

STATE OF MICHIGAN
COURT OF APPEALS

TROYER POTATO PRODUCTS, INC,

Plaintiff-Appellee,

v

JOHN OAKLEY and RICK NOBACK,¹

Defendants-Appellants.

UNPUBLISHED

April 19, 2011

No. 292666

Eaton Circuit Court

LC No. 07-001456-CK

Before: SHAPIRO, P.J., and HOEKSTRA and TALBOT, JJ.

PER CURIAM.

Defendants appeal as of right from the judgment entered following a bench trial, in which the trial court found defendants jointly and severally liable to plaintiff for a breach of contract in the amount of \$85,770.81. We reverse and remand for entry of an order consistent with this opinion.

I. BACKGROUND

Plaintiff filed suit alleging nonpayment by defendants for a bulk shipment of glyphosate, an unregistered chemical² often used in farming. Plaintiff is a wholesaler of farm chemicals, both registered and unregistered. Defendant farmers contend that they had no contract with plaintiff because the deliveries were for a group purchasing organization called “Mid-Michigan Buying Group” (MMBG).

A. MID-MICHIGAN BUYING GROUP

During the 2003 growing season, a group of farmers in central Michigan, approximately 110-120 farmers at the time of the dispute, decided to form a “buyer’s group” to purchase chemicals in bulk in order save money on their cost. The group was highly informal and,

¹ The proper spelling of defendant’s last name is Nobach.

² Registered chemicals require a license and the name of the purchaser must be recorded; unregistered chemicals have no such requirements.

although it was known, at least to some members, as “the Mid-Michigan Buying Group,” it was not incorporated nor registered as a d/b/a. The group did not have a bank account and neither paid nor received money.³ Defendants were two of the farmers that initiated the group. Defendant John Oakley was in charge of finding the lowest price on the chemicals and facilitated the delivery of all the chemicals that plaintiff provided. Defendant Richard Nobach was in charge of taking delivery of all the chemicals at a structure on his farmland in Eaton Rapids where the farmers would pick them up and leave checks payable to plaintiff.

B. TRANSACTION PROCESS AND DELIVERY

Oakley appears to be the only member of the group to have had direct contact with plaintiff. He would inform plaintiff when the glyphosate was low and the group needed another load. According to Oakley, the agreement was between MMBG and plaintiff, with MMBG agreeing “to facilitate full truckloads, economics of freight, that they would put some in there basically on consignment or it would, it would be there so they could facilitate a[n] economical way of getting it delivered.” There was no written contract. Oakley denied ever “placing an order,” stating instead that “we agreed to having a full truckload come into Eaton Rapids so that it could be dispensed.” Plaintiff acted purely as a middleman and neither produced nor delivered the chemicals.

Plaintiff’s manager, Charles Rynd, testified that his company did business with several buyers groups and provided them with special pricing. He testified that, in his first call with Oakley, Oakley told him that he was acting on behalf of MMBG, an entity, and that Rynd concluded they were agents for the individual growers in the form of MMBG. Oakley testified that he believed he was acting as “a facilitator” for plaintiff and the farmers, helping them to complete their transactions.

Rynd further testified that he told Oakley that his company would be interested in the arrangement proposed and that Oakley should get him a list of approximate quantities so they could provide pricing. He testified that Oakley did not propose becoming plaintiff’s representative in middle Michigan and that plaintiff already had a salesman in that area. However, he also stated that “we don’t do agents. We deal direct with growers through sales people.” According to Rynd:

Our agreement was that we would provide various products, primarily Glyphosate products, and a partial or a full load of mixed products. The mixed products would be the registered or regulated products and then the Glyphosates. . . . The agreement was that for the mixed products or the regulated products that we had to have a grower’s name and invoice, a grower’s name on the order sheets

³ There was some indication that the organization or one of defendants may have received de minimis payments for purposes of covering minor costs, but at trial the testimony was uncontradicted that no such funds were received.

with their pesticides license so that we could generate invoices at the time of shipment and then the, the check would be matched toward that invoice The Glyphosate was strictly shipped to the, ship it [sic]. They were to receive it, distribute it to the, to the growers, and send us checks for it. We didn't need to have individual invoices for those. We just needed to have, you know, a, a check so that we could identify that that person was from the Michigan Buyer's group and that we could, you know, correspond the check so that we knew which invoice to or for the Glyphosate we could apply it to.

Specifically as to the glyphosate,

all of the, the shipments of glyphosate [were put] under the Mid-Michigan Buyers Group name in the computer system and so that each time that there was a shipment there we then charged the Mid-Michigan Buyer's Group for that shipment and as we received checks we applied that to our, to the accounts receivable part of it.

He also testified that

when we discussed getting together on, on selling them product I was informed that Mid-Michigan Buyers Group didn't have a checking account or did not have any formal location or a formal bank account, that it would be dealing, that the checks would be coming from the [farmers] which we accepted as being a reasonable way of doing business with them.

