IN THE COURT OF APPEALS OF IOWA

No. 9-390 / 08-1639
Filed July 2, 2009

TRI-COUNTY GRAIN CORPORATION,
Plaintiff-Appellant/Cross-Appellee,

vs.

AMOS ZIMMERMAN d/b/a CANTRIL FEED & GRAIN,
Defendant-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Wapello County, Joel D. Yates, Judge.

Plaintiff appeals valuation date utilized to calculate grain-shortage damages and defendant cross-appeals for rent owed. **AFFIRMED IN PART REVERSED IN PART AND REMANDED.**

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

Myron L. Gookin and Amy R. Miller of Foss, Kuiken, Gookin & Cochran, Fairfield, for appellee.

Considered by Mahan, P.J., and Eisenhauer and Mansfield, JJ.

EISENHAUER, J.

The Tri-County Grain Corporation appeals the valuation date of the grain-shortage damages owed by Amos Zimmerman, the operator of Cantril Feed and Grain. Tri-County also appeals the statutory interest commencement date. Zimmerman cross-appeals claiming the court erred in failing to find Tri-County owed him rent for grain storage. We affirm in part, but reverse and remand for correction of the statutory interest commencement date.

I. Background Facts and Proceedings.

Tri-County entered into a written lease for a grain warehouse facility owned by Zimmerman. In the summer of 2006, Zimmerman told Tri-County he would not renew the lease when it expired on September 1, 2006. Zimmerman stored both corn and soybeans for Tri-County in his warehouse. Under the terms of the lease, Zimmerman provided all the labor at the facility. Additionally, Zimmerman was solely responsible for any grain shortages. If Tri-County sold any of its grain to Zimmerman, the lease provided Zimmerman would pay market price plus five cents per bushel.

After the lease expired on September 1, 2006, the parties entered into an oral contract regarding Tri-County's remaining corn and soybeans. The parties agreed Zimmerman would purchase the corn and Tri-County would pay Zimmerman to transport the soybeans to ADM in Quincy, Illinois. Zimmerman needed corn for his nearby feed mill, but did not need soybeans. There was no discussion about Tri-County paying rent for storage and Zimmerman did not prepare invoices for rent. Tri-County did not pay rent after the lease expired.

Zimmerman's purchase of Tri-County's corn was completed on December 29, 2006. Zimmerman did not deduct any rent/storage charges from his payment of $246,904.40 to Tri-County. On February 19, 2007, Zimmerman hauled the beans to ADM Quincy. Tri-County's agreement to pay Zimmerman for these hauling services was advantageous to Zimmerman because he bought supplies from ADM Quincy for his feed business. Therefore, he was not sending empty trucks to pick up his feed mill supplies.

The parties stipulated a soybean shortage of 10,544.51 bushels occurred. Zimmerman does not dispute his responsibility for the shortage. The district court found "both parties knew of the soybean shortage sometime during September 2006," but the actual extent of the shortage (10,544.51 bushels) was not determined until February 19, 2007.

In February 2007, Tri-County billed Zimmerman $76,444.11 for the soybean shortage. On July 17, 2007, Zimmerman, for the first time, claimed he was owed rent for storing Tri-County's corn and beans after September 1, 2006. Zimmerman's note to Tri-County stated: "If Tri-County Grain will charge $76,444.11 for the beans I will charge them $76,444.11 for storage over that period of time that they left the beans and corn here without paying storage . . . ."

The parties could not agree to a valuation for the soybean shortage and, on September 13, 2007, Tri-County filed suit. Tri-County claimed the soybeans should be valued at $7.23/bushel (approximately $76,000), the price on the February 19, 2007 delivery date. Zimmerman claimed the valuation should be $5.00/bushel (approximately $53,000), the price on the September 1, 2006 lease

expiration date. Zimmerman also filed a counterclaim seeking an offset for rent for the two bins used by Tri-County for storage after the warehouse facility lease expired. At trial Zimmerman testified the rental offset should be $30,000.

