IN THE COURT OF APPEALS OF IOWA

FILED
MAY 23 1989
CLERK SUPREME COURT

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**BETTY SCHMINKE,**

Plaintiff-Appellee,

vs.

**WEST VIRGINIA HOSPITAL SERVICES CORP.,**

Defendant-Appellant.

8-687
88-121

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Appeal from the Iowa District Court for Linn County (LA 13920), Thomas M. Horan, Judge.

The Hospital Corporation appeals a district court judgment awarding plaintiff $12,000 for its conversion of plaintiff's personal property. **AFFIRMED.**

Gregory J. Epping of Terpstra, Terpstra & Epping, Cedar Rapids, for defendant-appellant.

Mark J. McCool and C. Roderick Reynolds of McCool & McCool, Cedar Rapids, for plaintiff-appellee.

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

**OXBERGER, C.J.**

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Defendant-appellant West Virginia Hospital Services Corp. appeals the district court judgment awarding plaintiff-appellee Betty Schminke $12,000 for conversion of certain items determined to be her personal property. We affirm.

Defendant contends there was insufficient evidence to prove the items belonged to Schminke rather than Rodney Britcher, a tenant who operated a bar on property leased from defendant. The items were seized on this property when Britcher defaulted on the lease. Schminke's cross-appeal seeking additional damages has been dismissed as untimely and need not be addressed.

The testimony at trial was as follows. In September 1984 Britcher signed the commercial lease with the defendant. Plaintiff Schminke and Britcher resided together during the period of the lease and up to the date of trial. Schminke and Britcher testified Britcher ordered supplies for the business and Schminke would pay for them. They also stated Schminke leased from Thielking Leasing Co. four major items used in the business and the $10,000 C.D. she gave the leasing company as collateral was forfeited when defendant seized and never returned the items. Both testified they had an agreement for Britcher to repay Schminke for cash purchases when the bar began to make money.

Defendant's representative, Richard Raymon, testified he was not aware of Schminke's involvement in the business nor was her name on the property lease. He served a notice of default on Britcher September 17, 1985, indicating $1,775 back rent was owed. Britcher contended only $525 rent was owed. Raymon testified Britcher had told him he was planning on continuing the lease and had not given proper 30-day notice to terminate which accounts for this discrepancy.

On September 21, 1985, Raymon had all personal property remaining in the property seized and he changed the locks. He testified two men were observed filling their car trunks with bar supplies earlier that day.

Schminke later contacted an attorney who testified he told Raymon that Schminke claimed ownership in the four leased items. Raymon requested a U.C.C. filing proving such ownership but no such filing had been made. Schminke and Britcher testified any supporting documents for Schminke's claim of ownership, including receipts, were kept in a filing cabinet which was seized and not returned. Britcher testified regarding a list of items seized, the estimated value and which items were owned by Schminke. Raymon agreed the four major items had been seized and did not know what had been done with them. He testified a fifth leased item had been returned to a different leasing company.

Defendant contends the testimony of Britcher and Schminke, without supporting documentation, is not sufficient evidence for the district court to have found Schminke established ownership in the seized property and suffered damages totaling $12,000. The defendant concedes in its brief a landlord's lien is unenforceable against the property of third parties to the lease agreement.

This case was tried at law to the court and our review is limited to correction of errors at law. Iowa R. App. P. 4. The district court's findings of fact are binding on this court if supported by substantial evidence. Iowa R. App. P. 14(f)(1). Evidence reviewed for its substantiality is viewed in the light most favorable to the judgment and we need only consider evidence favorable to the judgment whether or not it is contradicted. F.S. Credit Corp. v. Shear Elevator, Inc., 377 N.W.2d 227, 232 (Iowa 1985).

Defendant contends Britcher was in actual possession of the items and his possession created a presumption of his ownership which cannot be rebutted by mere declarations of ownership by another party. See Thomas Truck & Caster Corp. v. Buffalo Caster & Wheel Corp., 210 N.W.2d 532, 555 (Iowa 1973).

It is true Britcher had possession of the four leased items so far as the items were on the premises of the rented property. Britcher testified he did not own the disputed property; that Schminke was the owner.

We find sufficient evidence in the record for the district court, sitting as fact finder, to conclude this possession was as an agent or custodian with consent of Schminke as the owner. See Thorp Credit, Inc. v. Wuchter, 412 N.W.2d 641, 643 (Iowa App. 1987). Schminke testified the items were leased to her on a lease-to-own basis and she would have owned them after a 3-year period.

The term "owner" is of quite general application and is frequently applied to one having an interest in property less than absolute. Id., (citing City of Cedar Rapids v. Cox, 250 Iowa 457, 468, 93 N.W.2d 216, 222 (1959)). The owner is also one who, in case of destruction of the property, must sustain the loss of it. 63 Am. Jur.2d Property, § 31, p. 261 (1984).

Schminke and Britcher testified it was Schminke who signed the lease and put up the $10,000 C.D. as security which was cashed by the leasing company. No evidence was presented by defendant to contradict this testimony. The record indicates failure of Schminke to produce supporting documentation was due to the fact defendant seized a filing cabinet containing such documentation, although Raymon denied having such papers. The leasing company has gone out of business.

From these facts we cannot say the district court erred in concluding Schminke was the owner of the four leased items. She was the person who leased the items, remained

at risk while the items were being used, and suffered the loss when the items were seized and not returned to the leasing company.

Generally, the measure of damages recoverable by a plaintiff who has lost property through conversion is the fair and reasonable market value of the property at the time and place of taking. F.S. Credit Corp., 377 N.W.2d at 234-35. The four items leased by Schminke were valued at $2,000 by Britcher. However, Schminke lost a $10,000 C.D. when the items were not returned to her or the leasing company. When a conversion occurs, the injured party should receive full compensation for his or her actual losses. 18 Am. Jur.2d, Conversion § 117 (1985).

We conclude there is sufficient evidence to support the trial court's award of $12,000.

**AFFIRMED.**