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STATE OF MINNESOTA
IN COURT OF APPEALS
A11-744

Cintas Corporation,
Respondent,

vs.

Elite Line Services, LLC,
Appellant.

Filed February 13, 2012
Affirmed
Johnson, Chief Judge

Hennepin County District Court
File No. 27-CV-09-18348

Jonathan P. Norrie, Bassford Remele, P.A., Minneapolis, Minnesota (for respondent)

Paula Duggan Vraa, Stephen P. Laitinen, Larson King, LLP, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Chief Judge; Schellhas, Judge; and Crippen, Judge.*

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*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D   O P I N I O N

JOHNSON, Chief Judge

The parties to this appeal entered into a five-year service agreement in May 2005 and another five-year service agreement in October 2005. Appellant unilaterally terminated the business relationship in February 2009, before either five-year period had expired. Respondent commenced this lawsuit, alleging that appellant breached the second agreement. On the first day of trial, the district court resolved a motion *in limine* by ruling that the second agreement was an integrated contract such that the first agreement was of no effect, but the district court permitted appellant to introduce evidence referring to the first agreement to provide the jury with background information about the parties' course of dealing. At the conclusion of trial, the jury returned a verdict in favor of respondent and awarded damages. The district court assessed pre-verdict interest at the rate of ten percent, relying on a recently amended statute that increased the rate of pre-verdict interest while the case was pending.

Appellant raises two issues. First, appellant challenges the district court's ruling on respondent's motion *in limine*. Second, appellant challenges the district court's application of the amended pre-verdict-interest statute, arguing that the statute does not apply to a case commenced before its effective date or, in the alternative, that such an application would be unconstitutional. We affirm.

FACTS

Cintas Corporation is engaged in the business of renting uniforms to commercial customers. It also rents floor mats and sells other supplies, such as commercial and

industrial soaps. Elite Line Services, LLC, provides operational and maintenance services for the Minneapolis-St. Paul International Airport's baggage-handling, passenger-boarding, and ground-support systems.

In May 2005, Cintas and Elite entered into a written agreement by using one of Cintas's pre-printed forms, which is entitled, "Standard Uniform Rental Service Agreement." This agreement provided that Cintas would provide Elite with the following services:

Item	**Quantity**	**Price/Week/Unit**
Comfort Shirt / Pleated Pant	9	$4.40
Lined Work Jacket	1	$0.60
Kresto [soap] Service	Any	$4.10
Estesol [soap] Service	Any	$2.95
3x10 Black Mat	Any	$4.15
4x6 Black Mat	Any	$3.50
3x5 Black Mat	Any	$2.95

This agreement specified a 60-month term, with pre-determined price increases on each anniversary date. The agreement also provided that, if Elite unilaterally terminated the agreement before its expiration for any reason other than documented quality problems, Elite would be required to pay Cintas liquidated damages equal to "50% of the average weekly invoice total multiplied by the number of weeks remaining in the unexpired term."

In October 2005, Cintas and Elite entered into a second agreement by using a Cintas pre-printed form entitled, "Flame Resistant Garment Service Agreement." This agreement provided that Cintas would provide Elite with the following services:

Item	Quantity	Price/Week/Unit
Indura Ultra Soft Shirt / Pant Combo	9	$9.85
Comfort Shirt / Comfort Pant	9	$4.40
Lined Work Jacket	1	$0.60
3x10 Carpeted Floor Mat	Any	$4.15
4x6 Carpeted Floor Mat	Any	$3.50
3x5 Carpeted Floor Mat	Any	$2.95

The second agreement also specifies a 60-month term, with pre-determined price increases on each anniversary date. The second agreement also prescribes liquidated damages for Elite's unjustified unilateral termination, but in an amount equal to "the average weekly invoice total multiplied by the number of weeks remaining in the unexpired term," *i.e.*, the full amount of the contract price for the remainder of the contract term.

A comparison of the two agreements reveals three differences between them. First, the parties added a fire-resistant shirt-and-pant combination. Second, the parties discontinued the deliveries of soap. Third, the parties changed the amount of liquidated damages from 50 percent to 100 percent of the contract price.

From October 2005 to February 2009, Cintas provided the services specified in the second agreement. But Cintas increased its prices in May of 2006, 2007, and 2008, coinciding with the anniversary dates of the first agreement.

Elite eventually became dissatisfied with Cintas's performance. In November 2008, Elite provided written notice to Cintas that it would terminate its business relationship with Cintas, effective February 12, 2009, which was approximately 20 months before the expiration of the second agreement. The letter in which Elite provided

written notice to Cintas refers to the second agreement, but not the first agreement, in the subject line.

