

IN THE COURT OF APPEALS OF IOWA

No. 7-147 / 06-1041
Filed July 25, 2007

STANDARD PRINTING & DESIGN, INC.,
Plaintiff-Appellant,

vs.

SHELL ROCK PRODUCTS, INC.,
Defendant-Appellee.

Appeal from the Iowa District Court for Dickinson County, David Lester,
Judge.

Standard Printing & Design, Inc. appeals from the district court's ruling in a
contract dispute with Shell Rock Products, Inc. **AFFIRMED.**

Jill M. Davis and Stephen F. Avery of Cornwall, Avery, Bjornstad & Scott,
Spencer, for appellant.

Michael R. Bovee of Montgomery, Barry & Bovee, Spencer, for appellee.

Heard by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

ZIMMER, J.

Standard Printing & Design, Inc. (Standard Printing) appeals from the district court's ruling in a contract dispute with Shell Rock Products, Inc. (Shell Rock). Standard Printing contends substantial evidence does not support the district court's conclusion that the parties entered a contract for 7500 price point cards at a cost of \$9480 rather than 35,500 cards at a cost of \$60,740.66. We affirm.

I. Background Fact & Proceedings

John Derner owns Shell Rock, a gravel pit and concrete manufacturing facility located in Shell Rock, Iowa. The company manufactures and sells prefabricated landscaping products. Shell Rock's office is located outside of Milford, Iowa. Wendy Bakke was a sales representative for Shell Rock from the fall of 1998 until April 2000. Rita Wendelsdorf began working at the Milford office in 2000.

Standard Printing is a company engaged in the business of commercial printing. Shell Rock began doing business with Standard Printing in 1999. Bakke was the Shell Rock representative who had contact with Standard Printing regarding Shell Rock's printing projects. Dara Roberts and Michael Iedema worked on Shell Rock's account at Standard Printing.

Prior to the price point card transaction that is the subject of this case, the orders Shell Rock placed with Standard Printing were on written estimate forms prepared by Standard Printing. It was the standard practice of Standard Printing to provide Shell Rock with a written total project cost. The estimate forms used by Standard Printing contain a customer signature line and state: "The person

named above on said date accepts the terms and conditions outlined within this estimate therein opening the job order.” The estimate forms used for Shell Rock’s transactions with Standard Printing prior to the transaction at issue here also list the total quantity of items covered by the order, the cost of each item, and the total cost of the job.

Bakke met with Roberts and ledema prior to February 10, 2000, to discuss a price point card project.¹ Roberts provided Bakke with an “Estimate Summary Sheet” for the project on February 10, 2000. The “Estimate Summary Sheet” listed 3700 cards and a total project cost of \$5735. On March 10, 2000, Roberts prepared another “Estimate Summary Sheet” for Bakke that listed 37,000 cards at twenty-two cents per card and a total project cost of \$8040.² The March 10, 2000, “Estimate Summary Sheet” stated:

Wendy [Bakke]—I spoke with our outsource and he told me that it would be on or close to March 31st before we receive your cards—just wanted to make sure that you were aware of that—here is your price of the 37,000 cards—if it all looks ok please sign and fax it back to me and we’ll get it going for you. Thank You Wendy! Dara [Roberts].

This “Estimate Summary Sheet” contained a customer signature line and a blank to insert the date. Rita Wendelsdorf signed the sheet on March 10, 2000, and faxed it to Standard Printing.

On March 15, 2000, Roberts prepared another “Estimate Summary Sheet” for the project, which stated:

¹ Price point cards are laminated pieces of paper that display a picture of a product, describe product specifications, and allow retailers to write the price of the product in magic marker on the card and later wipe off the price and write a new price on the card.

² The March 10, 2000 “Estimate Summary Sheet” was for four-color price point cards, which cost more than cards with fewer colors.

Here are your prices for 2 color and one color Price Point Cards—for looks you are probably better off going with the 4 color considering the price isn't drastically higher. I guess most of the cost is incurred in the paper. Let me know how you would like to go. Thank you Wendy [Bakke]!!

This "Estimate Summary Sheet" listed 37,000 one-color cards at sixteen cents per card and a total project cost of \$6049.53. The sheet listed 37,000 two-color cards at eighteen cents per card and a total project cost of \$6495.93.

