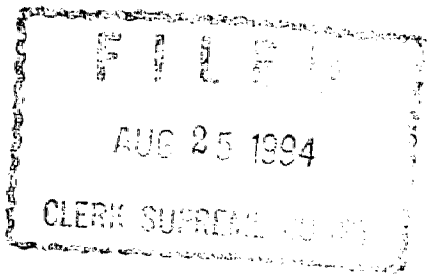
IN THE COURT OF APPEALS OF IOWA

No. 3-610 / 93-0265



GREYHOUND FINANCIAL CORPORATION,

Plaintiff-Appellee,

vs.

DORIS ROSENBERGER,

Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Gene L. Needles, Judge.

Rosenberger appeals from the district court decision finding her liable for breach of contract of guaranty. **AFFIRMED.**

George T. Qualley of Qualley & Associates, P.C., Sioux City, for appellant.

Mark D. Walz of Davis, Hockenberg, Wine, Brown, Koehn & Shors, P.C., Des Moines, for appellee.

Considered by Donielson, C.J., and Habhab and Huitink, JJ.

HABHAB. J.

In October 1985, Greyhound Financial Corporation entered into an equipment lease agreement with Rose Way, Inc., a corporation owned and operated by Doris and David Rosenberger. Greyhound leased fourteen 1986 Freightliner tractors to Rose Way.[1] The agreement provided Greyhound with options in case Rose Way breached the agreement and also provided a measure of Rose Way's liabilities if a breach occurred. Doris personally guaranteed the lease.

In December 1988, Rose Way defaulted and soon after entered bankruptcy. Upon default, Greyhound exercised its option to take possession and sell the tractors. Greyhound sold the trucks to a third party in 1990 and received payments of $155,000, $103,750, and $17,040 in return. The contract provided that, after the sale of the tractors, the lessee would be liable for the amount by which the proceeds of the sale is less than the sum of all unpaid rentals plus a stipulated loss value (SLV). The SLV is a specified percentage of the original cost of the equipment that varied for each of the twenty quarters of the payment plan. The specified percentages were listed on a schedule attached to the lease.

Greyhound brought an action on the personal guaranty in

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1. The lease called for montly payments totaling $1,197,000 over the lifetime of the lease. In addition, if the trucks were sold upon the completion of the lease, Greyhound would be entitled to twenty-five percent of the truck's original value (.25 x $1,197,490 = $299,372.50).

June 1989. Doris did not demand a jury trial in her answer. The district court granted summary judgment to Greyhound. The supreme court reversed in a per curiam opinion filed April 17, 1991.

In September 1991, Doris moved for leave to amend the answer. Leave was granted and Doris alleged that the liquidated damages clause constituted a penalty. Doris also asserted several counterclaims. Doris filed a jury demand within ten days after leave was granted and the case was so scheduled.

The district court dismissed Doris' counterclaims because she had previously signed away her cause of action. On the day the trial was to begin, the district court ruled that the case would be tried to the court.

After trial the district court entered judgment in favor of Greyhound and against Doris for $862,123.46. Doris appeals.

I. Demand for jury trial. Doris first claims she made a proper demand for jury trial under Iowa Rule of Civil Procedure 177. To make a timely and proper demand, the rule requires:

> A party desiring jury trial of an issue must make written demand therefor by filing a separate instrument clearly designating such demand not later than ten days after the last pleading directed to that issue. If filed with the petition, the jury demand shall be served with the original notice and petition. If filed after the petition, the jury demand shall be served and filed in accordance with R.C.P. 82.

Iowa R. Civ. P. 177(b). The right to jury trial is waived unless demand is made according to this rule. Schloemer v. Uhlenhopp, 237 Iowa 279, 280-83, 21 N.W.2d 457, 457-458 (1946). This right may be revived as to new issues only which are raised by a proper amendment to the pleadings. Blunt, Ellis, & Loewi, Inc. v. Igram, 319 N.W.2d 189, 195 (Iowa 1982); Universal C.I.T. Credit Corp. v. Jones, 227 N.W.2d 473, 475-476 (Iowa 1975).

The jury demand made by Doris was filed after the amended answer. Doris' jury demand was a general demand not limited to new issues raised in the amended pleading. If a partial demand is not made, then it is reasonable for the district court to assume a general demand is made for a jury on all issues raised by the pleadings. Blunt, Ellis & Loewi, 319 N.W.2d at 195; Universal C.I.T., 227 N.W.2d at 475-476.

Doris was not entitled to a jury on the primary issue of liability, since that right was waived when she failed to make a proper demand after the initial pleadings. See Iowa R. Civ. P. 177(a). Further, the issue of whether a liquidated damage clause is unenforceable because it is a penalty clause is a question of law for the court to decide. Rohlin Construction Co. v. City of Hinton, 476 N.W.2d 78, 79 (Iowa 1991). When a general demand for a jury is made, the district court should not have to sort through the various issues raised to determine which ones are proper for jury trial. Universal C.I.T., 227 N.W.2d at

476. The district court was justified in denying the jury demand.

Doris also argues that the district court should have exercised its discretion and allowed a trial by jury under Iowa Rule of Civil Procedure 177(d). Rule 177(d) provides the district court with the discretionary power to grant a jury trial if good cause is shown. Doris argues the district court abused its discretion in not granting the jury demand.

We review for an abuse of discretion. In order to show an abuse of discretion, one generally must show that the court exercised its discretion "'on grounds or for reasons clearly untenable or to an extent clearly unreasonable.'" State v. Blackwell, 238 N.W.2d 131, 138 (Iowa 1976) (quoting Weeks v. Burnor, 326 A.2d 138, 140 (Vt. 1974)). The district court's decision was not clearly unreasonable, particularly since it does not appear on the face of the document that there was proper service of the demand. The district court did not abuse its discretion.

We find the district court did not err in failing to grant Doris a jury trial.

II. The stipulated loss value provision. Doris contends that the SLV provision of the lease agreement constitutes a penalty, instead of liquidated damages, and should therefore be unenforceable. In order for the stipulated sums to be enforceable, they must be in reasonable proportion to the loss or injury actually

sustained or reasonably anticipated. Engel v. Vernon, 215 N.W.2d 506, 516 (Iowa 1974). If the stipulated sums are not reasonably proportional, then they will be viewed as an unenforceable penalty. Id.

Both parties make various calculations regarding the amount Greyhound should receive in the event of a fourteenth quarter default. Once Doris' error in the calculation of the SLV is accounted for, both parties find that Greyhound receives roughly $280,000 more than Greyhound paid for the equipment.[2] Doris characterizes this amount as profit only. We, however, view this sum as a combination of both the cost of extending credit and the expected tax advantages lost due to a breach of the agreement. Expected tax advantages were one motivation for Greyhound to enter the lease agreement. These tax advantages disappeared when there was a breach of the agreement. The SLV was a reasonable attempt to make a difficult approximation of the damages caused by the breach. We find the SLV to be a valid enforceable liquidated damages provision of the lease agreement.

AFFIRMED.

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2. Doris mistakenly includes the $299,372.50 residual payment in valuing the SLV. Greyhound would have been entitled to receive this amount upon the completion of the lease payments after the trucks were sold.