IN THE COURT OF APPEALS OF IOWA

No. 3-872 / 13-0333
Filed October 23, 2013

GREATAMERICA LEASING CORPORATION,
Plaintiff-Appellee,

vs.

PETER S. GELFAND, D.O., P.C. and
PETER S. GELFAND, D.O., Individually,
Defendants-Appellants.

Appeal from the Iowa District Court for Linn County, Robert E. Sosalla, and Paul D. Miller, Judges.

Defendant appeals the district court's ruling granting summary judgment. **AFFIRMED.**

Barry Kaplan and Melissa Nine of Kaplan & Freese, L.L.P., Marshalltown, for appellants.

Randall Armentrout and Benjamin P. Roach of Nyemaster, Goode, Voigts, West, Hansell & O'Brien, Des Moines, for appellee.

Considered by Vogel, P.J., and Danilson and Tabor, JJ.

DANILSON, J.

Peter S. Gelfand, D.O., P.C. and Dr. Peter Gelfand, individually (Gelfand) appeal the district court's ruling granting summary judgment to GreatAmerica Financial Services Corporation. Gelfand contends the district court erred by granting summary judgment when genuine issues of material facts exist. Specifically, Gelfand argues there is question whether Verathon, the vender to the agreement in question, was acting as an agent of GreatAmerica when it purportedly fraudulently induced him to sign the contract. Upon our review, we affirm.

I. Background Facts and Proceedings.

GreatAmerica is a financial services corporation located in Cedar Rapids, Iowa. The company is a source of financing to businesses that acquire commercial equipment from third party vendors. Dr. Gelfand operates a medical practice in New York, which is incorporated in his name.

The parties entered into an agreement signed by Gelfand both personally and on the behalf of Peter S. Gelfand, D.O., P.C. Gelfand signed the agreement after meeting with Verathon on November 16, 2010. The agreement required Gelfand to provide sixty monthly payments of $266.00 to GreatAmerica. In exchange, GreatAmerica provided the initial financing for a piece of medical equipment that was supplied to Gelfand by third party vendor, Verathon Medical. The agreement provided, in part:

> VENDOR (Vendor is not lessor's agent, nor is Vendor authorized to waive or alter any term or condition of this Agreement) : Verathon Medical
>
> . . . .

> TERM IN MONTHS: 60
>
> . . . .
>
> **THIS AGREEMENT IS NON-CANCELABLE FOR THE ENTIRE AGREEMENT TERM. YOU UNDERSTAND WE ARE PAYING FOR THE EQUIPMENT BASED ON YOUR UNCONDITIONAL ACCEPTANCE OF IT AND YOUR PROMISE TO PAY US UNDER THE TERMS OF THIS AGREEMENT, WITHOUT SET-OFFS FOR ANY REASON, EVEN IF THE EQUIPMENT DOES NOT WORK OR IS DAMAGED, EVEN IF IT IS NOT YOUR FAULT**.
>
> . . . .
>
> MISCELLANEOUS. This Agreement is the entire agreement between you and us and supersedes any prior representations or agreements, including any purchase orders. Amounts payable under this Agreement may include a profit to us. The original or this Agreement shall be that copy which bears your facsimile or original signature, and which bears our original signature. Any change must be in writing signed by each party.
>
> . . . .
>
> **THIS AGREEMENT IS NON-CANCELABLE FOR THE FULL AGREEMENT TERM. THIS AGREEMENT IS BINDING WHEN LESSOR FUNDS VENDOR THE EQUIPMENT.**

On December 15, 2010, GreatAmerica accepted the agreement and paid Verathon $12,190. It is undisputed that Gelfand made only ten monthly payments to GreatAmerica before he ceased.

In response, GreatAmerica filed a petition against Gelfand alleging breach of contract, breach of personal guaranty, and unjust enrichment. Gelfand answered, denying GreatAmerica's claims and offering the affirmative defense of fraudulent inducement by the vendor, Verathon. Gelfand claimed he quit making payments based upon Verathon's representation to him on November 16, 2010, that the agreement was "cancellable at any time" and "not a binding a contract."

On February 12, 2013, the district court granted GreatAmerica's motion for summary judgment. In its ruling, the court found that Gelfand and GreatAmerica had entered into a valid contract, which Gelfand later breached by failing to make

all the required payments. Because the agreement between the two parties contained an integration clause, Gelfand could only bring a fraudulent inducement claim with regard to misrepresentations of facts not included in the written contract. The court concluded the statements allegedly made by Verathon were contradicted by express terms in the agreement. Thus, even if Gelfand could establish Verathon was acting as an agent of GreatAmerica, his fraudulent inducement defense failed as a matter of law.

The court ordered Gelfand to pay $13,854.06 plus interest on the judgment. GreatAmerica then filed an application for attorney fees and costs, which was also granted. Gelfand appeals.

