

IN THE COURT OF APPEALS OF IOWA

No. 6-142 / 95-264

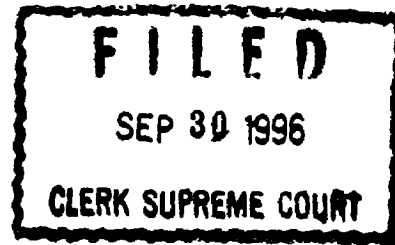
GORDON SEVIG TRUCKING COMPANY,

Plaintiff-Appellee,

vs.

**RICHARD W. BICE and MODERN
TRANSIT COMFORT, INC.,**

Defendants-Appellants.



Appeal from the Iowa District Court for Linn County, Harold Swailes, Judge.

The defendants appeal from the district court's adverse ruling determining the defendants were liable for services the plaintiff performed and certain truck products to be sold pursuant to the parties' agreement. **AFFIRMED.**

David P. McManus of Glasson, Grove, Sole & McManus, P.C., Cedar Rapids,
for appellants.

Jon M. McCright, Cedar Rapids, for appellee.

Considered by Cady, P.J., Streit, and Vogel, JJ.

CADY, P. J.-

This is an appeal from a judgment entered by the district court following a bench trial. We affirm by memorandum opinion pursuant to Supreme Court Rule 9.

Gordon Sevig Trucking Company (Sevig) instituted this action against Richard Bice and Modern Transit Comfort, Inc. (Modern Transit) for breach of contract and money due for services performed. Bice was the president and an owner of Modern Transit. In the answer to the petition, Bice affirmatively alleged any liability should be limited to the corporation and any recovery for the services rendered should be reduced by Sevig's wrongful conversion of a generator.

Sixteen months after Bice and Modern Transit filed an answer to the petition and five weeks prior to trial, Bice and Modern Transit sought to amend their answer to include a counterclaim for damages and replevin based on the conversion of the generator. ~~The trial court denied the motion to amend and the case proceeded to trial.~~

Sevig presented evidence at trial Bice requested Sevig to repair several generators and other equipment, the repairs were performed, and payment had not been made. Sevig also presented evidence Bice agreed to purchase six heating devices called "wintermisers" from Sevig for \$950 each, as well as mounting brackets for \$78.40 each. The "wintermisers" were delivered to Bice, and full payment had not been made. Bice testified any agreements were made on behalf of Modern Transit.

The trial court found Bice was personally liable for the “wintermisers” in the amount of \$6,067.32. It also found both Bice and Modern Transit were liable for services rendered by Sevig in the amount of \$672.38.

Bice and Modern Transit appeal. They claim substantial evidence was not presented to support a finding of individual liability by Bice and that Bice or Modern Transit authorized the repairs and agreed to purchase one of the “wintermisers.” They also claim the court erred in denying their motion to amend and in failing to reduce the recovery based on conversion.

Our review is on errors of law. Iowa R. App. P. 4. The findings of the trial court are binding if supported by substantial evidence. Iowa R. App. P. 14(f)(1).

We construe the findings of the trial court broadly and liberally. *State Farm v. Employers Mut. Cas. Co.*, 500 N.W.2d 80, 81 (Iowa App. 1993). Findings are supported by substantial evidence if they may be reasonably inferred from the evidence. *Id.* Evidence is substantial when a reasonable mind would accept it as adequate to reach the same findings. *Id.* In evaluating the sufficiency of evidence, we view it in its light most favorable to affirming the judgment of the trial court. *Id.* We need only consider evidence favorable to the judgment, whether or not that evidence was contradicted. *Id.*

Under our standard of review, we conclude substantial evidence supports each finding of the trial court. In particular, there is evidence Bice approached Sevig to purchase the “wintermisers” and gave Sevig the impression he was purchasing them

personally. The invoices were prepared by Sevig in the name of Bice, who signed them in his own name. We recognize there is ample evidence in the record which also supports Bice's claims, but we look beyond this evidence to determine if there is enough evidence to also support the trial court's findings. We find substantial evidence.

We also find the trial court acted within its discretion by denying the motion to amend. A trial court has broad discretion in making such decisions, and we will interfere only where a clear abuse has occurred. *Atlantic Veneer Corp. v. Sears*, 232 N.W.2d 499, 503 (Iowa 1975). Considering the nature of the counterclaim and its late filing, we find no abuse of discretion.

We further find the trial court did not err in entering damages for services rendered. Bice asserted the claim of conversion as a defense. However, there is evidence to support a finding ~~this defense was not established.~~ Moreover, ~~the damage~~ award does not result in double recovery to Sevig. The trial court only recognized the existence of an artisan's lien; it did not further order foreclosure of the lien.

We have carefully reviewed each claim raised by Bice and Modern Transit. Under our standard of review, we affirm the decision of the district court.

AFFIRMED.