IN THE IOWA SUPREME COURT

Supreme Court No. 19-0491
Linn County No. LACV090823

GreatAmerica Financial Services Corporation,
Plaintiff/Appellee

vs.

Natalya Rodionova Medical Care, P.C.
Defendant/Appellant

DEFENDANT-APPELLANT NATALYA RODIONOVA MEDICAL CARE, P.C.'S BRIEF

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. This Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) and 6.1103(4) because this Brief contains 2,590 words, excluding the parts of the Brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This Brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this Brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2013 in Times New Roman 14 font.

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. Did the trial court commit err in granting summary judgment to the Plaintiff when the only officer of the Defendant corporation did not sign the agreement with the Plaintiff, did not know about the terms of the agreement, and attempted to return the equipment in a timely manner?

Iowa R. App. P. 6.101, 6.102, and 6.103

Iowa R. Civ. P. 1.405(4)(a)

Iowa R. Evid. 5.408

C & J Vantage Leasing Co. v. Outlook Farm Golf Club, LLC, 784 N.W.2d 753, 758 (Iowa 210)

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Northrup v. Farmland Industries, Inc., 372 N.W.2d 193, 195 (Iowa 1985)

Pappas v. Clark, 494 N.W.2d at 247

ROUTING STATEMENT

This matter should be decided by the Supreme Court pursuant to Iowa R. App. P. 61101(2)(c). It involves unique issues that have far ranging effects that have to this point in time only been tangentially considered. Such a determination has widespread significance for many other lessees or a finance lease, either with GreatAmerica Financial Services Corporation (hereinafter "GreatAmerica") or with an entity like it. Iowa R. App. P. 6.1101(2)(d).

STATEMENT OF THE CASE

This action was brought by GreatAmerica against Natalya Rodionova Medical Care, P.C. (hereinafter "NRMC") (Plaintiff's Petition, App. pp. 5-7), a New York Professional Corporation. The Defendant filed an Answer to the Petition on September 13, 2018. (App. pp. 9-11). GreatAmerica filed a motion for summary judgment on January 18, 2019 and relied heavily on its "hell or highwater" clause for its motion. (Plaintiff's Motion for Summary Judgment, pp. 3, 6-7, App. pp. 14, 19-20). NRMC resisted the Motion for Summary Judgment on February 7, 2019. (Defendant's Resistance to Motion for Summary Judgement, App. p. 28).

The District Court determined that even though the Defendant, NRMC, had alleged that no member of NRMC had signed the agreement with the

Plaintiff, NRMC still benefitted from that agreement and was bound by it. (Order on Motion dated February 28, 2019, pp. 3-4, App. pp. 120-121).

This appeal followed.

STATEMENT OF THE FACTS

The Plaintiff, GreatAmerica, is an Iowa Corporation with its principal place of business located in Cedar Rapids, Iowa. The Defendant, NRMC, is a professional corporation with its practice located in New York City, New York. (Affidavit, Exh. E, p. 1, App. p. 84). The sole shareholder of the corporation and the only one authorized in general to sign any document for the corporation is Dr. Natalya Rodionova. She is a licensed physician. (Interrogatory Nos. 16 and 18, Exh. C, App. pp. 66, 68; Affidavit, Exh. E, p. 1, App. p. 84).

Dr. Natalya Rodionova began dealing with New York Digital Products, Inc. (hereinafter "New York Digital") as to the purchase of certain office equipment. The person she was dealing with was Anthony Bara. Anthony Bara is a principal of New York Digital. It appears that Mr. Bara has a criminal record. (Exh. B, pp. 1-2, App. pp. 42-43).

New York Digital sought financing for the equipment with GreatAmerica and obtained financing for this equipment through GreatAmerica. (Exh. D, pp. 4-6; App. pp. 72-74). This was all done without

Dr. Rodionova's approval or knowledge concerning the details of this situation. (Exh. C, p. 20, App. p. 64; Exh. 3, App. p. 44).

