FILED
DEC 17 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

**CHRISTOPHER J. KOEGEL** and **KAY KOEGEL**,

Plaintiffs-Appellees,

vs.

**R MOTORS, INC.** d/b/a **LIND BROS. MOTORS, LTD.**,

Defendant-Appellant.

Filed December 17, 1987

7-394
86-1506

Appeal from the Iowa District Court for Black Hawk County (No. 66156), Dennis Damsgaard, Judge.

Defendant appeals from the district court decision awarding damages to plaintiffs for breach of contract wherein defendant failed to perform by providing an automobile to plaintiffs within a specified time period. **AFFIRMED.**

Donald Gonnerman of Davis, Grace, Harvey, Horvath, Gonnerman & Rouwenhorst, Des Moines, for defendant-appellant.

Thomas E. Leahy of Grefe & Sidney, Des Moines, for plaintiffs-appellees.

Heard by Oxberger, C.J., and Donielson and Sackett, JJ.

**DONIELSON, J.** 174

Defendant appeals from the district court decision awarding damages to plaintiffs for breach of contract wherein defendant failed to perform by providing an automobile to plaintiffs within a specified time period. We affirm.

On October 1, 1984, Christopher and Kay Koegel discussed buying a new Peugeot automobile with Tom Lind, a representative of an entity the Koegels knew as Lind Brothers Motor Corporation Limited. The Koegels did in fact sign an order for a new Peugeot, with payment to be made on delivery. However, Lind was unable to obtain the car because Peugeot Motors of America was refusing to make deliveries to the dealership. After waiting for more than three months, the Koegels bought a similar Peugeot from a different dealership at a higher price. The Koegels later filed the present suit to recover the difference between the price they had agreed to pay Lind and the higher price they eventually had to pay another dealer.

Meanwhile, unknown to the Koegels, prior to October 1984 Lind Brothers Motor Corporation Limited had reached an agreement to sell its assets to R Motors Inc. While this sale was pending, R Motors Inc. obtained permission from the Iowa Secretary of State to do business under the name of Lind Brothers Motors. However, the contemplated sale of the Lind Brothers assets to R Motors never actually took place.

The Koegel lawsuit named as the defendant "R Motors, Inc., d/b/a Lind Bros. Motors, Ltd." The suit was tried to the court, which concluded that the Koegels were entitled to damages and that R Motors, Inc., was the seller. The court therefore entered a judgment against R Motors, Inc. R Motors, Inc., has appealed from that judgment.

Our scope of review is for correction of errors at law. Iowa R. App. P. 4. Findings of fact are binding upon this court if supported by substantial evidence. Iowa R. App. P. 14(f)(1).

I. R Motors contends the district court erred by concluding that it was the seller to the Koegels and was therefore liable for the Koegels' damages. R Motors asserts the aborted sale to the Koegels was negotiated entirely by Tom Lind, who was an owner and officer of Lind Brothers but was not an employee or agent of R Motors. R Motors also asserts that it was never notified of the Koegel transaction. R Motors argues the Koegels did not meet their burden to prove either that Tom Lind was an agent of R Motors or that any act by R Motors had created apparent authority in Tom Lind to act for R Motors.

We are in agreement with the district court's finding R Motors, Inc. d/b/a Lind Bros. Motors, Ltd. to be the correct defendant in this action based on the following evidence and pleadings: (1) Defendant admitted paragraph 2 of plaintiffs' petition which alleged "Defendant, R Motors, Inc., is an Iowa corporation which has adopted the assumed name of Lind Bros. Motors, Ltd. with its principal place of business in Waterloo, Black Hawk County, Iowa." (2) Plaintiffs' Exhibit 11 is a dealer license issued to R Motors, Inc. and/or Lind Bros. Motors dated October 5, 1984. (3) Plaintiffs' Exhibit 9 is a "Dealer License Renewal Application" form of the Iowa Department of Transportation wherein the firm name is noted as "R Motors, Inc. and/or Lind Bros. Motors, Ltd." and J. Thomas Lind has signed the form in his capacity as vice-president, secretary, and treasurer dated November 13, 1984. (4) Plaintiffs' Exhibit 12 is an "Endorsement" effective August 15, 1984, issued to "R Motors, Inc. d/b/a Lind Brothers Peugeot Mercedes Benz" by Universal Underwriters Insurance Company with the named insured listed as "R Motors, Inc." (5) Plaintiffs' Exhibit 13, a Bill of Sale, is dated December 12, 1983, between Lind Brothers Motor Corporation, Limited and R Motors, transfer-

ring the Peugeot franchise to R Motors. (6) Plaintiffs' Exhibit 15 is an affidavit (dated August 28, 1984) of Robert Rewoldt, owner of R Motors, Inc. which states "R Motors has purchased all the assets of Lind Brothers Motors Corporation Limited," to which is attached a bill of sale from Lind Brothers Motors Corporation Limited to R Motors, Inc. transferring the rights under the Peugeot dealer agreement. (7) Plaintiffs' Exhibit 17 is a partial transcript of a hearing before the Iowa Department of Transportation on September 14, 1984, wherein R Motors' counsel stated:

