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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

VEHICLE RENTAL AND LEASING, INC.,)

Plaintiff-Appellee,) Filed April 23, 1986 204

vs.)

BILLY JOHNSON and KIM THOMPSON,) 6-28 / 85-815

Defendants-Appellants.)

Appeal from the Iowa District Court for Winnebago County (13139) - Gilbert K. Bovard, Judge.

Defendants-lessees appeal an adverse judgment in an action brought by plaintiff-lessor for wrongful termination of a written automobile lease agreement. **AFFIRMED IN PART AND REVERSED IN PART.**

Richard A. Potter, Buffalo Center, Iowa, for defendants-appellants.

Mark R. Schoeller, Clear Lake, Iowa, for plaintiff-appellee.

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

SCHLEGEL, J.

Defendants-lessees appeal an adverse judgment in an action brought by plaintiff-lessor for wrongful termination of a written automobile lease agreement. Defendants counterclaimed, alleging violations of the Iowa Consumer Credit Code. We affirm in part and reverse in part.

Defendants leased a 1982 Ford from plaintiff pursuant to a written agreement dated and executed on June 20, 1981. The lease agreement provided for 48 monthly payments of $164.57. Thirteen payments were made by defendants totaling $2,139.41. Then, on September 21, 1982, plaintiff discovered the automobile parked in front of its business office with the keys in the ignition. Plaintiff contacted defendants and asked them if they intended to terminate the lease. Defendants sent a note to plaintiff on October 4, 1982, indicating they wished to terminate the lease, so plaintiff sold the auto for $5,500, again pursuant to the procedures set out in the lease agreement.

Plaintiff brought suit against defendants on February 14, 1983, to recover damages it suffered due to the termination of the lease agreement. Defendants counterclaimed, alleging plaintiff failed to pay defendants gain realized on the final disposition of the automobile and also that plaintiff violated the Iowa Consumer Credit Code.

The case was tried to the court on November 1, 1984. The trial court found that plaintiff was entitled to damages of $3,465.38, less $200 in statutory penalties assessed against plaintiff for violation of the Iowa Consumer Credit Code. Defendants appeal, alleging the trial court erred in determining the measure of damages, and in failing to award defendants costs of the action and reasonable attorney fees.

We are asked to decide issues arising from the contractual obligations and consequential damages arising from the lease agreement. This is an action at law and our review therefore is correct errors at law, and findings of fact

in jury-waived cases shall have the effect of a special verdict. Iowa R. App. P. 4.

I. **Damages.** The heart of this issue concerns which provision of the lease agreement is to be used to measure damages. Defendants argue that Paragraph 9 of the agreement entitled "Premature Termination" should control this issue. However, this paragraph requires a 30-day notice in writing of an intent to terminate be given the lessor by the lessee. The trial court, in its findings of facts, specifically found that the note provided by lessees was post-marked after the car was found parked in front of plaintiff's place of business. Therefore, we agree with the trial court that Paragraph 9 does not govern the damages issue in this case.

The trial court concluded instead, that Paragraph 10 of the lease agreement must be followed to determine damages. Paragraph 10 provides in part:

> (10) . . . Lessee shall, however, upon termination pursuant to this paragraph, be immediately responsible for payment of all amounts due under the lease agreement through the date of termination; for the loss, if any, resulting from the sale of the vehicle pursuant to the provisions of Paragraph 9 hereof entitled, "Premature Termination" (or with the gain, if any, applied by Lessor to the payment of amounts due under this paragraph); for liquidated damages of $100.00 . . . for any specific damages Lessor may have sustained . . . .

The trial court then computed the damages as follows:

Total Lease Obligation	$11,929.36
(Less the following credits)	
1. Credit for depreciated value:	3,000.00
2. Credit for difference between wholesale cash value and depreciated value:	2,500.00
3. Credit for payments made:	2,139.41
4. Credit for capitalized cost reduction:	1,000.00
5. Credit for security deposits	164.57
(Plus additions):	
1. Excess mileage charge:	700.00
2. Premature termination charge:	340.00
3. Interest from 9/21/82 to 1/19/83 at 18%:	250.70
TOTAL DAMAGES:	$4,416.08

The trial court found no ambiguity in the terms of the agreement. Defendants strenuously contend, however, that the amount due "upon termination" should be figured on the day they terminated the agreement, rather than upon the date of natural termination of the lease agreement.

