STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1795

Lyon Financial Services, Inc., d/b/a US Bancorp Manifest Funding Services,
Appellant,

vs.

Marty Hearyman, MD,
individually and d/b/a Northside Healthcare Center,
Respondent.

Filed June 2, 2009
Reversed
Stoneburner, Judge

Lyon County District Court
File No. 42CV07957

John D. Docken, Troy C. Kepler, Lyon Financial Services, Inc., 1310 Madrid Street, Marshall, MN 56258 (for appellant)

Robert L. Gjorvad, Runchey, Louwagie & Wellman, P.L.L.P., 533 West Main Street, P.O. Box 1043, Marshall, MN 56258 (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Bjorkman, Judge; and Muehlberg, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

STONEBURNER, Judge

Appellant challenges a judgment rescinding its equipment-finance agreement with respondent as an unenforceable, unconscionable contract that respondent was fraudulently induced to sign. Appellant argues that the district court erred in (1) admitting and relying on parole evidence that a third party fraudulently induced respondent to sign the agreement; (2) concluding that respondent reasonably relied on the third party to sign the agreement without reading it; and (3) concluding that the agreement is unconscionable. Because third-party fraud that is not attributable to appellant does not provide a defense to appellant's enforcement of the agreement and the agreement is not unconscionable, we reverse.

FACTS

Appellant Lyon Financial Services, Inc., d/b/a US Bancorp Manifest Funding Services, (Lyon) is an equipment-financing institution. Respondent Marty Hearyman is an Arkansas physician who, while acting as Medical Director of Northside Healthcare Center (Northside) in Austin, Arkansas, signed an Equipment Finance Agreement with Lyon in August 2005. Hearyman testified that he understood that a physician's signature on the agreement was necessary to enable Northside to open an account to obtain medical equipment, but Hearyman denied knowing that the terms of the agreement made him personally liable to Lyon for Lyon's financing of the equipment.

Under the six-page agreement, Lyon financed medical equipment for Northside. The equipment is listed in the agreement and the equipment vendor is identified as Practice Automations, Inc.

Hearyman's signature appears three times on the first page of the agreement, first under the bold, capitalized heading: "**THIS IS A NONCANCELABLE/ IRREVOCABLE AGREEMENT, THIS AGREEMENT CANNOT BE CANCELLED OR TERMINATED. TERMS AND CONDITIONS (THIS AGEEMENT CONTAINS PROVISIONS SET FORTH ON THE REVERSE SIDE, ALL OF WHICH ARE MADE PART OF THIS AGREEMENT)**." Hearyman also signed the first page under the heading: "**ACCEPTANCE OF DELIVERY**," acknowledging that "[u]pon your signing below, your promises herein will be irrevocable and unconditional in all respects." Each of these signatures follows a typed identification of the customer as "Marty Hearyman MD dba Northside Healthcare Center." Both signatures are followed by a "title" line. "Owner" is hand written after "title" for the first signature, and "MD/owner" is written after "title" for the second signature.[1] Also on the first page, Hearyman signed a paragraph titled "**GUARANTY**," making him the unconditional personal guarantor of payments under the agreement. This signature line indentifies Hearyman as the guarantor with no title.

Page two of the agreement contains the terms and conditions referenced on page one, and is signed by Hearyman with no title. Page three of the agreement lists the

[1] Hearyman's signature appears in multiple places on the agreement.

equipment financed by the agreement. Hearyman signed under a line identifying the customer as "Marty Hearyman MD dba Northside Healthcare Center" and above a "title" line on which "MD/owner" is handwritten.

Page four of the agreement is the payment schedule. Hearyman signed this page below a line again identifying the customer as "Marty Hearyman MD dba Northside Healthcare Center" and above a "title" line on which "MD/owner" is handwritten. Page five of the agreement is titled "Equipment Finance Agreement Software Addendum" disclaiming in bold type any warranties by Lyon for any software included in the agreement. Hearyman again signed as the customer with "MD/owner" handwritten as his title.

The final page of the agreement, titled "**DELIVERY GUARANTEE**," indentifies Practice Automations, Inc. as the equipment vendor, and states that, on signing, the customer authorizes Lyon to pay the vendor, making the customer's promises contained in the agreement irrevocable and unconditional. Hearyman's signature is under a line identifying the customer as "Marty Hearyman MD dba Northside Healthcare Center" and above a "title" line that contains the handwritten word "owner."

