood, O'Donohoe, Stochl, Braun, & Churbuck, New Hampton, for appellant.

Richard K. Updegraff, Brenton D. Soderstrum, and Miranda L. Hughes, of Brown, Winick, Graves, Gross, Baskerville and Schoenbaum, P.L.C., Des Moines, for appellee.

Heard by Sackett, C.J., and Mahan and Hecht, JJ.

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HECHT, J.

I. **Factual Background and Proceedings.** In the summer of 1995, Dale Recker entered into several hedge-to-arrive contracts (HTA contracts) with the Maynard Cooperative Company (Coop), a cooperative association owned by approximately 900 farmer members. The HTA contracts required Recker to deliver 60,000 bushels of corn by December 1995. As the delivery period for the HTA contracts approached, Recker rolled several of the contracts forward to the next year. On June 13, 1996, Recker bought back 55,000 bushels of corn for $39,275. On June 24, 1996, Recker rolled the remaining 5000 bushels of corn to a delivery period of December 1997. On June 16, 1997, Recker signed a promissory note acknowledging his financial obligation to the Coop and agreeing to satisfy the debt by June 16, 1998. On December 31, 1997, Recker paid $5000 on the note, leaving a balance of $34,275. Recker failed to make any further payments on the note and did not deliver the remaining 5000 bushels.

On April 30, 1998, the Coop filed a petition alleging Recker had breached his HTA contracts by failing to deliver grain as required under the terms of the contract. The Coop subsequently amended its petition to request judgment on the promissory note. Recker filed his answer asserting a counterclaim and several affirmative defenses. The Coop filed for summary judgment seeking dismissal of Recker's counterclaim and affirmative defense alleging illegality of the HTA contracts. The district court denied the motion on May 26, 1999. The Coop renewed its motion on December 23, 1999. The district court granted the motion in part, dismissing Recker's affirmative defense alleging illegality of

contract and counterclaim asserting violations of the Commodity Exchange Act (CEA). Trial commenced April 19, 2000. At the close of evidence, Recker moved for a directed verdict on the mutual mistake defense. The motion was overruled, and the jury returned a verdict in favor of the Coop. Recker filed motions for new trial and judgment notwithstanding the verdict, both denied by the district court. Recker appeals.

II. Contentions on Appeal. Recker contends the district court erred in (1) dismissing his affirmative defense alleging illegality of HTA contracts and counterclaim asserting violations of the CEA, (2) refusing to direct a verdict that no contract between the parties existed due to their mutual mistake of fact, and (3) overruling his motions for new trial and judgment notwithstanding the verdict.

III. Discussion.

A. Legality of HTA Contracts. Recker contends the district court erred in granting summary judgment in favor of the Coop on his affirmative defense alleging illegality of contract and counterclaim alleging violations of the CEA. We review the grant of summary judgment for correction of errors at law. *Whalen v. Connelly*, 593 N.W.2d 147, 152 (Iowa 1999). We review the record to determine if genuine issues of material fact exist and whether the trial court properly applied the law. *Anderson v. Miller*, 559 N.W.2d 29, 31 (Iowa 1997). We examine the record in the light most favorable to the party opposing the motion. *Id.*

In particular, Recker maintains the HTA contracts were futures contracts, as the roll forward provisions enabled speculation on the market. As futures

