

DEC 23 1980

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IN THE COURT OF APPEALS OF IOWA

CLERK SUPREME COURT

BROWER CONSTRUCTION COMPANY,)

Plaintiff-Appellee,)

Filed December 23, 1980

vs.)

GENERAL GROWTH DEVELOPMENT)
CORPORATION,)

0-334
2-64577

Defendant-Appellant.

Appeal from Woodbury District Court - David J. Blair, Judge.

Defendant appeals from a judgment entered on a jury verdict for plaintiff in this suit arising from breach of contract. AFFIRMED.

Bruce A. Crary of Crary, Huff, Yates & Clem, P.C., Sioux City, for defendant-appellant.

Robert R. Eidsmoe of Gleysteen, Harper, Eidsmoe & Heidman, Sioux City, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

Defendant, General Growth, appeals from a judgment entered on a jury verdict for plaintiff, Brower Construction, in a breach of contract action. General Growth contends insufficient evidence exists to support the amount of damages awarded. We affirm.

Our review is on error assigned. Iowa R. App. P. 4. The facts are not in dispute, only proof of damages.

Loss of profits is a proper consideration on damages due to a breach of contract. See Orkin Exterminating Co., Inc. (Ardwell Division) v. Burnett, 160 N.W.2d 427 (Iowa 1968); Capp Mfg. Co. v. Hartman, 260 Iowa 24, 148 N.W.2d 465 (1967).

The president of Brower Construction testified to 1) the contract price per linear foot, 2) the number of linear feet expected to be installed, 3) the approximate figure of \$30,000 in profits he expected from the job, 4) the usual field margin profit of 20% included in contract bids, and 5) the hindsight view that the job would have yielded the expected profit. The engineer for Brower Construction corroborated the 20% field margin and showed that its application to the contract price would yield \$31,350 profit.

The original petition as amended did not show the \$31,350 figure. Brower Construction moved to conform the pleadings to the proof, which motion was granted. No evidence contradicting that amount of profit-damages was introduced by either party.

"Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion." Briggs v. Board of Directors of Hinton Community Schools, 282 N.W.2d 740, 743 (Iowa 1979). We find the evidence in this case sufficient to support the jury's verdict.

General Growth would not have this court dispose of this issue in such a simplistic manner. They urge the percentage-computed, field margin profit does not meet the requirement of reasonable certainty. General Growth also alleges the amount of profits should be reduced by savings to plaintiff in wear and tear of machinery and employment of extra personnel.

Although plaintiff does not argue preservation on appeal, these arguments should have been raised at the trial by motion to direct the verdict and by offered instruction or objection. We find the jury did not fail to follow the offered instructions.

Finding no error, we affirm the award.

AFFIRMED.