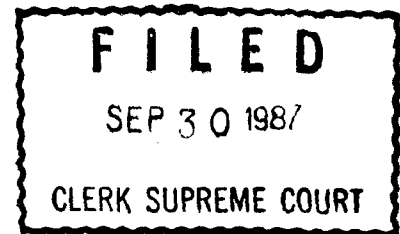


IN THE COURT OF APPEALS OF IOWA



MARVIN P. VANDERSEE, d/b/a
VANDERSEE BACKHOE SERVICE,

Plaintiff-Appellee,

vs.

ARLAN STEGEN, d/b/a
STEGEN'S SPORTS OUTFITTERS,

Defendant-Appellant.

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Filed September 30, 1987

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Appeal from the Iowa District Court for Linn County (No. LA 13269),
Thomas M. Horan, Judge.

Defendant appeals from judgment for plaintiff in an action for breach
of an oral contract. **AFFIRMED.**

Henry E. Nathanson of Nathanson Law Offices, Cedar Rapids, for defen-
dant-appellant.

Matthew G. Novak of Pickens, Barnes & Abernathy, Cedar Rapids, for
plaintiff-appellee.

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

DONIELSON, J.

Defendant appeals from judgment for plaintiff in an action for breach of an oral contract, asserting: (1) that he was not a party to the contract and should not have been found personally liable; (2) that the evidence was insufficient to support a finding that the contract called for payment of the reasonable value of the services performed rather than a specified lesser amount; (3) that the evidence was insufficient to support the trial court's determination of the reasonable value of the services performed; and (4) that the evidence was sufficient to establish a right to recover upon a counterclaim based on the manner in which the work was performed. We affirm.

The president of an incorporated sporting goods business hired various workers to construct an underground shooting range at the store. Plaintiff was hired to perform excavation work and brought suit for breach of an oral contract when defendant did not pay a bill in the amount of \$3,884.53.

Conflicting evidence was presented at trial concerning the terms of the oral agreement and the manner in which the work was performed. The trial court entered judgment for plaintiff in the full amount sought, finding that defendant had acted as his own general contractor and contracted personally with plaintiff. The court further found that plaintiff had established the reasonableness of his charges and that defendant had not established allegations, upon which a counterclaim was based, to the effect that materials were used which were defective and/or not agreed to and that the work was performed in a negligent and/or substandard manner. Defendant has appealed from this judgment.

Our scope of review is for the correction of errors at law; findings of fact in jury-waived cases shall have the effect of a special verdict. Iowa R. App. P. 4. Such findings are binding upon the appellate court if supported by substantial evidence. Iowa R. App. P. 14(f)(1).

This court must review the evidence in the light most consistent with the judgment and, if any ambiguity in the evidence is present, the evidence should be construed to uphold rather than defeat the trial court's judgment. Janda v. Iowa Industrial Hydraulics, Inc., 326 N.W.2d 339, 341 (Iowa 1982). Further, evidence can be contradictory and remain substantial. R.E.T. Corp. v. Frank Paxton Co., Inc., 329 N.W.2d 416, 419 (Iowa 1983). The reviewing court should defer to the trial court which had the opportunity to observe the demeanor of all the witnesses. Loudon v. State Farm Mut. Auto Ins. Co., 360 N.W.2d 575, 583 (Iowa App. 1984).

Defendant first alleges that the trial court erred in finding that the defendant was a party to the contract and personally liable to plaintiff. Defendant contends he acted as an agent of the corporation in dealing with plaintiff.

In reviewing the record, we find there is substantial evidence to support the trial court's finding that plaintiff contracted with defendant. Specifically, we note that (1) defendant filed a counterclaim in his individual capacity rather than under the corporate name; and (2) defendant admitted in the "statement of the case" portion of his brief that he elected to act as his own contractor and hire the workers necessary to do the job. Hence, we find defendant's first contention to be without merit.

Defendant next argues that the trial court erred in finding that the contract between the parties called for the defendant to pay the plaintiff the reasonable value of his services, as contended by plaintiff, rather than on a maximum-price bid basis as claimed by the defendant. In connection with this argument, defendant also argues that the trial court erred in finding that the cost of the materials and the hourly charges claimed by plaintiff for his labor and equipment were fair and reasonable.

We note that when plaintiff rested, his motion to amend the petition to conform to the evidence in reliance on an implied contract theory for the reasonable value of materials and services rendered was sustained. A review of the testimony reveals that this project took more time than originally estimated due to two factors beyond plaintiff's control; namely, the extremely rainy weather conditions and the "quicksand" type soil. Defendant, acting as his own general contractor, knew of these conditions, but desired to continue work on the project. Thus, we are in agreement with the trial court that plaintiff is entitled to the reasonable value of his services, rather than an alleged maximum-price bid which defendant contends plaintiff quoted to him.

In addition, we find that plaintiff's charges of \$50 per hour for the backhoe, \$65 per hour for the end loader, and \$35 per hour for dump trucks were fair and reasonable charges, supported by substantial evidence in the record, including testimony from defendant's own witnesses as to the reasonableness of such charges.

Defendant's last argument on appeal is that the trial court erred in holding that defendant failed to establish his counterclaim against the plaintiff by a preponderance of the evidence. Defendant claimed that plaintiff performed his work in a negligent and/or substandard manner and in breach of contract and warranty.

The record discloses that defendant did not voice any complaints on the workmanship involved until after he received his bill. Defendant's own consultant and foreman on the project testified that he had no complaints about plaintiff's work. We affirm the trial court's finding that defendant has failed to establish any of his claims against plaintiff by a preponderance of the evidence.

Accordingly, we find that the trial court's findings are supported by substantial evidence and affirm such findings.

AFFIRMED.