

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-000463-MR

HALL & DAVIS COMPANY

APPELLANT

v. APPEAL FROM SHELBY CIRCUIT COURT
HONORABLE WILLIAM F. STEWART, JUDGE
ACTION NO. 98-CI-00333

A.D. WHITE COMPANY, INC.

APPELLEE

AND NO. 2000-CA-000693-MR

A.D. WHITE COMPANY, INC.

CROSS-APPELLANT

v. CROSS-APPEAL FROM SHELBY CIRCUIT COURT
HONORABLE WILLIAM F. STEWART, JUDGE
ACTION NO. 98-CI-00333

HALL & DAVIS COMPANY

CROSS-APPELLEE

OPINION
AFFIRMING IN PART, REVERSING IN PART, AND REMANDING
** **

BEFORE: BUCKINGHAM, COMBS, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: Hall & Davis Company appeals from a judgment of the Shelby Circuit Court in the sum of \$22,016.82 representing an unpaid invoice and service charges due A.D. White Company, Inc.

(White). White cross-appeals on the issue of interest on the judgment. Having reviewed the record and applicable law, we affirm in part, reverse in part, and remand.

A.D. White Company, Inc. is in the business of serving as a broker for lumber and related products. On June 1, 1993, White entered into a written agreement (hereinafter, the "Agreement") with Hall & Davis which provided that White "agree[d] to sell lumber to Hall & Davis on the basis of 30 day Net terms and service charge of 2% per month for accounts past 30 days." The Agreement was signed for Hall & Davis by Greg Harrod, Manager.

On June 30, 1998, White filed an action against Hall & Davis contending that Hall & Davis had defaulted on its obligations and owed White the sum of \$29,937.09 through May 30, 1998. This total included several unpaid invoices as well as service charges which had accrued. In response, Hall & Davis denied that it had received the goods represented by one of the invoices, and further contended that Harrod did not have the authority to bind it to the terms set out in the Agreement.

A trial was scheduled for January 25, 1999, on which date the court instead held a hearing in chambers, and Hall & Davis was directed to pay to White all undisputed invoices, including pre-judgment interest at the rate of 8% per annum. Hall & Davis made the payment as instructed.¹ White contended that the balance as of the date of the payment, January 25, 1999,

¹ This payment consisted of principle of \$11,124.91 and interest of \$1,246.58.

had grown to \$34,388.31, hence, after the payment White claimed that Hall & Davis still owed a balance of \$22,016.82. This balance represented the total of the disputed invoice, No. 97204, in the amount of \$5,806.24, and the unpaid service charges which had accrued per the Agreement.

On September 13, 1999, White filed a motion for summary judgment, requesting the court grant judgment against Hall & Davis in the amount of \$22,016.82 plus interest at the rate of 2% per month from January 25, 1999 until paid, plus court costs. In support of the motion, White presented the sworn deposition testimony of Jeff DeCosta, the truck driver who had delivered the goods represented by invoice No. 97204 to Hall & Davis, and a receipt acknowledging delivery of the goods signed by Charles McIntosh, an employee of Hall & Davis. Additionally, White provided the sworn affidavit of its president, Harry White, which stated that the outstanding balance owed by Hall & Davis as of January 25, 1999 was \$22,016.82, and that Hall & Davis had previously paid service charges on its account between 1993 and 1996 per the Agreement signed by Harrod. (The affidavit was attached to the motion for summary judgment and included in the record on appeal.) Hall & Davis filed a response on October 5, 1999, addressing only the issue of the disputed invoice. Hall & Davis contended that only a partial load was delivered with regard to the disputed invoice. The response stated that Mr. McIntosh and Carl Tindall, employees of Hall & Davis, saw that a full load was not delivered, and that this information was supplied to Hall & Davis's counsel by its president, Donald

Hamilton. Hall & Davis provided no sworn affidavits nor any other evidence to support its contentions. Finding that no issues of material fact existed, on January 24, 2000, the court entered an order finding White was entitled to summary judgment as a matter of law. The court granted a judgment against Hall & Davis in the amount of \$22,016.82 plus interest thereon at the rate of 12% per annum from the date of entry of the judgment, January 24, 2000, until paid, and court costs. This appeal and cross-appeal followed.

