IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

CRAFTBILT MANUFACTURING CO.,	)	
	)	E1999-1529-COA-R3-CV
Plaintiff/Appellee	)	
	)	
vs.	)	
	)	Appeal As Of Right From The
UNITED WINDOW COMPANY, INC.,	)	SULLIVAN CO. CHANCERY COURT
	)	
Defendant/Appellant	)	HON. JOHN S. McLELLAN, III
	)	CHANCELLOR

For the Appellant:
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AFFIRMED Swiney, J.

O P I N I O N

This is an appeal by United Window Company, Inc. ("Defendant") from an award against it in the sum of $22,804.08. Defendant sold Craftbilt Manufacturing Co. ("Plaintiff") products. Defendant decided to terminate its business relationship with Plaintiff. Plaintiff and Defendant agreed for Plaintiff to take back the inventory and to give Defendant full credit for that

inventory. A dispute arose between the parties as to the value to be placed on the returned inventory. The Trial Court found for the Plaintiff and awarded judgment in the sum of $22,804.08. We affirm the judgment of the Trial Court.

BACKGROUND

This is a suit between two businesses on a revolving inventory account. Defendant opted to end its business relationship with Plaintiff and to return its inventory of Plaintiff's product for credit on its account. By agreement of the parties, Plaintiff took the inventory and shipped the products back to its corporate facilities. Based on the inventory, Plaintiff then credited Defendant's account for $40,972.11. Four months later, Plaintiff discovered that its employee who had conducted the inventory had made six mistakes owing to a change in its computerized inventory method which occurred near the time this inventory was taken. The error involved the counting of some items by board feet, the old method, rather than by piece, as required under the new inventory control system. When the errors were discovered, Plaintiff debited Defendant's account for $16,804.08, the amount of "over credit" that Defendant had received by mistake. Defendant refused to pay for the over credit, which then accumulated interest and accrued to a claimed outstanding account balance of $30,308.06, for which Plaintiff filed suit. Evidence at trial showed that there was no dispute as to the exact nature and amount of each of the six errors which had been made in the seven-page handwritten inventory. The Trial Court granted Plaintiff judgment in the amount of $22,804.08.

DISCUSSION

In this appeal, Defendant argues that the "express contract between the parties should [not have] been modified, reformed or rescinded because of a unilateral mistake by the Plaintiff/Appellee," citing *City of Memphis v. Moore*, 818 S.W.2d 13, 16 (Tenn. Ct. App. 1991) and

§ 153, *Restatement of Contracts* 2d. Plaintiff replies: (1) "Payment of a bill under mistake of fact is not a waiver of right of refund of overcharges discovered thereafter," citing *Schmidt v. Dixon*, 694 S.W.2d 319, 322 (Tenn. Ct. App. 1985); (2) "the general rule is that where money is paid by a mistake of fact, although there was negligence on the part of the person making the payment, it may be recovered." *W. E. Richmond & Co. v. Security Nat. Bank*, 64 S.W.2d 863, 866 (Tenn. Ct. App. 1933.)

Our review is *de novo* upon the record, accompanied by a presumption of the correctness of the findings of fact of the Trial Court, unless the preponderance of the evidence is otherwise. Rule 13(d), T.R.A.P.; *Davis v. Inman*, 974 S.W.2d 689, 692 (Tenn. 1998).

The Trial Court found that the agreement between these parties was that the Plaintiff would take back the inventory sold to Defendant and give Defendant full credit. The Trial Court also found:

> . . . that genuine error did exist in the inventory taken of items returned to Plaintiff, and that defendant had not even purchased the amounts of items listed on the inventory. It appearing to the Court that the obvious mis-notation on said inventory was a confusion of feet instead of units by Plaintiff's agent.

Defendant argues that the parties' agreement was founded upon the original inventory taken by the Plaintiff, even if that inventory was wrong. The Trial Court, after hearing all the proof and making its finding of facts, determined that the agreement between the parties was not as argued by the Defendant but rather as argued by the Plaintiff, and that Defendant would be given credit for the actual inventory returned.

We have reviewed the record in this case and find the evidence does not preponderate against the findings of the Trial Court. The proof shows that Plaintiff made the six alleged inventory

errors, corrected the errors, and billed Defendant only the amount necessary to correct that mistake. Despite Defendant's characterization of the Trial Court's judgment as being a "modification, reformation or rescission" of the agreement between the parties, the Trial Court merely enforced their agreement that Plaintiff would recover its products and credit Defendant's account for the items recovered. The judgment of the Trial Court accomplished exactly that and nothing more.

Plaintiff argues that it is entitled to prejudgment interest "at least on the $5,571.25 from September 16, 1997 and on the full balance from the date of suit." Plaintiff's argument for interest on $5,571.25 is based on the fact that the parties agreed at trial that Defendant owed Plaintiff $5,571.25 on the outstanding account, irrespective of any inventory errors made by Plaintiff. However, it was uncontested that the course of business between these parties never included the charging by Plaintiff or payment by Defendant of any interest on balances owed. Therefore, the Trial Court held that "[i]t is further the finding of the Court that the Plaintiff is not entitled to recover any finance charges." We see no reason to reverse this finding, which is based on the parties' business dealings over the course of their relationship.

The Trial Court also declined to award prejudgment interest "on the full balance from the date of the suit." Prejudgment interest is addressed in T.C.A. § 47-14-123, which provides:

> Prejudgment interest, i.e., interest as an element of, or in the nature of, damages, as permitted by the statutory and common laws of the state as of April 1, 1979, may be awarded by courts or juries in accordance with the principles of equity at any rate not in excess of a maximum effective rate of ten percent (10%) per annum . . . .

Our Supreme Court has held:

> [t]he trial court's decision to award or deny prejudgment interest may be overturned only upon a finding of 'manifest and palpable abuse of discretion.' Under this deferential standard, an appellate court may

> not substitute its judgment for that of the trial court. Rather, an abuse of discretion occurs only when the evidence does not support the trial court's decision.

Alexander v. Inman, 974 S.W.2d 689, 697 (Tenn. 1998).

In the case now before us, Plaintiff created the problem which led to Defendant's indebtedness by making a number of mistakes in its inventory of the products to be returned. In view of that circumstance, we find no "manifest and palpable abuse of discretion" by the Trial Court in denying prejudgment interest to Plaintiff.

Plaintiff asks that it be awarded damages for what it contends is a frivolous appeal by Defendant. T.C.A. § 27-1-122 provides for damages for frivolous appeal under certain circumstances. We do not believe this case to present an appropriate situation for such an award.

CONCLUSION

For reasons herein stated, we affirm the judgment of the Trial Court. Costs of this appeal are assessed to the Appellant, United Window Company, Inc.

D. MICHAEL SWINEY, J.

CONCUR:

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HOUSTON M. GODDARD, P.J.

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HERSCHEL P. FRANKS, J.