In April 2009, Cintas commenced this action against Elite. In its complaint, Cintas pleaded one count of breach of contract, alleging that Elite breached the second agreement by terminating the contractual relationship before October 2010. The complaint does not mention the first agreement.

After the close of discovery, the parties filed cross-motions for summary judgment. In August 2010, the district court granted Cintas's motion for partial summary judgment by ruling that Elite was bound by the second agreement despite Elite's argument that its signatory did not have authority to bind the company. At the same time, the district court denied Elite's motion by ruling, among other things, that the liquidated damages provision of the second agreement is enforceable.

The case was tried to a jury for one week in October 2010. On the first day of trial, Cintas orally moved *in limine* to clarify the relationship between the first agreement and the second agreement. Cintas argued that, because the second agreement governed the parties' relationship since October 2005, evidence concerning the first agreement should be inadmissible on the ground that it is irrelevant and likely to confuse the jury. In response, Elite argued that the first agreement is relevant because, in its view, the liquidated-damages clause of the second agreement should govern only Cintas's flame-resistant uniforms, which did not appear until the second agreement, while the liquidated-damages clause of the first agreement should govern the remaining services. Elite's responsive argument prompted Cintas to reply by arguing that the liquidated-damages

clause of the second agreement should govern *all* of the services identified in that agreement.

The district court resolved Cintas's motion *in limine* by ruling that the first agreement is admissible for a limited purpose, thereby denying Cintas's stated request for relief, and by ruling that the second agreement is an integrated contract, thereby granting what was effectively Cintas's alternative request for relief. The district court stated:

> Based on the actions of the parties before this lawsuit and up until this lawsuit following the [second] agreement, . . . it appears that they acted on the [second] agreement and the Court would have to conclude the [second] agreement is an integrated agreement.
>
> Now, that being said, I will tell the jury that [it is] the [second] agreement which was terminated by Elite and that [the jury] is to decide whether or not the termination was justified and the amount of damages. . . . If [the first agreement] is introduced, I would then give an instruction to the jury at the time of its introduction that the Court has decided the [first] agreement is merged into the [second] agreement and is no longer a separate legal agreement [but rather] is being allowed to show the background course of dealing of the parties only.

On the morning of the second day of trial, Elite sought to revisit the district court's ruling that the second agreement is an integrated agreement. Elite did so by describing three different ways in which the district court could instruct the jury on damages. First, Elite stated its preference for a jury instruction applying the liquidated-damages clause of the second agreement to only the flame-resistant uniforms and applying the liquidated-damages clause of the first agreement to the other services. Second, Elite described an alternative instruction applying the liquidated-damages clause of the second agreement to

only the flame-resistant uniforms and requiring Cintas to prove actual damages with respect to the other services. Third, Elite described a second alternative instruction applying the liquidated-damages clause of the second agreement to all services. Elite filed supplemental proposed jury instructions in written form that corresponded to these three alternative approaches. The appellate record is inconclusive as to how the district court actually instructed the jury because Elite did not request a full transcript, preferring instead to request and submit only limited excerpts.

At the conclusion of trial, the jury found in favor of Cintas and awarded damages in the amount of $62,202.60. Elite moved for judgment as a matter of law or, in the alternative, a new trial. The district court denied Elite's post-trial motion. On January 3, 2011, the court administrator entered judgment in the amount of the jury's verdict. In February 2011, the district court issued an order awarding Cintas pre-verdict interest in the amount of $9,440.16, which was calculated at a rate of ten percent. On February 25, 2011, the court administrator entered a second judgment in that amount. Elite appeals.

D E C I S I O N

I. Motion *in Limine*

Elite first argues that the district court erred in ruling on Cintas's motion *in limine* by concluding that the second agreement is an integrated contract. Elite contends that the two agreements were "separate and independent contracts, dealing with entirely different subject matters." Elite requests a new trial "to permit the jury to hear the evidence about the two contracts, their different subject matters, and their different liquidated damages clauses."

We begin by considering the scope of our review and the potential relief available on appeal. Elite's argument suggests that the district court excluded all evidence of the first agreement. But the district court merely announced its intention to give the jury a limiting instruction in the event that the first agreement was introduced into evidence. The district court stated that it would instruct the jury that "the [first] agreement is merged into the [second] agreement and is no longer a separate legal agreement [but rather] is being allowed to show the background course of dealing of the parties only." The district court later clarified that its ruling prevented Elite from introducing only limited types of evidence, namely, evidence of the negotiations leading to the first agreement and the reasons for the 50-percent liquidated-damages clause in the first agreement. The appellate record is inconclusive as to whether the first agreement actually was introduced into evidence because, as stated above, Elite did not submit a full trial transcript.

