STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1328

Daniel Everette Olean,
Appellant,

vs.

Moose Lake CO-OPerative Association,
Respondent.

Filed April 22, 2019
Affirmed
Halbrooks, Judge

Carlton County District Court
File No. 09-CV-16-822

Daniel Olean, Finlayson, Minnesota (pro se appellant)

Scott A. Witty, Jocelyn E. Bremer, Hanft Fride, P.A., Duluth, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Larkin, Judge; and Smith, Tracy M., Judge.

U N P U B L I S H E D   O P I N I O N

HALBROOKS, Judge

Appellant Daniel Everette Olean challenges the district court's calculation of his damages and its judgment in favor of respondent Moose Lake CO-OPerative Association (CO-OP) on CO-OP's breach-of-contract counterclaim. We affirm.

FACTS

In June 2015, Olean made a $3,553.77 purchase of fertilizer and glysophate from CO-OP using his credit account. As part of the purchase, CO-OP offered Olean the use of a fertilizer spreader at no additional cost. Olean used CO-OP's spreader to fertilize five separate corn fields, totaling approximately 83 acres.

Later that summer, Olean noticed an uneven growth pattern in the five fields that he had fertilized with the borrowed spreader. Olean contacted CO-OP and made a claim to his crop insurer. In mid-October 2015, a certified independent insurance adjuster inspected Olean's fields. In his report, the adjuster noted uneven growth patterns in 30 acres of corn, which he attributed to fertilizer-spreading issues. For purposes of Olean's insurance claim, the adjuster calculated the financial impact of the unevenly fertilized portions of Olean's fields and determined that the total loss was $4,251.67.

In February 2016, Olean brought an action in conciliation court against CO-OP, alleging that the spreader malfunctioned and caused crop damage. Olean sought $7,676.67 in damages plus costs. CO-OP asserted a counterclaim for nonpayment of Olean's credit account and sought damages of $4,022.32 plus costs. In April 2016, the conciliation court awarded Olean judgment against CO-OP in the amount of $4,251.67. It also awarded CO-OP judgment against Olean in the amount of $620.

CO-OP removed the case to district court pursuant to Minn. R. Gen. Prac. 521, alleging breach of contract and unjust enrichment and seeking damages of $4,154.68 plus interest. Olean sought $23,237.10 in damages, an amount he argued was based on his projected yield goal of 130 bushels of corn per acre.

The district court held a four-day bench trial in 2017. The district court found that Olean had proved by a preponderance of the evidence that a defect in the spreader caused the uneven application of fertilizer and resulting crop loss. It awarded Olean $4,326.67 in damages, including costs, a figure that was based on the adjuster's calculation of damages. The district court also found that CO-OP had proved by a preponderance of the evidence that Olean breached his credit-account agreement and awarded CO-OP $4,447.84 in damages. The district court determined that CO-OP was the prevailing party pursuant to Minn. Stat. § 491A.02, subd. 7(b) (2018), and was entitled to an award of costs and disbursements.

Olean asked for leave to file a motion for reconsideration, which the district court granted. Following a hearing, the district court issued an amended order. The amended findings of fact include a calculation of damages for two additional fields. Although the adjuster had not calculated a loss for those fields, the district court adopted his method of calculation and found that Olean's damages for crop loss in the two additional fields totaled $1,307.25. The district court awarded Olean a total of $5,633.92 in damages, inclusive of costs, for crop damage. The district court's damages award to CO-OP and its prevailing-party determination remained unchanged. This appeal follows.

D E C I S I O N

Olean contends that the district court erred in its calculation of damages. We review a district court's calculation of damages for an abuse of discretion. *Holiday Recreational Indus., Inc. v. Manheim Servs. Corp.*, 599 N.W.2d 179, 183 (Minn. App. 1999).

