IN THE COURT OF APPEALS OF IOWA

No. 2-170 / 91-1080

FILED
JUN 25 1992
CLERK SUPREME COURT

286

EXECUTIVE TRAVEL, INC.,

Appellant,

vs.

HY-VEE FOOD STORES, INC.,

Appellee.

Appeal from the Iowa District Court for Lucas County, James W. Brown, Judge.

Executive appeals the district court's judgment n.o.v. which eliminated the jury's award of consequential damages in this breach of contract action. **AFFIRMED.**

Arthur L. Buzzell, Davenport, for appellant.

Richard Davidson of Lane & Waterman, Davenport, for appellee.

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

OXBERGER, C.J.

Executive Travel, Inc. operates a travel agency. On July 29, 1988, Executive entered into three leases with Hy-Vee Food Stores, Inc. to lease space in Hy-Vee stores located in the Kansas City area. The leases were for a five-year term and provided that they were assignable only with Hy-Vee's consent.

On July 11, 1989, Executive advised Hy-Vee that it intended to terminate the three leases. Shortly thereafter, Executive ceased operating its travel agencies at the three locations. Hy-Vee refused to allow Executive to unilaterally terminate the lease and requested compliance with the lease terms and payment of delinquent rent. Hy-Vee also began to search for a successor tenant. Executive requested Hy-Vee interview Mike McReynolds as a successor tenant. Executive had intended to sell its interest in the leased premises to McReynolds. Hy-Vee refused to lease the locations to McReynolds, believing that he lacked experience and the ability to open travel agencies in all three locations at once. Hy-Vee officially terminated the lease on October 30, 1989, and leased the premises to a Carpentours, a Kansas City area travel agency.

Executive instituted its breach of contract action against Hy-Vee, alleging that Hy-Vee unreasonably refused to allow it to assign its interest in the three leases.

The matter was tried to a jury which found in favor of Executive by awarding $42,500 for Executive's lost profits from the sale of its interest to its proposed assignee, Mike McReynolds. The jury also awarded $141,145.45 in consequential damages resulting from Executive's breach of its computer lease agreement with the airlines' PARS Reservations Systems Use Agreement which Executive used for booking reservations, issuing tickets, and obtaining fare information, etc.

The district court sustained Hy-Vee's motion for judgment n.o.v. with respect to the $141,145.45 consequential damages award on the basis that Executive failed to present sufficient proof on that aspect of the damages. Executive appeals. Hy-Vee has dismissed its cross-appeal.

SCOPE OF REVIEW: We review for correction of errors at law. Iowa R. App. P. 4.

PROOF OF DAMAGES: The sole issue on appeal is whether the trial court erred in finding Executive Travel, Inc. had failed to sustain its burden of proof concerning the $141,145.45 in consequential damages it allegedly suffered.

A judgment notwithstanding the verdict must stand or fall on the grounds stated in the motion for directed verdict. On appeal, our review is limited to those grounds. When considering a motion for a judgment notwithstanding the verdict, the district court must view

the evidence in the light most favorable to the party against whom the motion is directed. Simply put, we ask, was there sufficient evidence to generate a jury question? Konicek v. Loomis Bros., Inc., 457 N.W.2d 614, 617 (Iowa 1990). We find the trial court in this case did not err.

The trial court found the evidence supporting the claim for damages resulting from Executive Travel's breach of a computer lease agreement with PARS was (1) the written PARS contract, (2) testimony of Executive Travel's President regarding the amount owed, and (3) a claim's letter admitted for the limited purpose of showing a claim had been made upon Executive Travel.

Included in the liquidated damages clause of the agreement was a formula for computing damages in the event of breach. In light of that formula, we find insufficient evidence in the record to substantiate the amount of damages claimed. For example, the calculations under the liquidated damages clause called for multiplying 80% of the total monthly charges. We find no evidence of what the total monthly charges were. We agree with the trial court, the evidence is insufficient to establish a reasonable basis for calculating the amount of damages. We affirm the trial court's decision to sustain the motion for judgment notwithstanding the verdict.

Each party will pay its own attorney's fees. Costs are taxed to the appellant.

AFFIRMED.

Donielson, J., concurs; Schlegel, J., dissents.

SCHLEGEL, J. (dissenting)

The majority determines the evidence is insufficient to establish a reasonable basis for calculating the amount of consequential damages. I respectfully dissent. On appeal we must determine whether there is sufficient evidence to generate a jury question while viewing the evidence in the light most favorable to Executive Travel, the party against whom the motion is directed. I find the evidence here was sufficient.

The written contract with PARS, testimony of Executive Travel's president about the amount owed, and a letter showing a claim had been made upon Executive Travel were all evidence supporting Executive Travel's claim for damages resulting from its breach of a computer lease agreement with PARS. The majority places importance on the lack of evidence surrounding the liquidated damages clause of Executive Travel's contract with PARS. I find, however, Executive Travel proved it was obligated under the contract for damages and that assignment of the contract to McReynolds would not be a problem. Hy-Vee presented no evidence to contradict this testimony.

I conclude, as did the jury, the evidence is totally sufficient to render a verdict. The determination of the weight to be given the evidence should be left to the jury. I would reinstate judgment for $141,145.45 plus interest to Executive Travel.