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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

CURTESY OIL CO., INC,

Plaintiff and Respondent,

v.

MAIYESA A. BASIDIQ,

Defendant and Appellant.

F068069

(Super. Ct. No. 670951)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Stanislaus County. Roger M. Beauchesne, Judge.

Law Office of John Nguyen and John Nguyen for Defendant and Appellant.

Lamb & Michael and Linda S. Leong for Plaintiff and Respondent.

-ooOoo-

Defendant Maiyesa A. Basidiq appeals from a \$37,240.80 judgment entered in favor of plaintiff Curtesy Oil Co., Inc. (Curtesy Oil) after a court trial.

* Before Gomes, Acting P.J., Detjen, J., and Franson, J.

Curtesy Oil sued Basidiq for failing to pay for gasoline delivered to her convenience store. Basidiq argued that Curtesy Oil invoiced her for gasoline that was never delivered and also failed to credit her account for \$38,000 in payments made.

On appeal, Basidiq contends the judgment is not supported by substantial evidence. In particular, she argues that the absence of any signature by her or one of her employees on 13 delivery receipts constitutes clear, positive and uncontradicted evidence that the alleged gasoline shipments were not delivered to her business.

Initially, we conclude the trial court's finding that the testimony of Curtesy Oil's president was credible must be upheld. Appellate courts defer to credibility findings unless the testimony was physically impossible or obviously false. Here, it is physically possible that gasoline was delivered by Curtesy Oil without the delivery person obtaining a signature on the delivery receipt.

We further conclude that the president's testimony and the business records admitted at trial constitute substantial evidence supporting the trial court's finding that Curtesy Oil delivered the gasoline in question to Basidiq.

We therefore affirm the judgment.

FACTS

Curtesy Oil is a wholesale provider of gasoline and other petroleum products located in Turlock, California. Duane Olesen is its president. As president, Olesen runs the day-to-day operations of the company, including dispatching shipments to customers. He was familiar with the account of Curtesy Oil that is the subject of this lawsuit.

Basidiq operated a convenience store/gas station business located on West Hatch Road in Modesto, California for about a year and a half. Basidiq acquired the business pursuant to a written asset purchase agreement with Saleh Suwaid. The business Basidiq acquired leased, rather than owned, the real estate. When the owner of the property went into default on a loan secured by the real estate, the bank foreclosed on the property. As

a result of the foreclosure and Basidiq's receipt of a notice to quit, Basidiq ceased operating the business sometime in July or August 2011.

Saleh Suwaid, a former cross-defendant in this lawsuit, owned and operated the business from February 2008 until he sold the business to Basidiq. When Suwaid began operating the business, it was named Kassim Market. He changed the name to Swaid's Food and Gas. After Basidiq acquired the business, she continued operating under the name Swaid's Food and Gas.

When Suwaid operated the business, he purchased fuel from Curtesy Oil using a revolving credit account. Basidiq continued to use Curtesy Oil as her exclusive fuel supplier. She testified she was required by a contract entered by the original owner of the business, Abdo Kassim, to purchase fuel from Curtesy Oil or pay a \$10,000 penalty if she purchased fuel elsewhere.

Olesen testified that every time Curtesy Oil delivered fuel to one of its customers a delivery receipt¹ would be filled out and the driver would have the customer sign the delivery receipt.

¹ At trial, 21 delivery receipts were received into evidence. They were preprinted forms with spaces for indicating the quantity of the product delivered, the dollar amount charged for the product, the amount of the prepaid fuel tax, and other information. An invoice number was printed on the upper right hand corner of the form. Below that number were two blank lines used to indicate to whom the product was delivered. Immediately below the two lines was a signature box that included the words "PRODUCTS RECEIVED AND TERMS ACCEPTED BY" and an "X" at the left end of the box to indicate where the person receiving the deliver should sign. Centered at the bottom of the form were the words "DELIVERY RECEIPT."

