IN THE COURT OF APPEALS OF IOWA

No. 0-331 / 99-1140
Filed August 16, 2000

ESTATE OF JESSE RAY TOBIN,
By TRACY L. SMITH AND PATRICK
W. TOBIN, Co-Administrators,
Plaintiff-Appellant,

vs.

ERIC HUFFMAN and TIM O'NEILL
CHEVROLET, INC., a Corporation,
Defendants-Appellees,

ESTATE OF JUSTIN HEITMANN, By
RACHELLE SCHROEDER, Administrator,
and ORA N. SMITH and DORA L. SMITH,
Defendants.

FILED
AUG 1 6 2000
CLERK SUPREME COURT

ESTATE OF JUSTIN HEITMANN, By
RACHELLE SCHROEDER, Administrator,
Plaintiff-Appellant,

vs.

ERIC HUFFMAN and TIM O'NEILL CHEVROLET,
INC., a Corporation,
Defendants-Appellees.

Appeal from the Iowa District Court for Fremont and Mills Counties, Charles L. Smith, Judge.

The Estate of Justin Heitmann and the Estate of Jesse Ray Tobin appeal the district court's grant of summary judgment in favor of Tim O'Neill Chevrolet, Inc. arising out of an automobile accident involving vehicles driven by Eric Huffman and Justin Heitmann. **REVERSED AND REMANDED.**

John French of Peters Law Firm, P.C., Council Bluffs, for appellant Estate of Heitmann.

William Hughes, Jr. of Stuart, Tinley, Peters, Thorn, Hughes, Faust & Madsen, Council Bluffs, and Stephen L. Rosman of Finerty & Rosman, Council Bluffs, for appellants – Estate of Tobin.

Philip Willson of Willson & Pechacek, P.L.C., Council Bluffs, for defendants – Estate of Heitmann, and Ora N. and Dora L. Smith.

Misty Gill and Gregory G. Barnsten of Smith Peterson Law Firm, Council Bluffs, for appellee – Tim O'Neill Chevrolet, Inc.

Heard by Streit, P.J., and Zimmer and Hecht, JJ.

HECHT, J.

The Estate of Justin Heitmann and the Estate of Jesse Ray Tobin appeal the district court's grant of summary judgment to Tim O'Neill Chevrolet, Inc. ("O'Neill") arising out of an automobile accident involving vehicles driven by Eric Huffman and Justin Heitmann. We reverse and remand for trial.

I. Factual Background and Proceedings. After work on March 14, 1997, Eric Huffman went to Tim O'Neill Chevrolet to look at new cars. Huffman was twenty years old at the time. At some point in the evening, Huffman and O'Neill's representative began negotiating for the purchase of a new 1997 Camaro. After several hours of negotiation with O'Neill's sales representatives, Huffman signed several documents and gave the dealership a postdated check for $750. O'Neill's representative agreed to seek financing for the transaction, and permitted Huffman to drive the vehicle off the lot. While driving the Camaro in the early morning hours of March 15, 1997, Huffman was allegedly involved in a motor vehicle accident that caused the deaths of two men, Justin Heitmann and Jesse Tobin. Huffman allegedly ran Heitmann's car off the road and left the scene. The Camaro did not sustain any damage. Tobin was a passenger in the car driven by Heitmann.

On March 17, 1997, Huffman returned to the dealership to determine whether he had obtained the loan he needed to finance the Camaro. The loan company approached by O'Neill had by that time disclosed it would not finance the car for the entire amount Huffman needed for the transaction. Several financing alternatives were explored to secure financing for the Camaro,

including a potential trade-in of Huffman's current vehicle, and a search for a co-signer for the loan. However, Huffman's vehicle had insufficient equity because of a creditor's security interest in it, and Huffman's father refused to become a co-signer on the loan. Financing for the transaction was not obtained, and on March 19, 1997, Huffman returned the Camaro to O'Neill who, in turn, returned the postdated $750 down payment check that had not yet been presented for payment. The dealership subsequently sold the Camaro as a new car to another buyer on March 26, 1997.

