2016 IL App (4th) 150214-U

NO. 4-15-0214

FILED
May 24, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

TOPFLIGHT GRAIN COOPERATIVE, INC., Plaintiff-Appellee, v. RJW WILLIAMS FARM, INC., Defendant-Appellant.	) Appeal from) Circuit Court of) Piatt County) No. 11MR31)) Honorable) William Hugh Finson,) Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in granting the grain purchaser's motion to compel arbitration where (1) the court's finding a valid contract existed was not against the manifest weight of the evidence because sufficient evidence was presented to conclude a timely written confirmation of the revised oral contract was received by the grain seller, and (2) the contract contained an arbitration clause.

¶ 2 This case arises from a dispute concerning an alleged contract for the sale of corn between plaintiff, Topflight Grain Cooperative, Inc. (grain purchaser) (Topflight), and defendant, RJW Williams Farms, Inc. (grain seller) (RJW).

¶ 3 On September 19, 2014, Topflight filed a second motion to amend its application to compel arbitration, arguing (1) the parties had a valid contract and (2) the parties agreed to arbitrate any disputes arising under that contract.

¶ 4 On February 20, 2015, following a bench trial, the trial court granted Topflight's

motion to compel arbitration. The court found the parties entered into a valid contract, which provided any disputes would be arbitrated by the National Grain and Feed Association (Association).

¶ 5 RJW appeals, arguing the trial court erred in finding a valid contract existed. We affirm.

¶ 6 I. BACKGROUND

¶ 7 Topflight and RJW have a history of doing business together and have entered into contracts for the purchase of grain in the past. The parties have also had a prior contract dispute arbitrated by the Association.

¶ 8 On June 10, 2010, Topflight entered into an oral agreement to purchase 200,000 bushels of # 2 Yellow Corn from RJW with a December 2010 delivery date (original contract No. 16877).

¶ 9 According to Topflight, on March 3, 2011, it agreed to RJW's request to split the original order for 200,000 bushels into two orders of 100,000 bushels each. The 200,000 bushels under original contract No. 16877 was split evenly between contract No. 36280 and revised contract No. 16877. Topflight maintained confirmations for those contracts were mailed to RJW on March 4, 2011, pursuant to its customary office practice.

¶ 10 On April 29, 2011, RJW sent a letter to Topflight indicating it intended to honor the pending contacts and requesting an extension for more time to deliver the bushels. Topflight sent a letter to RJW granting the requested extension. That letter stated, "we will grant [RJW] an extension on contracts [No.] 36280, 16877, and 16738 until close of business on Friday, May, 6, 2011."

¶ 11 RJW eventually delivered 83,338.94 of the 100,000 bushels due under contract No. 36280. However, it failed to deliver any of the remaining 16,661.06 bushels due under that contract. RJW did not deliver any of the 100,000 bushels due under revised contract No. 16877.

¶ 12 In May 2011, Topflight cancelled the contracts for the remaining bushels and sent a demand letter to RJW for the remaining amounts due. RJW did not pay the amount demanded and refused to arbitrate revised contract No. 16877 before the Association, despite that contract's arbitration clause. (We note contract No. 36280 was submitted to arbitration.)

¶ 13 On March 9, 2012, Topflight filed an amended motion to compel arbitration against RJW for its failure to deliver on revised contract No. 16877 and its refusal to arbitrate the dispute.

¶ 14 On April 13, 2012, RJW filed a motion to dismiss Topflight's amended motion to compel arbitration, which the trial court granted.

¶ 15 On November 26, 2012, Topflight appealed the dismissal. On appeal, this court reversed and remanded the matter for further proceedings. See *Topflight Grain Cooperative, Inc. v. RJW Williams Farms, Inc.*, 2013 IL App (4th) 121079-U, ¶ 1 (finding Topflight sufficiently alleged it sent a timely written confirmation of the revised contract No. 16877 to RJW and a question of fact remained regarding whether RJW received it).

¶ 16 On September 19, 2014, Topflight filed a second motion to amend its application to compel arbitration, arguing (1) the parties had a valid contract and (2) the parties agreed to arbitrate any disputes arising under that contract.

¶ 17 A bench trial was held on January 30, 2015, and February 13, 2015, on Topflight's motion to compel. The parties agreed the issues the trial court needed to decide were (1) is there

a contract, and if so, (2) does that contract contain an arbitration clause. The parties agreed revised contract No. 16877 was never signed by RJW.

