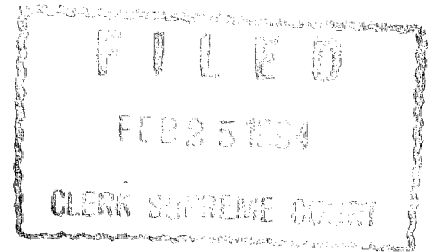


IN THE COURT OF APPEALS OF IOWA

No. 3-634 / 92-1622



HOWARD WESTERKAMP,

Plaintiff-Appellant/Cross-Appellee,

vs.

STUART BANDSTRA,

Defendant-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Marion County,
George W. Bergeson, Judge.

Westerkamp appeals, and Bandstra cross-appeals, from a district court judgment entered on Westerkamp's action for damages for lost profits on a farm lease and Bandstra's counterclaim for damages. **AFFIRMED.**

Lance A. Grotewold, Oskaloosa, for appellant.

Bert A. Bandstra, Knoxville, for appellee.

Heard by Schlegel, P.J., and Sackett and Habhab, JJ.

PER CURIAM.

Plaintiff-appellant/cross-appellee Howard Westerkamp rented a 220-acre tract from defendant-appellee/cross-appellant Stuart Bandstra in 1988. Westerkamp farmed the land during the crop years of 1988, 1989 and 1990. On April 11, 1991, Westerkamp filed this petition in equity seeking specific performance of the farm lease for the 1991 crop year. Bandstra filed a counterclaim asking for damages to injuries to the real estate, rent for silage Westerkamp kept on the real estate and the cost of replacing the silo which had burned down and punitive damages. Westerkamp amended his petition to ask for damages for wrongful termination of the farm lease.

The matter was tried to the court who found the parties at the time of the original lease had orally agreed that oral termination of the lease was sufficient and that agreement was in the lease the parties made. The court found the oral agreement waived the notice provisions of Iowa Code section 562.7 (1991); that Bandstra terminated the lease in October of 1991. The court denied Westercamp's claim for damages for the 1991 crop year. The court denied Bandstra's claim for damages to the real estate, but found Westerkamp owed Bandstra \$4500 for rent of the silo and \$3500 for damages to the silo which burned because the silage Westercamp had in Bandstra's silo spontaneously combusted causing the fire. The court denied Bandstra's claim for punitive damages.

Plaintiff appeals contending the trial court erred in (1) allowing Bandstra's claim for silo rent and considering hearsay evidence in determining the rent, (2) awarding Bandstra damages for the destruction of his silo and (3) failing to award him profits for the wrongful termination of the farm lease. Defendant on cross-appeal contends the trial court erred in not compensating him for damages done to his real estate. We affirm.

We must first establish our scope of review. Plaintiff contends it is de novo and defendant contends it is at law. This matter was filed in equity because plaintiff filed the action as a petition in equity asking for specific performance of the farm lease and a temporary and permanent injunction. Defendant counter claimed for damages and plaintiff then amended his petition seeking damages. The claims for injunctions and specific performance were not submitted to the court, but the damage claims were. The essential character of a cause of action and the relief it seeks, generally determine whether an action is at law or equity. See Mosebach v. Blythe, 262 N.W.2d 755, 758 (Iowa App. 1979). Where the primary remedy sought is money, and where the damages are full and certain, remedies are usually provided at law. Id. The action submitted to the trial court was for money damages. It also was tried as a law action. There were seven objections made during the course of the trial and all seven objections were ruled on by the trial court. The

action was tried as a law action. We determine our review is that of a law action.

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 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). Evidence is not insubstantial merely because it could support contrary inferences. Grinnell Mut. Reinsurance Co., 431 N.W.2d at 785.

We have reviewed the record and find substantial evidence supporting all the fact findings of the trial court. We have considered all issues raised on appeal

and cross-appeal and find them to be without merit. We affirm on the appeal and on the cross-appeal. Cost on appeal are taxed one-half to the plaintiff and one-half to the defendant.

AFFIRMED.