contracts, Recker argues, the HTA contracts were not exempt from regulation by the CEA. We disagree. The authorities conclusively hold HTA contracts with roll forward provisions are legal cash forward contracts, exempt from the CEA. *Top of Iowa Coop. v. Sime Farms, Inc.*, 608 N.W.2d 454, 465 (Iowa 2000) (finding HTA contracts with roll forward provisions legal cash forward contracts falling within the statutory exemption); *see also Grain Land Coop. v. Kar Kim Farms, Inc.*, 199 F.3d 983, 992 (8th Cir. 1999); *Haren v. Conrad Coop.*, 198 F.3d 683, 684 (8th Cir. 1999), *Asa-Brandt, Inc. v. ADM Investor Servs, Inc.*, 138 F. Supp. 2d 1144, 1164-65 (N.D. Iowa 2001), *Barz v. Geneva Elevator Co.*, 12 F. Supp. 2d 943, 954-55 (N.D. Iowa 1998), *Top of Iowa Coop. v. Schewe*, 6 F. Supp. 2d 843, 855-56 (N.D. Iowa 1998), *Oeltjenbrun v. CSA Investors, Inc.*, 3 F. Supp. 2d 1024,1045-47 (N.D. Iowa 1998), *Johnson v. Land O'Lakes, Inc.*, 18 F. Supp. 2d 985, 995-97 (N.D. Iowa 1998). Accordingly, the district court properly granted summary judgment on Recker's affirmative defense and counterclaim holding as a matter of law HTA contracts were not illegal under the CEA.

B. Mutual Mistake of Fact. Recker contends the district court erred in refusing to direct the jury to return a verdict that no contract between the parties existed due to a mutual mistake of fact. Furthermore, Recker contends the district court erred in overruling his motions for new trial and judgment notwithstanding the verdict on the same issue.

We review rulings on motions for directed verdict for correction of errors of law. *Sime Farms, Inc.*, 608 N.W.2d 454 at 466. The issue before us is simply whether there was "sufficient evidence to generate a jury question." *Id.* (quoting

Federal Land Bank v. Woods, 480 N.W.2d 61, 65 (Iowa 1992)). In deciding this issue, we view the evidence in the light most favorable to the nonmoving party. *Id.* We review a district court's denial of a motion for judgment notwithstanding the verdict for correction of errors at law. Iowa R. App. P. 4. This court's standard of review of a trial court's action on a motion for new trial is for abuse of discretion. *Ladeburg v. Ray*, 508 N.W.2d 694, 696 (Iowa 1993).

Recker argues neither party understood the nature of the risks involved with HTA contracts. Moreover, he contends a mutual mistake regarding risk should have allowed him to avoid the contract as a matter of law. Mutual mistake "occurs when both parties are under substantially the same erroneous belief as to the facts." E. Allen Farnsworth, *Contracts* § 9.3, at 683 (1990). To avoid a contract on the ground of mutual mistake, the party adversely affected must show:

> (1) the mistake goes to a basic assumption on which the contract was made; (2) the mistake has a material effect on the agreed exchange of performances; and (3) the mistake is not one of which that party bears the risk.

Id. (citing Restatement (Second) of Contracts § 152, at 385 (1981)).

We conclude the district court did not err in rejecting Recker's contention that he should prevail as a matter of law because of a mutual mistake of fact. "A party's failure to anticipate future events or contingencies is not a mistake as to a then existing or past fact that would normally entitle" relief. *Pathology Consultants v. Gratton*, 343 N.W.2d 428, 437 (Iowa 1984). Moreover, "[t]he continuation of existing market conditions is not such a 'basic assumption' that will justify voidance of a contract." *Davenport Bank & Trust Co. v. State Cent.*

Bank, 485 N.W.2d 476, 480 (Iowa 1992) (citing Restatement (Second) of Contracts § 152, at 386 (1981)). Even if we were to credit Recker's contention that the parties were mistaken as to the risks associated with HTA contracts, a reasonable fact-finder could conclude the parties' mistake related directly to unanticipated substantial future market fluctuations. The district court correctly allowed the jury to determine the issue of mistake, as "[t]he existence and terms of a contract and whether the contract was breached are ordinarily questions for the jury." *Davenport Bank & Trust Co.*, 485 N.W.2d at 480 (citing *Dallenbach v. Mapco Gas Products, Inc.*, 459 N.W.2d 483, 486 (Iowa 1999)). Accordingly, we find the district court did not err in overruling Recker's motions and affirm the district court's decision in all respects.

AFFIRMED.