

IN THE COURT OF APPEALS OF IOWA

HAWKEYE BANK AND TRUST

Spencer, Iowa,

Plaintiff-Appellant,

vs.

DONALD J. BLINK, DON R. PETERS,

JEFFREY J. BOHNENKAMP,

DONALD LAMB, BOB HANSON,

PAMELA J. KOENEN, INSURANCE

ASSOCIATES OF SPENCER,

MEINKING-HOVLAND-ROHLFSEN

AGENCY,

Defendants,

and **KVIS OF NORTHWEST IOWA,**

INC.,

Defendant-Appellee.

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CLERK SUPREME COURT

120

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6-398
86-165

Appeal from the Iowa District Court for Clay County (No. 21068), James
L. McDonald, Judge.

Plaintiff bank appeals from judgment for defendant insurer in an action
for breach of a contract for purchase of the insurance business. **AFFIRMED.**

Stephen F. Avery of Cornwall, Avery, Bjornstad & Scott, Spencer, for
plaintiff-appellant.

David H. Luginbill and Robert G. Allbee of Ahlers, Cooney, Dorweiler,
Haynie, Smith & Allbee, Des Moines, for defendant-appellee.

Redge O. Berg of Spencer for defendant Blink.

Fred B. Nelson of Greer, Nelson, Montgomery, Barry & Bovee, Spencer,
for defendant Peters.

Richard J Barry of Greer, Nelson, Montgomery, Barry & Bovee, Spencer,
for defendant *Bohnenkamp*

Donald J Hemphill of Sackett, Sackett, Hemphill & Howe, P.C., for
defendants Lamb, Hanson, and Koenen

Gary W Armstrong of Mack, Hansen, Gadd & Armstong, P.C., Storm
Lake, for defendant Insurance Associates of Spencer

Paul D Miller of Bedell & Miller, Spirit Lake, for defendant Meinking-
Hovland-Rohlfen Agency

Heard by Oxberger, C J , and Donielson and Schlegel, JJ

OXBERGER, C.J.

In this appeal, we are called upon to determine whether the defendant, KVIS of Northwest Iowa, Inc. (KVIS), and a number of its employees breached a provision of the contract of sale executed between KVIS and the plaintiff, Hawkeye Bank and Trust (Hawkeye). The trial court concluded that the particular contractual provision in question was not breached, and we affirm.

The facts from which this action arose were stipulated before the trial court as follows: In June of 1984, Hawkeye entered into a contract to purchase the insurance business of KVIS. As provided in their agreement, the purchase and sale of the business were consummated August 1, 1984. On that date, the employment contracts of six agent-employees of KVIS terminated. These agents then undertook employment with other insurance companies.

On September 18, 1984, Hawkeye commenced the underlying action alleging that KVIS and the six former employees had breached the contract of sale because the ex-employees had interfered with certain insurance contracts which KVIS had sold to Hawkeye. Specifically, Hawkeye argued that the defendants had violated paragraph ten of the contract which reads in pertinent part as follows:

In order to preserve, continue and maintain the value of the assets being purchased by the Buyer from the Seller, the Seller hereby agrees that for a period of three (3) years following the closing date no agent or employee of Kirke-Van Orsdel Insurance Services, Inc. or Seller will:

- (a) disturb or seek to secure discontinuance of, or solicit the placement or renewal of, any insurance policy or account described in paragraph 1 of this Agreement; or
- (b) disturb or seek to influence in any way, any of Buyer's agents, solicitors or representatives.¹

¹KVIS of Northwest Iowa, Inc., is a wholly-owned subsidiary of Kirke-Van Orsdel Insurance Services, Inc., which in turn is wholly owned by KVIS of Northwest Iowa, Inc. Both entities are referred to simply as "KVIS" throughout this opinion.

The parties characterized the sole issue before the trial court as whether the ex-employees were covered by paragraph ten. Hawkeye argued that the clause pertained to all persons employed by KVIS as of June 26, 1984, the date the contract was executed; KVIS urged that it applied only to those employed on or after August 1, 1984, the closing date of the sale. After Hawkeye presented its evidence, KVIS moved to dismiss, asserting that Hawkeye failed to establish that the contract had been breached. The trial court found the language of paragraph ten *clear and unambiguous*, and concluded that it covered only those persons employed on or after August 1. The court then granted KVIS' motion and Hawkeye has appealed.

Initially, we note that our standard of review is limited to the correction of errors at law. Iowa R. App. P. 4. Accordingly, the district court's findings of fact are binding upon us if supported by substantial evidence. Allen v. Highway Equipment Co., 239 N.W.2d 135, 139 (Iowa 1976). In passing upon the propriety of a trial court's order granting a motion to dismiss or a motion for a directed verdict, however, we view the evidence in the light most favorable to the party against whom the motion was made. Montgomery Ward, Inc. v. Davis, 398 N.W.2d 869, 871 (Iowa 1987).

Hawkeye's first contention on appeal is that the trial court erred in failing to consider extrinsic evidence in resolving the parties' dispute. It is well settled that a court's role in interpreting contracts is to ascertain the meaning and intention of the parties as expressed in the language used. Mopper v. Circle Key Life Ins. Co., 172 N.W.2d 118, 124 (Iowa 1969). If the language of the contract is written in clear and unambiguous terms, the court need not resort to the rules of construction; rather, the intention of the parties is determined by what the contract itself says. Allen, 239 N.W.2d at 139; Iowa R. App. P.

14(f)(14). Often in determining whether the parties' intention can be successfully established by the words of the contract, however, recourse must be had to extrinsic evidence. 4 Williston on Contracts § 601 (1961); see also Bankers Trust Co. v. Woltz, 326 N.W.2d 274, 276 (Iowa 1982). In such cases, extrinsic evidence is admitted only for the limited purpose of determining whether the contract is unambiguous; extrinsic evidence offered to show "what the parties meant to say" rather than "what was meant by what they said" is inadmissible and is barred by the parol evidence rule. Associated Grocers of Iowa Cooperative, Inc. v. West, 297 N.W.2d 103, 109 (Iowa 1980); see also 4 Williston on Contracts § 601(1961).

Our examination of the record persuades us that the trial court properly applied these principles in its attempt to ascertain the intention of the parties in the present controversy. Contrary to the appellant's assertion, it is apparent that the trial court did consider extrinsic evidence before concluding that paragraph ten was clear and unambiguous; the extrinsic evidence which the court refused to consider was that which Hawkeye attempted to use to add to the terms of the contract. We find no error in this respect. See Associated Grocers, 297 N.W.2d at 109.

Furthermore, we concur with the trial court's finding that paragraph ten is unambiguous, and we think that this conclusion is supported by substantial evidence. Initially, the interpretation urged by Hawkeye strains credulity because, after August 1, 1984, KVIS had no control over the actions of its former employees. Knowing this, it is unlikely that KVIS would agree to a contractual provision making it responsible for the acts of these individuals. The only logical interpretation of the contract is that argued by KVIS: that paragraph ten only pertains to those persons employed by KVIS as of August 1, 1984.

Relatedly, when the contract is read in its entirety, it becomes apparent that the interpretation urged by KVIS is what the parties intended. See Cairns v. Grinnell Mutual Ins. Co., 398 N.W.2d 821, 825 (Iowa 1987) (a contract should be interpreted in its entirety rather than solely by an examination of separate clauses). For example, in a portion of paragraph ten immediately following that in dispute, the parties set forth their agreed-upon method for calculating the damages to which Hawkeye would be entitled if the non-disturbance provisions of the paragraph were breached. Therein, the parties agreed that Hawkeye would recover damages equal to the actual commission earned as a result of a client "leaving the Buyer utilizing the services of seller or Kirke-Van Orsdel Insurance Services, Inc." Significantly, it is only through agents or employees of KVIS that a client could possibly utilize the services of KVIS or cause KVIS to earn commissions. Hawkeye's argument that paragraph ten also covers ex-agents of KVIS is wholly inconsistent with this provision of the paragraph because it leaves Hawkeye without a remedy for damages in such situations. See Fashion Fabrics of Iowa, Inc. v. Retail Investors Corp., 266 N.W.2d 22, 26 (Iowa 1978) (We prefer interpretations which give a lawful and effective meaning to all terms as opposed to interpretations which leave one or more parts unreasonable, unlawful, or of no effect.).

Hawkeye argues that because it knew at the time the contract was executed that KVIS of Northwest Iowa would be going out of business and therefore would have no employees as of August 1, 1984, the interpretation of paragraph ten urged by KVIS is unreasonable. We think, however, that the record contains substantial credible evidence to the contrary. While it is true that KVIS of Northwest Iowa was no longer existent as of August 1, the fact remains that its parent company, Kirke-Van Orsdel Insurance Services, Inc., remained viable. In fact, Kirke-Van Orsdel employed approximately forty persons in various

capacities at the time of the closing. It is wholly conceivable that Hawkeye intended to protect itself in the event that one of these or other persons employed by Kirke-Van Orsdel attempted to disturb the books of KVIS of Northwest Iowa. Moreover, we note that paragraph ten itself explicitly refers to employees of Kirke-Van Orsdel Insurance Services and makes no mention of KVIS of Northwest Iowa. Hawkeye cannot at this juncture attempt to assert that the latter is to whom it intended to refer. See Associated Grocers of Iowa Cooperative, Inc., v. West, 297 N.W.2d at 109.

In addition, Hawkeye argues that a memorandum dated July 23, 1984, sent from Jim Dunn, a senior vice-president of KVIS, to the agents of the company, supports its interpretation of paragraph ten. We cannot agree. Although the memorandum informs the agents of possible liability for an alleged business disturbance, this had no reference to paragraph ten. The alleged disturbance, which was the subject of the memorandum, occurred prior to August 1, 1984; the parties had agreed in a separate provision that the books of the business would not be disturbed by any agents or employees of KVIS between June 26, the date the contract was executed, and August 1, the date of the closing.

Furthermore, we think that the contracts which Hawkeye's counsel prepared in prior sales agreement add additional support to the trial court's finding in the case at bar. In two of Hawkeye's prior agreements, the non-disturbance provisions explicitly mentioned both the seller and each agent as falling within its purview. Hawkeye's failure to similarly provide for the coverage of each agent in the present case indicates an intentional departure from its prior format.

Given the above, we find no error in the trial court's conclusion that the contract was clear and unambiguous. The trial court properly examined the extrinsic evidence admitted in the case and determined therefrom that

paragraph ten clearly expressed the intent of the parties. Although the provision in question could have been worded more precisely, the Iowa Supreme Court has previously noted that this does not make a contract ambiguous. Cairns, 398 N.W.2d at 824. The contract states that for a period of three years commencing August 1, 1984, no agent or employee of KVIS shall disturb the business thereof. We think that the record contains credible evidence indicating that the parties intended for the contract to read exactly as it does, with August 1, 1984, as the focal date of reference.

Hawkeye further argues, however, that the trial court improperly refused to consider additional evidence which the court found violative of the parol evidence rule. We find no error in the court's conclusion. The court refused to consider evidence of what particular persons, in retrospect, testified that they meant for the contract (paragraph ten) to say as opposed to what it in fact says. We reiterate that this is precisely what the parol evidence rule is designed to exclude. See Associated Grocers of Iowa Cooperative, Inc. v. West, 297 N.W.2d at 109.

In addition, we disagree with Hawkeye's contention that certain portions of James Dunn's testimony, which were excluded from evidence, should have been admitted. Hawkeye argues that the trial court erred in sustaining KVIS' objection when Dunn was asked whether "by firing or discharging a person, KVIS' obligation under the contract was eliminated." The court sustained KVIS' objection that the question was argumentative and irrelevant. We find it unnecessary to pass upon the propriety of the trial court's decision to sustain the objection on the basis of the grounds asserted because the identical testimony had previously been admitted; accordingly, no error can be said to lie upon this basis. See Kengorco Inc. v. Jorgenson, 176 N.W.2d 186, 189 (Iowa 1970).

We similarly dispose of Hawkeye's contention that the trial court erred in sustaining KVIS' objection when Dunn was asked whether paragraph eight prohibited the agents from disclosing customer information to a third party. The trial court sustained the objection on the ground that the question called for an "incompetent conclusion of the witness." Although we agree with Hawkeye that the trial court erred in sustaining the objection upon this ground, see Schlichte v. Franklin Troy Trucks, 265 N.W.2d 725, 730 (Iowa 1978), we conclude that the refusal to admit the testimony was harmless error. Paragraph eight was not in issue and did not lend assistance in the interpretation of paragraph ten because it referred to a different subject and was written in an entirely different manner. Accordingly, we cannot say that the error prejudiced the plaintiff in any respect.

Hawkeye additionally argues that the trial court erred in excluding the proffered testimony of Terry Montgomery, the president of Hawkeye Insurance Services, in response to a question concerning whether "paragraph ten covered the KVIS agents for three years after August 1, 1984." The trial court sustained KVIS' objection that the question called for a legal opinion on the ultimate issue in the case. We find no error in this ruling. It is well settled that a question calling for a witness' conclusion concerning an issue of law is objectionable. Schlichte v. Franklin Troy Trucks, 265 N.W.2d at 730. Relatedly, the interpretation of a contract is generally considered a legal issue. See Fashion Fabrics of Iowa v. Retail Investors, 266 N.W.2d at 25. As such, Hawkeye's question necessarily called for a legal conclusion, and the objection thereto was properly sustained. Furthermore, we note that even if the testimony had been improperly excluded, any alleged error would have been harmless because the identical testimony was previously admitted. See Associated Grocers of Iowa Cooperative, Inc., v. West, 297 N.W.2d 103, 108 (Iowa 1980).

Finally, Hawkeye contends that the trial court erroneously construed the contract against it. See Village Supply Co., Inc., v. Iowa Fund, Inc., 312 N W 2d 551, 555 (Iowa 1981) (doubts concerning the meaning of a contract are to be construed against its drafter). We agree with Hawkeye's assertion that a contract is not construed against either party where it was drafted by legal counsel for both parties. See Banco Mortgage Co. v. Steil, 351 N.W.2d 784, 789 (Iowa 1984). Hawkeye's assignment of error is without merit, however, because there is nothing in the record or in the trial court's ruling indicating that the contract was construed against Hawkeye. Accordingly, this contention is rejected.

In summary, we have fully considered each of Hawkeye's contentions and are convinced that the trial court was correct in its ruling. Its judgment is therefore affirmed.

AFFIRMED.