The district court's ruling on Cintas's motion *in limine* prefigured the content of the jury instructions more than it determined the admissibility of evidence, as Elite's trial counsel recognized on the second day of trial. Elite attempted to persuade the district court to reframe the damages issues or perhaps to reconsider its earlier ruling, but to no avail. Elite's appellate argument for a new trial would be more logical if Elite also were arguing that the district court erred in instructing the jury. But Elite does not make such an argument, perhaps because Elite did not properly preserve that argument when it proposed an alternative instruction applying the 100-percent liquidated-damages clause of the second agreement to all of Cintas's services. *See* Minn. R. Civ. P. 51.04(a). As is,

Elite seeks a new trial so that it can introduce additional evidence about certain additional aspects of the first agreement, even though the jury was instructed to apply only the second agreement. It is difficult to conceive how the alleged error would not be harmless, *see* Minn. R. Civ. P. 61, or how Elite would benefit from a new trial.

In any event, the district court did not err when it ruled that the second agreement is an integrated contract such that the liquidated-damages clause of the first agreement does not apply to the parties' dispute, and when it announced its intention to give the jury a limiting instruction concerning the relevance of the first agreement. The parol evidence rule generally "'prohibits the admission of extrinsic evidence of prior or contemporaneous oral agreements, or prior written agreements, to explain the meaning of a contract when the parties have reduced their agreement to an unambiguous integrated writing.'" *Alpha Real Estate Co. v. Delta Dental Plan*, 664 N.W.2d 303, 312 (Minn. 2003) (quoting Richard A. Lord, *Williston on Contracts* § 33:1, at 541 (4th ed. 1999)). The parol evidence rule permits such evidence only if the written agreement at issue is "ambiguous or incomplete," in which case "'evidence of oral agreements tending to establish the intent of the parties is admissible.'" *Gutierrez v. Red River Distrib., Inc.*, 523 N.W.2d 907, 908 (Minn. 1994) (quoting *Material Movers, Inc. v. Hill*, 316 N.W.2d 13, 17 (Minn. 1982)). In other words, an exception to the parol evidence rule exists if it appears from the circumstances that "the parties did not intend the document to be a complete and final statement of the whole of the transaction between them," in which case a district court may admit parol evidence concerning "the existence of any separate oral agreement as to any matter on which the document is silent, and which is not

inconsistent with its terms." *Bussard v. College of St. Thomas, Inc.*, 294 Minn. 215, 224, 200 N.W.2d 155, 161 (1972) (quotation omitted).

In this case, the exception to the parol evidence rule does not apply. The parties observed the terms of the second agreement after its execution in October 2005 in the sense that Cintas delivered the services described in the second agreement and Elite paid Cintas for those services. When Elite sought to unilaterally terminate its contractual relationship with Cintas, Elite's Vice President and General Manager did so by sending a letter to Cintas with a subject line that referenced the "Flame Resistant Garment Service Agreement . . . *dated October 27, 2005*," and only that agreement. The only deviation from the terms of the second agreement was Cintas's annual price increases, which occurred in May of 2006, 2007, and 2008, in keeping with the anniversary dates of the first agreement. But that one deviation is insufficient to establish that "the parties did not intend the [second agreement] to be a complete and final statement of the whole of the transaction between them." *See id.* at 224, 200 N.W.2d at 161 (quotation omitted). Rather, the totality of the circumstances indicate that the second agreement is unambiguous and complete in governing the parties' relationship. *See Alpha Real Estate*, 664 N.W.2d at 312; *Gutierrez*, 523 N.W.2d at 908.

Elite cites *W.R. Millar Co. v. UCM Corp.*, 419 N.W.2d 852 (Minn. App. 1988), in support of its contention that the two agreements in this case are independent and do not address the same subject matter. The facts of *W.R. Millar* are readily distinguishable. In that case, the parties entered into two agreements, one month apart, but the agreements concerned entirely different types of goods, without any overlap. *Id.* at 853-54. In this

case, in contrast, the services in the two agreements substantially overlapped. After the execution of the second agreement, Cintas performed services that were not mentioned in the first agreement and ceased to deliver other services that were identified in the first agreement but not in the second agreement.