On January 30, 1998, Heitmann's Estate filed a petition against Huffman and O'Neill seeking damages arising out of the accident. Tobin's Estate filed a similar lawsuit against Huffman, O'Neill, and Heitmann on March 18, 1998. On March 10, 1999, the Estate of Heitmann filed a motion for partial summary judgment requesting the district court to rule as a matter of law that O'Neill was the owner of the Camaro at the time of the accident. The Estate of Tobin joined in this motion. O'Neill filed a resistance to this motion and filed its own motion for summary judgment on the issue of ownership of the vehicle. On June 21, 1999, the district court filed an order granting summary judgment in favor of O'Neill, dismissing the dealership from the case. The Estate of Tobin and the Estate of Heitmann filed applications for interlocutory appeal. Our supreme court granted the applications on August 24, 1999.

II. Contentions of the Parties. Tobin's Estate contends the court erred in (1) sustaining O'Neill's motion for summary judgment by failing to apply the proper standard of review applicable to motions for summary judgment, and (2)

failing to grant Heitmann estate's motion for summary judgment. Heitmann's Estate claims the court erred in several of its factual findings and legal conclusions by determining (1) O'Neill is not liable for damages arising out of the accident, (2) O'Neill made a bona fide sale of a vehicle to Huffman based on the purchase agreement, and (3) O'Neill rebutted the presumption it was the owner of the vehicle which collided with Heitmann. O'Neill argues the district court did not err by granting summary judgment in its favor because the dealership made a bona fide transfer to Huffman and was no longer the owner of the Camaro at the time of the accident.

III. Standard of Review. Our review of a district court's grant or denial of summary judgment is for the correction of errors at law. *LeMars Mut. Ins. Co. v. Joffer,* 574 N.W.2d 303, 306 (Iowa 1998). We will uphold summary judgment when the moving party shows no genuine issue of material fact exists and it is entitled to judgment as a matter of law. *Shaw v. Soo Line R.R.,* 463 N.W.2d 51, 53 (Iowa 1990). In determining whether a genuine issue of fact exists, we consider the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any. Iowa R. Civ. P. 237(c). To decide if the moving party has met this burden, we review the record in the light most favorable to the party opposing summary judgment. *Hoffnagle v. McDonald's Corp.,* 522 N.W.2d 808, 811 (Iowa 1994).

IV. The Merits. Before leaving the O'Neill car lot late in the evening of March 14, 1997, Huffman signed several documents including: a motor vehicle purchase agreement, a retail order for a motor vehicle, an application for

certificate of title, an agreement to provide accidental physical damage insurance, an Iowa vehicle retail installment contract security agreement note and disclosure statement, a power of attorney authorizing the dealership to apply for a certificate of title for him, an application for credit, an odometer disclosure statement, a damage disclosure statement, an acknowledgement of physical delivery, and an agreement for the dealership to hold his postdated check. A representative of O'Neill signed the purchase agreement, the retail order form, the odometer statement, the damage statement, the acknowledgement of physical delivery, and the agreement to hold Huffman's postdated check. However, the dealership's representative did not sign the application for certificate of title, the agreement to provide accidental physical damage insurance, and the installment contract. O'Neill asserts the purchase agreement signed by both Huffman and the dealership's representative is controlling in this case and supports its theory Huffman was the owner of the car when he drove it off the lot on the night of the accident. Furthermore, O'Neill argues any other evidence as to the ownership of the vehicle is extrinsic evidence and barred by the application of the parol evidence rule. Appellants contend O'Neill did not make a bona fide sale or transfer of its right, title and interest in the car to Huffman before the car accident occurred because no money was paid by Huffman and no loan was obtained for the credit transaction contemplated by the parties. Finally, appellants claim the parol evidence rule does not preclude consideration of extrinsic evidence under the circumstances of this case.

