IN THE COURT OF APPEALS OF IOWA

No. 9-303 / 08-1790
Filed June 17, 2009

NICHOLAS ECHARD,
Plaintiff-Appellant,

vs.

MICHAEL J. KLINGE,
Defendant-Appellee.

Appeal from the Iowa District Court for Clayton County, John Bauercamper, Judge.

Plaintiff appeals the district court's decision refusing his request for reimbursement from defendant on their joint debt as co-owners of a limited liability corporation. **REVERSED AND REMANDED.**

Matthew J. Erickson, Postville, for appellant.

Patrick W. O'Bryan, Des Moines, for appellee.

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

Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

ROBINSON, S.J.

I. Background Facts & Proceedings

Nicholas Echard and Michael Klinge were co-owners of M & N, L.L.C., a limited liability corporation. Through the corporation they farmed some land together. The corporation purchased a sprayer, which cost $140,000 and was largely financed through Badgerland Farm Credit Services. They borrowed from FreedomBank in Monona, Iowa, for the down payment on the sprayer and signed a promissory note for $22,732.50 payable by April 17, 2007. Echard and Klinge each signed a guaranty for the debt to FreedomBank.

On November 17, 2006, they decided to reorganize and start a new corporation, M & N Farming, L.L.C. Klinge signed a "Notice of Resignation/Release" resigning from M & N. The notice stated "Michael Klinge will be released from any and all liability associated with M & N, L.L.C., including any notes or bank liability." Echard signed an acceptance of the release and resignation. Contemporaneously, Echard and Klinge signed an "Assumption of Liability" stating M & N Farming assumed the debt for certain assets, including the sprayer. In fact, however, FreedomBank refused to permit the reassignment of the debt to M & N Farming.

On June 18, 2007, Freedom Bank sent a letter to M & N stating the amount of $23,031.54 was delinquent. Echard and Klinge then each signed an agreement with the bank extending the due date for the debt to September 9, 2007.

The parties decided to quit farming together and they split the assets of M & N. The sprayer was sold and the proceeds applied to the debt at Badgerland Farm Credit Services. Klinge paid half of a remaining operating debt and paid off the balance of the debt at Badgerland. He refused, however, to pay one-half of the debt for the sprayer with FreedomBank. Echard paid off the debt to FreedomBank and filed this suit seeking to have Klinge pay one-half of that debt, $11,987.54, plus interest.

The district court issued a decision on October 10, 2008. The court found that the clear language of the release excluded Klinge from any liability on the promissory note with FreedomBank. Echard appeals the decision of the district court.

II. Standard of Review

This action was tried at law, and our review is for the correction of errors at law. Iowa R. App. P. 6.4. Findings of fact in a law action are binding upon the appellate court if they are supported by substantial evidence. Iowa R. App. P. 6.14(6)(*a*).

III. Merits

Echard contends the district court failed to consider the 'Notice of Resignation/Release" and "Assumption of Liability," both signed together on November 17, 2006. Echard believes the court improperly focused only on the release.

Generally, instruments relating to the same transaction, which are contemporaneously executed, should be construed together. *Taylor Enter., Inc.*

v. Clarinda Prod. Credit Ass'n, 447 N.W.2d 113, 115 (Iowa 1989). The supreme court has stated:

> A contemporaneous agreement in writing, attached or with knowledge accepted, is to be taken and considered in connection with a given instrument. That the two are to be construed together is so well and generally established in all jurisdictions as to require no citations. It is general contract law and is in most respects applicable to cases involving negotiable instruments.

Allison Ford Sales v. Farmers State Bank, 249 Iowa 261, 264, 86 N.W.2d 896, 898-99 (1957). *See also Fausel v. JRJ Enters., Inc.*, 603 N.W.2d 612, 618 (Iowa 1999) (quoting Restatement (Second) of Contracts § 202(2), at 86 (1979) ("A writing is interpreted as a whole, and all writings that are part of the same transaction are interpreted together.").