For purposes of this opinion, we will refer to these documents as delivery receipts, even though the parties' briefing refers to them as invoices. (See *Signal Oil & Gas Co. v. State Bd. of Equalization* (1975) 49 Cal.App.3d 550, 554-555 [describing three different documents—an invoice, a loading ticket and a delivery receipt—and concluding delivery of the latter two documents to the purchaser was sufficient to establish the fuel had been "invoiced to the purchaser" for purposes of a tax statute].)

Basidiq testified that she personally trained her employees where to sign the delivery receipts and the importance of signing the receipts. Basidiq also testified that she was familiar with the signatures of all of her employees.

Basidiq disputed Curtesy Oil's claim that it had delivered the fuel set forth on the 13 delivery receipts that had not been signed by one of her employees in the box designated for acknowledging receipt. Some of these delivery receipts had handwriting in the "other products" box that could be interpreted as initials or signatures. The delivery receipt dated March 8, 2011, contained initials or a signature in the "product" box of the form. Basidiq testified that the handwriting on these delivery receipts was not the signature of any of her employees.

The 13 unsigned delivery receipts totaled over \$130,000. Their dates ranged from November 13, 2010, to August 5, 2011. However, over half of the delivery receipts were for deliveries allegedly made during the 40-day period from January 7, 2011, through February 15, 2011, inclusive.

At trial, Curtesy Oil introduced into evidence a 20-page handwritten record of Basidiq's account with Curtesy Oil. Olesen personally prepared the document to record the deliveries and payments made on the account and kept it on his desk. The upper right hand corner of each page of this document contained the preprinted heading "ACCOUNTS RECEIVABLE LEDGER." This document kept a running balance of the amount owed or overpaid on the account.

The final entry in the ledger (1) was dated July 27, 2011; (2) referenced a charge of \$12,465.91; and (3) showed a balance owed of \$30,747.06. The charge of \$12,465.91 corresponds to the amount on the delivery receipt dated July 27, 2011, for invoice number 15515. As a result of subsequent corrections and adjustments, the balance owed was reduced from \$30,747.06 to \$29,784.85. When Basidiq did not pay the account balance, this lawsuit began.

PROCEEDINGS

In December 2011, Curtesy Oil filed a complaint against Basidiq alleging causes of action for (1) open book account, (2) goods sold and delivered, and (3) account stated.

A bench trial was conducted on April 23, 24 and 25, 2013. After receiving the parties' posttrial briefs, the trial court filed a five-page written decision in July 2013. The written decision included explicit credibility findings. The court stated it found Olesen to be convincing and a very credible witness. The court also stated it did not believe Basidiq's claim that 13 gasoline deliveries were not made. The court addressed Basidiq's argument regarding the absence of signatures on the delivery receipts by stating:

“[Basidiq] contends that some of the gasoline deliveries were not acknowledged by [her] employee(s) on some of the [delivery receipts]. The evidence confirms that contention. However, the absence of written acknowledgement does not a fortiori result in the conclusion there was no delivery.”

The trial court found in favor of Curtesy Oil on all three of its causes of action in the principal amount of \$29,784.85. It also awarded Curtesy Oil \$5,059.20 in prejudgment interest calculated at the rate of 10 percent, attorney fees in the amount of \$1,000, and costs in an amount to be determined.

On July 31, 2013, the trial court filed a judgment totaling \$37,240.80, which included costs in the amount of \$1,396.75.

In September 2013, Basidiq filed a notice of appeal from the judgment after court trial.

DISCUSSION

I. STANDARDS OF REVIEW

A. Substantial Evidence Rule

When an appellate court reviews a trial court's statement of decision, the trial court's findings of fact are reviewed under the substantial evidence standard and the trial

court's resolution of a question of law is subject to independent review. (*Brewer v. Murphy* (2008) 161 Cal.App.4th 928, 935.)

A trial court's findings of fact will be upheld if there is substantial evidence, contradicted or uncontradicted, to support the finding. (*Brewer v. Murphy, supra*, 161 Cal.App.4th at p. 935.) In evaluating the support for a finding, we view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor. (*Ibid.*) Furthermore, evidence is defined as "substantial" for purposes of this standard of review if it is of ponderable legal significance, reasonable in nature, credible and of solid value. (*Id.* at pp. 935-936.) For example, the testimony of a single witness, even a party in the action, will constitute substantial evidence if that testimony was credible. (*In re Marriage of Mix* (1975) 14 Cal.3d 604, 614.)

