IN THE COURT OF APPEALS OF IOWA

No. 1999-510 (9-767) / 99-598
Filed July 12, 2000

VERN D. NELSON and DONNA NELSON,
Plaintiffs-Appellees,

vs.

CORENET, INC.,
Defendant,

KURT JENSEN and PHOENIX INTERNET TECHNOLOGIES, INC.,
Defendants-Appellants.

FILED
JUL 12 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Black Hawk County, Jon C. Fister, Judge.

Defendants, Kurt Jensen and Phoenix Internet Technologies, Inc. appeal the trial court's judgment for damages arising from the breach of a real property lease in favor of Vern and Donna Nelson. **AFFIRMED.**

Kenneth P. Nelson and Aaron K. Hawbaker of Randall, Nelson & Hawbaker, P.L.C., Waterloo, for appellants.

David Riley of Yagla, McCoy and Riley, Waterloo, for appellees.

Considered by Mahan, P.J., and Zimmer and Vaitheswaran, JJ.

VAITHESWARAN, J.

Kurt Jensen and Phoenix Internet Technologies, Inc. (Phoenix), appeal the district court's judgment for damages arising from the breach of a real-property lease in favor of Vern and Donna Nelson. Appellants claim the court's findings that Jensen executed the lease both as an agent for CoreNet, Inc., and individually and that Phoenix made an original promise to the Nelsons were not supported by substantial evidence. We affirm.

I. Background Facts and Proceedings

In January 1996, Vern and Donna Nelson leased commercial space to "CoreNet, Inc. Kurt Jensen." Jensen signed the lease as "Kurt Jensen, CEO CoreNet, Inc." He also initialed changes in an addendum to the lease without any indication of his status as chief executive officer of CoreNet, Inc. In August 1996, Phoenix entered into an asset purchase agreement with CoreNet. The agreement excluded all liabilities of CoreNet unless listed specifically in Exhibit B. Exhibit A to the asset purchase agreement listed the Nelson lease as an asset. Exhibit B listed "none" for liabilities assumed. CoreNet ceased operations around September 1996. In October 1996, CoreNet did not pay its rent and the Nelsons threatened to change the locks and enforce their landlord's lien. In November, Donna Nelson met with David Marks of Phoenix who assured her the lease was "still in effect" and she need not worry because Phoenix would make certain the rent was paid. Phoenix then provided the funds for CoreNet to cure the rent deficiency. In June 1997 Phoenix vacated the property and no further rent payments were made.

In December 1997 the Nelsons brought suit against CoreNet, Jensen, and Phoenix for damages from breach of the lease. The district court entered judgment against both Jensen individually and Phoenix. The court also entered a default judgment against CoreNet. Phoenix and Jensen appeal.

II. Scope of review

Cases tried at law are reviewed for errors of law. Iowa R. App. P. 4. The trial court's findings are binding on appeal if supported by substantial evidence. *Gallagher, Langlas & Gallagher v. Burco*, 587 N.W.2d 615, 617 (Iowa App. 1998); Iowa R. App. P. 14(f)(1). When the trial court's ruling is challenged for lack of substantial evidence, we view the evidence in the light most favorable to the judgment. *Frank Millard & Co., Inc. v. Housewright Lumber Co.*, 588 N.W.2d 440, 441 (Iowa 1999). We liberally construe the court's findings to uphold, rather than defeat, the result. *Tim O'Neill Chevrolet, Inc. v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996). Our review is to determine whether substantial evidence exists to support the trial court's findings according to the witnesses the court believed. *Id.*

III. Appellate claims

Jensen claims he did not sign the lease as an individual, but only signed as an agent of CoreNet, Inc. He asserts there is no ambiguity in the lease. If the court were to find an ambiguity, he argues, it should be construed against the Nelsons, since they drafted the lease. He also argues that the lease was fully integrated and the court erred in relying on parol evidence to determine what the parties intended.

Phoenix claims the court erred in finding it promised Donna Nelson Phoenix would remain in the property and guarantee CoreNet's payments if she would forebear from accelerating the rent and enforcing her landlord's lien on its equipment. Phoenix claims this oral-promise claim is new to the proceedings and was not pled. Phoenix asserts it did not assume the lease, but rather subleased the property from CoreNet. Phoenix further claims, even if the parties made an oral contract, it is barred by the statute of frauds because it was a five-year lease, and therefore, it was not capable of being performed in one year. Finally, Phoenix claims if the court finds an oral promise was made, the promise is invalid because it was made under duress. Phoenix argues the Nelsons' threats to lock the doors would have destroyed Phoenix's operations and those threats were not proper or legal. Phoenix asserts it had no choice but to make an agreement with Nelsons.

IV. Discussion

There is substantial evidence to support the court's findings concerning Jensen's individual liability, apart from any parol evidence. His name individually was listed as a tenant, along with CoreNet, Inc. In initialing addenda and changes to the lease, Jensen did not indicate he was initialing as CEO of CoreNet. The signature line on the lease did not set forth the corporation's name with a place for an officer to sign. The only indication Jensen was not participating individually in the lease was his written description "CEO of CoreNet, Inc." after his name.

Jensen cites *Consumers' Twine & Machinery Co. v. Mt. Pleasant Thermo Tank Co.*, 196 Iowa 64, 194 N.W. 290, 292-93 (1923) to support his claim the

written description after his name relieves him of personal liability. If the lease did not list both the corporation and Kurt Jensen as tenants, the principles set forth in *Consumers' Twine* might apply. However, the lease unambiguously lists Kurt Jensen as one of the tenants. The district court properly enforced the contract as written. *See Iowa Fuel and Minerals, Inc. v. Iowa State Bd. of Regents*, 471 N.W.2d 859, 863 (Iowa 1991). The mere addition of a designation, treated as "descriptio personae" does not relieve Jensen of personal liability under the circumstances of this case. *See Consumers' Twine*, 194 N.W. at 293. We affirm the district court's determination that Kurt Jensen was personally liable under the lease.

Concerning the interaction between Phoenix and the Nelsons in November 1996, substantial evidence supports the district court's finding Donna Nelson understood David Marks of Phoenix to be promising that Phoenix would make certain the lease payments were made if the Nelsons did not accelerate the lease payments or enforce their landlord's lien on the equipment in the building. The district court found Nelson's testimony more credible than Marks' on this point. We do not weigh the credibility of witnesses on review. *Etchen v. Holiday Rambler*, 574 N.W.2d 355, 360 (Iowa App. 1997). The promise to the Nelsons qualifies as an "original promise" which takes it out of the statute of frauds. *See Gallagher*, 587 N.W.2d at 618 (discussing original and collateral promises and the statute of frauds).

We need not address Phoenix's duress contention because this issue was not preserved. *Geneva Corporate Finance v. G.B.E. Liquidation Corp.*, 598 N.W.2d 331, 335 (Iowa App. 1999). Substantial evidence in the record supports

the district court's findings alleged to be error by appellants. Consequently, we affirm the judgment of the district court concerning the liability of Jensen and Phoenix.

AFFIRMED.