¶ 18 During trial, Derrick Bruhn, the grain merchandising manager for Topflight, testified on March 3, 2011, he and another Topflight employee, Scott Docherty, met with James Williams, president of RJW, to discuss upcoming grain deliveries. At that meeting, Bruhn and Docherty hand delivered a customer acknowledgment listing the grain deliveries RJW had agreed to make to Topflight, including original contract No. 16877. According to Bruhn's testimony, Williams told Bruhn and Docherty "he was going to be short crop for the delivery period—or the crop year 2010, and he would need to roll some of those contracts out to the deferred year." Bruhn explained Williams was "trying to exit out of some of the [existing grain delivery] contracts." Williams wanted permission to deliver one-half of original contract No. 16877 directly to Archer-Daniels-Midland (ADM) instead of Topflight's Monticello location.

¶ 19 Topflight agreed to the modification and Bruhn split the order for 200,000 bushels from the original order into two different orders. Bruhn put the 100,000 bushels to be delivered directly to ADM on Direct Grain Purchase Confirmation No. 36280 (confirmation No. 36280). The remaining 100,000 bushels for delivery directly to Topflight were reflected on a revised confirmation for contract No. 16877, which Bruhn testified was signed and mailed out. Bruhn testified he mailed the Futures Only Grain Purchase Confirmation for revised contract No. 16877 (confirmation No. 16877) in the same envelope with the confirmation for No. 36280 on March 4, 2011, pursuant to Topflight's customary business practices for mailing written confirmations. Confirmation No. 16877 was not returned as undeliverable and RJW did not respond with an objection.

¶ 20 Adam Jackson, a former grain merchandiser with Topflight, testified he prepared confirmation No. 16877 on March 4, 2011. Jackson testified the document confirmed the sale of 100,000 bushels of corn to Topflight. Jackson testified he signed the confirmation, which was admitted into evidence. Jackson did not personally mail confirmation No. 16877.

¶ 21 On March 7, 2011, Bruhn, accompanied by Docherty, met with Williams at his home to obtain a signature "on the portion of 16877 that was priced out, setting the basis for direct delivery to ADM, also to get [a] signature on the bushels that were rolled out to the following crop year, and to get personal guarantees and contract amendments signed." Bruhn discussed with Williams, among other things, the 100,000 bushels to be delivered per revised contract No. 16877. Bruhn testified Williams reviewed the customer acknowledgment, which specifically listed revised contract No. 16877 and stated the commodity, quantity, delivery date, and price. Bruhn testified Williams did not have any objections to it. Williams did not sign revised contract No. 16877 that day because Bruhn did not present it to him.

¶ 22 Bruhn testified he faxed a customer acknowledgment to Williams on March 16, 2011. The customer acknowledgment identified revised contract No. 16877, showed the amount of bushels due (100,000), specified the price, and the delivery date.

¶ 23 At the close of Topflight's case, RJW moved for a directed finding, which the trial court denied. RJW chose not to offer any evidence on its behalf.

¶ 24 After the parties completed their closing argument, the trial court found the following:

> "On the first issue, whether there is a contract, whether there is a valid contract under [original contract No.] 16877, as I said this

morning, really doesn't matter, because the contract we are talking about here is the second [revised contract No.] 16877, the one for delivery of one hundred thousand bushels of number two yellow corn.

The evidence the court has heard hasn't changed since this morning. [Topflight's] Exhibit Number 8, the one headed [']Futures Only Grain Purchase Confirmation,['] was prepared. It was[,] pursuant to Topflight's mailing procedures, put into the mail on March 4th, the day after the meeting with Mr. Williams. The law presumes that when something is mailed it's received. No objections were made. The officials from the grain company talked to Mr. Williams the next time, I think was on the 7th, and they showed him—well they eventually got to him the customer acknowledgment that is part of [Topflight's] Exhibit Number 10, that clearly shows [revised] contract [No.] 16877 for one hundred thousand bushels of yellow corn. No objections came after that. So I think[,] based on all that, there is clear evidence that there is a contract between the parties. Does that contract include an arbitration contract? Obviously it does. It's paragraph twelve on the back side of [Topflight's] Exhibit [No.] 8. I agree with [Topflight's attorney,] Mr. Smith that the UCC applies and controls the court's decision. When the matter gets to arbitration [RJW] can certainly raise that as a

> defense [certain] rules haven't been complied with. But as I said this morning, I don't think the court is bound by the rules and procedures of a private association. It has to be bound by the [UCC]. So[,] for all those reasons, I'm going to find the contract does include an arbitration [clause] that is properly worded, and I'm going to find in favor of [Topflight] and against [RJW] [and] order this cause submitted to arbitration."

