IN THE COURT OF APPEALS OF IOWA

No. 7-872 / 07-0733
Filed February 13, 2008

VIRGINIA GAY HOSPITAL,
Plaintiff/Counterclaim Defendant-Appellant,

vs.

PARK AVENUE LAUNDRY SERVICES, INC.,
Defendant/Counterclaim Plaintiff-Appellee.

Appeal from the Iowa District Court for Benton County, Marsha M. Beckelman, Judge.

Virginia Gay Hospital appeals from the district court's denial of its motion for judgment notwithstanding the verdict or for new trial. **REVERSED AND REMANDED.**

Patrick Roby and Robert Hogg of Elderkin & Pirnie, P.L.C., Cedar Rapids, for appellant.

Frank Harty of Nyemaster, Goode, West, Hansell & O'Brien, P.C., Des Moines, for appellee.

Considered by Sackett, C.J., and Mahan and Vaitheswaran, JJ.

VAITHESWARAN, J.

Park Avenue Laundry Services, Inc. entered into a contract with Virginia Gay Hospital to provide the hospital with linen and laundry service. Each entity ultimately sued the other for breach of contract. A jury determined that both entities breached the contract and awarded Virginia Gay damages of $48,000 and Park Avenue damages of $57,000. On appeal, Virginia Gay contends the verdicts were inconsistent and irreconcilable. We agree.

I. Background Facts and Proceedings

Irwin Zuckerman is the owner of Park Avenue. Aramark is one of Park Avenue's chief competitors. Michael Reifenstahl, an Aramark employee serving as the director of environmental services at Virginia Gay, negotiated the laundry services contract with Park Avenue. That contract contained the following cost provision:

> The cost for service is $.40/lb., forty cents per pound, dry weight returned to Customer, $4.00/week environmental charge and a replenishment charge of 5% per invoice. A minimum weekly usage of two thousand two hundred (2200) pounds is required.

The contract did not specify the quality or weight of the linens Park Avenue would supply. As Zuckerman explained at trial, the better the quality, the greater the weight.

Reifenstahl picked linens for the hospital from samples Zuckerman provided. Zuckerman characterized these selections as "premium linen." Reifenstahl agreed it was "nice stuff," but said he was not told the linens he chose would weigh significantly more than the linens they had been using.

Several months after the contract was executed, the hospital's financial officer expressed concern that the hospital was paying more for linen service with

Park Avenue than it had paid with its previous provider. In response, Reifenstahl checked the weight of the laundry delivered by Park Avenue, using an uncertified hanging scale at the hospital.

Four weigh-ins were conducted by Reifenstahl and his fellow Aramark employees. All four resulted in laundry weights significantly lower than the weights disclosed on the invoices provided by Park Avenue. Zuckerman was present at the fourth weigh-in. He testified he expressed concern about the hospital scale but, after being pressured by Reifenstahl, agreed to reimburse the hospital for the fourth claimed overcharge. He declined to reimburse the hospital for the remaining claimed overcharges, maintaining through trial that the "weigh-in" process was simply a ploy by Aramark to replace Park Avenue as the hospital's linen and laundry provider. The hospital in turn declined to pay the amounts it claimed were overcharges.

This lawsuit ensued, and it culminated in the verdicts described above, as well as entry of judgment against both parties. In a post-trial ruling, the district court rejected Virginia Gay's assertion that the verdicts were inconsistent. This appeal followed.

II. Analysis

The hospital asserts the verdicts were inconsistent because the jury instructions required the jury to find both that Park Avenue breached the contract and that Park Avenue "has done what the contract requires." Our review of this

issue is for errors of law. *See Clinton Physical Therapy Servs., P.C. v. John Deere Health Care, Inc.*, 714 N.W.2d 603, 609 (Iowa 2006).[1]

Turning to the pertinent jury instructions, the hospital was required to prove the following elements of its breach-of-contract claim:

1. The parties were capable of contracting.
2. The existence of a contract.
3. The consideration.
4. The terms of the contract.
5. Virginia Gay has done what the contract requires.
6. Park Avenue Laundry Services has breached the contract.
7. The amount of any damage Park Avenue Laundry Services has caused.

