FILED
JUN 24 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

MONTE GRANDGEORGE,

Plaintiff-Appellee,

vs.

JACK G. CLAPSADDLE,

Defendant-Appellant.

Filed June 24, 1980

0-105
2-63000

Appeal from Kossuth District Court - J. H. Andreasen, Judge.

Defendant appeals order granting plaintiff summary judgment and requiring specific performance of an agreement between the parties providing for settlement of all disputes and legal claims between them. AFFIRMED.

Mark S. Soldat of Soldat & Braunschweig, Algona, for defendant-appellant.

Martin Peterson of Lynch and Peterson, Algona, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

Defendant, Jack G. Clapsaddle, appeals order granting motion by plaintiff, Monte Grandgeorge, for summary judgment and requiring specific performance of an agreement between the parties providing for settlement of all disputes and legal claims between them. Clapsaddle asserts evidence of an alleged contemporaneous oral agreement modifying the terms of the parties' contract, which trial court excluded as inadmissible parol evidence, should have been admitted under either the conditional delivery, inducement, or ambiguity exception to the parol evidence rule. He also contends the trial court erred in finding in the alternative the rejected evidence did not show a sufficiently material breach by Grandgeorge to justify Clapsaddle's rescission. We affirm the trial court order.

Our scope of review of this equitable proceeding is de novo. Iowa R. App. P. 4.

I.

The purpose of granting a summary judgment is to allow the obtaining of a judgment promptly and without the expense of a trial when there is no genuine and material fact issue present. Lewis v. State, 256 N.W.2d 181, 186 (Iowa 1977). Movant must prove the absence of any such fact issues. Tasco, Inc. v. Winkel, 281 N.W.2d 280, 282 (Iowa 1979). The trial court and this court on review must examine all material properly before it in the light most favorable to the party opposing the motion, including the pleadings, admissions, depositions, answers to interrogatories, and affidavits to determine whether any genuine issue of a material fact is generated. Lewis, 256 N.W.2d at 186; see Iowa R. Civ. P. 237(e). Even if the facts are undisputed, summary judgment is not appropriate if reasonable minds may draw different inferences from them. Tasco, Inc., 281 N.W.2d at 282; Daboll v. Hoden, 222 N.W.2d 727, 731-34 (Iowa 1974). If, however, the court determines no such issue exists, and, the movant is entitled to judgment as a matter of law, entry of summary judgment is correct. Lewis, 256 N.W.2d at 186.

The issue here on appeal is whether Clapsaddle's proffered evidence of a contemporaneous oral agreement is admissible parol evidence. The general rule is that in the absence of fraud, duress, accident, or mistake, parol evidence of an oral agreement made prior to or contemporaneous with the execution of a contract is not admissible to

vary, supplement, modify, or contradict the express terms of a written contract. Gordon v. Witthaver, 258 Iowa 617, 620, 138 N.W.2d 918, 920 (1966); see Skubal v. Meeker, 279 N.W.2d 23, 27 (Iowa 1979); Egan v. Egan, 212 N.W.2d 461, 464-65 (Iowa 1973). In determining the meaning of the writing, however, extrinsic evidence is admissible to explain the situation of the parties, antecedent negotiations, attendant circumstances, and the objects the parties were striving to attain. Fashion Fabrics of Iowa, Inc. v. Retail Investors Corp., 266 N.W.2d 22, 25-27 (Iowa 1978); Freese Leasing, Inc. v. Union Trust and Savings Bank, Stanwood, 253 N.W.2d 921, 924 (Iowa 1977). Clapsaddle contends the evidence here of a contemporaneous oral agreement is admissible under either the conditional delivery, inducement, or ambiguity exception to the parol evidence rule. If one of these exceptions does not apply, the evidence is inadmissible since it adds to the original agreement. See Gordon, 258 Iowa at 620, 138 N.W.2d at 920.

