IN THE COURT OF APPEALS OF IOWA

No. 1-362 / 10-1833
Filed September 8, 2011

JASON HARPER,
Plaintiff-Appellant,

vs.

STEPHEN KACZOR,
Defendant-Appellee.

Appeal from the Iowa District Court for Pottawattamie County, James Richardson, Judge.

Plaintiff appeals the district court's decision granting summary judgment to defendant in this action for breach of contract. **REVERSED AND REMANDED.**

Matthew V. Stierman of Stierman Law Office, P.C., Council Bluffs, for appellant.

Dean T. Jennings of Jennings Law Firm, Council Bluffs, for appellee.

Heard by Vogel, P.J., Vaitheswaran, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MILLER, S.J.

I. Background Facts & Proceedings

Jason Harper and Stephen Kaczor are second cousins. Kaczor knew Brian Mahoney from previous business enterprises.[1] In early 2002, Mahoney contacted Kaczor to inform him there was a business opportunity involved with HCX Development Partners of the Midwest, L.L.C. (HCX-Midwest),[2] which sold franchises for hair salons. Kaczor told Harper about the business opportunity, and they both went to a meeting in Florida in March 2002 to learn more about it.

Harper invested money to obtain a one-half interest in HCX-Midwest. On June 11, 2002, Harper and Kaczor entered into an agreement, which was drafted by Kaczor's attorney. Harper was not represented by an attorney, and there was no formal conference concerning the document or its contents. The agreement, titled "Option," is as follows:

> It is understood that [Harper] will from time to time make cash investments in the "Company" which will amount to a one half ownership interest in the Company and those amounts will be reported to [Kaczor] and each month hereafter [Harper] will confirm to [Kaczor] the total amount of the outstanding principal investment, hereinafter referred to as "capital investment." This is for the purpose of calculating the purchase price, plus interest, for [Kaczor] when the Option is exercise[d]. [Harper] shall have the right to sell, assign, or bequeath this option to his heirs or assigns, his interest in HCX Development Partners of the Midwest, L.L.C. shall be subject to this Option until it is exercised or expires.
>
> [Harper] grants to [Kaczor] the exclusive personal option, which shall be non-assignable, to purchase one half of [Harper's] ownership interest in the business and franchises known as HCX

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[1] Kaczor, his father, and Mahoney had all been involved in selling Kirby vacuum cleaners many years ago. Also, Kaczor and Mahoney had both been involved with Media Arts Group, Inc., also known as Thomas Kinkade art galleries.

[2] The company might also have been known as Haircolorxpress Development Partners of the Midwest, L.L.C., at some point in time.

> Development Partners of the Midwest, L.L.C., herein called the "Company." Said option must be exercised within five years of the date of this agreement. Said option and transfer shall not violate or trigger the Buy Sell provisions of the Operating Agreement for the Company.
>
> In consideration of ONE DOLLAR ($1.00) and other valuable consideration including the hard work and effort of [Kaczor] to establish and maintain the business and franchises of HCX Development Partners of the Midwest, L.L.C., receipt of which is hereby acknowledged, [Harper] agrees to sell and convey to [Kaczor] a one-half ownership interest in the one-half interest belonging to [Harper], the purchase price of which will be determined by the capital investment amount paid by [Harper] for the business and franchises known as HCX Development Partners of the Midwest, L.L.C. The purchase price shall be payable in the following manner:
>
> At such time as payment is received in full, including interest at the rate of Thirty (30%) percent per annum, upon the exercise of this Option by [Kaczor], [Harper] shall execute any and all documents necessary to convey a Twenty-five (25%) percent membership interest in the Company to [Kaczor].
>
> Or, [Harper] agrees to receive installment payments until such time as [Kaczor] exercises this Option using the following formula:
>
> At such time as the Company has a net monthly profit [Kaczor] shall receive a credit for one-half of the net monthly profit (at the time that the Company begins to record a net monthly profit) payable to [Harper] from the Company to apply on the outstanding purchase price which shall draw interest at the rate of Thirty (30%) percent per annum. The credit shall be calculated monthly by [Kaczor] and reported to [Harper], thereby showing any outstanding interest and balance owing on principal to [Harper].
>
> Notice that this Option is to be exercised by [Kaczor] shall be in writing to [Harper] at his last known address by ordinary mail or in person.

