IN THE COURT OF APPEALS OF IOWA

No. 9-986 / 09-0996
Filed February 10, 2010

GREATAMERICA LEASING CORPORATION,
Plaintiff-Appellee,

vs.

FELBERBAUM & ASSOCIATES, P.A.,
Defendant-Appellant.

Appeal from the Iowa District Court for Linn County, William L. Thomas (summary judgment) and Thomas L. Koehler (default judgment), Judges.

Lessee appeals from district court rulings granting summary judgment and default judgment entered in this breach-of-contract action based on two lease agreements. **AFFIRMED.**

Jeffrey P. Taylor of Klinger, Robinson & Ford, L.L.P., Cedar Rapids, and Louis R. Cohan and Joseph C. Sullivan of Weinstock & Scavo, P.C., Atlanta, Georgia, for appellant.

Randall D. Armentrout and Christian P. Walk of Nyemaster, Goode, West, Hansell & O'Brien, P.C., Des Moines, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Danilson, JJ.

DANILSON, J.

This appeal involves breach-of-contact claims arising from two separate lease agreements between an equipment lessee (Felberbaum) and assignee to the lessor (GreatAmerica).

On October 29, 2008, the district court (Judge William Thomas) granted partial summary judgment in GreatAmerica's favor with respect to its breach-of-contract claim on Lease No. 297742.[1] The court noted that the lease was a "finance lease" containing a "hell or high water" clause, which made the lessee's obligation under the lease irrevocable upon acceptance of the goods, despite what happens to the goods afterwards. *See GreatAmerica Leasing Corp. v. Star Photo Lab, Inc.*, 672 N.W.2d 502, 504 (Iowa Ct. App. 2003). The court denied summary judgment as to Lease No. 401631, however, concluding there was an issue of fact "with respect to the acceptance of the equipment."

Judgment was entered as to Lease No. 297742 on March 25, 2009.

On May 28, 2009, the district court (Judge Thomas Koehler) entered default judgment against Felberbaum on Lease No. 401631[2] for defendant's failure to be present at trial. The ruling notes that counsel for Felberbaum was contacted and counsel "stated his client would not appear for trial and a default was appropriate." The court noted that summary judgment final judgment with respect to Lease No. 297742 was filed on March 25, 2009, and that judgment

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[1] Lease No. 297742, entered into in December 2004, was for equipment described as a "Sharp AR-M440U" and required Felderbaum to make sixty monthly payments of $1083.88 plus tax.

[2] Lease No. 401631, entered into in April 2007, was for equipment described as "Gestetner DSM 790 S# C5570100275 [and] Docstar Workgroup pro S#54530004808" and required Felberbaum to make sixty-three monthly payments of $2146.00 plus tax.

"remains separately enforceable." The district court determined GreatAmerica was entitled to relief with respect to Lease No. 401631 and entered default in the amount of damages shown by affidavit, $134,023.64, as well as attorney fees in the amount of $9287.30. Felberbaum did not move to set aside the default judgment.

Felberbaum appeals, the premise of its arguments being that "there is insufficient record evidence of the assignment of both leases." It claims to have preserved this error by filing notice of appeal. We will first address Felderbaum's challenge to the summary judgment.

We review the district court's grant of summary judgment for correction of errors at law. *Van Fossen v. MidAmerican Energy Co.*, ___ N.W.2d ___, ___ (Iowa 2009). Summary judgment is only appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3). We view the facts in the light most favorable to the non-moving party and consider every legitimate inference that may be reasonably deduced from the record. *See Van Fossen*, ___ N.W.2d at ___.

In its summary judgment ruling, the district court rejected Felberbaum's claim that the second lease canceled the first.[3]

> After reviewing the record, the Court finds that Defendant does not present any factual disputes or any legal authority which would excuse its failure to make payments on the first lease. Even if Defendant made an agreement with Zeno and/or Benchmark regarding the first lease, this agreement was clearly not sanctioned by Plaintiff, the holder of the first lease by virtue of Benchmark's assignment. Benchmark had no authority to close out a lease it

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[3] Felberbaum makes this argument on appeal as well. However, it implicitly recognizes that to find error in the ruling, we must first accept its claim that there is insufficient evidence of assignment.

> was no longer a party to. The Court therefore finds that summary judgment should be granted on Plaintiff's claims under the first lease.

On appeal, Felderbaum challenges the summary judgment by asserting there is insufficient record evidence of assignment of the leases. However, GreatAmerica presented affidavit evidence that it took assignment and provided financing for both Lease No. 297742 and Lease No. 401631 in support of its motion for summary judgment. In its resistance to GreatAmerica's motion for summary judgment, Felberbaum did not contest the assignment in the district court. It provided no affidavit in resistance to GreatAmerica's assertion of assignment. In fact, Felberbaum in its resistance to motion for summary judgment specifically stated, "In 2007, Felberbaum was current on its lease obligations to Benchmark's assignee, Plaintiff GreatAmerica Leasing." Further, in its Responses to Plaintiff's First Requests for Admissions, Felberbaum admitted it "accepted delivery of the equipment leased from Plaintiff [GreatAmerica] pursuant to Lease Agreement Nos. 297742 and 401631," and that it "made payments to GreatAmerica Leasing Corporation pursuant to the Lease Agreements." Consequently, there was nothing to show that there was a genuine issue as to assignment and the district court did not err in granting summary judgment to GreatAmerica on Lease No. 297742. *See* Iowa R. Civ. P. 1.981 ("The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.").

Felberbaum contends the district court erred in granting default judgment on Lease No. 401631, again asserting the lack of record evidence of the assignment of both leases. As already noted, there is unchallenged record evidence of assignment.

While the default judgment is final and appealable, *see Dolezol v. Bockes*, 602 N.W.2d 348, 353 (Iowa 1999), our review is limited to those issues properly raised below. *See In re Marriage of Huston*, 263 N.W.2d 697, 699 (Iowa Ct. App. 1978). "[W]hen a default judgment is involved no specific issues could have been preserved." *Id.* at 700. Thus, our review of the default judgment is limited to "determining whether the relief granted exceeded or was inconsistent with the demands made in the petition." *Id.* (quoting *Claeys v. Moldenschardt,* 169 N.W.2d 885, 886 (Iowa 1969)); *see also Heyer v. Peterson*, 307 N.W.2d 1, 4-5 (Iowa 1981).

We find the relief ordered by the court in its default judgment on Lease No. 401631 is consistent with GreatAmerica's petition and supported by the record, including evidence that Felberbaum accepted the equipment described in Lease No. 401631.

We find no error and therefore affirm.

AFFIRMED.