

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

JOHN E. GIBBONS,

Plaintiff,

vs.

AGRICULTURAL CONSULTANTS, LLC,
a Wisconsin limited liability company; and
W.S. AG CENTER, INC., a Wisconsin
corporation,

Defendants.

Case No. 12-09224-CKB

HON. CHRISTOPHER P. YATES

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND VERDICT

How do you solve a problem like urea? In the case of Defendants Agricultural Consultants, LLC (“Ag Consultants”) and W.S. Ag Center, Inc. (“WS Ag”), you maintain an outside sales force to sell the farm commodity to your customers at the lowest possible price. In 2006, when his former college roommate – Plaintiff John Gibbons – was down on his luck, Kent Ganske – the principal of Ag Consultants and WS Ag – offered Gibbons the opportunity to sell farm products such as urea and ethanol on behalf of the defendants. Predictably, the two men proceeded on a handshake basis, so no written contract governed their relationship. But when the relationship soured, Ganske ended the sales arrangement on August 16, 2012, and Gibbons responded with a demand for \$38,265 in past-due sales commissions. Ultimately, the dispute wound up in court, where Gibbons sought damages under the Michigan Sales Representatives’ Commissions Act (“SRCA”), MCL 600.2961. Based on the record developed during a six-day bench trial, the Court concludes that Gibbons has no basis for claiming breach of contract concerning past-due sales commissions or future commissions.

I. Findings of Fact

Pursuant to MCR 2.517(A)(1), in an action tried without a jury, “the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment.” The Court must render “[b]rief, definite, and pertinent findings and conclusions on the contested matters” that may take the form of a written opinion. See MCR 2.517(A)(2) & (3). Therefore, the Court shall begin with findings of fact, followed by conclusions of law, and ultimately the verdict.

By all accounts, Plaintiff Gibbons has worked in sales for decades. But in 2006, Gibbons had lost his job in the furniture industry, so he prevailed upon his old friend, Kent Ganske, for financial assistance. In response, Ganske gave Gibbons \$18,000 and the opportunity to work off that amount. Specifically, Gibbons started selling farm commodities for Ganske’s companies, and Ganske began paying sales commissions to Gibbons. By 2008, Gibbons was receiving \$10 per ton for sales to the defendants’ agricultural customers and \$15 per ton for sales to the ethanol customers. On occasion, Gibbons and Ganske informally reconciled the commission payments to Gibbons, but they disagreed regularly about how much money Ganske owed Gibbons for sales commissions.

In 2010, Plaintiff Gibbons and Kent Ganske settled on reduced commission rates of \$5 per ton for sales to the defendants’ agricultural customers and \$10 per ton for sales to ethanol customers. On November 11, 2010, Gibbons wrote a letter to Ganske stating:

This letter is to confirm to you that as of 10/01/10, I ceased to represent your company. We have discussed our many differences, and unless we can reach a mutually acceptable agreement for the future, my status with your company will remain the same as above.

See Defendants’ Exhibit N. But in early 2011, Gibbons once again began selling farm commodities for Ganske’s companies. In addition, Gibbons resumed sending Ganske quarterly billing statements,

asserting on January 17, 2011, that Ganske owed him \$27,135 in sales commissions. See Plaintiff's Exhibit 7 (letter of January 17, 2011). And when Gibbons sent a statement to Ganske on March 12, 2012, Gibbons's demand for purportedly unpaid sales commissions had grown to \$30,875. See id. (letter of March 12, 2012). Finally, on July 9, 2012, Gibbons sent a quarterly letter acknowledging payment of \$10,000 by Ganske, but demanding \$43,265. See id. (letter of July 9, 2012).

