IN THE COURT OF APPEALS OF IOWA

No. 8-531 / 07-1878
Filed October 29, 2008

FC COOP II,
Plaintiff-Appellee,

vs.

IOWA SELECT FARMS, L.P.,
n/k/a IOWA SELECT FARMS, L.L.P.,
Defendant-Appellant.

Appeal from the Iowa District Court for Hardin County, William J. Pattinson, Judge.

The defendant appeals from the district court's judgment entry in favor of the plaintiff. **AFFIRMED.**

Sean P. Moore and Michael R. Blaser of Brown, Winick, Graves, Gross, Baskerville & Schoenebaum, P.L.C., Des Moines, for appellant.

Bernard L. Spaeth and John H. Moorlach of Whitfield & Eddy, P.L.C., Des Moines, for appellee.

Heard by Sackett, C.J., and Mahan and Miller, JJ.

SACKETT, C.J.

The defendant, Iowa Select Farms, appeals from the district court's judgment entry in favor of the plaintiff, FC Coop, on FC Coop's breach-of-contract claim and the court's award of prefiling interest. We affirm.

I. Background.

On June 7, 2001, FC Coop[1] and Iowa Select Farms entered into a propane supply agreement. Iowa Select Farms was to purchase propane fuel from FC Coop from September of 2001 to April of 2002. The contract provided:

> 1. Agreement to Purchase and Sell. [FC Coop] agrees to sell propane fuel to [Iowa Select Farms] and [Iowa Select Farms] agrees to purchase propane fuel from [FC Coop] on the terms and conditions set forth in this Agreement. Subject to the provisions of paragraph 12 hereof, this Agreement covers the months of September, 2001 through April, 2002 . . . . Subject to the terms of this Agreement, [Iowa Select Farms] and [FC Coop] have agreed to the purchase and sale of Flat Price Gallons and Hedged Price Gallons for each Delivery Month on quantity and pricing terms set forth in Exhibit "A" attached hereto and incorporated by this reference.

Exhibit A stated: "[P]rice valid up to 3,500,000 gallons." Depending on delivery method, the price was either $0.62 or $0.70 per gallon. The contract further provided:

> 10. Term: This contract will terminate upon 100% completion of the BUYER'S purchase commitment or on April 30, 2002, whichever event first occurs. However, BUYER may, at its option, extend the time for completion of its purchase commitment into May and June, 2002 for the final 500,000 gallons of its commitment by paying an additional ¾ cent per gallon. Under no circumstances, however, may this contract be extended beyond June 25, 2002.

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[1] The parties to the contract were Buckeye Cooperative Elevator Company (Buckeye) and Iowa Select Farms. In January of 2002, Buckeye and FC Coop II merged, with FC Coop being the surviving entity.

During the term of the contract Iowa Select Farms purchased 2,508,870 gallons of propane fuel. However, the parties disagreed on the quantity of propane fuel the contract required Iowa Select Farms to purchase. Iowa Select Farms claimed it was allowed to purchase "up to" 3.5 million gallons of propane, but not required to purchase 3.5 million gallons of propane, according to exhibit A. FC Coop claimed that Iowa Select Farms was required to purchase 3.5 million gallons and pointed to the "purchase commitment" language of paragraph 10.

In June of 2006, FC Coop filed suit seeking recovery for breach of written contract, breach of the implied covenant of good faith and fair dealing, and promissory estoppel. In July of 2007, Iowa Select Farms moved for summary judgment. FC Coop resisted the motion for summary judgment and moved for declaratory judgment. On October 8, 2007, the parties stipulated that FC Coop's damages were $207,916.69. On October 15, 2007, the district court entered judgment against Iowa Select Farms. The district court declared the contract required Iowa Select Farms to purchase 3.5 million gallons of propane and Iowa Select Farms had breached the contract. The court concluded the contract was unambiguous and it did not need to resort to extrinsic evidence to interpret the contract language. The court entered judgment against Iowa Select Farms in the amount of $254,985.17, which included FC Coop's damages in the amount of $207,916.69 and pre-judgment interest in the amount of $47,068.48. The court granted summary judgment in favor of Iowa Select Farms on FC Coop's good-faith-and-fair-dealing and promissory estoppel claims.

