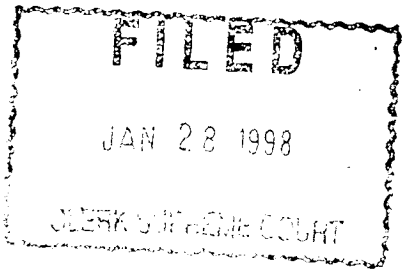
IN THE COURT OF APPEALS OF IOWA

000235

No. 7-567 / 96-1630
Filed January 28, 1998



MICHAEL JUDAS,
Plaintiff,

vs.

ARCHER DANIELS MIDLAND CORPORATION,
Defendant/Third Party
Plaintiff-Appellant,

vs.

BOWKER MECHANICAL CONTRACTORS, INC.,
Third-Party Defendant-Appellee.

Appeal from the Iowa District Court for Linn County, Thomas M. Horan, Judge.

Defendant appeals from the district court's ruling dismissing its contractual indemnity claim against third-party defendants after the defendant settled the tort claim of the plaintiff, an employee of the third-party defendant. **AFFIRMED.**

Douglas R. Oelschlaeger and Richard S. Fry of Shuttleworth & Ingersoll, P.C., Cedar Rapids, for appellant.

David J. Dutton and Carolyn A. Rafferty of Dutton, Braun, Staack, Hellman & Iverson, P.L.C., Waterloo, for appellee.

Heard by Huitink, P.J., and Vogel and Mahan, JJ.

HUITINK, P.J.

Archer Daniels Company (ADM) appeals the district court's denial of its claim for indemnification against Bowker Mechanical Contractors, Inc.

I. Background Facts and Proceedings.

Michael Judas is an employee of Bowker Mechanical Contractors, Inc., a plumbing and mechanical contractor for Archer Daniels Midland Company (ADM). ADM owns and operates a corn processing plant in Cedar Rapids. Judas claims he was injured on September 28, 1992, while working at an ADM facility. Judas sued ADM alleging ADM's negligence in failing to provide a safe workplace, failing to maintain measures to ensure Judas' safety, and failing to warn Judas of the dangers and risks on the premises caused his injuries.

ADM filed a third-party claim against Bowker based on an indemnity clause included in its purchase agreement with Bowker. This clause provides:

> If Seller's [Bowker's] work under the order involves operations by Seller on the premises of Buyer [ADM] or one of its customers, Seller shall take all necessary precautions to prevent the occurrence of any injury to persons or damage to property during the progress of such work and, except to the extent that any such injury or damage is due solely and directly to Buyer's or its customer's negligence, as the case may be, Seller shall pay the Buyer for all loss which may result in any way from any act or omission of the Seller, its agents, employees, or subcontractors . . . .

Bowker filed a cross-petition against ProFab, Inc., another contractor working at ADM at the time Judas was injured.

Judas settled with ADM and ProFab for $100,000. ADM contributed $85,000 to the settlement. ProFab contributed $15,000. In addition, Bowker's workers' compensation carrier agreed to waive its lien for benefits paid to Judas. Bowker did not contribute to the settlement.

Bowker and ADM submitted their indemnity dispute to the district court on stipulated facts. ADM demanded indemnification for its $85,000 contribution to the settlement, $56,326.50 in attorney fees, and $14,790.01 in expenses from Bowker. The district court denied ADM's claim.

On appeal, ADM argues the district court erred in denying its indemnity claim against Bowker. ADM contends it is entitled to indemnification from Bowker pursuant to the terms of the parties' purchase agreement.

II. Standard of Review.

We review for errors of law. Iowa R. App. P. 4. The district court's findings of fact in a law action are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1). We construe the district court's findings 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's 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 the 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. Ins. Reins. Co.*, 431 N.W.2d at 785 (citation omitted).

With these principles in mind, we turn to the issue presented on appeal.

III. The Merits.

A successful indemnity claim requires proof: (1) the indemnitee was legally liable to the injured party; (2) the settlement was reasonable; and (3) the facts are such as to give rise to a duty on the part of the indemnitor to indemnify the indemnitee. *Stalter v. Iowa Resources, Inc.*, 467 N.W.2d 586, 589 (Iowa App. 1991); *Ke-Wash Co. v. Stauffer Chemical Co.*, 177 N.W.2d 5, 9 (Iowa 1970). However, where there is an express indemnity agreement providing otherwise, proof of the foregoing elements is not a predicate to recovery. *Ke-Wash v. Stauffer Chemical Co.*, 177 N.W.2d at 11.

We initially reject ADM's argument that the terms of its indemnity agreement with Bowker fall within the exception excusing it from proving the three elements essential to recovery. The agreement expressly excludes indemnity for damages due

solely to ADM's negligence or that of its customers. Moreover, there is no language in the agreement which imposes a duty on Bowker to defend ADM. *See* 42 C.J.S. Indemnity § 24 (stating where an agreement provides for liability under specific circumstances, a party who seeks indemnity and who settles without judicial finding of liability must prove the existence of his liability in a suit against the indemnitor, unless the indemnitor had a duty to defend). Under these circumstances, the district court correctly concluded ADM was required to meet the burden of proof earlier described. *Ke-Wash Co. v. Stauffer Chemical Co.*, 177 N.W.2d at 9.

ADM first must prove its actual liability for Judas' damages. *Id.* A negotiated settlement agreement neither obviates the need to prove actual liability nor provides the basis for a finding of the settlor-indemnitee's liability. "[A] settlement agreement between plaintiff A and defendant B should not be the basis of imposing a liability on defendant C to indemnify B without a showing of liability of B to A." *Id.* at 11 (quoting *Williams v. Johnston*, 442 P.2d 178, 184; 92 Idaho 292, 298 (1965)). The record indicates ADM has not pled or proven actual liability. In fact, ADM maintains it is not at fault for Judas' injuries. The district court under these circumstances correctly concluded ADM failed to meet its burden of proof on the first element of its claim for indemnity. We accordingly affirm on this issue.

We have also considered the remainder of ADM's appellate contentions and find them to be without merit. The judgment of the district court is affirmed.

AFFIRMED.