

IN THE COURT OF APPEALS OF IOWA

No. 6-186 / 95-910

DICKIE D. GRUBB,

Plaintiff/Defendant to Counterclaim/Appellee.

vs.

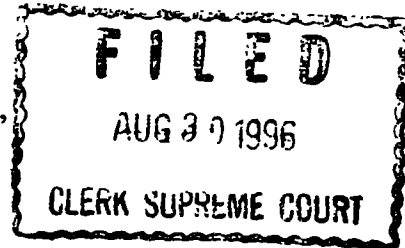
RON MOORE,

Defendant/Counterclaimant/Cross-Claimant/Appellant,

and

BOBBI JO VICTOR and FRED VICTOR,

Defendants and Defendants to Cross-Claim.



Appeal from the Iowa District Court for Poweshiek County, Phillip R. Collett,
Judge.

Ron Moore appeals from judgment entered against him on Dickie Grubb's
claim of breach of an oral agreement. **AFFIRMED.**

Todd P. Forsythe, Cedar Rapids, for appellant.

Garold F. Heslinga of Heslinga, Heslinga & Dixon, Oskaloosa, for appellee.

No appearance for Victors.

Considered by Sackett, C.J., and Cady and Vogel, JJ.

SACKETT, C.J.

Defendant-appellant Ron Moore appeals from a judgment entered against him and in favor of plaintiff-appellee Dickie Grubb on a claim of breach of an oral agreement. Defendant contends (1) there is not sufficient evidence to support the trial court's finding he, not his corporation, was liable; and (2) the trial court erred in concluding there was an agreement he would repurchase plaintiff's inventory. We affirm.

Plaintiff and defendant have had business dealings for over twenty years. Plaintiff is controlling owner of a corporation known as Monte Transport, Inc. Defendant is controlling owner of a corporation known as Ron Moore Oil Company.

Defendant owned a truck stop gas station which he operated. There was a restaurant on the premises. The gas station gave meal tickets redeemable at the restaurant to truckers who purchased gasoline. It was important to defendant the restaurant be operational. He leased it to plaintiff in the spring of 1993. Plaintiff was to pay no rent for six months. Plaintiff paid defendant \$4152.75 for the inventory and admittedly owes defendant an additional \$2652.75 for the inventory.

Plaintiff operated the restaurant for less than three months. When he left, he inventoried his supplies and equipment and determined they were worth \$4962.94. Plaintiff claimed defendant had agreed to purchase his inventory if plaintiff quit doing business. Bobbie Joe and Fred Victor took over the restaurant and used the inventory without paying anyone for it.

Plaintiff filed suit against defendant and the Victors claiming they owed him for the inventory he left when he left the restaurant business. Defendant filed a counterclaim for the balance owed on the original inventory and cross-claimed against the Victors for the balance due on the inventory when plaintiff left the business. The Victors did not answer or appear.

The matter was tried to the court without a jury. Defendant moved for a directed verdict alleging any contract was between corporate entities not parties to the action. The court denied the motion and found defendant individually owed plaintiff \$4962.94 for the inventory left when plaintiff ceased operating the restaurant. The court further found defendant owed plaintiff \$225 for unpaid meal tickets. The court found plaintiff still owed defendant \$2652.75 for the original inventory. The amounts were offset and judgment was entered against defendant in the amount of \$2535.19. Judgment on defendant's cross-claim was entered against the Victors in the amount of \$2535.19. The Victors are not parties to this appeal.

Plaintiff-appellee has failed to file an appellate brief. That failure does not entitle defendant-appellant to reversal as a matter of right, but it does provide a basis for other sanctions. *Jefferson County v. Barton-Douglas Contractors Inc.*, 282 N.W.2d 155, 157 (Iowa 1979). Ordinarily, we will not search the record for a theory upon which to affirm the trial court. *Id.* We may confine our consideration to issues raised in appellant's brief or treat appellee's failure to file a brief as a concession of claims made by appellant, depending upon their apparent merit. *Id.* We limit our

consideration to the issues and arguments in appellant's brief. *See Pringle Tax Serv., Inc. v. Knoblauch*, 282 N.W.2d 151 (Iowa 1979).

Defendant first contends judgment should have been entered against his corporation, not against him individually.

In a law action, we review a district court's determinations for errors in its application of legal principles and conclusions of law. Iowa R. App. P. 4; *Waukon Auto Supply v. Farmers & Merchants Sav. Bank*, 440 N.W.2d 844, 846 (Iowa 1989); *Grinnell Mut. Reinsurance Co. v. Voeltz*, 431 N.W.2d 783, 785 (Iowa 1988); *In re Mt. Pleasant Bank & Trust Co.*, 426 N.W.2d 126, 129 (Iowa 1988); *Cross v. Lightolier Inc.*, 395 N.W.2d 844, 846 (Iowa 1986). Where the trial court sits as the finder of fact, the court's findings have the effect of a jury verdict and bind us if substantial evidence supports them. *Waukon*, 440 N.W.2d at 846; *Grinnell*, 431 N.W.2d at 785; *In re Mt. Pleasant*, 426 N.W.2d at 129; *Cross*, 395 N.W.2d at 846-47. Evidence is substantial when a reasonable mind could accept it as adequate to reach the same findings. *Waukon*, 440 N.W.2d at 846; *Grinnell*, 431 N.W.2d at 785. Evidence is not insubstantial merely because it would have supported contrary inferences. *Papenheim v. Lovell*, 530 N.W.2d 668, 671 (Iowa 1995); *Grinnell*, 431 N.W.2d at 785.

We construe the trial court's findings broadly and liberally. *Grinnell*, 431 N.W.2d at 785. In case of doubt or ambiguity, we construe the court's findings of fact

to uphold, rather than defeat, the judgment. *Id.* In addition, the review standard prohibits us from weighing the evidence or the credibility of witnesses. *Id.*

Plaintiff's testimony was that his dealings were with defendant individually. While there was some evidence that dealings were with the corporation, the question is whether there is substantial evidence supporting the trial court's finding on this issue. There is such evidence. We affirm on this issue.

Defendant next claims there was not substantial evidence supporting the trial court's findings he agreed to repurchase the inventory. Plaintiff testified there was an agreement that defendant would repurchase the inventory. Although there may be contrary evidence, the findings of the trial court are supported by substantial evidence. The trial court's findings of fact are binding on the reviewing court if supported by substantial evidence. Iowa R. App. P. 14(f)(1). A finding of fact is supported by substantial evidence if that finding may be reasonably inferred from the evidence. *Hubby v. State*, 331 N.W.2d 690, 694 (Iowa 1983).

We affirm. As a sanction for appellee's failure to file an appellate brief, the costs of the appeal are taxed to him. Failure to file a brief provides a basis for sanctions. *Barton-Douglas*, 282 N.W.2d at 157.

AFFIRMED.