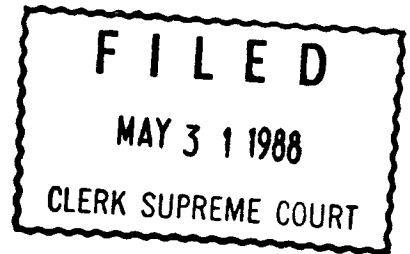


IN THE COURT OF APPEALS OF IOWA



LOUIS LISKA,

)

Plaintiff-Appellee,

)

vs.

)

CHANDLER MANUFACTURING CO.,
INC.,

)

Defendant,

)

and CRAFT INDUSTRIES and ILLINOIS
INDUSTRIAL TOOL,

)

)

Defendants-Appellants.)

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Filed May 31, 1988

7-540
87-70

Appeal from the Iowa District Court for Webster County (No. 51132),
Milton D. Seiser, Judge.

Retailer appeals the judgment finding it liable in a products liability action.

AFFIRMED.

M. Gene Blackburn and Jerry L. Schnurr III of Law Offices of M. Gene
Blackburn, Fort Dodge, for defendants-appellants.

John W. Gailey of Gailey Law Offices, Fort Dodge, and James W. McCarthy,
Fort Dodge, for plaintiff-appellee.

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

OXBERGER, C.J.

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This appeal is brought by Illinois Industrial Tool to challenge the decision of the district court in a products liability action. Illinois Industrial Tool challenges the sufficiency of the evidence, several evidentiary rulings, and the court's refusal to admit a letter urging the destruction of evidence. We affirm.

This law action was tried to the court and the court's findings of fact are binding on appeal if supported by substantial evidence. Iowa R. App. P. 14(f)(1). We review for the correction of errors at law. Iowa R. App. P. 4. We find the following facts supported by substantial evidence.

Louis Liska (Liska) is a farmer in Webster County. On February 4, 1982, he purchased a battery charger from Industrial Tool. Industrial Tool retails tools and equipment; it does not manufacture or repair the equipment sold.

Liska kept the charger in the west end of his machine shop next to propane and oxygen tanks for welding, gasoline, oil, an air compressor, a skidloader full of gasoline, and an LP tractor. The shed itself was built in 1938. He had it wired for 110 volts in 1940. There is also some 220 wiring for larger motors. Liska designed a special outlet for the battery charger to prevent overloading in case there was a surge of power.

On March 13, 1982, Liska hooked the battery charger to a tractor battery in the west end of the shed. The charger was not set for a specific time in order to let the battery recharge slowly. The charger was the only piece of equipment operating.

Later that evening, Liska went to bed and was awakened by a loud noise. When he went to the shed, it was in flames. The local fire department was unable to put the blaze out and the shed and its contents were destroyed.

Liska notified Industrial Tool of the fire and told them he felt the charger was the cause of the fire. In response to its request, Liska sent the battery

charger to Industrial Tool. Industrial Tool inspected the charger and sent it back to Liska. They also sent a new charger to Liska at a later date.

Liska then took the damaged charger and the new one to Dr. Bruce Johnson and asked him to inspect them and determine whether the charger caused the fire. Dr. Johnson's inspection disclosed that the fire started in the charger since the damage to the inside of the charger could not have been caused by the exterior fire. He found the charger to be defective and not up to industry standards since it had no fuses or a rating indicating what charges the charger could withstand. He testified that if the charger would have been equipped with fuses, they would have prevented electrical arcing and a fire in the event the transformer or any other component therein failed. Industrial Tool did not present any evidence disputing Dr. Johnson's finding that the charger was defective and did not meet industry standards.

Dr. Johnson did not go to the scene of the fire because he was convinced the charger started the fire. He was of the opinion that the electrical arcing and fire would have been sufficient to ignite the materials near the charger.

I. Industrial Tool challenges the admission of Dr. Johnson's testimony. It argues the opinion testimony was based in part upon hearsay evidence, thus lacking proper foundation, and the court erred in admitting it. Industrial Tool argues Dr. Johnson did not inspect the fire scene and relied only on what Liska told him.

We hold Industrial Tool has failed to preserve error on this point. Industrial Tool made no foundational objection to Dr. Johnson's opinion testimony. The only objection made related to the admission of the report prepared by Dr. Johnson, although Industrial Tool had no problem with Dr. Johnson referring to the report. For the absence of a timely objection stating the specific ground

of the objection, the error is waived. Beckman v. Carson, 372 N.W.2d 203, 209 (Iowa 1985).

II. Industrial Tool argues the trial court erred in admitting plaintiff's exhibits 1, 1A, and 1B. It argues these exhibits are offers in bulk and contain inadmissible hearsay evidence which make the exhibits inadmissible.

