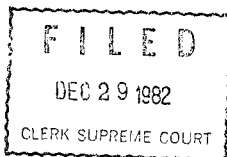


IN THE COURT OF APPEALS OF IOWA



AMUSE-O-MATIC, INC.,

)

Plaintiff-Appellee,

)

Filed December 29, 1982

vs.

)

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J.J.'S LOUNGE and ROSE M.  
JUNKMAN,

)

2-342  
2-67681

)

Defendants-Appellants.

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Appeal from Calhoun District Court - Louis Beisser, Judge.

Defendants, operators of a bar, appeal from a judgment holding them in breach of contract for ordering the removal of coin-operated machines from their premises. AFFIRMED.

Dan T. McGrevey, Fort Dodge, for defendants-appellants.

Stephen G. Kersten of Kersten, Opheim, Carlson & Trevino, Fort Dodge, for plaintiff-appellee.

Considered en banc

DONIELSON, J.

Defendants, operators of a bar, appeal from a judgment holding them in breach of contract for ordering the removal of coin-operated machines from their premises. On appeal defendants contend that district court erred in finding a valid contract between themselves and plaintiff lessor. Additionally, defendants contend that they are entitled to rescission due to plaintiff's prior breach. We affirm the district court on both of the assigned errors.

Our scope of review in this law action is on assigned errors. Iowa R. App. P. 4; Kurtenbach v. TeKippe, 260 N.W.2d 53, 54 (Iowa 1977).

I.

Plaintiff, Amuse-O-Matic corporation, is in the business of renting coin-operated amusement machines such as juke boxes, and electric video games. The defendants, J.J.'s Lounge and Rose M. Junkman, rented four machines from the plaintiff and placed them in their bar. The defendants allege that the machines broke down frequently, and disputes arose between the parties over service and repair of the machines. The machines were eventually removed from the defendant's bar, allegedly due to the defendant's request.

The plaintiff later brought the present action for breach of an alleged written contract covering the rental of the machines. The plaintiff sought to recover profits it would have earned if the machines had remained in place for the entire period of the alleged contract.

At trial, defendants acknowledged that defendant Rose Junkman signed a document, but asserted that the plaintiff had failed to sign it, and that the plaintiff had later filled in certain blanks. Additionally, the defendants alleged that the plaintiff had obtained defendant's signature by presenting the document to her when she was too busy tending bar to read it, and by misrepresenting its effect as a mere continuation of an earlier oral agreement. Furthermore,

defendants complained that the machines were removed from the premises due to plaintiff's failure to properly repair and maintain the machines.

The trial court concluded that the defendants had failed to prove that Rose Junkman's signature was due to any misrepresentation or mistake, and consequently held them in breach of contract. Additionally, the court held that the defendants had failed to prove that plaintiff's alleged poor maintenance of the machines justified a rescission of the contract.

## II.

Defendant's first contention is that the trial court erred in finding a valid contractual obligation. Before the merit of this contention can be reached, plaintiff poses the threshold question of whether the defendants' pleading is sufficient to challenge the validity of the contract. Specifically, the parties dispute whether defendants' answer, stating an affirmative denial that the defendant Rose Junkman signed the document sued upon, is sufficient to satisfy Iowa Rules of Civil Procedure 100 and 101. Rule 101 reads in part: "Any defense that a contract or writing sued on is void or voidable. . . must be specially pleaded." Rule 100 provides that a party's signature will be deemed genuine unless denied and supported by an affidavit.

Although the parties dispute the sufficiency of the statement as an affirmative defense, we find that the pleading is sufficient to challenge the alleged contract. The nature of the defense is a denial of the existence of a contract, not an avoidance requiring an affirmative defense. Defendants did not really deny the genuineness of defendant Rose Junkman's signature on the alleged contract; essentially they argued that, regardless of the alleged signature, the document did not represent a contract because mutual assent was lacking. The theory is that her apparent manifestation of assent was induced by a misrepresentation as to the character and essential terms of the document.

Accordingly defendants contend there was a lack of consent and, therefore, no contract was ever formed. See Restatement (Second) of Contracts § 163 (1979).

This defense is not an attempt to avoid the legal effects of an otherwise binding contract, rather, it is one that challenges the very existence of a contractual relationship. Therefore, there was no need to plead an affirmative defense in avoidance per Rule 101; defendants' denial of the contract was sufficient.

Proceeding to the merits, defendants contend that the trial court erred in finding a valid contractual obligation. On review we examine the evidence in the light most favorable to the judgment. See Kurtenbach v. TeKippe, 260 N.W.2d 53, 54 (Iowa 1977). We find the trial court's finding of a valid contractual obligation is well supported by the evidence.

Plaintiff's employee testified that he had filled in the terms of the contract, explained the terms to Rose Junkman, witnessed her signature on the contract, and gave her a copy. Furthermore, defendant Rose Junkman never denied that the signature was her own, and also responded affirmatively when asked whether she had read what she had signed.

Finally, an examination of the contract reveals nothing that suggests a person would not know, or have a reasonable opportunity to know, its character or essential terms. Since a person is bound by the documents which they sign, see Wilmotter Co. v. Roseman Bros. 258 N.W.2d 317, 323 (Iowa 1977), we find no error in the trial court's finding of a valid contractual obligation.

### III.

Defendants alternatively argue that if a valid contractual obligation existed, they are entitled to rescission due to plaintiff's prior breach. Initially, it should be noted that rescission is only available where the breach is so substantial it defeats the object of the contracting parties. Nora Springs Co-op Co. v. Brandau, 247

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N.W.2d 744 (Iowa 1976). Defendants claim such a substantial prior breach existed in the plaintiffs failure to properly service the machines. To substantiate this claim, a parade of witnesses testified that the machines failed to properly function by estimates ranging from twenty to fifty percent of that time. Despite these subjective estimates, the court was persuaded otherwise. The undisputed income of the machines objectively demonstrated that the machines were adequately functioning and properly cared for within the terms of the contract.

This court is bound by findings of fact if supported by substantial evidence. Iowa R. of App. P. 14(f)(1). The undisputed income statements clearly demonstrate that the machines were generating sizeable income until the defendant ordered them removed. We find no substantial prior breach entitling defendant to rescission.

Having found no reversible error, we affirm the judgment.

AFFIRMED.