IN THE COURT OF APPEALS OF IOWA

No. 3-907 / 13-0125
Filed October 23, 2013

SMITH MACHINERY CO., INC.,
Plaintiff-Appellee,

vs.

C & B MANUFACTURING, INC.
d/b/a HITCHDOC,
Defendant-Appellant.

Appeal from the Iowa District Court for Boone County, Steven J. Oeth, Judge.

Hitchdoc appeals from the ruling finding it breached its contract with Smith Machinery Co. **AFFIRMED.**

Kenneth R. Munro of Munro Law Office, P.C., Urbandale, for appellant.

Kirke C. Quinn and Jay W. Halbur of the Law Offices of Kirke C. Quinn, Boone, for appellee.

Heard by Vogel, P.J., Mullins, J., and Sackett, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

SACKETT, S.J.

C & B Manufacturing, Inc., d/b/a Hitchdoc (Hitchdoc), appeals from the ruling finding it breached its contract with Smith Machinery Co., Inc. (Smith Machinery) and awarding Smith Machinery $62,500 in damages, plus interest. It contends Smith Machinery breached the contract by providing a substandard product and failing to provide installation drawings for approval. Hitchdoc also contends the court erred in misapplying the parol-evidence rule.

We find substantial evidence supports the district court's finding Hitchdoc, not Smith Machinery, breached the contract. The parol-evidence rule does not apply because the evidence complained of concerns negotiations the parties engaged in after the contract was signed. Because the trial court's ruling is supported by the facts and the law, we affirm.

I. Background Facts and Proceedings.

Hitchdoc is a manufacturing company located in Jackson, Minnesota. Smith Machinery, located in Boone, sells and installs new and used manufacturing equipment. On a recommendation, Hitchdoc contacted Smith Machinery regarding the design and installation of a paint line in its manufacturing plant.

On October 6, 2010, the parties entered into a contract whereby Smith Machinery was to provide and install a paint line system for Hitchdoc at a cost of $298,950. The terms of the contract call for Hitchdoc to pay forty percent of the contract price at the time the system was ordered, thirty percent after approving the installation drawings, twenty-five percent when the parts shipped, and five

percent upon completion. Hitchdoc paid $119,580 at the time of purchase, as required.

Brad Mohns, President of Hitchdoc alleges Smith Machinery promised it would have the power and free conveyer system within two to three weeks of entering the contact and that the paint system would be operational by January 2011. James Smith, an officer at Smith Machinery, recalls he informed Mohns that even if the parties had an approved layout at the time the contract was entered into, the earliest the paint line could be completed would be mid-January 2011. The contract does not specify a completion date, but states parts will be shipped twelve weeks after drawing approval.

On December 29, 2010, Mohns left a message stating he was unhappy with the lack of progress being made on the contract. Mohns expressed his dissatisfaction with his own employees as well as with Smith Machinery's performance. The parties met on January 5, 2011, and discussed various changes to the paint line, including changing the line to accommodate larger parts.

On January 12, 2011, Mohns emailed Smith, stating: "To say I am disappointed in SMC is putting it very mildly. After a lot of thought I have decided not to continue to put any more faith in your company." Mohns demanded the down payment be returned. In his reply, Smith noted the paint system layout had not yet been approved and there had been "several changes" in the layout. Smith told Mohns he did not want Mohns to pay for anything until he was "very

satisfied." Smith Machinery stopped work on the project while Smith and Mohns continued to exchange correspondence.

The project resumed following a meeting in mid-February 2011. On February 22, 2011, Smith Machinery employee Steve Wilcoxon emailed Mohns the layout for the conveyor path and equipment, asking for any feedback or questions. Hitchdoc continued to make modifications to the design and Smith Machinery continued to send it drawings reflecting those changes. Hitchdoc never gave approval of any drawing Smith Machinery provided. Despite the lack of approval, parts were delivered to Hitchdoc in mid-March. At the time the parts were delivered, Hitchdoc again asked that the design be modified to accommodate larger parts. Smith Machinery began to install the system while working on design modifications to meet Hitchdoc's specifications.

