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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-822**

Anthony Crianza,
Appellant,

vs.

Royale Crown Construction, Inc.,
Respondent.

**Filed April 6, 2010
Affirmed
Kalitowski, Judge**

Anoka County District Court
File No. 02-CV-08-1950

Patrick R. Gillespie, Rogers, Minnesota (for appellant)

John L. Tambornino, Edina, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Kalitowski, Judge; and Crippen, Judge.*

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Anthony Crianza challenges the district court's judgment dismissing his claims for unpaid sales commissions from respondent Royale Crown Construction, Inc.

We affirm.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

D E C I S I O N

Appellant brought suit against respondent, appellant's former employer, claiming that respondent owed him unpaid sales commissions on 21 jobs. Appellant failed to specify the amounts owed for each. Respondent filed a counterclaim, alleging that appellant renegotiated contracts to reduce respondent's revenues and failed to perform his job duties, causing respondent to lose jobs. Following the presentation of appellant's case at trial, respondent (1) moved for dismissal on the ground that appellant failed to show a right to relief; and (2) confessed to judgment in the amount of \$1,837.58, the amount respondent admitted owing appellant. The district court granted appellant the amount admitted but ordered judgment in favor of respondent on appellant's remaining claims.

Appellant argues that the district court's findings of fact regarding the amount of unpaid sales commissions owed to him by respondent are clearly erroneous because they are contrary to the evidence in the record. We disagree.

Minn. R. Civ. P. 41.02(b) (2008) provides that after a plaintiff has presented evidence at a trial before the court, the defendant may move for dismissal on the ground that based on the facts and the law, the plaintiff has failed to show a right to relief. If the district court awards judgment on the merits against the plaintiff, the district court must make findings of fact as required by Minn. R. Civ. P. 52.01 (2008). Rule 52.01 provides that on review, findings of fact shall not be set aside unless clearly erroneous, and that "due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses." We will not reverse a district court's dismissal under rule 41 unless the

district court abused its discretion. *Altimus v. Hyundai Motor Co.*, 578 N.W.2d 409, 411 (Minn. App. 1998).

Here, appellant claimed that respondent breached the parties' contract by refusing to pay commissions it owed appellant. "A claim of breach of contract requires proof of three elements: (1) the formation of a contract, (2) the performance of conditions precedent by the plaintiff, and (3) the breach of the contract by the defendant." *Thomas B. Olson & Assocs., P.A. v. Leffert, Jay & Polglaze, P.A.*, 756 N.W.2d 907, 918 (Minn. App. 2008), *review denied* (Minn. Jan. 20, 2009). The parties concede that they entered into a contract whereby respondent agreed to pay appellant a percentage of the net profit on contracting jobs for which appellant performed sales-consultant duties. Thus, the issues before the district court were whether appellant performed the contractually required job duties to receive the commissions, and whether respondent breached the contract by failing to pay commissions owed to appellant.

The record supports the district court's conclusion that appellant failed to make a prima facie case that respondent breached the parties' contract. Specifically, appellant failed to show that respondent owed him outstanding commissions.

In support of his claims, appellant testified as to his estimate of the commissions owed to him for each of the jobs based on his limited experience as a sales consultant for respondent. Appellant described the work he performed and the expenses incurred for each job, and explained the general reasoning behind each commission estimate. But appellant failed to support his claims with any documentary evidence, and the district court found that appellant's testimony was vague and ambiguous. Appellant claims that

on the second day of trial he presented information from respondent's files showing payments received from jobs that were higher than those indicated in respondent's interrogatory answers. But appellant failed to establish that he performed the work necessary to receive commissions for these jobs.

Significantly, the district court found that appellant's testimony was not credible. The district court found that appellant lied under oath about taking materials from one of respondent's job sites to complete work that he privately contracted to perform on his own. The district court concluded that appellant's lack of credibility regarding this incident "casts a shadow of a doubt on all other parts of his testimony." *See* Minn. R. Civ. P. 52.01 (providing that on review, this court defers to the district court's credibility determinations).

Moreover, the record indicates that appellant failed to show that he performed conditions precedent by completing the work necessary to receive the commissions under the contract. Appellant's position as a sales consultant involved securing signed contracts from homeowners for the repair of weather-related damage to their home. Appellant followed leads provided to respondent by a telemarketing service, or found his own leads by driving through neighborhoods, looking for weather-damaged houses. Appellant received partial payment of his commission once a contract was signed, and received the remainder after respondent received the final payment following completion of the job.

Appellant testified that once he secured a job for respondent, he had completed performance of his duties as a sales consultant and was entitled to the commission for

that job. But respondent's president testified that sales consultants are responsible for managing projects to completion. Corroborating the president's testimony, the subcontractor agreement submitted into evidence provides that sales consultants "will be paid 40% of Net Profit . . . as long as Sales Consultant can proficiently maintain project management." The agreement further provides that the sales consultant "agrees to give a 14 day written notice to company, and/or complete all projects in production to avoid forfeiture." Although appellant testified that he did not sign a subcontractor agreement, the president disputed this claim and the district court could properly find the president's testimony credible.

The record indicates that appellant failed to perform project-management duties, resulting in other sales consultants performing the work or respondent losing the job. Respondent's counterclaim, voluntarily dismissed following appellant's case, was based on appellant's failure to perform pursuant to the parties' contract. We conclude that appellant failed to show that he completed the conditions precedent to receive commissions under the contract.

In sum, the district court's findings regarding the amount of unpaid sales commissions respondent owed appellant are not clearly erroneous. Therefore, the district court did not abuse its discretion by dismissing appellant's claims of unpaid sales commissions for failure to show a right to relief.

Affirmed.