Thus, Rynd knew that the glyphosate was intended for the individual farmers and that Oakley and Nobach did not intend to purchase all the glyphosate that was delivered. Indeed, he testified that "they weren't buying it for their own account."

Rynd testified that Oakley ordered each shipment of the glyphosate by telephone: "What he would do is say we need a load of Glyphosate and then, and then he would tell me whether it would be in shuttles or 30 gallon drums." Upon hearing from Oakley that more chemicals were needed, plaintiff would contact BRC Enterprises, a chemical wholesaler, who would contact the chemical manufacturer and arrange for shipping by a third-party semi-truck company.

The chemicals would arrive by semi-truck, which was unloaded and the chemicals placed inside the buildings on Nobach's farm. Registered chemicals were labeled for the specific farmer who requested them, but unregistered chemicals were not labeled for any specific farmer. One of the farmer's described Nobach's farm as "a staging area." Once the chemicals were unloaded, the individual farmers would come to Nobach's farm and take the amount of chemicals they needed. Each farmer wrote a check made payable directly to plaintiff and left the check with Nobach. Nobach created an "invoice" or farmer's "receipt," which contained the quantity, price, dollar amount, check number, and farmer's name. Nobach would deliver the checks to Oakley, who would mail the checks and invoices created by Nobach to plaintiff. Plaintiff would reduce the balance they showed as owed by MMBG consistent with the checks they received. At the end of a growing season, plaintiff took back any chemicals that had been delivered to Nobach's property but had not been picked up or paid for by any group members.

C. DISPUTED TRANSACTION

At the end of the 2005 growing season, plaintiff notified defendants that one of the seven shipments had not been paid for. Defendants responded that all the chemicals shipped had been either picked up by individual farmers and paid for with individual checks, or returned to plaintiff.

Roger Betz, one of the farmers, who was also a district farm management educator with Michigan State University extension, attempted to review all the paperwork and determine who was right and what happened. He discovered that the amount of unpaid-for glyphosate was almost exactly 140 30-gallon drums or barrels, the precise amount that would be contained within a single shipment. He hypothesized that one of the shipments that plaintiff believed had been made had, in fact, not been made. However, after reviewing the documents, the only glyphosate delivery that had not been signed for was one that came in shuttles rather than barrels; all of the bills of lading for the barrel shipments were initialed as having been received.

Given that the number of unpaid-for barrels was almost precisely the amount listed as being delivered on one of the bills of lading, Betz theorized that one of the barrel deliveries had been signed for twice and that the unpaid-for barrels had never been delivered. He posited that this was far more likely than someone having stolen precisely one delivery of barrels from the building on Nobach's farm. This supposition was supported by the fact that there was no evidence of any of the glyphosate having been stolen, or of Nobach or Oakley having sold it and kept the proceeds for themselves rather than sending them to plaintiff.

C. LITIGATION

Plaintiff filed suit against defendant for the unpaid for delivery of glyphosate. Attached to plaintiff's complaint was an affidavit signed by a plaintiff's manager attesting that MMBG had an outstanding debt with plaintiff in the amount of \$54,561.92. The complaint had only two allegations: that plaintiff sold defendant goods and that the amount in the affidavit was due and owing. The complaint caption listed the defendant(s) as "John Oakley & Rick Novak D/B/A Mid Michigan Buyers Group, individually and jointly and severally."⁴ Defendants denied both allegations and asserted that "[d]efendants are not the proper party in interest."

A bench trial took place on April 27 and 28, 2009. In a written opinion, the court defined the liability issues as follows: "First, whether the parties had a valid contract that was breached. Second, whether the existence of an agency between defendants and the plaintiff or the defendants and some third parties absolves them of personal liability." The trial court concluded that plaintiff had met its burden "to establish the existence of a valid contract between the parties and that the contract was breached by defendant":

⁴ On April 7, 2008, the parties stipulated to an amended complaint to correct the spelling of Nobach's name.

The testimony indicated that the defendants telephoned the plaintiff to inquire about how much it would cost to purchase various chemicals including glysohate [sic], a generic substitute for Roundup. The evidence demonstrated that plaintiff then provided a price quotation to the defendants under the heading of “Mid-Michigan Buying Group.” (Ex. 1). The defendants thereafter agreed to purchase a truckload of glysohate [sic] in 30-gallon containers and one was shipped on April 13 and signed for by defendant Nobach. (Ex. 7; Ex. 8). From late April to early June seven total shipments of both 30-gallon and 250-gallon containers of glysohate [sic] were documented by invoices, six of which were initialed as received by either defendant Nobach or one of his employees. From not only these invoices but also the testimony and behavior of the parties, it is evident that several agreements existed between both defendants and the plaintiff by which the defendants agreed to purchase a stated quantity of product from the plaintiff for an agreed upon price.