II. Standard of Review.

A grant of summary judgment is reviewed for corrections of errors at law. *Hills Bank & Trust Co. v. Converse*, 772 N.W.2d 764, 771 (Iowa 2009). The nonmoving party is afforded every legitimate inference that can be reasonably deduced from the evidence. *Id*. If reasonable minds can differ on how the issue should be resolved, a fact question exists. *Id*. 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. *Alliant Energy-Interstate Power & Light Co. v. Duckett*, 732 N.W.2d 869, 874 (Iowa 2007).

III. Discussion.

On appeal, Gelfand contends the district court erred by granting summary judgment for GreatAmerica. He does not disagree with the court's ruling that he breached the agreement made with GreatAmerica by failing to make the required

payments. Instead, he maintains summary judgment was not proper because the district court made determinations that should have been reserved for a jury. Specifically, he argues it is necessary for a jury to determine whether Verathon was acting as an agent of GreatAmerica because it, in turn, determines whether his affirmative defense of fraudulent inducement is controlling.[1] Because we find the statements made by Verathon are inadmissible even if it was acting as an agent of GreatAmerica, we disagree.

A. Breach of Contract.

The district court determined, and Gelfand does not dispute, that Gelfand and GreatAmerica entered into a fully-integrated written agreement. *See Whalen v. Connelly*, 545 N.W.2d 284, 290 (Iowa 1996) ("An agreement is fully integrated when the parties involved adopt a writing or writings as the final and complete expression of the agreement."). "When an agreement is deemed fully integrated, the parol evidence rule prevents the receipt of any extrinsic evidence to contradict (or even supplement) the terms of the written agreement." *Id*.; *see also* Restatement (Second) of Contracts § 213, at 129 (1981). Although our courts have allowed fraudulent inducement claims to proceed despite an integration clause in a contract, "we have done so only with regard to

---

[1] Gelfand contends he was fraudulently induced to enter the agreement by statements made by Verathon. Because the only parties to the agreement are Gelfand and GreatAmerica, not Verathon, the defense is only applicable if Verathon made the statements while acting as an agent of GreatAmerica. *See C & J Vantage Leasing Co. v. Wolfe*, 795 N.W.2d 65, 79 (Iowa 2011) (holding a party seeking to raise a defense of fraud in the inducement of a finance contract by an equipment vendor must prove by a preponderance of the evidence that an agency relationship existed between the vendor and financing source.).

misrepresentations concerning facts or circumstances not included in the written contract." *Id*. at 294.

Here Gelfand claims he was induced to enter the contract by Verathon's assurances that the agreement was "cancellable at any time, by either party, without penalty." Even if Verathon made the alleged statements as the agent of GreatAmerica, the parol evidence rule prevents the admission of any such comments. *See Whalen*, 545 N.W.2d at 290; *see also* Restatement (Second) of Contracts § 213, at 129 (1981). The fully integrated agreement clearly states that the term of the contract is sixty months. It also states multiple times, in bold, capital letters, "This agreement is non-cancellable for the full agreement term." Gelfand has not asserted inducement based on any misrepresentations concerning facts or circumstances not included in the written contract. *See Whalen*, 545 N.W.2d at 294.

For the first time on appeal Gelfand claims the statements made by Verathon were re-affirmed following the execution of the written agreement and are thus admissible. The parol evidence rule only applies to prevent the admission of extrinsic evidence of negotiations or agreements that "vary, add to, or subtract from a written agreement" and were "prior to or contemporaneous with the writing." *Garland v. Branstad*, 648 N.W.2d 65, 70 (Iowa 2002). Gelfand failed to make such a factual claim in any of his answers to interrogatories from GreatAmerica. He also never raised the argument before the district court. Thus, we decline to consider the argument. *See State v. Hernandez-Lopez*, 639 N.W.2d 226, 233 (Iowa 2002) ("Generally, we will only review an issue raised on

appeal if it was first presented to and ruled on by the district court. . . . If a party failed to timely apprise the district court of an issue, the matter is deemed unpreserved for our review.").[2]

Because Gelfand's defense of fraudulent inducement would fail as a matter of law even if Verathon were an agent of GreatAmerica, we need not consider the argument. Without a successful defense, we agree it was proper for the district court to grant summary judgment in favor of GreatAmerica for Gelfand's breach of contract.

B. Attorney Fees.

Gelfand's only argument against the award of attorney fees to GreatAmerica is his claim the court's ruling on the motion for summary judgment was improper. We have already determined it was not. Because he has not argued the district court abused its discretion, and because we affirm the district court's ruling on summary judgment, we affirm the court's award of attorney fees as well.

AFFIRMED.

---

[2] We also note that Gelfand failed to plead the contract was subsequently modified as an affirmative defense. *See Fees v Mutual Fire and Auto. Ins. Co.,* 490 N.W.2d 55, 58 (Iowa 1992) ("Any defense that a contract or writing sued on is void or voidable, or which admits the facts of the adverse pleading but seeks to avoid their legal effect must be specifically pleaded.").