As a sale of goods, the sale of the Camaro falls under the provisions of the Uniform Commercial Code, Article 2. *See Semler v. Knowing,* 325 N.W.2d 395, 398 (Iowa 1982). The Uniform Commercial Code parol evidence rule states:

> Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement . . . .

Iowa Code § 554.2202 (1997).

Our first inquiry must be whether O'Neill and Huffman intended the purchase agreement to be the final expression of their agreement. Parol evidence is admissible to show whether the writing was intended to be the final expression of any part of the agreement, or the complete and final expression of the agreement. *See In re Eickman Estate,* 291 N.W.2d 308, 312 (Iowa 1980) (holding summary judgment was inappropriate where the record revealed evidence one party did not understand the signed document was to constitute the full and final agreement of the parties.) When determining whether an agreement is integrated, the key question is the intent of the parties. *See* Iowa R. App. P. 14(f)(14). The intent of the parties may be determined from the terms of the contract, what is necessarily implied from the terms, and the circumstances surrounding the formation and execution of the contract. *Broadway Corp. v. Taco Bell Corp.,* 542 N.W.2d 816, 820 (Iowa 1996). Extrinsic evidence is admissible as an aid to interpretation of a contract when it throws light on the situation of the parties, their antecedent negotiations, the attendant

circumstances, and the object the parties were striving to obtain. *Financial Marketing Servs., Inc. v. Hawkeye Bank & Trust*, 588 N.W.2d 450, 456 (Iowa 1999); *Fashion Fabrics of Iowa, Inc. v. Retail Investors Corp.*, 266 N.W.2d 22, 25 (Iowa 1978).

In the present case, the purchase agreement contained an integration clause that stated, "This document represents the complete agreement between you and the dealer regardless of any other oral, written, or prior agreements or representations." A contract with an integration clause typically represents the complete agreement of the parties and any extrinsic evidence that varies, adds, or subtracts from its terms is barred by the parol evidence rule. *Levien Leasing Co. v. Dickey Co.*, 380 N.W.2d 748, 750 (Iowa App. 1985) (citing *Kroblin v. RDR Motels*, 347 N.W.2d 430, 433 (Iowa 1984)). In circumstances where a handcrafted document contains an integration clause, where the parties were sophisticated business persons represented by counsel and of equal bargaining strength, and where the terms of any oral agreement reasonably would be expected to be included in the exchange agreement, the parol evidence rule excludes evidence to vary the terms of the agreement. *See Montgomery Properties Corp. v. Economy Forms Corp.*, 305 N.W.2d 470, 476 (Iowa 1981). However, where the integration clause is merely boilerplate in the contract, the courts have suggested a more lenient approach to parol evidence. *See generally Levien*, 380 N.W.2d at 752-53 (distinguishing *Montgomery Properties Corp.*, 305 N.W.2d at 470, in a case where the integration clause in a motor vehicle lease was boilerplate rather than handcrafted).

Huffman was not a sophisticated businessperson. O'Neill was experienced in these types of transactions. The parties did not have equal bargaining strength, and the purchase agreement was not a handcrafted document but rather a form used by the dealership for its vehicle sales. We do not find the integration clause to be controlling under the circumstances presented in this case. Moreover, even when an integration clause exists in an agreement, courts have allowed extrinsic evidence because the parties did not intend a writing to be a complete expression of their agreement. *Levien,* 380 N.W.2d at 752.

We conclude from the extrinsic evidence in the present case the purchase agreement was not a fully integrated agreement because neither the dealership nor Huffman intended it to be a complete expression of their agreement. The purchase agreement denotes a total cash price of $22,414.15, from which Huffman's down payment of $750 was subtracted. The purchase agreement indicates the "unpaid cash balance due on delivery" is $21,664.15. It is clear Huffman took possession of the Camaro on March 14, 1997, and only gave the dealership a $750 postdated check; and the sale was contingent upon financing that had not been secured when Huffman took possession of the vehicle. Although he signed an application for financing before driving the vehicle off O'Neill's lot, the application was ultimately not approved for the full amount of the balance due. Clearly, the dealership did not intend to complete the transaction if Huffman was unable to secure financing. Therefore, we conclude the purchase agreement does not constitute the complete expression of agreement between

the parties and we may therefore consider extrinsic evidence in determining whether the district court correctly granted summary judgment in favor of O'Neill.