We agree with defendants that "in the construction of written contracts, the cardinal principle 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). We cannot agree, however, with their interpretation of the date of termination. As we previously noted, no 30-day written notice was provided by defendants that would necessarily allow them to proceed under the provisions of Paragraph 9. Consequently, based upon the findings of fact by the trial court, we must concur with the conclusion that defendants defaulted on their contractual obligations.

Our courts have long adhered to the principles of reasonable expectations in construing and applying standardized contracts such as the one before us today. See C. & J. Fertilizer, Inc. v. Allied Mut. Insurance Co., 227 N.W.2d 169, 177 (Iowa 1975). Following defendant's reasoning, they would have leased the automobile with an initial lease value of $8,060.97, for 13 months, make total monthly payments of $2,139.41, return the vehicle without the 30-day required notice, and, based upon the resale amount of the auto, receive damages from the lessor in the amount of $2,160.00. We cannot agree with defendants that this is simply a case of a bad bargain being made by plaintiff. This is a standardized contract. Plaintiff enters into contracts such as this with the reasonable expectation of making a profit. While we are certainly not guarantors of the plaintiff to make a profit from this agreement, we also cannot interpret the contractual language so as to allow defendant to default on the contract

and still receive damages from plaintiff. We hold, therefore, the trial court correctly determined damages in this case.

II. **Attorney Fees and Costs.** The trial court specifically found that plaintiff violated sections 537.2507 and 537.3203 of the Iowa Consumer Credit Code (ICCC). The trial court found, however, that defendants suffered no substantive damage due to these "highly technical" violations. The trial court then cited Public Finance Co. v. Van Blaricome, 324 N.W.2d 716 (Iowa 1982), and assessed $100 for each violation, the minimum penalty required under section 573.5201(1)(d) of the ICCC. But the trial court refused to award defendants costs and attorney fees due to plaintiff's violations, and stated that to do so would, in effect, ". . . be an abuse of discretion." We disagree with the trial court.

The very case that the trial court cited in its conclusions of law provides the proper procedures for the trial court to follow when a party has shown his adversary has violated provisions of the ICCC and yet has proven or shown little or no damages. In Public Finance, the supreme court said:

> Penalties awarded to a consumer may be set off against the consumer's obligation to the creditor. Section 537.5201(8) also directs the court to award the successful debtors costs and reasonable attorneys fees for services—in this case in connection with the counterclaim. The fees are to be determined by the value of time reasonably spent, and not by the amount of the consumer's recovery. Id. We hold that such an award of costs and fees includes those relating to this appeal, insofar as it relates to the counterclaim. This court has previously held that an award of attorneys fees under section 537.5201(8) includes fees for both district court and appellate court services. Sheffield Savings Bank v. Klages, 294 N.W.2d 55, 57 (Iowa 1980); First Northwestern National Bank v. Crouch, 287 N.W.2d 151, 154 (Iowa 1980). On remand the district court is also to fix the attorney fees in both courts and to tax the costs in district court. We tax the costs in this court one-half to Public Finance and one-half to the Van Blaricomes. (Emphasis ours.)

324 N.W.2d at 726.

We note particularly the language stating that section 537.5201(8) "directs" the court to award costs and attorney fees. We therefore hold the trial court did not have the discretion to decide whether or not costs and attorney fees were to be awarded to defendants.

Defendants' attorney has submitted an affidavit in the appendix supporting a request of $900 in attorney fees. This figure does not include fees associated with this appeal. Considering the hours spent on this case and the result achieved, we award $600 for attorney fees in connection with the trial, and $500 in fees associated with this appeal.

We affirm the trial court's determination of damages, but reverse the trial court's denial of costs and attorney fees on the counterclaim.

AFFIRMED IN PART AND REVERSED IN PART.