B. Credibility Findings

Findings of fact as to witness credibility are difficult to challenge successfully. Such findings are given great deference by appellate courts and appellants are confronted with one of the most demanding tests for establishing error. Specifically, an appellate court will reject a credibility finding only if the testimony is incredible on its face, inherently improbable or wholly unacceptable to reasonable minds. (*Nevarez v. Tonna* (2014) 227 Cal.App.4th 774, 786; *Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 201 [a trial court's credibility findings cannot be reversed on appeal unless that testimony is incredible on its face or inherently improbable]; see *People v. Jones* (2013) 57 Cal.4th 899, 963-964 [testimony of a single witness is sufficient to support a conviction unless the testimony is physically impossible or inherently improbable].) Thus, showing testimony was merely improbable is insufficient to establish a credibility finding was erroneous. (*Consolidated Irrigation Dist. v. City of*

Selma, supra, at p. 201.) Instead, “[t]he evidence must be physically impossible or obviously false without resorting to inference or deduction.” [Citation.]” (*Ibid.*)

II. SUFFICIENCY OF THE EVIDENCE

A. Basidiq’s Contentions

In this appeal, Basidiq’s opening brief does not refer to the specific tests for overturning a trial court’s credibility finding. Instead, Basidiq refers to the rule that “a trier of fact may not indulge in inferences rebutted by clear, positive and uncontradicted evidence. [Citation.]” (*Fullerton Union High School Dist. v. Riles* (1983) 139 Cal.App.3d 369, 383.) In Basidiq’s view, the trial court inferred Olesen’s testimony was credible and her testimony was not believable despite the clear, positive and uncontradicted evidence that the alleged gasoline deliveries were not made. The evidence Basidiq refers to is the unsigned delivery receipts for the 13 fuel shipments.

B. Analysis

As to the trial court’s finding that the testimony of Olesen was credible, we will defer to that finding because the matters asserted in that testimony were not physically impossible or obviously false. (*Consolidated Irrigation Dist. v. City of Selma, supra*, 204 Cal.App.4th at p. 201.) For instance, it is physically possible that gasoline was delivered by Curtesy Oil without the delivery person obtaining a signature on the delivery receipt. The primary consequence of this court’s acceptance of the finding that Olesen’s testimony was credible is that testimony becomes part of the evidence evaluated to determine if substantial evidence supports the trial court’s findings that Basidiq did not pay for \$29,784.85 worth of fuel delivered by Curtesy Oil.

Basidiq’s position that the unsigned delivery receipts constitute clear, positive and uncontradicted evidence that the fuel deliveries were not made cannot be accepted under the applicable standard of review. The absence of a signature on the delivery receipt supports an *inference* that the delivery did not occur, but it is not *clear* and *positive*

evidence that no delivery occurred. Other inferences can be drawn from the unsigned delivery receipts. For instance, it is possible to infer the deliveries were made, but the driver neglected to obtain a signature to confirm the delivery. Furthermore, the inference that the 13 deliveries were not made is contradicted by inferences drawn from (1) the testimony of Olesen that the deliveries occurred, (2) the testimony of Craig Olesen, a vice president of Curtesy Oil, that Curtesy Oil paid sales tax on the fuel covered by the 13 delivery receipts and (3) the monthly sales tax reports generated by Curtesy Oil and supplied to the State of California.

In addition, the fact that 7 of the 13 unsigned deliveries occurred within a 40-day period supports the trial court's analysis that, if the deliveries had not been made, Basidiq would have experienced a shortage of gas at the convenience store. Because there was no evidence that her supplies of fuel ran short during that period, the court was justified in inferring the deliveries were made.

DISPOSITION

The judgment is affirmed. Curtesy Oil shall recover its costs on appeal.