This dispute centers on paragraph six of the parties' agreement providing for settlement of all disputes and legal claims between them. This paragraph states:

> 6. Second Party [Grandgeorge] agrees that First Party [Clapsaddle] may remove from Second Party's storage area located at 112 North Thorington, Algona, Iowa, various items set forth on "Exhibit A" attached thereto and by this reference made a part hereof. Said items are to be removed on or before the 13th day of November, 1978, and shall be removed in a peaceful and orderly manner after notice has been given to Second Party, who shall be allowed to be present during the removal or have someone present on his behalf. First Party agrees that all other items remaining at 112 North Thorington, Algona, Iowa, in both the storage area and other areas of said building, shall be and hereby are released from any claim thereto by First Party.

Clapsaddle sought to introduce evidence of an oral agreement with Grandgeorge that provided for Grandgeorge delivering to Clapsaddle on October 13, 1978, a key to the storage area described in paragraph six; thus allowing Clapsaddle to remove his personal property during the weekend of October 14-15, 1978. Clapsaddle alleged Grandgeorge breached this oral agreement by failing to deliver the key to him on October 13, 1978. Clapsaddle further alleged the oral agreement was his primary consideration in executing the settlement agreement and he considered the agreement rescinded and void when Grandgeorge failed to perform in accordance with the oral agreement. Since the parol evidence rule excludes consideration of parol evidence in determining whether a genuine fact dispute exists in a summary judgment

determination, see Nutrena Mills, Inc. v. Yoder, 187 F. Supp. 415, 419 (N. Iowa 1960), aff'd, 294 F.2d 505, 512-16 (8th Cir. 1961), we turn to the question of the applicability of these exceptions to the parol evidence rule to this case.

II.

Clapsaddle contends the conditional delivery exception to the parol evidence rule applies to this case. The conditional delivery exception allows the admission into evidence of parol evidence to prove the delivery of a contract was conditional only, and compliance with the condition failed. In re Estate of Simplot, 215 Iowa 581-82, 246 N.W.2d 396, 398 (1933). The parol evidence must be directed solely to the fact of delivery and to the conditions and does not operate to alter in any way the terms of the contract. Id. If conditional delivery and failure to comply with the condition is proved, the entire contract fails. Id. Clapsaddle argues the parol evidence is admissible to show delivery of the written settlement agreement was conditional and Grandgeorge's failure to comply with an alleged condition precedent: delivery of the storage area key. The question here becomes whether delivery of the key was a condition precedent or a condition subsequent of the settlement agreement.

A condition precedent in a contract is an act to be performed by one party before the accruing of liability by the other party. Cavanagh v. Iowa Beer Co., 136 Iowa 236, 241, 113 N.W. 856, 858 (1907). Parol evidence of such a condition does not vary or contradict the contract, but goes to the actual validity of the contract and is admissible. Id. If the condition is a condition subsequent, then parol evidence is not admissible for it manifestly varies or contradicts the terms of a valid written contract. Id. The determination of whether a condition is precedent or subsequent is a question purely of intent; such intent must be determined by considering the words of the particular clause in relation to the whole contract, the nature of the act required, and the subject matter of the contract. Id.

The facts of this case gathered from the affidavits and pleadings demonstrate the oral agreement was a condition subsequent, not precedent. The parties executed and delivered the written settlement agreement at approximately 11:45 a.m. on October 13, 1978. Under Clapsaddle's argument, Grandgeorge then had about twelve hours to deliver the storage area key. But, when Clapsaddle executed and delivered the settlement

agreement, he also commenced his performance under the agreement by tendering to Grandgeorge a check for $4250 as required by paragraph five of the agreement. Clearly, Clapsaddle considered the contract to be in force and binding at the time he tendered the check and the delivery of the storage area key was not a condition precedent, but related to the enforcement and implementation of the agreement after delivery. Since the oral agreement relates to the implementation of the written agreement, not its establishment, the conditional delivery exception does not apply. See Farmers' Savings Bank of Slater v. Weeks, 209 Iowa 26, 28, 227 N.W. 508, 509 (1929).

Moreover, the conditional delivery exception does not apply when the written instrument speaks on the subject matter of the condition precedent. Travers-Newton v. Naab, 196 Iowa 1313, 1314-16, 196 N.W. 36, 37 (1923); see Versteeg v. Hoeven, 214 Iowa 92, 99-100, 239 N.W. 709, 712 (1931). Even if we construe the oral agreement as a condition precedent, the oral agreement's modifying effect on paragraph six prevents the admission of this evidence. Travers-Newton, 196 Iowa at 1314-16, 196 N.W. at 37. The oral agreement provides for almost immediate removal of the personal property during the weekend of October 14-15, 1978. Paragraph six provides a specific period of time not to exceed thirty days for the removal of the items. This contradictory effect prevents evidence of the oral agreement from coming under the conditional delivery exception. Id; see Freese Leasing, Inc., 253 N.W.2d at 924. See also Restatement of Contracts § 241 (1932).

