FILED
SEP 29 1992
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-417 / 91-1964

KRUSE LEASE, INC., d/b/a DAN KRUSE PONTIAC, INC.,

Appellee,

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vs.

BRIAN J. VINCENT,

Appellant.

Appeal from the Iowa District Court for Dubuque County, Lawrence H. Fautsch, Judge.

Vincent, the lessee, appeals a district court decision finding he failed to give notice in order to avail himself of the premature termination provision under the lease and finding he defaulted under the lease. **REVERSED AND REMANDED.**

David L. Clemens & Richard D. Westphal of Reynolds & Kenline Law Office, Dubuque, for appellant.

Chad Leitch and D. Flint Drake of O'Connor & Thomas, P.C., Dubuque, for appellee.

Heard by Hayden, P.J., Habhab, J., and McCartney, S.J.*

*Senior Judge from the 2nd Judicial District serving on this court by order of the Iowa Supreme Court.

PER CURIAM

On March 10, 1988, Vincent leased a car from Kruse Lease, Inc. (Kruse). According to the terms of the written lease, Vincent agreed to pay Kruse $337.73 per month for a period of sixty months. Vincent had no right to purchase the car upon expiration of the lease.

The lease specifically provided for premature termination in paragraph 31 which states:

> **31. Premature Termination.** I may terminate this lease at any time after six (6) months from the date the vehicle was delivered to Me by **(a)** giving You thirty (30) days notice **(b)** returning the vehicle, and **(c)** paying the amount of any loss computed according to item 34.

Paragraph 34 of the lease provides:

> **34. Premature Termination Liability.**
> **(a)** If the actual value of the vehicle at the time that the lease is prematurely terminated is **greater** than the Premature Termination Value, I will have no further liability under this Lease, except for other charges already incurred. If the actual value of the vehicle is **less** than the Premature Termination Value, I will be liable for the amount of the difference.
> **(b)** If I feel that the cash offers received by You are too low, I may obtain, at My own expense, from an independent third party agreeable to both You and Me a professional appraisal of the cash wholesale value of the vehicle which could be realized at sale. The appraised value shall then be used as the actual value and shall be final and binding.

Vincent made payment through June 1990, totaling $9,456.44. On August 30, 1990, Vincent called the appellee's company and advised that he was dropping off the leased vehicle and would place the keys under the floor

mat. Shortly after that call, the leased car was returned to the appellee's premises. After giving Vincent notice of right to cure and notice of private sale, Kruse sold the car for $10,325.00. Kruse then brought suit in the district court and recovered damages as follows:

$10,807.36	32 payments left at $337.73
100.00	Collection expense as set out in paragraph 36 of the lease
5,629.00	Estimated wholesale value of the vehicle at the end of the term pursuant to paragraph 10 of the lease
364.00	Sale expenses
(10,325.00)	Net sale price of the car
(350.00)	Less security deposit
$ 6,225.36	

We believe the delivery of the car to the appellee's premises substantially complies with paragraph 31 of the lease agreement and placed Kruse on actual notice that Vincent was terminating the lease under that paragraph. Accordingly, we reverse the trial court and remand for the computation of damages consistent with paragraph 34 of the lease and such other paragraphs that are applicable in premature termination circumstances including a rental payment for the thirty-day period as provided under paragraph 31.

After considering all issues presented, we reverse the district court and remand with instructions not inconsistent with this opinion.

Costs of this appeal shall be divided equally between the parties.

REVERSED AND REMANDED.