Having concluded that “defendants” had a contract with plaintiff, the trial court further concluded that the individual defendants were not shielded from liability by any agency status. First, it held that there was insufficient evidence of an agency relationship between defendants and plaintiff, as there was no evidence that plaintiff had any authority over the defendants. Second, it determined that, even if defendants were acting as agents of MMBG and the plaintiff knew this, the individual defendants would still be liable because the identity of the principals, i.e. the individual farmers, was not disclosed.

Defendants now appeal, claiming the trial court erred in determining that a contract existed between themselves and plaintiff.

II. ANALYSIS

The existence of a contract involves a question of law that we review de novo. *Kloian v Domino’s Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006).

A. ERRONEOUS FACTUAL FINDINGS

Before discussing the legal conclusions reached by the trial court, we note that the several of the facts upon which it based its conclusions are erroneous, as they are unsupported by the record.

First, the trial court erred because it neither distinguished between either of the two individual defendants nor determined the relationship of either of the individual defendants to MMBG. For example, the court stated that “[t]he testimony indicated that the defendants telephoned the plaintiff to inquire” about purchasing chemicals. However, the testimony is uncontested that only Oakley telephoned plaintiff in this regard. Indeed, it was not disputed that Nobach never had any contact at all with plaintiff.

Second, the trial court stated that “plaintiff then provided a price quotation to the defendants under the heading of “Mid-Michigan Buying Group,” citing trial exhibit 1, which was a price list. This statement was in error because the price list had been prepared by Oakley and

distributed to the farmers to provide them with the charges each farmer would have to pay to plaintiff given the overall charge for the larger quantities being delivered.

Third, the trial court's opinion states that "the defendants thereafter agreed to purchase a truckload of glyphosate in 30-gallon containers" and that over the growing season "several agreements existed between both defendants and the plaintiff by which the defendants agreed to purchase a stated quantity of product from the plaintiff for an agreed upon price." As previously noted, this places Oakley and Nobach in the same position without discussing Nobach's lack of involvement in the creation of any of these "agreements." Further, there is no evidence that defendants ever agreed to purchase the truckloads of chemicals that were delivered to Nobach's facility. Rather, the undisputed record evidence is that both parties intended these chemicals to be purchased by individual farmers. The court also failed to consider the fact that no payment was ever made by Oakley, Nobach, or MMBG to plaintiff for an entire truckload. All the payments received by plaintiff over a several month period came from individual farmers.

B. EXISTENCE OF CONTRACT

As to the trial court's legal conclusion that a contract existed, the trial court erred by failing to recognize that the Uniform Commercial Code (UCC), MCL 440.1101 *et seq.*, applied to this alleged "sale" of goods because the glyphosate at issue is indisputably a "good" within the meaning of the UCC. See MCL 440.2105(1). Under the UCC, "[a] 'sale' consists in the passing of title from the seller to the buyer for a price." MCL 440.2106(1). Under the circumstances, no sale occurred because plaintiff and defendants never agreed that title of the glyphosate (or any of the other chemicals) would pass to defendants. See MCL 2401(1) (providing that "title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties"). Rather, title of the chemicals remained with plaintiff until they were received and paid for by the individual farmers.

This is best evidenced by the parties' dealings in two respects. First, any unsold chemicals were returned to plaintiff. Had title transferred, the products would not have been returned, but would have needed to be sold back to plaintiff. Second, as previously noted, when registered chemicals are sold, the purchaser must be recorded and the purchaser must have a license. Plaintiff's records show the names of individual farmers ordering each registered chemical and sent invoices indicating which specific farmer the chemicals were for. It would be unlawful for MMBG to have taken title of the registered chemicals since MMBG was not listed as the purchasing party and did not have the proper license.

However, insofar as the chemicals were received at Nobach's farm and placed in the building until the farmers came to pick them up and left their specific checks for their purchases, which were then forwarded to plaintiff, the distribution of registered and unregistered chemicals was the same. In light of the uniform process of distribution and the fact that it would not have been legal for title to pass on the registered chemicals, we fail to see how the process could pass title on unregistered chemicals without doing so for registered chemicals. Accordingly, we must conclude that title did not pass for either the registered or unregistered chemicals. There being no passage of title, there was no contract for the sale of goods between plaintiff and defendants. MCL 440.2106(1).

We need not address the remainder of defendants' issues because our conclusion that no sale of goods contract existed is dispositive.

III. CONCLUSION

The trial court made several erroneous findings of fact that were inconsistent with the factual record. Furthermore, under the UCC, no contract for the sale of goods existed in this case because title never transferred from plaintiff to defendants. Consequently, the trial court erred in holding that a contract existed between plaintiff and defendants.

Reversed and remanded for entry of an order consistent with this opinion. We do not retain jurisdiction.

/s/ Douglas B. Shapiro

/s/ Joel P. Hoekstra

/s/ Michael J. Talbot