

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

JAMES RISSLER AND JIMMY J. THOMAS

APPELLANTS,

v.

JUSTIN HEINZLER AND LANCE NEFF

RESPONDENTS.

DOCKET NUMBER WD71316

DATE: July 27, 2010

Appeal From:

Saline County Circuit Court
The Honorable Dennis A. Rolf, Judge

Appellate Judges:

Division Three: Victor C. Howard, Presiding Judge, Thomas H. Newton and Gary D. Witt,
Judges

Attorneys:

Scott C. Hamilton, Lexington, MO, for appellants.

Donald G. Stouffer, Marshall, MO, for respondents.

MISSOURI APPELLATE COURT OPINION SUMMARY

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JAMES RISSLER AND JIMMY J. THOMAS,

APPELLANTS,

v.

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Saline County

Before Division Three Judges: Victor C. Howard, Presiding Judge, Thomas H. Newton and Gary D. Witt, Judges

James Rissler entered into a contract with Justin Heinzler and Lance Neff on July 11, 2003, regarding the ownership of 508 cows. Pursuant to the contract, the cattle were divided into two equal shares, fifty/fifty. The first share belonged to Heinzler and Neff, and the second share belonged solely to Rissler. To purchase their share, Heinzler and Neff collectively paid Rissler \$90,000 pursuant to the contract. The contract expressly provided that "[n]o cattle shall be sold or moved without the 3 partners agreeing and being present at the time of moving the cattle" and that "[t]he parties must give each other 24 [sic] notice of the moving by phone or presence." On or about July 26, 2003, Heinzler removed 162 cows (25% of the total cows) from the farm where they were kept and sold them at auction for \$69,685.27. Heinzler provided no notice to either Rissler or Neff prior to selling these cows. Shortly thereafter Rissler sold the remaining 75% of the cattle without notice to Neff or Heinzler and Rissler kept 100% of the profits from that sale for himself.

The matter was tried to the bench, and on March 25, 2009, the trial court issued its judgment, wherein it found that "Heinzler breached said contract on or about July 25, 2003 by removing and selling 162 head of cattle without notifying or receiving permission from the other parties to the contract." Notwithstanding this breach of contract by Heinzler, the trial court found that Rissler "failed to prove the damages [he] allege[s] [he has] suffered."

AFFIRMED.

Division Three holds: In his sole Point Relied On, Rissler argues that the "trial court erred in not awarding [him] damages because he proved both a breach of the contract and the damages caused by the breach in that the evidence was sufficient to determine the profit received by the defendant." A breach of contract action includes the following essential elements: (1) the existence and terms of a contract; (2) that plaintiff performed or tendered performance pursuant to the contract; (3) breach of the contract by the defendant; and (4) damages suffered by the plaintiff. The only issue on appeal is whether the trial court erred in failing to award damages. The trial court found that Rissler failed to prove damages because he did not present evidence of the amount of money he received from the sale of the remaining 75% of the cattle, nor did he provide evidence of the loan he paid off from his sale of the cattle he received. On appeal,

Rissler fails to demonstrate that the trial court erred in concluding that he did not prove the existence of actual damages resulting from Heinzler's breach of contract.

The judgment of the circuit court is hereby affirmed.

Opinion by: Gary D. Witt, Judge

July 27, 2010

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