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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-649

Filed: 15 January 2019

Mecklenburg County, No. 16-CVD-017036

LINDA WELCH, Plaintiff,

v.

R&M CHARLOTTE LLC d/b/a TWO MEN AND A TRUCK, Defendant.

Appeal by defendant from judgment entered 28 February 2017 by Judge Becky T. Tin in Mecklenburg County District Court. Heard in the Court of Appeals 14 December 2017.

Scott Taylor, PLLC, by J. Scott Taylor, for plaintiff-appellee.

Hedrick Gardner Kincheloe & Garofalo LLP, by M. Duane Jones and Allen C. Smith, for defendant-appellant.

BERGER, Judge.

R&M Charlotte LLC d/b/a Two Men and a Truck ("Defendant") appeals from judgment entered February 28, 2017, which found it liable for either the repair or replacement of property owned by Linda Welch ("Plaintiff") that had been damaged during Plaintiff's move from Charlotte to Waynesville, North Carolina. Defendant argues that the trial court erred by (1) finding Plaintiff had purchased additional

insurance to cover up to $12,000.00 in losses during her move; and (2) concluding that Defendant must repair or replace a sofa damaged in transit in a manner inconsistent with remedies contemplated in the contract between the parties. After review, we affirm in part, and reverse and remand in part.

Factual and Procedural Background

In 2004, Plaintiff purchased a sofa for approximately $3,000.00, along with a matching love seat. In 2015, Plaintiff hired Defendant to move her furniture from Charlotte to Waynesville, North Carolina. On May 21, 2015, the parties executed a bill of lading (the "Bill of Lading"), which gave the terms by which Defendant would deliver the contents of Plaintiff's residence to her new home. The Bill of Lading incorporated an insurance addendum (the "Insurance Addendum"), which described the two options available to Plaintiff "to cover loss and/or damages" associated with Defendant's moving services: "Basic Value Protection" or "Full Value Protection." In both the Bill of Lading and the Insurance Addendum, an additional $90.00 charge is noted for Plaintiff's election of Full Value Protection for up to $12,000.00 of insurance coverage.

Also the Bill of Lading reflects Defendant's attestation that it received "all property . . . in good condition" and Plaintiff's signature noting her agreement that "all property" had been delivered "in good condition, except as noted on the inventory form." Although no "inventory form" appears in our record, there is the "Damage

Report" submitted by Plaintiff to Defendant on the same day of the move, in which Plaintiff claimed that the sofa's armrest had been torn during the move. Plaintiff testified at trial that a padded cover had been placed on the sofa to protect it during transport, but the cover had fallen off when the movers carried the sofa into Plaintiff's new residence. When that happened, Plaintiff had asked Defendant to replace the protective cover before moving the sofa any farther. Unfortunately, Defendant did not heed Plaintiff's warning and tore the sofa's armrest when the sofa was pushed through Plaintiff's door without any protective covering.

After Plaintiff had filed her Damage Report, Defendant sent a repair person to inspect the sofa. The repair person concluded that the sofa's armrest needed to be replaced and suggested that the sofa be returned to the manufacturer because he was uncomfortable making the repair himself. However, Defendant sent another repair person to Defendant's house to collect and repair the sofa. The sofa was returned to Plaintiff on June 30, 2015, but instead of replacing the armrest, the second repair person had merely sprayed paint over the damage. Plaintiff immediately pointed out the discoloration and texture change of the repaired fabric to Defendant, and told Defendant that the repair had not been done as promised. Instead of responding to Plaintiff's concerns, Defendant sent a letter to Plaintiff on August 4, 2015, stating that her damage claim had been resolved.

After unsuccessful attempts to contact Defendant by telephone, Plaintiff wrote to Defendant in February 2016 and claimed the sofa had been damaged by Defendant's negligence and that Defendant had failed to restore the sofa to its previous condition. Plaintiff also stated that the sofa's manufacturer, Masterfield Furniture Company ("Masterfield"), was able to make the necessary repairs. Plaintiff asked Defendant to pay for Masterfield to repair the sofa and transport it to and from Masterfield. On March 10, 2016, Defendant responded to Plaintiff by refusing to provide any further compensation or repairs.

On August 26, 2016, Plaintiff filed suit against Defendant in Mecklenburg County small claims court. On September 23, 2016, Plaintiff was awarded $3,311.28 to cover the replacement cost of the damaged sofa with interest. Defendant appealed to district court and, after arbitration, Plaintiff was awarded $3,155.00, plus interest and costs, on December 14, 2016. Defendant again appealed. After a bench trial in district court, judgment was entered for Plaintiff and Defendant was ordered to transport the sofa to Masterfield and pay for the repair or replacement of the sofa. It is from that judgment that Defendant timely appeals.

