IN THE COURT OF APPEALS OF IOWA

No. 7-956 / 07-0536
Filed February 13, 2008

COURTNEY MUNSON,
Plaintiff-Appellant,

vs.

BRUECK CONSTRUCTION,
Defendant-Appellee.

Appeal from the Iowa District Court for Des Moines County, R. David Fahey, Jr., Judge.

The plaintiff appeals from the order that granted the defendant's motion for directed verdict and overruled his motion for new trial on his claim for breach of contract and breach of implied warranty. **AFFIRMED.**

Steven Ort of Bell, Ort & Liechty, New London, for appellant.

Patrick Woodward of McDonald, Woodward & Ivers, P.C., for appellee.

Considered by Vogel, P.J., and Mahan and Zimmer, JJ.

VOGEL, P.J.

The plaintiff appeals from the order that granted the defendant's motion for directed verdict on his claim for breach of contract and breach of implied warranty and overruled his motion for new trial. We affirm.

Background Facts and Proceedings.

In the summer of 1999, Courtney Munson approached Brueck Construction with a set of architect-drawn home plans, and asked Brueck to bid on certain aspects of the construction. Brueck agreed to the proposal and assumed, among other duties, the obligation to oversee or subcontract the installation of plumbing, heating, and insulation. As originally planned, the walk-out lower level of the home contained work and storage space; however, Munson changed the plan and directed that those spaces be finished as an exercise room and a home theater.

Among other portions of the construction, Munson himself contracted for the excavation, foundation, and concrete floors. When these were finished in November of 1999, Brueck began his work. Munson's contract with Brueck specified that there were to be four "frost proof hose faucets (outside)"; however, the locations of the spigots were to be determined in a "walk through" with the owner. Brueck had subcontracted with McCann Mechanical to do the plumbing. During a walk-through with plumber Don Riley, Munson directed that a spigot be placed in the wall in the southeast corner of the exercise room.

Riley, concerned about the placement of that spigot in an outside wall because of the increased risk of freezing, expressed those concerns to Brueck's onsite manager, Steve Brueck, and McCann Mechanical's owner, James

McCann. It was the opinion of both that Munson understood the concern, and that the spigot should nonetheless be placed where Munson wished. Therefore, at Munson's direction, Riley placed the outside faucet on the back, lower level of the house.

The contract further provided that Brueck would insulate the home. Although Brueck intended to use fiberglass batt insulation, Munson insisted that Brueck use a process called spray-in cellulose insulation. Brueck's owner, Robert Brueck, concerned about possible mold, voiced concerns about the amount of water used in the process. Brueck had never used this process before, but acceded to Munson's wishes and subcontracted the work to S&S Spray-In Insulation.

On November 2, 2000, after construction was complete, the home was turned over to Munson. At that time Munson occupied the home, spending nine months of the year there and three months of the year in Florida. In 2003, Munson decided to spend only two to three months of the year in Iowa and the remainder in Florida. He occupied the house for several weeks in December 2003, but returned to Florida just after New Year's Day, 2004. During his absence, Munson's employee, Perry Piper, was to check on the house on a regular basis. On February 9, 2004, Piper entered the home and discovered the lower level was flooded. He estimated there was between seven and eight inches of water standing on the floor. The flooding occurred when the water pipe located in the exterior wall cracked approximately eighteen inches above its connection to the outside faucet. The cracked pipe was a result of freezing.

On July 19, 2005, Munson filed an action against Brueck alleging breach of contract, breach of implied warranty, and negligence[1]. Following the close of plaintiff's evidence at trial, Brueck moved for a directed verdict. In an on-the-record ruling, the court granted the motion and dismissed Munson's suit in its entirety. The court later overruled Munson's motion for new trial, which was limited to the implied warranty theory. Munson appeals from these rulings.

Standard of Review.

We review the district court's rulings on motions for directed verdict for the correction of errors at law. *Yates v. Iowa West Racing Ass'n*, 721 N.W.2d 762, 768 (Iowa 2006). In reviewing such rulings, we view the evidence in the light most favorable to the nonmoving party to determine whether the evidence generated a fact question. *Id.* "Where substantial evidence does not exist to support each element of a plaintiff's claim, the court may sustain the motion." *Dettmann v. Kruckenberg*, 613 N.W.2d 238, 251 (Iowa 2000). Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. *Falczynski v. Amoco Oil Co.*, 533 N.W.2d 226, 230 (Iowa 1995). If reasonable minds could differ on resolution of the issue, then it should be submitted to the jury. *Top of Iowa Coop. v. Sime Farms, Inc.*, 608 N.W.2d 454, 466 (Iowa 2000).