We find no abuse of discretion by the trial court in the admission of these exhibits. The challenged exhibits are Liska's estimated values for the property destroyed in the fire. Liska determined the values based on his knowledge of their costs, his ownership, and his attempts to determine replacement costs. He adopted these values and testified to them.

Iowa law does bar offers in bulk when a portion of the offer contains inadmissible evidence. Englund v. Younkers Bros., 259 Iowa 48, 58, 142 N.W.2d 530, 535 (1966). However, value testimony is liberally received, with its weight to be determined by the fact finder. State v. Savage, 288 N.W.2d 502, 504 (Iowa 1980). An owner may testify as to actual value without a showing of general knowledge of market value. Id.

We conclude the court did not abuse its discretion in admitting the exhibits because Liska adopted the values and as the owner was entitled to express an opinion as to the values. We also note that Industrial Tool's codefendant, Chandler Manufacturing, offered defendant's exhibits J and K. These two exhibits are reproductions of the challenged exhibits and contain the values assigned to the property by the defendant's expert. Industrial Tool did not object to these exhibits. So even without the plaintiff's exhibit, the same evidence was introduced.

III. The next issue raised by Industrial Tool is a troublesome one. Industrial Tool charges the plaintiff and his attorney with the destruction of evidence. Industrial Tool argues since evidence was destroyed, it must have been unfavorable to plaintiff's case and, therefore, an inference of unfavorability is justified.

The fire took place March 13, 1982, and Industrial Tool did not ask to inspect the site until three years after the loss. During that time Liska occasionally made salvage attempts and cleared the site. He did, however, send the charger to Industrial Tool for their inspection.

One of the defense attorneys, Mr. Wilke, came into the case after its commencement. He asked plaintiff's attorney, Mr. Gailey, if he could see the file in order to examine the pleadings and discovery materials. The entire file was provided by mistake to Mr. Wilke, and he inadvertently discovered a letter from Mr. Gailey to Liska. The letter stated in pertinent part:

The Manufacturers lawyers and representatives are requesting dates when they can come and examine the site of the fire, and I would like for you to have that area completely removed within the next two or three weeks, if at all possible. I really don't want to give them an opportunity to examine the area and claim the fire started somewhere else, so believe me, it is very important that you have this taken care of at once.

Liska acknowledged receiving the letter, but testified he did nothing in response to the letter.

The trial court excluded the letter because it was discovered inadvertently. Industrial Tool argues the letter should have been admitted.

The intentional destruction of evidence is referred to as spoliation. When it is established, the fact finder may draw the inference that the evidence destroyed was unfavorable to the party responsible for its spoliation. State v. Langlet, 283 N.W.2d 330, 333 (Iowa 1979); Prudential Ins. Co. v. Lawnsdail, 235 Iowa 125, 130, 15 N.W.2d 880, 883 (1944). Application of the concept requires an intentional act of destruction. Only intentional destruction supports the rationale of the rule that the destruction amounts to an admission by conduct of the weakness of one's case. Langlet, 283 N.W.2d at 333.

We hold, regardless of whether any error occurred in the exclusion of the letter, an unfavorable inference is unjustified in this case. While the letter

evidenced Mr. Gailey's intent to destroy the evidence, Industrial Tool has not shown Liska intentionally destroyed any evidence. Liska testified he took no action in response to Mr. Gailey's letter. We agree with the trial court that no harm resulted from the letter, although that does not justify its sending. Also, Industrial Tool made no attempt for nearly three years to inspect the site. The site during that time was exposed to weather and Liska's attempts to salvage some of the loss. There is no evidence Liska intentionally destroyed any evidence.

IV. Industrial Tool finally challenges the sufficiency of the evidence to support the trial court's judgment. It argues Liska failed to prove by a preponderance of the evidence that the alleged defect in the charger was the proximate cause of the fire.

We hold the evidence sufficient to support the trial court's judgment. We view the evidence in the light most favorable to the judgment. Kurtenbach v. Tekippe, 260 N.W.2d 53, 54 (Iowa 1977).

After the fire, Dr. Johnson inspected both the damaged charger and a new charger. His inspection revealed that the charger was defective because it lacked the necessary fuses to prevent arcing if the transformer failed. He discovered the charger was not manufactured to industry standards. His inspection revealed the damage to the inside of the charger could not have occurred as a result of the fire in the shed. He found that if the fire started outside the charger, the power to the charger would have been discontinued and the interior damage would not have occurred. He also testified that in his opinion, the fire in the charger would have been sufficient to ignite the combustible materials adjacent to the charger. The defendants chose not to present any evidence disputing Dr. Johnson's findings, although they did inspect the charger. We hold there was substantial evidence to support the district court's decision.

The judgment of the district court awarding \$105,755.19 together with statutory interest from the date of filing the petition is affirmed.

AFFIRMED.