

IN THE COURT OF APPEALS OF TENNESSEE
EASTERN SECTION

FILED

April 26, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

THOMAS H. MEEKS, d/ b/ a)	BRADLEY COUNTY
T. R. AGRI - SYSTEMS)	03A01-9511-CH-00402
)	
Plaintiff - Appellee)	
)	
v.)	HON. EARL H. HENLEY,
)	CHANCELLOR
)	
FRANK WHEATLEY)	
)	
Defendant - Appellant)	AFFIRMED AND REMANDED

RANDY SELLERS OF CLEVELAND FOR APPELLANT

ROGER E. JENNE OF CLEVELAND FOR APPELLEE

O P I N I O N

Goddard, P. J.

This is a suit by Thomas H. Meeks, d/b/a T.R. Agri-Systems, against Frank Wheatley to recover the amount owed on a contract he alleges he had with Mr. Wheatley to remove and re-install interior equipment necessary for Mr. Wheatley's poultry production enterprise.

The Trial Court found in favor of Mr. Meeks and awarded him the sum of \$28,757.52, plus pre-judgment interest at the rate of 10 percent per annum from the date his bill for services was submitted to Mr. Wheatley until the date of the hearing below.

Mr. Wheatley appeals, making the following insinuations: (1) the evidence preponderates against the Chancellor's finding that there was a contract between the parties, (2) the sum awarded was excessive, (3) the award of pre-judgment interest was improperly allowed, and (4) the Trial Court should not have dismissed his counter-complaint which sought damages for Mr. Meeks' negligence in performing the services.

The testimony of the parties is diametrically opposite as to the terms of the contract. Mr. Meeks insisted that the contract price for removing the equipment from a snow-damaged chicken house was \$2000, and for replacing it in two new houses \$12 per hour. On the other hand, Mr. Wheatley contended the contract for replacing the equipment was \$2000, and for removing it \$12 per hour.

The Chancellor, in resolving the controversy, made the following determination:

A bill was submitted by Mr. Meeks for \$30,340.52. Mr. Wheatley claims \$1,733.00 for correcting some of Meeks' mistakes; however, it was later admitted that he should not have credit for \$150.00 for relocating the

fan. Consequently, the amount of modification cost should be \$1,733.00 less \$150.00, for a total of \$1,583.00. The Court gives judgment for \$30,340.52 less \$1,583.00, for a total of \$28,757.52. Pre-judgment interest in the amount of ten (10%) percent is awarded from the time Mr. Meeks submitted his bill until the date of trial.

It is apparent from the foregoing that the Trial Court implicitly accredited the testimony of Mr. Meeks and discredited that of Mr. Wheatley. Upon giving due deference to the Chancellor's evaluation of the credibility of the witnesses, we are not in a position to say that the evidence preponderates against his determination. We accordingly as to the first two issues conclude it is appropriate to affirm the Chancellor under Rule 10(a) of this Court.

As to the pre-judgment interest, the trial court is authorized under T. C. A. 47-14-103 to award such if warranted by the proof. In the case at bar it appears that Mr. Wheatley had the benefit of the labors expended by Mr. Meeks and his employees, as well as approximately \$9000¹ worth of equipment installed for the period for which interest was allowed. This being the case we do not believe the Chancellor abused his discretion in the award of pre-judgment interest.

With regard to the last issue regarding the counter-claim, the Trial Court in effect granted partial relief by allowing a set-off against the amount claimed to be owed by Mr.

¹ Mr. Wheatley testified that according to his calculations he owed Mr. Meeks approximately \$20,000.

Meks because of certain expenditures by M. Wheatley to rectify errors.

For the foregoing reasons the judgment of the Trial Court is affirmed and the cause is remanded for collection of the judgment and costs below. Costs of appeal are adjudged against M. Wheatley and his surety.

Houston M Goddard, P. J.

CONCUR:

Don T. Murray, J.

Charles D. Susano, Jr., J.