IN THE COURT OF APPEALS OF IOWA

No. 3-552 / 12-1833
Filed October 23, 2013

JASON HARPER, HARPER ENTERPRISES, LLC and HARPER CONSTRUCTION, LLC, a/k/a HARPER CONSTRUCTION, INC.,
Plaintiffs-Appellees,

vs.

STEPHEN KACZOR,
Defendant-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Pottawattamie County, Timothy O'Grady, Judge.

A defendant appeals from a decision entered in favor of the plaintiffs based on the breach of a contract between the parties. **AFFIRMED.**

Stephen A. Rubes, Council Bluffs, for appellant.

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

Heard by Vaitheswaran, P.J., and Doyle, J., and Goodhue, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

GOODHUE, S.J.

The defendant, Stephen Kaczor, has appealed from the decision of the trial court, which entered judgment against him and in favor of the plaintiff, Jason Harper, Harper Enterprises, L.L.C., and Harper Construction, L.L.C., a/k/a Harper Construction, Inc. (collectively Harper), based on Kaczor's breach of a contract between the parties.

I. Background Facts and Proceedings

The factual background of this matter has for the most part been set out in *Harper v. Kaczor*, No 10-1833, 2011 WL 3925435, at *1-3 (Iowa Ct. App. Sept. 8, 2011). The matter initially came before this court as the result of the granting of a motion for summary judgment in Kaczor's favor. On appeal the summary judgment was reversed and the matter remanded on the grounds that to the extent there was a written agreement between the parties it was ambiguous and extrinsic evidence should be admitted and considered to properly interpret the documents involved. *Harper*, 2011 WL 3925435, at *6.

The underlying issue was whether Kaczor had entered into an agreement to purchase a one-half of a one-half interest in HCX Midwest, a franchise holding company, from Harper or whether Harper had only granted Kaczor an option to make such a purchase. Harper maintained a contract existed and Kaczor maintained it was only an option, which he had not exercised. The trial court held that the written documents labeled "Option" and "Amendment to Option" were in effect written memorializations of an oral agreement to make the purchase, but were put in the form of an option to shield Kaczor's interest from a pending lawsuit involving a prior employer, Media Arts.

HCX Midwest was the next to the bottom level of a pyramid system to sell beauty salon franchises. Kaczor was hired and paid by upper levels of the company to sell the franchises to the ultimate or producing base of the pyramid system in the franchise area of HCX Midwest. Harper was in the construction business and, where possible, negotiated the build outs with the ultimate franchise purchaser. Only Harper signed the subscription agreement requiring the purchase of a fifty percent interest in HCX Midwest from a higher level in the franchise system. An upper level franchise holder retained the other fifty percent. The agreement required Harper to advance development and advertising costs at the request of the apex of the system. Harper advanced $325,633.50 under the subscription agreement. Otherwise, neither the financial records of HCX Midwest nor the financial records of any other level of the pyramid system was a part of the record. There was evidence that Kaczor sold several franchises, but apparently the franchise-selling system collapsed and the investment in HCX Midwest is of limited or no value.

The determination that a contract existed raised a secondary issue as to the appropriate calculations of the interest due from Kaczor to Harper. The "Amendment to Option" provided that Kaczor was to pay "the flat sum of $25,000 as interest payable on or before March 15, 2004 with payments of $1000 per month thereafter commencing on April 15, 2004, until principal is paid in full." The trial court held that the $1000 per month expressed the method of payment and did not express an interest amount and accordingly computed the interest due at the statutory rate of 2.18% per annum. Harper contends that the $1000

per month reflected the actual interest to be charged on the outstanding balance and has cross-appealed on that issue.

II. Standard of Review

The trial court's findings of fact in this law action are binding on the appellate court if supported by substantial evidence. Iowa R. Civ. P. 6.904(3)(a). The findings of fact have the effect of a special verdict and the function of this court is limited to correction of errors at law. Iowa R. Civ. P. 6.907. Additionally, an appellate court decision becomes the law of the case and is controlling on the trial court as well as on further appeals in the same case. *Bahl v. City of Asbury,* 725 N.W.2d 317, 321 (Iowa 2006); *Springer v. Weeks & Leo Co.,* 475 N.W.2d 630, 632 (Iowa 1991).

III. Discussion

This case is factually driven. Kaczor contends that the trial court made numerous erroneous factual findings, and specifically asserts that there was no ambiguity in the "Option" or "Amendment to Option," and that therefore, extrinsic evidence should not have been admitted. *Harper*, 2011 WL 3925435, at *4-5, held that the written documents were in fact ambiguous and extrinsic evidence was appropriate in an effort to interpret their effect and the intent of the parties. That ruling is the law of the case and was binding on the trial court, and is binding on this court. *See Bahl*, 725 N.W.2d at 321; *Springer*, 475 N.W.2d at 632.

Kaczor further contends substantial evidence that a contract was formed is absent in the record, and the trial court used erroneous facts and inferences to supply the essentials of a contract and its breach. Acceptance is an essential

element of a contract. *Bartlett Grain Co. v. Sheeder*, 829 N.W.2d 18, 23 (Iowa 2013). Based on the written documents, Kaczor contends there was no acceptance since the option was never exercised. The trial court concluded there was an oral agreement preceding the written documents and the written documents only memorialized a part of the oral agreement, which provided that Kaczor was to buy one-half of Harper's interest in HCX Midwest. Option language was used to protect Kaczor's interest from the pending litigation.

The testimony of the two parties was contradictory as to whether it was their intent to create a binding contract or only an option in favor of Kaczor. It is critical that the trial court found Harper's testimony more credible than Kaczor's. In addition, there was evidence that supported Harper's version of the transaction. Kaczor admitted there was a pending action involving Media Arts, making the use of the option as a shield more plausible. Harper's testimony and version of the transaction was corroborated by the understanding of the owners of HCX Midwest and other levels of the pyramid franchise-selling system. The option was signed one day after a substantial demand (naming Jason and Steve in the greeting) was made on the subscription agreement. As determined by the prior appellate decision involving this transaction, the "Option" and "Amendment to Option" contained language unusual for a true option. Both parties signed the "Option" suggesting Kaczor had an obligation. If the instrument were a pure option he would have only been a recipient of a right and his signature would have been unnecessary.

It is fundamental that an appellate court is obligated to give deference to the trial court's determination of witness credibility. *In re Marriage of Udelhofen*,

444 N.W.2d 473, 474 (Iowa 1989). That deference is of critical importance when there is substantial conflict in the testimony of the witnesses, as in this case. We conclude there is substantial evidence supporting the trial court's findings and conclusions that an oral contract existed, followed by a written memorialization of certain of the terms, but framed to shield Kaczor from possible adverse results in the Media Arts litigation.

Harper contends the correct interpretation of the "Amendment to Option" as a part of the agreement between the parties requires Kaczor to pay $1000 per month on the unpaid sum due to Harper. There was little or no extrinsic evidence offered on that portion of the agreement. The trial court found and concluded that the $1000 per month related to the method of payment rather than the applicable interest rate. It would be unusual to state an interest rate in an absolute dollar sum when the principal would likely fluctuate. The trial court's interpretation of the language used is logical.

No rate of interest having been expressed, the trial court's use of the statutory rate is appropriate. Costs on appeal are assessed seventy-five percent to Kaczor and twenty-five percent to Harper due to the cross-appeal.

AFFIRMED.