

IN THE COURT OF APPEALS OF IOWA

FILED

MAR 26 1985

31  
CLERK SUPREME COURT

DARRELL BETHARDS,

Plaintiff-Appellee,

vs.

EAST DES MOINES NATIONAL BANK,

Defendant,

and

MARION FRANK STEPLETON,

Defendant-Appellant.

Filed March 26, 1985

5-33  
84-657

---

Appeal from the Iowa District Court for Polk County, Rodney J. Ryan, Judge.

Defendant appeals from adverse decision in a declaratory judgment action to construe the terms of a contract and to determine the parties' interest in an insurance proceeds check. REVERSED AND REMANDED.

Terry Wright, Des Moines, for defendant-appellant.

Gerald R. Ralph, Des Moines, for plaintiff-appellee.

Considered by Oxberger, C.J., Hayden, and Sackett, JJ.

The parties entered into an agreement for plaintiff to purchase defendant's tavern business. After the business burned a dispute arose regarding the proceeds of an insurance check. The court found that plaintiff should receive the insurance proceeds, and defendant appeals. We reverse.

Early in May of 1983, plaintiff Darrell Bethards agreed to purchase the inventory and business of defendant Frank Stepleton. He was to pay \$2178.41 for the inventory. The subject of this dispute involves the amount to be paid for the business. Bethards claims the purchase price was \$15,000 and Stepleton says the figure was \$30,000.

On May 6 Bethards delivered to Stepleton a Cadillac which both agree is worth \$11,000 and paid him \$4000 in cash. Stepleton then went to his attorney to ask him to draw up a contract showing a price of \$15,000 for the business. The contract provided that \$15,000 would be paid by Bethards over five years with an interest rate of 10 percent. The payments were to be paid monthly beginning on the 6th of June in the amount of \$319.06. No mention is made of a price for the inventory. Further, Bethards was to purchase insurance to include both himself and Stepleton as beneficiaries. Stepleton says he did not mention the "down payment" of \$15,000 to his attorney because that payment had already been made, and Stepleton also made reference at trial to the fact he considered "skimming a little bit off" on his income taxes.

On July 14 the contract was signed by both parties. July 15 Bethards paid Stepleton for the inventory and also made two payments for June and July installments. Bethards insured the business as required in the contract for "at least" the purchase price, and set the policy limit at \$30,000. On September 14, 1983, the business burned.

After the fire Bethards signed a proof of loss statement indicating Stepleton was the titleholder and also told the insurance adjustor he paid \$33,000 for the

business. The adjustor testified at trial confirming both these facts. A check for \$30,000 was issued by the company to both Stepleton and Bethards. Bethards signed his name to the check, endorsed it, and then withdrew \$15,440.99. The parties have stipulated the bank is owed \$15,440.99. This declaratory judgment action was brought to determine whether Bethards or Stepleton is entitled to the remaining proceeds from the check.

The court found that Bethards was entitled to the proceeds and stated:

[T]he court takes the position that it was far more beneficial to Seller, Stepleton, to make sure that his agreed sale price for his business was protected; and, when Stepleton directs his attorney to draw a contract indicating a total agreed sale price of \$15,000, with the contract containing all terms of the agreement, without any mention of a balance due or prior payments not satisfying the contract, the conclusion must be that up to the point of signing a written contract the agreement had been oral and the parties desired a standard written contract to express their agreement, which in reality had been mostly satisfied by the time they got around to signing the final draft and has now been fully satisfied.

Our review of this declaratory action is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of fact, but are not bound by them. Iowa R. App. P. 14(f)(7).

The parole evidence rule indicates that, generally, extrinsic evidence will not be admitted to vary or contradict the terms of a written agreement; however, such extrinsic evidence has always been allowed to show that a writing is not an integrated agreement. Kroblin v. RDR Motels, Inc., 347 N.W.2d 430, 433 (Iowa 1984); In re Eickman Estate, 291 N.W.2d 308, 312 (Iowa 1980); Fashion Fabrics of Iowa v. Retail Investors, 266 N.W.2d 22, 25 (Iowa 1978); Restatement (Second) of Contracts § 214 (1961). Extrinsic evidence is admissible here to determine the scope of the agreement.

Defendant argues that the written agreement is not an integrated contract and that extrinsic evidence shows that the actual price for the entire business is \$30,000. Plaintiff has not provided a presentation of its argument through an appellee's brief, but after a review of the record presented to this court, we cannot find adequate support for plaintiff's position which prevailed at trial.

We are not unmindful of the fact that a contract shall be read against the drafter. Fashion Fabric, at 26. However, we must also read the contract so as to give effect to the intent of the parties. Pathology Consultants v. Gratton, 343 N.W.2d 428, 434 (Iowa 1984). In Kroblin the court rejected the contention that the court should not look to the fact that the buyer in that instance made payments consistent with the seller's version of the contract terms. Kroblin, at 433. The court commented, "A document will be read in the light of surrounding circumstances and given such practical construction as they themselves have placed upon it." Id. (citations omitted). The courts have frequently stated that the acts of the parties are one of the best indications of the true intent of a contract. Lovlie v. Plumb, 250 N.W.2d 56, 59 (Iowa 1977); State ex rel. State Highway Commission v. City of Davenport, 219 N.W.2d 503, 508 (Iowa 1974); Hamilton v. Wosepka, 261 Iowa, 299, 305, 154 N.W.2d 164, 172 (Iowa 1967).

If the agreement had already been consummated on May 6 by the transfer of title of the Cadillac and payment of \$4000 in cash, then it makes no sense that Bethards would sign a contract several months later which not only obligated him to pay \$15,000 but to pay it in increments of \$319.06 for 59 months. One of the most telling factors is that Bethards, after transferring \$15,000 to Stepleton, paid Stepleton amounts on July 15 for both the inventory and for two installment payments.

Bethards was asked about these matters at trial, and on the question of why he would sign the contract when it called for monthly payments, he responded, "The only thing that I felt that the contract was, was that it was drawn up in May and it wasn't settled—it wasn't signed or settled until July." When asked why he made the two installment payments, he said, "The contract was not signed or settled until July, and that was the figure that we arrived at in the lawyer's office. And I think if he will recall, I got upset over the two payments that I had to make at that point in time." Other parts of the agreement were not included

in the contract, as Bethards indicated at trial, such as payment of \$2178 for the inventory. Bethards' actions following the signing of the contract also show that the purchase price was \$30,000 and that Bethards recognized Stepleton as the titleholder. He insured the premises for \$30,000, told the insurance adjustor he had paid \$33,000 for the business, and signed a proof of loss showing Stepleton as titleholder.

The only evidence to the contrary is that Stepleton did not tell his attorney of the down payment prior to drafting the agreement. The trial court noted this as the most important factor in determining the agreement between the parties. While it is convincing, the actions of the parties, particularly those of Bethards, are substantial to show the price was \$30,000.

We find that the purchase price of the business was \$30,000 and that the defendant is entitled to the remaining proceeds of the insurance check.

REVERSED AND REMANDED FOR ENTRY OF AN ORDER IN  
CONFORMANCE WITH THIS OPINION.