FILED
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CLERK SUPREME COURT

56

IN THE COURT OF APPEALS OF IOWA

PATTISON BROS. MISSISSIPPI RIVER TERMINAL, INC.,

Plaintiff-Appellee,

vs.

LLOYD F. ARNOLD, d/b/a TOWN AND COUNTRY ELEVATOR,

Defendant-Appellant.

Filed October 18, 1979

192
2-62525

Appeal from Chickasaw District Court - Peter Van Metre, Judge.

Defendant appeals judgment awarding damages to plaintiff for breach of contracts for the sale of corn. - Affirmed.

James D. O'Connor, of O'Donohoe, O'Connor & O'Donohoe, New Hampton, for defendant-appellant.

Richard D. Chabot, of Austin, Myers, Gaudineer & Knox, Des Moines, for plaintiff-appellee.

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

PER CURIAM

Defendant, Lloyd F. Arnold, d/b/a Town and Country Elevator, appeals judgment awarding plaintiff, Pattison Bros. Mississippi River Terminal, Inc., damages for breach of contract. Affirmed.

Arnold and Pattison Bros. made a series of contracts for the sale of corn during 1973. Arnold was to deliver the corn to the Pattison Bros.' terminal during March and April 1973, after navigation had commenced on the Mississippi River. Arnold failed to deliver the corn and the trial court awarded Pattison Bros. damages for the difference between the market and contract prices of the corn not delivered. Arnold appeals that award.

Appellate review of this action at law is for errors assigned. Iowa R. App. P. 4. The trial court's findings of fact are binding on appeal if supported by substantial evidence, Iowa R. App. P. 14(f)(1), and the evidence is viewed in a light most favorable to the judgment. Sand Seed Service, Inc. v. Bainbridge, 246 N.W.2d 911, 912 (Iowa 1976). Inquiry into whether the trial court applied improper rules of law, however, is not precluded. Id.

Here, the trial court findings of fact are supported by substantial evidence. Testimony and demonstrative evidence support the trial court finding that Pattison Bros. had sufficient storage capacity to accept shipments from Arnold and was willing to accept and pay for corn delivered. The finding Arnold failed to ship the grain also is supported by the evidence and is not contested on appeal.

Thus, the crux of this appeal rests on the legal conclusions of the trial court that Pattison Bros. did not anticipatorily breach the contract, the conditions precedent to Pattison Bros. performance were not met and therefore Arnold's breach was not excused. The trial court applied provisions of chapter 554, the Code 1977; most notably sections 554.2503, 554.2507(1), and 554.2208(1). These Uniform Commercial Code provisions clearly apply. See Sand Seed Service, Inc., 246 N.W.2d at 912. The trial court properly concluded that Pattison Bros. did not anticipatorily breach the contract as a matter of law since the facts indicated it had sufficient storage capacity to accept delivery from Arnold and was willing to do so. The trial court also correctly concluded Pattison Bros.' obligations under the contract had not accrued since the condition

precedent of tender had not occurred. See § 554.2507. While actual tender was, perhaps, unnecessary, Arnold's complete silence on delivery cannot be deemed a tender as contemplated in section 554.2503. See Sand Seed Service, Inc., 246 N.W.2d at 912.

Since Arnold's breach was not excused by any action of Pattison Bros., damages properly were awardable.

AFFIRMED.