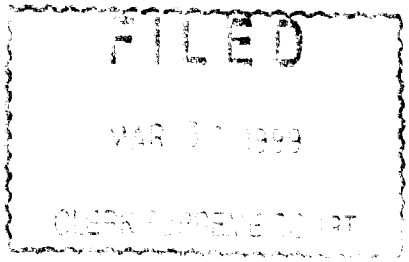
IN THE COURT OF APPEALS OF IOWA

No. 9-024 / 98-0409
Filed March 31, 1999



FARMERS COOPERATIVE ELEVATOR CO.,
Plaintiff-Appellant,

vs.

RONALD WARSCHKOW,
Defendant-Appellee.

Appeal from the Iowa District Court for Hardin County, Carl E. Peterson, Judge.

Farmers Cooperative appeals from an adverse ruling in a breach of contract action. **AFFIRMED.**

Lynn J. Wiese of Barker, McNeal, Wiese & Holt, Iowa Falls, for appellant.

William R. King and Jeanie Kunkle Vaudt of Davis, Brown, Koehn, Shors & Roberts, P.C., Des Moines, for appellee.

Heard by Sackett, P.J., and Streit and Mahan, JJ.

STREIT, J.

Farmers Cooperative Elevator Company appeals from dismissal of their claim for damages due to the appellee's breach of a corn futures contract. Because we find the price to be paid upon delivery ambiguous under the contract, and Farmers Coop presented no evidence of the market price of corn on the date of breach or evidence from which the market price could be reasonably ascertained, Farmers Coop has failed to prove their damage claim. The dismissal of the trial court is affirmed.

I. Background & Facts.

On March 27, 1995, and May 25, 1995, Ronald Warschkow and a representative of Farmers Cooperative Elevator Company agreed Warschkow would sell the Coop corn at a later date. Warschkow believed each contract was for the sale of 1500 bushels of corn and the elevator believed each contract was for the sale of 15,000 bushels. The misunderstanding was discovered in December of 1995 when Warschkow sought payment for the delivery of 3000 bushels of corn. The parties eventually resolved their dispute by entering into a new contract written by Farmers Cooperative.

The new contract provided Warschkow would deliver 25,000 bushels of corn for $2.33 by July 31, 1996. A hand-written amendment to the contract stated:

> If settlement has not occurred by 7-31-96, adjustment will be made to roll contract into fall delivery. Those adjustments depend upon the market at the time.

The meaning of the amendment is disputed by the parties. Farmers Coop argues the contract obligated Warschow to a delivery date of July 1996, and if he could not deliver, the delivery would roll over to the fall of 1996 and the price would be adjusted according to July corn prices. Warschkow argues both parties knew he would not fufill the contract in July as provided in the contract, and the amendment provided him the "option" of selling Farmers Coop 25,000 bushels at $2.33 per bushel by fall of 1996.

Both parties signed the new agreement. Warschkow did not deliver any corn to Farmers Coop in 1996. Farmers Coop filed suit alleging breach of contract and the case was tried to the court. After trial, the court found Warschkow breached the contract when he failed to deliver 25,000 bushels of corn to the Coop by November 30, 1996, but, because Farmers Coop had not proved the amount of its damages, dismissed the claim. Farmers Coop appeals.

II. Standard of Review.

An action for a money judgment based on breach of contract is an action at law. *See Quigley v. Wilson*, 474 N.W.2d 277, 279 (Iowa App.1991). Our review, accordingly, is for correction of errors at law. Iowa R. App. P. 4; *Advance Elevator Co., Inc. v. Four State Supply Co.*, 572 N.W.2d 186, 188 (Iowa App. 1997).

III. Interpretation of Ambiguous Contract Provision.

The district court implicitly found the terms of the final contract between the parties clear and unambiguous. When a contract is not ambiguous, it will be enforced

as written. *Spilman v. Board of Directors*, 253 N.W.2d 593, 596 (Iowa 1977). Our review of the contract, however, reveals an ambiguity as to price. For this reason, we have used the rules of contract interpretation to decide this case.

