

FILED

APR 25 1989

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

SAMUEL D. GOODMAN, d/b/a)
GOODMAN ENTERPRISES,)

Plaintiff-Appellant,)

vs.)

JOE & JERRY'S DISTRIBUTING CO.;)
JOSEPH E. KUHN, Individually;)
JEROME R. SCHULTZ, Individually,)

Defendants,)

WILLIAM H. WORLEY, Individually;)
ELIZABETH A. WORLEY, Individually;)
MICHAEL K. RUSSELL, Individually;)
and KARLA HOELZEL RUSSELL,)
Individually,)

Defendants-Appellees.)

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8-586
88-489

Appeal from the Iowa District Court for Pottawattamie
County (56355), Leo F. Connolly, Judge.

Plaintiff contends the district court erred by allowing
parol evidence concerning the intent of the signatories to
the "general release." **AFFIRMED.**

Michael G. Reilly, of Perkins, Sacks, Hannan, Reilly &
Petersen, Council Bluffs, for the plaintiff-appellant.

David D. Ernst, of Gaines, Mullen, Pansing, Hogan &
Cotton, Omaha, and Richard D. Crotty, Council Bluffs, for
the defendants-appellees.

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

OXBERGER, C.J.

Plaintiff-landlord brought this suit for breach of a lease against a corporation and its two original stockholders. He later added as defendants four recent purchasers of stock in the corporation. He alleged that those defendants had signed a "general release" guaranteeing the lease obligation and agreeing to indemnify one of the original stockholders from any liability under the lease. The district court entered judgment in favor of the recent stock purchasers, holding the "general release" they signed was not a guarantee of the lease obligation. The plaintiff appeals. Our review is for the correction of errors at law. Iowa R. App. P. 4. The trial court's findings of fact are binding upon us if supported by substantial evidence. Iowa R. App. P. 14(f)(1). We affirm.

The plaintiff owned commercial real estate and leased it to a corporation called Joe & Jerry's Distributing Co. At the time the lease was executed, the two principal stockholders in Joe & Jerry's were Joseph Kuhn and Jerome Schultz. However, Joseph Kuhn later sold his stock in the company to a group composed of Schultz, William and Elizabeth Worley, and Michael and Karla Russell. In connection with this sale, the Russells and the Worleys signed a document entitled "general release." The district court found this document was intended to

protect Kuhn from future liability arising from his former association with Joe & Jerry's Distributing Co.

After Kuhn sold his stock and after Russells and Worleys signed the "general release," Joe & Jerry's fell behind on its rental obligation to the plaintiff. Plaintiff filed a breach of lease action against the corporation, Kuhn and Schultz. Plaintiff alleged Kuhn and Schultz individually were guarantors of the lease obligation. Plaintiff amended to add the Russells and Worleys as defendants. Plaintiff alleged that under the "general release" document the Russells and Worleys were guarantors of the lease obligation.

In the plaintiff's breach-of-lease suit, the district court entered a default judgment against Schultz and a consent judgment against Kuhn but declined to enter any judgment against the Russells and Worleys. The district court held the "general release" signed by the Russells and Worleys was not a guarantee of the lease obligation or a general guarantee running to the benefit of all creditors of the corporation or of Kuhn.

Plaintiff's first contention on appeal is that the district court erred by allowing parol evidence concerning the intent of the signatories to the general release. Extrinsic evidence may be admitted to show that a writing is not completely clear and unambiguous with respect to the subject of the lawsuit. Kroblin v. RDR Motels, Inc., 347 N.W.2d 430, 433 (Iowa 1984).

It is not clear from the face of the "general release" that it is intended to be treated as a guarantee of the lease. There is no language stating Worleys, Russells or Schultz guarantee anything. The only reference to guarantee is the word "guarantors" after the signatures. We find substantial evidence to support the trial court's use of parol evidence.

The parol evidence consisted of Worley testifying there were hard feelings between Kuhn and Schultz. Kuhn was afraid that Schultz would find some way to encumber the \$75,000 Kuhn was paying Worley and Russell for Kuhn's stock in the corporation.

The trial court found that "general release" imposes no liability on the Worleys and Schultzes for obligations of Joe & Jerry's Distributing Co. This finding is supported by substantial evidence. The evidence supports the finding that the "general release" was designed solely to protect Kuhn's purchase price of \$75,000.

Plaintiff also contends the trial court erred by disregarding the effect of the "assignment and agreement not to execute" signed by the plaintiff and Kuhn. Kuhn assigned all his rights under the "general release" to the plaintiff. Plaintiff claims the "general release" creates rights in Kuhn and indemnity obligations in the Worleys, Russells and Schultzes. Since Goodman had been assigned Kuhn's contract rights, he claims the right to enforce those rights against the defendants.

Kuhn's rights under the "general release" are protection of his \$75,000 purchase price. Since there is no claim that Kuhn was denied his \$75,000, there is no right Kuhn has under the "general release" for Goodman to enforce. The trial court was not in error in failing to consider the effect of the assignment and agreement not to execute.

AFFIRMED.