IN THE COURT OF APPEALS OF IOWA

No. 9-449 / 08-1683
Filed October 21, 2009

FRONTIER LEASING CORPORATION,
Plaintiff-Appellee,

vs.

LINKS ENGINEERING, LLC d/b/a
BLUFF CREEK GOLF COURSE,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg, Judge.

Bluff Creek Golf Course appeals from the district court's order entering summary judgment in favor of Frontier Leasing Corporation. **REVERSED AND REMANDED.**

Kimberly P. Knoshaug of Lewis, Webster, Van Winkle & Knoshaug, L.L.P., Des Moines, for appellant.

Edward N. McConnell and Aaron H. Ginkens of Ginkens & McConnell, P.L.C., Clive, for appellee.

Heard by Vogel, P.J., and Potterfield, J. and Mahan, S.J.*

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

POTTERFIELD, J.

I. Background Facts and Proceedings

In January of 2004, Royal Links USA solicited Dave Fleming, golf professional and director of golf for Links Engineering, L.L.C. d/b/a Bluff Creek Golf Course, to purchase a nonmotorized beverage cart. Royal Links told Fleming that advertising revenue from the beverage cart would cover Bluff Creek's monthly lease expenses for the cart. On January 21, 2004, Fleming, on behalf of Bluff Creek, applied for financing for the beverage cart and signed a Royal Links USA credit application. Royal Links frequently referred customers to the C and J entities, a group of corporations owned and managed by C. Allen Rice, which provided financing for commercial equipment. There are four distinct C and J legal entities relevant to this case: (1) C and J Management Corporation (hereinafter "Management"); (2) C and J Leasing Corporation (hereinafter "Leasing Corp."); (3) C & J Vantage Leasing Company (hereinafter "Vantage"); and (4) C and J Special Purpose Corporation (hereinafter "SPC"). Royal Links sent Bluff Creek's credit application to Leasing Corp. On January 23, 2004, Leasing Corp. notified Royal Links that Bluff Creek was approved for credit.

On February 6, 2004, Fleming signed a two-page equipment lease agreement for the beverage cart. The preprinted lease stated that Leasing Corp. was the lessor and had a handwritten note indicating it was lease number 22696. On February 9, 2004, Fleming signed a delivery and acceptance certificate directed to Leasing Corp., acknowledging receipt of the beverage cart. On February 10, 2004, lease number 22696, previously signed by Fleming, was signed by Rice, president of Leasing Corp. At some point after Fleming signed

the lease, someone wrote "C & J Vantage Leasing Co." four lines underneath Rice's signature.

On February 10, 2004, Rice signed a document on Management's letterhead stating:

> As a matter of standard practice C & J Management Corporatioon [*sic*] solicits Leases in the name of C & J Leasing.
>
> These leases are then assigned to one of the following companies for the purpose of the appointed company becoming lessor of the equipment:
>
> C & J Vantage Leasing Co.
> C and J Leasing Corp.
>
> As to the following lease, Lease No. 022696 Dated February 10, 2004 LINKS ENGINEERING, LLC, as lessee; C and J management [*sic*] does hereby appoint C & J Vantage Leasing Co. as lessor under the lease. This appointment is made prior to the start of the lease and lessor shall be considered the original lessor under the lease agreement.

The same day, Leasing Corp. conducted a telephone audit with Fleming and filled out a verification form. Leasing Corp. received an invoice from Royal Links for the beverage cart. On February 13, 2004, Leasing Corp. marked the invoice paid. On February 19, 2004, Leasing Corp. filed a UCC Financing Statement with the Indiana Secretary of State listing Links Engineering and Bluff Creek as debtors subject to lease number 022696, with collateral listed as a beverage caddy express cart.

Fourteen months later, on April 8, 2005, Vantage sold and assigned various leases, including the lease for Bluff Creek's beverage cart, to SPC. SPC then sold the leases to Frontier Leasing Corporation. On May 12, 2005, Leasing Corp., on its own letterhead, sent a certified demand letter to Bluff Creek

asserting that Bluff Creek was in default on lease 022696. The default letter stated that Bluff Creek could correct the default by paying its delinquent rentals in the amount of $1321.70. Otherwise, Leasing Corp. would accelerate the entire balance of $14,635.70, and Bluff Creek would have to return the equipment.

Upon receiving this letter, the managing owner of Bluff Creek, Lance Clute, called Leasing Corp. and learned of the lease agreement signed by Fleming. Clute requested a copy of the lease, and upon its receipt, he stopped all payments on the cart. Clute communicated to Leasing Corp. that he wanted someone to remove the beverage cart from his property. Clute submitted an affidavit stating Fleming did not have authorization to enter into financing agreements. It is unclear from the record how many payments Bluff Creek made on the cart.