¶ 25 In its February 20, 2015, written order, the trial court granted Topflight's motion to compel arbitration, finding (1) Topflight and RJW entered into an enforceable contract on March 4, 2011, *i.e.*, revised contact No. 16877 and (2) the conditions of revised contract No. 16877 provide the parties' dispute must be submitted to arbitration before the Association.

¶ 26 This appeal followed.

¶ 27 II. ANALYSIS

¶ 28 On appeal, RJW argues the trial court erred in concluding a valid contract existed. Specifically, RJW contends the Association's rules for grain contracting should preempt those of the UCC. RJW contends under the Association's rules there would not be a valid contract between the parties.

¶ 29 The issue at the heart of this case is whether Topflight and RJW agreed to arbitrate their dispute regarding revised contract No. 16877 before the Association. See *Donaldson, Lufkin & Jenrette Futures, Inc. v. Barr*, 124 Ill. 2d 435, 444, 530 N.E.2d 439, 443 (1988). However, any obligation to arbitrate in this case would be derived from revised contract No. 16877. Thus, the question of whether a valid contract exists between the parties must first be

resolved. See *Salsitz v. Kreiss*, 198 Ill. 2d 1, 13, 761 N.E.2d 724, 731 (2001) ("an agreement to arbitrate is a matter of contract"). The parties agree the key to whether a contract was formed in this case turns on whether RJW received written confirmation of revised contract No. 16877.

¶ 30 The question of whether RJW received written confirmation of the revised contract presents a question of fact. *Tabor & Co. v. Gorenz*, 43 Ill. App. 3d 124, 129, 356 N.E.2d 1150, 1153 (1976) (question of whether a written confirmation of an oral contract was received is a question of fact). A trial court's findings of fact in a civil case are generally reviewed under a manifest weight of the evidence standard. *Franz v. Calaco Development Corp.*, 352 Ill. App. 3d 1129, 1139, 818 N.E.2d 357, 368 (2004) (questions of fact receive manifest-weight review). A judgment is against the manifest weight of the evidence when an opposite conclusion is apparent or when the judgment is unreasonable, arbitrary, or not based upon the evidence. *Best v. Best*, 223 Ill. 2d 342, 350, 860 N.E.2d 240, 245 (2006).

¶ 31 RJW argues Association rules should govern over whether a valid contract exists. According to RJW, there would be no contract under the Association because the Association's definition of "reasonable time" requires the confirmation to be sent "not later than the close of the business day following the date of trade" and "there is no credible evidence that a written confirmation was sent to RJW by the close of the next business day, or even sent at all."

¶ 32 Topflight, on the other hand, argues we should examine the contract formation issue under the relevant provisions of the UCC. We agree with Topflight. RJW's position requires a contract to first exist as any authority on the Association's part would come from that contract. Instead, because the parties were engaged in grain merchandising, the relevant provisions of the UCC rules govern the issues in this case. *Bureau Service Co. v. King*, 308 Ill.

App. 3d 835, 838, 721 N.E.2d 159, 161 (1999) (citing *Sierens v. Clausen*, 60 Ill. 2d 585, 588-89, 328 N.E.2d 559, 561 (1975) (under the UCC, both grain producers and grain licensees are considered merchants).

¶ 33 The statute of frauds provision of the UCC requires contracts for the sale of goods in excess of $500 be in writing. 810 ILCS 5/2-201(1) (West 2012). However, an unsigned contract will be enforceable if "within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents." 810 ILCS 5/2-201(2) (West 2012). "Whether a time for taking an action required by the [UCC] is reasonable depends on the nature, purpose, and circumstances of the action." 810 ILCS 5/1-205(a) (West 2012). Under section 2-201(2) of the UCC, a written confirmation will be sufficient to bind the parties to the unsigned contract "unless written notice of objection to [the confirmation's] contents is given within 10 days after it is received." 810 ILCS 5/2-201(2) (West 2012).

