FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

CALVIN V. FRENCH and E. LAVON FRENCH,	)	
Plaintiff-Appellee,	)	FILED JUNE 4, 1986
vs.	)	6-81
	)	85-886
NORTH AMERICAN VAN LINES, INC.	)	
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Polk County (32091) - John N. Hughes, Judge.

Petitioner appeals an adverse judgment in an action for damages arising out of a breach of contract action. **AFFIRMED AS MODIFIED.**

Jack W Rogers of Rogers, Miller, Reaverly & Schuster of Des Moines, Iowa, for defendant-appellant.

David L. Phipps of Whitfield, Musgrave, Selvy, Kelly & Eddy of Des Moines, Iowa, for plaintiff-appellees.

Heard by Snell, P.J., Schlegel, and Sackett, JJ.

SCHLEGEL, P.J.

Defendant appeals an adverse judgment in an action for damages arising out of a breach of contract action. We modify and affirm the trial court.

Plaintiffs entered into a contract with defendant to ship their household goods from Des Moines to the Washington, D.C., area. Among the household items was a Baldwin Grand Piano that plaintiffs had purchased in 1966. The piano had been constructed in the nineteen-thirties, but had been rebuilt and was in excellent condition when it was dismantled by defendant's employees and shipped to Washington, D.C. But when the movers attempted to put the legs back on the piano, the back of the piano dropped and struck the floor. This caused a severe crack in the "V" portion on the base side of a cast iron plate inside the instrument.

This plate extends to the sides of the piano and is the frame to which the strings are attached. When all 220 strings of the piano have been tightened, a total "pull" of up to 40,000 pounds would be exerted upon the plate. The tightening of the strings to their proper tension would buckle the plate and consequently prevent the proper tuning of the piano.

Defendant admits liability for the damaged instrument. The main issue at trial was the correct nature of relief or the proper amount of damages plaintiffs are entitled to. The case was tried to the bench and judgment was entered for plaintiffs, awarding them $11,000 in replacement costs for the piano. The trial court also ordered the interest on the judgment to run from November 17, 1981, to the date the damage occurred. Defendant filed a motion to enlarge and amend findings, conclusions and judgment, but it was overruled.

We are presented with four issues on appeal. Defendant alleges the trial court erred in, (1) finding that satisfactory repairs could not be made on the

piano; (2) finding that plaintiffs were entitled to full replacement cost of the piano; (3) failing to amend its conclusions and judgment to provide defendant with possession and title of the damaged piano when replacement costs are paid; and (4) setting the interest on the judgment to commence on the date the piano was damaged rather than the date the petition was filed.

This is an action founded upon contractual obligations. Therefore, it is an action at law. Our review is for the correction of errors at law. Iowa R. App. P. 4. Findings of fact by the trial court are binding upon this court if they are supported by substantial evidence. Iowa R. App. P. 14(f)(1).

This court is not bound by the trial court's determinations of law; neither is it precluded from inquiry into whether the trial court applied erroneous rules of law which materially affected its decision. Blunt, Ellis & Loewi, Inc. v. Igram, 319 N.W.2d 189, 192 (Iowa 1982).

I. Repair of the Piano. Defendant initially asserts that the trial court erred in finding that the piano could not be satisfactorily repaired. Under the terms of defendant's sales brochure, the specific protection bought by plaintiffs allowed defendant either repair or replace a damaged item. The brochure language applicable to defendant's responsibilities was admitted into evidence at trial. This "replacement cost protection plan" stated:

> "(replacement cost protection) eliminates depreciation as concern and means no out-of-pocket expense, no loss due to inflation and claims can almost always be settled faster, since questions of depreciation don't come up."
>
> . . .
>
> "We'll repair the items or replace it with one of equal value. Or we'll give you the full amount it would cost up to replace the same item. . . of the same quality. . . at today's cost."

Defendant offered expert testimony that the plate could be welded and thus "satisfactorily repaired." However, even those experts concluded that the piano, thus repaired, would not be the same quality as it existed before

the damage. Indeed, neither of defendant's experts could state with any degree of certainty that the proposed repairs would even succeed. Plaintiff's expert, on the other hand, has extensive knowledge and experience in the piano business, concerning both the technical side of piano building and repair, and sales. He is also the only expert to examine personally the piano. He stated that any attempt to repair the plate would at worst, completely fail or at best substantially diminish the value of the piano to the extent that it would have no commercial value at all. Finally, plaintiff's expert testified that a piano of similar quality would cost around $11,000.

The trial court found that the recognized procedure to follow when a plate is cracked is to return the piano to the factory for the installation of a new plate. But, due to the age and model of this particular piano, a new plate would not be available at the factory.

Therefore, based upon the evidence received at trial, the trial court concluded that the piano could not be satisfactorily repaired, and that, as a consequence, defendant was ordered to replace the piano with another of similar quality, at a cost of $11,000. We are bound by this conclusion because it is readily apparent that this conclusion is supported by substantial evidence.

