

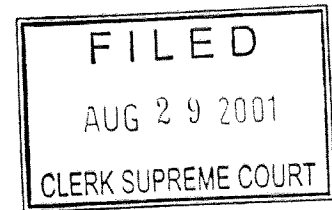
IN THE COURT OF APPEALS OF IOWA

No. 1-281 / 00-1139
Filed August 29, 2001

TEXTRON FINANCIAL CORPORATION,
Plaintiff-Appellee,

vs.

ERICKSON DISTRIBUTING, LTD., d/b/a
ERICKSON PHARMACY and GUS T. ERICKSON,
Defendants-Appellants.



Appeal from the Iowa District Court for Hancock County, Bryan H. McKinley, Judge.

The defendants appeal from the district court's ruling granting the plaintiff summary judgment on the plaintiff's claim of breach of an equipment lease.

AFFIRMED.

David M. Nelsen of Nelsen Law Office, Mason City, for appellants.

H. Raymond Terpstra II of Terpstra & Epping, Cedar Rapids, for appellee.

Considered by Sackett C.J., and Vogel and Vaitheswaran, JJ.

VAITHESWARAN, J.

Boiled down to its essentials, this case presents a single fact question: whether a lease was assigned to the party seeking to enforce it. The district court found undisputed evidence in the summary judgment record that it was. We agree and, accordingly, affirm the court's grant of summary judgment in favor of the assignee.

I. Background Facts and Proceedings

Erickson Distributing, Ltd. leased an apothecary system from Avco Leasing. The vendor, Recomm International Display, Ltd., was not a party to the lease agreement.

The lease agreement provided the lease could be assigned to a third party without notice to Erickson. After Erickson defaulted on its lease payments, Textron Financial Corporation, as assignee, sued Erickson and its president Gus Erickson to enforce the agreement. Attached to its petition was: (1) the lease agreement between Avco and Erickson; (2) a document reflecting that the vendor Recomm had filed for bankruptcy; (3) portions of Recomm's bankruptcy reorganization plan addressing in part the rights and obligations of lessees and lessors of Recomm products; (4) an order confirming the reorganization plan; and (5) a letter from Textron to Erickson advising Erickson of modifications to the lease in light of Recomm's bankruptcy petition and providing for different payment options under the lease.¹ Erickson's answer to the petition denied "for

¹ Although the lease agreement between Avco and Erickson states there shall be no modifications without both parties' approval, Erickson does not challenge the assignee's actions on this ground.

lack of knowledge" the paragraph referencing the lease and its assignment, as well as the paragraphs describing the exhibits attached to the petition.

Textron moved for summary judgment, relying almost exclusively on its petition and attachments. Erickson filed a resistance, averring Textron failed to support its allegation that it had a lease agreement with Erickson. Erickson attached to its resistance documents purporting to show the absence of such an agreement. The district court granted Textron's motion and entered judgment in favor of Textron for \$14,207.37 plus interest, costs and attorney fees. Erickson moved for enlarged findings of fact and conclusions of law pursuant to Iowa Rule of Civil Procedure 179(b). The court denied the motion. Erickson appealed from the final judgment.

II. Scope and Standards of Review

An appellate court reviews a district court's grant of summary judgment on error. *Crippen v. City of Cedar Rapids*, 618 N.W.2d 562, 565 (Iowa 2000). Summary judgment is appropriate only when the entire record before the court shows there is no genuine issue of material fact and the district court correctly applied the law. *Carr v. Bankers Trust*, 546 N.W.2d 901, 903 (Iowa 1996). To determine whether a genuine issue of material fact exists, we examine the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits. Iowa R. Civ. P. 237(c); *Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Federated Mut. Ins. Co.*, 596 N.W.2d 546, 549 (Iowa 1999). The moving party has the burden to show there are no material facts in dispute. *Weinzettl v. Ruan Single Source Transp. Co.*, 587 N.W.2d 809, 810 (Iowa Ct. App. 1998). The non-moving party cannot rely

only on its pleadings if the motion for summary judgment is properly supported. *Id.* The non-moving party must set forth specific facts that show there is a genuine issue for trial. *Schaefer v. Cerro Gordo Co. Abstract Co.*, 525 N.W.2d 844, 846 (Iowa 1994). It can be fatal to the resisting party to rely only on a perceived weakness in the movant's contention. *Suss v. Schammel*, 375 N.W.2d 252, 254 (Iowa 1985).

III. Lease Assignment

There is no dispute that Erickson entered into a lease agreement with Avco.² The only real question is whether the lease was assigned to Textron. Erickson contends Textron failed to prove there was such an assignment. Under our summary judgment rule, Textron was not required to do more than allege there was an assignment. See Iowa R. Civ. P. 237(a) (stating claimant may move for summary judgment with or without supporting affidavits). Textron did so. At that point, the rule required Erickson to set forth specific facts to controvert the assertion that there was an assignment. See Iowa R. Civ. P. 237(e). Erickson did not do so. Instead, Erickson attached to its resistance the assignment contract referred to in Textron's petition, thereby confirming the very fact it sought to dispute. Therefore, although the documents attached to Textron's petition shed little light on the circumstances surrounding the alleged assignment, Erickson's document resolves the assignment question.

² Erickson argues the agreement was actually a sale agreement with Recomm rather than a lease agreement. The agreement itself belies this assertion. It is titled "Lease Agreement", uses the terms "lessor" and "lessee" and is signed by an Avco representative as lessor and by Gus Erickson as lessee. Although the record reflects Erickson also entered into an advertising agreement with Recomm, we agree with the district court that the Recomm-Erickson agreement was entirely independent of the lease agreement and did not convert the lease agreement between Avco and Erickson into a sale agreement.

Erickson now contends the district court erred in relying on this assignment contract because the contract does not expressly specify that Erickson's lease was among those assigned to Textron. However, this omission does not amount to a failure by Textron to meet its burden of proof but a failure by Erickson to controvert the proof. Textron alleged Avco assigned Erickson's lease agreement to it. Erickson confirmed Avco assigned specified leases to Textron and furnished no evidence to dispute Textron's assertion that its lease was one of those specified leases. Under this record, Erickson did not generate an issue of material fact. *Cf. Fisher Controls Int'l, Inc. v. Marrone*, 524 N.W.2d 148, 149 (Iowa 1994) (noting employee's failure to dispute key fact alleged in pleading appropriately resulted in grant of summary judgment in favor of employer).

The district court found, "it is undisputed that Textron is the assignee of the Avco/Erickson lease agreement." In its ruling on the 179(b) motion, the court further found, "[t]he record is clear that an assignment between Avco and Textron took place and that the lease at issue was one of the leases assigned." Discerning nothing in the summary judgment record to controvert these findings, we affirm the district court's grant of summary judgment in favor of Textron.

AFFIRMED.