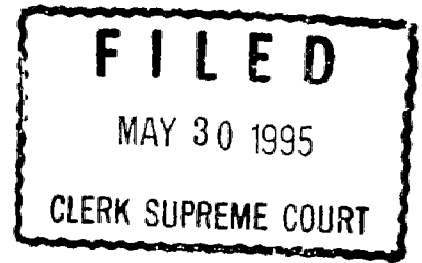


IN THE COURT OF APPEALS OF IOWA

No. 5-32 / 94-244



THE METRIX COMPANY,

Appellee,

vs.

FISCHER, INC.,

Appellant.

Appeal from the Iowa District Court for Dubuque County, Alan Pearson, Judge.

Fischer, Inc. appeals a district court order determining it did not have a valid statutory lien and denying its request for certain rents and charges due from Metrix Company. **REVERSED.**

David L. Hammer, Angela C. Simon, and Scott J. Nelson of Hammer, Simon & Jensen, Dubuque, for appellant.

Robert M. Bertsch of O'Connor & Thomas, P.C., Dubuque, for appellee.

Considered by Habhab, P.J., and Cady and Huitink, JJ.

HUITINK, J.

Fischer, Inc. (Fischer), appeals a district court order determining it did not have a valid statutory lien and denying its request for rents and charges due from The Metrix Company (Metrix). We reverse.

Metrix is in the business of drawing, processing, and distributing animal fetal blood serum and other animal by-products for use in the drug industry. Metrix entered into numerous unwritten contracts with Fischer to provide necessary cold storage services.

Under one contract Metrix rented a room in cold storage and paid a monthly flat rate regardless of the amount of product stored in this area. Metrix stored its serum under this contract. Under a second contract Metrix stored products in Fischer's warehouse area and was charged according to the amount of products stored. Rents and charges due under the second contract are at issue in this case.

In 1989 Metrix purchased pork bile from FDL Foods, Inc. (FDL). FDL drew the bile and saved it at Fischer Cold Storage in FDL's name. On August 17 FDL issued an invoice to Metrix for a purchase of 94,500 pounds of pork bile. On the same date FDL issued a warehouse delivery order to Fischer directing it to transfer title of the bile to Metrix.

Fischer then generated an in-house "transfer and store" receipt which was sent from the cold storage plant to its main office. However, due to clerical error Fischer

did not send an invoice for storage charges to Metrix on August 17, and it subsequently did not bill Metrix on a monthly basis for the bile storage.

In April 1992 Fischer discovered the error and sent Metrix an invoice for back storage of the bile in the amount of \$13,720.40. Metrix refused to pay the invoice and informed Fischer of its refusal to pay in July 1992.

After this refusal Fischer asserted its statutory lien against all Metrix products stored in Fischer's facilities pursuant to Iowa Code sections 554.7209 and 578.1 (1991). Metrix attempted to remove its serum, for which its storage charges were paid, but Fischer refused to turn over any of Metrix's product until it paid the disputed storage bill for the bile.

Metrix filed a petition seeking a writ of injunction to gain access to its serum. The district court issued an injunction ordering Fischer to turn over the animal blood serum secured by a bond in the amount of \$17,151.43.

Fischer filed a motion to dissolve the injunction and demanded Metrix post bond in accordance with Iowa Code section 584.2. The court denied the motion but ordered Metrix to post an additional bond of \$13,179.05 so the total amount of the bond (\$30,330.48) complied with section 584.2 ("bond shall be in amount equal to twice the amount of the lien claimed").

Fischer then filed an answer and counterclaim for money damages. It requested the court enter judgment in the amount of \$15,165.24 plus costs and interest, to be paid from the cash bond.

The court found Metrix had tried to dispose of the bile itself and was therefore responsible only for rent due from the time it received the invoice until its attempted removal of the bile. The court stated Fischer failed to perform its contractual duty to bill Metrix on a monthly basis and it was inequitable to require Metrix to pay for storage during the time Fischer prevented it from removing the bile. The court also refused to order Metrix to pay for the disposal charges which became necessary when Fischer went out of business. Fischer was awarded \$2891.70, the injunction was dissolved, and the balance of the bond was returned to Metrix. Fischer's rule 179(b) motion was denied.

On appeal, the dispositive issue is whether Fischer is entitled to recover on its lien. Even though Fischer's counterclaim is an action at law, Metrix filed its original petition in equity, and the parties agreed to try the case in equity. Our review, therefore, is *de novo*. Iowa R. App. P. 4. We consider anew both legal and equitable issues. *Mensch v. Netty*, 408 N.W.2d 383, 385 (Iowa 1987).

Fischer contends it had an enforceable statutory lien on all of Metrix's products (bile and blood serum) held in cold storage pursuant to Iowa Code sections 554.7209 and 578.1. It argues the district court erred in ruling its lien was not valid. Fischer

also contends the court erred in not applying section 584.2 and allowing Metrix to escape its statutory obligation to pay by applying equitable principles. We agree in all aspects.

Fischer's counterclaim is grounded on statutory rights based on legal rather than equitable principles. The district court, sitting in equity, was bound by statutes and required to follow the law in the absence of fraud or mistake. *Id.* (citations omitted).

The record indicates Metrix received notice from FDL in August 1989 that the 94,500 pounds of bile had been transferred into Metrix's name and was in storage at the Fischer storage facilities. From that time until April 1992, Fischer continued to provide storage for Metrix.

The district court found Metrix attempted to remove the bile from storage in order to dispose of it and mitigate damages. In so finding the district court failed to recognize Fischer, in order to preserve its lien, was obligated to maintain possession of the product until Metrix posted the appropriate bond. Failure to comply with the requirements of section 584.3 would have left Fischer with no recourse to recover the rents and charges due.

In addition, our review of the record reveals Metrix made no attempt to remove the bile (either the 94,500 pounds at issue or from another lot of 25,000 pounds) after the injunction issued. Metrix removed only the serum, which was of considerable value. The bile, which was of no commercial value at that time, was left in storage.

Fischer informed Metrix on October 30, November 11, and November 24 of 1992 that it was ceasing operations and Metrix should dispose of its product. The warehouse manager also made numerous calls to Metrix in order to determine when and how Metrix was going to dispose of the bile. When Metrix failed to act, Fischer was left with no choice but to incur costs for disposing of the bile on its own. We determine Fischer's actions were commercially reasonable given the fact the bile was practically worthless and had a nominal resale value. Metrix is therefore liable for the disposal costs as well. *See Iowa Code § 578.1 (1991).*

After our review of the record we conclude Fischer had a valid and enforceable lien. Fischer is entitled to recover for rents and charges due for storage services provided for Metrix. The district court erred in ruling Fischer was barred from recovering by the doctrines of laches or any other equitable theory. To hold otherwise would not only deny Fischer the relief to which it is entitled, but would require us to nullify Iowa Code sections 554.7209, 578.1 and 584.1 in the process. Our decision is consistent with the legislatively designed scheme to resolve disputes of this nature.

We therefore reverse the decision of the district court and order Metrix to pay (in addition to the \$2891.70 paid previously from the posted bond) \$12,273.54 for the rents and charges due for storage. Metrix is also ordered to pay interest on the past due bill in the amount of \$1921.74. Finally Metrix shall pay for the disposal charges incurred by Fischer in the amount of \$3,879.65.

Costs of this appeal are assessed to Metrix. The district court is reversed with instructions.

REVERSED.