

IN THE COURT OF APPEALS OF IOWA

FILED

JUN 29 1982

CLERK SUPREME COURT

DEAN F. MEYLOR,

Plaintiff-Appellee/Cross-Appellant,

vs.

RONALD K. BROWN, individually
and d/b/a BROWN CHEVROLET AND BUICK
COMPANY, and BROWN CHEVROLET
COMPANY, INC.

Defendants-Appellants/Cross-Appellees.

Filed June 29, 1982

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Appeal from Cherokee District Court, Richard F. Branco, Judge.

Defendant-car dealer appeals the decision of the trial court, which awarded plaintiff damages for breach of an oral contract to sell a special edition Corvette, contending the trial court erred in finding sufficient evidence of promissory estoppel and there was insufficient evidence of an oral contract. Plaintiff cross-appeals, claiming the court erred in not awarding punitive damages. AFFIRMED.

J. R. Miller of Miller, Miller, Miller & Green, Cherokee, for defendants-appellants/cross-appellees

David L. Sayre of McDonald, Sayre & Wittgraf, Cherokee, for plaintiff-appellee/cross-appellant.

Heard en banc.

Defendant-car dealer appeals the decision of the trial court, which awarded plaintiff damages for breach of an oral contract to sell a special edition Corvette, contending the trial court erred in finding sufficient evidence of promissory estoppel and there was insufficient evidence of an oral contract. Plaintiff cross-appeals, claiming the court erred in not awarding punitive damages. We find sufficient evidence of an oral contract between plaintiff and defendant and sufficient evidence of promissory estoppel. Accordingly, we affirm the trial court's award of damages to plaintiff. Additionally, we hold the trial court did not err in denying punitive damages.

In 1978, plaintiff, Dean Meylor, was approached by an employee of defendant, Ronald K. Brown and Brown Chevrolet Company about purchasing a special edition "Indy Pace Car" Corvette from defendant (hereinafter reference to defendant includes both Ronald Brown individually and Brown Chevrolet.) A "Motor Vehicle Purchase Agreement" was prepared under which plaintiff agreed to purchase an Indy Pace Car from defendant for \$12,524.69. The agreement contained in bold print the words "This agreement is not binding until accepted by the selling dealer or his authorized representative." Plaintiff signed the agreement, but neither the defendant nor his agent signed the form.

Since the Indy Pace Car was a special edition, production of the car was limited. Only one car per dealer was to be made available for resale. Because the Indy Pace Car Corvettes were drastically limited in production, they quickly became objects of interest to collectors and speculators. The market value of the cars rose dramatically between the time Meylor initially conversed with the defendant's employee and the time the defendant received its one Pace Car for resale.

When defendant received a Pace Car, he refused to sell the car to Meylor. Instead defendant apparently sold the car to someone else. Meylor then filed the

present suit seeking specific performance of a contract to sell him the car for \$12,524.69. In the alternative, Meylor requested actual damages equal to his anticipated lost profit from resale. Meylor also requested punitive damages.

Although Meylor at one point filled out an order form for the car at the price quoted above, the form was never signed by a representative of the defendant, and it is undisputed that the order form did not give rise to a written contract. Rather, Meylor asserted that an oral contract was made at about the same time the order form was filled out. The defendant objected to any evidence of such an oral contract, relying on the statute of frauds found in the Iowa Uniform Commercial Code, section 554.2201, The Code 1977. The plaintiff responded that the statute of frauds objection was overcome by promissory estoppel. He claimed the oral contract had induced him to forbear from trying to buy a Pace Car elsewhere. The trial court initially granted the defendant a summary judgment, holding the doctrine of promissory estoppel did not apply to the UCC statute of frauds and Meylor, therefore, could not prove an oral contract. The Iowa Supreme Court, however, reversed the summary judgment and held the doctrine of promissory estoppel does apply to the UCC statute of frauds. Meylor v. Brown, 281 N.W.2d 632, 635 (Iowa 1979).