On May 18, 2011, Mohns emailed Smith, once more expressing dissatisfaction with the progress being made and threatening legal action. Smith responded that beginning the following week, he would send six workers to the plant to install the system until the project was completed. In an email dated May 23, 2011, Mohns informed Smith he had given copies of their correspondence and the contract to Hitchdoc's attorneys, complaining that it appeared the system Smith Machinery was installing was "a piecemeal of junk."

On June 13, 2011, with approximately four to five weeks left to finish the project, Hitchdoc forced Smith Machinery off its property. Smith admits that at the time Smith Machinery was forced to stop work on the project, some of the

welding was not up to standards. However, he claims that a supervisor would have corrected the welds at final inspection of the project.

On June 15, 2011, Smith Machinery filed a petition alleging Hitchdoc breached the contract by refusing to allow it to complete the project and refusing to pay. It sought to recover $131,000—the amount that remained due under the contract—plus interest and attorney fees.

On August 2, 2011, Hitchdoc answered, denying the allegations in Smith Machinery's petition. Hitchdoc counterclaimed for breach of contract and fraud. Under its breach of contract claim, Hitchdoc alleged Smith Machinery "never provided acceptable drawings for the contract, was dilatory in its performance of the contract, and was in breach of the implied warranty of merchantability, implied warranty of fitness for a particular purpose and was in breach of the implied warranty of workmanship." It sought return of its down payment, damages for losses and costs incurred as a result of the breach, the cost of removing the equipment Smith Machinery installed, attorney fees, and costs of the action. With regard to the fraud claim, Hitchdoc alleged Smith Machinery promised to have a working system in place by a specific date and that it relied on that statement, which was intended to mislead. Hitchdoc requested an award of compensatory and punitive damages, attorney fees, interest, and costs.

The parties' claims were tried to the bench in late October and early November of 2012. Each side presented expert witness testimony to support its claim regarding the quality of construction of the paint line system; Hitchdoc's expert opined the system was inadequately designed and poorly installed, while

Smith Machinery's expert was not concerned about the system's integrity and opined that any complaints could have been addressed if Smith Machinery had been permitted to finish its work.

The district court filed its order on December 21, 2012. It entered judgment in favor of Smith Machinery on its breach of contract claim and dismissed Hitchdoc's breach-of-contract and fraud claims. The court awarded Smith machinery $62,500 in damages plus interest.

II. Standard of Review.

Because this action was tried as a law action, our review is for correction of errors at law. *See* Iowa R. App. P. 6.907. The trial court's findings of fact have the effect of a special verdict and are binding upon us if supported by substantial evidence. Iowa Rs. App. P. 6.904(3)(a), 6.907. Evidence is substantial where a reasonable mind would accept it as adequate to reach a conclusion. *Land O'Lakes, Inc. v. Hanig*, 610 N.W.2d 518, 522 (Iowa 2000). In determining whether substantial evidence supports the trial court's judgment, we view the evidence in the light most favorable to judgment. *Id.*

III. Analysis.

On appeal, Hitchdoc contends the trial court erred in finding it failed to prove its breach-of-contract claims. It also contends the court erred in its application of the parol evidence rule. Finally Hitchdoc argues the district court erred in finding it is not entitled to damages for any breach by Smith Machinery.

A. Breach of contract.

A breach of contract occurs where a party fails, without legal excuse, to perform any promise that forms a whole or a part of a contract. *Magnusson Agency v. Pub. Entity Nat'l Co.-Midwest*, 560 N.W.2d 20, 27 (Iowa 1997). Hitchdoc alleges Smith Machinery breached the contract in two respects: by failing to perform its work in a reasonably good and workmanlike manner and by failing to timely provide drawings of the paint line layout. We address these arguments in turn.

The implied warranty of workmanlike construction was implemented to protect an innocent home buyer by holding the experienced builder accountable for the quality of construction. *Speight v. Walters Dev. Co., Ltd.*, 744 N.W.2d 108, 110 (Iowa 2008). It requires a building be constructed "in a reasonably good and workmanlike manner and . . . be reasonably fit for the intended purpose." *Id.* at 111.

In *Semler v. Knowling*, 325 N.W.2d 395, 397 (Iowa 1982), our supreme court held the implied warranty of workmanlike construction did not apply to the construction of a sewer line, which—although essential to its completion—was not part of the construction of the building. The court found instead that an implied warranty of fitness for a particular purpose existed in the contract to install the sewer. *Semler*, 325 N.W.2d at 397.

