FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

UNITED STATES LEASING CORP.,)
Appellant,)
v.)
PETERSON RADIO COMPANY, INC.,)
Appellee.)

Filed June 24, 1977

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2-58872

Appeal from Pottawattamie District Court - Dan R. McTaggert, Magistrate.

Appeal from trial court's denial of plaintiff's action for deficiency judgment. Affirmed.

Bruce D. Fleming, of Council Bluffs, for appellant.

David McCann, of Council Bluffs, for appellee.

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

PER CURIAM 627

Plaintiff, United States Leasing Corp., appeals trial court's ruling dismissing its action for a deficiency judgment against defendant Peterson Radio Company, Inc. Plaintiff and defendant executed a contract whereby Peterson Radio was to lease two copying machines from U.S. Leasing for five years. After several months, Peterson Radio stopped making rental payments and U.S. Leasing repossessed the machines and sold them at a substantial loss. Trial court denied plaintiff a deficiency judgment on grounds that U.S. Leasing had failed to show that its repossession and resale procedures complied with Article 9 of the Uniform Commercial Code. U.S. Leasing asserts that trial court erred in finding that the lease was, in fact, a security agreement and hence noncompliance with Article 9 is irrelevant. *See* section 554.1201(37), The Code. Defendant contends U.S. Leasing never advanced this theory to trial court, and, therefore, error is not preserved. *See* Aetna Casualty and Surety Co. v. Jewett Lumber Co., 209 N.W.2d 48, 50 (Iowa 1973).

Appellant never transmitted any transcript of trial to this court nor did it designate any parts of the transcript in the appendix. We have examined the court file in a fruitless attempt to determine the preservation of error issue. Even if we should resolve the issue favorably to plaintiff, sufficient record has not been transmitted to decide this case on the merits. Ordinarily, whether a lease was intended as a security agreement is a question of fact. *See* section 544.1201(37), The Code. While a copy of the lease and the option to purchase the equipment seem to support plaintiff's position, *see* Leaseamerica Corporation v. Kleppe, 405 F.Supp. 39 (N.D. Iowa 1975), we are not able to say that the facts as established in trial could not support defendant's position.

As appellant, it is U.S. Leasing's burden to present a record sufficient to consider its claimed error. Enslow v. Miner, 231 Iowa 590, 1 N.W.2d 700 (1942); rule 341(b), Rules of Civil Procedure. It has not done so.

Trial court's judgment hereby is affirmed.

All judges concur except DONIELSON, J., who concurs specially.

DONIELSON, J. (specially concurring)

While agreeing with the majority, I hasten to add that the determination of whether a lease is intended to be a true lease or a secured transaction in the State of Iowa is one exclusively made on the facts of each case. The disposition of this case, in my opinion, should not be taken to reflect any opinion as to the continued vitality of leasing arrangements as such in this state.