Laclede Gas Co. v. Amoco Oil Co.

522 F.2d 33 (8th Cir. 1975)

Ross, Circuit Judge.

The Laclede Gas Company (Laclede), a Missouri corporation, brought this diversity action alleging breach of contract against the Amoco Oil Company (Amoco), a Delaware corporation. It sought relief in the form of a mandatory injunction prohibiting the continuing breach or, in the alternative, damages. The district court held a bench trial on the issues of whether there was a valid, binding contract between the parties and whether, if there was such a contract, Amoco should be enjoined from breaching it. It then ruled that the "contract is invalid due to lack of mutuality" and denied the prayer for injunctive relief. The court made no decision regarding the requested damages. Laclede Gas Co. v. Amoco Oil Co., 385 F. Supp. 1332, 1336 (E.D. Mo. 1974). This appeal followed, and we reverse the district court's judgment.

On September 21, 1970, Midwest Missouri Gas Company (now Laclede), and American Oil Company (now Amoco), the predecessors of the parties to this litigation, entered into a written agreement which was designed to provide central propane gas distribution systems to various residential developments in Jefferson County, Missouri, until such time as natural gas mains were extended into these areas. The agreement contemplated that as individual developments were planned the owners or developers would apply to Laclede for central propane gas systems. If Laclede determined that such a system was appropriate in any given development, it could request Amoco to supply the propane to that specific development. This request was made in the form of a supplemental form letter, as provided in the September 21 agreement; and if Amoco decided to supply the propane, it bound itself to do so by signing this supplemental form.

Once this supplemental form was signed the agreement placed certain duties on both Laclede and Amoco. Basically, Amoco was to "install, own, maintain and operate . . . storage and vaporization facilities and any other facilities necessary to provide [it] with the capability of delivering to [Laclede] commercial propane gas suitable . . . for delivery by [Laclede] to its customers' facilities." Amoco's facilities were to be "adequate to provide a continuous supply of commercial propane gas at such times and in such volumes commensurate with [Laclede's] requirements for meeting the demands reasonably to be anticipated in each Development while this Agreement is in force." Amoco was deemed to be "the supplier," while Laclede was "the distributing utility."

For its part Laclede agreed to "install, own, maintain and operate all distribution facilities" from a "point of delivery" which was defined to be "the outlet of [Amoco] header piping." Laclede also promised to pay Amoco "the Wood River Area Posted Price for propane plus four cents per gallon for all amounts of commercial propane gas delivered" to it under the agreement.

Since it was contemplated that the individual propane systems would eventually be converted to natural gas, one paragraph of the agreement provided that Laclede should give Amoco 30 days written notice of this event, after which the agreement would no longer be binding for the converted development. . . .

Then, on April 3, 1973, Amoco notified Laclede that its Wood River Area Posted Price of propane had been increased by three cents per gallon. Laclede objected to this increase also and demanded a full explanation. None was forthcoming. Instead Amoco merely sent a letter dated May 14, 1973, informing Laclede that it was "terminating" the September 21, 1970, agreement effective May 31, 1973.

II.

Since he found that there was no binding contract, the district judge did not have to deal with the question of whether or not to grant the injunction prayed for by Laclede. He simply denied this relief because there was no contract. Laclede Gas Co. v. Amoco Oil Co., supra, 385 F. Supp. at 1336.

Generally the determination of whether or not to order specific performance of a contract lies within the sound discretion of the trial court. . . . However, this discretion is, in fact, quite limited; and it is said that when certain equitable rules have been met and the contract is fair and plain "specific performance goes as a matter of right." Miller v. Coffeen, 365 Mo. 204, 280 S.W.2d 100, 102 (1955), quoting, Berberet v. Myers, 240 Mo. 58, 77, 144 S.W. 824, 830 (1912). (Emphasis omitted.)

With this in mind we have carefully reviewed the very complete record on appeal and conclude that the trial court should grant the injunctive relief prayed. We are satisfied that this case falls within that category in which specific performance should be ordered as a matter of right. . . .

