IN THE COURT OF APPEALS OF IOWA

No. 6-792 / 96-472

000335

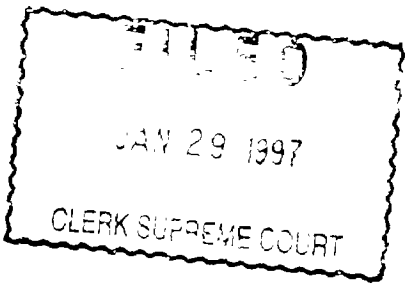
UNIGLOBE TRAVEL (NORTH CENTRAL, INC.),

Appellee,

vs.

PATRICK CRAWFORD,

Appellant.



Appeal from the Iowa District Court for Polk County, Donna L. Paulsen, Judge.

A franchisee appeals from a judgment entered against him in a breach of contract action. **AFFIRMED.**

Burns H. Davison, II, of Davison, Burnette & Kelley, Des Moines, for appellant.

Frank Burnette, of Burnette, & Kelley, Des Moines, for appellant.

David G. Stork and Becky S. Goettsch of Shearer, Templer, Pingel & Kaplan, P C., West Des Moines, for appellee..

Heard by Cady, P.J., Huitink, J., and Schlegel, S.J.*

*Senior judge from the Iowa Court of Appeals serving on this court by order of the Iowa Supreme Court.

CADY, P.J.

Uniglobe Travel (North Central) Inc. ("Uniglobe"), commenced a breach of contract action against its franchisee, Patrick Crawford. It sought to recover unpaid royalties and advertising fees and to collect on a promissory note. Paragraph three of Uniglobe's petition alleged:

> 3. On or about February 13, 1990, Defendant Patrick Crawford entered into a franchise agreement with Uniglobe. (Exhibit A). This franchise agreement granted to Patrick Crawford the exclusive right to use the Uniglobe name and logo in the operation of a Uniglobe travel agency located in Des Moines, Iowa.

The franchise agreement was attached to the petition as Exhibit A, and paragraph B of the agreement provided:

> B. [Uniglobe Travel] International has granted to Franchisor the exclusive rights to franchise the UNIGLOBE System (including the UNIGLOBE name and logo and other identifying marks used in the UNIGLOBE System) in that geographic area (hereinafter called the "Region") where Franchisee's office is located.

Crawford admitted paragraph three of the petition in his answer. He claimed he was relieved of his obligation to perform under the agreement because Uniglobe breached several obligations under the agreement, including granting other franchises in the Des Moines area.

The action was tried to the court on January 4, 1996. On January 23, 1996, the court rendered a judgment in favor of Uniglobe. The court rejected Crawford's claims that Uniglobe had not provided the assistance, advice, advertising, and other

services it was contractually obligated to furnish. The court also rejected Crawford's claim that Uniglobe had awarded him an exclusive franchise in the Des Moines area.

Crawford filed a rule 179(b) motion. Among other things, he alleged Uniglobe affirmatively pled, and he admitted in his answer, Uniglobe granted him the exclusive franchise for Des Moines. In its resistance to the motion, Uniglobe argued it was the franchisor which had been granted an exclusive franchise and not the franchisee. Uniglobe contended this was made clear by the evidence at trial and it requested leave of the court to amend its pleadings to conform to the evidence. The court denied Crawford's rule 179(b) motion. It found the evidence at trial established Crawford was one of several franchisees in the Des Moines area and nothing in the franchise agreement had granted him an exclusive franchise. The court found Uniglobe's motion to amend should be granted to delete the word "exclusive" from paragraph three of the petition.

On appeal, Crawford asserts he established as a matter of law Uniglobe breached the contract by failing to grant him an exclusive franchise. He argues that once the allegations of paragraph three of the petition were admitted, they became conclusive as to the issues addressed. He contends the trial court erred in allowing Uniglobe to amend its pleadings to change a material issue after the trial.

Our review is at law. Iowa R. App. P. 4. In particular, we will reverse a decision by the trial court to grant an amendment to a pleading only upon a clear

abuse of discretion. *See Atlantic Veneer Corp. v. Sears*, 232 N.W.2d 499, 503 (Iowa 1975).

We generally recognize that parties are bound by their pleadings and are not permitted to maintain a position inconsistent with them at trial. *Miller v. AMF Harley-Davidson Motor Co.*, 328 N.W.2d 348, 352 (Iowa App. 1982). Thus, facts set forth in pleadings and not denied in subsequent pleadings are accepted as true against the original pleader. *Id.*; Iowa R. Civ. P. 102. If not amended or withdrawn, admissions in pleadings stand as conclusive proof of the admitted facts. *Long v. McAllister*, 319 N.W.2d 256, 258 (Iowa 1982). The party making them is bound to them, and no evidence is required to be introduced at trial to establish them. *Id.*

In this case the pleading which gave rise to the admission was amended by the court. Thus, it is unnecessary to directly decide how the rule which binds a party to its pleadings should be applied to pleadings claimed to be ambiguous or mistaken. *See State Farm Mut. Auto. Ins. Co. v. Koenigsmark*, 717 S.W.2d 271 (Mo. App. 1986) (ambiguous pleading construed against pleader); *Ray Dancer, Inc. v. DMC Corp.*, 530 N.E.2d 605 (Ill. App. 1988) (admission in pleading not binding if result of mistake). The issue we confront is whether the court properly permitted Uniglobe to amend its pleading following the entry of judgment.

Amendments to conform to proof are acceptable at any time during the course of litigation, and even after judgment has been rendered. *Allison-Kelsey AG Center, Inc. v. Hildebrand*, 485 N.W.2d 841, 846 (Iowa 1992). The timing of the amendment

is not the determining factor. *Id.* at 845-46. The critical factor, instead, is whether the amendment substantially changes the issues. *Id.*

In this case, the amendment did not change any of the issues presented at trial. The trial court acknowledged one of Crawford's claims was that Uniglobe awarded him an exclusive franchise. This issue was considered and decided by the court. The post-judgment amendment simply prevented Crawford from using the disputed pleading to bind Uniglobe. Instead, the court decided the issue on the evidence. We believe this was proper.

Crawford knew or should have known Uniglobe never intended for its pleading to concede the existence of an exclusive franchise. The written agreement attached to the petition and referred to in the petition never stated Uniglobe was granting Crawford an exclusive franchise, but indicated Uniglobe International had given Uniglobe the exclusive right to establish franchises in the area. Furthermore, at trial Crawford's counsel raised the issue whether paragraph three of the petition constituted an admission, and counsel for Uniglobe clarified its petition by indicating paragraph three was referring to the exclusive right between Uniglobe and its international company, not Uniglobe and Crawford.

Under the circumstances, the district court clearly acted within the window of its discretion in permitting Uniglobe to escape the binding effect of the admission by

amending its petition. We have considered all the claims raised by Crawford and affirm the decision of the district court.

AFFIRMED.