

FILED

JAN 25 1979

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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

LEONARD LaBENZ and
MARY LaBENZ,

Appellees,

vs.

HAWK HYBRID & LIVESTOCK
CO., INC.,

Appellants.

Filed January 25, 1979

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2-61411

Appeal from Harrison District Court - E. F. Hanson, Judge.

Defendant appeals denial of motion to amend pleading to assert permissive counterclaim. - Affirmed.

Robert Kohorst, of Louis, Moore & Kohorst, Harlan, for Appellant.

Lyle Ditmars, of Peters, Campbell & Pearson, Council Bluffs, for Appellees.

Submitted to Oxberger, C. J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

This appeal presents a single issue for review - whether trial court abused its discretion in denying defendant's motion for leave to amend its answer. Plaintiffs filed their petition on August 23, 1977, and defendant answered on September 15, 1977. Thereafter, plaintiffs filed a request for admissions and subsequently moved for summary judgment. Hearing was held on plaintiffs' motion for summary judgment on November 21, 1977, at which time defendant filed motion for leave to amend its answer to assert a permissive counterclaim. Trial court denied defendant's motion and granted summary judgment in plaintiffs' favor.

Since defendant failed to amend its answer within 20 days after service, its only recourse was to seek leave of court to permit said amendment or to secure plaintiffs' written consent. Rule 88, Rules of Civil Procedure. Considerable discretion is vested in trial court in allowing amendments to pleadings. *Parker v. Tuttle*, 260 N.W.2d 843, 846 (Iowa 1977). Defendant's proposed amendment sought to interpose a permissive counterclaim against plaintiffs in the nature of an action for indemnity. At the time of hearing, however, the amounts for which defendant sought indemnification were unascertained. If defendant has a cause of action on this theory, it can pursue an independent action. See *Karr v. Samuelson, Inc.*, 176 N.W.2d 204, 212-13 (Iowa 1970). We find no abuse of discretion in trial court's denial of defendant's motion to amend.

AFFIRMED.