IN THE COURT OF APPEALS OF IOWA

No. 9-561 / 09-0120
Filed August 6, 2009

CHAU PHAM,
Plaintiff-Appellee,

vs.

THOMAS NGUYEN,
Defendant-Appellant.

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

Defendant appeals from the district court's order finding the purchase of a business was subject to a financing contingency and entering judgment in favor of the plaintiff and against the defendant. **AFFIRMED.**

Judy D. Johnson and Steven P. Wandro of Wandro & Baer, P.C., Des Moines, for appellant.

Kathleen T. Sandre of Coppola, McConville, Coppola, Hockenberg, & Scalise, P.C., West Des Moines, for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer and Mansfield, JJ.

MANSFIELD, J.

This appeal presents the question whether the district court erred in finding that a purchase of a business was subject to a financing contingency even though the contingency was not mentioned in the parties' written agreement. Because we conclude the district court committed no error of law and its factual findings are supported by substantial evidence, we affirm the judgment below.

I. Background Facts and Proceedings.

Thomas Nguyen owns Cali Nails, a nail care salon located in Merle Hay Mall. In November 2007, Chau Pham learned through her brother, who worked for Thomas,[1] that the business was for sale. Chau called Thomas and told him she was interested. The parties agreed upon a total purchase price of $112,500, with $12,500 to be paid as a down payment. According to Chau, it was discussed and understood that she would obtain a loan for the $100,000 balance. Chau also contends that Thomas agreed to provide her with financial statements to enable her to obtain a loan.

On November 27, 2007, the parties met and executed a written purchase agreement. Chau typed up the document, using as a model the form of agreement that her buyer had provided when she had sold her own nail business several months before. The written agreement between Thomas and Chau stated in relevant part, "Buyer is to pay twelve thousand five hundreds dollars ($12,500.00) today and the remainder ($100,000). (One hundreds thousands even)." The document was silent on when "the remainder" was to be paid.

[1] We will refer to the parties by their first names, as they have done in their briefs.

At the same meeting, Chau also turned over the $12,500 down payment. Thomas contends that the written agreement included a second page, which acknowledged receipt of the $12,500 and also stated, "Any parties break agreement contract will lose the amount of deposit." Chau denies that this second page, which she did not sign, was part of the parties' agreement.

Chau repeatedly requested Thomas to provide the financial information for the business. Thomas never did so. Chau was not able to obtain financing and did not go through with the purchase. When Thomas refused to return the deposit, Chau sued.

This case was tried to the district court. The court determined it would be appropriate to consider parol evidence under the circumstances, especially in light of the incomplete payment provision. After taking that evidence into account, the court found Chau's acquisition of financing—although not mentioned in the written agreement—was a condition precedent to her obligation to buy the salon. Because the condition failed, the court ruled that she had no obligation to complete the purchase. The court also ordered the return of Chau's $12,500 deposit. Because the contract was no longer effective, the district court ruled that Thomas would be unjustly enriched if allowed to retain the deposit. Thomas now appeals.

II. Standard of Review.

This action was tried at law, so we review for the correction of errors at law. Iowa R. App. P. 6.907 (2009). Findings of fact in a law action are binding upon an appellate court if they are supported by substantial evidence. Iowa R. App. P. 6.904(3)(*a*). Evidence is substantial if a reasonable person would accept

it as adequate to reach a conclusion. *Chrysler Fin. Co. v. Bergstrom*, 703 N.W.2d 415, 418 (Iowa 2005). In determining whether substantial evidence exists, we view the evidence in the light most favorable to the district court's judgment. *Id.*[2]

III. Analysis.

Thomas first argues that the district court erred in holding that a financing contingency was part of the parties' agreement. This argument has both legal and factual components. Legally speaking, Thomas contends the parol evidence rule prohibits the introduction of oral testimony to alter the meaning of clear and unambiguous language. Even if this legal hurdle can be overcome, Thomas urges as a factual matter that the district court's finding that there was a financing contingency is not supported by substantial evidence. For the reasons we discuss herein, we do not believe the district court committed a legal error and we believe its factual findings are supported by substantial evidence.

The parol evidence rule prohibits the introduction of extrinsic evidence under certain circumstances. In particular, where a written agreement is a

[2] Thomas urges us to review on a de novo basis the ruling that he had to repay the $12,500 deposit, on the theory that unjust enrichment is rooted solely in equitable principles. *See Iowa Waste Sys., Inc. v. Buchanan County*, 617 N.W.2d 23, 30 (Iowa Ct. App. 2000). We do not agree with Thomas's suggestion. In this case, the $12,500 award should properly be viewed as a damage award based on the "restitution interest" in a suit over an express contract. Restatement (Second) of Contracts § 344, at 102-03 (1981). *See* Joseph M. Perillo, *Calamari and Perillo on Contracts* § 15.1, at 540 (6th ed. 2009) (distinguishing between restitution as a quasi-contractual recovery and as a remedy for breach of contract). This differentiates it from an unjust enrichment claim in a case where there was no actual contract. In any event, two additional principles counsel against de novo review. First, our review is generally governed by how the case was tried in district court. *Ralfs v. Mowry,* 586 N.W.2d 369, 371 (Iowa 1998). Second, where both legal and equitable relief are demanded, an action is ordinarily classified according to what appears to be its primary purpose or its controlling issue. *Phone Connection, Inc. v. Harbst*, 494 N.W.2d 445, 448 (Iowa Ct. App. 1992).

