

IN THE COURT OF APPEALS OF IOWA

BUSINESS EQUIPMENT LEASING, INC., )

Plaintiff-Appellee, )

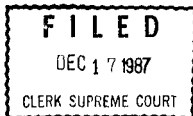
vs. )

SACRED HEART CHURCH OF VALLEY )  
JUNCTION, POLK COUNTY, IOWA, )

d/b/a SACRED HEART SCHOOL, )

Defendant-Appellant. )

7-200  
86-799



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Appeal from the Iowa District Court for Polk County (No. CL60-35586),  
Jack D Levin, Judge.

The defendant appeals the district court decision which held that it breached  
a lease agreement. **AFFIRMED.**

Mark C. Smith of Des Moines for defendant-appellant.

Michael J. Green of West Des Moines for plaintiff-appellee.

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

**OXBERGER, C.J.**

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The defendant, Sacred Heart Church of Valley Junction, Polk County, Iowa, d/b/a Sacred Heart School (Sacred Heart), appeals the judgment entered against it for the breach of a lease agreement. Sacred Heart raises three issues on appeal: (1) that the trial court erred in determining that a binding contract existed between the parties; (2) that the trial court erred in not finding the contract unconscionable; and (3) the trial court erred in finding plaintiff, Business Equipment Leasing (BEL) had not breached the leasing agreement. We affirm.

On June 1, 1984, James Calandro, the principal of Sacred Heart, entered into a lease agreement with BEL to lease a Gestetner 2045R copier. He testified by deposition that he had authority to execute the lease, and that the first lease payment was made upon delivery of the copier. Two more payments were also made on the copier, but no payments were made after September of 1984.

Sacred Heart became dissatisfied with the copier's performance and eventually, in November of 1984, two new copiers were substituted for the original copier. The current principal, Ronald Bromert, signed, without reading, what he believed to be a delivery ticket for the machines. BEL contends this document was a modification of the June lease agreement. Sacred Heart then proceeded to use the copiers through the 1985 school year.

Sacred Heart's Articles of Incorporation provide that only money for the ordinary administration of the parish may be spent unless there is written authorization from an appropriate church official. These restrictions on authority were never communicated to the principals or BEL.

Our scope of review is for the correction of errors at law. Iowa R. App. P. 4. The findings of fact are binding upon us if supported by substantial evidence. Iowa R. App. P. 14(f)(1).

Sacred Heart first contends there was not a binding contract between the parties. Sacred Heart argues that the school's articles place restrictions on the principal's authority, and that BEL had constructive notice of these since the articles were filed. The school further argues that BEL did not produce sufficient evidence of "apparent authority."

The law in Iowa is that "apparent authority" takes precedence over the "notice" doctrine. Newberry v. Barth, Inc., 252 N.W.2d 711, 714 (Iowa 1977). Mere want of authority in fact will not relieve a corporation from the burden of a contract made in reasonable reliance upon such appearance of authority. Id. All such acts and contracts of the agent as are within the apparent scope of the authority conferred on him are also binding upon the principal. FS Credit Corp. v. Troy Elevator, Inc., 397 N.W.2d 735, 740 (Iowa 1986). Apparent authority, or ostensible authority to do such acts or to make such contracts, is that which, although not actually granted, has been knowingly permitted by the principal or which he holds the agent out as possessing. Id.; Mayrath Co. v. Helgeson, 258 Iowa 543, 548 (139 N.W.2d 303, 306 (1966)). Apparent authority, as between the principal and third persons, must be determined by what the principal said and did rather than by the acts or statements of the purported agent. Clemens Graf Droste Zu Vischering v. Kading, 368 N.W.2d 702, 711 (Iowa 1985).

Both principals, Calandro and Bromert, were hired by the church to handle the ordinary administration of the school. The church never told the men they could not enter transactions of this nature. Their employment contracts contained no limitations on their administrative powers. Calandro was given a check signed by the associate pastor to make the first and last lease payments. The school also made two subsequent lease payments, one signed by the associate pastor and the other signed by the parish pastor. The church never informed BEL the principals did not have authority to lease the copiers. The school also used the

copiers throughout the school year. There was no indication to BEL that the principals did not have any authority until the January 1985 meeting. We conclude, in regard to both the June lease agreement and the November modification, that the principals had the apparent authority to bind the school, and that the trial court did not err in finding a contract between the parties.