On March 13, 2003, Harper and Kaczor entered into a second agreement, titled, "Amendment to Option," as follows:

> The interest rate of Thirty (30%) percent as call[ed] for in the agreement shall be changed so that [Kaczor] shall pay the flat sum of $25,000.00 as interest payable on or before March 15, 2004, with payments of $1,000.00 per month thereafter commencing on April 15, 2004, until principal is paid in full. All references in the original Option to the interest rate of Thirty (30%) percent shall now

> mean only the payment of the sum of $25,000.00 and shall cover the time period from the date of their initial agreement until March 15, 2004.

The "Amendment to Option" was also drafted by Kazcor's attorney, again without any formal conference about the document or its contents.

On October 6, 2009, Harper filed a petition alleging he and Kaczor had agreed to jointly purchase the one-half interest in HCX-Midwest, but Kaczor stated he did not have sufficient funds at that time. Harper claimed Kaczor proposed that if he purchased the one-half interest in the company, Kaczor would purchase one-half of the one-half interest within a short period of time. He claimed the "Option," and "Amendment to Option," represented Kaczor's obligation to pay him for one-half of Harper's investment in HCX-Midwest, plus interest. Harper alleged Kaczor refused to make any payments under the parties' agreements.

Kaczor denied Harper's claims and filed a motion for summary judgment. In an affidavit, Kaczor claimed he had not promised to invest in HCX-Midwest. He alleged the purpose of the "Option," was to give him an opportunity to invest in the business if it proved to be successful. He alleged the purpose of the "Amendment to Option," was solely to change the interest rate he would pay if he exercised the option. Kaczor claimed he had the right to exercise the option or not, and he chose not to exercise the option.

Harper resisted the motion for summary judgment. He claimed the parties' agreements were ambiguous and extrinsic evidence should be considered to interpret those agreements. He submitted affidavits, his answers

to interrogatories, and his deposition and that of Kaczor. Harper asserted that if this extrinsic evidence was considered, it would show the parties intended that Kaczor would be responsible to pay one-half of the amount Harper invested in HCX-Midwest.

The district court granted the motion for summary judgment. The court found the facts of the case were not in dispute. The court stated, "The language of the 'option' is clear; therefore, any prior or contemporary statements are barred if offered to vary the terms of the written 'option.'" The court noted, "the simple language of the 'option' requires the option must be exercised in writing to Plaintiff at his last known address by ordinary mail or in person. This option was never exercised." Harper appeals the district court's grant of summary judgment to Kaczor.

II. Standard of Review

We review the district court's ruling on a motion for summary judgment for the correction of errors at law. *See* Iowa R. App. P. 6.907. Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Kistler v. City of Perry*, 719 N.W.2d 804, 805 (Iowa 2006). A court should view the record in the light most favorable to the non-moving party. *Frontier Leasing Corp. v. Links Eng'g, L.L.C.*, 781 N.W.2d 772, 775 (Iowa 2010). In determining whether there is a genuine issue of material fact, the court affords the non-moving party every legitimate inference the record will bear. *Kern v. Palmer Coll. of Chiropractic*, 757 N.W.2d 651, 657 (Iowa 2008).

III. Merits

Harper contends the district court erred by finding, "The facts are not in dispute," and that extrinsic evidence could not be considered to interpret the "Option," and "Amendment to Option." He also contends the court did not consider the entirety of the agreements, but singled out one sentence in reaching its decision. Harper claims the court should have looked at the agreements as a whole, and it should have considered the evidence he submitted in support of his resistance to the motion for summary judgment. Harper asserts summary judgment was inappropriate because there were factual disputes concerning the intent of the parties in entering into the "Option," and "Amendment to Option."