Roberts prepared a final "Estimate Summary Sheet" on May 3, 2000. Roberts sent this sheet to Wendelsdorf because Bakke had ended her employment with Shell Rock on April 20, 2000. This "Estimate Summary Sheet" differed from the prior "Estimate Summary Sheets" because it did not set forth the total quantity of price point cards covered by the estimate or list a total project cost. The sheet has the number 9480 in handwriting at the bottom of the amount column. Wendelsdorf testified she wrote 9480 on the sheet to reflect her calculation of the total project cost based on the quantity numbers listed on the "Estimate Summary Sheet." The sheet lists a quantity of 500 cards at \$2.93 per card, 1000 cards at \$1.78 per card, 1500 cards at \$1.33 per card, 2000 cards at \$1.02 per card, and 2500 cards at \$0.88 per card. The total project cost for these quantities of cards is \$9480, although the "Estimate Summary Sheet" does not list a total project cost.

Standard Printing's phone records show that the May 3, 2000 "Estimate Summary Sheet" was faxed to Shell Rock at 1:08 p.m. The records also show a telephone call between the Standard Printing office and the Shell Rock office at 1:38 p.m. that lasted 1.1 minutes. Roberts alleged that during this telephone call, Wendelsdorf verbally placed an order for price point cards with a total project

cost of \$60,740.66.³ Wendelsdorf testified she did not believe an order had been placed with Standard Printing on May 3, 2000, because she was waiting for Standard Printing to send an order confirmation sheet for a Shell Rock representative to sign, as Standard Printing had done in all its prior business transactions with Shell Rock.

The price point cards were delivered to Shell Rock's office in the morning on June 8, 2000, and Wendelsdorf signed a shipping receipt for the cards. Roberts called Wendelsdorf at 4:00 p.m. on June 8 and told Wendelsdorf she should "sit down" because the cost of the price point cards was substantially more than anticipated. When Roberts told Wendelsdorf the cost of the order was \$60,740.66, Wendelsdorf wrote the amount on the order packing slip followed by four question marks. Wendelsdorf testified she told Roberts that Roberts must have placed a decimal point in the wrong place. Roberts testified she had told Bakke sometime in April 2000 that the project would cost in excess of \$55,000, but Bakke testified Roberts never told her the project would cost so much.

Roberts faxed the May 3, 2000, "Estimate Summary Sheet" to Wendelsdorf on June 9. This sheet contains the following handwritten notation by Roberts: "OK per phone via Rita [Wendelsdorf] 5/3." Roberts testified she placed this notation on the sheet following her May 3 telephone conversation with Wendelsdorf. Roberts also had a telephone conversation with Wendelsdorf on June 9 regarding the "Estimate Summary Sheet." According to Wendelsdorf, this

³ Roberts testified Wendelsdorf told her to proceed with the order using quantities Roberts had determined earlier with Bakke. Roberts said she and Wendelsdorf did not discuss exact quantities in the conversation because she assumed Wendelsdorf had a sheet from Bakke that listed 35,500 as the quantity of cards to be ordered.

was the first time Roberts informed her that the numbers under the quantity column of the May 3, 2000 "Estimate Summary Sheet" meant thirteen groups of 500 and seventeen groups of 1500. Wendelsdorf wrote these numbers next to the quantities listed following the June 9 conversation.

Following the delivery of the cards, but prior to the 4:00 p.m. telephone conference during which Roberts informed Wendelsdorf about the unexpectedly high price, Derner took several dozen cards to Shell Rock's customers in Spencer, Iowa, including Ace Hardware and Gary Toft, a landscaper. After Standard Printing informed Shell Rock the card order cost \$60,740.66, Shell Rock did not use any more of the cards, and the cards still remain at Shell Rock's Milford office. Subsequent correspondence between legal counsel for Shell Rock and Standard Printing indicates Shell Rock demanded that Standard Printing remove the price point cards from Shell Rock's office, but Standard Printing refused the demand.

Standard Printing's telephone records reflect a flurry of communications between Standard Printing and Shell Rock following the 4:00 p.m. telephone conference on June 8, 2000, when Roberts informed Wendelsdorf of the \$60,740.66 total project cost. On June 9, 2000, Standard Printing called Shell Rock at 3:53 p.m., and at 4:02 p.m., Standard Printing sent Shell Rock a fax. At 4:11 p.m., Standard Printing sent Shell Rock another fax, and at 4:12 p.m., Standard Printing placed a 3.3-minute telephone call to Shell Rock's office. These communications were Roberts's attempt to explain why the cost of the price point card project had increased from less than \$10,000 to more than \$60,000.

