



486

IN THE COURT OF APPEALS OF IOWA

MAURICE POWERS d/b/a FARMERS)
FEED and SUPPLY)

Appellee,)

vs.)

RICHARD SCHMITT and MARGUERITE)
SCHMITT, Husband and Wife,)

234
2-59194

Appellants.)

Appeal from Clayton District Court - C. W. Antes, Judge.

Appeal from judgment on the pleadings for plaintiff in action on open account.

REVERSED AND REMANDED.

James S. Updegraff, of Donohue Law Office, of West Union, counsel for appellants.

Harold H. Pahlas, of Elkader, counsel for appellee.

Submitted to Allbee, C.J., Donielson, Snell, Oxberger and Carter, JJ.

DONIELSON, J.

Defendants-Richard and Marguerite Schmitt appeal judgment on the pleadings for plaintiff-Maurice Powers d/b/a Farmers Feed and Supply in an action on an open account. Attached to the petition filed on February 21, 1975, was a bill of particulars in the form of two ledger sheets from the Schmitt account with Farmers Feed and Supply. Defendants thereafter moved for a consecutively numbered and itemized bill of particulars, in accordance with rule 99, Rules of Civil Procedure. Powers responded by filing a list of 192 items which included the date, description and price of each item.

The Schmitts responded by filing their answer, in which they denied the allegations in the petition regarding the existence of and purchases from an open account with Powers. However, the Schmitts did not specifically deny any of the items in the bill of particulars or itemized list filed subsequently. Based upon this omission, and the terms of rule 99, R.C.P., plaintiff moved for judgment on the pleadings on January 20, 1976. Defendants resisted this motion, but in a ruling filed February 5, 1976, the district court sustained plaintiff's motion, and granted judgment against the Schmitts in the amount of \$3,290.93, plus interest.

Rule 99, R.C.P., provides:

A pleading founded on an account shall contain a bill of particulars thereof, by consecutively numbered items, which shall define and limit the proof, and may be amended as other pleadings. A pleading controverting such account must specify the items denied, and any items not thus specified shall be deemed admitted. (emphasis added)

In sustaining plaintiff's motion for judgment on the pleadings, the district court noted that the plaintiff had filed a consecutively numbered bill of particulars, covering items 1 through 192. However, the defendants only denied the allegations of the petition and did not specifically deny the items in the bill of particulars, as prescribed by rule 99. Since, according to this rule, all such items not specifically denied are deemed admitted, the trial court sustained the plaintiff's motion.

On appeal, defendants argue that rule 99 only applies in situations where certain items of a bill of particulars are specifically denied and others are not responded to at all. They argue that since they denied the relevant allegations in the petition, there was no need to further deny the 192 individual items in the bill of particulars. Although the language of the rule and cases interpreting it do not convince us that defendants'

interpretation is correct, we are compelled to reverse the judgment of the district court on another ground asserted by the Schmitts.

In his petition, plaintiff made several allegations that were controverted by the defendants in their answer—whether the prices stated in the bill of particulars represented the actual reasonable prices and values, whether all of the items were actually delivered to and received by the defendants, whether the bill of particulars showed all payments or credits on this account, and others.

The law in Iowa is clear that a judgment on the pleadings is not proper in a situation where a controverted issue exists. See *Haworth v. Newell*, 102 Iowa 541, 549, 71 N.W. 404 (1897); *Jasper Co. v. Stergios*, 228 Iowa 601, 605, 292 N.W. 855 (1940); *Friedman v. Colonial Oil Co.*, 236 Iowa 140, 145, 18 N.W.2d 196 (1945). In *Roth v. Bluffs City Motors, Inc.*, 186 N.W.2d 634, 635-636 (Iowa 1971), the court, in holding that the plaintiff had not been entitled to a judgment on the pleadings, noted that the defendant there had denied that the values listed in the bill of particulars represented the reasonable prices and values, that the aggregate amount of the account was correct, and that the balance was justly due and owing to the plaintiff. We agree with the reasoning of Roth and hold that a judgment on the pleadings was improperly entered in the instant case. Therefore, we reverse the judgment of the district court and remand the case for appropriate further action. On remand the defendant should be permitted to amend their answer so as to comply with the technical requirements of rule 99, R.C.P.

REVERSED AND REMANDED.