FILED
APR 28 1978
CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

UNIVERSAL COOPERATIVES, INC.,

Plaintiff,

v.

TASCO, INC.,

Defendant.

TASCO, INC.,

Appellant,

v.

UNIVERSAL COOPERATIVES, INC.,

Counterclaim Defendant,

And

BANGOR PUNTA OPERATIONS, INC.,

Appellee.

Filed April 28, 1978

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2-59563

Appeal from Butler District Court - John F. Stone, Judge.

Counterclaimant appeals from trial court order sustaining defendant's special appearance on the ground that § 617.3, The Code, did not confer jurisdiction. Affirmed.

Max E. Kirk, of Ball & Nagle, P.C., Waterloo, for appellant.

Gene Yagla, of Lindeman & Yagla, Waterloo, for appellee.

Heard by Allbee, C.J., Donielson, Oxberger and Carter, JJ. Snell, J., takes no part.

PER CURIAM

This is a dispute arising out of the alleged breach of a contract for the construction of portable livestock confinement buildings and the claimed commission of several business torts. The question to be decided is whether the counterclaim defendant Bangor Punta Operations, Inc.[1] is subject to the jurisdiction of Iowa courts by virtue of our long-arm statute, § 617.3, The Code. Trial court held it was not and sustained the special appearance. We agree and affirm.

The principles which guide both the initial decision of this case and our review are set out in Douglas Machine & Engineering Co. v. Hyflow Blanking Press Corp., 229 N.W.2d 784, 787-88 (Iowa 1975) and Creative Communication Consultants, Inc. v. Byers Transportation Co., 229 N.W.2d 266 (Iowa 1975).

Trial court made its ruling on the basis of the pleading, the contract and two affidavits, one in support of the special appearance and one in opposition. The court found that the contract was to be performed outside of Iowa, and that no tort had been committed in whole or in part in Iowa.

Assuming that the counterclaimant's conclusory allegations contained in its pleading and affidavit were sufficient to establish a prima facie showing of jurisdiction, it is apparent that the affidavit in support of the special appearance created a fact question; the latter document was no less potent than its opponents. See Tice v. Wilmington Chemical Corp., 259 Iowa 27, 34, 141 N.W.2d 616, 621, 143 N.W.2d 86 (1966). We are bound by trial court's findings, if supported by substantial evidence. DeCook v. Environmental Security Corp., 258 N.W.2d 721, 726 (Iowa 1977); Norton v. Local Loan, 251 N.W.2d 520, 521 (Iowa 1977). The court's material findings were so supported. Because the facts as found do not bring the case within the reach of the statute, we do not consider the constitutional minimum contacts question.

AFFIRMED.

[1] In referring to Bangor Punta as the counterclaim defendant, we simply acquiesce in the designation used by the parties. Bangor Punta was not involved in this lawsuit until defendant-counterclaimant, Tasco, Inc., added it as a party in an amendment to the counterclaim. It appears that rule 34, Rules of Civil Procedure, would provide the proper means for attaining this result, if any such means are available in this case. Bangor Punta has, of course, had no opportunity to raise this issue because of the threshold jurisdictional question. See rules 66 and 104, R.C.P.