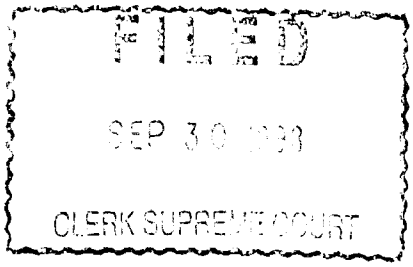
IN THE COURT OF APPEALS OF IOWA

No. 8-414 / 97-1553



EDAH ENTERPRISES, L.L.C.,
Appellee,

vs.

GENERAL PLANT SERVICES, INC.,
Appellant.

Appeal from the Iowa District Court for Scott County, Edward B. de Silva, Judge.

A defendant in a replevin action appeals the summary judgment ruling directing the return of a compressor and appurtenances to the plaintiff. **AFFIRMED.**

Kathryn S. Barnhill of Barnhill & Goodman, P.C., West Des Moines, for appellant.

Jonathan C. Fox of Califf & Harper, P.C., Moline, for appellee.

Considered by Cady, C.J., and Vogel and Mahan, JJ.

VOGEL, J.

General Plant Services, Inc., (General Plant), appeals the summary judgment ruling directing the return of a compressor and appurtenances to EDAH Enterprises, L.L.C. As we find General Plant, in its resistance to the motion for summary judgment, failed to put forth specific facts showing there were issues of material fact in dispute, we affirm.

Background facts. This dispute centers around the ownership rights of a 1982 Ingersol-Rand 72 horse screw compressor and appurtenances. Prior to this conflict, the disputed equipment and the real estate it was located on were owned by J. David Johnson and leased to Quad City Mechanical, Inc. (QCM), of which Johnson was the sole owner and shareholder. On September 17, 1996, QCM entered into a five-year equipment lease with General Plant. The lease contained a "substantially complete and accurate list of property subject to the list," but also contained a catchall provision to include any "unintentionally omitted items." The compressor was not part of the listed property. On September 19, 1996, EDAH and QCM executed an "Agreement for Sale of Commercial Real Estate." This agreement included fixtures and personal property, and specifically included "all compressors."On September 27, 1996, General Plant entered into a monthly rental agreement with QCM to lease the real property. Finally, on December 10, 1996, QCM conveyed the real estate to EDAH by warranty deed. General Plant vacated the premises shortly thereafter,

removing not only the equipment specifically mentioned in its equipment lease, but also the compressor and its appurtenances.

In March of 1997, EDAH filed a replevin action seeking return of the compressor from General Plant, claiming ownership by virtue of QCM's conveyance to EDAH of the real estate, fixtures and personal property. General Plant resisted, claiming possessory rights in the compressor pursuant to its equipment lease.

EDAH moved for summary judgment, asserting that no material facts were in dispute and it was entitled to judgment as a matter of law. General Plant resisted. The district court granted the motion, finding that the compressor was conveyed to EDAH pursuant to a merger of the purchase agreement with the warranty deed. General Plant appeals.

Scope of review. We review a summary judgment ruling for error. *Anderson v. Miller*, 559 N.W.2d 29, 31 (Iowa 1997). We examine the record before the district court to decide whether a genuine issue of material fact exists and whether the court correctly applied the law. *See Id.*; Iowa R. Civ. P. 237(c). In doing so, we view the facts in the light most favorable to the party opposing the motion for summary judgment. *Anderson*, 559 N.W.2d at 31.

To determine whether a genuine issue of material fact exists, the court must examine the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits. Iowa R. Civ. P. 237(e). The burden is on the moving party to show the absence of a material fact issue, and the resisting party is accorded all possible

inferences reasonably deducible from the evidence. *See Red Giant Oil Co. v. Lawlor*, 528 N.W.2d 524, 528 (Iowa 1995). However, when a motion for summary judgment is made and supported as provided in the rule, an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him. Iowa R. Civ. P. 237(e); *Bitner v. Ottumwa Community School Dist.*, 549 N.W.2d 295, 299 (Iowa 1996).

General Plant first contends the district court erred in granting summary judgment because it alleges there are material facts in dispute as to whether the sale to EDAH included the compressor. We disagree. First of all, there has never been a dispute as to whether the purchase agreement included the compressor. Secondly, the trial court ruled, as a matter of law, that the purchase agreement merged with the warranty deed. There is no genuine issue of material fact as to this issue.

General Plant next asserts there is a material fact as to whether the lease agreement between itself and QCM was completely integrated. In its resistance to the motion for summary judgment, General Plant asserted that the compressor was not only included by virtue of the "catchall" provision of the lease, but was also specifically listed on an equipment list that was part of the lease. However, as pointed out in EDAH's response to the resistance, the equipment list attached by General

Plant to its resistance was not a part of the original rental agreement.[1] In addition, the only affidavit filed in support of General Plant's resistance was not timely filed. Although the court did not rule on EDAH's motion to strike the affidavit, the court did not include any reference to the affidavit in its ruling. We cannot infer that the court considered the affidavit in its ruling, and we decline to consider it on appeal.

We find that General Plant's resistance to the motion for summary judgment was deficient. It not only referred to a spurious list of equipment, but the only affidavit filed in support of the resistance was untimely. Although the district court proceeded to rule on the merits, we may affirm on any ground, whether urged or not. *See Harbit v. Voss Petroleum, Inc.*, 553 N.W.2d 329, 330 (Iowa 1996); *Benton v. Nelsen*, 502 N.W.2d 288, 291 (Iowa App. 1993).

We conclude that General Plant failed to put forth specific facts to show there was a genuine issue for trial. We therefore affirm the district court's entry of summary judgment.

AFFIRMED.

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[1] In ruling on EDAH's motion for sanctions pursuant to Iowa R. Civ. P. 80, the district court admonished General Plant's counsel for filing an incorrect exhibit and referencing that exhibit in her argument.