Elite further contends that the second agreement is not integrated because it does not contain an express integration clause. The lack of an express integration clause, however, is not dispositive. "The absence of a merger clause in a writing does not necessarily open the door to parol evidence." *Minnesota Teamsters Pub. & Law Enforcement Emps. Union, Local 320 v. County of St. Louis*, 726 N.W.2d 843, 848 (Minn. App. 2007) (quotation and alteration omitted), *review denied* (Minn. Apr. 25, 2007). As stated above, the totality of the circumstances indicate that the second agreement is an unambiguous and complete statement of the parties' agreement.

In light of our conclusion that the district court appropriately applied the parol evidence rule, we also conclude that the district court did not abuse its discretion by announcing its intention to limit the purposes for which the first agreement could be offered into evidence. *See* Minn. R. Evid. 401, 402, 403; *Bergh & Mission Farms, Inc. v. Great Lakes Transmission Co.*, 565 N.W.2d 23, 26 (Minn. 1997) (stating that trial court's rulings on admission and exclusion of evidence should not be reversed except for "clear abuse of discretion" or "erroneous view of the law"); *Hebrink v. Farm Bureau Life Ins. Co.*, 664 N.W.2d 414, 418 (Minn. App. 2003) (stating that purpose of motion *in limine* is to prevent "injection into trial of matters which are irrelevant, inadmissible and prejudicial" (quotation omitted)). And even if we assume that the district court erred by

limiting Elite's evidence concerning the first agreement, Elite is not entitled to a new trial because it cannot demonstrate that the evidence "might reasonably have changed the result of the trial if it had been admitted." *Becker v. Mayo Found.*, 737 N.W.2d 200, 214 (Minn. 2007) (quotation omitted); *see also* Minn. R. Civ. P. 61.

Therefore, the district court did not err in ruling on Cintas's motion *in limine*.

II. Pre-Verdict Interest

Elite also argues that the district court erred by calculating all pre-verdict interest at the rate of ten percent, pursuant to a 2009 amendment to Minn. Stat. § 549.09, subd. 1(b), (c), which became effective on August 1, 2009. Elite argues that the district court should have used the rate of four percent, which was in effect before August 1, 2009, for interest occurring before that date.

Elite's argument has two parts. Elite first contends that the district court erred by retroactively applying the amended pre-verdict-interest statute to the time period of April 17, 2009, to July 31, 2009, despite the absence of legislative intent to apply the amended statute retroactively. Elite's argument concerns a matter of statutory interpretation, to which we apply a *de novo* standard of review. *Goodman v. Best Buy, Inc.*, 777 N.W.2d 755, 758 (Minn. 2010).

The amended statute provides that judgments of more than $50,000 accrue interest at the rate of ten percent from the commencement of the action until the verdict. Minn. Stat. § 549.09, subd. 1(a), (b), (c)(2) (2010). The legislature determined that the statute should become effective August 1, 2009, and should "appl[y] to judgments and awards finally entered on or after that date." 2009 Minn. Laws ch. 83, art. 2, § 35, at 1055. The

plain language of the session law demonstrates that the legislature intended the amended statute to apply to cases such as this one, in which a judgment is entered after August 1, 2009, without regard for when the case was commenced. *See County of Washington v. TMT Land V, LLC*, 791 N.W.2d 132, 134-35, 138 (Minn. App. 2010) (applying amended pre-verdict-interest statute to judgment entered in October 2009 on jury verdict returned in June 2009 in case commenced in 2006 or 2007).

Elite also contends, in the alternative, that if the amended statute applies to this case, such an application would be a violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The Due Process Clause "prohibits retroactive legislation when it divests any private vested interest." *K.E. v. Hoffman*, 452 N.W.2d 509, 512 (Minn. App. 1990), *review denied* (Minn. May 7, 1990). A private vested interest that is protected from retroactive legislation may arise upon a final judgment. *See, e.g.*, *In re Individual 35W Bridge Litig.*, 806 N.W.2d 820, 830-31 (Minn. 2011) (citing *Holen v. Minneapolis-St. Paul Metro. Airports Comm'n*, 250 Minn. 130, 136, 84 N.W.2d 282, 287 (1957)). But a person does not have a private vested interest that is protected from retroactive legislation in a pending claim, or even in a district court judgment that is pending on appeal. *U.S. Home Corp. v. Zimmerman Stucco & Plaster, Inc.*, 749 N.W.2d 98, 101 (Minn. App. 2008), *review denied* (Minn. Aug. 5, 2008). Thus, Elite's interest in paying pre-verdict interest at a rate of four percent was not vested on August 1, 2009, and, thus, was not constitutionally protected from retroactive legislation.

Therefore, the district court did not err by calculating pre-verdict interest at the rate of ten percent for the period of time between the commencement of the action and the effective date of the amended statute.

Affirmed.