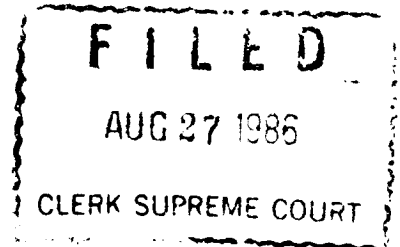


IN THE COURT OF APPEALS OF IOWA



MOBILE CHEMICAL COMPANY,)

Plaintiff-Appellant,)

vs.)

ARTS MILLING SERVICE, INC.,)

Defendant-Appellee.)

Filed August 27, 1986

6-211
85-1813

222

Appeal from the Iowa District Court for Howard County (No. 13579) -
L. D. Lybbert, Judge.

Plaintiff appeals from a judgment for defendant in an action seeking the
balance due on an open account. **AFFIRMED.**

Gary L. Robinson and Julie Gunderson Trachta, of Klinger, Robinson &
McCuskey, Cedar Rapids, for plaintiff-appellant.

Frank D. Elwood, of Elwood & Elwood, Cresco, for defendant-appellee.

Considered by Donielson, P.J., and Schlegel, and Sackett, JJ.

SACKETT, J.

Plaintiff Mobile Chemical Company appeals from judgment for Defendant Art's Milling Service, Inc. on an action seeking the balance due on an open account. Mobile contends there was sufficient evidence to establish its right to the sum sought. We affirm.

In 1980, Arthur Bruess, owner of Art's Milling, sold on contract an agricultural business to persons who incorporated the business under Bonair Agricultural Supply, Inc. Under new ownership Bonair was unable to obtain credit. An arrangement was worked out by which Mobile would take orders from Bonair and bill the Art's Milling account, with Art's Milling guaranteeing payment for both its own orders and Bonair's.

In 1982, Bonair placed an order with Mobile for 500 tons of chemicals. Art's Milling paid for 211 tons delivered to Bonair. Bonair paid \$15,676.65, representing the difference between the cost of 211 tons and the cost of the additional tonnage delivered to Bonair.

Bonair became bankrupt and Mobile was forced to return the \$15,676.65 received from Bonair.

Subsequently Mobile sued Art's Milling on the guarantee to pay for fertilizer ordered and delivered to Bonair. Art's Milling admittedly guaranteed 200 tons and paid for these tons. The dispute concerns the remaining 300 tons.

The trial court found that Art's Milling had shown by a preponderance of the evidence that at the time the 500-ton order was placed Art's Milling had become aware of Bonair's financial difficulties. Although it is somewhat disputed, the trial court found Art Bruess, on behalf of Art's Milling, had told Mobile's sales representative that Art's Milling would only guarantee the payment of 200 tons of fertilizer for Bonair. The trial court also found that Mobile's

sales representative clearly understood Art's Milling was only guaranteeing payment on 200 tons, not the additional 300 tons.

Additionally, the trial court determined Art's Milling had established by a preponderance of the evidence that it only ordered and agreed to pay or guarantee payment for 200 tons of fertilizer for Bonair and Art's Milling had paid Mobile for all fertilizer it had ordered for itself or had ordered and agreed to pay or guarantee for Bonair. Judgment was entered for Art's Milling.

Mobile appeals, raising as its sole issue, that it had shown by the preponderance of the evidence an open account existed between it and Art's Milling for \$15,676,¹ the approximate price for the additional 300 tons, and Mobile was thus entitled to recover.

Mobile argues the issue which is determinative of whether it was entitled to recover the \$15,676.65 is whether an open account in fact existed. However, we find the real fighting issue is whether Art's Milling had placed a limit on the amount of fertilizer ordered by Bonair which Art's Milling would guarantee.

We do not decide the facts anew. This is a law action and the findings of facts made by the trial court are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1). Thus, our sole task is to determine whether there is substantial evidence supporting the trial court's findings.

Viewing the record, there is sufficient evidence to support the trial court's finding that Art's Milling guaranteed payment on only 200 tons. George Clemons, sales representative and district manager for Mobile, testified on cross-examination that Arthur Bruess told him at the time the order for fertilizer was placed

¹ Art's Milling had actually paid for 211 tons of fertilizer.

that Bruess would not guarantee payment on any fertilizer Bonair ordered over 200 tons.

Therefore, we affirm the trial court.

AFFIRMED.