After a bench trial, the court determined the shortfall should be valued at a market price of five dollars per bushel. It awarded judgment in favor of Tri-County for $53,249.78 (five dollars market price plus five cents/bushel) with interest from August 26, 2008. The court denied Zimmerman's counterclaim for rent and ruled, "the court cannot conclude that a rental agreement . . . was part of the agreement reached by the parties." This appeal followed.

II. Scope of Review.

We review for correction of errors at law. Iowa R. App. P. 6.4. The district court's findings of fact have the effect of a special verdict and are binding on us if supported by substantial evidence. *Van Oort Constr. Co. v. Nuckoll's Concrete Serv., Inc.*, 599 N.W.2d 684, 689 (Iowa 1999). "When a reasonable mind would accept the evidence as adequate to reach a conclusion, the evidence is substantial." *Raper v. State*, 688 N.W.2d 29, 36 (Iowa 2004). However, we are not bound by a district court's conclusions of law or application of legal conclusions. *Id.* "We view the evidence in a light most favorable to the trial court's judgment." *Van Oort*, 599 N.W.2d at 689.

III. Soybean Shortfall Valuation.

The parties agree the valuation for the soybean shortfall is governed by the measure of damages established in Iowa's Uniform Commercial Code: "[T]he measure of damages for nondelivery . . . by the seller is the difference

between the market price *at the time when the buyer learned of the breach* and the contract price." Iowa Code § 544.2713(1) (2007) (emphasis added).

Tri-County argues the damage valuation should be made in February 2007 when it learned the *exact* number of bushels it was shorted. We disagree. After viewing the evidence in the light most favorable to the trial court's judgment, substantial evidence supports the finding the parties knew a shortfall existed in September 2006. Therefore, Tri-County "learned of the breach" at the time soybeans had a market price of five dollars per bushel. Iowa courts look to the market price for grain at the time the breach became known to set the measure of damages. *See Cargill, Inc. v. Fickbohm*, 252 N.W.2d 739, 742 (Iowa 1977) (using the market price of corn when plaintiff "learned defendant was not going to deliver in accordance with the agreement"). We find no error in the trial court's damages calculation.

IV. Rent Counterclaim.

Zimmerman cross-appeals the district court's ruling Tri-County did not owe rent for grain storage after the lease expired in September 2006. Substantial evidence supports the district court's finding, "[Zimmerman] did not act in a way consistent with rent money being due and owing from [Tri-County] after September 1, 2006. More specifically, [Zimmerman] did not provide to [Tri-County] either invoices or demands for rent." We find no error in the court's dismissal of Zimmerman's counterclaim.

V. Interest.

Tri-County appeals the court's statutory interest order. The controlling statute provides: "Interest . . . shall accrue from the date of the commencement of the action." Iowa Code § 668.13. We therefore remand to the district court to modify its order and award interest from September 13, 2007, the date the case commenced. In all other respects the district court's judgment is affirmed.

AFFIRMED IN PART REVERSED IN PART AND REMANDED.

Mahan, P.J., concurs; Mansfield, J., concurs in part and dissents in part.

MANSFIELD, J. (concurring in part and dissenting in part)

I concur in the disposition of the cross-appeal. However, I would sustain Tri-County's appeal because I believe the district court should have used the February 19, 2007 date for valuing the shortfall in soybeans.

The pertinent facts are essentially undisputed. After the parties' lease expired, Zimmerman was to transport the soybeans to ADM in Quincy, Illinois, with Tri-County paying for the transportation. This arrangement benefited Zimmerman because his trucks otherwise would have gone empty to ADM to pick up feed. The parties also recognized that Zimmerman's obligation to cover any shortfall in the beans would continue. In September 2006, the parties realized there was going to be some shortfall in the beans, but no one knew the exact shortfall until February 2007 when Zimmerman cleaned out the bins and hauled the beans to ADM. Tri-County told ADM to clean out the bins in the fall of 2006, but Zimmerman testified that he was busy in the fall and did not have trucks available, so the beans were not loaded and delivered to ADM until February.