On appeal, Iowa Select Farms contends that (1) under the express terms of the contract, Iowa Select Farms did not have an obligation to purchase 3.5 million gallons of propane; (2) the district court erred in not considering prior propane supply agreements between the parties; and (3) FC Coop is not entitled to prefiling interest.

II. Scope and Standards of Review.

Our review of district court rulings on motions for summary judgment is for correction of errors at law. Iowa R. App. P. 6.4; *Faeth v. State Farm Mut. Auto. Ins. Co.*, 707 N.W.2d 328, 331 (Iowa 2005). Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Grinnell Mut. Reins. Co. v. Jungling*, 654 N.W.2d 530, 535 (Iowa 2002).

A declaratory judgment action tried at law limits appellate review to correction of errors at law. *Am. Family Mut. Ins. Co. v. Petersen*, 679 N.W.2d 571, 575 (Iowa 2004). We are bound by well-supported findings of fact, but are not bound by the legal conclusions of the district court. *Id.* We review the district court's interpretation of a contract as a legal issue unless it depended on extrinsic evidence. *Connie's Const. v. Fireman's Fund Ins.*, 227 N.W.2d 207, 210 (Iowa 1975). When the district court is required to construe a contract, it decides the legal effect of the agreement. Construction is always reviewed as an issue of law. *Allen v. Highway Equip. Co.*, 239 N.W.2d 135, 139 (Iowa 1976).

The district court did not deem it necessary to consider extrinsic evidence in determining the meaning of the contract in this case. Therefore, our review of the district court's interpretation and construction of the contract is at law. *Connie's Const.*, 227 N.W.2d at 210. Where the facts are not in dispute, appellate review in a declaratory judgment action is to determine whether the district court correctly determined the legal consequences arising from a contract. *Shelter Gen. Ins. Co. v. Lincoln*, 590 N.W.2d 726, 728 (Iowa 1999).

III. Discussion.

Agreement between Iowa Select Farms and FC Coop. Iowa Select Farms contends the court erred in determining the agreement obligated it to purchase 3.5 million gallons of propane. It argues the district court's interpretation of the agreement is contrary to both the express terms and rules of contract interpretation. We disagree.

The district court determined the terms of the contract were not ambiguous, then properly applied principles of interpretation to determine the intent of the parties from the contract language. *See* Iowa R. App. P. 6.14(6)(*n*). We find no error of law in the analysis of the district court. *See Connie's Const.*, 227 N.W.2d at 210. From the terms of the "agreement to purchase and sell," the seller committed to a "flat price" valid through a set date. The purchase of the final 500,000 gallons of buyer's "purchase commitment" could be extended beyond the set date "by paying an additional [amount] per gallon." The "quantity and pricing" was set forth in Exhibit "A." Exhibit A listed "flat price gallons delivered on 3,500,000 gallons." The contract for a flat price "valid up to

3,500,000 gallons" terminated "upon 100% completion of buyer's purchase commitment or on [a set date], whichever event first occurs." The buyer was required to pay "only the price listed in Exhibit 'A'" "for all flat price gallons throughout the term of this agreement."

Iowa Select Farms' argument that the contract gave it only an option to purchase "up to" 3.5 million gallons and that the contract terminated on a set date "regardless of how many gallons of propane it purchased" is without merit and unsupported by the language of the contract.

The district court ruled:

> Simply put, the June 7, 2001 Propane Supply Agreement obligated Iowa Select to purchase 3.5 million gallons of propane—no more, no less. FC is entitled to a declaratory judgment confirming that proposition and, obviously, Iowa Select is not entitled to summary judgment on the contract breach count.
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> . . . .
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> Flowing from a declaratory ruling expounded above, coupled with the remainder of the summary judgment record and the parties' stipulation regarding damages, I am satisfied that Iowa Select breached the Agreement and is, accordingly, liable for FC's damages.