After making 16 payments under the agreement, Northside defaulted. Lyon sued Hearyman for damages as provided in the agreement, including costs, disbursements, and attorney fees. Hearyman denied liability under the agreement.

At the bench trial in Lyon's enforcement action, the district court permitted Hearyman to testify that he was fraudulently induced to sign the agreement without reading it by Jack Weir, one of the owners of Practice Automations, Inc. Hearyman

testified that Practice Automations, Inc. provided online medical records and other business services to a clinic that Hearyman owns and operates in Bald Knob, Arkansas and that Hearyman had developed a close personal friendship with Jack Weir.

Weir convinced Hearyman to become the "temporary" medical director of Northside as a favor to Weir, who, according to Hearyman, owned Northside with Phyllis Copeland, an employee of Practice Automations, Inc. Hearyman also agreed to be the "temporary" medical director at several other clinics owned by Weir because Weir needed a physician at each clinic to "provide oversight" to nurses and physician's assistants who staffed the clinics and to authorize purchases of medical supplies and equipment for the clinics.

Hearyman testified that he had only been to Northside once or twice and had no ownership or financial interest in Northside or Weir's other clinics. But he acknowledged that he frequently signed documents that allowed Northside to buy medical supplies and equipment. Hearyman testified that Weir discussed the Lyon financing agreement with him at length, and Hearyman understood that the agreement allowed Northside to participate in an equipment acquisition program that required the authorization of a physician. Hearyman was aware that the equipment was to be provided by Practice Automations, Inc.

Hearyman testified that the agreement was presented to him for signing on a busy day at Hearyman's Bald Knob clinic, when he did not have time to read it. He testified that the agreement had several notes stuck on it indicating where he should sign, and that those notes obscured some of the words on the agreement. Hearyman testified that he

signed the agreement without reading any of it and without noticing any of the language that identified him as "dba Northside," "owner," or "guarantor."

Hearyman testified that sometime after he signed the agreement, he personally called Lyon to verify that the equipment listed on Schedule A of the agreement had been delivered in good condition. Hearyman testified that he made this telephone call at the request of Copeland, despite the fact that Hearyman never received, saw, used, or had any interest in the equipment and has, to this day, no idea what became of the equipment.

The district court concluded that the agreement is ambiguous "in light of the fact that [Hearyman] has no ownership interest in Northside," making parole evidence admissible. The district court concluded that Weir made false representations to Hearyman to induce him to sign the agreement without reading it and that Hearyman was justified in relying on Weir's representations. The district court rescinded the agreement based on Weir's fraud. The district court also held that, as a matter of law, the agreement was unconscionable at the time it was made and that the district court would not enforce the agreement. The district court dismissed Lyon's action with prejudice and denied Lyon's motion for amended findings of fact and conclusions of law. This appeal followed.

D E C I S I O N

In an appeal from a bench trial, we give the district court's factual findings great deference and do not set them aside unless clearly erroneous, but we are not bound by and need not give deference to the district court's decision on a purely legal issue. *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002), *review*

denied (Minn. June 26, 2002). "Whether a contract is ambiguous is a question of law, on which the reviewing court owes no deference to the district court's determination." *Murray v. Puls*, 690 N.W.2d 337, 343 (Minn. App. 2004), *review denied* (Minn. Mar. 15, 2005).

Lyon argues that the agreement is a finance lease under Minn. Stat. § 336.2A–103 (1)(g)(2008), and, by its terms, is irrevocable and uncancellable upon the customer's acceptance of the equipment identified in the agreement. Although the district court did not address whether the agreement is a finance lease under the statute, we agree with Lyon that, as a matter of law, the lease meets the definition of a finance lease under Minn. Stat. § 336.2A-103. Lyon asserts that the fraud of an unrelated third party does not provide a defense to enforcement. Lyon concedes that if Lyon or an agent of Lyon had fraudulently induced Hearyman to sign the agreement, or if the terms of the agreement were unconscionable, Hearyman would have a defense to enforcement, but argues that because neither condition exists in this case, the agreement must be enforced.

To support the proposition that misrepresentation or fraud of an unrelated third party does not provide a defense to enforcement of the agreement, Lyon relies on *Wells Fargo Fin. Leasing, Inc. v. LMT Fette, Inc.*, 382 F.3d 852 (8th Cir. 2004). In *Wells Fargo*, the federal district court, applying Iowa law, rejected a claim that fraud and misrepresentation by an equipment vendor precluded enforcement of a financial lease. The Eighth Circuit stated: "A third party's negligent misrepresentation . . . cannot form the basis of a defense to performance of a contract without a basis for imputing the third party's actions to the [party enforcing the contract]." *Id.* at 856 (affirming a judgment

enforcing Wells Fargo's equipment lease against Fette, which claimed that it had no intention of entering into such a lease and was misled by a third party into signing an equipment lease).