Once NRMC was presented with a bill, it proceeded to see if there was some settlement that could be made to bring this matter to a conclusion. (*See* various emails attached hereto as Plaintiff's Exh. 3, App. p. 44). The agreement that forms the basis of this case was not presented to Dr. Rodionova until this case was filed. (*See* Answer to Interrogatory No. 11, Exh. C, p. 17, App. p. 61; and Affidavit of Dr. Rodionova, Exh. A, App. p. 30). The equipment was specific for New York Digital and it was not usable by Dr. Rodionova. (S*ee* Interrogatory Answer No. 14, Exh. C, p. 20, App. p. 64). Dr. Rodionova did not sign any agreement with Anthony Bara or New York Digital. Mr. Bara created accounts with phone companies that were unauthorized by Dr. Rodionova and someone at New York Digital unlawfully stole her identity to set up those accounts. (S*ee* Answer to Interrogatory No. 9, Exh. C, p. 15, App. p. 59; and Interrogatory No. 15, Exh. C, p. 21, App. p. 65).

Dr. Rodionova's corporation paid bills for a short while during her investigation into what was going on. Her signature was forged on the agreement with GreatAmerica.

I. ARGUMENT

1. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO THE PLAINTIFF ON ITS CLAIM BECAUSE IT DETERMINED NRMC RECEIVED A BENEFIT FROM HAVING THE EQUIPMENT ON ITS PREMISES AND IT DID NOT REJECT THE AGREEMENT IN A TIMELY MANNER.

A. Preservation of Error

All the issues set forth herein have been preserved for appellate review, pursuant to Iowa R. App. P. 6.101, 6.102, and 6.103. The issues were raised, submitted, and decided by the District Court and all materially affect the final decision, therefore, establishing a basis for appellate review.

B. Scope of Review

The scope of review on a Motion for Summary Judgment is for correction of errors at law. *See Grovijohn v. Virjon, Inc.*, 643 N.W.2d 200, 202 (Iowa 2002).

C. Analysis

a. Fraud by agent.

When the trial court is confronted with a summary judgment motion, "it is required to examine, in the light most favorable to the party opposing the motion, the entire record before it, including pleadings, admissions, depositions, answers to interrogatories and affidavits, if any, to determine for

itself whether any genuine issue of material fact is generated thereby." *Drainage Dist. No. 119, Clay County v. Incorporated City of Spencer*, 268 N.W.2d 493, 499 (Iowa 1978); *Pappas v. Clark*, 494 N.W.2d at 247; *Northrup v. Farmland Industries, Inc.*, 372 N.W.2d 193, 195 (Iowa 1985).

The Plaintiff has presented no evidence that the Defendant's sole shareholder and only authorized officer signed any document that would bind the Defendant to an agreement with GreatAmerica. The Plaintiff has stated that the agreement was signed by Dr. Rodionova without providing any proof of signature. She properly denied that the signature was hers on the document. (*See* Defendant's Answer, Exh. A, App. p. 12; and Iowa R. Civ. P. 1.405(4)(a)). No expert witness has claimed that it was her signature on the document.

The unreported case of *GreatAmerica Leasing Corp. v. Wahoo*, 2011 WL 1559935 (N.D. Iowa 2011) was a federal case that involved the leasing of equipment for restaurants in Florida. An individual by the name of Leverock acted as the "point man" in negotiating an equipment lease for certain restaurants. The case involved the allegation of a forged signature on the agreement but bears little resemblance to the current case. There was no doubt that Leverock was an agent acting on behalf of Wahoo in that case.

Here the individual involved in the transactions with GreatAmerica, Anthony Bara, had no association with NRMC, and in fact set up fraudulent telephone accounts unrelated to the GreatAmerica document. (Exh. E, pp. 2-3, App. pp. 85-86; Exh. D, pp. 1-14, App. pp. 69-84).

