**IN THE COURT OF APPEALS OF IOWA**

No. 6-921 / 06-0249
Filed January 31, 2007

**C AND J LEASING CORP.,**
Plaintiff-Appellant,

**vs.**

**HENDREN GOLF MANAGEMENT, INC.,**
**d/b/a WOLF CREEK GOLF CLUB and**
**BRETT HENDREN, Individually,**
Defendants-Appellees.

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Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge.

C and J Leasing Corporation appeals from the district court's ruling declaring its contract with defendants-appellees null and void. **REVERSED AND REMANDED.**

Edward McConnell of Edward N. McConnell, P.L.C., West Des Moines, and Aaron H. Ginkens of Ginkens Law Firm, P.L.C., West Des Moines, for appellant.

Joseph M. Barron and Scott J. Beattie of Peddicord, Wharton, Spencer & Hook, LLP, Des Moines, for appellee.

Heard by Mahan, P.J., and Vaitheswaran and Eisenhauer, JJ.

**MAHAN, P.J.**

C and J Leasing Corporation (C and J) appeals the district court's ruling declaring its contract with defendants-appellees (Hendren) null and void. C and J argues the district court erred in its determination that the contract was unconscionable. We reverse and remand for further proceedings.

**I. Background Facts and Proceedings**

Brett Hendren owns Hendren Golf Management and Wolf Creek Golf Course. He was approached by representatives of Royal Links, Inc. to buy two beverage carts. The carts were to be stocked with various beverages, snacks, and other items for sale to golfers on the course. Royal Links' program also included profits raised from advertising it would place on the carts. Royal Links told Hendren the carts were "free" because the advertising revenue paid for the carts' lease payments. Hendren decided to purchase the carts and elected to use financing. Royal Links had arranged with various financiers (in Hendren's case, C and J Leasing) to provide financing for the carts. Royal Links provided Hendren with a credit application, which it forwarded to C and J. C and J approved Hendren for financing. Royal Links then provided C and J's equipment lease agreement to Hendren. The agreement contains a hell or high water clause.[1] Hendren read and signed the document.

[1] Under a hell or high water clause, the lessee agrees to pay all rents and other amounts due on the lease regardless of whether the equipment is lost, destroyed, defective, or disappears. *See Great Am. Leasing Corp. v. Star Photo Lab, Inc.*, 672 N.W.2d 502, 503 (Iowa Ct. App. 2003).

Soon after Hendren entered the agreement, the Royal Links program ran into trouble. Royal Links stopped paying Hendren advertising profits.[2] Hendren, in turn, stopped making lease payments to C and J.

At trial the parties presented three issues. First, Hendren asserted Royal Links was an agent of C and J. Second, C and J argued their contract was a finance lease under article 2 of the Uniform Commercial Code and the hell or high water clause had to be enforced. Third, Hendren claimed the contract was unconscionable.

The district court concluded Royal Links was not an agent of C and J. It left open the question of whether the contract was a finance lease or a contract for sale with a security interest. Instead, the court determined the agreement was unconscionable. C and J appeals the court's ruling concerning unconscionability. Hendren requests that if we find the contract is not unconscionable, we either (1) find an agency relationship between C and J and Royal Links or (2) determine the equipment lease agreement is a sale with security interest, making the hell or high water clause unenforceable.

**II. Standard of Review**

Because C and J's action against Hendren was an action at law, we review for correction of errors at law. Iowa R. App. P. 6.4; *Great America Leasing Corp. v. Star Photo Lab, Inc.*, 672 N.W.2d 502, 504 (Iowa Ct. App. 2003).

[2] Royal Links is now bankrupt.

## III. Merits

### A. Unconscionability

The district court determined the contract between C and J and Hendren was both procedurally and substantively unconscionable. *See Maxwell v. Fidelity Fin. Servs., Inc.*, 907 P.2d 51, 59 (Az. 1995). The court concluded the contract was procedurally unconscionable because (1) the court determined it was unclear whether the agreement was a finance lease or something else; (2) there was disparity in bargaining powers in favor of C and J; (3) the terms of the agreement were not negotiable; and (4) while C and J made reasonable efforts to advise Hendren Royal Links was not its agent, it did nothing to reduce the confusion caused by the contract. The court concluded the contract was substantively unconscionable due to the disparity between the price of the carts and their actual worth.[3] With the interest charged by C and J, the price of the carts was over $19,000 each. However, Rice testified that of the carts he has re-possessed, he has only been able to sell one. He only received $600 for it. C and J could provide no evidence that the carts were worth even as much as Hendren's estimate of $1500.

