FILED
OCT 07 1977
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

GIFT HOUSE INC.,

Plaintiff-Appellant,

vs.

T. E. ROONEY, d/b/a ROONEY'S JACK AND JILL, d/b/a KIMBALL MARKET AND FOODLAND OF DYERSVILLE, INC.,

Defendants-Appellees.

Filed October 7, 1977

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2-58969

Appeal from Dubuque District Court - T. H. Nelson. Judge.

Plaintiff trading stamp company appeals trial court ruling directing verdict for the defendant merchant in a suit to collect deferred payments allegedly due and payable with the discontinuing of the defendants' issuance of trading stamps. Affirmed.

James M. Stanton, of Boyle, Schuler & Stanton, of Clear Lake for Plaintiff-Appellant.

Hal Reynolds, of Reynolds, Kenline. Breitbach, McCarthy & Clemens, of Dubuque, and Thomas Gilloon, of Dyersville, for Defendants-Appellees.

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

PER CURIAM

Plaintiff Gift House Inc. appeals the trial court's ruling directing a verdict for the defendant T.E. Rooney in its suit to collect deferred payments allegedly due and payable upon Rooney's discontinuing the issuance of Gift House trading stamps.

Gift House was purchased by Gold Bond in March of 1971. As a part of the purchase package Gift House agreed to assign its rights and obligations under the "Consumer Exchange" notes receivable agreements to Gold Bond. This assignment was to include the Rooney account. Subsequently, Gift House assigned the account to Gold Bond. Then, Gold Bond reassigned these accounts back to Gift House. The net result of these transfers was to leave the original agreement between Gift House and Rooney fully extant and operative. Also this left Gold Bond with no contractual relationship with Rooney. Since Gift House remained obligated to perform under the provisions of the original contract, by its own conduct Gift House terminated the agreement with Rooney. Their agreement dealt only with Rooney's ceasing to operate the retail grocery business or discontinuing the use of Gift House stamps. Upon the happening of either event the balance of the deferred sums remaining unpaid by Rooney would become due and payable. The agreement failed to reserve to Gift House the right to declare due and payable the deferred sums when Gift House ceased to do business.

We find no merit in Gift House's reliance upon Kinser v. McMurray, 190 Iowa 1329, 181 N.W. 691 (1921). **Kinser** involved an assignee who had fully performed the duties under the assignment and the subsequent refusal of such performance by the party originally contracting with the assignor. There was no evidence presented to the trial court of either actual performance as an assignee by Gold Bond or of a present obligation to perform by Gold Bond as an assignee.

Neither do we find merit in the Gift House claim that Rooney's refusal to consent to substituted performance precipitated the cancellation of its agreement with Gold Bond. Rooney had no such power. It has long been settled that "The right of everyone to choose with whom he will contract does not determine the question of assignability. That right exists in the contracts that are assignable, as well as in those that are not." In re Estate of Grooms, 204 Iowa 746, 751, 216 N.W.

78, 80 (1927). We note also under the Uniform Commercial Code,

> A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach. § 554.2210(1), The Code 1971.

Gift House has argued its arrangements with Gold Bond were a full and complete substitution of its performance due Rooney. Therefore, even if its view was fully supported by evidence at trial, Rooney's consent would have been rendered totally irrelevant under either **Grooms** or the statutory law governing such an assignment. We note, as previously stated, there was no evidence introduced by Gift House to substantiate its claim that Gold Bond performed as an assignee or had a present obligation to so perform.

The trial court properly directed a verdict for Rooney; the deferred payment plan did not provide a method of payment in the event Gift House went out of business. Suit upon the contract occasioned by Gift House's liquidation does not support recovery of the Rooney deferred payments. We affirm the trial court ruling that no factual dispute existed for the jury to resolve.

Affirmed.