FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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KROTZ ENTERPRISES, INC., d/b/a WILDLIFE TREE FARMS, LLOYD L. and CONSTANCE KROTZ,	)	
Plaintiff-Appellants,	)	Filed March 26, 1985
vs.	)	
FRANK LYONS and TERRY LYONS, d/b/a AMERICAN TIRE SERVICE AND TIMBER CO.,	)	5-27 84-433
Defendants-Appellees.	)	

Appeal from the Iowa District Court for Linn County - Harold J. Swailes, Judge.

Plaintiffs appeal from the judgment of the district court in an action for breach of contract arising out of a sale of timber located on plaintiffs' property. AFFIRMED.

Peter C. Riley and Mary K. Hoefer of the Tom Riley Law Firm, Cedar Rapids, Iowa, for plaintiffs-appellants.

David L. Baker and Edward M. Blando of Elderkin, Pirnie, Van Lackum and Elderkin, Cedar Rapids, Iowa, for defendants-appellees.

Considered by Oxberger, C.J., Hayden, and Sackett, JJ.

HAYDEN, J.

Plaintiffs appeal from the judgment of the district court in an action for breach of contract arising out of a sale of timber located on plaintiffs' property.

In October of 1982 the parties entered into a contract in which defendants agreed to cut and purchase white oak veneer logs located on plaintiffs' property. The parties agree that the contract is in two parts. The first part is a letter written by plaintiff Lloyd Krotz to defendant Frank Lyons dated October 20, 1982, referring to "our Cedar Rapids timber." The letter sets forth different sizes of logs and requests defendants to indicate the price they would pay for each size. The letter also requests that defendants indicate what rule or method they would use for calculating the number of board feet of veneer based on the dimensions of the logs. The following language is contained in the letter: "Selected trees only are to be cut by you and skidded to front of timber and accumulated for loading." In the spaces provided in the letter defendants wrote prices for each size log and indicated they would use Doyle Rule for calculating footage. The second part of the contract is a short form with the name of defendants' business at the top and entitled "contract." The form is printed with handwriting in the spaces provided. In the space provided for a description of the timber is written "white oak veneer logs" and in the space provided for location of the timber is written "5000 42nd St. N.E. Cedar Rapids, Iowa." In the space provided for price there is a reference to the prices listed in the letter.

Plaintiffs reside at 5000 42nd Street, N.E., in Cedar Rapids. Their house is located on wooded property. At the western boundary of their property is a strip of land owned by the Dochtermans. Plaintiffs own more timberland west of the Dochterman property. Plaintiffs also own and operate a lumber business located in the same general vicinity.

Defendants began cutting and removing timber from the lot around plaintiffs' house. The logs which would not qualify for veneer were left behind. Defendants paid plaintiffs for three loads of veneer logs. Plaintiffs prevented

defendants from removing the third load and cutting any more timber because plaintiffs were dissatisfied with the measurements made by defendants and defendants' buyers.

Plaintiffs filed this action for breach of contract alleging that: (1) the price of the logs selected and cut by defendants was more than defendants had paid for the logs and (2) plaintiffs were entitled to treble damages under Iowa Code section 658.4 since defendants willfully injured trees they were not authorized to cut under the contract. Defendants counterclaimed alleging that plaintiffs breached the contract by not allowing plaintiffs to haul away the logs that were paid for and by refusing to allow plaintiffs to log the remaining timber as called for in the agreement.

At the end of their evidence and at the end of the case plaintiffs moved for a directed verdict on the ground that the contract was unambiguous. Plaintiffs urged that the jury not be allowed to decide whether the contract authorized defendants to cut trees on plaintiffs' property west of their house and whether defendants were required to pay for the trees which were cut but were not of veneer quality. The trial court overruled the motion. The jury returned a verdict in favor of plaintiffs in the amount of $150 and in favor of defendants on their counterclaim in the amount of $7,250.

On appeal plaintiffs argue that the trial court erred in submitting the two issues to the jury. Our review of this action at law is on assigned error. Iowa R. App. P.4.