III.

Clapsaddle argues the inducement exception to the parol evidence rule also applies to this case. The inducement exception provides that evidence of collateral oral agreements relating to matters not covered by the written agreement or collateral to the writing and serving as inducement for the execution of the agreement is admissible. Banwart v. Shullenberg, 190 Iowa 418, 420, 180 N.W. 190, 192 (1920); see Blunk v. Kuyper, 241 Iowa 1138, 1141-42, 44 N.W.2d 651, 655-56 (1950). Here, the oral agreement concerns the same subject matter covered in paragraph six of the written agreement. The oral agreement is not collateral to the written agreement and, thus, would not be admissible under this exception. Id. Clapsaddle, however, argues the Banwart holding

was broadened by the Iowa Supreme Court in Gordon v. Witthauer, 258 Iowa 617, 619-22, 138 N.W.2d 918, 921 (1965), so that parol evidence is admissible even if it relates to matters covered in or collateral to the written agreement. Our reading of Gordon indicates an expansion of the inducement exception, but not to the extent urged by Clapsaddle.

We read Gordon to hold that evidence of an oral agreement or modification is admissible if it has been accepted and acted upon by the parties in such a manner as to induce fraudulently the execution of a contract, but only to the extent the oral agreement relates to matters not covered in the written agreement. Id. The written agreement in Gordon addressed the matter of a heating and cooling system while the oral agreement concerned matters collateral to the heating and cooling system, but not covered in the written agreement. Id. Here, as stated previously, the oral agreement covers the same matters found in paragraph six of the written agreement and is not admissible under the inducement exception to the parol evidence rule.

IV.

Lastly, Clapsaddle argues the ambiguity exception to the parol evidence rule applies to this case. Parol evidence is admissible to aid in interpreting the meaning of an ambiguous contract when it is applied to the negotiated transaction in order to determine the intent of the parties from what they wrote. Egan, 212 N.W.2d at 464-65; Zimbelman v. Boone Coal, Inc., 220 Iowa 1310, 1314, 263 N.W. 335, 337 (1935). A contract is ambiguous only when found to have an uncertain meaning by persons of competent skill and information. Comptograph Co. V. Burroughs Adding Machine Co., 179 Iowa 83, 108, 159 N.W. 465, 473 (1916). Alternatively stated, language in a contract is considered ambiguous when it is capable of being understood reasonably in two or more possible ways. Wilson v. State Farm Mutual Automobile Insurance Co., 256 Iowa 844, 847, 128 N.W.2d 218, 220 (1964).

Clapsaddle argues paragraph six is ambiguous because it fails to specify the time to be allowed between the giving of notice and the actual removal of the personal property. We find paragraph six is not susceptible to two or more possible meanings regarding this time period. The paragraph succinctly details the procedure for removal of the personal property from the storage area. The outside time limit for the property

removal was thirty days. Although no specific time between notice and removal was set forth, a reasonable time for performance can be implied. Kelley, Maus & Co. v. Hart-Pan Co., 137 Iowa 713, 716, 115 N.W. 490, 491-92 (1908). There existed no ambiguity in paragraph six such that the ambiguity exception to the parol evidence rule would apply to this case.

V.

We also find that even if the evidence of the oral agreement were admissible, the evidence would not establish a material breach justifying Clapsaddle's rescission of the contract. Maytag Co. v. Alward, 253 Iowa 455, 457, 112 N.W.2d 654, 659 (1962). The failure to deliver the storage area key on October 13, 1978, was not a material failure of consideration. The parties' agreement was to resolve all disputes and claims existing between themselves. The delivery of the key would have been only a means of implementing the settlement of certain disputes, not a fulfillment of a material obligation of the contract. Id.

Trial court is affirmed.

AFFIRMED.