Amoco contends that four of the requirements for specific performance have not been met. Its claims are: (1) there is no mutuality of remedy in the contract; (2) the remedy of specific performance would be difficult for the court to administer without constant and long-continued supervision; (3) the contract is indefinite and uncertain; and (4) the remedy at law available to Laclede is adequate. The first three contentions have little or no merit and do not detain us for long.

There is simply no requirement in the law that both parties be mutually entitled to the remedy of specific performance in order that one of them be given that remedy by the court. . . .

While a court may refuse to grant specific performance where such a decree would require constant and long-continued court supervision, this is merely a discretionary rule of decision which is frequently ignored when the public interest is involved. . . .

Here the public interest in providing propane to the retail customers is manifest, while any supervision required will be far from onerous.

Section 370 of the RESTATEMENT OF CONTRACTS (1932) provides:

Specific enforcement will not be decreed unless the terms of the contract are so expressed that the court can determine with reasonable certainty what is the duty of each party and the conditions under which performance is due.

We believe these criteria have been satisfied here. As discussed in part I of this opinion, as to all developments for which a supplemental agreement has been signed, Amoco is to supply all the propane which is reasonably foreseeably required, while Laclede is to purchase the required propane from Amoco and pay the contract price therefor. . . . the fact that the agreement does not have a definite time of duration is not fatal since the evidence established that the last subdivision should be converted to natural gas in 10 to 15 years. This sets a reasonable time limit on performance and the district court can and should mold the final decree to reflect this testimony.

It is axiomatic that specific performance will not be ordered when the party claiming breach of contract has an adequate remedy at law. . . . This is especially true when the contract involves personal property as distinguished from real estate.

However, in Missouri, as elsewhere, specific performance may be ordered even though personalty is involved in the "proper circumstances." Mo. Rev. Stat. § 400.2-716(1); RESTATEMENT OF CONTRACTS, supra, § 361. And a remedy at law adequate to defeat the grant of specific performance "must be as certain, prompt, complete, and efficient to attain the ends of justice as a decree of specific performance." National Marking Mach. Co. v. Triumph Mfg. Co., 13 F.2d 6, 9 (8th Cir. 1926). . . .

One of the leading Missouri cases allowing specific performance of a contract relating to personalty because the remedy at law was inadequate is Boeving v. Vandover, 240 Mo. App. 117, 218 S.W.2d 175, 178 (1949). In that case the plaintiff sought specific performance of a contract in which the defendant had promised to sell him an automobile. At that time (near the end of and shortly after World War II) new cars were hard to come by, and the court held that specific performance was a proper remedy since a new car "could not be obtained elsewhere except at considerable expense, trouble or loss, which cannot be estimated in advance."

We are satisfied that Laclede has brought itself within this practical approach taken by the Missouri courts. As Amoco points out, Laclede has propane immediately available to it under other contracts with other suppliers. And the evidence indicates that at the present time propane is readily available on the open market. However, this analysis ignores the fact that the contract involved in this lawsuit is for a long-term supply of propane to these subdivisions. The other two contracts under which Laclede obtains the gas will remain in force only until March 31, 1977, and April 1, 1981, respectively; and there is no assurance that Laclede will be able to receive any propane under them after that time. Also it is unclear as to whether or not Laclede can use the propane obtained under these contracts to supply the Jefferson County subdivisions, since they were originally entered into to provide Laclede with propane with which to "shave" its natural gas supply during peak demand periods. Additionally, there was uncontradicted expert testimony that Laclede probably could not find another supplier of propane willing to enter into a long-term contract such as the Amoco agreement, given the uncertain future of worldwide energy supplies. And, even if Laclede could obtain supplies of propane for the affected developments through its present contracts or newly negotiated ones, it would still face considerable expense and trouble which cannot be estimated in advance in making arrangements for its distribution to the subdivisions.

Specific performance is the proper remedy in this situation, and it should be granted by the district court.

CONCLUSION

For the foregoing reasons the judgment of the district court is reversed and the cause is remanded for the fashioning of appropriate injunctive relief in the form of a decree of specific performance as to those developments for which a supplemental agreement form has been signed by the parties.