IN THE COURT OF APPEALS OF IOWA

FILED
JUN 25 1985
CLERK SUPREME COURT

282

KENNETH G. MEYERHOFF TRUST, Joseph Nutting, Trustee,

Plaintiff-Appellee,

vs.

HONEYWELL, INC.,

Defendant-Appellant.

Filed June 25, 1985

5-187
84-1615

Appeal from the Iowa District Court for Black Hawk County - Dale S. Missildine, Senior Judge.

Defendant appeals an adverse judgment in an action on a contract. AFFIRMED.

Samuel C. Anderson of Swisher & Cohrt, Waterloo, Iowa, for defendant-appellant.

Joseph Nutting of Martin, Nutting, Miller, Keith & Pedersen, Waterloo, Iowa, for plaintiff-appellee.

Considered by Oxberger, C.J., Donielson, and Schlegel, JJ.

SCHLEGEL, J.

Defendant, Honeywell, Inc., appeals an adverse judgment in an action on a contract. We affirm.

Plaintiff, a charitable trust, and Honeywell entered into a contract that required Honeywell to maintain the heating and cooling systems in some of plaintiff's property. Their dispute arose when Honeywell refused to replace two heat exchangers in furnaces covered by the maintainance contract.

Plaintiff brought suit, alleging the heat exchanges were components that Honeywell had a duty to replace under the following contract clause:

> Component Replacements
>
> Honeywell will replace worn, failed, or doubtful components and parts. Replacements will be of like or current design to minimize system depreciation and obsolescence.

Honeywell claimed the heat exchangers were excluded from such coverage by the following clause:

> Limitation of Liability
>
> * * *
>
> . . . Repair or replacement of nonmaintainable parts of the system such as ductwork, boiler shell and tubes, unit cabinets, boiler refractory material, electrical wiring, hydronic and pneumatic piping, structural supports, etc. is not included under the agreement.

Following a short bench trial, the trial court ruled the contract was ambiguous and construed the contract against the drafter, Honeywell. Judgment was entered in favor of plaintiff.

In contract cases, the cardinal principal 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). The contract should be interpreted as a whole. See Fashion Fabrics of Iowa, Inc. v. Retail Investors Corp., 266 N.W.2d 22, 26 (Iowa 1978). We prefer interpretations which give a reasonable,

lawful, and effective meaning to all terms as opposed to interpretations which leave one or more parts unreasonable, unlawful, or of no effect. Id.

Testimony at trial established that heat exchangers were components of the furnaces to be maintained by Honeywell. It was also established that heat exchangers themselves were not subject to maintenance. Plaintiff thus should have presented evidence to show that heat exchangers are not similar to the nonexclusive examples listed in the limitation clause upon which Honeywell relies. However, no such evidence was presented. Normally, the lack of such evidence would result in plaintiff failing to meet its burden of proof.

In this case, however, the trial court properly ruled that the contract as a whole is ambiguous. The forms prepared and used by Honeywell do not define "component," "maintenance," or "nonmaintainable parts." The schedule of equipment to be maintained lists parts such as belts and filters, which Honeywell admits must be replaced under the contract. The same schedule also lists furnaces; parts which Honeywell apparently claims are not supposed to be replaced under the contract.

Viewing the contract as a whole, we must conclude that the contract is ambiguous as that term is defined in Gendler Stone Products v. Lamb, 179 N.W.2d 628, 631 (Iowa 1970). The trial court properly resolved any doubts about the meaning of the agreement against Honeywell, the drafter. See Village Supply Co. v. Iowa Fund, Inc., 312 N.W.2d 551, 555 (Iowa 1981). Although Honeywell's position in the underlying dispute is reasonable, it is incumbent upon Honeywell to draft its form contracts so that outside testimony is not required to ascertain the meaning of those contracts.

AFFIRMED.