Vantage filed a petition on July 6, 2005, asserting Bluff Creek breached the contract and was in default in an amount estimated at $14,676.91. On November 14, 2007, Vantage filed a motion to substitute party on the grounds that as of November 1, 2006, Vantage transferred its obligation to service and collect on this lease to Frontier. On June 4, 2008, Frontier filed a motion for summary judgment, which Bluff Creek resisted. After hearing on the matter, the district court granted Frontier's motion for summary judgment on September 16, 2008.

Bluff Creek appeals, arguing Frontier is not the real party in interest because there was no valid assignment of the original lease by lessor Leasing Corp., and therefore Frontier has never been a party in interest. Bluff Creek also asserts on appeal that Fleming lacked authority to sign financing agreements.

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 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. Real Party in Interest

Lawsuits must be prosecuted in the name of the real party in interest. Iowa R. Civ. P. 1.201. This rule protects a defendant against a subsequent lawsuit from the party who is legally entitled to recover. *Kimmel v. Iowa Realty Co.*, 339 N.W.2d 374, 379-80 (Iowa 1983). "When there is an effective assignment, the assignee assumes the rights, remedies, and benefits of the assignor . . . ." *Pillsbury Co. v. Wells Dairy, Inc*., 752 N.W.2d 430, 435 (Iowa 2008) (internal quotation omitted).

We agree with Bluff Creek that the district court erred in finding Frontier was the real party in interest. The district court ignored the distinction between the different C and J corporations and consequently failed to recognize the invalidity of the various lease assignments. Contrary to the district court's findings, the record clearly establishes, and both parties admit, that Leasing Corp. was the original lessor. Therefore, Leasing Corp. is the only corporation that could make a valid assignment of the lease. There is no evidence that Leasing Corp. ever assigned or intended to assign the lease to another corporation.

Frontier relies on the "internal assignment" document in which Management "appoints" Vantage as lessor and argues that since Management is a parent company to Leasing Corp and Vantage, it had authority to assign the lease. Frontier argues that, while this document may not have been perfect, it shows intent that the lease be assigned to Vantage. No particular words are necessary to effectuate an assignment. *Lynch v. Bogenrief*, 237 N.W.2d 793, 799 (Iowa 1976). An assignment need not be in writing and may be shown by evidence of intent to create the assignment. *Kimmel*, 339 N.W.2d at 379. However, the assignment, and the intent to assign, must be on the part of the *lessor*. *Kintzel v. Wheatland Mut. Ins. Ass'n*, 203 N.W.2d 799, 804 (Iowa 1973). The internal assignment document here may show Management's intent to assign the lease, but it does not show Leasing Corp.'s intent to do so. Because Leasing Corp. was the original lessor, we are concerned only with Leasing Corp.'s intent to assign the lease.

Leasing Corp. did not sign the lease until February 10, 2004. The same day, Leasing Corp. conducted a telephone audit with Fleming and filled out the accompanying verification form. Leasing Corp. received the invoice for the beverage cart from Royal Links and marked the invoice paid on February 13, 2004. Frontier argues that Vantage issued the check to Royal Links for the beverage cart. However, there is no evidence of such payment in the record. Even if Vantage did pay the Royal Links invoice, this is not evidence of *Leasing Corp.'s* intent to assign the lease.

Further, other evidence belies Frontier's claim that Leasing Corp. intended to assign the lease to any other party. On February 19, 2004, Leasing Corp. filed

a UCC Financing Statement with the Indiana Secretary of State listing Links Engineering and Bluff Creek as debtors subject to lease number 022696. Leasing Corp. also sent a default notice to Bluff Creek on May 12, 2005. These actions are inconsistent with an assignment of the lease to Vantage. Thus, the record shows Leasing Corp. did not intend to assign the lease to Vantage, or to any other party. Further, the assignment of the lease to Vantage by Management, a nonparty to the lease, had no effect or validity.

Because the record does not show an actual assignment of the lease or Leasing Corp.'s intent to assign the lease to Vantage, Vantage did not have the authority to assign the lease to SPC, and therefore SPC did not have the authority to assign the lease to Frontier. Accordingly, Frontier has no enforceable interest in the lease and is not the real party in interest. We reverse the district court's grant of summary judgment in favor of Frontier. On remand, the district court shall allow a reasonable period of time for substitution of the real party in interest. Iowa R. Civ. P. 1.201. Because we find Frontier is not the real party in interest, we decline to address Bluff Creek's agency claim.

IV. Attorney Fees

The district court awarded "reasonable attorney fees" to Frontier pursuant to an agreement between the parties. We review the district court's award of attorney fees for an abuse of discretion. *GreatAmerica Leasing Corp. v. Cool Comfort Air Conditioning & Refrigeration, Inc.*, 691 N.W.2d 730, 732 (Iowa 2005). "When judgment is recovered upon a written contract containing an agreement to pay an attorney's fee, the court shall allow and tax as a part of the costs a reasonable attorney's fee to be determined by the court." Iowa Code § 625.22

(2005). Because judgment should not have been recovered on this contract, we find the district court erred in awarding attorney fees.

REVERSED AND REMANDED.