While the district court noted there was an "Assumption of Liability," the court's decision was based solely on the release. We conclude these two contemporaneous documents, the release and the assumption of liability, should be considered together in determining the parties' intent.

Contract interpretation is a process to determine the meaning of the words in a contract, while construction of a contract is a process to determine the legal effect of the words. *RPC Liquidation v. Iowa Dep't of Transp.*, 717 N.W.2d 317, 321 (Iowa 2006). We review the district court's interpretation of a contract as a legal issue, unless the interpretation depends upon extrinsic evidence, and in that case a question of interpretation is left to the trier of fact. *Fausel*, 603 N.W.2d at 618. Our review of a court's construction of a contract is always a legal issue. *Id.*

"The primary goal of contract interpretation is to determine the parties' intentions at the time they executed the contract." *Walsh v. Nelson*, 622 N.W.2d 499, 503 (Iowa 2001). One rule of contract interpretation is that "[w]ords and other conduct are interpreted in light of all the circumstances, and if the principal purpose of the parties is ascertainable it is given great weight." *Fausel*, 603 N.W.2d at 618 (quoting Restatement (Second) of Contracts § 202(1), at 86 (1979)).

Long ago the supreme court abandoned the rule that extrinsic evidence cannot change the plain meaning of a contract. *Pillsbury Co., Inc. v. Wells Dairy, Inc.*, 752 N.W.2d 430, 436 (Iowa 2008) (citing *Hamilton v. Wosepka*, 261 Iowa 299, 313, 154 N.W.2d 164, 171-72 (1967)). Regardless of whether the language in a contract is ambiguous, the words of the contract and the parties' conduct must be interpreted "in light of all the circumstances." *Walsh*, 622 N.W.2d at 503. While extrinsic evidence may be considered as an aid in the process of interpretation, "the words of the agreement are still the most important evidence of the party's intentions at the time they entered into the contract." *Pillsbury*, 752 N.W.2d at 436.

The "Notice of Resignation/Release" provided that Klinge was resigning from M & N, and stated, "[t]his resignation is given pursuant to the agreement that Michael Klinge will be released from any and all liability associated with M & N, L.L.C., including any notes or bank liability." Klinge signed this portion of the document. There was also a portion designated "Acceptance of Resignation/ Release" which stated, "Comes now M & N, L.L.C. and does hereby accept the

resignation of Michael Klinge and does here release Michael Klinge from any and all liability associated with M & N, L.L.C., including any notes or bank liability." This portion was signed by Echard. The "Assumption of Liability" provided:

> Comes now M & N Farming, L.L.C. and does hereby assume all debt and liability against the equipment shown on Exhibit A attached hereto. This assumption of liability is given in consideration of receipt of the Bill of Sale from M & N, L.L.C. to M & N Farming, L.L.C.

The "Assumption of Liability" was signed by Klinge and Echard, as managers of M & N Farming. The sprayer was listed as an asset in Exhibit A.

In considering the "Notice of Resignation/Release" and "Assumption of Liability" together, it is clear that the intention of the parties was that Klinge would be released from "liability associated with M & N," at the same time the liability was to be assumed by M & N Farming. Klinge and Echard were the co-owners and co-managers of M & N Farming. There is nothing in the documents showing an intention that the liability would be assumed by Echard alone. M & N Farming never became operational. FreedomBank refused to move the debt from M & N to M & N Farming.

In addition to the words of the agreements, we also look to the parties' conduct. Although Klinge was supposedly not a co-owner of M & N after November 2006, in July 2007 he signed an extension of the debt for the sprayer with FreedomBank. Furthermore, Klinge had paid one-half of other debts associated with M & N. Klinge had paid one-half of an operating note and one-half of the debt to Badgerland. Kline testified he was not legally obligated to pay these debts, but had done so "to get the things settled."