Whether a particular contract problem is an issue for the jury may depend upon whether the problem is one of interpretation or construction of the contract. Connie's Construction Co., Inc. v. Fireman's Fund Insurance Co., 227 N.W.2d 207, 210 (Iowa 1975). "Interpretation, the meaning of contractual words, is an issue for the court, unless it depends on extrinsic evidence or on a choice among reasonable inferences from extrinsic evidence. (Citations omitted). Construction, the legal effect of a contract, is always a matter of law to be decided by the court." Id. See also Farm Bureau Mutual Insurance Co. v. Sandbulte, 302 N.W.2d 104, 108

(Iowa 1981) (definition of the phrase "immediately adjoining" was an issue of interpretation to be decided by the court where no extrinsic evidence was submitted); Mikesh v. Peters, 284 N.W.2d 215, 219-20 (Iowa 1979) (whether the reservation of "recreational rights" in a deed imposes a legal duty upon the grantee limiting the use of the land is an issue of construction); Spilman v. Board of Directors of Davis County Community School District, 253 N.W.2d 593, 595 (Iowa 1977) (whether the use of the term "library clerk" in plaintiff's employment contract is encompassed within the statutory language "all certificated school employees" is a question of construction of the contract in light of the statute).

Both of the questions at issue in this case involve contract interpretation. The first dispute concerns what land was intended to be described by the phrases "5000 42nd St. N.E. Cedar Rapids, Iowa," and "our Cedar Rapids timber." The second problem concerns the meaning of the phrase "selected trees only are to be cut by you" in light of the description of the subject of the contract as "white oak veneer logs." If there was properly admitted extrinsic evidence on these issues or a choice between reasonable inferences from extrinsic evidence, then the trial court properly submitted the issues to the jury.

Extrinsic evidence is admissible as an aid to contract interpretation "when it throws light on the situation of the parties, antecedent negotiations, the attendant circumstances and the objects they were striving to attain." Fashion Fabrics of Iowa, Inc. v. Retail Investors Corp., 266 N.W.2d 22, 25 (Iowa 1978). In the case of the description of the location of the timber there was extrinsic evidence offered by both parties as to what timber was included. Plaintiffs offered evidence as to the street addresses of various parcels of property they owned. They also testified that the western edge of the land on which their house is located is the city limits of Cedar Rapids. Both parties agreed that Lloyd Krotz showed defendants around the boundaries of the property when they first came to bid on the logs. Krotz testified that he only showed them the land on which his house was located whereas Frank Lyons testified they were shown the larger tract to the

west as well. Furthermore, Lyons stated that Krotz offered to bridge a culvert to make the western property more accessible to defendants. Lyons testified that although he wrote the address on the contract form he thought this referred to both parcels of land. We find there was sufficient extrinsic evidence to justify submission of this issue of contract interpretation to the jury, especially where the credibility of the witnesses was a crucial part of the determination.

There was also extrinsic evidence on the second question. Both sides agreed that Lloyd Krotz told defendants they did not have to buy any log which was hollow. Plaintiffs presented testimony that aside from this exception Krotz indicated that only veneer quality trees were to be cut, and any log cut was to be purchased. Defendants presented evidence that a veneer log is a log free of all visible defects and that it is impossible to tell whether a tree is of veneer quality until it has been cut. Frank Lyons testified that Krotz told them to leave any tree not of veneer quality and Krotz would use it in his lumber business. Lyons also testified that defendants' bid was made on the understanding that they were purchasing only veneer quality logs and that the bids would have been lower if they had been negotiating to purchase the inferior logs as well. There was sufficient extrinsic evidence on the question of interpretation of this part of the contract to generate a question for the jury.

Plaintiffs argue that even if these questions could properly be determined by the jury, the trial court erred in not sufficiently instructing the jury that they should resolve these questions. We decline to consider this argument on appeal since no objections were made to the instructions on this ground before the district court. Wiles v. Myerly, 210 N.W.2d 619, 624 (Iowa 1973).

Finally, defendants urge that they should be awarded attorney fees since this is a frivolous appeal. We decline to consider such an award.

AFFIRMED.