

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2005-CA-000662-MR

ADVANTA USA, INC., d/b/a  
GARST SEED COMPANY

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT  
HONORABLE STEVE A. WILSON, JUDGE  
CIVIL ACTION NO. 02-CI-01620

FARMERS FERTILIZER COMPANY, INC.

APPELLEE

OPINION  
REVERSING AND REMANDING

\*\* \*\* \* \* \*

BEFORE: BARBER, JOHNSON, AND KNOPF, JUDGES.

KNOPF, JUDGE: Advanta USA, Inc., doing business as Garst Seed Company, appeals from a January 25, 2005, judgment of the Warren Circuit Court awarding \$175,000 to Farmers Fertilizer, Inc. for wrongful termination of a sales agreement. On appeal, Garst contends that the circuit court committed several errors that warrant reversal of the judgment. First, Garst charges that the court erred when it denied Garst's motion in limine to exclude parol evidence of an oral agreement that allegedly varies the terms of a written contract executed by the parties. Next,

Garst insists that certain jury instructions were erroneous. Finally, Garst contends that any recovery of damages should have been limited to a measure of thirty days. Agreeing with these contentions, we reverse and remand for a new trial.

This litigation arose after Garst terminated the parties' business relationship. Farmers is a family-owned business in Warren County that sells agriculture-related products and services. Garst manufactures seed products for use in growing farm crops. In October 1998, George Pettit, a Garst district salesman, met with Brent Hendrick, the president of Farmers. Hendrick agreed to begin selling the Garst product line in his store. At the meeting, Pettit advised Hendrick that he would not actively solicit any of Farmers' competitors in the Warren County market, and he promised an ongoing relationship between Garst and Farmers.

Farmers did not place an order for Garst seed until January 26, 1999, when Pettit returned to the store for a second meeting. At that time, Hendrick and Pettit signed a two-page document entitled "Garst Seed Company Sales Representative Agreement." Hendrick later testified he signed the document without reading it. The parties' relationship continued until September 2002, when Greg Wilson, who replaced Pettit as Garst's Warren County salesman, informed Hendrick that the relationship was being terminated for cause. Farmers subsequently filed suit

against Garst alleging wrongful termination of the agreement to supply seed to Farmers based on Pettit's oral assertion at the October 1998 meeting that the business relationship would continue indefinitely.

At trial, Garst relied on the executed sales representative agreement that allowed it to terminate the relationship with or without cause. Farmers argued that, although its president, Hendricks, had signed the January 26, 1999, agreement, the written contract did not control the parties' business relationship. Farmers instead claimed that the parties were bound only by Pettit's oral promise that an exclusive, indefinite relationship existed. Farmers also argued alternatively that Garst's termination of the agreement was improper because the written contract required thirty days' written notice prior to termination.

As authorized by the instructions, the jury found that there was no written contract, but that an oral agreement existed based on Pettit's representations during the October 1998 meeting. Farmers was awarded \$175,000.00 in compensatory damages based on expert testimony of lost profits over five years resulting from the termination.

The interpretation and construction of a contract is a matter of law, and our review is *de novo*.<sup>1</sup> We review Garst's claims by first noting that the Uniform Commercial Code (UCC) applies to the written sales agreement between the parties.<sup>2</sup> The applicable provisions of the UCC compel us to agree with Garst that the trial court improperly allowed the jury to consider parol evidence that contradicted the written contract.

Kentucky Revised Statutes (KRS) 355.2-202 codifies the parol evidence rule found in Section 2-202 of the UCC. Kentucky case law regarding parol evidence is well-settled:

The parol evidence rule is one of substantive law. It defines the limits of a contract. Where the parties put their engagement in writing all prior negotiations and agreements are merged in the instrument, and each is bound by its terms unless his signature is obtained by fraud or the contract be reformed on the ground of fraud or mutual mistake, or the contract is illegal.<sup>3</sup>

The record in this case contains numerous pleadings and motions. In none of them did Farmers allege fraud or misrepresentation as part of its cause of action; instead it relied only upon the wrongful termination claim. After the

---

<sup>1</sup> *First Commonwealth Bank of Prestonsburg v. West*, 55 S.W.3d 829, 835 (Ky.App. 2000).

<sup>2</sup> *Leibel v. Raynor Mfg. Co.*, 571 S.W.2d 640, 643 (Ky.App. 1978).

<sup>3</sup> *Childers & Venters, Inc. v. Sowards*, 460 S.W.2d 343, 345 (Ky. 1970) (citations and internal quotation marks omitted).

close of its case, Farmers moved the trial court to amend its pleading to reflect an allegation of fraud. However, contrary to Farmers' assertion in its brief, the court ultimately denied the motion and the issue was not submitted to the jury.

The UCC operates to facilitate commercial transactions, and the parol evidence rule effectively bars a contracting party from later disclaiming the contract because he is unsatisfied with the bargained-for outcome.<sup>4</sup> In this case, it is apparent that Hendrick chose not to read the contract presented to him by Pettit before he signed it.

