COURT OF APPEALS
DECISION
DATED AND FILED

April 30, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP2223 **Cir. Ct. No. 2010CV1818**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

LEASING SERVICES LLC,

PLAINTIFF-APPELLANT,

V.

MACHINIST AFL-CIO LODGE 6S,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Washington County: JAMES K. MUEHLBAUER, Judge. *Reversed.*

Before Brown, C.J., Reilly and Gundrum, JJ.

¶1 PER CURIAM. In this collection case, Leasing Services, LLC, appeals from an order denying its motion for summary judgment and granting the summary judgment motion of Machinist AFL- CIO Lodge 6S ("the Union"). The

circuit court concluded that the equipment lease between the parties was unconscionable at its inception. We disagree and reverse.

¶2 In April 2006, United Leasing Associates of America, Ltd., and the Union entered into a six-year commercial equipment lease agreement under which the Union agreed to pay $2,289.00 per month for three Sharp copiers and ancillary equipment. The monthly payment also included the balance remaining on prior lease agreements with other financing companies. United Leasing later assigned the lease to appellant Leasing Services, LLC, located in Germantown, Wisconsin. The Union is located in Bath, Maine.

¶3 Union Office Solutions is the vendor that presented the lease to the Union. William Rudis, the Union's representative, sought out Rod Eckland,[1] Office Solutions' president and owner, as Rudis had met Eckland before, Office Solutions had supplied copiers to the Union in the past, and Rudis typically did not shop for Union equipment.[2] Eckland told Rudis that Office Solutions' pricing terms were "the best in the business … somewhere around dealer cost or below." Rudis testified later that he relied on Eckland's representations and assessment of the Union's needs. An authorized Sharp sales and service provider in Maine later advised the Union and the court by affidavit that the monthly fee actually exceeded the "dealer cost" by a factor of three.

[1] Office Solutions' president and owner is referred to in the record both as "Rod Eckland" and "Rod Eitland." We use "Eckland" to be consistent with the circuit court.

[2] Rudis is an international union representative who was brought in to the local union lodge in Bath to address mismanagement issues. He was made a trustee, which required that he handle contracts, including this lease agreement.

¶4 After making twenty-seven of the seventy-two payments, the Union advised Leasing Services that financial hardship prevented it from honoring the remainder of the lease. Leasing Services filed suit. Although the lease agreement contained a "hell or high water" clause that required performance no matter what, the Union answered that the terms of the lease were unconscionable, making the irrevocable agreement unenforceable. The parties both moved for summary judgment, Leasing Services seeking a money judgment and the Union seeking dismissal of the case.

¶5 The circuit court concluded that the lease agreement was substantively unconscionable because it unreasonably favored Leasing Services and also was procedurally unconscionable because Leasing Services was in a position of superior bargaining power, compared to Rudis. Accordingly, the court concluded that the lease should not be enforced. Leasing Services moved for reconsideration, to no avail. Leasing Services appeals.

¶6 We review de novo the grant of summary judgment, employing the same methodology as the circuit court. ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 314-16, 401 N.W.2d 816 (1987). A party is entitled to summary judgment when there are no genuine issues of material fact and that party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2) (2011-12).[3]

¶7 "A contract is unconscionable when no decent, fair-minded person would view the result of its enforcement without being possessed of a profound sense of injustice." ***Foursquare Props. Joint Venture I v. Johnny's Loaf &***

[3] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Stein, Ltd., 116 Wis. 2d 679, 681, 343 N.W.2d 126 (Ct. App. 1983). For a contract to be found unconscionable, it must exhibit both procedural and substantive unconscionability. ***Aul v. Golden Rule Ins. Co.***, 2007 WI App 165, ¶26, 304 Wis. 2d 227, 737 N.W.2d 24. Procedural unconscionability requires consideration of the factors bearing on a meeting of the minds. ***Discount Fabric House v. Wisconsin Tel. Co.***, 117 Wis. 2d 587, 601, 345 N.W.2d 417 (1984). Relevant factors include the parties' ages, education, intelligence, business acumen and experience, their relative bargaining power, who drafted the contract, whether the terms were explained to the weaker party, whether the drafting party would have permitted alterations in the printed terms, and whether there were alternative providers of the subject matter of the contract. ***Wisconsin Auto Title Loans, Inc. v. Jones***, 2006 WI 53, ¶34, 290 Wis. 2d 514, 714 N.W.2d 155. Substantive unconscionability "pertains to the reasonableness of the contract terms themselves." ***Aul***, 304 Wis. 2d 227, ¶26. Determining unconscionability presents a question of law that we determine de novo on a case-by-case basis. ***Wisconsin Auto Title Loans***, 290 Wis. 2d 514, ¶¶25, 33.

¶8 Here, the circuit court found the following:

> Eckland/Union Office Solutions secured Rudis' signature on the copier lease/purchase contract between [the Union] and United Leasing Services. Both Eckland and United Leasing Associates had substantial business acumen and experience with copiers and pricing, whereas Rudis had none. United Leasing Associates supplied (i.e. drafted) the contract. Eckland/Union Office Solutions told Rudis that the contract pricing terms were "the best in the business … somewhere around dealer cost or below.["] Eckland/Union Office Solutions and United Leasing Associates were in a position of superior bargaining power because they already had an existing relationship with [the Union] and knew [the Union's] needs, whereas Rudis was unfamiliar with the [Union] and its needs.

¶9 On our de novo review, we conclude the agreement was not procedurally unconscionable. "A bargain is not unconscionable merely because the parties to it are unequal in bargaining position, nor even because the inequality results in an allocation of risks to the weaker party." RESTATEMENT (SECOND) OF CONTRACTS § 208 cmt. d. (1979), *quoted in* ***Wisconsin Auto Title Loans***, 290 Wis. 2d 514, ¶49 n.42; *see also* 7 CORBIN ON CONTRACTS § 29.4, at 393 (revised ed. 2002) ("Superior bargaining power is not in itself a ground for striking down a resultant contract as unconscionable."). The terms were plainly set forth in the lease agreement. The Union was not bound to deal with Eckland, Office Solutions, or Leasing Services. It was free to comparison shop, to verify Eckland's appealing pricing claims, or to seek an agreement with some other dealer. A reasonable inference is that another source of copiers exists somewhere between Maine and Wisconsin. Rudis was aware when he made the contract that he possessed limited knowledge with respect to the Union's needs and the cost of copiers. Having undertaken to perform in the face of that awareness, he should bear the risk of his "conscious ignorance." *See* ***Pietroske, Inc. v. Globalcom, Inc.***, 2004 WI App 142, ¶11, 275 Wis. 2d 444, 685 N.W.2d 884.

¶10 Having determined there was no procedural unconscionability, we need not address substantive unconscionability. *See* ***Cottonwood Fin., Ltd. v. Estes***, 2012 WI App 12, ¶7, 339 Wis. 2d 472, 810 N.W.2d 852.

By the Court.—Order reversed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.