

IN THE COURT OF APPEALS OF IOWA

No. 2-127 / 91-1177

FILED

SEP 29 1992

CLERK SUPREME COURT

BUNCE BROADCASTING CORPORATION,

Appellee,

vs.

NATIONAL AMUSEMENT COMPANY, INC., d/b/a SOUND SYSTEMS, INC.,

Appellant.

Appeal from the Iowa District Court for Polk County,
Harry Perkins, Senior Judge.

Defendant appeals from a district court judgment determining that defendant breached its broadcasting contract with the plaintiff and rejecting defendant's counterclaim that plaintiff's actions justified defendant's breach of contract, and awarding plaintiff a full recovery on its claim. **AFFIRMED.**

Randy G. Sargent, Des Moines, for appellant.

Ronald A. Riley of Hansen, McClintock & Riley,
Des Moines, for appellees.

Considered by Oxberger, C.J., and Hayden and Habhab,
JJ. Donielson, J., takes no part.

OXBERGER, C.J.

The plaintiff, Bunce Broadcasting Corporation, (Bunce), leased to defendant, National Amusement Company, (National Amusement), a subcarrier FM Multiplex facility for the purpose of transmitting planned music programs to National Amusement's customers. The lease was for ten years, beginning July 1, 1978. It included an automatic renewal for an additional ten years unless either party, in writing by registered mail, gave notice of their intent to terminate the lease agreement at least one year prior to the date of termination.

National Amusement's general manager gave Bunce notice of termination, in writing, on May 26, 1987. National Amusement removed its equipment and ceased making lease payments to Bunce from and after July 1, 1987. Lease payments were in the amount of \$800 per month. Bunce filed suit claiming damages for nonpayment of lease payments for the final year of the agreement.

National Amusement answered and counterclaimed alleging that the termination of the agreement was caused by Bunce's failure to fulfill its contractual obligation resulting in damages. They argued Bunce failed to perform its obligation to provide a usable signal for its broadcast and were justified in rescinding the agreement. National Amusement also asserted Bunce failed to exercise reasonable diligence in attempting to mitigate its damages for the loss of rent.

The trial court found in favor of Bunce on all issues and determined Bunce was entitled to the total amount of \$9600 which National Amusement did not pay under the terms of the lease agreement. National Amusement appeals.

Scope of Review

Findings of facts in a law action are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1). We construe the trial court's findings broadly and liberally. Grinnell Mut. Reinsurance Co. v. Voeltz, 431 N.W.2d 783, 785 (Iowa 1988). In case of doubt or ambiguity we construe the findings to uphold, rather than defeat, the court's judgment. Id. We are prohibited from weighing the evidence or the credibility of the witnesses. Id.

A finding of fact is supported by substantial evidence if the finding may be reasonably inferred from the evidence. In evaluating sufficiency of the evidence, we view it in its light most favorable to sustaining the court's judgment. We need only consider evidence favorable to the judgment, whether or not it was contradicted.

Briggs Transp. Co. v. Starr Sales Co., 262 N.W.2d 805, 808 (Iowa 1978).

"Evidence is substantial or sufficient when a reasonable mind could accept it as adequate to reach the same findings." Waukon Auto Supply v. Farmers & Merchants Sav. Bank, 440 N.W.2d 844, 846 (Iowa 1989) (citation omitted). Evidence is not insubstantial merely because it could support contrary inferences. Grinnell Mut. Reinsurance Co., 431 N.W.2d at 785 (citation omitted).

With these principles in mind, we turn to the issues raised on appeal.

I. Counterclaim for Rescission

National Amusement contends the trial court erred in refusing to find in their favor on a counterclaim for rescission and damages. National Amusement alleges Bunce failed to perform its duties under the contract. The trial court made no specific findings regarding Bunce's performance on the contract. National Amusement did not seek an enlargement of the findings, pursuant to Iowa Rule of Civil Procedure 179(b). We, therefore, presume the court decided the facts necessary to support its decision in Bunce's favor. See Banker's Trust Co. v. Fidata Trust Co., 452 N.W.2d 411, 413 (Iowa 1990). With the appeal in this perspective, National Amusement is entitled to prevail only if the evidence is so compelling the trial court was required to rule in their favor as a matter of law. Brunner v. United Fire and Casualty Co., 338 N.W.2d 151, 152 (Iowa 1983).

National Amusement proffered written notice of intent to terminate their agreement with Bunce on May 26, 1987. They moved out of the transmission facilities and stopped making payments on or about July 1, 1987, one year prior to the date the lease was to be terminated pursuant to the agreement between the parties. Prior to that time, they did not request credit, the remedy provided in the contract, for poor performance on the contract. Only after

Bunce commenced this suit did National Amusement raise issues of Bunce's performance on the contract.

We hold there was sufficient evidence in the record to support the trial court's decision. We affirm the trial court's ruling in favor of Bunce.

II. Mitigation of Damages

National Amusement next contends the district court erred in finding Bunce exercised reasonable diligence in attempting to mitigate its damages. Specifically, National Amusement contends Bunce did not advertise the vacancy in national trade journals.

When a tenant wrongfully abandons leased property, the landlord is under a duty to show reasonable diligence has been used to relet the property in order to mitigate the resulting damage. Harmsen v. Dr. MacDonald's Inc., 403 N.W.2d 48, 51 (Iowa App. 1987). Robert Bunce testified regarding the steps taken to locate another tenant, including contacting national companies who may have been interested in renting space.

We hold there was sufficient evidence to support the trial court's determination that Bunce had made reasonable efforts to rent or lease the facility.

AFFIRMED.