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ARKANSAS COURT OF APPEALS

DIVISION II
No. CA09-677

TIM CASSINGER APPELLANT V. POINSETT COUNTY RICE & GRAIN, INC. APPELLEE	**Opinion Delivered** April 14, 2010 APPEAL FROM THE CRAIGHEAD COUNTY CIRCUIT COURT [NO. CIV 08-336] HONORABLE DAVID N. LASER, JUDGE AFFIRMED

JOHN MAUZY PITTMAN, Judge

Appellee sued appellant for breach of a contract. The trial court found appellant to have breached the contract and awarded appellee judgment in the amount of $45,999 and attorney's fees of $15,000. Appellant argues that the trial court erred in finding that he was in breach of contract, and that the award of attorney's fees was either invalid or excessive. We affirm.

The meaning of a contract is controlled by the intent of the parties as expressed in the language used. *Les-Bil, Inc. v. General Waterworks Corp.*, 256 Ark. 905, 511 S.W.2d 166 (1974). The written agreement itself is the best evidence of the parties' intent. *First National Bank v. Griffin*, 310 Ark. 164, 832 S.W.2d 816 (1992). However, in interpreting contracts, courts may acquaint themselves with the persons and circumstances involved, placing themselves in the same situation as the parties who made the contract, and may also consider

the construction that the parties themselves place on the contract. *Stokes v. Roberts*, 289 Ark. 319, 711 S.W.2d 757 (1986).

There is no serious dispute regarding the facts of this case. Appellant is a rice grower who farms acreage for both himself and his landlord, with whom he has a crop-share agreement. Appellee is a rough rice merchant that purchases rice from farmers and sells it to exporters. Most of the rice to be exported is transported by truck to loading facilities on the Mississippi River and shipped to the Gulf of Mexico by barge. As is typical of the industry, appellee does not have enough storage capacity for the rice that it purchases. Consequently, appellee obtains contracts to buy rice with different delivery periods, which are matched to the demands of the exporter that is the ultimate buyer. Movement of the rice is initiated by the exporter, which informs appellee when during the delivery period it wants the rice to be shipped. Appellee then informs the farmer and arranges to pick up the rice that it has contracted to buy during that period, which is trucked to a port facility and loaded on a barge. In addition to specifying different delivery periods, the contracts also specify the amount of rice to be sold to appellee and the price that the rice grower will be paid for the rice. The grower is paid by appellee after appellee is paid by the exporter, after the barge is loaded.

The contract at issue was signed by appellant on March 17, 2007. In it appellant agreed to sell appellee 4,500 hundredweight of rice, at a price of 10.578 dollars per hundredweight, for delivery between February 1 and March 31, 2008. The agreement

expressly stated: "Performance or delays subject to strikes, force majeure or conditions beyond their control."

Appellee did not pick up appellant's rice during the contractual delivery period because flooding caused the Mississippi River to rise to dangerous levels in March 2008. Barges could not be loaded safely because they had risen, with the river, above the level of the loading spout at the loading facility employed by appellee. Loading effectively ceased on March 13, 2008, and could not be resumed until April 28, 2008.

Appellee informed appellant of the problem and assured him that his rice would be picked up as soon as barge loading could resume. On April 7, 2008, appellee wrote all of its customers, including appellant, assuring them that it would resume deliveries as soon as possible, and urging them to contact appellee's office if they had questions.

Appellant did not attempt to contact appellee thereafter. Rice prices had substantially increased between March of 2007 and 2008. On April 10, 2008, without notice to appellee, appellant sold his rice to a third party for 17.78 dollars per hundredweight. Appellee learned of the sale when it began the process of picking up appellant's rice on April 12, 2008. In order to meet its contractual obligations to exporters, appellee was obliged to buy rice at the prevailing price of 20.90 dollars per hundredweight.

Appellant argues that the flooding on the Mississippi River that prevented barges from being loaded did not constitute a force majeure extending the delivery date of the contract. We do not agree. As we interpret the contract, the force majeure clause excused delays

beyond the control of the contracting parties for such time as would be reasonable under the facts and circumstances of the particular case. *See Wilson v. Talbert*, 259 Ark. 535, 535 S.W.2d 807 (1976). Appellant had contracted with appellee under similar terms without incident since 2003, and knew from the parties' course of dealing that payment for his rice would not be forthcoming until appellee was itself paid by the exporter. Furthermore, the record shows that appellee offered to reimburse appellant for interest and storage costs for the period of delay. We think that the delay in performance was justified in light of the extant circumstances, that the period of delay was reasonable, and that appellant would have suffered no undue harm or inconvenience had he accepted the offer of interest and storage costs made by appellee.

Nor do we agree that the trial court erred in awarding appellee $15,000 in attorney's fees as the prevailing party in this breach-of-contract case. Although there is no fixed formula for computing attorney's fees, it has long been held that the courts should be guided by recognized factors in making their decision, including the experience and ability of the attorney, the time and labor required to perform the legal service properly, the amount involved in the case and the results obtained, the novelty and difficulty of the issues involved, the fee customarily charged in the locality for similar legal services, whether the fee is fixed or contingent, the time limitations imposed upon the client or by the circumstances, and the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer. *Chrisco v. Sun Industries, Inc.*, 304 Ark. 227, 800 S.W.2d 717 (1990). In light of these factors and the affidavit submitted by appellee's counsel

in support of the motion for fees, we cannot say that the trial court abused its discretion in fixing the award. *See id*.

Affirmed.

HENRY and BAKER, JJ., agree.