Analysis

"The standard of review on appeal from a judgment entered after a non-jury trial is whether there is competent evidence to support the trial court's findings of fact and whether the findings support the conclusions of law and ensuing judgment."

Cartin v. Harrison, 151 N.C. App. 697, 699, 567 S.E.2d 174, 176 (2002). "Conclusions of law drawn by the trial court from its findings of fact are reviewable *de novo* on appeal." *Carolina Power & Light Co. v. City of Asheville*, 358 N.C. 512, 517, 597 S.E.2d 717, 721 (2004).

"Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal." *Koufman v. Koufman,* 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (citation omitted). "Findings of fact supported by competent evidence are binding on appeal, notwithstanding the existence of contradictory evidence." *Terry's Floor Fashion's, Inc. v. Crown Gen. Contractors, Inc.*, 184 N.C. App. 1, 10, 645 S.E.2d 810, 816 (2007) (citations omitted).

Defendant first argues that the trial court erred by finding that Plaintiff had properly contracted for Full Value Protection insurance coverage for up to $12,000.00 in losses, rather than the default Basic Value Protection coverage. We disagree and affirm this portion of the trial court's order. Defendant also argues that the trial court erred by foreclosing on Defendant's contractual right to provide alternative methods of relief to Plaintiff. Here, we agree with Defendant, and reverse this part of the order and remand.

I. Full Value Protection vs. Basic Value Protection Insurance

Defendant contests only one finding of fact in the order on appeal, which states that Plaintiff had "purchased full value protection insurance from [Defendant] to cover damages up to $12,000." Relying on the facts that Plaintiff's shipment weighed 5,000 pounds and that the Insurance Addendum states under the Full Value Protection coverage option that "[t]he minimum value of the shipment will be $4.00 times the weight of the shipment," Defendant argues that for Plaintiff to have more than basic coverage, she was required to pay $150.00, which would have given her $20,000.00 in coverage. However, Plaintiff estimated the value of her property to be $12,000.00 for which she paid $90.00 to insure. Defendant argues that Plaintiff's insurance coverage was therefore limited to the default Basic Value Protection plan. We disagree as there is competent evidence to support the trial court's finding that Plaintiff properly elected to receive Full Value Protection.

"It is a well-recognized principle of construction that when the language of a contract is clear and unambiguous, the court must interpret the contract as written, and [t]he heart of a contract is the intention of the parties, which is to be ascertained from the expressions used, the subject matter, the end in view, the purpose sought, and the situation of the parties at the time." *Root v. Allstate Ins. Co.*, 272 N.C. 580, 583, 158 S.E.2d 829, 832 (1968) (citations and quotation marks omitted).

> Interpreting a contract requires the court to examine the language of the contract itself for indications of the parties' intent at the moment of execution. If the plain language of a contract is clear, the intention of the parties is inferred

> from the words of the contract. Intent is derived not from a particular contractual term but from the contract as a whole. . . . Furthermore, when the terms of a contract are plain and unambiguous, there is no room for construction. The contract is to be interpreted as written, and enforced as the parties have made it.

State v. Philip Morris USA Inc., 363 N.C. 623, 631-32, 685 S.E.2d 85, 90-91 (2009) (*purgandum*[1]).

Here, neither party contests that the Bill of Lading, along with the Insurance Addendum, bound the parties to the contractual terms of those documents. However, Defendant challenges the trial court's interpretation of the insurance coverage provisions of the contract. The disputed portion of the Bill of Lading states:

> **VALUATION:** Shipper must initial the option selected.
> **Choose one.**
> [handwritten]
> ___ **Basic Value Protection.** I release this shipment to a value of 60 cents per pound per article. **This lower level of of** [*sic*] **protection is provided at no additional cost beyond the base rate. However, it provides only minimal protection that is considerably less than the average value of household goods.**
>
> <u>LW</u> **Full Value Protection.** I release this shipment to a value of $4.00 times actual weight in pounds of shipment or declared lump sum value of $<u>**12,000**</u>.
> (Declared value must be at least $4.00 per pound times weight of shipment.) **LW $90**

[1] Our shortening of the Latin phrase "*Lex purgandum est.*" This phrase, which roughly translates "that which is superfluous must be removed from the law," was used by Dr. Martin Luther during the Heidelberg Disputation on April 26, 1518 in which Dr. Luther elaborated on his theology of sovereign grace. Here, we use *purgandum* to simply mean that there has been the removal of superfluous items, such as quotation marks, ellipses, brackets, citations, and the like, for ease of reading.

