



Trumm v. Fedder's Supply

2002 | Cited 0 times | Court of Appeals of Iowa | November 25, 2002

Feeder's Supply, Inc. appeals from the district court's order ruling it breached its contract with Bernie and Leroy Trumm, who cross- appeal. **AFFIRMED.**

Feeder's Supply, Inc. (FSI) appeals from the district court's order ruling it breached its contract with Bernie and Leroy Trumm and awarding the Trumm's \$60,809.00 in damages. FSI contends the district court erred in dismissing its counterclaim for lack of evidence, and in awarding damages to the Trumms. The Trumms cross-appeal, contending they are entitled to additional damages. We affirm.

I. Background Facts and Proceedings.

In April 1996, the Trumms entered into a contract with FSI for the sale of segregated early weaned (SEW) pigs. The two-year contract required FSI to buy 900 SEW pigs per month from the Trumms at a purchase price of between \$27 and \$39 per head. The contract specified the breeding stock used by the Trumms would consist of F-1 Geneti-Porc gilts and Seghers Terminal boars, and the Trumms were to use only Master Mix feed. Under the contract, FSI was required to notify the Trumms of any complaints concerning the quality or quantity of SEW pigs within twenty-four hours of delivery.

Jeff Paulsen was in charge of FSI's hog contracting from 1993 until June 1998. Paulsen visited the Trumms' farm once or twice a week. During the term of the first contract, no complaints were relayed to the Trumms' regarding the quality of the pigs.

During the summer and fall of 1997, the parties began negotiating the terms of a second two-year contract, which was signed in November 1997. The second contract, effective March 1, 1998, was identical to the first, except the sale price of the SEW pigs was renegotiated to between \$30 and \$42 per head.

In March of 1998, FSI began complaining to the Trumms about the quality of the pigs, claiming that when they were marketed six months later, they were not cutting out at fifty one percent lean. Because the market had changed, FSI was having difficulty selling the hogs and prices were declining. FSI stopped buying the SEW pigs at twenty-one days as specified in the contract. The Trumms had to keep the pigs longer than twenty-one days, feeding and housing them until FSI could take delivery.

In July 1998, Paulsen began working for Cargill, a company that supplies feed to FSI. The Trumms



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assumed Paulsen was still an agent for FSI. Paulsen requested that the Trumms switch to Cargill feed. The Trumms tried one delivery of feed, but were not satisfied and returned to using Master Mix.

On September 3, 1998, Paulsen informed the Trumms that FSI was planning to terminate their contract. The following day, the Trumms were presented with a written termination agreement and a bill for feed. The Trumms paid the feed bill but did not sign the termination agreement. FSI continued to accept delivery of SEW pigs, but paid less than the contract price. On December 1, 1998, FSI sent official notification of termination of the contract based on what it alleged to be material breaches by the Trumms. On August 3, 1999, after some of the herd had tested positive for psuedo rabies, the Trumms sold the entire herd to the federal government.

The Trumms brought suit against FSI, alleging FSI unilaterally terminated the contract without just cause. The Trumms sought \$73,939 in damages for the cost of holding the pigs longer than twenty-one days, and for the profits it would have received had the contract not been breached. FSI counterclaimed, alleging the Trumms materially breached the contract by not providing quality pigs. FSI claimed the Trumms unilaterally altered the genetics of the herd, and discontinued buying Master Mix feed, causing it damage.

After a trial, the district court entered judgment against FSI in the amount of \$60,809.00, and dismissed FSI's counterclaim for lack of evidence. FSI appeals.

II. Scope of Review.

We review the district court's decision for errors at law. Iowa R. App. P. 4. Where the trial court sits as the fact finder, its findings have the effect of a jury verdict and bind us if they are supported by substantial evidence. *Bazal v. Rhines*, 600 N.W.2d 327, 329 (Iowa Ct. App. 1999). Evidence is substantial when a reasonable mind could accept it as adequate to reach the same findings. *Id.* We view the evidence in a light most favorable to upholding the district court's judgment. *Benson v. Webster*, 593 N.W.2d 126, 129 (Iowa 1999).

III. Counterclaim.

FSI alleges the district court erred in dismissing its counterclaim for lack of evidence. The contract stated, "The SELLER shall produce for delivery to BUYER healthy, high-quality SEW pigs of less than twenty (20) days of age at the time of delivery." FSI claims the term "high-quality SEW pigs" means pigs that cut out at fifty-one percent lean or better as market hogs, and that the SEW pigs provided by the Trumms failed to meet this criteria. FSI also contends the Trumms breached the contract when they unilaterally changed the genetics of the SEW pigs. FSI argues it is entitled to recover its net lost profits.

