IN THE COURT OF APPEALS OF IOWA

No. 9-709 / 09-0123
Filed October 21, 2009

FRONTIER LEASING CORPORATION,
Assignee from C & J VANTAGE LEASING, Assignor,
Plaintiff-Appellant,

vs.

TREYNOR RECREATION AREA,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Eliza J. Ovrom, Judge.

Frontier Leasing Corporation appeals from the district court's order dismissing its petition for damages arising from an alleged breach of contract. **AFFIRMED AND REMANDED.**

Edward N. McConnell and Aaron H. Ginkens of Ginkens & McConnell, P.L.C., Clive, for appellant.

Anthony Tauke of Porter, Tauke & Ebke, Council Bluffs, for appellee.

Considered by Sackett, C.J. and Potterfield, J. and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

POTTERFIELD, J.

I. Background Facts and Proceedings

In November of 2003 Royal Links USA solicited Treynor Recreation Area to purchase a nonmotorized beverage cart. Royal Links represented that advertising revenue from the beverage cart would cover Treynor's monthly lease expenses for the cart. For financing the beverage cart, Royal Links frequently referred customers to the C and J entities, a group of corporations owned and managed by C. Allen Rice, which provided financing for commercial equipment. There are four distinct C and J legal entities relevant to this case: (1) C and J Management Corporation (hereinafter "Management"); (2) C and J Leasing Corporation (hereinafter "Leasing Corp."); (3) C & J Vantage Leasing Company (hereinafter "Vantage"); and (4) C and J Special Purpose Corporation (hereinafter "SPC").

On December 1, 2003, Michael Nielsen, on behalf of Treynor, signed a three-page equipment lease agreement for the beverage cart. The preprinted lease, lease number 22437, stated that Leasing Corp. was the lessor. The lease stated, "Lessee shall not be obligated to any assignee of the Lessor except after written notice of such assignment." On December 4, 2003, Treynor signed a delivery and acceptance certificate directed to Leasing Corp., acknowledging receipt of the beverage cart. On December 5, 2003, Leasing Corp. conducted a telephone audit with Treynor and filled out a verification form. On December 8, 2003, Rice signed the equipment lease directly under the words "C and J Leasing Corp. (LESSOR)." At some point after Rice signed the lease, someone wrote "C & J Vantage Leasing Co." underneath Rice's signature. Rice testified

that he signed the lease on behalf of Leasing Corp. and that the handwritten words were an internal memorandum showing the lease had been assigned to Vantage.

On December 11, 2003, Rice signed a document on Management's letterhead stating:

> As a matter of standard practice C & J Management Corporatioon [*sic*] solicits Leases in the name of C & J Leasing.
>
> These leases are then assigned to one of the following companies for the purpose of the appointed company becoming lessor of the equipment:
>
> C & J Vantage Leasing Co.
> C and J Leasing Corp.
>
> As to the following lease, Lease No. 022437 Dated December 8, 2003 TREYNOR RECREATION AREA as lessee; C and J management [*sic*] does hereby appoint C & J Vantage Leasing Co. as lessor under the lease. This appointment is made prior to the start of the lease and lessor shall be considered the original lessor under the lease agreement.

On November 21, 2003, Royal Links sent Leasing Corp. an invoice for the beverage cart. The invoice is marked paid by check number 231914 on December 11, 2003. Check number 231914 was written out of Vantage's checking account. However, all invoices sent to Treynor were from Leasing Corp., including invoices as recently as January 17, 2005, and March 17, 2005. On December 19, 2003, Leasing Corp. filed a UCC Financing Statement with the Iowa Secretary of State listing Treynor Recreation Area as a debtor subject to lease number 22437, with collateral listed as a beverage caddy express cart.

Royal Links subsequently went out of business, leaving Treynor with the golf cart and no advertising revenue, so Treynor stopped making lease payments

on the cart. On December 2, 2004, Leasing Corp., on its own letterhead, sent a certified demand letter to Treynor, asserting Treynor was in default on the lease for the beverage cart. The default letter stated that Treynor could correct the default by paying its delinquent rentals in the amount of $543. Otherwise, Leasing Corp. would accelerate the entire balance of $15,361, and Treynor would have to return the equipment.