Standard Printing called Shell Rock's office several times requesting payment on the \$60,740.66 invoice. Derner asked Standard Printing President Scott DeGeest to come to Shell Rock's office in order to discuss the invoice. Derner and DeGeest met during the summer of 2000, but were unable to resolve the issue.

After settlement discussions were unsuccessful, Standard Printing filed a three-count petition at law against Shell Rock. Count I alleged breach of an oral contract. Count II set forth a cause of action based on quantum meruit, and Count III sought recovery based on an open account. The lawsuit sought damages in the amount of \$60,740.66 plus interest. After several continuances and a change of counsel by Standard Printing, the case was tried to the court. During trial, Standard Printing asserted for the first time that a cause of action existed based on a written contract and requested an award of attorney fees. These issues were tried by consent and addressed by the trial court in its ruling.

On March 13, 2006, the district court issued its decision and found an express contract between the parties for 7500 price point cards at a cost of \$9480 plus statutory interest of five percent per year totalling \$2727.50. The court found incidental damages in the amount of \$1745.05 and awarded Standard Printing a total of \$13,943.45. The court also concluded Shell Rock was entitled to retain 7500 cards and required Shell Rock to store the remaining cards for a period of thirty days following the entry of its order to permit Standard Printing to remove them.⁴ Standard Printing filed a motion for new trial on

⁴ The court found if Standard Printing failed to remove the cards from Shell Rock's office within thirty days, Shell Rock was entitled to use the cards or dispose of them.

March 23, 2006, which the district court denied. Standard Printing now appeals. Shell Rock has not cross-appealed from the district court's award of damages.

II. Scope & Standards of Review

The parties agree this matter was tried to the district court at law. Accordingly, we review for the correction of errors at law. Iowa R. App. P. 6.4. The court's findings of fact are binding on us if supported by substantial evidence. Iowa R. App. P. 6.14(6)(a); *Hartzler v. Town of Kalona*, 218 N.W.2d 608, 609 (Iowa 1974). We consider evidence substantial when a reasonable mind would accept it as adequate to reach a conclusion. *Falczynski v. Amoco Oil Co.*, 533 N.W.2d 226, 230 (Iowa 1995).

III. Discussion

Standard Printing has raised three issues on appeal. First, it contends substantial evidence does not support the district court's conclusion that the parties entered into a contract for 7500 price point cards at a cost of \$9480 rather than approximately 35,500 cards at a cost of \$60,740.66. Second, it claims the court erred in failing to find a contract based on Rita Wendelsdorf's actual or apparent authority to contractually bind the company. Finally, it argues the court erred in finding Shell Rock did not accept the goods and properly rejected the goods after discovering the price.

A. The Contract. Standard Printing contends it entered into a binding contract with Shell Rock that obligated Shell Rock to purchase price point cards from Standard Printing at a cost of \$60,740.66. Upon our review of the record, we are satisfied that substantial evidence supports the district court's decision to the contrary.

As we have mentioned, the district court concluded Standard Printing and Shell Rock entered into a contract for 7500 price point cards at a cost of \$9480. The record shows that after Bakke left Shell Rock, Roberts sent Wendelsdorf the May 3, 2000 "Estimate Summary Sheet." Unlike prior "Estimate Summary Sheets" in transactions between Standard Printing and Shell Rock, this sheet did not contain a total project cost or the total quantities Roberts eventually ordered. Roberts testified by deposition that she never computed the total cost of the project for Bakke prior to Bakke leaving Shell Rock. However, at trial Roberts attempted to recant her deposition testimony and testified she had communicated the anticipated cost of the project in an amount in excess of \$55,000 to Bakke. The district court found Roberts never provided Wendelsdorf with any quantity or price information different than what was set forth on the May 3, 2000 "Estimate Summary Sheet" even though she knew Wendelsdorf had not previously been involved in the project.

After Wendelsdorf received the May 3, 2000 "Estimate Summary Sheet" from Roberts, she reasonably calculated the total cost to be \$9480 based on the quantities and prices listed on the sheet, and she verbally approved the order with Roberts. Roberts never provided Shell Rock with a final estimate setting forth the actual quantities she ordered, and she never provided a final cost quote for those quantities. Instead of following the method of ordering the parties had used in prior transactions, Roberts sent Wendelsdorf the incomplete May 3, 2000 "Estimate Summary Sheet" that reasonably led Wendelsdorf to conclude the quantities listed on the sheet were the quantities Roberts intended to order. Once Roberts received verbal approval from Wendelsdorf, Roberts wrote "OK

per phone via Rita [Wendelsdorf] 5/3” on the “Estimate Summary Sheet,” and she testified she assumed Wendelsdorf knew the quantity of cards ordered was 35,500 even though the quantities listed on “Estimate Summary Sheet” added up to only 7500 cards. The actual quantity information regarding thirteen groups of 500 and seventeen groups of 1500 was not added to the sheet until after the dispute arose regarding the quantity of price point cards Roberts ordered.

