IN THE COURT OF APPEALS OF IOWA

No. 0-696 / 89-1871

FILED
FEB 26 1991
CLERK SUPREME COURT

141

DARRELL HAMMARSTEDT,

Appellant,

vs.

GANNETT CO., INC. and **DES MOINES REGISTER AND TRIBUNE COMPANY,**

Appellees.

Appeal from the Iowa District Court for Cerro Gordo County, John Stewart Scoles, Judge.

Hammarstedt appeals the disrict court's dismissal of his breach of contract action. **AFFIRMED.**

Gary S. Gill and Lori A. Liljedahl, Des Moines, for appellant.

Kasey W. Kincaid and K. J. Walker of Walker, Giudicessi & Kincaid, Des Moines, for appellees.

Heard by Donielson, P.J., and Hayden and Habhab, JJ.

DONIELSON, P.J.

Plaintiff Darrell Hammarstedt, an agency manager for the Des Moines Register and Tribune Company (the Register), brought this suit claiming the Register breached its contract with him. Plaintiff now appeals. He claims the court erred in: (1) excluding parol evidence; (2) finding he did not have a lifetime contract; (3) not applying the doctrine of waiver; (4) not applying the doctrine of promissory estoppel; and (5) not finding the Register's cancellation of the lease was a violation of an implied duty of good faith and fair dealing. We now affirm.

Our review is for correction of errors at law. Iowa R. App. P. 4. Because the case was tried to the court, the court's findings of fact have the force of a jury's special verdict, id., and they are binding on us if supported by substantial evidence. Dunn v. General Equities of Iowa, Ltd., 319 N.W.2d 515, 517 (Iowa 1982).

In September 1964, Hammarstedt entered into a contract, entitled "Agency Manager's Lease," with the Register to be the agency manager in Mason City. Agency managers are independent contractors and distribute newspapers within a designated area. Hammarstedt signed the lease and subsequently purchased equipment from the former Mason City agency manager. The lease agreement contained provisions allowing either party to cancel the lease upon 30 days advance notice. Paragraph seven of the lease provides in pertinent part: "The Company may cancel this lease upon

thirty days advance notice, or at any time for good and sufficient reason . . ." Hammarstedt received a letter of cancellation on June 26, 1986.

Hammarstedt brought this suit claiming the Register breached its agreement with him. He obtained a temporary injunction during the pendency of the action in district court which prohibited the Register from terminating the agreement. At trial, he testified that when he signed the agreement, John Freeland, an employee of the Register, told him the termination provision did not apply to him and that the lease would be canceled only if Hammarstedt did not pay his bill to the Register. Hammarstedt also offered the testimony of other agency managers. Freeland testified he could not recall the conversation between Hammarstedt and himself at the time the lease was signed in 1964, but that "it isn't possible" he would have told Hammarstedt the lease could only be canceled for delinquency of Hammarstedt's bill.

In its Findings of Fact, Conclusions of Law, and Order, the district court initially ruled the parol evidence rule prohibited plaintiff from introducing evidence that would vary the terms of the "Agency Manager's Lease" and the proffered testimony (briefly described above) would not be considered. The district court then concluded: (1) the lease did not, as plaintiff contended, provide Hammarstedt a lifetime contract but rather, the lease clearly and unambiguously allowed cancellation for any reason upon 30

days advance notice; (2) the Register had not waived this contract right of cancellation; (3) Hammarstedt could not invoke the doctrine of promissory estoppel to defeat the express terms of a subsequently entered written agreement; and (4) cancellation pursuant to the agreement by the Register did not constitute an implied duty of good faith and fair dealing. The district court dismissed the suit. Hammarstedt appeals.

"When persons place their agreement in writing, the parol evidence rule forbids the use of extrinsic evidence to vary, add to, or subtract from the agreement." Bankers Trust Co. v. Woltz, 326 N.W.2d 274, 276 (Iowa 1982) (citations omitted). Extrinsic evidence offered to show what the parties meant to say instead of what was meant by what they said is not admissible. Id. In a detailed and well-reasoned opinion, the district court concluded the language of paragraph seven of the lease (the cancellation provision) was clear and unambiguous, the parties understood what was meant by the contract language and, therefore, no extrinsic evidence was admissible which would vary the provision or delete it altogether. We agree. While Hammarstedt attempts to argue the extrinsic evidence was offered to show inducement to enter a contract, promissory estoppel, and other matters relative to the terms and duration of the contract, we cannot escape the conclusion that the evidence was offered to vary the terms of the unambiguous cancellation provision and was,

therefore, inadmissible. The trial court was correct in excluding the proffered extrinsic evidence.

