IN THE COURT OF APPEALS OF IOWA

No. 8-704 / 07-1161
Filed October 29, 2008

FRONTIER LEASING CORPORATION,
Plaintiff-Appellee,

vs.

BOWLERS COUNTRY CLUB, INC.,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Douglas F. Staskal, Judge.

Defendant appeals the district court's grant of summary judgment to plaintiff in its action for breach of contract. **AFFIRMED.**

Christopher L. Laux, Notre Dame, Indiana, and Jerrold Wanek of Garten & Wanek, Des Moines, for appellant.

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

Considered by Miller, P.J., and Potterfield, J., and Robinson, S.J.*

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

ROBINSON, S.J.

I. Background Facts & Proceedings

On August 26, 2004, Frontier Leasing Corporation, an Iowa corporation, and Bowlers Country Club, Inc., an Indiana company, entered into a lease agreement for a beverage cart that was to be provided by Royal Links USA, Inc. Under the agreement Bowlers was to pay rent of $299 per month for a period of sixty months. The lease provided:

> **Unconditional Obligation:** YOU MAY NOT CANCEL OR TERMINATE THIS LEASE. You agree that you are unconditionally obligated to pay all Lease payments and other amounts due for the entire Lease term no matter what happens, even if the equipment is damaged or destroyed, if it is defective or if you can no longer use it.

The lease also provided "any suit on this Lease shall be proper if filed in the Iowa District Court for Polk County." Additionally, the lease provided for the payment of attorney fees.

Based on a sales promotion by a Royal Links salesperson, Bowlers understood that Royal Links would provide the beverage cart, as well as sell advertising on the cart, and the advertising revenue would cover the cost of the lease payments for the cart, so there would be no out-of-pocket expense for Bowlers. About six weeks after the agreement was signed, Royal Links advised Bowlers they were no longer going to make monthly payments to golf courses that had leased beverage carts.[1] On January 4, 2005, Bowlers sent a letter to Frontier Leasing and Royal Links terminating the agreement.

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[1] Royal Links has since declared bankruptcy.

Frontier Leasing filed suit against Bowlers in Iowa on February 3, 2005, for breach of contract and demanding the full amount due under the lease. Bowlers filed a motion to dismiss, claiming Indiana should be the proper forum for the case. Bowlers filed a separate suit against Frontier Leasing and Royal Links in Indiana. The Indiana action was later dismissed, based on the pending suit in Iowa. *See Bowlers Country Club, Inc. v. Royal Links USA, Inc.*, 846 N.E.2d 732, 737 (Ind. Ct. App. 2006).

The case proceeded in Iowa. Bowlers raised several counterclaims against Frontier Leasing, including unconscionability. Frontier Leasing filed a motion for summary judgment, which was resisted by Bowlers. The district court granted the motion for summary judgment, finding there was no evidence of an agency relationship between Frontier Leasing and Royal Links, and Bowlers's claims of unconscionability were "simply frivolous." The court entered judgment against Bowlers for $16,096.34 on the lease, and $24,776.95 in attorney fees. Bowler appeals.

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. 6.4. 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 nonmoving party. *Eggiman v. Self-Insured Servs. Co.*, 718 N.W.2d 754, 758 (Iowa 2006).

III. Unconscionability

Bowlers claims the lease agreement is unconscionable. Bowlers points out that the decision to enter into the agreement was made by its Board of Directors, who are blue-collar working people. The club operations manager who signed the agreement admitted that he did not read it. Bowlers asserts it was "hoodwinked" by Royal Links and Frontier Leasing into signing the agreement when they knew the beverage cart operation was in dire financial straits.