[O]ne who is able to read and write, and who signs a written contract, must exercise reasonable diligence to ascertain its contents, and unless fraudulently prevented from doing so he will be bound by its stipulations and cannot excuse himself upon the ground that he did not familiarize himself with the terms of the contract before executing it.<sup>5</sup>

Accordingly, it was error to allow Farmers to introduce parol evidence of Pettit's personal promise months before the contract was signed.

Farmers' reliance on A&A Mechanical v. Thermal Equipment Sales<sup>6</sup> to avoid this result is misplaced. It is true, as that case notes, that the UCC liberalizes the parol evidence

---

<sup>4</sup> *Id.*

<sup>5</sup> *Brenard Mfg. Co. v. Jones*, 269 S.W. 722, 723 (Ky. 1925).

<sup>6</sup> 998 S.W.2d 505 (Ky.App. 1999).

rule somewhat by permitting certain forms of extrinsic evidence to explain or supplement a written agreement.<sup>7</sup> The UCC does not, however, any more than does the common law, permit evidence of a prior oral agreement to contradict the terms of an integrated written contract. Pettit's assertion regarding Farmers' sales territory and the duration of the sales agreement clearly contradicted the written contract and so was not admissible even under the liberalized UCC parol evidence rule. Had Hendrick read the plain language of the document, he could have refused to bind his company to the agreement. Since there is no allegation that Pettit fraudulently obtained Hendrick's signature, the written contract was the final agreement of the parties.

When a contract is plain, unambiguous and fair, not vitiated by fraud or mistake in its execution, the courts are not authorized to make for the parties to it a different one, or to construe it contrary to its express terms.<sup>8</sup>

Consequently, the trial court committed reversible error by allowing the jury to consider extrinsic evidence to vary the terms of the written contract between the parties.

We next address Garst's claims of error as to jury instructions. The instructions allowed the jury to determine

---

<sup>7</sup> KRS 355.2-202.

<sup>8</sup> *First Commonwealth Bank of Prestonsburg v. West, supra, note 2, at 836.*

whether an oral or written contract existed between the parties and whether Garst wrongfully terminated the agreement. The instructions regarding the existence and performance of the oral agreement were improper because such evidence was barred by the parol evidence rule. On remand, the jury should be limited to determining whether Garst terminated the written contract without adequate notice.

Lastly, we address Garst's combined claims of error regarding damages. Garst argues that the jury should not have been allowed to consider speculative evidence relating to Farmers' lost profits. Garst further contends that the lost profits calculation should have been limited in duration because the written contract provided for termination upon thirty days' notice.

Our standard of review for evidentiary decisions of the trial court is abuse of discretion.<sup>9</sup> The court's decision will only be disturbed if it is "arbitrary, unreasonable, unfair, or unsupported by sound legal principles."<sup>10</sup>

In this case both Farmers and Garst presented expert testimony regarding lost profits as a result of the terminated contract. Farmers' expert, accountant Jerry Shelton, calculated

---

<sup>9</sup> *Goodyear Tire and Rubber Co. v. Thompson*, 11 S.W.3d 575, 577 (Ky. 2000).

<sup>10</sup> *Id.* at 581.

lost profits of over \$532,165.00 for a five-year period (2003-2007) following the termination. The jury ultimately awarded \$175,000.00 in compensatory damages,

To recover damages for breach of contract, the loss must be proven with reasonable certainty.<sup>11</sup> Furthermore, "the loss of anticipated profits may be recovered when they can be legally ascertained, and when there is no lack of certainty on account of being too remote, conjectural, and speculative."<sup>12</sup>

In this case, the proof that Farmers lost profits as a result of the termination of the sales agreement was not speculative. However, damages based upon lost profits should have been limited under the written contract to a period of thirty days following termination. An Illinois appellate decision is instructive.

[T]o put plaintiff in the position he would have been in had defendant given the required amount of notice of termination, plaintiff's lost-profits damages should have been limited to the contractual notice period of 30 days. The parties did not contemplate several years' lost profits as damages because the contractual period for notice of termination was only 30 days. . . . Awarding lost profits for a period longer

---

<sup>11</sup> *Pauline's Chicken Villa, Inc. v. KFC Corp.*, 701 S.W.2d 399, 401 (Ky. 1985).

<sup>12</sup> *Kentucky Utilities Co. v. Warren Ellison Café*, 21 S.W.2d 976, 978 (Ky. 1929).

than 30 days was an improper windfall for plaintiff.<sup>13</sup>

For the foregoing reasons, the judgment is reversed and this case is remanded to Warren Circuit Court with directions to grant Garst a new trial. If Garst is found liable, damages for termination of the Garst Seed Company Representative Sales Agreement shall be limited to thirty days.

ALL CONCUR.

BRIEF FOR APPELLANT:

John L. Tate  
Christopher W. Haden  
Stites & Harbison, PLLC  
Louisville, Kentucky

BRIEF FOR APPELLEE:

Frank Hampton Moore, Jr.  
Matthew P. Cook  
Cole & Moore, P.S.C.  
Bowling Green, Kentucky

---

<sup>13</sup> Royal's Reconditioning Corp. v. Royal, 689 N.E.2d 237, 241 (Ill.App. Ct. 1997).