II. Replacement Cost of the Piano. Defendant alleges the trial court erred in failing to consider the lower estimates of its experts concerning the cost of a piano of like kind and quality. As we noted in the previous issue, the trial court was persuaded by plaintiff's expert not only as to the impracticality of repairing the piano but also as to the quality of the piano prior to its damage. Based upon that evidence, the trial court concluded that to replace satisfactorily this specific piano, it would cost $11,000. We are bound, not only the the trial court's determination that this piano could not be satisfactorily repaired, but also by the adjoining determination that the piano's quality and value amounted

to $11,000. We are bound, as we said before, because there is substantial evidence to support such a determination.

Defendant argues that the proper legal principles applicable to this issue are that plaintiffs should receive, "the fair and reasonable cost of replacement or repair, but not to exceed the value of the property immediately prior to the loss or damage." State v. Urbanek, 177 N.W.2d 14, 16-17 (Iowa 1970). Plaintiffs, however, counter this legal argument with the assertion that the correct legal principles applicable here are found in New Hampshire Insurance Company v. Christy, 200 N.W.2d 834, 844 (Iowa 1972). There the supreme court stated:

> The fundamental principle upon which the Cohen opinion is based appears to be that the rule for the measure of damages recoverable for breach of contract is such amount as may reasonably be considered as arising naturally from the breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of the parties, at the time they made the contract, as the probable result of the breach of it.

The trial court's conclusions do not conflict with either of the above principles of law. Since the value of the piano before it was damaged was estimated at approximately $11,000, we cannot see how the judgment of that amount violates the legal rules espoused by defendant. Moreover, a fair and reasonable replacement of this piano was obviously contemplated by the parties when they entered into the contract. This is precisely what the trial court provided for in its findings of fact and conclusions of law. Whether we apply defendant's legal rules, or plaintiffs, the crucial determination is the value of the piano before it was damaged. And, as we have previously noted, that factual determination by the trial court is affirmed by this court. Therefore, we can find no error by the trial court on this issue.

III. Salvage Value of Damaged Piano. Defendant argues that the trial court erred in not amending its conclusions and judgment to allow it possession

and title of the damaged piano. Citing the same law allegedly applicable to the prior issue, defendant maintains that consideration should have been given to the salvage value of the damaged piano in determining the final damages.

We are not persuaded by defendant's argument. In the previous issue, it was not necessary to decide which law was applicable. However, on this issue it is necessary to keep in mind that this is an action arising from a contract. Specifically, this is an action concerning damages arising from a breach of contract. Defendant's legal position, however, is taken from a case involving negligence.

Consequently, we look to the language of the brochure to determine what damages the parties "reasonably considered to have arisen naturally from the breach of the contract, ..." New Hampshire Insurance, at 844. The brochure stated that defendant would "repair the item or replace it with one of equal value." Or, the brochure promised that defendant would give the plaintiff "the full amount it would cost us to replace the same item. . . of the same quality. . . at today's cost."

From this language it is clear that both parties could reasonably contemplate that, should an item be damaged beyond repair, defendant would replace the item, of the same quality at today's cost. The trial court found therefore that plaintiffs were entitled to recover the full replacement cost of the piano. We need not add to this conclusion. It is correct and we affirm the judgment.

IV. Interest. In response to plaintiffs' general request for interest, the trial court awarded interest in addition to the $11,000 judgment, commencing from November 17, 1981, the date the damage occurred and was complete. Defendant asked the trial court to provide interest only from the date the judgment was entered, but the trial court refused.

On appeal, plaintiffs concede that the trial court incorrectly determined the amount of interest in the judgment. After reviewing the relevant authorities, we conclude the trial court did, in fact, err. We therefore modify the interest award to allow for interest at five percent from the date of the damage, November 17, 1981, to the date the petition was filed on December 22, 1983. Thereafter, interest shall accrue at the rate of ten percent until the date of payment. See Louden v. State Farm Mutual Auto Insurance Co., 360 N.W. 2d, 575, 584 (Iowa App. 1984); Muchmore Equipment, Inc. v. Grover, 334 N.W. 2d 605, (Iowa 1983); Iowa Code Sections 535.2(1)(a), and 535.3.

We have considered all the issues raised on appeal and, except for our modification of the interest award, affirm the trial court on all the allegations of error.

AFFIRMED AS MODIFIED.

Snell, J., concurs; and Sackett, J., dissents.

SACKETT, J. (dissenting)

The defendant should be entitled to credit for the salvage of the piano or the old piano. Any other result is inequitable and not in accord with the recognized principles of determining damages.

Furthermore, I would modify the interest to accrue at 10 percent from the date of the filing of the petition, December 22, 1983. I would award no additional interest.