

IN THE COURT OF APPEALS OF IOWA

No. 3-273 / 92-1544

FILED

DEC 29 1993

CLERK SUPREME COURT

ESTATE OF LYLE A. CHAPMAN, SR.,

Plaintiff/Appellee,

vs.

MARLAN SCHRECK,

Defendant/Appellant.

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Appeal from the Iowa District Court for Scott County,
James Haverkamp, Judge.

The defendant appeals the district court's ruling determining he must separately pay, pursuant to an oral agreement, for raw metal inventories at a foundry the defendant bought from the plaintiff's decedent pursuant to a written purchase agreement. **AFFIRMED.**

Michael DePree and Mark J. Smith of Wells, McNally & Bowman, Davenport, for appellant.

John D. DeDoncker of Lane & Waterman, Davenport, for appellee.

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

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HAYDEN, J.

In the fall of 1990 defendant Marlan Schreck purchased the Durant Foundry and Machine Company from plaintiff Lyle Chapman, Sr. This dispute between the parties centers around the payment for the raw metal inventories at the foundry. Chapman claims the parties orally agreed Schreck would purchase separately the raw metal inventories because they were not included in the written purchase agreement for the foundry.

The closing on the purchase of the foundry was scheduled for September 1, 1990, but due to a problem with the deed, closing was delayed until October 1990. Schreck, however, assumed control of operations on September 2, 1990. At that time the parties conducted an inventory of the raw metal on the site. Chapman subsequently presented a separate bill to Schreck for the raw metal inventory. In March 1991 Schreck sent a letter to Chapman indicating he was willing to pay \$22,465.65 for the raw metal inventories. Schreck contends he wrote the letter after Chapman threatened to commence a lawsuit regarding the nonpayment of the bill for the raw metal inventories. Schreck claims this was an offer to settle rather than an admission of liability.

Chapman subsequently filed a lawsuit seeking recovery of the amount allegedly owed by Schreck for the raw metal inventories. Later Chapman died, and the lawsuit was prosecuted by his estate.

Prior to trial, Schreck filed a motion in limine seeking to exclude from evidence the offer to pay for the raw metal inventory. The trial court denied the motion, asserting there was an issue of fact concerning whether the March letter was an admission of liability or an offer to compromise.

The case proceeded to trial. The defendant had a standing objection to the plaintiff's testimony there was an oral agreement between the parties for the defendant to pay separately for the raw metal inventory. Schreck continued to claim the offer in the March letter was one of settlement which should have been excluded under Iowa Rule of Evidence 408. The district court permitted the plaintiff to introduce the March letter concerning the defendant's offer to pay for the inventory and testimony concerning the offer.

On August 26, 1992, the district court entered a ruling determining Chapman was entitled to recover a separate payment from Schreck for the raw metal inventories at the foundry. The court concluded Chapman and Schreck had a separate agreement to pay for the raw metal inventories apart from the written purchase agreement for the foundry and other assets. The court entered a judgment in the amount of \$22,466.65, with interest at the rate of ten percent per annum from and after June 28, 1991, the date the petition was filed. Schreck appeals.

I. Extrinsic Evidence. Schreck contends the trial court erred in considering extrinsic evidence to interpret the contract and the parties' intentions regarding the purchase of the raw metal inventories. The trial court, however, determined the parties' contract was ambiguous with regard to the purchase of the raw metal inventories.

Extrinsic evidence is admissible to aid in the interpretation of an ambiguous contract. Seibel v. Commonwealth Life Ins. Co., 194 Iowa 701, 707, 190 N.W. 173, 176 (1922); see Dental Prosthetic Servs., Inc. v. Hurst, 463 N.W.2d 36, 39 (Iowa 1990) (extrinsic evidence admissible as aid to interpretation when it throws light on situation of parties, antecedent negotiations, attendant circumstances, and objects parties were trying to attain). Such evidence sheds light on the intentions of the parties. The court considered the following evidence.