¶ 34 To answer the question of whether a valid contract exists, we must determine whether RJW received written confirmation No. 16877 within a reasonable time. "Because it is difficult for a sender to prove that an item was received by the addressee, the general rule is that correspondence is presumed to have been received when the correspondence has been placed in a properly addressed envelope with adequate postage affixed and deposited in the mail." *First National Bank of Antioch v. Guerra Construction Co., Inc.*, 153 Ill. App. 3d 662, 667, 505 N.E.2d 1373, 1376 (1987); *Tabor*, 43 Ill. App. 3d at 129, 356 N.E.2d at 1154 ("A letter properly addressed, stamped and mailed is presumed to have been duly received based upon the probability of delivery and the difficulty of proving receipt in any other way."). "The

presumption is not conclusive and may be rebutted by evidence that the correspondence was not received by the addressee." *Guerra Construction Co.*, 153 Ill. App. 3d at 667, 505 N.E.2d at 1376.

¶ 35 "[O]ffice custom as to mailing is sufficient to constitute proof of the mailing when there is corroborating evidence to establish the fact that the custom was followed in the particular case." *Tabor*, 43 Ill. App. 3d at 130, 356 N.E.2d at 1154 (citing *Owl Electric Co., Inc. v. United States Fidelity & Guaranty Co.*, 131 Ill. App. 2d 333, 337, 268 N.E.2d 493, 496 (1971)); *Guerra Construction Co.*, 153 Ill. App. 3d at 667, 505 N.E.2d at 1376 (evidence of general office practice regarding mailing is insufficient unless accompanied by evidence the practice was followed in the particular instance in question). A party "[does] not bear the burden of proving [the] mailing date beyond a reasonable doubt, but rather must show that it is more probable than not that the mailing occurred on a specific date." *Carroll v. Department of Employment Security*, 389 Ill. App. 3d 404, 411, 907 N.E.2d 16, 24 (2009).

¶ 36 In this case, Bruhn testified he mailed the written confirmation for revised contract No. 16877 along with confirmation No. 36280 on March 4, 2011. Bruhn explained Topflight's customary business practice for mailing written confirmations involve the following:

> "Once the contracts are printed off, signed, they go—they are folded with the address showing, and they go into a window envelope. The window envelope is sealed, goes to a postage meter that's in the office, postage is put on, and at that point the envelope with the documents in it is taken to our CFO's desk, and that is a central point [at] which the U.S. postal system picks up our mail."

¶ 37 Bruhn testified the CFO's desk was the location designated by Topflight and the United States postal service for daily pickup of outgoing mail. Bruhn testified these procedures were followed with respect to revised contract No. 16877 on March 4, 2011. According to Bruhn, once the confirmation for revised contract No. 16877 was printed off and signed, he "combined it with [the confirmation for revised contract No.] 36280, put it in a window envelope with the address showing, put the postage on it[,] and mailed it out—put it on a desk for the U.S. Postal system to pick it up."

¶ 38 Confirmation No. 16877 was not returned as undeliverable and RJW did not immediately object to it. The presumption RJW received both confirmations is buttressed by the fact it partially performed its obligation under contract No. 36280, which was sent out with confirmation No. 16877. See *Tabor*, 43 Ill. App. 3d at 130, 356 N.E.2d at 1155 (corroborating evidence of receipt includes the fact other mailings sent at the same time arrived and were not returned). In addition, RJW indicated it intended to honor the pending contacts and sought an extension for more time to complete delivery. Moreover, RJW presented no testimony refuting its receipt of confirmation No. 16877. The trial court's finding RJW received written confirmation of revised contract No. 16877 is not against the manifest weight of the evidence.

¶ 39 As stated, RJW's obligation to arbitrate is derived from the contract's arbitration clause. Revised contract No. 16877 clearly contains an arbitration clause, which states the following:

> "Arbitration: The parties to this contract agree that the sole remedy for resolution of *any and all disagreements or disputes arising under this Contract shall be through arbitration proceedings before the*

[Association] under [Association] Arbitration Rules. The decision and award determined through such arbitration shall be final and binding upon the Buyer and Seller. Judgement upon the arbitration award may be entered and enforced in any Court having jurisdiction thereof." (Emphasis added.)

¶ 40 Thus, the trial court's finding RJW is obligated to arbitrate its dispute regarding the underlying contract before the Association is not against the manifest weight of the evidence.

¶ 41 In sum, the trial court's finding RJW received written confirmation of revised contract No. 16877 was not against the manifest weight of the evidence. The arbitration clause contained in revised contract No. 16877 clearly confers jurisdiction on the Association to arbitrate the parties' underlying dispute. As such, the court did not err in granting Topflight's motion to compel arbitration.

¶ 42 III. CONCLUSION

¶ 43 For the foregoing reasons, we affirm the trial court's judgment.

¶ 44 Affirmed.