Contract interpretation is a process to determine the meaning of the words in a contract, while construction of a contract is a process to determine the legal effect of the words. *Fashion Fabrics of Iowa, Inc. v. Retail Investors Corp.*, 266 N.W.2d 22, 25 (Iowa 1978). "An option agreement is subject to the same rules of interpretation as an ordinary contract." *Hilgenberg v. Iowa Beef Packers, Inc.*, 175 N.W.2d 353, 360 (Iowa 1970). We review the district court's interpretation of a contract as a legal issue, unless the interpretation depends upon extrinsic evidence, and in that case a question of interpretation is left to the trier of fact. *Fausel v. JRJ Enters., Inc.*, 603 N.W.2d 612, 618 (Iowa 1999). Our review of a court's construction of a contract is always a legal issue. *Id.*

"The primary goal of contract interpretation is to determine the parties' intentions at the time they executed the contract." *Walsh v. Nelson*, 622 N.W.2d 499, 503 (Iowa 2001). The words and conduct of the parties "are interpreted in

light of all the circumstances, and if the principal purpose of the parties is ascertainable it is given great weight." *Fausel*, 603 N.W.2d at 618 (quoting Restatement (Second) of Contracts § 202(1), at 86 (1979)).

The Iowa Supreme Court long ago abandoned the rule that extrinsic evidence cannot change the plain meaning of a contract. *Pillsbury Co., Inc. v. Wells Dairy, Inc.*, 752 N.W.2d 430, 436 (Iowa 2008). The court has adopted the Restatement rule that "the meaning of a contract 'can almost never be plain except in context.'" *Id.* (citing Restatement (Second) of Contracts § 212 cmt. b, at 87). Also,

> Any determination of meaning or ambiguity should only be made in the light of relevant evidence of the situation and relations of the parties, the subject matter of the transaction, preliminary negotiations and statements made therein, usages of trade, and the course of dealing between the parties. But after the transaction has been shown in all its length and breadth, the words of an integrated agreement remain the most important evidence of intention.

Id. (quoting Restatement (Second) of Contracts § 212 cmt. b, at 87); *see also Soults Farms, Inc. v. Schafer*, 797 N.W.2d 92, 107-08 (Iowa 2011).

We look to all of the surrounding circumstances, including "preliminary negotiations and statements made therein." *Id.* "[I]n the quest for the intention [of the parties], the situation of the parties, the attendant circumstances, and the objects they were thereby striving to attain are necessarily to be regarded." *Hamilton v. Wosepka*, 261 Iowa 299, 309, 154 N.W.2d 164, 169 (1967). "The admission of evidence of extrinsic facts is not for the purpose of changing the writing, but to secure light by which to measure its actual significance." *Id.*

The district court did not consider extrinsic evidence to determine whether a genuine issue of material fact exists concerning the intent of the parties. *See Soults Farms*, 797 N.W.2d at 107-08 (noting extrinsic evidence may be considered to aid in the process of interpretation). The primary goal of the court is to determine the intent of the parties at the time they entered into an agreement. *Pillsbury*, 752 N.W.2d at 436.

The issue as framed on appeal appears to be a disagreement as to whether the "Option" and "Amendment to Option" contain ambiguities leaving them susceptible to more than one reasonable interpretation. We believe that several phrases used in those documents demonstrate varying degrees of ambiguity. We conclude context, including the situation and relations of the parties at the time they entered those agreements, should be considered in determining the parties' intent at the time they did so. *See id.* The following are some examples of ambiguities that appear: (1) The option provides that Harper will report to Kaczor the investments Harper makes in the company, doing so for the purpose of calculating the purchase price, plus interest, to be paid by Kaczor, not "*if* the option is exercised," but instead "*when* the Option is exercise[d]." (2) The option provides that Harper shall have the right to sell, assign, or bequeath the option. The option must therefore be seen as providing some enforceable right to Harper, perhaps a right to be paid by Kaczor, as alleged by Harper. (3) The option provides that it "*must be exercised* within five years."