complete integration, terms that contradict or supplement the terms of that writing may not be proved. *Whalen v. Connelly*, 545 N.W.2d 284, 290-91 (Iowa 1996). Where an agreement is a partial integration, the parol evidence rule bars proof of contradictory terms, but not additional ones. Restatement (Second) of Contracts §§ 215-16, at 136-37 (1981). In addition, when parties agree orally that performance of a written agreement is subject to the occurrence of a stated condition, the agreement is not integrated with respect to the condition. Restatement (Second) of Contracts § 217, at 141.

Courts in other jurisdictions have determined that where evidence of an oral financing contingency does not contradict the written terms of a partially integrated agreement, the parol evidence rule allows the admission of such evidence. *See Morgan Stanley High Yield Sec., Inc. v. Seven Circle Gaming Corp.*, 269 F. Supp. 2d 206, 217 (S.D.N.Y. 2003); *see also Honeywell v. San Francisco Hous. Auth.*, 72 Fed. App'x 609, 612 (9th Cir. 2003) (stating where written agreement was silent on financing contingency, parol evidence was admissible to establish existence thereof).

We agree with the district court that the parol evidence rule did not preclude Chau from offering proof of a financing contingency. The written document was not a complete integration. It had no integration clause, and the payment provision was incomplete on its face. In relevant part, the contract read, "Buyer is to pay twelve thousand five hundreds dollars ($12,500.00) today and the remainder ($100,000)." But *when* was the remainder to be paid? As the district court observed, "There is obviously some language missing at the end of this sentence." Thus, we conclude that it was permissible for Chau to present

proof that payment of the full purchase price was to occur when Chau had financing in place.

This leads to the next issue, whether there is substantial evidence to support the district court's finding that such an oral covenant was part of the deal. Thomas denied there was any financing contingency, so we must look to what Chau testified. In her testimony, Chau concedes that she drafted and signed the written agreement on the spot on November 27, 2007, because she really liked the shop and Thomas was threatening to sell it to someone else. While Chau testified very clearly that she told Thomas she would have to get a loan, there is a difference between telling the other party you will need a loan and reaching agreement with the other party that the transaction is contingent on financing. Nevertheless, we conclude the finding that the parties orally agreed on a financing contingency is a reasonable inference from Chau's testimony, and accordingly we affirm the district court on this point as well.[3]

Thomas argues that this case is controlled by *Gerard v. Peterson*, 448 N.W.2d 699 (Iowa Ct. App. 1989), where we found that a home purchase agreement was not subject to a financing contingency as claimed by the buyers. However, two critical differences exist between that case and this one. First, *Gerard* involved "an integrated contract which did not contain a condition precedent." *Gerard*, 448 N.W.2d at 701. Here, by contrast, the written contract had a gap in it. It was not integrated on the question of when the subsequent payment was to be made. Second, in *Gerard*, the record affirmatively showed

[3] Thomas does not dispute the district court's finding that Chau attempted in good faith to obtain financing and was unable to do so.

that a loan contingency clause was not part of the parties' contract. *Id*. The buyers had asked the realtor about including such a clause and were told "it wasn't necessary." *Id*. at 700-01. As we put it, "Although the Petersons clearly were familiar with this type of clause, they unfortunately chose to rely on the bad advice of this realtor, and did not insist on including it in their contract." *Id*. at 701. Here, by contrast, Chau was not told that a financing condition "wasn't necessary"; she understood from her discussions with Thomas that it was part of the deal.

Lastly, Thomas argues that even if financing was a condition precedent to the purchase of the nail care salon, the district court erred in ruling that he had to repay the deposit. Here too, we believe the district court analyzed the law correctly. According to Restatement (Second) of Contracts section 377, at 224, when a party's duty is discharged because of non-occurrence of a condition, that party is entitled to restitution for any benefit he or she has conferred on the other party by way of part performance or reliance. That principle applies here. Because Chau's duty to perform was discharged based on non-occurrence of a condition, she was entitled to recover the down payment she had made to Thomas. Even if the disputed language on the second page were deemed part of the contract,[4] it only provides that someone who "breaks" the agreement would lose the deposit. Under the district court's findings, Chau did not break the contract.

[4] The district court found the second page was not part of the contract executed by the parties on November 27, 2007.

IV. Conclusion.

For the foregoing reasons, we affirm the judgment below.

AFFIRMED.