

[Cite as *Anixter, Inc. v. Rohr Corp.*, 2004-Ohio-3623.]

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

ANIXTER, INC.,	:	APPEAL NO. C-030690
	:	TRIAL NO. A-0200874
Plaintiff-Appellee,	:	
	:	<i>DECISION.</i>
vs.	:	
ROHR CORP.,	:	
	:	
Defendant-Appellant.	:	

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: July 9, 2004

Statman, Harris, Siegel & Eyrich, LLC, and *C. Edward Noe*, for Plaintiff-Appellee,

Brian T. Giles, for Defendant-Appellant.

Please note: We have removed this case from the accelerated calendar.

MARK P. PAINTER, Judge.

{¶1} Plaintiff-appellee Anixter, Inc., sued defendant-appellant Rohr Corp. for payment for SOW 600 V 90C portable cord (“SOW cable”) purchased from Anixter. Rohr counterclaimed based on the cost of replacement cable. The trial court, adopting a magistrate’s decision, awarded Anixter damages, less the value of the defective cable. The trial court also dismissed Rohr’s counterclaim. We affirm.

{¶2} Rohr has been a customer of Anixter for over ten years. Rohr has always paid Anixter’s invoices.

{¶3} This dispute concerns SOW cable. Rohr used SOW cable for several projects across the country to supply power to heavy industrial equipment such as floating dredges. Rohr ordered the cable for each project separately. In the fall of 2000, Rohr ordered SOW cable for its Vulcan project in Los Angeles. The cable arrived with kinks and some corkscrews in it. Rohr never used this particular batch of cable and returned it to Anixter.

{¶4} After returning the allegedly defective cable, Rohr replaced all the SOW cable for all its projects with Pireflex cable. Rohr paid for the replacement cable and sent Anixter invoices for the Pireflex cable.

{¶5} Anixter filed an action seeking to recover some \$38,000 on an account for the sale of various wire and wire products to Rohr, including the defective SOW cable. Rohr counterclaimed for \$39,294.19 for the Pireflex cable and the SOW return shipment costs.

{¶6} The trial court referred the case to a magistrate for a bench trial. After presiding over the trial, the magistrate found for Anixter in the amount of \$34,623.81 and

dismissed Rohr's counterclaim. The trial court adopted the magistrate's decision over Rohr's objection.

{¶7} On appeal, Rohr raises two assignments of error: (1) the dismissal of the counterclaim was inconsistent with the reduction in damages and constituted an abuse of discretion; and (2) the dismissal of the counterclaim was against the manifest weight of the evidence.

I. Reduction in Damages and Counterclaim Dismissal

{¶8} In its first assignment of error, Rohr contends that the trial court abused its discretion by dismissing Rohr's counterclaim for incidental and consequential damages, and that the dismissal was inconsistent with the reduction in Anixter's damages ordered by the court.

{¶9} For a sale of goods, if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may reject the whole, accept the whole, or accept any commercial unit or units and reject the rest.¹ Rejection must be within a reasonable time after tender or delivery, and the buyer must notify the seller of the rejection.²

{¶10} If the goods do not conform to the contract, the buyer can recover the difference between the contract price and the cover price, plus incidental damages and consequential damages, less expenses saved in consequence of the seller's breach.³ Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses, or commissions in connection

¹ R.C. 1302.60.

² R.C. 1302.61(A).

³ *Freitag v. Bill Swad Datsun* (1981), 3 Ohio App.3d 83, 443 N.E.2d 988.

with effecting cover, and any other reasonable expenses incident to the delay or other breach.⁴

{¶11} Rohr casts its claim of error as an abuse of discretion by the trial court. But we are convinced Rohr is actually complaining that the dismissal of the counterclaim was against the manifest weight of the evidence.

{¶12} The trial court reduced Anixter's damages by the cost of the returned defective cable. Rohr entered into evidence several invoices that it had sent to Anixter. These invoices included charges for returning the defective SOW cable from the Vulcan project. The invoices also included charges for Pireflex cable for the Vulcan project, as well as four other projects. But most of the SOW cable was kept and apparently used. And yet Rohr sought over \$39,000 to replace the cable at each of its jobsites.

{¶13} Incidental and consequential damages only involve curing or replacing defective goods.⁵ They do not involve replacing other functioning products, and the magistrate evidently found that the SOW cable for the other projects was not defective. Rohr was free to change the type of cable it used. But it was not Anixter's responsibility to finance that change.

{¶14} And the dismissal was not inconsistent with the reduction in damages for the defective SOW cable. Because Rohr provided no evidence other than its own invoices to support its counterclaim, the trial court did not have to allow any deductions other than the actual cost of the SOW cable—the only damages that Rohr had proved. Since Rohr failed to prove any incidental or consequential damages, the trial court did not, on the weight of the evidence, err by dismissing the counterclaim for incidental and consequential damages.

⁴ R.C. 1302.89(A).

⁵ R.C. 1302.89.

{¶15} We therefore overrule Rohr’s first assignment of error.

II. Manifest Weight of the Evidence

{¶16} In its second assignment of error, Rohr argues that the magistrate’s dismissal of the counterclaim was against the manifest weight of the evidence.

{¶17} When we review a trial court’s dismissal of a counterclaim, we are guided by the principle that judgments supported by some competent, credible evidence going to all the material elements of the case must not be reversed as being against the manifest weight of the evidence.⁶ If the evidence is susceptible to more than one interpretation, we must give it the interpretation consistent with the trial court’s judgment.⁷

{¶18} The counterclaim was not legally cognizable. A party cannot recover incidental and consequential damages for goods that are satisfactory. Even if Rohr could have recovered on these grounds, the evidence it offered was inadequate. The only evidence that Rohr offered was its own invoices sent to Anixter for the Pireflex cable, including shipping and labor costs. But these invoices were nothing more than Rohr’s saying, “Hey, you owe me something.” Rohr introduced no neutral evidence, such as an invoice from Pireflex for the Vulcan project. The evidence Rohr introduced was not credible. Therefore, the trial court’s dismissal of the counterclaim was proper.

{¶19} We overrule Rohr’s second assignment of error. Accordingly, we affirm the judgment of the trial court.

Judgment affirmed.

HILDEBRANDT, P.J., and GORMAN, J., concur.

Please Note:

The court has recorded its own entry on the date of the release of this decision.

⁶ *Central Motors Corp. v. Pepper Pike*, 73 Ohio St.3d 581, 1995-Ohio-289, 653 N.E.2d 639.

⁷ *Id.*