2015 IL App (3d) 140320-U

Order filed January 9, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

CLARENCE CHINN,	)	Appeal from the Circuit Court
	)	of the 9th Judicial Circuit,
Plaintiff-Appellant,	)	Hancock County, Illinois,
	)	
v.	)	Appeal No. 3-14-0320
	)	Circuit No. 12-LM-7
DEAN FECHT and KIRBY FECHT,	)	
	)	
Defendants-Appellees.	)	Honorable Richard H. Gambrell,
	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's findings that defendants' representation that a used tractor was in "excellent condition" did not create either an express warranty or an implied warranty were not against the manifest weight of the evidence.

¶ 2 Plaintiff, Clarence Chinn, purchased a tractor from defendants, Dean and Kirby Fecht. After taking delivery, plaintiff discovered that the tractor had an oil leak and was in need of considerable repairs. Defendants refused to take back the tractor and refund the purchase price. Plaintiff sued defendants, claiming breach of express and implied warranty. Plaintiff alleged that

defendants created an express warranty by stating that the tractor was in "excellent condition" and "field ready." The trial court entered judgment in favor of defendants.

¶ 3 Plaintiff appeals, arguing that the trial court erred in finding that: (1) defendants' representations did not constitute an express warranty; and (2) no implied warranty existed. For the following reasons, we affirm,

¶ 4 BACKGROUND

¶ 5 Plaintiff sought to acquire a tractor to use in his farming operation. He wanted a tractor with greater horsepower than his current tractors. Plaintiff had been a self-employed farmer for 54 years. During his time as a farmer, plaintiff had often purchased, updated and modernized farm equipment, including tractors. While searching for a new tractor, plaintiff came across defendants' online advertisement for the sale of a 1994 John Deere tractor. The advertisement stated that the tractor was in "excellent condition." Plaintiff contacted defendant, Dean Fecht, who referred plaintiff to co-owner, Kirby Fecht. While speaking on the telephone, defendants told plaintiff that they had used the tractor for numerous years in their farm operation and that the tractor was sound and "field ready."

¶ 6 Plaintiff visited defendants' farm in order to inspect the tractor. While plaintiff conducted his inspection, defendants, again, told him the tractor was sound and "field ready." Defendants also informed plaintiff that the engine had previously been rebuilt and the tractor repainted. They did not know when or by whom the tractor had been rebuilt and repainted. Plaintiff checked the tractor's oil, started the tractor, and operated it down the road for one mile. After inspecting the tractor, plaintiff told defendants that a hose and a hydraulic plug needed to be replaced. Defendants made such repairs prior to delivering the tractor to plaintiff. Plaintiff purchased the tractor from defendants for $47,000. The parties did not sign a written contract.

¶ 7 The day after taking delivery, plaintiff noticed that the tractor had a major oil leak. Plaintiff hired a certified mechanic to inspect the tractor. The mechanic told plaintiff that the tractor suffered from major mechanical malfunction. The mechanic also said the tractor was in need of numerous repairs before plaintiff could use it in his farming operation.

¶ 8 Plaintiff contacted defendants; he told them that they misrepresented the condition of the tractor. Defendants refused plaintiff's request that they take back the tractor and refund the purchase price.

¶ 9 Plaintiff filed a complaint, alleging breach of express warranty and breach of implied warranty of fitness. Plaintiff alleged that defendants' statements concerning the condition of the tractor created an express warranty. After taking and considering testimony, exhibits and written posttrial arguments, the court found in favor of defendants on both counts. The court found that defendants' representations did not constitute an express warranty. The judge stated defendants' expression that the tractor was in "excellent condition" was the sellers' opinion. In addition, the court found that no implied warranty existed where plaintiff did not rely on defendants' skill when selecting a tractor for use in his farming operation. The court reasoned that plaintiff had a "lifetime of farming experience."

¶ 10 Plaintiff appeals. We affirm.

¶ 11 ANALYSIS

¶ 12 Plaintiff argues that the trial court erred by finding that the defendants' expressions did not create an express warranty and that no implied warranty existed. Existence of an express warranty is a question of fact. *Alan Wood Steel Co. v. Capital Equipment Enterprises, Inc.*, 39 Ill. App. 3d 48, 54 (1976). We will not disturb the trial court's findings unless such findings are against the manifest weight of the evidence. *Id.* The same is true with respect to implied

warranties. *Adolphson v. Gardner-Denver Co.*, 196 Ill. App. 3d 396, 401 (1990). A trial court's determination is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence presented. *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 13 I. Express Warranty

¶ 14 Plaintiff argues that defendants' representations that the tractor was in excellent condition, sound and field ready created an express warranty.