As noted above, to aid in the interpretation of a contract, we consider the words of the contract and the conduct of the parties, "in light of all the circumstances." *Walsh*, 622 N.W.2d at 503. In light of the circumstances of this case, and considering the agreements as a whole, we determine the parties intended that Klinge would be released from his liability on the debt for the sprayer only if the debt was assumed by M &N Farming. Because the debt was not assumed by M & N Farming, we determine the release did not become operational. We conclude Klinge continued to be liable for one-half of the debt for the sprayer.

As an alternative argument, Echard has raised the issue of rescission of the contracts. We first note, however, that this issue was not decided by the district court, and Echard did not file a post-trial motion seeking a ruling on the issue. For this reason, we conclude error has not been preserved on the issue of rescission. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). Additionally, rescission is an equitable remedy. *Clark v. McDaniel*, 546 N.W.2d 590, 595 (Iowa 1996). It is only available where remedies at law are inadequate. *Id.*

We reverse the decision of the district court finding that Klinge was excluded from liability on the debt for the sprayer. We remand to the district court to enter judgment for Echard for $11,987.54, plus interest. Costs of this appeal are assessed to Klinge.

REVERSED AND REMANDED.

Vaitheswaran, P.J., concurs; Doyle, J.,dissents.

DOYLE, J. (dissenting)

I respectfully dissent. The majority asserts the district court's decision was based solely on the release. While the district court's conclusions of law are brief and refer to the release only, the court's findings of fact specifically acknowledge the extrinsic evidence of the parties' assumption of liability document and their testimony and conduct. "The construction and interpretation of a contract is generally reviewed as a matter of law. The construction or interpretation made by the district court is not binding on us." *Longfellow v. Sayler*, 737 N.W.2d 148, 153 (Iowa 2007) (citations omitted). However, if the district court's interpretation was predicated upon extrinsic evidence, the findings of the court are binding on appeal if supported by substantial evidence. Iowa R. App. P. 6.14(6)(*a*), *Grinnell Mut. Reins. Co. v. Voeltz*, 431 N.W.2d 783, 785 (Iowa 1988). I find that substantial evidence supports the district court's decision.

When Klinge signed the notice of resignation/release, he relinquished any and all interest he had in M & N, L.L.C., including any rights to the sprayer. When Echard signed the acceptance of resignation/release, he, on behalf of M & N, released Klinge from any and all liability associated with M & N, including any notes or bank liability. The release necessarily included the outstanding debt on the sprayer. While the parties intended that certain M & N assets, including the sprayer, would be transferred to M & N Farming, L.L.C. and that the accompanying debt would be assumed by M & N Farming, FreedomBank would not agree to the transfer, so M & N Farming never became operational. Thereafter, the assets of M & N were transferred to Echard or sold, and he

assumed all debt associated with the assets he received. Echard sold the sprayer for less than its outstanding debt. Klinge was released from personal liability to the bank when Echard voluntarily paid off the note on the sprayer. The fact that the parties intended to operate under a new limited liability company did not establish that the parties intended Klinge to be held responsible for half the sprayer debt in the event the new venture failed to materialize. The assumption of liability document contains a contingency. M & N Farming's assumption of all debt and liability against M & N's equipment was conditioned upon transfer of that equipment to M & N Farming. The transfer did not occur, so the debt remained with M & N. Klinge's notice of resignation/release and Echard's acceptance of resignation/release contain no contingencies, although they could have. Echard's release is unambiguous, even in light of the assumption of liability document and extrinsic evidence. Although extrinsic evidence is allowed to aid in the process of interpretation, "the words of the agreement are still the most important evidence of the party's intention at the time they entered into the contract." *Pillsbury Co.,* 752 N.W.2d at 436. If the parties truly intended for Klinge's release from liability to be contingent upon the transfer of certain M & N assets to M & N Farming, the parties could have easily expressed such an intention. They did not do so. I would therefore affirm the district court.