

STATE OF MICHIGAN
COURT OF APPEALS

W. A. THOMAS COMPANY,

Plaintiff-Appellant,

v

AEROQUIP-VICKERS, INC.,

Defendant-Appellee.

UNPUBLISHED

December 14, 2001

No. 222544

Macomb Circuit Court

LC No. 97-005926-CZ

Before: Owens, P.J., and Holbrook, Jr., and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for involuntary dismissal at a bench trial. We affirm.

Plaintiff, a manufacturer of precision parts, produced certain parts for defendant who in turn used the parts to supply components to an automobile manufacturer. The parties had no formal contract; rather, their dealings consisted of purchase orders or releases and verbal agreements. In the fall of 1995, plaintiff informed defendant that it was raising its prices for several of the parts it manufactured for defendant. Plaintiff invited defendant to seek quotes from other suppliers, and defendant indicated its intention to do so. For a short time after the price increase, defendant continued to order parts from plaintiff. After the parties' relationship ended, plaintiff brought this action to recover for damages it allegedly sustained as a result of defendant's decision to no longer conduct business with plaintiff. Plaintiff sought reimbursement for tools that were made specifically for defendant's parts, as well as raw materials it had ordered and quality control gauges that were used to manufacture parts for defendant. Plaintiff asserted claims under theories of breach of contract, account stated, and equitable or promissory estoppel.

Because this was a bench trial, the trial court properly treated defendant's motion for a directed verdict as a motion for involuntary dismissal under MCR 2.504(B)(2). *Samuel D Begola Services, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995). The court rule provides that the trial court may dismiss the plaintiff's action after the close of the plaintiff's case if the court determines that the plaintiff has not shown a right to recovery under the facts or law. *Id.*, MCR 2.504(B)(2). In reviewing a motion for involuntary dismissal, this Court reviews the trial court's legal rulings de novo and reviews any factual findings for clear error. *Samuel D Begola Services, supra*.

Plaintiff first argues that the trial court erred by failing to consider its claim for promissory estoppel. Plaintiff further argues that dismissal of that claim was not warranted. We disagree.

The elements of promissory estoppel are:

(1) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee, (3) which in fact produced reliance or forbearance of that nature, and (4) in circumstances such that the promise must be enforced if injustice is to be avoided. [*Joerger v Gordon Food Service, Inc.*, 224 Mich App 167, 173; 568 NW2d 365 (1997).]

Promissory estoppel requires an actual, clear, and definite promise. *State Bank of Standish v Curry*, 442 Mich 76, 84-85; 500 NW2d 104 (1993). “[R]eliance is reasonable only if it is induced by an actual promise.” *Id.* at 84; *Charter Twp of Ypsilanti v General Motors Corp.*, 201 Mich App 128, 134; 506 NW2d 556 (1993). Promissory estoppel is cautiously applied and should be available only where the facts are unquestionable and the wrong to be prevented undoubted. *Marrero v McDonnell Douglas Capital Corp.*, 200 Mich App 438, 442-443; 505 NW2d 275 (1993).

The trial court dismissed plaintiff’s claims principally because it was not convinced that plaintiff had sustained its burden of proof with regard to damages. It is apparent from the record that the court considered the promissory estoppel claim as part of its decision. Thus, there is no merit to plaintiff’s argument that the court failed to consider this theory of recovery.

The trial court found that plaintiff had not shown that defendant promised to pay for the cost of the tooling and gauges used to manufacture the parts over and above the cost of tooling and gauges for which plaintiff had previously billed defendant and for which defendant had previously paid. The court also found that plaintiff failed to establish damages. These findings are supported by the record. Lisa Frymire, plaintiff’s director of purchasing, testified that she did not know whether defendant ever agreed to pay plaintiff for the tooling and gauging costs at issue. Richard Nash, plaintiff’s director of sales and marketing, acknowledged that plaintiff never sent defendant an invoice for tooling or gauging separate from the tooling purchase orders issued by defendant and subsequently paid by defendant. Based on our review of the record, the trial court did not clearly err in finding that plaintiff failed to show a promise by defendant to pay for the tooling and gauging nor in finding that plaintiff had failed to establish damages.

Plaintiff also argues that the trial court erred in finding that plaintiff could not recover damages with regard to the raw materials that it still possessed after defendant stopped placing orders because plaintiff failed to show that the raw materials in its possession were related to any specific purchase order from defendant. We disagree.

The evidence showed that plaintiff received authorization from defendant to order raw materials that plaintiff anticipated it would need to produce parts for defendant in the near future. However, plaintiff failed to show that defendant’s authorizations applied to the materials left on hand after defendant pulled its work from plaintiff. The early authorizations were related to the

original agreements between the parties to produce parts at the initial prices. Plaintiff subsequently raised its prices for several of the parts and essentially put in place a new pricing scheme for those parts. Plaintiff's evidence did not distinguish between raw materials ordered under the old pricing scheme and those materials that may have been ordered after the new prices became effective. Most notably, the testimony of plaintiff's witnesses was unable to tie plaintiff's purchase of raw materials to a specific purchase order from defendant. The trial court's findings in this regard were not clearly erroneous and the court correctly dismissed plaintiff's claim based upon a theory of promissory estoppel.

Next, plaintiff challenges the trial court's dismissal of its claims asserted under a breach of contract theory. Plaintiff maintains that the trial court erred in finding that plaintiff's purchase of raw materials was not related to a specific purchase order. We disagree. In light of our conclusion that the trial court did not clearly err in finding that plaintiff failed to establish damages with respect to raw materials, the trial court's findings are also dispositive of plaintiff's claim premised on a breach of contract theory.

Finally, plaintiff appears to challenge the trial court's findings with regard to the cost of gauges because the court mistakenly believed that there were agreements between the parties with regard to the gauges. Plaintiff appears to argue that the court mistakenly considered its request for reimbursement of the cost of the gauges under a breach of contract theory, rather than promissory estoppel. We disagree. After reviewing the trial court's findings, it is apparent that the court addressed any claim regarding the gauges under the theory of promissory estoppel, not only under a breach of contract theory. Plaintiff has not demonstrated any error.

Defendant argues that it is entitled to sanctions because plaintiff's appeal is frivolous and vexatious, MCR 7.216(C). An appeal is vexatious under MCR 7.216(C) if it is taken without any reasonable basis for belief that there was a meritorious issue to be decided on appeal. *Dillon v DeNooyer Chevrolet Geo*, 217 Mich App 163, 169; 550 NW2d 846 (1996). Although we have concluded that the trial court's decision should be affirmed, we are not satisfied that plaintiff had no reasonable basis for filing an appeal.

Affirmed.

/s/ Donald S. Owens
/s/ Donald E. Holbrook, Jr.
/s/ Michael J. Talbot