Both parties also signed the Insurance Addendum, which states, in pertinent part:

> **ADDENDUM TO UNIFORM HOUSEHOLD GOODS BILL OF LADING**
>
> SHIPPER DECLARATION OF VALUE
>
> **IMPORTANT:** There are two (2) options available to cover loss and/or damages:
>
> **Option 1: Basic Value Protection. This lower level of value protection is provided at no additional cost. However, it only provides minimal protection that is considerably less than the average value of household goods.** The carrier's maximum liability shall be $0.60 per pound for the actual weight on any lost or damaged article or articles, if the shipment has been expressly released by the shipper to such value per article. Under this option, a claim for any article that may be lost, destroyed or damaged while in the custody of your mover will be settled based on the weight of the individual article multiplied by 60 cents. . . .
>
> **Option 2: Full Value Protection.** The minimum value of the shipment will be $4.00 times the weight of the shipment. However, you have the right to declare that your shipment has a greater value and pay for that increased protection. If items are lost, the mover will have the options of replacing them with the articles of like kind and quality or paying the replacement costs as determined by current market value. If items are damaged, the mover will have the same options, plus the additional options of repairing the items or paying the repair cost. All damaged items that are either replaced or reimbursed at full-market value become the property of the mover. . . .

The "Option 2" phrase adjacent to the Full Value Protection description above had been circled on the signed original. Below these option descriptions, a "Declaration" section was included, which states:

> Prior to the move, the shipper must select one of the options listed below. If the carrier fails to require the shipper to choose one of the liability options, the shipper will be considered to have chosen Option 1 (Basic Value Protection).
>
> Shipper hereby releases the entire shipment to a value not exceeding:

______________________ Signature of Shipper and Date	Option 1 – Basic Value Protection – $.60 per pound per article.
Linda Welch 5-21-15 LW ______________________ Signature of Shipper and Date	Option 2 – Full Value Protection – $4.00 times the actual weight in pounds of shipment or a declared lump sum value of $ **12,000** . **$90**

> This document shall be completed and signed PRIOR TO MOVE and made a permanent part of the Bill of Lading.
>
> BILL OF LADING/ORDER NO: **92-7919** DATE **05/21/15**
>
> NAME OF SHIPPER **Linda Welch** .
>
> ( ) HOURLY RATE MOVE (**X**) WEIGHT & DISTANCE MOVE
>
> CARRIER REPRESENTATIVE **EB** .

Taken together, the plain language of the Bill of Lading and the Insurance Addendum call for Plaintiff to choose between two options of insurance coverage: (i) Basic Value Protection, which was the lower-coverage default plan "provided at no additional cost"; or (ii) Full Value Protection, which would require Plaintiff to pay an additional fee for a higher-level of coverage. Defendant, by writing "choose one" above the Basic and Full Value options shows its intent to offer Plaintiff a choice between these two options. Additionally, as shown above, the Insurance Addendum states that "[p]rior to the move, the shipper must select one of the options listed above," and then prompts the shipper to write the date and sign their name next to his or her selected coverage option.

The Bill of Lading and Insurance Addendum further demonstrate Plaintiff's clear intention to select the Full Value Protection option. Plaintiff initialed the Full Value Protection" option on the Bill of Lading, and, on the Insurance Addendum, Plaintiff also dated, initialed, and signed her name next to "Option 2: Full Value Protection."

Finally, the parties' signatures and the handwritten notations of "$12,000" for "lump sum value," and "$90" for the cost to insure this value, on the Bill of Lading and Insurance Addendum evidence the parties' mutual intent that these are the terms under which they would be bound. These hand-written notations demonstrate

Plaintiff's intent that in exchange for the extra $90.00 fee, she would receive coverage for $12,000.00 under the Full Value Protection option.

Defendant's acceptance of these terms is primarily illustrated by the initials "EB" on the signature line at the bottom of Insurance Addendum, next to "CARRIER REPRESENTATIVE." Additionally, "$90" was written next to "Full Value Protection" in the Bill of Lading's itemized list of charges and Defendant's representative signed the Bill of Lading to specifically acknowledge that "[p]ayment [was] [r]eceived at [d]estination." From this, it is clear that Defendant accepted Plaintiff's offer to pay an extra $90.00 in exchange for $12,000.00 of Full Value Protection coverage. The plain language of the Bill of Lading and Insurance Addendum illustrate a meeting of the minds whereby Defendant would provide $12,000.00 of Full Value Protection coverage in exchange for Plaintiff's payment of an additional $90.00 fee.