We conclude the extrinsic evidence submitted by Harper in his resistance to the motion for summary judgment should have been considered as it relates to

the context of the parties' agreements in order to assist in determining whether a genuine issue of material fact exists concerning their intent.

Additionally, the court found, "The facts are not in dispute." However, in looking at the affidavits submitted by the parties, the answers to interrogatories, and the depositions, it appears there are several factual disputes concerning "the situation of the parties, the attendant circumstances, and the objects they were thereby striving to attain." *See Hamilton*, 261 Iowa at 309, 154 N.W.2d at 169. For example, in the petition Harper alleges, "Kaczor therefore proposed that if Harper would purchase a one-half interest at that time that Kaczor would purchase one-half of Harper's one-half interest but needed a short period of time to obtain the necessary funds." Harper presented affidavits from people involved in management of the parent company, HCX International Development Partners, L.L.C. (HCX-IDP), that they understood Harper and Kaczor were partners in HCX-Midwest.[3] In his deposition, however, Kaczor stated he "[f]lew home, and the next thing I knew, Jason owned the territory. And I found that out through Brian Mahoney." Kaczor denied entering into an agreement with Harper to purchase one-half of HCX-Midwest.

Because the parties dispute whether they agreed that Kaczor would buy one-half of Harper's interest in the company, they also dispute the reasons why they executed a written agreement. Harper claimed the "Option" represented

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[3] Harper presented affidavits from Brian Mahoney, president of HCX-IDP; Merlin Hershey, vice president of business development for HCX-IDP; and Manoj Daya, executive vice president of operations for HCX-IDP. Each of the affiants stated he believed Harper and Kaczor were partners in HCX-Midwest, and that Kaczor was going to repay Harper for part of his investment.

Kaczor's obligation to purchase one-half of Harper's one-half ownership interest in HCX-Midwest, by reimbursing him for one-half of the amount Harper invested in the company. On the other hand, Kaczor testified in his deposition that the issue of the option did not even arise until after Harper had purchased an interest in HCX-Midwest and Kaczor was offered employment by HCX-IDP to develop franchises. Kaczor stated he "wasn't going to put the time and effort and energy into making . . . it a success . . . without some kind of possible ownership." He testified his acceptance of employment was contingent on being granted the option to purchase an ownership interest.

Another factual dispute concerns why the agreements were titled as an "Option," and "Amendment to Option." Harper claimed Kaczor was attempting to shield assets because he was facing potential liability in a lawsuit involving Media Arts Group, Inc. Kaczor stated he was a plaintiff, and would not have been liable in the suit. In his deposition, however, Kaczor acknowledged there was a counterclaim against him and he could potentially have been liable "in the range of $150,000," which was a concern for him.

Kaczor argues that the parol evidence rule bars consideration of extrinsic evidence in interpreting the parties' written agreements. Those agreements contain no integration clause. Further, and more importantly, we note the following concerning the parol evidence rule:

> The parol evidence rule forbids use of extrinsic evidence to vary, add to, or subtract from a written agreement. But the rule does not come into play until by interpretation the meaning of the writing is ascertained, and, as an aid to interpretation, extrinsic evidence is admissible which sheds light on the situation of the

> parties, antecedent negotiations, attendant circumstances, and the object they were striving to attain.

I.G.L. Racquet Club v. Midstates Builders, 323 N.W.2d 214, 216 (Iowa 1982) (*quoting Egan v. Egan*, 212 N.W.2d 461, 464-65 (Iowa 1973)) (internal citations omitted).

There exist genuine issues of material fact concerning not only the context in which the parties entered into the written agreements but also the intent of the parties in doing so. When, as here, the interpretation of a contract depends upon the credibility of extrinsic evidence, the question of interpretation should be determined by the finder of fact. *See Pillsbury*, 752 N.W.2d at 436. We reverse the district court's grant of summary judgment to Kaczor and remand for further proceedings.

REVERSED AND REMANDED.