With regard to the purchase of the foundry, Schreck initially sent to Chapman an "Offer to Purchase Stock." In the document Schreck offered and agreed to purchase the real estate, improvements, equipment, inventory, inventory parts, raw metal inventories, fixtures, and operating supplies listed on schedule II. Ellen Curry, defendant's attorney who drafted this document, explained at trial they had made a provision in the agreement for a list to be attached itemizing the stock Schreck was to purchase. Chapman did not accept this offer. Plaintiff then sent an "Offer to Purchase Assets and Covenant Not to Compete."

This document, signed by both parties in July 1990, included the purchase by Schreck of real estate, improvements, "[e]quipment, inventory, inventory parts, raw metal inventories, fixtures, and operating supplies." The purchase price provision of the agreement, however, stated the price of \$364,300 included: "real estate and improvements, equipment, inventories, fixtures, and operating supplies." The purchase price provision did not specifically mention the "raw metal inventories."

The trial court concluded this omission of raw metal inventories was an ambiguity in the agreement subject to interpretation. Consequently the trial court overruled Schreck's objection to the plaintiff's offer of proof of an oral agreement regarding the raw metal inventories.

Chapman testified the parties had orally agreed Schreck would purchase the raw metal inventories separately. Evidence shows the parties signed the "Offer to Purchase Assets" agreement in July 1990 and contemplated a September closing date. Due to a problem with the title, the closing was delayed until October 1990. However, the parties agreed Schreck was to assume control of the foundry on September 1 or 2, 1990. At the time the parties conducted an inventory of the raw metal stock at the foundry. The court found the parties originally intended a stock sale which included the raw metal inventories on an attached schedule. The final agreement, however, was an asset sale which excluded the raw metal inventories.

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After considering this evidence the trial court determined a separate agreement to purchase the raw metal inventories existed between the parties. Construction and interpretation of contracts are to be resolved by the court as a matter of law. McKenzie v. Eastern Iowa Tire, Inc., 448 N.W.2d 464, 466 (Iowa 1989). However, when extrinsic evidence has been considered by a trial court to aid in the construction of a contract, the trial court's findings of fact become binding on the reviewing court. Id. The findings of the trial court are supported by substantial evidence. We hold plaintiff is entitled to the judgment as set forth by the trial court. We affirm on this issue.

II. Offer to Compromise. Schreck contends the trial court should not have admitted the March 1991 letter. Defendant claims the letter was an offer to compromise and inadmissible under Iowa Rule of Evidence 408. Plaintiff offered the March letter as evidence a separate agreement existed regarding the purchase of the raw metal inventories.

An offer to compromise is generally inadmissible as an admission of liability. Iowa R. Evid. 408. Such evidence, however, is admissible to prove a fact other than liability. Tratchel v. Essex Group, Inc., 452 N.W.2d 171, 179 (Iowa 1990) (citation omitted). It is also admissible if the intent of the settling party is to admit responsibility rather than to offer a compromise. Id. (citing Nehring v. Smith, 243 Iowa 225, 233, 49 N.W.2d 831,

835 (1951)). The offer of settlement or compromise exclusionary rule is designed to exclude this evidence only when it is tendered as an admission of weakness of the other party's claim or defense, not when it is tendered to prove a fact other than liability. Pogge v. Fullerton Lumber Co., 277 N.W.2d 916, 921 (Iowa 1979) (citations omitted).

The decision whether to admit such evidence for other purposes is within the discretion of the trial court. Production Credit Ass'n v. Ryan, 441 N.W.2d 379, 384 (Iowa App. 1989) (citation omitted). We will reverse the trial court's determination on the issue of admissibility of such evidence only when we find a clear abuse of discretion. Gail v. Clark, 410 N.W.2d 662, 672 (Iowa 1987) (citation omitted). The trial court reasonably balanced the questions of relevancy, probative value, and prejudice. We hold the trial court did not abuse its discretion in admitting the letter. We affirm.

Costs of this appeal are assessed to Schreck.

AFFIRMED.