On appeal, Hall & Davis contends that the trial court erred in granting the summary judgment as there were genuine issues of material fact as to whether the entire load of goods represented by the disputed invoice was delivered to Hall & Davis. Hall & Davis further argues that issues of material fact existed as to whether any interest (service charges) was owing at all, the method of computation, and the total amount owed.

The record contains the sworn affidavit of Jeff DeCosta, as well as a receipt signed by Charles McIntosh, an employee of Hall & Davis. DeCosta testified that he delivered the load at issue, which was ten bundles of lumber, to Hall & Davis on October 9, 1997. DeCosta produced a delivery receipt, attached as an exhibit to the deposition testimony, showing that ten units had been unloaded on October 9, 1997, and testified that it is the customer who unloads the truck. The receipt was filled out and signed by DeCosta, and signed on behalf of Hall & Davis by Charles McIntosh. Hall & Davis provided no affidavits or other evidence to support its contention that the load was

only partially delivered. The attorney's response is not evidence. Hence, we agree that no issue of material fact existed as to whether the entire load of goods represented by the disputed invoice was delivered to Hall & Davis.

Hall & Davis further contends that no service charges are owing as Greg Harrod, who signed the Agreement, did not have the authority to bind the company to its terms. As manager, Harrod clearly had implied authority to bind Hall & Davis to the Agreement, which involved purchases made in the ordinary course of Hall & Davis's business. R.H. Kyle Furniture Co. v. Russell Dry Goods Co., Ky., 340 S.W.2d 220 (1960).

Further, Harrod clearly had both actual and apparent authority to bind Hall & Davis, as the Agreement was signed by Harrod in 1993, and not contested by Hall & Davis until after White's complaint was filed in 1998. Id.

Finally, Hall & Davis contends that issues of material fact existed with regard to the method of computation of interest, which White compounded monthly, and the total amount owed. The Agreement provided for a service charge of 2% per month on the unpaid balance. This is a contractual term which allows for calculation of interest monthly. Therefore, the court was correct in compounding the interest monthly, as did White, per the terms of the Agreement to calculate the amount owed as \$22,016.82.

The standard of review of a trial court's granting of summary judgment is "whether the trial court correctly found that there were no genuine issues as to any material fact and that the

moving party was entitled to judgment as a matter of law.”
Scifres v. Kraft, Ky. App., 916 S.W.2d 779, 780 (1996). We are to view the record in the light most favorable to the party opposing the motion and resolve all doubts in its favor.
Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476, 480 (1991). Having viewed the record in the light most favorable to Hall & Davis, we adjudge that no issues of material fact existed and that White was entitled to judgment as a matter of law.

On cross-appeal, White contends that the trial court erred, as the amount awarded did not include any interest from January 25, 1999 until the date of final judgment, January 24, 2000. White contends that interest upon the judgment amount should have been calculated from the date the amount due White was originally calculated, January 25, 1999. White further contends that the court erred by not awarding post-judgment interest based upon the written contract between the parties, per KRS 360.040.

We agree that the court erred and should have continued compounding the interest monthly per the terms of the Agreement until the date of the final judgment, January 24, 2000. After the judgment, KRS 360.040 provides for 12% interest compounded annually, or interest in accordance with a written obligation, whether higher or lower than 12%. The Agreement provided for a 2% per month service charge on the unpaid balance, the literal interpretation of which provides for compounding monthly. Hall & Davis presented no evidence to the contrary. Hence, pursuant to

KRS 360.040, we believe interest should have been calculated per the terms of the Agreement.

For the aforementioned reasons, the summary judgment of the Shelby Circuit Court is affirmed. That portion of the judgment awarding interest is reversed and remanded for further proceedings.

ALL CONCUR.

BRIEF FOR APPELLANT AND CROSS-
APPELLEE:

Fielding E. Ballard, III
Shelbyville, Kentucky

BRIEF FOR APPELLEE AND CROSS-
APPELLANT:

Michael V. Brodarick
Louisville, Kentucky