> "Where a contractor agrees to build a structure to be used for a particular purpose, there is an implied agreement on his part that the structure when completed will be serviceable for the purpose intended. . . .
>
> Where the contract contains a guarantee or warranty, express or implied, that the contractor's work will be sufficient for a

> particular purpose or to accomplish a certain result, unless waived by the owner, the risk of accomplishing such purpose or result is on the contractor, and there is no substantial performance unless the work is sufficient for such purpose or accomplishes such result."

Id. (quoting 17A C.J.S., *Contracts*, § 494(2)(a), at 715-16 (1963)). Although the implied warranty of workmanlike construction does not apply here to the construction of a paint line, the implied warranty of fitness for a particular purpose does. Hitchdoc's breach of contract claim was also pleaded under this theory. We therefore consider whether Smith Machinery breached the implied warrant of fitness for a particular purpose.

Two experts testified at trial to address the question of whether Smith Machinery's work on the paint line system was sufficient. Hitchdoc's expert identified a number of flaws in the paint line system and concluded it was poorly designed and lacked structural integrity. Smith Machinery's expert testified that while some of the welds were of poor quality, the project was in the "rough stage" of installation and the problems Hitchdoc's expert identified would be addressed in other stages of the installation; he opined that everything appeared to be up to industry standards at that stage of the installation.

The trial court found Hitchdoc's claims of poor workmanship were difficult to evaluate because the project was not completed, and concluded that to the extent there were flaws in the system or with the product, they would have been addressed. The court found Hitchdoc's expert's testimony was offset by Smith Machinery's expert's testimony that the work was adequate given the stage of the process. It also considered the fact that Smith Machinery has adequately

installed paint line systems in other manufacturing plants in concluding Smith Machinery's workmanship was adequate.

We find substantial evidence supports the trial court's findings. The experts in this case gave two differing opinions as to the quality of the work being performed. However, the paint line system was not completed; it was in the rough stages of installation when Hitchdoc removed Smith Machinery's employees from its premises. Hitchdoc's expert admitted that some of the perceived problems with the system, like bad welds, could be corrected. Smith Machinery's expert testified it was industry practice that if equipment failed to work upon completion of the installation, it would be replaced with operating parts. However, Hitchdoc did not allow Smith Machinery the opportunity to correct any defects, either before the system was completed or after. Given Smith Machinery's expert's testimony that the work was adequate at that stage of completion, and viewing the evidence in a light most favorable to the verdict, we find Hitchdoc has failed to prove Smith Machinery breached the implied warranty of fitness for a particular purpose.

In its counterclaim for breach of contract, Hitchdoc also argues Smith Machinery never provided acceptable drawings and was dilatory in its performance. The district court addressed the timeliness claim, finding that Smith Machinery's failure to perform in a timely manner did not justify Hitchdoc's termination of the contract. In its analysis, the court noted the contract does not specify a completion date, but indicates the product will be shipped twelve weeks after the drawings are approved, with installation taking another five to six weeks.

The court further noted that although Hitchdoc never approved a drawing, the product was shipped and Smith Machinery began installation in mid-March 2011. While installation was not complete within six weeks, the court found Hitchdoc was responsible in part for the delay because it changed the specifications after the installation had begun.

Although the court briefly mentions that Hitchdoc never approved a drawing, the court does not address any breach-of-contract theory relating to Smith Machinery's failure to wait for approval before beginning the installation. Hitchdoc filed a motion to reconsider pursuant to Iowa Rule of Civil Procedure 1.904(2), asking the court to reconsider its ruling on Smith Machinery's failure to perform the contract in a timely manner; it does not make reference to Smith Machinery's failure to provide a drawing or obtain approval of the drawing before installing the paint line system.

On appeal, Hitchdoc argues Smith Machinery's failure to provide drawings was a breach of contract. It also argues it could not be found to have breached the contract because it did not give approval of any of the drawings, which triggers the next payment under the contract. Assuming error was preserved on the question of whether Smith Machinery breached the contact by failing to obtain approval of the drawing before starting installation, we find the evidence supports the district court's ruling.

