IN THE COURT OF APPEALS OF IOWA

No. 8-465 / 07-1705
Filed December 17, 2008

FRONTIER LEASING CORPORATION,
Plaintiff-Appellee,

vs.

DANIEL GARFIELD MEIKLE, an individual d/b/a MANAGEMENT RECRUITERS OF CHICAGO WEST LOOP and DANIEL G. MEIKLE and MARY K. MEIKLE, Individually,
Meikles-Appellants.

Appeal from the Iowa District Court for Polk County, Artis I. Reis, Judge.

The Meikles appeal from the district court's order granting summary judgment in favor of Frontier Leasing Corporation. **REVERSED AND REMANDED.**

Billy J. Mallory and Thomas J. Levis of Brick Gentry, P.C., West Des Moines, for appellants.

Edward N. McConnell of Edward N. McConnell, P.L.C., West Des Moines, for appellee.

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

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

ZIMMER, S.J.

Daniel Garfield Meikle, an individual d/b/a Management Recruiters of Chicago West Loop, and Daniel and Mary Meikle, individually, (collectively "Meikles") appeal from the district court's order granting summary judgment in favor of Frontier Leasing Corporation ("Frontier"). We reverse and remand for further proceedings.

I. Background Facts and Proceedings.

In early 2001 Daniel Meikle was approached by Management Recruiters International, Inc. ("MRI") to purchase a franchise to operate in Chicago, Illinois. MRI is one of the world's largest search and recruitment organizations with more than 1100 offices in over thirty-five countries and system-wide billings of nearly $500 million. Meikles allege that MRI representatives informed them at that time that MRI had an exclusive financing arrangement with Frontier. Frontier is a finance company that provides financing for commercial-equipment needs to customers across the United States with its principal place of business in Polk County, Iowa.

Meikles allege they were informed that: (1) the purchase price for the franchise was $70,000, the purchase price for the equipment was $7,000, and the monthly payment for the purchase price for the franchise would be $2,400 plus tax; (2) Frontier would provide the financing for the purchase of the franchise, the payment of the franchise fee, and the equipment; and (3) Frontier would find another buyer to take over or assume the remaining debt owed to Frontier on the franchise if the franchise failed. Meikles agreed to purchase the franchise that became MRI-Chicago West Loop and executed a lease and

personal guaranty. Frontier was the assignee of the lease and guaranty from its assignor, Total Lease Concepts. The lease and guaranty contained a "hell and high water" clause, obligating Meikles—as lessee and guarantor—unconditionally. The lease also contained a waiver of defenses clause, protecting the assignee, Frontier, from any claims Meikles asserted against Total Lease Concepts.

In June 2005 Frontier filed a petition at law asserting breach of contract and requesting the return of the equipment and compensation for Frontier's losses. Frontier contended that Meikles had failed to make payments under the lease and personal guaranty. Frontier filed a motion for summary judgment in January 2007, claiming Meikles were in default on the lease and personal guaranty in the amount of $84,775.13 and that it should be awarded attorney fees and court costs. In April 2007 Meikles filed an amended answer and a counterclaim, asserting various affirmative defenses and counterclaims including, among other things, that the lease and personal guaranty were void, voidable, or otherwise unenforceable; the lease was not a finance lease; and the interest rate Frontier was charging was usurious. Meikles also filed their resistance to Frontier's motion for summary judgment.

After a hearing, the district court issued a ruling in May 2007 granting summary judgment in favor of Frontier, and dismissing Meikles' affirmative defenses and counterclaim. The district court found the written lease agreement, which stated it was a finance lease, contained an integration clause and therefore the matter was governed by the terms of the written agreement; no extrinsic evidence could be considered to vary, add or subtract from its terms.

Based on the terms of the written agreement, judgment was entered in favor of Frontier in the amount of $84,775.13 and ordered the return of the equipment.

Meikles filed a motion to enlarge the findings of fact and conclusions of law, which was denied. Meikles now appeal.

II. Standard of Review.

We review a district court's ruling on a motion for summary judgment for correction of errors at law. Iowa R. App. P. 6.4; *Wallace v. Des Moines Indep. Sch. Dist. Bd. of Dirs.*, 754 N.W.2d 854, 857 (Iowa 2008). Summary judgment is available only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Buechel v. Five Star Quality Care, Inc.*, 745 N.W.2d 732, 735 (Iowa 2008); *Rodda v. Vermeer Mfg*., 734 N.W.2d 480, 483 (Iowa 2007). An issue of material fact occurs when the dispute involves facts which might affect the outcome of the suit under the applicable law. *Wallace*, 754 N.W.2d at 857. An issue is "genuine" when the evidence allows a reasonable jury to return a verdict for the non-moving party. *Id*. The burden of showing the nonexistence of a material fact is on the moving party, and every legitimate inference that reasonably can be deduced from the evidence should be afforded the nonmoving party. *Id.*; *Rodda*, 734 N.W.2d at 483.

III. Integration Clause.

Meikles argue the court erred in ruling that the lease was integrated. Specifically, Meikles allege the court erred in relying on the existence of an integration clause in the lease agreement (1) to find that the lease was a finance lease and (2) to disregard Meikles' assertions of fact based on the parol evidence rule. Meikles contend the lease was not the final and complete expression of the

agreement between the parties and a material fact exists as to whether the lease is a finance lease.

The general rule is that extrinsic evidence cannot be used to contradict or modify the terms of a fully integrated contract. See *Garland v. Branstad*, 648 N.W.2d 65, 69 (Iowa 2002).

> An agreement is fully integrated when the parties involved adopt a writing or writings as the final and complete expression of the agreement. *Montgomery Properties Corp. v. Economy Forms Corp.,* 305 N.W.2d 470, 476 (Iowa 1981). Whether or not a written agreement is integrated is a question of fact to be determined by the totality of the evidence. *See* Restatement (Second) of Contracts § 209, cmt. c (1981). 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. Restatement (Second) of Contracts § 213 (1981).

Whalen v. Connelly, 54 N.W.2d 284, 290-91 (Iowa 1996).

Here, the district court concluded the agreement presented by Frontier was a fully integrated agreement. However, Frontier's own affidavit in support of its motion for summary judgment belies this finding: Ms. Suzanne Schoofs, an accounts manager for Frontier, in her affidavit speaks of a purchase option that is not included in the written agreement presented to the court. Moreover, Frontier admitted before the district court that a franchise fee was part of the transaction at issue in this case and that the monthly payment included a franchise fee payment.

By definition, an agreement cannot be fully integrated—a "final and complete expression of the agreement"—if there are terms separate and apart from that agreement. *Id.* Consequently, the parol evidence rule does not bar consideration of extrinsic evidence to determine the agreement of the parties.

See Levien Leasing Co. v. Dickey Co., 380 N.W.2d 748, 750-51 (Iowa Ct. App. 1985) (finding that even though an integration clause existed in the lease, it was not intended as complete expression of agreement; there was a separate purchase option and the parol evidence rule would not bar extrinsic evidence).

IV. Conclusion.

We conclude summary judgment was improper where the content and extent of the parties' agreement remain issues of fact. We reverse the grant of summary judgment and remand for further proceedings.

REVERSED AND REMANDED.