

## IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

ANDREW M. BOSE,  Plaintiff,  vs  SIOUX CITY TRUCK & TRAILER, INC.,  Defendant.	NO. LACV205399   RULING RE: DEFENDANT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND/OR REMITTITUR
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This matter came before the Court on December 6, 2024, for hearing on the Defendant's Motion for Judgment Notwithstanding the Verdict and/or Remitter filed October 11, 2024, and the Plaintiff's Resistance thereto filed October 22, 2024. The Plaintiff appeared through Counsel Stephen Doohen. The Defendant appeared through Counsels David Edwards and Jessica Board. The hearing was reported by Official Reporter Amy Lutgen.

After considering the arguments presented, and having reviewed the contents of the file and applicable law, the Court finds and rules as follows:

**FACTUAL BACKGROUND**

The Plaintiff brought this action against the Defendant after a dispute arose between the parties regarding the Defendant's repairs and upgrades made on a semi-truck tractor owned by the Plaintiff that had been damaged in a layover accident in October 2021.

After some initial discussions between the parties and Plaintiff's insurance company regarding the cost of the repairs caused by the accident, the Defendant performed work for the repairs as well as additional upgrades to the semi-truck. After

completion of this work, the Defendant submitted an invoice for the work to the Plaintiff who felt that the amounts charged were excessive and not properly attributed to the repair work vs. upgrade work. After failing to resolve the dispute, the Plaintiff filed suit against the Defendant asserting claims for breach of contract, conversion, fraudulent misrepresentation and negligent misrepresentation. The Court subsequently dismissed the breach of contract and fraudulent misrepresentation claims at summary judgment and the matter proceeded to trial on the conversion and negligent misrepresentation claims. Prior to trial, the Plaintiff did post a \$50,000 bond to obtain possession of his semi-tractor as the Defendant had filed an Artisan's Lien against the tractor.

This matter proceeded to trial from September 24, 2024, to September 27, 2024. At the close of evidence the Court denied the Defendant's Motion for Directed Verdict as it pertained to the Plaintiff's claims for conversion and punitive damages and granted the Defendant's Motion for Directed Verdict as it pertained to the Plaintiff's claim for negligent misrepresentation. On September 27, 2024, the jury returned a verdict finding that the Plaintiff had proven its claim for conversion and awarded the Plaintiff damages of \$65,000 for loss of use; \$3,409.07 for cost of additional repairs and \$1,000 for additional costs incurred to recover possession.

On October 11, 2024, the Defendant filed its Motion for Judgment Notwithstanding the Verdict and/or Remittitur alleging as follows:

1. That the Court had improperly denied their Motion for Directed Verdict as the Plaintiff's claim is not supported by Iowa law in that a valid artisan's lien is a complete defense to a claim for conversion.
2. That, in the alternative, if the claim for conversion was properly submitted to the

jury, that the Defendant's damages were not proven by competent evidence or are not a type recoverable in a conversion action.

3. That if the motion for judgment notwithstanding the verdict is not granted, that the Court should order a remittitur of damages as the award of damages made the jury is not supported by sufficient evidence.

### **LEGAL PRINCIPLES REGARDING CONVERSION/ARTISAN LIENS**

The elements of a claim of conversion are: (1) ownership by the plaintiff or other possessory right in the plaintiff greater than that of the defendant; (2) exercise of dominion or control over property by defendant inconsistent with, and in derogation of, plaintiff's possessory rights thereto; and (3) damage to plaintiff. *Duncan v. Ford Motor Credit, Repossessors, Inc.*, 919 N.W.2d 768 (Iowa Ct. App. 2018).

An artisan lien is provided for pursuant to Iowa Code section 577.1, which states as follows:

[a]ny person who renders any material in the making, repairing, improving, or enhancing the value of any inanimate personal property with the assent of the owner, express or implied, shall have a lien thereon for the agreed or reasonable compensation for the service and material while such property is lawfully in the person's possession, which possession the person may retain until such compensation is paid ....

To show the existence of a valid artisan's lien, the claimant must prove, first, the performance of a service in the making, repairing, improving, or enhancing the value of the vehicle, and second, that it performed the service with the owner's assent. *Swift, Inc. v. Sheffey*, No. 09-1505, 2010 Iowa App.LEXIS 1384, at \*7 (Ct. App. Nov. 24, 2010).

The possessory interest of a party holding a valid artisan's lien is greater than the possessory interest of the owner of the property. *Iowa Truck Center, Inc. v. Davis*, 204 N.W.2d 630, 631 (Iowa 1973).

An artisan's lien can be voided if it is shown that there was fraud or bad faith by the artisan is asserting said lien. *Cernica v. Wagner's Wheel Alignment, Inc.*, 27 Pa.D. & C3d 678, 679 (Pa. 1983). "An attempt by a lien holder to assert a lien for an excessive amount in bad faith may constitute a conversion and void the lien, such as when the amount is greater than that actually owing or includes an amount for which no lien in entitled". *Id.* at 682.