We find substantial evidence supports the district court’s finding that the parties entered a contract for 7500 price point cards at a cost of \$9480 rather than approximately 35,500 cards at a cost of \$60,740.66. In reaching this conclusion, we recognize the district court had the advantage of listening to and viewing the witnesses, and in matters of witness credibility, we are particularly inclined to give weight to the district court’s findings. *Weinhold v. Wolff*, 555 N.W.2d 454, 458 (Iowa 1996).

B. Actual or Apparent Authority. Standard Printing also claims the court erred in failing to find a contract for 35,500 cards at a cost of \$60,740.66 based on Wendelsdorf’s actual or apparent authority to contractually bind the company. We need not address this argument because we believe the record supports the district court’s conclusion that the parties contracted for 7500 price point cards at a cost of \$9480.

C. Rejection of Goods. Standard Printing’s final contention is that “the trial court erred in finding that Shell Rock did not accept the goods and that Shell Rock timely and properly rejected the goods after discovering the price.” The court concluded Shell Rock’s conduct after learning the cost of the price point cards did not constitute acceptance as provided in Iowa Code section 554.2606

(1999).⁵ The court also found Shell Rock's rejection of the price point cards was done within a reasonable time after they were delivered to Shell Rock's Milford office. Standard Printing argues Shell Rock accepted all the goods and acted in a manner inconsistent with Standard Printing's ownership of the goods by distributing some of the price point cards to its vendors, failing to collect the distributed cards, and failing to return the balance of the cards to Standard Printing.

The record reveals Shell Rock clearly did not accept all of the price point cards because it immediately discontinued use of the cards once it learned it was being billed more than \$60,000. Derner only distributed several dozen cards before he learned the price for the order was much higher than expected. When Roberts first conveyed the final cost of the order to Wendelsdorf after the price point cards had been delivered, she even told Wendelsdorf to sit down because the cost was substantially more than anticipated. Several communications occurred between the parties, and Wendelsdorf advised Roberts that Shell Rock was dissatisfied and shocked at the price. At that point, Derner immediately

⁵ Iowa Code section 554.2602 defines what constitutes acceptance of goods:

1. Acceptance of goods occurs when the buyer
 - a. after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that the buyer will take or retain them in spite of their nonconformity; or
 - b. fails to make an effective rejection (subsection 1 of section 554.2602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or
 - c. does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by the seller.
2. Acceptance of a part of any commercial unit is acceptance of that entire unit.

ceased to distribute the cards. Under these circumstances, we agree with the district court's conclusion that Shell Rock did not accept all the price point cards.⁶

Standard Printing also maintains Shell Rock failed to effectively reject the price point cards. Standard Printing maintains Wendelsdorf's communications with Standard Printing after Shell Rock learned the cost of the cards did not constitute rejection. The record demonstrates Shell Rock almost immediately expressed its dissatisfaction with the price of the cards after they were delivered.⁷ Although Shell Rock did not return the cards, it immediately discontinued distribution and refused to pay the invoices for more than \$60,000 it received from Standard Printing in June and July 2000. Derner contacted Standard Printing's president in August 2000 to discuss a possible resolution of the problem; when the parties were unable to reach an agreement, Shell Rock directed Standard Printing to collect the cards from Shell Rock's office. We find no reason to disagree with the court's conclusion that Shell Rock effectively rejected the price point cards.

We conclude substantial evidence supports the district court's finding that Shell Rock did not accept the price point cards and rejected the goods within a reasonable time after they were delivered to Shell Rock's Milford office.

IV. Conclusion

We affirm the district court's order finding an express contract between the parties for 7500 price point cards at a cost of \$9480 plus statutory interest of five

⁶ As we have already mentioned, Shell Rock has not appealed from the judgment entered by the court based on its purchase of 7500 price point cards.

⁷ Iowa Code section 554.2602 states, "Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller."

percent per year, and we affirm the court's award of \$13,943.45 to Standard Printing.

AFFIRMED.