On July 30, 2012, counsel for Plaintiff Gibbons sent a letter to Kent Ganske demanding the payment of \$38,265 in past due commissions for sales work[.]”¹ See Defendants' Exhibit P. That prompted a written response from Ganske on August 16, 2012, acknowledging that “I do not know the exact amount due to” Gibbons, promising to “review all of his contacts and business dealings and determine an amount of money that needs to be paid[.]” and clarifying that Gibbons “will make no new contacts of any kind claiming he is with me or representing my company and there will be no recognition of any of his actions that he may have done since May.”² See Plaintiff's Exhibit 15. The Form 1099 reports establish that the defendants paid Gibbons \$68,000 in 2011 and \$33,000 in 2012, see Defendants' Exhibit A, but Gibbons insists that the defendants still owe him a substantial amount of money for unpaid sales commissions. In contrast, the defendants assert that they overpaid Gibbons by tens of thousands of dollars, see Defendants' Exhibit I (“Comparison of Compensation Scenarios”), so they owe him nothing.

¹ That figure appears to reflect the \$43,265 claimed by Plaintiff Gibbons on July 9, 2012, see Plaintiff's Exhibit 14 (letter of July 9, 2012), reduced by a \$5,000 payment sent to Gibbons by Kent Ganske on approximately July 20, 2012. See id.

² Kent Ganske testified that Plaintiff Gibbons stopped working for the defendants on either May 1 or 2, 2012, and the record seems to bear out that testimony. Although text messages between Gibbons and Ganske in June and July 2012 suggest some sort of business relationship, see Plaintiff's Exhibit 40, that relationship plainly did not continue through the summer of 2012. As Tina Graham testified, Gibbons voluntarily ceased selling for the defendants in mid-2012.

II. Conclusions of Law

Because Plaintiff Gibbons and Kent Ganske maintained an informal relationship, the Court cannot look to any written documents to determine the parties' contractual rights and duties. Instead, the Court must rely upon the evidence about the oral agreements underlying the parties' undeniable business relationship. See H J Tucker & Associates, Inc v Allied Chucker and Engineering Co, 234 Mich App 550, 554 (1999). The Court shall begin by considering Gibbons's claim for breach of the defendants' obligation to pay past-due commissions, and then the Court shall turn to Gibbons's claim for future commissions.

A. Past-Due Commissions.

Plaintiff Gibbons filed this action to recover sales commissions purportedly owed to him by the defendants. "When analyzing a claim for posttermination commissions, the first step is to look at the parties' contract." KBD & Associates, Inc v Great Lakes Foam Technologies, Inc, 295 Mich App 666, 675 (2012); see also MCL 600.2961(2). Here, both sides recognize that Gibbons sold farm commodities for the defendants, so the defendants were obligated to pay Gibbons sales commissions for his work. Indeed, the defendants paid tens of thousands of dollars to Gibbons each year for sales commissions from 2007 through 2012. See Defendants' Exhibit A. Consequently, the Court must simply determine whether those payments include all of the sales commissions owed to Gibbons by the defendants under the terms of the parties' oral agreement.

An oral agreement can support a common-law claim for breach of contract, see, e.g., Hague v DeLong, 282 Mich 330, 332-333 (1937), as well as a claim under the SRCA. See, e.g., Reicher v SET Enterprises, Inc, 283 Mich App 657, 658 (2009); H J Tucker, 234 Mich App at 554. Here,

the Court concludes that the parties entered into a series of oral contracts. Under Michigan law, the freedom to contract “permits parties to enter into new contracts or modify their existing agreements.” Quality Products and Concepts Co v Nagel Precision, Inc, 469 Mich 362, 371 (2003). Here, Plaintiff Gibbons initially received monthly fees plus commissions, then he switched over to a commission-based compensation system in 2008 that paid him \$10 per ton for agricultural products and \$15 per ton for ethanol sales, and finally in 2010 his commissions were reduced to \$5 per ton for agricultural products and \$10 per ton for ethanol sales. The Court finds that the reduction in commissions that took place in 2010 roughly coincided with Gibbons’s letter of resignation dated November 11, 2010, see Defendants’ Exhibit N, because the dispute about reducing commission rates elicited that angry response from Gibbons. Thus, the Court concludes that the reduced commission rates were part of the terms of Gibbons’s renewed relationship with the defendants in early 2011.

