IN THE COURT OF APPEALS OF IOWA

No. 7-360 / 96-1228

GERALD VOILES CO., INC.,

Plaintiff-Appellant,

vs.

ROLSCREEN COMPANY, an Iowa Corporation,

Defendant-Appellee.

Appeal from the Iowa District Court for Scott County, Bobbi M. Alpers, Judge.

Plaintiff appeals the district court's order granting summary judgment in favor of defendant in its wrongful termination action. **AFFIRMED.**

Michael Noyes of Noyes & Gosma, Davenport, for appellant.

Carole J. Anderson of Lane & Waterman, Davenport, and Alan H. Silberman and Catherine A. Van Horn, Chicago, Illinois, for appellee.

Heard by Sackett, P.J., and Vogel and Mahan, JJ.

SACKETT, P.J.

Plaintiff-appellant Gerald Voiles Co., Inc., appeals the trial court's decision sustaining defendant Rolscreen Company's[1] motion for summary judgment resulting in the dismissal of plaintiff's claim for unlawful termination of a franchise agreement.

Plaintiff and defendant agreed in 1986 that plaintiff would serve as a distributor of defendant's products in Iowa and Illinois. The parties' agreement, including provisions for termination, was reduced to writing. On July 15, 1994, defendant advised plaintiff the agreement would be terminated July 15, 1995. In September 1994, plaintiff sold the assets of its business. Plaintiff then sued defendant claiming (1) defendant violated the termination provisions of the agreement, and (2) the agreement was governed by the Illinois Franchise Disclosure Act, and in terminating, defendant failed to comply with the provisions of the Act. Plaintiff and defendant made motions for summary judgment. Defendant's motion was sustained and the action was dismissed. This appeal follows.

On appeal of a summary judgment ruling, we review the entire record to determine whether there is a genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. *Fees v. Mut. Fire & Auto. Ins. Co.*, 490 N.W.2d 55, 57 (Iowa 1992); Iowa R. Civ. P. 237(c). No fact question exists if the only dispute concerns the legal consequences flowing from undisputed facts.

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[1] Defendant is now known as Pella Corporation.

Ottumwa Hous. Auth. v. State Farm Fire & Cas. Co., 495 N.W.2d 723, 726 (Iowa 1993).

Plaintiff contends defendant breached the agreement in using termination provisions termed "normal" and not using the termination provisions termed "conditional." The agreement signed by the parties had three provisions for termination. The two in question, "normal" and "conditional," provided as follows:

> TERMINATION (NORMAL)
>
> Both the Distributor and Rolscreen Company agree to do business with each other as defined in this Distribution Agreement and attendant current company-released Price Lists, Purchase Plans and Policy Bulletins, until the business relationship is terminated in accordance with the provisions of this Agreement. In the event either party desires to terminate its business relationship with the other, the party desiring to terminate the relationship must give the other party written notice by certified mail, return receipt requested, no less than one year prior to the termination date, except in circumstances hereinafter specified for conditional or immediate termination.
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> * * *
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> TERMINATION (CONDITIONAL)
>
> In the event either party wishes to terminate the business relationship due to unsatisfactory performance or breach of any provisions outlined in this Distribution Agreement and attendant current company-released Price Lists, Purchase Plans and Policy Bulletins, by the other party, the party contemplating termination shall give written notice by certified mail, return receipt requested, to the other party defining the problem, specifying the corrective actions necessary to resolve it and the time period (not less than 30 days) during which such corrective actions must be completed. The time period shall be determined by the nature and seriousness of the problem. Failure to resolve the problem shall justify termination by either party at the expiration of the specified time period by mailing a written notice by certified mail, return receipt requested, to the other party.

Defendant used the normal termination provision. Plaintiff contends the facts here support a finding the conditional provision should have been used. The trial court found defendant could elect the termination provision used.

The construction and interpretation of a contract are questions of law for the court. *See A. Y. McDonald Indus. v. Insurance Co. of N. Am.*, 475 N.W.2d 607, 618 (Iowa 1991). It is the cardinal principle of contract construction that the parties' intent controls; and except in cases of ambiguity, this is determined by what the contract itself says. *See Essex Ins. Co. v. Fieldhouse, Inc.*, 506 N.W.2d 772, 775 (Iowa 1993); *Iowa Fuel & Minerals, Inc. v. Iowa State Bd. of Regents*, 471 N.W.2d 859, 862 (Iowa 1991); *Berryhill v. Hatt*, 428 N.W.2d 647, 654 (Iowa 1988). Interpretation of a contract is a question of law to be decided by the courts as a matter of law unless, after applying legal rules, the language is susceptible to two or more different and reasonable meanings. Iowa R. App. P. 14(f)(14).

The contract clearly provides the parties have the right to elect a termination provision. The district court was correct in holding the agreement permitted defendant to choose any of the options for termination. We affirm on this issue.

Plaintiff next contends the agreement was subject to the Illinois Franchise Disclosure Act of 1987 and that defendant violated the Act by terminating the agreement for other than just cause.

The Illinois Franchise Disclosure Act of 1987, Ill. Rev. Stat. ch. 121½, para. 1701-1744 (1987), at section 1719 provides:

> Termination of a Franchise. (a) It shall be a violation of this Act for a franchisor to terminate a franchisee of a franchised business located in this State prior to the expiration of its term except for "good cause" as provided in subsection (b) or (c) of this Section.
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> (b) "Good cause" shall include, but not be limited to, the failure of the franchisee to comply with any lawful provisions of the franchise or other agreement and to cure such default after being given notice thereof and a reasonable opportunity to cure such default, which in no event need be more than 30 days.

The trial court found it unnecessary to address this issue, finding plaintiff, not defendant, terminated the agreement. Plaintiff contends this is an incorrect finding.

A similar issue concerning the same Illinois act was raised in *Derson Group, Ltd. v. Right Management Consultants, Inc.*, 683 F.Supp. 1224 (N.D. Ill. 1988). In *Derson*, defendant sent plaintiff notice of the termination of an affiliation agreement. The court found though defendant sent notice of termination, it was plaintiff who terminated the agreement. The court held thereafter plaintiff could not establish the most basic element of its claim and the case was dismissed. *Id.* at 1228-29.

The trial court found plaintiff terminated the franchise. We agree with the trial court this is the only conclusion that can be drawn from this record. It is undisputed that though defendant notified plaintiff the franchise would be terminated in twelve months, plaintiff by the sale of assets terminated the franchise earlier. The trial court correctly sustained defendant's motion for summary judgment and dismissed the case.

AFFIRMED.