Smith Machinery submitted a number of drawings to Hitchdoc asking for input. It is undisputed that Hitchdoc did not approve any of the drawings it provided. However, the evidence shows that Hitchdoc continued to make

changes to the system design from the time the contract was entered in October 2010 through the start of installation in March 2011. As Smith testified:

> That was I believe in late March—I don't know exact dates—that myself, Steve, our crew, all our trucks and equipment came up that day. Previous to that I had been telling Steve we need to get signed approval drawings. He said that we were going to go that day as the crew went in and they were going to sign the drawings that Ted had sent him the day before.
>
> We went into that meeting, talked about it, we were unloading all the equipment and the paint system as we trucked it up. We sat down with Brad, Ted, Steve and myself and went over the drawing. That's when Brad and Ted said we need to make this do a 27-foot part, the system was designed for 17-foot part.
>
> That's the day that we came up. They were supposed to sign that drawing at 17 feet and in that meeting they chose, hey, we need to make this longer, we've got a bigger part, can we do that? Steve says, yeah, I can rearrange it, change some of the widths and the length of the paint system.
>
> So, we continued on working, our guys started unloading it and Steve and Ted worked out the drawing that we were building the system to.

Steve Wilcoxon similarly testified that he reviewed a drawing with Hitchdoc employee Todd Martin, who seemed satisfied with it. Wilcoxon attended a meeting at Hitchdoc's facility in March 2011 where Hitchdoc again changed the specifications to accommodate larger equipment. During the meeting, the paint-line-system parts were being unloaded into the facility. It was discussed that Smith Machinery would continue with the installation. Smith Machinery's employees continued to modify the system design to accommodate the larger equipment as Hitchdoc requested. Substantial evidence supports the trial court's finding that Smith Machinery's delay in providing a drawing to Hitchdoc for approval was, in part, caused by Hitchdoc's continuous modifications of the system specifications.

Furthermore, no breach occurred when Smith Machinery began installation before drawing approval. Hitchdoc had expressed its displeasure with the lack of progress on the system as early as December 2010. On more than one occasion, Mohns stated the importance of having a paint line system operational as soon as possible. It appears Smith Machinery attempted to accommodate this desire by moving forward with the installation despite the lack of drawing approval. Hitchdoc recognized that Smith Machinery was going ahead with the installation and therefore consented to the installation even though no drawing had yet been approved.

Because substantial evidence supports the district court's findings, we affirm.

B. Parol evidence.

Hitchdoc argues the trial court violated the parol-evidence rule when it found Hitchdoc made design changes that caused delay in Smith Machinery performing the contract

When an agreement is fully integrated, the parol-evidence rule forbids the introduction of extrinsic evidence solely to vary, add to, or subtract from the agreement. *C & J Vantage Leasing Co. v. Wolfe*, 795 N.W.2d 65, 85 (Iowa 2011). An agreement is fully integrated when the parties adopt a writing or writings as the final and complete expression of their agreement. *Id.* There is no dispute that the contract between Hitchdoc and Smith Machinery was fully integrated. Accordingly, extrinsic evidence may not be introduced to change the terms of the contract.

The parol-evidence rule is not, however, a complete bar to the use of extrinsic evidence; there are exceptions. *See id*. For instance, parol evidence may be introduced "when it sheds light on the situation of the parties, antecedent negotiations, the attendant circumstances, and the objects they were striving to attain." *Kroblin v. RDR Motels, Inc.*, 347 N.W.2d 430, 433 (Iowa 1984). Furthermore, the parole-evidence rule only applies to negotiations or agreements made before or at the same time as the written contract. *Garland v. Branstad*, 648 N.W.2d 65, 69 (Iowa 2002). Our supreme court has expressly held that extrinsic evidence may be admitted to establish negotiations between the parties after the contract has been entered into and modifications to the written contract. *Id.* at 71.

Here, the evidence of Hitchdoc's modification of the paint line specifications was admissible. Not only was it entered into after the contract was made, it was not introduced to vary the terms of the contract, but rather to explain Smith Machinery's delay in performance. We find no error.

C. Damages.

Because we affirm the trial court's ruling dismissing Hitchdoc's breach-of-contract claim, we do not address Hitchdoc's final argument regarding whether it is entitled to damages for breach of contract.

AFFIRMED.