The fighting issue in the case was whether the market value of the beans should be determined as of September 2006 or February 2007. During that time, the market price of beans increased from approximately $5.00/bushel to approximately $7.23/bushel. The parties agreed that Iowa Code section 554.2713 (2007) (Uniform Commercial Code section 2-713) applies to this case and that Zimmerman should be treated as a breaching seller. Section 554.2713

states that the buyer's measure of damages is the difference between the market price "at the time when the buyer learned of the breach" and the contract price.

The majority reasons that Tri-County "learned of the breach" in September 2006, when it was aware there was going to be some shortfall, even though it did not know the amount of the shortfall. This is certainly a defensible interpretation of Iowa Code section 554.2713, but I believe it is not the correct one. The fundamental purpose of contract remedies is to protect the non-breaching party's benefit of the bargain. Had there been no shortfall, Tri-County would have sold 10,544.51 more bushels of beans in February 2007, when they were worth $7.23/bushel, not at some earlier date. Moreover, comment 1 to U.C.C. section 2-713 makes clear that the remedy provided by that section is meant to dovetail with the cover remedy provided by U.C.C. section 2-713. *See* U.C.C. § 2-713 cmt. 1 ("The general baseline adopted in this section uses as a yardstick the market in which the buyer would have obtained cover had he sought that relief."); *Cargill, Inc. v. Fickbohm*, 252 N.W.2d 739, 742 (Iowa 1977) (quoting and relying upon this comment). In other words, the market price should reflect the price at which the buyer would have been able to obtain cover. Tri-County, however, had no ability to obtain cover until it knew the actual amount of the shortfall.

I believe *Carson v. Mulnix*, 263 N.W.2d 701 (Iowa 1978), is the most relevant Iowa precedent here. In *Carson*, the defendant was contractually obligated to deliver corn to the plaintiff by the end of 1973, but there was evidence that the defendant had repudiated the contract in August 1973. 263 N.W.2d at 706. Nonetheless, the court held that it was "reasonable" for the

plaintiff to wait until the end of December for the defendant to perform. *Id*. Accordingly, for damage calculation purposes under Iowa Code section 554.2713, the court upheld December 28, 1973, as being the "time when the buyer learned of the breach." *Id*.

Similarly, I believe that it was reasonable for Tri-County to wait for Zimmerman to perform by cleaning out the bins and delivering the beans to ADM. The district court indicates that Tri-County could have taken steps to ascertain the shortfall in Zimmerman's bins before February 2007. But from an economic efficiency standpoint, that would not have made sense. The parties had a mutually beneficial arrangement under which the beans would be loaded and delivered to ADM, at which time the actual shortfall would be determined. It would have been illogical for Tri-County to clean out the bins itself earlier and forgo this arrangement. The law should encourage the performance of efficient contracts.

Moreover, if anyone should have had the burden of calculating the shortfall, it would be the breaching party (Zimmerman), not the innocent party (Tri-County). Zimmerman did not have a warehousing license and should not have been commingling Tri-County's grain with anyone else's. How Zimmerman managed to lose 10,544.51 bushels of Tri-County soybeans is not explained. If a party had a duty to get to the bottom of the situation, it was Zimmerman, not Tri-County.

Finally, this is not a situation where Tri-County can be accused of failing to mitigate. Although soybean prices went up in the winter of 2006-07, they could

have gone down. An immediate action by Tri-County to determine the shortfall in September 2006 and purchase a corresponding quantity of beans might have enhanced rather than mitigated damages. *See Reliance Cooperage Corp. v. Treat*, 195 F.2d 977, 982-83 (8th Cir. 1952) (holding, in a pre-U.C.C. case, that damages for non-delivery should be based on market price as of the date of delivery, not the date of repudiation).

In summary, I believe a proper interpretation of Iowa Code section 554.2713 holds that when a buyer learns there will be some shortfall in delivery, but is not aware of the amount of the deficit, the damage calculation should be based on market price at the time of delivery. I would reverse and remand for an award of damages in the amount of $76,444.11.