**IN THE COURT OF APPEALS OF IOWA**

No. 8-857 / 07-0323
Filed November 26, 2008

**ALFREDO RODRIGUEZ and**
**OTILIA RODRIGUEZ,**
Plaintiffs-Appellants,

**vs.**

KIRBY CLEANING SYSTEMS,
JOSH BEECHUM and an unknown
person identified herein as JOHN DOE**,**
Defendants,

**TENHAKEN ASSOCIATES, INC.,**
Defendant-Appellee.

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Appeal from the Iowa District Court for Washington County, Michael R. Mullins, Judge.

Plaintiffs appeal from the district court's ruling granting summary judgment in favor of TenHaken Associates, Inc. **AFFIRMED.**

William Bribriesco and Daniel Bernstein of William J. Bribriesco & Associates, Bettendorf, for appellants.

Michael Moreland and Heather Simplot of Harrison, Moreland, Webber & Woods, P.C., Ottumwa, for appellee.

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

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

**POTTERFIELD, J.**

**I. Background Facts and Proceedings**

Josh Beechum sold Kirby vacuum cleaners as an independent contractor for TenHaken Associates, Inc. On August 12, 2003, Beechum, as seller, entered into an Iowa retail installment contract for the sale of a Kirby vacuum cleaner with buyer Alfredo Rodriguez. Rodriguez was denied financing for the vacuum cleaner. On or about September 10, 2003, Beechum and an unidentified individual, John Doe, allegedly went to Rodriguez's home to retrieve the vacuum cleaner. Beechum and John Doe allegedly forced their way into the Rodriguez home, causing injuries to Otilia Rodriguez.

The Rodriguezes sued Kirby Cleaning Systems, TenHaken Associates, Beechum, and John Doe for these injuries. The Rodriguezes allege that TenHaken is liable for Beechum's actions under a theory of joint enterprise liability.[1]

TenHaken filed a motion for summary judgment. The district court granted the motion on January 24, 2007, finding there was no genuine issue as to any material fact that would support the fourth element of the joint enterprise theory. The Rodriguezes appeal.

**II. Standard of Review**

We review the granting of a summary judgment motion for correction of errors at law. *In re Estate of Renwanz*, 561 N.W.2d 43, 44 (Iowa 1997). Summary judgment is appropriate when the record demonstrates that there is no

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[1] The Rodriguezes do not dispute the district court's finding that Beechum was an independent contractor and not an employee of TenHaken.

genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* We review the evidence in the light most favorable to the nonmoving party. *Id*.

**III. Summary Judgment**

The Rogriguezes rely on the Iowa retail installment contract between Beechum and Alfredo Rodriguez to support their claim that Beechum and TenHaken were involved in a joint enterprise to sell vacuum cleaners, and, therefore, TenHaken is vicariously liable for the injuries caused by Beechum. A joint enterprise exists when there is (1) a contract; (2) a common purpose; (3) a community of interest; and (4) equal right to a voice, accompanied by an equal right of control. *Heick v. Bacon*, 561 N.W.2d 45, 49 (Iowa 1997).

We agree with the district court that there is no genuine issue as to any material fact which would support the fourth element of this test. TenHaken and Beechum do not have equal voice or control in the sale of vacuum cleaners. Beechum is one of many independent contractors who sell vacuum cleaners they receive on consignment from TenHaken. TenHaken has no control over Beechum's sales methods, leads, or even price. TenHaken is a distributor who allows Beechum to sell its product, but TenHaken does not have a voice concerning how Beechum chooses to sell or reclaim that product. Because there is no genuine issue as to any material fact that would support the fourth element of the joint enterprise theory, we find that summary judgment is appropriate.

**AFFIRMED.**