## LEGAL PRINCIPLES APPLICABLE TO MOTIONS FOR JUDGMENT

### NOTWITHSTANDING VERDICT

Iowa Rule of Civil Procedure 1.1003 provides in relevant part:

**Rule 1.1003.** Judgment notwithstanding verdict

On motion, any party may have judgment in that party's favor despite an adverse verdict, or the jury's failure to return any verdict under any of the following circumstances:

**1.1003(1)** If the pleadings of the adverse party fail to allege some material fact necessary to constitute a complete claim or defense and the motion clearly specifies such failure.

**1.1003(2)** If the movant was entitled to a directed verdict at the close of all the evidence, and moved therefor, and the jury did not return such verdict, the court may then either grant a new trial or enter judgment as though it had directed a verdict for the movant.

A motion for judgment notwithstanding the verdict is authorized when the defendant requested a directed verdict at trial, was entitled to the directed verdict, and the jury failed to return the verdict. *Jasper v. H. Nizam, Inc.*, 764 N.W.2d 751, 768-769 (Iowa 2009).

"When considering a motion for judgment notwithstanding the verdict, the district court must view the evidence in the light most favorable to the party against whom the

motion is directed.” *Konicek v. Loomis Bros., Inc.*, 457 N.W.2d 614, 617 (Iowa 1990); see also *Royal Indem. Co. v. Factory Mut. Ins. Co.*, 786 N.W.2d 839, 846 (Iowa 2010). The trial court must determine whether substantial evidence is found in the record to support each element of the Plaintiff’s claim. *Gibson v. ITT Hartford Ins. Co.*, 621 N.W.2d 388, 391 (Iowa 2001). In viewing the record in the light most favorable to Plaintiff, the Court must consider “[c]ircumstantial evidence . . . equally as probative as direct evidence.” *Carter v. Carter*, 957 N.W.2d 623, 635 (Iowa 2021).

A motion for judgment notwithstanding the verdict should be denied when there is any substantial evidence to support the jury’s verdict. *Id.* “Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion.” *Seastrom v. Farm Bureau Life Ins. Co.*, 601 N.W.2d 339, 345 (Iowa 1999); *Schlegel v. Ottumwa Courier*, 585 N.W.2d 217, 221 (Iowa 1998); *Matter of Estate of Bayer*, 574 N.W.2d 667, 670 (Iowa 1998). The Court must “take into consideration all reasonable inferences the jury could fairly make, regardless of whether there is any evidence in contradiction.” *Stender v. Blessum*, 897 N.W.2d 491, 501 (Iowa 2017). The Iowa Supreme Court has instructed district courts to reconcile a verdict in any reasonable manner consistent with the evidence and its fair inferences in favor of the nonmoving party:

It is fundamental that a jury’s verdicts are to be liberally construed to give effect to the intention of the jury and to harmonize the verdicts if it is possible to do so. The test is whether the verdicts can be reconciled in any reasonable manner consistent with the evidence and its fair inferences, and in light of the instructions of the court. Only where the verdicts are so logically and legally inconsistent that they cannot be reconciled will they be set aside. *Hoffman v. National Med. Enter., Inc.*, 442 N.W.2d 123, 126–27 (Iowa

1989).

### **LEGAL PRINCIPLES APPLICABLE REMITTITUR**

"Fixing the amount of damages is a function for the jury. As such, courts "loath to interfere with a jury verdict." *Sallis v. Lamansky*, 420 N.W.2d 795, 799 (Iowa 1988). When considering a remittitur, the court will reduce or set aside a jury award only if it is: (1) flagrantly excessive or inadequate; (2) so out of reason as to shock the conscience; (3) a result of passion, prejudice, or other ulterior motive; or (4) lacking in evidentiary support. *Spaur v. Owens-Corning Fiberglas Corp.*, 510 N.W.2d 854, 869 (Iowa 1994).

### **ANALYSIS AND CONCLUSION**

#### **Motion for Judgment Notwithstanding Verdict**

The Defendant primarily contends that the Plaintiff's claim for conversion should not have been presented to the jury as the Defendant had a valid possessory interest in the property through its asserted artisan's lien. While it is indisputable that the holder of a valid artisan's lien has a greater ownership interest in property than the actual owner of the property, if said lien obtained by fraud or bad faith such a lien is voided. In this case, the Plaintiff contended that the lien asserted by the Defendant was done in bad faith as shown by the fluctuating invoices created by the Defendant leading up to the filing of the artisan's lien followed by the Petition herein. The Defendant's, on the other hand, asserted to the jury that the issuance of the artisan's lien was done in good faith and that the amounts claimed in said lien were reasonable in light of the nature and extent of the work performed.

Reviewing the evidence presented at trial, the Defendant was claiming \$108,578.10 as the amount owed for the work they performed. (Exhibits 127 – 129). The

jury returned a verdict for the Defendant on its counterclaim for \$89,334.29 which is \$19,243.81 less than the amount claimed or nearly 18% less than the amount claimed. From a review of the amount requested and the jury's determination of the amount actually owed, viewing this in the light most favorable to the Plaintiff and giving all reasonable inferences from the jury's verdict, it is reasonable to conclude that the jury determined that the Defendant had not acted in good faith in its issuance of the artisan's lien in this case.

