

STATE OF MICHIGAN
COURT OF APPEALS

CHRYSLER PENTASTAR AVIATION, INC.,

Plaintiff–Appellee,

v

MLX CORPORATION,

Defendant–Third-Party Plaintiff–Appellant,

v

AVIATION GROUP, INC.,

Third-Party Defendant–Appellee.

UNPUBLISHED

July 23, 1996

No. 175159

LC No. 92-222888-CK

Before: Michael J. Kelly, P.J., and Young and N.O. Holowka,* JJ.

PER CURIAM.

Defendant appeals as of right from an adverse verdict after a jury trial. We affirm.

Aviation Group, Inc. (“AGI”) provided air charter services for MLX. Chrysler Pentastar Aviation purchased some of AGI’s assets and assumed its contractual obligations to MLX. As a result, MLX began using Chrysler Pentastar’s charter service.

Chrysler Pentastar started billing MLX for flights. MLX failed to pay the entire amount due, contending that it was entitled to be credited for flight time which it had banked under its agreement with AGI. AGI’s representative testified at trial that the banked amount was never intended to be applied as a cash credit, but would be applicable only in months when MLX’s purchases exceeded certain monthly minimum commitments. Thus, Chrysler Pentastar argued, MLX was not entitled to have the banked amount offset against general billings.

* Circuit Judge, sitting on the Court of Appeals by assignment.

The jury found for Chrysler Pentastar and against MLX. It also found no cause for action on MLX's third-party complaint against AGI. MLX moved for judgment notwithstanding the verdict, arguing that it was entitled to judgment under an "equitable estoppel" theory.

MLX argues on appeal that it should have been granted judgment notwithstanding the verdict. We disagree. When reviewing a court's denial of a motion for judgment notwithstanding the verdict, we must view the evidence in a light most favorable to the nonmoving party. *Kemp v Mutual of Omaha Ins Co*, 375 Mich 359, 362; 134 NW2d 696 (1965). AGI's representative provided sufficient evidence to support Chrysler Pentastar's theory of the case that the banked amounts were not general credits against billings. MLX's evidence disputed, but could not negate, that testimony.

Affirmed.

/s/ Michael J. Kelly

/s/ Robert P. Young, Jr.

/s/ Nick O. Holowka