At the beginning of the first quarter of 2011, Plaintiff Gibbons sent Kent Ganske an invoice demanding \$27,135 in commissions that had been computed at rates of \$10 per ton for agricultural products and \$15 per ton for ethanol sales. See Plaintiff’s Exhibit 14 (letter of January 17, 2011). Although the Court can countenance commissions at those rates for sales in 2010, the Court cannot approve the figures in Gibbons’s invoice for the first quarter of 2011, which he sent to Ganske on April 4, 2011, because Gibbons still used the old commission rates, see id. (letter of April 4, 2011), rather than the reduced commission rates of \$5 per ton for agricultural products and \$10 per ton for ethanol sales. Instead, the Court must adjust the first-quarter invoice downward to reflect the new commission rates, thereby cutting the total commissions earned from \$21,990 to \$12,785.³

³ In total, Plaintiff Gibbons sold 1,841 tons of farm commodities during the first quarter of 2011. Because he charged commission rates that were \$5 per ton too high, the Court must reduce the total commissions by 1,841 tons times \$5 per ton, which equates to a reduction of \$9,205.

In similar fashion, the Court must reduce the commissions claimed by Plaintiff Gibbons by \$5 per ton for each additional quarter in 2011 and 2012. Thus, Gibbons's sales commissions for the second quarter of 2011, reflected in the invoice dated July 14, 2011, see Plaintiff's Exhibit 14 (letter of July 14, 2011), must be reduced from \$31,430 to \$17,015.⁴ Gibbons combined his commissions for the third and fourth quarters of 2011 into a single invoice dated January 16, 2012, see Plaintiff's Exhibit 14 (letter of January 16, 2012), which must be reduced from \$22,920 to \$12,780.⁵ The sales commissions for the first quarter of 2012, which are reflected in the invoice dated March 12, 2012,⁶ see Plaintiff's Exhibit 14 (letter of March 12, 2012), must be reduced from \$14,730 to \$8,960.⁷ The sales commissions for the second quarter of 2012, which are reflected in the invoice dated July 9, 2012, see Plaintiff's Exhibit 14 (letter of July 9, 2012), must be reduced from \$22,390 to \$13,010.⁸ Aggregating all of these quarterly reductions, the Court concludes that Gibbons billed the defendants \$48,910 more than he should have received in commissions under the reduced rates applicable in

⁴ In total, Plaintiff Gibbons sold 2,883 tons of farm commodities during the second quarter of 2011. Because he charged commission rates that were \$5 per ton too high, the Court must reduce the total commissions by 2,883 tons times \$5 per ton, which equates to a reduction of \$14,415.

⁵ In total, Plaintiff Gibbons sold 2,028 tons of farm commodities during the third and fourth quarters of 2011. Because he charged commission rates that were \$5 per ton too high, the Court must reduce the total commissions by 2,028 tons times \$5 per ton, which is a reduction of \$10,140.

⁶ Although that quarterly invoice bears the date March 12, 2012, it lists a "Total Owed as of 4/12/2012," see Plaintiff's Exhibit 14 (letter of March 12, 2012), which leads the Court to surmise that that invoice for the first quarter of 2012 may have been prepared and sent on April 12, 2012.

⁷ In total, Plaintiff Gibbons sold 1,154 tons of farm commodities during the first quarter of 2012. Because he charged commission rates that were \$5 per ton too high, the Court must reduce the total commissions by 1,154 tons times \$5 per ton, which equates to a reduction of \$5,770.

⁸ In total, Plaintiff Gibbons sold 1,876 tons of farm commodities during the second quarter of 2012. Because he charged commission rates that were \$5 per ton too high, the Court must reduce the total commissions by 1,876 tons times \$5 per ton, which equates to a reduction of \$9,380.