To establish a claim for conversion, the Plaintiff must establish the following three elements: 1) ownership by the plaintiff or other possessory right in the plaintiff greater than that of the defendant; (2) exercise of dominion or control over property by defendant inconsistent with, and in derogation of, plaintiff's possessory rights thereto; and (3) damage to plaintiff. *Duncan v. Ford Motor Credit, Repossessors, Inc.*, 919 N.W.2d 768 (Iowa Ct. App. 2018). As just discussed, when viewed in the light most favorable to the Plaintiff and drawing all reasonable inferences in support of the jury verdict, the evidence supports a finding that the Plaintiff's possessory interest herein was not trumped by the Defendant's asserted Artisan's lien. That being the case, the record clearly supports the second element that the defendant exercised dominion and control over the property inconsistent with the Plaintiff's rights thereto as the Defendant only returned the property to the Plaintiff after the posting of the bond herein.

Regarding the third element, damages, the Defendant contends that the damages awarded are not appropriate for a claim of conversion and/or the evidence presented was not adequate to support the award of the damages made. As stated above, the jury awarded the Plaintiff the following damages on his conversion claim:

A) Loss of Use of the semi-truck	\$65,000.00
B) Cost of Additional Repairs	\$ 3,409.07
C) Additional Costs Incurred to Recovery Poss.	\$ 1,000.00

While it is true that the general rule is that the measure of damages for conversion is the fair and reasonable market value of the property at the time of the taking, other types of damages are also recoverable such as lost profits and the reasonable expenses incurred in recovering the property. *Murray v. Conrad*, 346 N.W.2d 814, 821 (Iowa 1984); *Dolezal Commodities, Inc. v. City of Cedar Rapids Airport Com'n*, 387 N.W.2d 572, 576 (Iowa 1986); *State v. Taylor*, 506 N.W.2d 767,769 (Iowa 1993).

The Defendant contends that conversion damages are not appropriate in this case as the Plaintiff did not suffer a total loss of the property and the circumstances herein were not in the nature of a forced sale of the property. This contention is without merit as the Defendant themselves acknowledge that the reasonable expenses incurred in recovery the property is a valid item of damages in a conversion proceeding. If expenses incurred in recovering the property are recoverable in a conversion proceeding, a total loss of the property cannot be required to maintain this type of cause of action. Accordingly, the evidence supports a finding that the second and third elements have also been established as it is clear that the Defendant exercised dominion and control over the property at least until the bond was posted and the Defendant appears to concede that the cost of the posting of the bond, \$1,000, would be an appropriate damage for conversion.

The issue remains, however, whether the award for loss of use and the cost of additional repairs was appropriate. As stated above, damages other than simply the



value of the property at the time of the conversion are permissible under a conversion claim. The Supreme Court has previously held that the victim of a conversion can recover “the amount of any further pecuniary loss of which the deprivation has been a legal cause.” *Taylor* supra at 769. The Plaintiff presented evidence regarding the costs he alleged he incurred in the loss of use of the semi in Exhibit 28 (showing costs incurred for loads done by the Plaintiff) and truck rental rates (Exhibit 31). Using either of these two calculations would have established loss of use amounts of \$71,603 and \$66,030 respectively. Again, viewing the evidence in the light most favorable to the Plaintiff the award of \$65,000 for loss of use of the semi is supported by the record.

Finally, the jury awarded additional damages to the Plaintiff of \$3,409.07 for the cost of additional repairs to the semi. While there is evidence in the record to indicate that such costs for additional repairs were incurred by the Plaintiff, there is little if any evidence to suggest that such repair costs were incurred as a result of deprivation of the property from the Plaintiff by the Defendant. While such damage may be recoverable under another theory of recovery, they are not caused by the deprivation itself. Accordingly the Court finds that the jury’s award of damages of \$3,409.07 should be deleted.

### **CONCLUSION**

For the reasons set forth above, the Defendant’s Motion for Judgment Notwithstanding the Verdict is denied. The Court does find that a remitter of damages regarding the cost of additional repairs of \$3,409.07 should be entered reducing the jury award to the Plaintiff from \$69,409.07 to \$66,000.00. The Judgment entered herein is amended accordingly.

**SO ORDERED** as set out above.

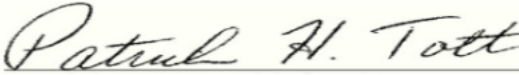


State of Iowa Courts

**Case Number**  
LACV205399  
**Type:**

**Case Title**  
BOSE, ANDREW VS. SIOUX CITY TRUCK & TRAILER, INC.  
OTHER ORDER

So Ordered

  
Patrick H. Tott, Chief District Court Judge  
Third Judicial District of Iowa

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