On April 8, 2005, Vantage sold and assigned various leases, including the lease for Treynor's beverage cart, to SPC. SPC then sold the leases to Frontier Leasing Corporation. The only assignment of which Treynor received notice was the assignment to Frontier.

Leasing Corp. filed a petition on January 18, 2005, asserting Treynor breached the contract and was in default in an amount estimated at $15,910.20. On March 16, 2005, Leasing Corp. filed an amended petition naming Vantage as the new plaintiff in the case after assignment of the lease. On June 21, 2007, Vantage filed a second motion to amend, substituting Frontier Leasing Corporation as the real party in interest following assignment of the lease.

Both parties filed motions for summary judgment, which were resisted by the opposing party. The district court denied both parties' motions for summary judgment, and the matter proceeded to trial. After trial, the district court dismissed Frontier's petition, finding that because of errors in the chain of assignment, Frontier was not the real party in interest in the case. Frontier appeals, arguing all assignments of the lease were proper, and, therefore, it is the real party in interest.

II. Standard of Review

We review the district court's ruling for errors at law. Iowa R. App. P. 6.907 (2009).

III. Real Party in Interest

Lawsuits must be prosecuted in the name of the real party in interest. Iowa R. Civ. P. 1.201. This rule protects a defendant against a subsequent lawsuit from the party who is legally entitled to recover. *Kimmel v. Iowa Realty Co.*, 339 N.W.2d 374, 379-80 (Iowa 1983). "When there is an effective assignment, the assignee assumes the rights, remedies, and benefits of the assignor . . . ." *Pillsbury Co. v. Wells Dairy, Inc*., 752 N.W.2d 430, 435 (Iowa 2008) (internal quotation omitted).

The record establishes that Leasing Corp. was the original lessor under the equipment lease. The parties disagree, however, on whether Leasing Corp. later assigned or intended to assign the lease to Vantage. No particular words are necessary to effectuate an assignment. *Lynch v. Bogenrief*, 237 N.W.2d 793, 799 (Iowa 1976). An assignment need not be in writing and may be shown by evidence of intent to create the assignment. *Kimmel*, 339 N.W.2d at 379. However, the assignment, and the intent to assign, must be on the part of the lessor. *Kintzel v. Wheatland Mut. Ins. Ass'n*, 203 N.W.2d 799, 804 (Iowa 1973).

The district court properly considered all evidence in determining whether Leasing Corp. intended to assign the Treynor lease to Vantage. Frontier asserts that Rice's testimony that Leasing Corp. intended to assign the lease to Vantage, along with the internal assignment document from Management and the fact that Vantage paid for the cart, show Leasing Corp.'s intent to assign the lease to

Vantage. However, Leasing Corp's other actions are inconsistent with an intent to assign the lease. The internal assignment document that Frontier asserts established an intent to assign the lease to Vantage was signed on December 11, 2003, on behalf of Management. After that date, Leasing Corp. took the following actions showing an intent to continue as the lessor: (1) Leasing Corp. continued to send invoices to Treynor; (2) Treynor continued to make payments to Leasing Corp.; (3) Leasing Corp. filed a UCC Financing Statement with the Iowa Secretary of State listing Treynor as a debtor; (4) Leasing Corp. sent Treynor a default letter; and (5) Leasing Corp. filed the original petition in this case. Because these actions belie the argument that Leasing Corp. intended to assign the lease to Vantage, we agree with the district court that the instruments and surrounding circumstances in this case do not establish Leasing Corp.'s intent to assign to lease to any other party. Further, the assignment of the lease to Vantage by Management, a nonparty to the lease, had no effect or validity and was irrelevant in proving Leasing Corp.'s intent.

Because the record does not show an actual assignment of the lease or Leasing Corp.'s intent to assign the lease to Vantage, Vantage did not have the authority to assign the lease to SPC, and therefore SPC did not have the authority to assign the lease to Frontier. Accordingly, Frontier has no enforceable interest in the lease and is not the real party in interest. On remand, the district court shall allow a reasonable period of time for substitution of the real party in interest. Iowa R. Civ. P. 1.201.

AFFIRMED AND REMANDED.