2011 and 2012.⁹ Even under his own inflated commission-rate calculations, Gibbons believed that he was entitled to \$38,265 in past-due commissions when he stopped working for the defendants, see Defendants' Exhibit P; Plaintiff's Exhibit 14 (letter of July 9, 2012), so the Court concludes that the defendants did not breach their obligation to pay past-due commissions to Gibbons. As a matter of simple arithmetic, Gibbons's overcharges of \$48,910 in 2011 and 2012 exceed the \$38,265 that he claims as past-due commissions, so the defendants plainly did not breach any obligation to pay Gibbons past-due commissions.

B. Future Commissions

During the trial, Plaintiff Gibbons provided the Court with a calculation of damages that ran the defendants' commission obligation through 2017. See Plaintiff's Exhibit 39. Gibbons based that calculation upon the assumption that, despite his voluntary disassociation with the defendants, they remain obligated to pay him commissions for years into the future on all sales to the customers he allegedly brought to the defendants. The Court disagrees.

Plaintiff Gibbons insists that the procuring-cause doctrine, recognized in Reed v Kurdziel, 352 Mich 287, 294-295 (1958), entitles him to an abundance of future commissions for all sales to every customer he brought to the defendants. "The procuring-cause doctrine applies when the parties have a contract governing the payment of sales commissions, but the contract is silent regarding the payment of posttermination commissions." KBD, 295 Mich App at 673. Here, the oral agreement between Gibbons and the defendants manifestly did not contemplate the payment of post-termination

⁹ To summarize, the Court added the following reductions to arrive at the final figure for the excess commissions invoiced by Plaintiff Gibbons: \$9,205 for the first quarter of 2011; \$14,415 for the second quarter of 2011; \$10,140 for the third and fourth quarters of 2011; \$5,770 for the first quarter of 2012; and \$9,380 for the second quarter of 2012.

commissions for future sales. Indeed, the payment of commissions for future sales seems completely foreign to the farm-commodities industry in which the defendants operate.

At trial, several experienced hands in the farm-commodities industry explained the nature of the business. David Kaltenberg testified that each individual sale is a separate transaction, that companies do not enter into long-term contracts, and that commissions are paid to only one outside sales representative for each transaction.¹⁰ Similarly, Mark VanderWerff testified that the market for farm commodities is remarkably price-sensitive, so buyers deal with different vendors from one transaction to the next depending upon the vendors' prices at the time of each transaction. Indeed, long-term commitments by buyers to vendors have no place in that industry. Kenneth Seifert also confirmed that buyers almost always go to the vendor with the lowest prices for farm commodities, so the notion of long-term loyalty to a vendor and its sales representative makes no economic sense. To counter all of this extraordinarily persuasive testimony, Plaintiff Gibbons offered only his own self-serving testimony that he believed that he had a right to commissions for all future sales to every customer he brought to the defendants. But Gibbons's own demand letter to the defendants, which he sent on July 30, 2012, requested only "past due commissions" of \$38,265, as opposed to future commissions for sales to the customers he purportedly recruited. See Defendants' Exhibit P. Thus, Gibbons's own demand belies the position he took at trial with respect to his entitlement to future commissions. Accordingly, the Court concludes that the oral agreement between Gibbons and the defendants included no right to future commissions, so the defendants did not breach any contractual obligation to make such payments to Gibbons.

¹⁰ According to David Kaltenberg, the market for farm commodities is highly price-sensitive, so any arrangement that results in stacked commissions paid to multiple sales representatives for a single transaction would make it impossible for the vendor to compete on the basis of price.

III. Verdict

For all of the reasons stated in the Court's findings of fact and conclusions of law, the Court hereby renders a verdict in favor of the defendants and against Plaintiff Gibbons on Gibbons's claim for breach of contract. Simply stated, the defendants did not fail to pay Gibbons any past-due sales commissions or any future commissions to which Gibbons was entitled under the oral agreement that defined the rights and responsibilities of the parties. Therefore, Gibbons shall recover nothing from the defendants in this action.

IT IS SO ORDERED.

Dated: January 6, 2015



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge