

IN THE COURT OF APPEALS OF IOWA

K & S OF DENISON, INC.

Plaintiff-Appellant,

vs

NORMAN NIELSEN,

Defendant-Appellee.

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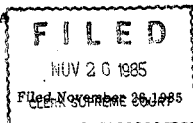
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Appeal from the Iowa District Court for Crawford County - Michael S.
Walsh, Judge

Plaintiff appeals the district court's dismissal of its petition for breach
of contract and nonpayment of open account. **AFFIRMED.**

James R. Van Dyke, of Van Dyke & Werden, Carroll, for plaintiff-appellant.

Daniel J. Murtaugh, of Louis Law Firm, Harlan, for defendant-appellee.

Considered by Donielson, P.J., and Hayden, and Sackett, JJ.

Plaintiff has appealed claiming the trial court erred in dismissing its petition. Plaintiff's action at law was based upon alternate grounds of breach of a written contract and nonpayment of an open account.

On plaintiff's appeal from an adverse judgment rendered in a law action tried to the court, our review is not de novo but on errors assigned. Iowa R. App. P. 4. In order to prevail on this contention under this limited extent of review it would be necessary for us to hold plaintiff had established its theory in the trial court as a matter of law. Arthur Elevator Co. v. Grove, 236 N.W.2d 383, 388 (Iowa 1975).

The trial court found that plaintiff and defendant's salesman entered into negotiations for defendant's purchase of a combine. The parties agreed that defendant would trade in certain equipment in connection with this purchase, the parties agreed to a price, and defendant signed the "general retail purchase order." It is agreed by the parties that none of the blanks of the purchase agreement were filled in when defendant signed it and that plaintiff's salesman stated he would fill in the purchase agreement later. The completed document was admitted into evidence and stated these figures:

Total Cash Price	\$60,000
Less Trade	15,000
Cash Difference	45,000
Sales Tax	<u>1,350</u>
Total	\$46,350
Cash with Order	4,350
Cash on Delivery	
Balance	<u>\$42,000</u>

It is agreed by the parties that no payment was made at this time by defendant.

Approximately two months later, defendant signed a completed retail installment contract to finance the purchase of the combine. The document read as follows when defendant signed it:

Net Trade-In Allowance	\$15,000.00
Cash	<u>4,350.00</u>
Total Down Payment	<u>19,350.00</u>
* * * * *	
Sales Tax	1,350.00
Total Cash Price	61,350.00
Total Down Payment	19,350.00
Unpaid Balance of Cash Price	42,000.00
Filing Fees	3.00
Document Tax	--
Amount Financed	42,003.00
Finance Charge	<u>10,018.32</u>
Total of Payments	<u>\$52,021.32</u>

The trial court found that defendant did in fact pay all of its installments for the total amount of \$52,021.32, but defendant did not pay the \$4,350 referred to as "cash" in the installment contract. However, the trial court concluded that the language in the documents was clear and not ambiguous, as they both stated that the cash down payment of \$4,350 was paid.

In the construction of written contracts, the cardinal principle is that the intent of the parties must control; and except in cases of ambiguity, this is determined by what the contract itself says. Iowa R. App. P. 14(f)(14). To use extrinsic evidence to show that the amount was not actually paid would be a violation of the parol evidence rule as it would vary or alter the terms of the contract. See Bankers Trust Company v. Woltz, 326 N.W.2d 274, 276 (Iowa 1982). We affirm the trial court on the breach of contract theory finding that plaintiff failed to establish its theory as a matter of law.

Plaintiff, however, had an alternate ground of recovery, nonpayment of an open account. The trial court stated: "The Plaintiff has failed to establish that any additional amount is due and owing from the Defendant beyond that amount already paid by the Defendant."

A continuous, open, current account is one which is not interrupted or broken, not closed by settlement or otherwise, and is a running, connected series of transactions. Griffith v. Portlock, 233 Iowa 492, 498, 7 N.W.2d 199, 202

(1942) Generally, an account is equivalent to a claim or demand based upon a transaction creating a debtor-creditor relationship. In re Stratman's Estate, 231 Iowa 480, 489, 1 N.W.2d 636, 643 (1942).

Defendant testified he believed that the retail installment payments were all that he would have to pay, that the purchase agreement and installment contracts did not reflect the amounts that the parties orally agreed to, and that the \$4,350 difference should have been added to the \$15,000 trade-in allowance to accurately reflect the trade-in value of his equipment at \$19,350. The trial court found the defendant's testimony credible and would not grant plaintiff relief under its open account theory. Weight to be given testimony is for the finder of fact, and the trial court's findings of fact are binding upon us if supported by substantial evidence. Iowa R. App. P. 14(f)(1). We believe there is substantial evidence in the record to support the trial court's findings.

We find plaintiff failed to establish its theory as a matter of law. We therefore affirm the trial court.

AFFIRMED.¹

¹ We refer appellee's counsel to Iowa Rule of Appellate Procedure 16(a) which provides that the cover of appellee's brief should be red.