Upon retrial, the trial court ruled that Meylor had established promissory estoppel, had thereby overcome objections based on the UCC statute of frauds, and was permitted to present evidence of an oral contract. The trial court further ruled that Meylor had proved the existence of an oral contract for sale of the car at the price of \$12,524.69. The trial court awarded Meylor actual damages equal to his anticipated lost profits from resale and declined to award Meylor punitive damages.

The defendant has appealed, challenging the finding that Meylor had established promissory estoppel and the finding that Meylor had presented sufficient evidence to prove the existence of an oral contract. Meylor has cross-

appealed, challenging the trial court's refusal to award punitive damages.

I. Scope of Review.

Since this controversy was tried below in equity, our review is de novo, although we give weight to the findings of fact of the trial court. Iowa R. App. P. 14(f)(7); Youngblut v. Wilson, 294 N.W.2d 813, 816 (Iowa 1980).

II. Oral Contract

Defendant claims the trial court erred in finding clear and convincing evidence of an oral contract. We note defendant cites no authority in support of this proposition. Iowa R. App. P. 14(a)(3) states, "Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue." Although we could rule adversely to defendant on the basis of Iowa R. App. P. 14(a)(3), nevertheless we move to address the merits of the argument.

As a general proposition, the statute of frauds embodied in sections 554.2201 and 622.32, The Code 1977, prohibits the introduction of evidence to prove certain oral contracts upon timely objection. See Warder & Lee Elevator, Inc. v. Britten, 274 N.W.2d 339, 344, 345, 346 (Iowa 1979)(Reynoldson, C.J., dissenting); Bahnsen v. Rabe, 276 N.W.2d 413, 415 (Iowa 1979). In the event the statute of frauds defense was not raised by objection to proffered evidence, the plaintiff, to recover, would still have to meet the burden to prove the contract by a preponderance of the evidence. See Iowa R. app. P. 14(f)(5), (6).

In this case plaintiff asserts promissory estoppel as a bar to the applicability of the statute of frauds. Plaintiff is relying upon promissory estoppel to allow him to produce evidence of the oral agreement he allegedly made with defendant. If successful in barring the statute of frauds defense, plaintiff need only prove the existence of a clear and definite oral agreement by a preponderance of the evidence. In Stander v. Floyd, 164 N.W.2d 791, 793 (Iowa 1969), the court stated, "plaintiff [had the] burden to prove the terms of the alleged oral agreement by

a preponderance or greater weight of the evidence." At this juncture, we should note the supreme court's reference to "clear and convincing evidence" in Meylor v. Brown, 281 N.W.2d 632, 635 (Iowa 1979), was not made in relation to plaintiff's burden of proof, but rather was made in relation to the circumstances a court should consider when determining whether enforcement of the agreement is necessary to prevent injustice.

The trial court found, and we concur, plaintiff proved by a preponderance of the evidence, for the purposes of establishing promissory estoppel, there was an oral agreement to sell the car to plaintiff. The evidence is undisputed defendant's employee tendered a "Motor Vehicle Purchase Agreement" to plaintiff. The purchase price was \$12,524.69. Plaintiff signed the form as "buyer." The form was then delivered to defendant. The evidence shows defendant, Ronald K. Brown, knew plaintiff was acting as though he had agreed to buy the car. We find abundant evidence indicating plaintiff and defendant intended the agreement to reserve the car for purchase by plaintiff. Accordingly, we conclude there is sufficient evidence, for purposes of promissory estoppel, to establish an oral contract under which plaintiff agreed to buy, and defendant sell, an Indy Pace Car Corvette for \$12,524.69.