Olean asserts that his damages should be calculated based on the difference between his projected yield goal of 130 bushels per acre and his actual yield, resulting in a figure of $23,237.10. In support of his argument, Olean relies on the testimony of the CO-OP's agronomy manager, who stated that a yield of 130 bushels per acre or greater is "achievable," as evidence that Olean would have achieved such a yield if not for the malfunctioning spreader. But a damages award must be based on "actual damages" or an amount that compensates a complainant for a proven injury or loss. *Poppler v. Wright Hennepin Coop Elec. Ass'n*, 834 N.W.2d 527, 546 (Minn. App. 2013), *aff'd*, 845 N.W.2d 168 (Minn. 2014). We note that Olean provided only a partial transcript of the district court proceedings, making review of this issue difficult. It is appellant's burden to provide an adequate record. *Grundtner v. Univ. of Minn.*, 730 N.W.2d 323, 334 (Minn. App. 2007).

To determine Olean's actual damages, the district court adopted the adjuster's method for calculating the crop damage. The adjuster calculated crop damage by:

> (1) measuring the bushel-per-acre yield in the highest production areas; (2) measuring the yield in the lowest production areas of those fields; (3) calculating the difference between the high-yield and low-yield areas; (4) multiplying the result by the number of affected acres; and (5) multiplying the bushels per acre lost through insufficient fertilizer by the fixed price [of $4.15] per bushel.

The adjuster testified that Olean and the crop insurance adjusters present during his inspection agreed on the number of affected acres, the method of calculation, and the loss determination. Based on this method of calculation, Olean suffered a loss of $4,251.67 in sections 4 and 28. The district court applied this methodology to determine Olean's losses in section 27, which contained 7.5 acres of corn. Using Olean's insured yield of 84 bushels per acre, a price of $4.15 per bushel, and an estimate that one-half of the 7.5 acres was impacted by insufficient fertilizer, the district court found that Olean's loss in section 27 was $1,307.25. On this record, the district court properly exercised its discretion by utilizing the adjuster's method to calculate damages. We affirm the district court's damages calculation.

Olean also contends that the district court erred by finding in favor of CO-OP on its breach-of-contract counterclaim, arguing that he did not have an open-ended credit agreement with CO-OP and that CO-OP's counterclaim is barred by Minn. Stat. § 513.33, subd. 2 (2018).

Olean's argument that the district court erred in finding that he had an open-ended credit agreement with CO-OP is unavailing. The record includes Olean's application for an open-ended credit account. The record also includes an account ledger that shows purchases and payments on the credit account, which Olean does not dispute. The district court found that Olean used his credit account to make purchases on 15 dates—to purchase fuel at the pump and to purchase fertilizer and livestock feed in the store. The record includes evidence that Olean made payments to CO-OP on six dates but failed to pay the remaining balance on his credit account of $4,447.84. The district court did not clearly err in its finding that Olean had an open-ended credit agreement with CO-OP.

Minn. Stat. § 513.33, subd. 2, provides that "[a] debtor may not maintain an action on a credit agreement unless the agreement is in writing, expresses consideration, sets forth the relevant terms and conditions, and is signed by the creditor and the debtor." CO-OP, not Olean, brought the action based on the credit agreement. Minn. Stat. § 513.33, subd.

1(3) (2018), defines a "debtor" as "a person who obtains credit or seeks a credit agreement with a creditor or who owes money to a creditor." CO-OP is not a debtor under the statutory definition. Because CO-OP is the creditor in this case, Minn. Stat. § 513.33, subd. 2, does not apply and does not bar CO-OP's counterclaim against Olean.

Next, Olean contends that the interest rate he was charged by CO-OP is in reality an unlawful delinquency or collection charge and that the district court's determination that it did not violate Minn. Stat. § 334.062 (2018) is error. We disagree. Minn. Stat. § 334.062 states that agricultural cooperatives such as CO-OP "may impose, charge, and collect a finance charge on goods, products, and services, including sales and open- and closed-end credit transactions that do not exceed a monthly rate of 1-1/2 percent or an annual rate of 18 percent." Olean's credit application and the ledger detailing his purchases and payments with CO-OP reflect that the charges assessed by CO-OP were finance charges within the meaning of Minn. Stat. § 334.062, not delinquency or collection charges. The district court properly concluded that CO-OP's interest charges were permissible under Minn. Stat. § 334.062.

Finally, for the first time on appeal, Olean asserts claims for breach of article II of the Uniform Commercial Code and strict liability. A party may not raise a new issue on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Therefore, we decline to address these arguments.

Affirmed.