Hammarstedt next claims that the court erred by not finding he had a permanent or lifetime contract cancelable only for good and sufficient reason. See Wolfe v. Graether, 389 N.W.2d 643, 652-57 (Iowa 1986) (reviewing law concerning contracts of permanent employment). He believes the excluded evidence clearly shows he had such a contract. In light of our conclusion that this extrinsic evidence was inadmissible, plaintiff's contention must fail. The terms of the contract specifically provide that the lease could be canceled for any reason by either party on 30 days advance notice. Such a contract, by its very terms, does not establish a lifetime contract cancelable only for good and sufficient reason. See Welter v. Heer, 181 N.W.2d 134, 136 (Iowa 1970) (contract cannot contain express term and implied term as to same term).

Hammarstedt further contends the court erred by not applying the doctrine of waiver. Iowa law recognizes that contract rights can be waived. See e.g., In re Guardianship of Collins, 327 N.W.2d 230 (Iowa 1982). Waiver is the voluntary or intentional relinquishment of a known right. Id. at 334. It can be express or implied. Id. The essential elements are (1) the existence of a right, (2) actual or constructive knowledge of it, and (3) an intention to give it up. Id. Even had we determined

that Hammarstedt's proffered parol evidence could be considered, we would reject this waiver argument.

Hammarstedt asserts the Register expressly waived its right to terminate his contract prior to entering into the contract. This argument is inconsistent with the first element of waiver. Hammarstedt contends the Register gave up a right prior to entering the contract but prior to the agreement neither party had any contract rights. The Register could not waive a right that did not exist. This argument necessarily fails.

Hammarstedt alternatively contends the Register waived its right to cancel on 30 days advance notice by its course of dealing in the past. It is true our supreme court recognizes that contract rights may be waived by a prior course of dealing between the parties. See Dunn v. General Equities of Iowa, Ltd., 319 N.W.2d 515, 516-17 (Iowa 1982). Hammarstedt, however, relies upon the Register's alleged course of dealing with other agency managers. This court is unwilling to extend the "course of dealing" principle to include actions concerning persons not parties to the contract under circumstances similar to the one involved here.

Hammarstedt also claims the court should have applied the doctrine of promissory estoppel in this case. He claims he detrimentally relied upon the oral assurances of Freeland that the lease would not be canceled except for cause and would not have signed the contract had he not

been so assured. The Register argues that promissory estoppel cannot be employed to enforce an alleged oral agreement which preceded the execution of the written contract addressing the same issues. The district court accepted the Register's position concluding that to allow the invocation of promissory estoppel to defeat the express terms of the subsequent written agreement would render the parol evidence rule without effect. See Durkee v. Goodyear Tire & Rubber Co., 676 F. Supp. 189 (W.D. Wis. 1987); Big G Corp. v. Henry, 148 Vt. 589, 536 A.2d 559 (1987). We find no error in the district court's conclusion.

Finally, Hammarstedt claims the court should have found the cancellation breached an implied duty of good faith and fair dealing to the contract. Hammarstedt proposes that this court apply the doctrine of good faith and fair dealing in a manner which would prohibit the use of "cancellation without cause" contract provisions. (We find this somewhat baffling in as much as Hammarstedt does not argue the reciprocal provision, allowing him to cancel the lease for any reason upon 30 days advance notice, should also be void.) Cornswet, Inc. v. Amana Refrigeration, Inc., 594 F.2d 129 (5th Cir. 1979), cert. denied, 444 U.S. 938, 100 S. Ct. 288, 62 L. Ed. 2d 198 (1979), involved a wholesale distributor's attempt to prevent Amana from terminating a business relationship. The distributor made several of the claims Hammarstedt urges here, including that an express term of the agreement, allowing termination

"for any reason," should be interpreted to mean "for good or just cause." The Fifth Circuit Court of Appeals concluded that the inclusion of a clause permitting termination of the agreement "for any reason" precludes the implication of a term that would bar such a termination. Likewise, we conclude that the implied duty of good faith cannot be invoked to negate a specific contract provision permitting termination without cause.

Finding no error, we affirm.

AFFIRMED.