¶ 15 A seller creates an express warranty by making an affirmation of fact or promise to the buyer which relates to the goods and becomes part of the basis of the bargain. *Mydlach v. DaimlerChrysler Corp.*, 226 Ill. 2d 307, 320 (2007); 810 ILCS 5/2-313(1) (West 2012). The seller need not use formal words, such as "warrant" or "guarantee" to create an express warranty. 810 ILCS 5/2-313(2) (West 2012). We apply the "basis of the bargain" test to determine whether the descriptions or affirmations created an express warranty. *Alan Wood Steel Co.*, 39 Ill. App. 3d at 53. The test focuses upon the affirmations or descriptions which go to the essence of the bargain or become a basic assumption of the parties' agreement. *Id.*

¶ 16 Plaintiff relies on *Weng v. Allison*, 287 Ill. App. 3d 535, 536 (1997), wherein the court held that the seller's statements to the buyer that the car was "mechanically sound," "in good condition," and had "no problems" were affirmations of fact that created an express warranty. (Internal quotation marks omitted.) *Id.* However, *Weng* is easily distinguishable. There, the buyer did not test drive the car before purchasing it. Here, plaintiff inspected the tractor, operated it, found some defects and required that they be corrected before purchase. Further, plaintiff was an experienced farmer and had purchased tractors in the past.

¶ 17 Contrary to plaintiff's position, courts regard a seller's statement that products are of "good quality," "the best," or "in perfect condition" as expressions of the seller's opinion or "puffery" rather than an express warranty. *Redmac, Inc. v. Computerland of Peoria,* 140 Ill. App. 3d 741, 744 (1986); *Olin Mathieson Chemical Corp. v. Moushon,* 93 Ill. App. 2d 280, 282 (1968); *Royal Business Machines, Inc. v. Lorraine Corp.*, 633 F. 2d 34, 42 (1980). A seller's statement that a truck was in "good condition" did not create an express warranty where the buyer inspected the truck, was aware that the truck needed repairs, and was familiar with trucks prior to purchasing one from the seller. *Janssen v. Hook,* 1 Ill. App. 3d 318, 321 (1971).

¶ 18 Here, defendants' expression that the tractor was in "excellent condition" constituted their opinion, but never became a basis for the bargain. Plaintiff conducted his own inspection of the tractor. He determined that the tractor was in need of some repairs, which defendants made prior to delivering the tractor. Moreover, plaintiff was familiar with tractors before he purchased one from defendants as evident by his 54 years of experience as a farmer. The trial court's finding is not against the manifest weight of the evidence.

¶ 19 II. Implied Warranty of Fitness for Particular Use

¶ 20 Plaintiff argues that an implied warranty existed due to the fact that he relied on defendants' judgment to select a suitable tractor.

¶ 21 In order to prove breach of an implied warranty of fitness for a particular use, plaintiff must show: (1) that there was a sale of goods; (2) that the seller has reason to know of any particular purpose for which the goods are required; (3) that the buyer of the goods, plaintiff, was relying upon seller's skills or judgment to select suitable goods; and (4) that the goods were not fit for the particular purpose for which they were used. *South Side Trust & Savings Bank of*

Peoria v. Mitsubishi Heavy Industries, Ltd., 401 Ill. App. 3d 424, 436-37 (2010) (quoting *Maldonado v. Creative Woodworking Concepts, Inc.*, 342 Ill. App. 3d 1020, 1034 (2003)).

¶ 22 It is undisputed that there was a sale of goods; defendants sold plaintiff a tractor. Defendants were aware that plaintiff was purchasing the tractor for the purpose of using it in his farming operation. Evidence also established that the tractor is unsuitable for such use; the tractor had an oil leak and was in need of numerous repairs. We are left to determine whether plaintiff relied on defendants' skill and judgment when selecting this tractor.

¶ 23 Here, plaintiff was an experienced farmer. He frequently purchased farm equipment, including tractors. Plaintiff knew the type of tractor that he wanted to purchase; he was seeking one with greater horsepower than his current tractors. Additionally, plaintiff conducted his own inspection, operated the tractor, and demanded that defendants make certain repairs before consummating the sale. The trial court's finding that plaintiff did not rely on defendants' skill or judgment is not against the manifest weight of the evidence.

¶ 24 CONCLUSION

¶ 25 For the foregoing reasons, the judgment of the circuit court of Hancock County is affirmed.

¶ 26 Affirmed.