IN THE COURT OF APPEALS OF IOWA

No. 0-295 / 89-1899

FILED
SEP 26 1990
CLERK SUPREME COURT

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CHR EQUIPMENT FINANCING, INC.,

Appellant,

vs.

C & K TRANSPORT, INC.,
Defendant,

HEMMEN OF IOWA, INC., and RONALD L. HEMMEN,

Appellees.

Appeal from the Iowa District Court for Hamilton County, Newt Draheim, Judge.

CHR appeals the district court's judgment entered on remand contending the district court erred by refusing to award CHR damages for unpaid highway use tax. **REVERSED AND REMANDED WITH DIRECTION.**

Kirk E. Goettsch of Clark, Hastings & Goettsch, Ames, for appellant.

James L. Kramer of Johnson, Erb, Latham, Gibb & Carlson, P.C., Fort Dodge, for appellees.

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

OXBERGER, C.J.

On November 19, 1984, CHR and C & K Transport executed a five-year lease for semi-trailer trucks. Hemmen of Iowa and Ronald Hemmen guaranteed the performance of the lease.

C & K Transport and Hemmen defaulted on the lease in April 1987. CHR sued C & K Transport and Hemmen for breach of the lease. C & K Transport filed bankruptcy and is no longer a party to this case. The district court awarded CHR approximately $36,000.

CHR appealed contending that it was entitled to more damages. We affirmed the district court in most part but reversed the district court's refusal to award certain additional damages. CHR Equip. Financing, Inc., v. C & K Transport, (No. 88-1706, filed October 5, 1989, Schlegel, J.). We remanded the case stating:

> V. Other Elements of Damage. Appellant contends the trial court should have included the investment tax credit recapture, highway use tax, penalties and interest, and Iowa sales and use tax, penalties, and interest as elements of damage. The lease specifically provided for these elements of damage. There was no specific waiver of these elements and appellant is entitled to receive them. Failure to allow appellant to recover these elements would grant a windfall to the appellee. The only evidence as to the amounts of these elements was offered by appellant and was apparently undisputed. We reverse the trial court's refusal to award these elements of damages and remand to the trial court for modification of the judgment to allow the addition of $3747.14 for the tax recapture and $1839.63 for the sales and use taxes and penalties.

The district court entered a supplemental judgment on remand increasing the judgment by $3747.14 for the tax recapture and $1839.63 for the sales and use taxes and penalties. CHR now appeals this judgment. CHR claims an additional entitlement to the unpaid highway use tax. CHR argues that the highway use tax was inadvertently omitted from the prior itemized recitation for remand. CHR also requests attorney fees on appeal.

Generally an appellate court enjoys broad latitude when called upon to interpret the meaning of its own prior order. Thomas v. Minner, 340 N.W.2d 285, 286 (Iowa 1983). Further, a decree is susceptible of interpretation on the same basis as other written instruments. "The determinative factor is the intention of the court as gathered from all parts of the judgment. Effect must be given to that which is clearly implied as well as to that which is expressed." Dairyland, Inc. v. Jenison, 207 N.W.2d 753, 754 (Iowa 1973)(quoting Whittier v. Whittier, 237 Iowa 655, 663, 23 N.W. 2d 435, 440 (1946)).

After reading the prior appellate decision in its entirety, we agree with the appellants that the $2,232 of road use tax with interest and penalties was inadvertently omitted from this court's prior order's remand recitation. Accordingly, we remand this case for modification of the judgment to allow the addition of $2,232 for the highway use tax, penalties and interest the appellants were entitled to under the lease originally in controversy.

Iowa courts lack the power to award attorney's fees unless authorized by statute or contract. Bethards v. Shivvers, Inc., 355 N.W.2d 39, 48 (Iowa 1984)(authorities omitted). Pursuant to provisions of the Lease Agreement and Guarantees between the parties, CHR is entitled to recover the reasonable attorney's fees expended in prosecution of this action. This appeal was a direct result of CHR attempting to collect damages resulting from Hemmen's default on the lease. We order the appellees to pay the appellant's attorney's fees of $638.83 and the costs of this appeal.

REVERSED AND REMANDED WITH DIRECTION.