Sacred Heart then argues that if there was a contract, it was rescinded by the parties' conduct. They rely primarily on the November modification. After the original copier developed problems, the parties negotiated a substitution of two copiers for the original one. When the machines were delivered, Bromert signed a lease agreement believing it was a delivery ticket. He admitted he did not read the document. The school then used these two copiers extensively throughout the school year.

Parties to a valid contract may rescind or abandon it, or substitute another in its place, or by conduct inconsistent with the continued existence of the original contract estop themselves from asserting any right thereunder. Severson v. Elberon Elevator, Inc., 250 N.W.2d 417, 421 (Iowa 1977). The burden to establish one of these events occurred is on the party raising the claim. Id. When the evidence is susceptible to differing inferences, the issue of whether the claim has been proven is for the trier of fact. Id.

The trial court found Sacred Heart had not met its burden and we agree. The school requested the substitution of the copiers. Bromert executed the modification. See Preston v. Howell, 219 Iowa 230, 238, 257 N.W.415, 418 (1934) (party to a contract has a duty to read the same and cannot be excused for failure to do so). The school also consented to the modification by retaining and using the machines. We conclude there was no rescission of the contract and Sacred Heart is bound by its terms.

Sacred Heart also asserts the trial court erred in not finding the contract unconscionable. The school relies heavily on C & J Fertilizer, Inc. v. Allied Mut. Ins. Co., 227 N.W.2d 169 (Iowa 1975) and Iowa Code section 554.2302. The trial court reviewed this case and concluded the contract in the instant case was not unconscionable.

A bargain will be deemed unenforceable if it is such as no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other. Lakeside Boating and Bathing, Inc. v. State, 402 N.W.2d 419, 422 (Iowa 1987); Farmers Savings Bank v. Gerhart, 372 N.W.2d 238, 244 (Iowa 1985). The burden is on the party asserting unconscionability. Smith v. Harrison, 325 N.W.2d 92, 94 (Iowa 1982). Factors to be considered are: assent, unfair surprise, justice, disparity of bargaining power, and substantive unfairness. Home Fed. Sav. & Loan Ass'n v. Company, 357 N.W.2d 613, 618 (Iowa 1984).

We conclude the trial court was correct. Mr. Calandro stated in his deposition that he investigated the choice of copiers and that BEL reduced the lease price twice while negotiating the deal. Sacred Heart also used BEL for copier service and signed a similar lease agreement prior to the present lease agreement. Monsignor Pfeffer also testified the school was paying three to five cents per copy for commercial copying services. The school made 342,000 copies on the three machines and this figure at 4 cents a copy would equal \$13,680. The total lease payments equal approximately \$15,000. Under these circumstances, we cannot conclude the contract was unconscionable. The doctrine does not exist to rescue parties from bad bargains. Smith, 325 N.W.2d at 94. The trial court did not err in not finding the contract unconscionable.

Sacred Heart's final argument is that the trial court erred in finding BEL had not breached the lease agreement. Sacred Heart contends BEL had a duty to deliver a working copier and that they failed to do so. We conclude BEL did

not breach the agreement. Although there were problems with the original machine, BEL promptly serviced the machine and substituted two copiers in an effort to accommodate and provide the school with copying services. Further, the school made a total of 342,000 copies on the three machines. The trial court did not err in finding BEL had not breached the agreement.

Finally, BEL requested an award of attorney fees pursuant to a clause in the lease agreement. The trial court ordered Sacred Heart to pay \$1,500 towards those fees. We find no error in this award.

Attorney fees are generally not recoverable as damages in the absence of a statute or a provision in a written contract. Suss v. Schammel, 375 N.W.2d 252, 256 (Iowa 1985). There is a valid written contract in this case. That contract provides for the payment of legal fees in the event of litigation arising from a breach of that agreement. We, therefore, conclude the trial court's award of fees was proper. The judgment is affirmed.

**AFFIRMED.**