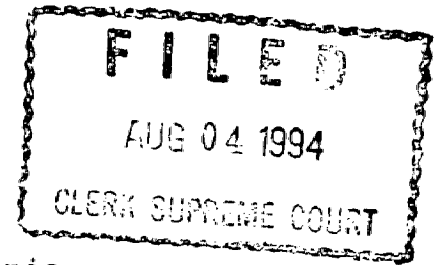


IN THE COURT OF APPEALS OF IOWA

No. 3-655 / 93-494



TRANSPORT INTERNATIONAL POOL, INC., A Pennsylvania Corporation,

Plaintiff-Appellee,

vs.

KING CONSTRUCTION, INC., An Iowa Corporation,

Defendant-Appellant,

and

KING TRANSPORT, INC., An Iowa Corporation,

Defendant.

Appeal from the Iowa District Court for Linn County,
Lynne E. Brady, Judge.

The defendant King Construction, Inc., challenges the order finding it liable for monies due for the lease of trailers from the plaintiff. **AFFIRMED.**

Carolyn J. Beyer and James A. Piersall of Wenzell, Piersall & Harms, P.C., Cedar Rapids, for appellant.

James L. Chipokas and Mark L. Chipokas, Cedar Rapids, for appellee.

Considered by Donielson, C.J., and Habhab and Huitink,
JJ.

DONIELSON, C.J.

This case concerns the issue of whether King Construction, Inc., is liable for monies due on a lease of trailers from the plaintiff, Transport International Pool (TIP). Mike Berryhill is the sole owner of King Construction and King Transport. Berryhill contacted TIP attempting to lease flatbed trailers for over-the-road hauling. TIP requested a credit check before leasing the trailers. In order to obtain credit, TIP required the lessee to be in business for at least three years. King Transport had just recently come into existence. The credit information sent to TIP was based on King Construction, which had been in existence over three years.

TIP approved the application and prepared a lease agreement naming King Construction as the lessee. TIP also prepared a second lease for a trailer to be picked up on a subsequent date which also named King Construction as the lessee. The trailers under both leases were picked up and signed for by employees of King Transport. Subsequent invoices were addressed to King Transport. King Transport and King Construction share the same address.

Counsel for King Transport indicated there was no objection to a judgment being entered against King Transport, but King Construction disputed any liability. The district court determined King Construction was the party responsible under the lease and judgment was entered

against both King Construction and King Transport. King Construction appeals.

We review this law action for the correction of errors of law. Iowa R. App. P. 4. The first issue raised on appeal is whether the trial court had sufficient evidence to support a finding that the trailers were leased by King Construction. Findings of facts in a law action are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1). We construe the trial court's finding's broadly and liberally. Grinnell Mut. Reins. Co. v. Voeltz, 431 N.W.2d 783, 785 (Iowa 1988). In case of doubt or ambiguity we construe the findings to uphold, rather than defeat, the district court judgment. Id. We are prohibited from weighing the evidence or the credibility of the witnesses. Id.

A finding of fact is supported by substantial evidence if the finding may be reasonably inferred from the evidence. In evaluating sufficiency of the evidence, we view it in its light most favorable to sustaining the court's judgment. We need only consider evidence favorable to the judgment, whether or not it was contradicted.

Briggs Transp. Co. v. Starr Sales Co., 262 N.W.2d 805, 808 (Iowa 1978).

"Evidence is substantial or sufficient when a reasonable mind could accept it as adequate to reach the same findings." Waukon Auto Supply v. Farmers & Merchants Sav. Bank, 440 N.W.2d 844, 846 (Iowa 1989) (citation omitted). Evidence is not insubstantial merely because it

could support contrary inferences. Grinnell Mut. Reins. Co., 431 N.W.2d at 785 (citation omitted).

The district court found King Construction did in fact lease the trailers and were therefore financially responsible. The court found the credit application and the lease agreements naming King Construction as lessee to be important documents. We find this to be substantial evidence in support of the district court's ruling.

King Construction further alleges the trial court disregarded the separate nature of the two corporations without any basis in fact to allow piercing the corporate veil. On appeal a case must be determined on the same theory upon which the matter was presented to and determined by the trial court. Aetna Cas. & Sur. Co. v. Jewett Lumber Co., 209 N.W.2d 48, 50 (Iowa 1973). This court is not permitted to give consideration to a theory or issue not initially raised. Id.

Appellant's theory was not addressed by the trial court in the pleadings or in testimony. Nowhere in the district court's findings of fact and conclusions of law is there any indication the decision was reached by invoking the doctrine of piercing the corporate veil.

The district court's judgment against King Construction is supported by substantial evidence. We determine any other issues the parties may have raised on appeal are either improperly preserved for review or are without merit.

Costs of this appeal are assessed to the appellant.

AFFIRMED.