In determining whether the agreement was unconscionable, we are to look to the following factors: (1) assent; (2) unfair surprise; (3) notice; (4) disparity of bargaining power; and (5) substantive unfairness. *Gentile v. Allied Energy Prods., Inc.*, 479 N.W.2d 607 (Iowa 1991). We may conclude the contract is unconscionable "[i]f the court as a matter of law finds the contract or any clause

[3] The carts have no mechanized features of any kind, whether for transportation, refrigeration, or cash register. The district court referred to the carts as "ice chest[s] on wheels."

of the contract to have been unconscionable at the time it was made." Iowa Code § 554.2302 (2005). The agreement is unfair if "it is such as no person in his or her senses and not under delusion would make on the one hand, and as no honest and fair person would accept on the other." *Farmer's Sav. Bank v. Gerhart*, 372 N.W.2d 238, 244 (Iowa 1985). According to comment 1 to section 554.2302,

> The basic test is whether, in the light of the general commercial background and the commercial needs of the particular trade or case, the clauses involved are so one-sided as to be unconscionable under the circumstances existing at the time of the making of the contract . . . . The principle is one of prevention of oppression and unfair surprise (omit citation) and not of disturbance of allocation of risks because of superior bargaining power.

Finally, this court has already determined that hell or high water clauses are valid and enforceable in Iowa. *Great America*, 672 N.W.2d at 505.

The district court compares the actual worth of the carts themselves to their worth as part of the Royal Links program. The carts themselves may only be worth $600. However, when the carts were stocked with goods and supported with advertising revenue, they may have been worth $19,000. In fact, prior to agreeing to provide financing, C and J investigated whether the carts would be profitable enough to be worth their lease. It concluded they would. Hendren also called other courses to inquire about their agreements with Royal Links and received no complaints. It was only after Royal Links collapsed that the carts became a bad investment.[4] Our analysis, however, begins at the time the contract was made. There is no evidence showing that, at the time the

[4] C and J does not make this argument.

agreement between Hendren and C and J, the price of the carts was unconscionable.

Furthermore, Hendren was not an unsophisticated contractor. He had experience managing a golf course. He also had experience and knowledge concerning the types of carts available. He had ample time to consider the agreement and was under no pressure to accept the agreement. He also testified he understood the agreement when he signed it.

We conclude the district court erred when it determined the contract was both procedurally and substantively unconscionable. As indicated previously, Hendren requests a discussion of the other two issues in the event we conclude that the contract is not unconscionable. We turn our attention to the other issues at this time.

**B. Agency**

The district court determined there was no agency relationship between Royal Links and C and J. We agree. There is no evidence to indicate an agency relationship. While Hendren dealt with Royal Links representatives throughout the negotiation process, and Royal Links appears to have tried to make it appear the two companies were interrelated, he should have been alerted to their actual arrangement given C and J's documentation and the post-delivery telephone interview. Further, no evidence exists to indicate Royal Links had any input into C and J's decisions to provide leasing. Nor did C and J have any influence over what Royal Links employees represented to buyers.

**C. Equipment Finance Lease**

The district court left open the question of whether the equipment finance lease qualified as a lease agreement or "something else." According to Iowa Code § 554.13103(1):

> g. "Finance lease" means a lease with respect to which:
> (1) the lessor does not select, manufacture, or supply the goods;
> (2) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and
> (3) one of the following occurs:
> (a) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;
> (b) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;
> (c) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacture of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or
> (d) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (i) of the identity of the person supplying in the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (ii) that the lessee is entitled under this Article to the promise and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (iii) that the lessee may communicate with the person supplying the goods to the lessor and receive and accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

The district court determined it was questionable whether the lease met the first two requirements of section 554.13103. According to the court, the

structure of the transaction indicated that C and J bought and sold the equipment to Hendren. The Royal Links logo at the top of the lease agreement further confuses the transaction. However, the contract clearly states on its front that Royal Links is the "dealer" and C and J is the "lessor." Furthermore, the rest of the contract only refers to C and J and Hendren. Therefore, it is reasonable to conclude the first requirement of the statute is fulfilled.

The lease's fulfillment of (2) is somewhat problematic. According to the lease, Hendren had title and was the owner of the carts upon delivery. C and J reserved a security interest in the equipment. On the other hand, C and J attached certain restrictions concerning the use of the equipment consistent with ownership. C and J required that the carts remain at the address on the lease, that Hendren use the equipment in conformity with manufacturer's instructions and warranties only for business purposes, that Hendren provide upkeep for the carts, and that the carts be available for C and J's inspection. Finally, the lease complied with section (3)(c) and (d).

Hendren urges us to conclude that the presence of ambiguity throughout the contract, specifically the presence of the C and J's security interest, makes the contract a sale with a security interest. Nothing in the Code, however, prevents a security interest from being added to a finance lease agreement. *See* Iowa Code § 554.9201.

Finally, the commentary attached to section 554.9201 also states, "[I]f a transaction does not qualify as a finance lease, the parties may achieve the same result by agreement; no negative implications are to be drawn if the

transaction does not qualify." The contract includes language in capital letters that the agreement is to be construed as a finance lease under the UCC.

Therefore, it is reasonable to conclude the equipment lease agreement is a finance lease.

**IV. Summary**

We conclude the district court erred in determining the equipment lease agreement was unconscionable. We also conclude there was no agency relationship between C and J and Royal Links. Because the equipment lease agreement is a valid finance lease agreement, the hell or high water clause is enforceable. We therefore reverse and remand for further proceedings consistent with this opinion.

**REVERSED AND REMANDED.**