"A bargain is said to be unconscionable at law if it is 'such as no man in his senses and not under delusion would make on the one hand, and no honest and fair man would accept on the other.'" *Casey v. Lupkes*, 286 N.W.2d 204, 207 (Iowa 1979) (citation omitted). Unconscionability is an available defense to a lease agreement. *See Lakeside Boating & Bathing, Inc. v. State*, 402 N.W.2d 419, 422 (Iowa 1987). We determine unconscionability as of the time the parties entered into the lease. *Casey*, 286 N.W.2d at 208. We look at the factors of assent, unfair surprise, notice, disparity of bargaining power, and subjective unfairness. *Home Fed. Sav. & Loan Ass'n v. Campney*, 357 N.W.2d 613, 618 (Iowa 1984).

The "unconditional obligation" provision in the lease is known as a "hell or high water" clause. *See GreatAmerica Leasing Corp. v. Star Photo Lab, Inc.*, 672 N.W.2d 502, 504 (Iowa Ct. App. 2003). "In general, a hell or high water clause makes a lessee's obligation under a finance lease irrevocable upon

acceptance of the goods, despite what happens to the goods afterwards."[2] *Id.* "Hell or high water" provisions are enforceable in Iowa. *Id.* at 505.

Bowlers had every opportunity to read the lease agreement. *See Home Fed. Sav. & Loan Ass'n*, 357 N.W.2d at 619 (finding terms of contract were not an unfair surprise, even though party had not read contract, when there was the opportunity to read it). In addition, Bowlers was under no pressure to sign the lease. *See Lakeside Boating & Bathing*, 402 N.W.2d at 422 (noting party was "under no apparent compulsion to sign" lease). Like the district court, we are unpersuaded by Bowlers's claims of disparity in bargaining power.

We determine Frontier Leasing has shown there is no genuine issue of material fact to support a claim that the lease was unconscionable. We affirm the decision of the district court finding the lease agreement was not unconscionable.

IV. Attorney Fees

Bowlers contends the district court abused its discretion by ordering it to pay Frontier Leasing's attorney fees for the Indiana litigation. The lease provided, "If we refer this Lease to an attorney for collection, you agree to pay our reasonable attorney's fees and actual costs." The lease also provided, "You agree to indemnify us for any liabilities, costs or expenses (including attorney's fees) incurred by us in connection with this Lease . . . ." Bowlers claims the Indiana litigation did not involve collection.

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[2] Frontier Leasing claims the lease in question is a finance lease, as defined by Iowa Code section 544.13103(1)(g) (2005). Bowlers does not dispute this characterization. Section 554.13407(1) provides, "In the case of a finance lease that is not a consumer lease the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods."

In awarding attorney fees, the district court is afforded broad, but not unlimited, discretion. *Gabelmann v. NFO, Inc.*, 606 N.W.2d 339, 342 (Iowa 2000). The district court's decision will be reversed only if it is based on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Bremicker v. MCI Telecomm. Corp.*, 420 N.W.2d 427, 428 (Iowa 1988).

The district court found:

> Further, as pointed out by the Indiana Court of Appeals, all of the jurisdictional and substantive claims raised by Bowlers in the Indiana action could have been, and were in fact, raised by Bowlers both offensively and defensively in this case. In essence, Bowlers chose to take a chance on moving this dispute to Indiana. This did not change the nature of the dispute but it did create two lawsuits from one. Thus, Bowlers is in no position to claim the fees Frontier incurred in Indiana were not incurred in connection with its effort to enforce the parties' contract.

We conclude the district court did not abuse its discretion in ordering Bowlers to pay Frontier Leasing's attorney fees connected with the Indiana litigation.

Additionally, Frontier Leasing seeks attorney fees for this appeal. *See Beckman v. Kitchen*, 599 N.W.2d 699, 702 (Iowa 1999) (noting party entitled to attorney fees under a contract may be entitled to reasonable attorney fees on appeal). We consider the time expended, the nature of the services rendered, the amount in controversy, the relative difficulty and importance of the issues, and the results obtained. *Id.* We determine Frontier Leasing is entitled to $1000 for appellate attorney fees.

We affirm the decision of the district court. Costs of this appeal are assessed to Bowlers Country Club.

AFFIRMED.