We affirm the district court's judgment on this issue.

Admission of Extrinsic Evidence. Iowa Select Farms contends the district court erred in not considering a prior propane supply agreement when interpreting the terms of this agreement. The court determined the terms of the contract were not ambiguous, so it did not need to consider extrinsic evidence to determine the parties' intent. *See Hartig Drug Co. v. Hartig*, 602 N.W.2d 794, 797 (Iowa 1999) (noting the question whether a contract is ambiguous is a matter of law and extrinsic evidence "can be considered" if a contract is ambiguous); *Tom Riley Law Firm v. Tang*, 521 N.W.2d 758, 759 (Iowa Ct. App. 1994) (stating

the parties' intent "is determined by the language in the contract, unless it is ambiguous"). Citing to *C-Thru Container Corp. v. Midland Manufacturing Co.*, 533 N.W.2d 542, 545 (Iowa 1995), Iowa Select Farms argues that

> under Iowa Code section 554.2202, and the official comments thereto, the legislature has rejected "a requirement that the language of the contract be ambiguous as a condition precedent to the admission of trade usage evidence," and "even a complete contract may be explained or supplemented by parol evidence of trade usages."

Even if this were a trade usage issue instead of a course-of-dealing issue, the use of extrinsic or parol evidence is permissive, not mandatory. *See* Iowa Code § 554.2202 (2001) (providing agreement terms "may not be contradicted by evidence of any prior agreement . . . but may be explained or supplemented"); *see also C-Thru Container*, 533 N.W.2d at 545. We conclude the district court did not err in interpreting the unambiguous terms of the contract at issue without resorting to extrinsic evidence. We affirm on this issue.

Pre-Filing Interest. FC Coop sought prejudgment interest on its "buyback cost" and "lost sales." Before the district court's hearing on the motions for summary judgment and declaratory judgment, the parties jointly stipulated that FC Coop incurred buyback-cost and lost-sales damages of $156,498.98 on March 29, 2002, buyback-cost and lost-sales damages of $51.417.71 on May 1, 2002, and that interest would accrue from June 5, 2006, the date the lawsuit was filed. The court awarded interest on those amounts from the date of the damages to the date of its judgment entry. Iowa Select Farms contends any interest due should begin only on the date the lawsuit was filed.

The general rule is that interest "shall accrue from the date of the commencement of the action." Iowa Code § 668.13(1) (2007). Our supreme court has recognized "a definite exception to this rule when it has been shown that the damage was complete at a particular time." *Gosch v. Juelfs*, 701 N.W.2d 90, 92 (Iowa 2005). In that circumstance, "'in cases in which the entire damage for which recovery is demanded was complete at a definite time before the action was begun interest is recoverable, even though the damage is of an unliquidated character.'" *Id.* (quoting *Bridenstine v. Iowa City Elec. Ry.*, 181 Iowa 1124, 1136, 165 N.W. 435, 439 (1917)). The joint stipulation of the parties provides the necessary proof "the entire damage for which recovery is demanded was complete at a definite time before the action was begun." *Id.*

Iowa Select Farms argues the exception does not apply because it disputes FC Coop's right to recover under the terms of the contract. *See Flom v. Stahly*, 569 N.W.2d 135, 143 (Iowa 1997) (agreeing with the trial court's denial of prefiling interest because "a genuine dispute existed between the parties as to the [plaintiffs'] right to recover at all and as to the amount of damages"). A review of the authority cited in *Flom* reveals the focus of the dispute is the amount and date of the damages, not, as Iowa Select Farms contends, whether there was a right to recover damages. *See Brenton Nat'l Bank v. Ross*, 492 N.W.2d 441, 443 (Iowa Ct. App. 1992) (determining "the amount of damages was in controversy throughout the proceedings and remained undetermined until the jury rendered its verdict"). In the case before us, the parties jointly stipulated to both the amounts and dates of the damages. We conclude the district court correctly

applied the exception to the general rule and awarded damages from the dates the damages were complete. We affirm on this issue.

AFFIRMED.