The final contract between the parties included the following hand-written amendment: "If settlement has not occurred by 7-31-96, adjustment will be made to roll contract into fall delivery. Those adjustments depend on the market at the time." Ambiguity exists when, after application of pertinent rules of interpretation to the face of the instrument, a genuine uncertainty exists concerning which of two reasonable constructions is proper. *Berryhill*, 428 N.W.2d at 654; *Gendler Stone Prods. Co. v. Laub*, 179 N.W.2d 628, 631 (Iowa 1970). The test for ambiguity is an objective one: "Is the language fairly susceptible to two interpretations?" *Central Bearings Co. v. Wolverine Ins. Co.*, 179 N.W.2d 443, 445 (Iowa 1970). Under application of these rules, the amendment is ambiguous.

Farmers Coop argues the provision means that if Warschkow did not deliver the corn by July of 1996, the price would be adjusted and calculated with the July of 1996 market price for corn. Under this interpretation, Warschkow would be in breach of the contract in July of 1996. Farmers Coop argues it is standard within the industry to set the price of a rolled over crop by the market price at the time of the forward roll. This calculation would result in Warschkow's corn having a price of ninety-two cents per bushel under the contract.

Another interpretation, used by the district court,[1] is this provision means if Warschkow was unable to deliver the corn by July of 1996, he was obligated to fall corn delivery. The price for fall delivery would be determined by the market price at the time of delivery, or, if Warschkow could not make fall delivery, Farmers Coop's damages would be determined by the market price at the time of the breach.

Ambiguities in a contract are strictly construed against the drafter. *Dickson v. Hubbell Realty Co.*, 567 N.W.2d 427, 430 (Iowa 1997); *Village Supply Co. v. Iowa Fund, Inc.*, 312 N.W.2d 551, 555 (Iowa 1981); *Fashion Fabrics of Iowa, Inc. v. Retail Investors Corp.*, 266 N.W.2d 22, 27 (Iowa 1978). Further, the interpretation which gives a reasonable, lawful, and effective meaning to the contract provision will be chosen. *See American Soil Processing, Inc. v. Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd.*, 1998 WL 820025 *10 (Iowa 1998). We find the trial court's interpretation of the meaning of this amendment reasonable and in conformance with the provisions of the Uniform Commercial Code. We choose the trial court's meaning rather than that advanced by the drafter, Farmers Coop.

IV. Proof of Damages Under the UCC § 554.2711(1) & § .554.2713(1).

It is undisputed Warschkow breached the contract. A buyer's usual remedy for nondelivery is set forth in § 554.2711(1) of the Uniform Commercial Code, which provides part:

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[1] Warschkow's understanding that this contract provision gave him an option to sell corn is an unreasonable interpretation of this language.

> Where the seller fails to make delivery . . . the buyer may cancel and . . . may . . . recover damages for nondelivery as provided in this Article . . . .
>
> Under s 554.2713(1), a buyer's usual measure of damages for nondelivery is:
>
> the difference between the market price *at the time when the buyer learned of the breach* and the contract price together with any incidental and consequential damages provided in this Article (section 554.2715), but less expenses saved in consequence of the seller's breach.

Iowa Code § 554.2713(1) (1997)(emphasis added). *See also Cargill, Inc. v. Fickbohm*, 252 N.W.2d 739, 742 (Iowa 1977).

Because we have chosen the trial court's interpretation of the amendment, Warschkow breached the contract on November 30, 1996, the last day he could have delivered the corn for fall delivery. Under the Uniform Commercial Code, the court may imply a price if there is evidence of price and the court has a reasonably certain basis for doing so. *See* Iowa Code § 554.2204(3)(1997). Farmers Coop did not present any evidence of the market price of new corn in November of 1996, when the contract was breached. The parties acknowledged the market was volatile that fall. The court could not ascertain a reasonably certain market price at the time of Warschkow's breach under this record. For this reason, the court did not err in refusing to imply a price at which to calculate Farmers Coop's damages. Due to the lack of any evidence regarding market price in November of 1996, Farmers Coop did not prove their damages. The district court did not err in dismissing their claim.

AFFIRMED.