The Estates of Tobin and Heitmann argue pursuant to Iowa Code section 321.493 the dealership was the owner of the Camaro at the time of the accident. The dealership, in turn, argues Huffman was the owner of the car during the relevant time period. Section 321.493 states, in relevant part:

> 1. a. [I]n all cases where damage is done by any motor vehicle by reason of negligence of the driver, and driven with the consent of the owner, the owner of the motor vehicle shall be liable for such damage. For purposes of this subsection, "owner" means the person to whom the certificate of title for the vehicle has been issued or assigned or to whom a manufacturer's or importer's certificate of origin for the vehicle has been delivered or assigned.
>
> 2. A person who has made a bona fide sale or transfer of the person's right, title, or interest in or to a motor vehicle and who has delivered possession of the motor vehicle to the purchaser or transferee shall not be liable for any damage thereafter resulting from negligent operation of the motor vehicle by another, but the purchaser or transferee to whom possession was delivered shall be deemed the owner. The provisions of subsection 2 of section 321.45 shall not apply in determining, for the purpose of fixing liability under this subsection, whether such sale or transfer was made.

Iowa Code § 321.493(1)(a) and (2). Our court has interpreted this method of determining ownership as requiring us to "determine whether there has been a bona fide sale or transfer and to discount the effect of the registration of the vehicle for purposes of establishing liability." *Desy v. Rhue,* 462 N.W.2d 742, 745 (Iowa App. 1990). In order "'to hold the legal title' and to have a 'bona fide sale or transfer,' a purchaser must, at minimum, possess enforceable rights against the purported seller." *Id.* It is undisputed the certificate of title never passed from O'Neill to Huffman. However, the mere fact O'Neill still held title to

the Camero does not conclusively establish its ownership of the vehicle. *See Hartman v. Norman*, 253 Iowa 694, 701, 112 N.W.2d 374, 378 (1961).

O'Neill contends it made a bona fide sale and delivered possession of the Camaro to Huffman and, therefore, is not the owner for purposes of section 321.493(1)(a). The purchase agreement signed by both parties required Huffman to make a $750 down payment. Huffman did not provide $750 to the dealership on March 14, 1997; rather he gave them a postdated check that both parties agreed would not be deposited until March 25, 1997. Huffman also signed an installment contract indicating the payment of the remaining purchase price was to be made by monthly payments. Because, as is emphasized repeatedly by the dealership, O'Neill is not in the business of financing loans for cars, Huffman had to secure financing for the cash balance due. He attempted to do so, with O'Neill's assistance, by completing a loan application on March 14, 1997. The financing company denied the initial loan application for the full amount of the unpaid cash balance and Huffman and O'Neill considered other options, including a trade-in and a co-signer. When these alternatives failed, Huffman returned the vehicle to O'Neill and the dealership returned his postdated check.

Huffman testified he thought the purchase was contingent on whether he obtained financing for the balance due. O'Neill's conduct in the transaction tends to confirm Huffman's understanding. The dealership deferred execution of the installment contract pending approval of Huffman's loan application. No application was made for issuance of a certificate of title in Huffman's name.

O'Neill failed to notify its insurer of a sale of the vehicle. In view of the conflicting evidence in the record, we hold the issue of ownership of the Camaro could not be decided as a matter of law. The issue should be submitted to the jury. See *Six v. Freshour,* 231 N.W.2d 588, 591 (Iowa 1975). We therefore reverse the district court's order granting summary judgment in favor of O'Neill and remand this case for trial.

REVERSED AND REMANDED.