Similarly, Park Avenue was required to prove the following elements of its breach-of-contract counterclaim:

1. The parties were capable of contracting.
2. The existence of a contract.
3. The consideration.
4. The terms of the contract.
5. Park Avenue has done what the contract requires.
6. Virginia Gay has breached the contract.
7. The amount of any damage Virginia Gay has caused.

Both claim and counterclaim were founded on a single contract. On one verdict form, the jury found Park Avenue breached the contract with Virginia Gay. On another verdict form, the jury found Virginia Gay breached the contract with Park Avenue. These findings were inconsistent, as they "compel different judgments." *Id.* Park Avenue could not have "breached the contract," as required to prove the hospital's claim, and also have "done what the contract requires," as required to prove its counterclaim. The finding that Park Avenue "breached the contract" negates an essential element of its breach of contract counterclaim against

[1] We proceed directly to the merits because we are not persuaded by Park Avenue's contention that the hospital failed to preserve error.

Virginia Gay. Along the same line, once the jury found "Virginia Gay has done what the contract requires," it could not find Virginia Gay breached the contract. *Cf. Top of Iowa Coop. v. Schewe*, 324 F.3d 627, 633-34 (8th Cir. 2003) (considering whether verdicts were inconsistent where jury found both a breach of contract by farmer and breach of fiduciary duty by cooperative and finding no inconsistency because breach of fiduciary duty did not negate any elements of breach of contract claim); *Crookham v. Riley*, 584 N.W.2d 258, 269 (Iowa 1998) (holding in malpractice action and counterclaim on written contract that general verdict on counterclaim was inconsistent and irreconcilable with special verdict on claim).

We turn to the question of whether the verdicts could be harmonized "in light of the evidence and the law." *See Clinton Physical Therapy*, 714 N.W.2d at 613. The district court attempted to do so by characterizing any breach by the laundry service provider as immaterial. The court stated:

> The jury . . . could have either found Park Avenue breached the contract by providing Virginia Gay with a higher-quality linen without its notice or by failing to inform Virginia Gay at the time the parties entered into the contract that the higher-quality linen would weigh substantially more.
>
> The contract did not specify the quality of linen Park Avenue was to provide Virginia Gay. If the jury believed the heavier linen was provided because of a miscommunication between the parties over the quality of the linen selected, then it could have determined Park Avenue's breach was immaterial. The jury also then could have determined Virginia Gay breached the contract when it terminated the contract rather than work with Park Avenue to correct the misunderstanding.

This effort to harmonize the verdicts required the court to speculate about what the jury may have done. *See id.* at 614 ("When two answers in a verdict are both supported by substantial evidence but are inconsistent under the instructions, a

court may not attempt to reconcile the inconsistency and enter a judgment by correcting the inconsistency to conform to the intent of the jury because the two conflicting views of the evidence would necessarily produce some speculation about the intent of the jury."); *Hoffman v. Nat'l Med. Enters., Inc.*, 442 N.W.2d 123, 127 (Iowa 1989) (noting there was no way to determine "which verdict is inconsistent with the jury's intent"). Additionally, the jury was not instructed on materiality. *Id.* (rejecting plaintiff's attempt to reconcile inconsistent verdicts where jury not instructed on the conjectured legal theory urged by plaintiff). For these reasons, we are convinced the verdicts cannot be harmonized.

Turning to the remedy, Virginia Gay argues it is entitled to terminate the contract as a matter of law and we may, accordingly, remand for entry of judgment in its favor. We disagree. We believe the more appropriate course is to remand the case for a new trial. *See Clinton Physical Therapy*, 714 N.W.2d at 614.

REVERSED AND REMANDED.