Our review of a district court's ruling on a motion for new trial depends on the grounds raised in the motion. *Clinton Physical Therapy Servs., P.C. v. John Deere Health Care, Inc.*, 714 N.W.2d 603, 609 (Iowa 2006). Because the sufficiency of the evidence presents a legal question, we review the trial court's

[1] Munson dismissed the negligence claim prior to trial.

ruling on this ground for the correction of errors of law. *Estate of Hagedorn ex rel. Hagedorn v. Peterson*, 690 N.W.2d 84, 87 (Iowa 2004).

Implied Warranty.

In directing the verdict on Munson's implied warranty for a particular purpose claim, the court found that no evidence had been presented as to the causation of the frozen pipe. It recognized that no expert testimony was presented that

> the plumbing should not have been at that location or that it was incorrectly installed, that the insulation was insufficient, or that the insulation was incorrectly installed. Similarly, there is no evidence in this record that the insulation was insufficient, either in its design or it was incorrectly installed. There is likewise, no evidence in this record that some combination of those two things caused this failure. That is the proper subject of expert testimony.

Finally, the court noted that the only evidence in the record was that the plumbing and installation work was undertaken in a good and workmanlike manner.

In construction contracts it is implied that the building will be erected in a reasonably good and workmanlike manner and will be reasonably fit for the intended purpose. *Busker v. Sokolowski*, 203 N.W.2d 301, 303 (Iowa 1972).

> 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.

Semler v. Knowling, 325 N.W.2d 395, 398-99 (Iowa 1982) (quoting 17A C.J.S., *Contracts*, § 494(2)(a), at 715-16 (1963)).

The supreme court in *Semler* noted the following elements for recovery must be present under the theory of implied warranty of fitness for a particular purpose:

> (1) The seller must have reason to know the consumer's particular purpose. To give rise to an implied warranty the contract must respond to a particular need of the consumer, not just to general purposes.
> (2) The installation contractor must have reason to know that the consumer is relying on his skill or judgment to furnish appropriate installation services.
> (3) The consumer must, in fact, rely upon the installer's skill or judgment.

Semler, 325 N.W.2d at 399. Whether such a warranty arises is usually a question of fact determined from the circumstances of the parties' negotiations. *Id.*

First, we conclude no substantial evidence was introduced at trial that would support the first element of this claim—that Brueck had in any way responded to a "particular need" of Munson. In that regard, there is no evidence that the water pipes were intended by Munson to meet a particular purpose other than to move water from one point to the next. Providing and installing a water pipe is merely a general purpose under the greater building contract. Nothing sets this purpose aside from any other such pipe installation. Its general purpose is distinguishable from that discussed in *Semler.* There, the contractor was "hired for a single, particular purpose: to install a working sewer system by a means which did not necessitate cutting the street in order to hook up Semler's building with the City's main sewer line." *Semler*, 325 N.W.2d 397. Conversely, here, Brueck was hired for the entirely general purpose of overseeing or subcontracting the installation of the home's plumbing, heating, and insulation.

Furthermore, there is simply no evidence, other than speculation, in the record as to what caused the pipe to freeze and eventually burst. No expert evidence was introduced by the plaintiff to substantiate a deficiency in the plumbing, insulation, or construction. No opinions were rendered that the plumbing or insulation was not installed in a good and workmanlike fashion. Rather, the undisputed evidence established that pipes can freeze and crack for any number of reasons, including some that are in the sole control of the home owner, namely the failure to maintain adequate heat in the structure during the winter months and the placement of connectors or hoses on the outside spigot. None of the reasons offered for the pipe freezing were excluded and no causation was opined by any of the witnesses that was not more speculation than fact. Accordingly, due to this lack of evidence in the record, we conclude the court properly granted a directed verdict in favor of Brueck and overruled the motion for new trial on Munson's implied warranty claim.

Breach of Contract.

Munson alleged in his pleadings that Brueck failed to perform its contract in a good and workmanlike manner and that the pipe installation was not done in a manner fit for its intended purpose. In granting the directed verdict on this ground, the court relied on the same grounds it cited in granting the directed verdict on the implied warranty claim.

We conclude the trial court properly granted Brueck's motion for directed verdict on this ground as well. In a breach-of-contract claim, the complaining party must prove: (1) the existence of a contract; (2) the terms and conditions of the contract; (3) that it has performed all the terms and conditions required under

the contract; (4) the defendant's breach of the contract in some particular way; and (5) that plaintiff has suffered damages as a result of the breach. *Iowa-Illinois Gas & Elec. Co. v. Black & Veatch*, 497 N.W.2d 821, 825 (Iowa 1993).

Munson failed to present substantial evidence that Brueck breached the contract. As noted above, there was no expert testimony that Brueck failed to act in a manner consistent with industry standards. None of the witnesses could identify the reason why the pipe froze and broke. They were only able to testify about a variety of generic and theoretical reasons the pipe could have broken. No evidence existed, other than the pipe and insulation were both properly installed, and carried out in a good and workmanlike manner. We therefore affirm the order of the trial court granting directed verdict.

AFFIRMED.