III. Promissory Estoppel.

Defendant claims the trial court erred by concluding plaintiff proved the elements of promissory estoppel. The elements of promissory estoppel were set forth in Meylor v. Brown, 281 N.W.2d 632 (Iowa 1979), in which the court stated:

In order to obtain the benefit of the doctrine of promissory estoppel to defeat a statute of frauds defense, the promisee must show more than the nonperformance of an oral contract. See 3 Williston on Contracts § 553A (Third Ed. Jaeger, 1960). Under § 217A [of the Restatement (Second) of Contracts] the defense cannot be overcome, when it is otherwise applicable, unless the promisee proved (1) the promisor should reasonably have expected the agreement to induce action or forbearance, (2) such action or forbearance was induced, and (3) enforcement is necessary to prevent injustice.

Id. at 635. The elements of promissory estoppel, as opposed to equitable estoppel, must be established by a preponderance of the evidence. Promissory estoppel becomes an element of the plaintiff's cause of action in the event evidence of an oral contract is sought to be barred by application of the statute of frauds. Equitable estoppel, on the other hand, is an affirmative defense that must be plead, and proved by clear and convincing evidence. See Citizens Savings Bank v. Sac City State Bank, 315 N.W.2d 20, 29 (Iowa 1982); Manson State Bank v. Diamond, 227 N.W.2d 195, 199-200 (Iowa 1975).

Defendants initially argue it is not reasonable to conclude defendants should reasonably have expected the agreement to induce action or forbearance. We see no merit in that contention. There is evidence up to fifty percent of the purchase agreements were honored despite the absence of a required signature by the seller or his agent. There is evidence purchase agreements, for automobiles ordered from the factory, were not signed by the seller or seller's agent until delivery. We are of the opinion, considering all the facts, defendants should have expected the purchase agreement, although unsigned by defendants, to induce forbearance or action on the part of plaintiff.

Defendant also claims the agreement could not have induced action or forbearance on the part of plaintiff. Defendant contends the evidence establishes plaintiff could not have purchased a similar car for a similar price at that time since there were no such car available. The trial court stated: "Plaintiff did not seek to purchase another car from some other dealer. He had no reason to do so and could not have done so at the same price quoted in the purchase order." The trial court concluded plaintiff was induced by the agreement to refrain from seeking another car from another source. We are of the opinion that conclusion is obvious and correct. Plaintiff did not attempt to buy another Indy Pace Car since he relied upon his oral agreement with defendant. In fact, plaintiff would have been foolish to bind himself under another contract. He would have been bound to

perform under the written purchase agreement since to satisfy the statute of frauds under section 555.2201, The Code 1977, the agreement need only be signed by the party against whom enforcement is sought. Defendants' contention on this issue does not really address whether or not plaintiff was induced to take or refrain from taking action. Their argument relates more to the final element of promissory estoppel, whether enforcement of the agreement is necessary to prevent injustice.

Under the facts presented, we believe justice requires enforcement of the agreement. The trial court applied the factors set out in Meylor v. Brown, 281 N.W.2d 632, 635 (Iowa 1979), and concluded enforcement of the doctrine of promissory estoppel was necessary to prevent injustice to plaintiff. The court concluded (a) plaintiff had no other remedies; (b) plaintiff's forbearance was substantial and reasonable; (c) the forbearance corroborated the making, and defines the terms, of the promise and (d) the forbearance was foreseeable by defendant. Plaintiff is entitled to the profit he lost by his reliance on the agreement. The trial court's award of damages is affirmed.

IV. Punitive Damages.

Plaintiff claims the trial court erred in denying punitive damages. In considering punitive damages, it is fundamental they are not allowed as a matter of right. Such damages are always discretionary. Rowen v. Le Mars Mutual Insurance Co. of Iowa, 282 N.W.2d 639, 661 (Iowa 1979). Punitive damages cannot be recovered for mere breach of contract. Pogge v. Fullerton Lumber Co., 277 N.W.2d 916, 920 (Iowa 1979). Punitive damages may be recovered when the breach also constitutes a malicious, intentional tort. Id. We are of the opinion the facts in this case do not permit an award of punitive damages. There was merely a breach of an oral contract. Accordingly, we affirm the denial of punitive damages.

AFFIRMED.