The Plaintiff claims that its Exhibit 2 (attached to its Motion for Summary Judgment, App. p. 24) shows that Melissa Santiago "confirmed that the equipment had been installed and was working." (*See* Affidavit of Steve Louvar attached to Plaintiff's Motion, App. pp. 26-27). Exhibit 2 reflects no such confirmation. There is no indication on that exhibit that the equipment had been installed. There is no indication the equipment was working.

Life Investors Ins. Co. of America v. Corrado, 804 F.3d 908 (8th Cir. 2015) involved a settlement agreement. In that case, the court stated that a principal made a choice to ratify the action of an agent or other actor when the principal had facts that would have led a reasonable person to investigate further, but the principal ratified without any further investigation. 804 F.3d at 912-913.

Again, the facts of that case are not pertinent to the case before the Court. According to the Plaintiff, this agreement went into effect on October 23, 2017. (*See* Plaintiff's Exh. 1, App. p. 8). Inquiry was made to Dr. Rodionova on a payment not made on April 23, 2018 and a reply was sent

from Dr. Rodionova on May 17, 2018 that told GreatAmerica, "Tony Bara and New York Digital betrayed me…" She further stated, "Ny Digital turned out to be criminals and a fraud." "The last two invoices send to Tony Roma. He was swearing, he will pay them. I have it in writing and witnesses. For all the damages he caused to my company." (*See* Plaintiff's Exh. 3, App. p. 25). The communication also proposes a settlement agreement or possible settlement agreement between the parties. Nothing in the email makes any indication that Dr. Rodionova approved any agreement made by Tony Bara. The time period from the start of the agreement to the date of non-payment by Dr. Rodionova's company was very short and not a ratification of any agreement set up by Tony Bara (something he claimed he would take care of for her). (*See* email dated May 17, 2018, Exh. 3, App. p. 25). A settlement agreement or proposal is not relevant evidence in an action against a party. Iowa R. Evid. 5.408.

In addition, the "hell or highwater" language in the agreement does not end inquiry as to the defenses raised by Dr. Rodionova as to contract formation. *See C & J Vantage Leasing Co. v. Outlook Farm Golf Club, LLC*, 784 N.W.2d 753, 758 (Iowa 210). *See also C & J Vantage Leasing Co. v. Wolfe*, 795 N.W.2d 65, 78-79 (Iowa 2011). A condition precedent that GreatAmerica set forth in its communication to New York Digital Products,

Inc. was that Dr. Rodionova sign the agreement. (Defendant's Exh. D, p. 6, App. p. 74). This, according to the Defendant, was never done.

b. Acceptance.

The trial court placed the responsibility on NRMC for the acceptance of the agreement by its actions. (Order on Motion for Summary Judgment, unnumbered page 4, App. p. 121).

The trial court determined that Dr. Rodionova assented to the Agreement for two reasons:

1. She did not return the equipment or accepted it pursuant to the Agreement; and

2. She did not immediately stop her office from paying the amount that apparently went to GreatAmerica. (Order on Motion for Summary Judgment unnumbered pages 3-4, App. pp. 120-121).

The first item is clearly not the case because Dr. Rodionova would not have known what equipment was subject to the lease – without a copy of the lease, and even if she did have a copy of the lease it is clear that more than one copy was floating around. There was one that did not have any list of equipment attached to it. (*See* Defendant's Exh. D, p. 7, bates stamped GFSC 0034, App. p. 75). To assert that she should have known where and whom to return the goods to is not supported by the evidence. The equipment was sent to Dr. Rodionova

from New York Digital – not GreatAmerica. (Defendant's Exh. C, p. 20, App. p. 64). She stated that even though she had no contract with New York Digital, that it sent this equipment to her office and left it. She further stated that she could not use this equipment. (Defendant's Exh. C, p. 20, App. p. 64). To state that a phone call from an employee of GreatAmerica to the office of Dr. Rodionova made it clear that the equipment was accepted is not supported by the document itself. (Plaintiff's Exh. 2, attached to the Affidavit of Steve Louvar, App. p. 24).