> Similarly, we have Peugeot inventory. We think we are a franchisee at the current time until this Authority says otherwise, and we think that we have the right to sell those cars that we have. We do not want to give up those rights, and, yet, there's absolutely no reason that we shouldn't be allowed--that R Motors shouldn't be allowed to become a new licensee. Until this Authority acts to remove its rights as a franchisee of Peugeot or anybody else, it is a franchise of anybody that transfers the franchise to it.

(8) Plaintiffs' Exhibit 18 is a letter dated January 25, 1985, from R Motors' attorney to Peugeot wherein he states the name of the corporation is R Motors, Inc., with an assumed name of Lind Bros. Motors. (9) Defendant's Exhibit A is the decision of the Transportation Regulation Authority, wherein the Superintendent of the Transportation Regulation Authority, following the evidence submitted to him through the testimony of Robert Rewoldt and J. Thomas Lind, found that on August 29, 1984, Robert Rewoldt executed documents to finalize the transfer of the Peugeot franchise to R Motors, Inc. and it was found that Robert Rewoldt expected to employ both J. Thomas Lind and Tim Lind to run the day-to-day operations of R Motors, Inc.

Based on the foregoing facts, we find defendant's first contention to be without merit.

**II.** In addition to arguing that it is not the proper defendant, R Motors also contends that no defendant is liable to the Koegels because they tendered

no payment and because the order form they signed was not a binding contract. R Motors contends the order form merely said, in effect, "if the dealer obtains a specified car, the buyer will pay for it"; R Motors argues that the order form was not an absolute undertaking by the seller to obtain a car in any event.

With regard to these assertions, the district court found:

> The Plaintiff negotiated with one J. Thomas Lind, known as Tom, and thereafter signed a cash buyer's order, Plaintiffs' Exhibit 1, for the purchase of the 1985 Peugeot automobile. As a part of the deal, the Plaintiff was trading in a 1980 Peugeot automobile and a 1975 Peugeot automobile. The agreement was that the trade-in allowance on the 1980 model would be $6,000.00 and on the 1975 automobile $1,750.00. The original purchase price was $19,746.49 and less the trade-ins left a balance due and owing of $11,496.00 plus tax, license and dealer's preparation fees. As shown by Exhibit 1, this cash buyer's order was approved by Tom, who ostensively [sic] was the manager of the Lind Brothers Motors, Ltd. The 1975 Peugeot automobile was left with Lind Brothers Motors, and the title was endorsed in blank by the Plaintiff. This 1975 automobile was subsequently sold by Lind Brothers Motors, Ltd., although no payment for it was ever made to Plaintiffs. The Court finds that the document prepared and furnished by Lind Brothers Motors, Ltd., while entitled a cash buyer's order, was in fact a contract. There was an offer and an acceptance and along with consideration part performance by the Plaintiff. Completion of the contract called for delivery of the car to Plaintiff and Plaintiff paying the balance thereon.

We are in agreement with the district court's findings. In addition, we note that Exhibit 1 contains those terms necessary for the existence of a contract: identifying the goods, citing the price, describing the trade-in property, the place of performance, the parties' identification, the parties' signatures, and the date of performance, as well as other terms and conditions of the agreement. See Iowa Code §§ 554.2105, 554.2106, 554.2202, 554.2205, 554.2206, 554.2309 (1985).

Several phone conversations took place between October 1, 1984, and January 16, 1985, concerning delivery of the automobile. On January 17, 1985, plaintiff wrote to Tom Lind and advised if the vehicle was not delivered by January 25, plaintiff would exercise his right to cover or purchase a similar

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vehicle elsewhere and hold Lind Brothers liable for the difference in price. Lind Brothers did not deliver the automobile on or before January 25, 1985. When defendant breached the contract, plaintiffs had a right to exercise the remedy available to them under Iowa Code section 554.2712 (1985) to "cover" and purchase a replacement automobile. Thus, we find plaintiffs are entitled to recover the amount of damages as reasonable and proper additional costs incurred by them.

**III.** Finally, R Motors contends the district court's written findings were inadequate because they did not make clear the court's basis for concluding that Tom Lind had authority to act for R Motors and that R Motors was therefore the proper defendant in this case. We are not persuaded by defendant's argument. The district court set forth ample findings of fact to support its determination in this case.

Plaintiffs request costs and attorney fees to be taxed against defendant. We decline to so order.

We affirm the trial court in all respects.

**AFFIRMED.**