A. Definition of "High-Quality SEW Pigs."



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Sale-of-goods contracts are governed by the Iowa Uniform Commercial Code (U.C.C.). See Iowa Code § 554.2102 (1999). Under the U.C.C.,

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

a. by course of dealing or usage of trade (section 554.1205) or by course of performance (section 554.2208); and

b. by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement. Iowa Code § 554.2202.

The U.C.C. defines usage of trade as:

any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court. Iowa Code § 554.1205(2).

FSI first contends the term "high-quality SEW pigs" is defined by trade usage as pigs that cut out at fifty-one percent lean or better as market hogs. The evidence presented at trial by FSI indicates that the term "high-quality" as defined by Farmland Foods, FSI's buyer, means market hogs cutting out at not less than fifty-one percent lean. However, trial testimony also revealed that different hog buyers used different standards as to the percentage lean considered acceptable and the method by which the lean was measured. Leroy Trumm testified he had heard buyers accepted anywhere from forty-nine to fifty-four percent lean. Trumm also testified that, although he had raised hogs his entire life, he had never heard there was a fifty-one percent lean industry standard. The trial court concluded the evidence failed to establish the industry standard for high-quality SEW pigs is cutting out at not less than fifty-one percent lean. Upon reviewing the evidence presented at trial, we find no error.

B. Genetics.

FSI next argues the Trumms breached the contract when they unilaterally changed the genetics of the SEW pigs they sold to FSI. However, the district court concluded FSI acquiesced to the modification of the Trumms' breeding stock. Paulsen frequented the Trumms' farm. He had suggested the Trumms try artificial insemination, and consented when the Trumms inquired as to whether they could return to the use of their Seghers terminal boars. When FSI began to complain



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about the quality of the pigs, Paulsen suggested the Trumms switch to Danbred boars for breeding. An executory contract may be effectively modified by one party with the consent of the other. *Tindell v. Apple Lines, Inc.*, 478 N.W.2d 428, 430 (Iowa Ct. App. 1991). The requisite consent may be either express or implied from acts and conduct. *Id.* We find no error in the district court's assessment that Paulsen's actions were tantamount to a modification of the contract.

Because the Trumms did not breach their contract with FSI, we need not consider the issue of damages incurred by FSI.

IV. Damages.

FSI next contends the district court erred in awarding the Trumms damages in excess of \$60,000. On cross-appeal, the Trumms argue the district court erred in declining to award them damages sustained between April 1 and September 3, 1998 for the extra time in which they were required to house and feed the SEW pigs.

Under Iowa law, when a contract has been breached the non-breaching party is generally entitled to be placed in as good a position as he or she would have occupied had the contract been performed. *Midland Mut. Life Ins. Co. v. Mercy Clinics, Inc.*, 579 N.W.2d 823, 831 (Iowa 1998). However, the non-breaching party's recovery is limited to the loss actually suffered by reason of the breach; he is not entitled to be placed in a better position than he would have been in if the contract had not been broken. *Id.*

We find substantial evidence supports the district court's calculation of the Trumms' damages. The trial court had the opportunity to evaluate the credibility of the witnesses, *Tim O'Neill Chevrolet v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996), and found the testimony of the Trumms' expert witness to be believable and reliable. On this basis, the court awarded the Trumms actual damages for losses they incurred from September 4, 1998 until August 3, 1999 of \$23,009, and loss of profit damages until the end of the contract on March 1, 2000 of \$37,800. FSI contends the record is speculative as to whether the Trumms sustained damages, arguing no evidence was presented regarding the market price of the SEW pigs, the Trumms' lost profit, or costs they saved. See *Data Documents, Inc. v. Pottawattamie County*, 604 N.W.2d 611, 616-17 (Iowa 2000). However, proof of damages need not be shown by mathematical certainty. *Id.* at 616. Rather, the evidence must be sufficient to allow a factfinder to make an approximate estimate of the loss. *Id.* at 617. The Trumms' expert witness calculated the Trumms would have profited \$6 per head under the contract, factoring the price FSI would have paid minus the cost of raising the pigs. He then calculated the total profit the Trumms would have earned under the contract and subtracted from it the amount the Trumms actually earned. This evidence was sufficient to allow the district court to estimate the loss the Trumms incurred after FSI provided them notice it was terminating the contract.

The district court declined to award the Trumms damages from April 1 to September 3, 1998, when



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the Trumms housed the SEW pigs an average of seven days longer. The Trumms argue they are entitled to damages for the costs involved in the delay. Although the Trumms had to pay additional feed for the pigs during that time, the Trumms agreed to do so and continued to sell pigs to FSI, even though FSI refused to pay them for their additional expenses. Therefore, damages are not available to them prior to FSI's notification of the contract termination.

Because the district court properly dismissed FSI's counterclaim and correctly assessed the Trumms' damages, we affirm.

AFFIRMED.