Because the terms of the Bill of Lading and Insurance Addendum are "plain and unambiguous," the "contract is to be interpreted as written, and enforced as the parties have made it." *Philip Morris USA Inc.*, 363 N.C. at 362, 685 S.E.2d at 91 (*purgandum*). Accordingly, we affirm the trial court's finding that Plaintiff "purchased full value protection insurance from [Defendant] to cover damages up to $12,000."

II. <u>Conclusions Limiting Methods of Relief</u>

Defendant next challenges the trial court's conclusion that Defendant must repair or replace the damaged sofa, as such a conclusion foreclosed on Defendant's contractual right to provide alternative methods of relief to Plaintiff. We agree.

Again, "[t]he heart of a contract is the intention of the parties. . . ." *Root*, 272 N.C. at 583, 158 S.E.2d at 832 (citations and quotation marks omitted). Therefore, "[i]f the plain language of a contract is clear, the intention of the parties is inferred from the words of the contract . . . [and] [t]he contract is to be interpreted as written, and enforced as the parties have made it." *Philip Morris USA Inc.*, 363 N.C. at 631-32, 685 S.E.2d at 90-91 (*purgandum*).

The Full Value Protection option on the Insurance Addendum states, in pertinent part, that

> [i]f items are lost, the mover will have the options of replacing them with the articles of like kind and quality or paying the replacement costs as determined by current market value. If items are damaged, the mover will have the same options, plus the additional options of repairing the items or paying the repair cost. All damaged items that are either replaced or reimbursed at full-market value become the property of the mover.

Both parties executed the Insurance Addendum agreeing to these terms. The plain language of this provision clearly states that if property is damaged, Defendant has the option to either: (i) replace the damaged item with one of "like kind and quality"; (ii) pay the replacement costs "as determined by current market value"; (iii) repair the item; or (iv) pay the repair cost.

Defendant argues that the trial court erred in interpreting this provision when it outlined the exclusive remedy available to Plaintiff:

> 1. Defendant shall pay for and ensure the safe moving of Plaintiff's couch from Plaintiff's home on or about Thursday, March 16, 2017, to Masterfield Furniture Company in Taylorsville, North Carolina;
>
> 2. If Masterfield certifies to [Defendant] that it can restore the arm of [Plaintiff's] sofa to the relative condition that it was in prior to the move on May 21, 2015, then [Defendant] is to pay Masterfield in full to make those repairs as expediently as possible and return the sofa to [Plaintiff] in the condition that it leaves Masterfield as expediently as possible at the cost of [Defendant];
>
> 3. If Masterfield informs [Defendant] that it is unable to repair [Plaintiff's] sofa arm to the relative condition that it was in prior to the move on May 21, 2015, then [Defendant] must purchase a new sofa from Masterfield; a sofa which Masterfield certifies is comparable in color and quality to [Plaintiff's] original sofa and [Defendant] is to move that sofa into [Plaintiff's] home as expediently as possible all at the cost of [Defendant].

In ordering Defendant to have the sofa repaired or replaced exclusively by Masterfield, the trial court limited the contractual remedies to which the parties had originally agreed, and also took away Defendant's contractual right to choose which remedy it would use to satisfy its contractual obligation. In requiring Defendant to either repair or replace Plaintiff's sofa through Masterfield, the trial court took away two of Defendant's alternative options. Pursuant to contract, Defendant also had the option to compensate Plaintiff in a manner that would permit her to repair or replace the damaged item herself. Additionally, neither the Bill of Lading nor the Insurance Addendum specified the manner in which Defendant would repair or replace the

damaged item. Therefore, the parties never agreed that Defendant would have to rely on the manufacturer of the damaged item for repair or replacement. Because this dispute is governed by the clear and unambiguous contract terms, the trial court could only interpret the contract as written, and enforce it within the terms agreed to by the parties. Therefore, we reverse the order of the trial court insofar as it is inconsistent with the terms of the contract, and remand.

Conclusion

We affirm the trial court's finding that Plaintiff had purchased Full Value Protection coverage for any loss up to $12,000.00. We reverse and remand for the trial court to enter an order that is consistent with the terms of the parties' contract.

AFFIRMED IN PART; REVERSED AND REMANDED IN PART.

Judges HUNTER, JR. and INMAN concur.

Report per Rule 30(e).