With regard to the failure to immediately stop payments on the equipment, Dr. Rodionova did not consider these payments to GreatAmerica to be NRMC's responsibility. In her email exchange with Tim McEowen she stated she sent the last two invoices to Tony Barro who swore in front of witnesses that he would pay them. (Defendant's Exh. 3, App. p. 44). In addition, only four payments were ever made from NRMC to GreatAmerica according to the spreadsheet provided by GreatAmerica. (Plaintiff's Exh. 6, App. p. 114). Dr. Rodionova expected those payments to be made by Tony Barro, the man who set up fraudulent accounts in the name of her business. (Defendant's Exh. 3, p. 3, App. p. 25).

There is scant evidence that NRMC did anything other than make payments. When she did not sign the agreement and was only presented with the

agreement at the time the lawsuit was filed, it is difficult to see how she could be bound by a term as onerous as the "hell or highwater" clause contained in the agreement. Even if assent were assumed in some fashion for her not immediately delivering the equipment to some entity (the evidence will show that she was told by the gentleman from New York Digital that he would be paying the payments due, that he would pick it up (or that she expected him to pick it up)) (Plaintiff's Exh. 3, App. p. 25), there is no evidence that this equipment provided her a benefit but rather that this was a scam that she got involuntarily involved with to her corporation's detriment. It is difficult to see how Dr. Rodionova's actions constitute ratification of the agreement because there was no "conduct that justifies a reasonable assumption that the person so consents." Restatement (Third) of Agency Section 4.01(2). In addition, the case of *Life Investors Ins. Co. of Am. v. Estate of Corrado*, 838 N.W.2d 640, 645-646 (Iowa 2013) should not be read to state that ratification can occur in all instances where a person's name is forged on a document. There were several instances cited by Dr. Rodionova of where Mr. Bara had set up false accounts under her name.

The issues generated by these various accounts set up fact questions that should be resolved by a trial of this matter and not by summary judgment. *See C & J Vantage Leasing Co. v. Wolfe*, 795 N.W.2d, 65, 73 (Iowa 2011).

II. CONCLUSION

The Court's order on Motion for Summary Judgment and two entries of judgment should be overturned and this case remanded back to the District Court for further proceedings. (Order on summary judgment, App. p. 118; Order on attorney's fees, App. p. 162; Order entering judgment, App. p. 167). The trial court correctly stated that the affirmative defenses raised by the Defendant are not defeated by a "hell or highwater clause" but went on to determine that Dr. Rodionova's failure to immediately recognize the problem as president of NRMC and return the equipment to the Plaintiff created acceptance on the part of NRMC. The benefits of such implied acceptance are never set forth in any detail either in the arguments of the Plaintiff or in the Court's order and further the allegation is rebutted by Dr. Rodionova's affidavit. (Affidavit dated February 5, 2019, App. pp. 84-87).

The Defendant prays that this Court determine that acceptance by action needs to be by an affirmative, clear action, on the part of a Defendant who has not otherwise signed or agreed to a written agreement. The actions of the Defendant were in the nature of an attempt to settle this matter or a settlement agreement rather than a use of the equipment and continued payment for the equipment. The Defendant is perfectly willing to accede to the notion that both the Defendant and the Plaintiff may have been the victims

of a third-party in this instance. The Defendant prays that this Court overturn the Summary Judgment in favor of the Plaintiff and send this matter back to the District Court for further proceedings.

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REQUEST FOR ORAL ARGUMENT

Appellant, Natalya Rodionova Medical Care, P.C., requests oral argument on the issue appealed in this case. Notice of this request is hereby given to the Appellee.

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CERTIFICATE OF ELECTRONIC FILING AND SERVICE

I certify that on the 11th day of November 2019, I electronically filed the foregoing with the Clerk of Court using the Iowa Electronic Document Management System, which will send notification of electronic filing to the following opposing counsel. Per Iowa Rule 16.317(1)(a)(2), this constitutes service of the document for the purposes of the Iowa Court Rules.

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