Hearyman argues that in Minnesota, unlike Iowa, the fraud or misrepresentations of a third party may be the basis for contract rescission even though an innocent party to the contract will be prejudiced by rescission. Hearyman relies on *State v. Bucholz*, 169 Minn. 226, 227, 210 N.W. 1006, 1006 (1926) (stating that if fraud or misrepresentation without fraud induces a party to assent to a contract, "the one deceived may avoid the contract because his assent was so induced"). Hearyman's reliance on the *Bucholz* case is misplaced because Bucholz, defending against the state's attempt to recover on a seed-grain note, asserted that he was fraudulently induced into buying seed grain by the state's representative, not an unrelated third party. *Id.* at 226–27, 210 N.W. at 1006. The case holds that Bucholz was not precluded from asserting a defense that the state's representative fraudulently induced him to buy the grain. *Id.* at 228–29, 210 N.W. at 1007. The case stands for no more than Lyon concedes: fraud of a party or a party's agent is a defense to that party's enforcement of a contract. We agree with Lyon that, under Minnesota law, Weir's fraudulent inducement of Hearyman to sign the agreement does not provide Hearyman with a defense to Lyon's enforcement of the agreement.

In Minnesota, rescission of a contract for mistake "is ordinarily founded upon either mutual mistake of the parties or a mistake by one induced or contributed to *by the other*." *Gethsemane Lutheran Church v. Zacho*, 258 Minn. 438, 443–44, 104 N.W.2d 645, 649 (1960) (emphasis added). In *Gethsemane*, the supreme court noted that

although, under its equitable power, the court has the right to rescind a contract for a purely unilateral mistake of one contracting party not induced or contributed to by the other, "it is equally clear that in the interest of preserving some reasonable stability in commercial transactions the courts will not set aside contractual obligations, particularly where they are embodied in written contracts, merely because one of the parties claims to have been ignorant of or misunderstood the provisions of the contract." *Id.* Although Minnesota cases have held that a party fraudulently induced to execute a written agreement on a false representation about the nature of the agreement can defend against its enforcement by the other contracting party, even though the person so induced was negligent in signing it, the law in Minnesota is equally clear that this proposition is the rule only where the question does not involve the rights of an innocent party. *Sullivan v. State Bank of Morton*, 179 Minn. 161, 166, 228 N.W. 603, 605 (1930) (noting that if the seller is not a party to the fraud that induced a purchase, the contract must stand); *C. Gotzian & Co. v. Truszinski*, 169 Minn. 199, 199, 210 N.W. 880, 880 (1926) (holding that where one party presents a guaranty for signature, representing that it is not a guaranty and imposes no liability, the other party may defend against enforcement "*while in the hands of the first* although negligent in signing it without reading" (emphasis added)).

Furthermore, rescission is an equitable remedy, and "[u]pon rescission the parties must be put in the same position they would have been [in] had the contract never existed." *Johnny's, Inc. v. Njaka*, 450 N.W.2d 166, 168 (Minn. App. 1990). In this case, Lyon paid for equipment that Hearyman verified was received by Northside in good

condition. Rescission will not restore Lyon to the position it was in prior to fully performing its part of the agreement and is not an equitable remedy in this case.

Because Weir's fraud is not a defense to Lyon's enforcement of the contract, we do not reach Lyon's assertion that the district court clearly erred in finding that Hearyman reasonably relied on Weir's representations to sign the contract without reading it. Nor do we reach Lyon's argument that the district court erroneously admitted parole evidence of Weir's fraud, except to note that the record does not support the district court's characterization of the agreement as "ambiguous" (thereby making parole evidence admissible).[2]

Hearyman argues that the district court's finding that the contract was unconscionable at the time he signed it is supported by evidence in the record. Whether a contract is unconscionable is a question of law reviewed de novo. Minn. Stat. § 336.2-202 (2008); *Osgood v. Med., Inc.*, 415 N.W.2d 896, 901 (Minn. App. 1987), *review denied* (Minn. Feb. 12, 1988).

> If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made, the court may refuse to enforce the lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

Minn. Stat. § 336.2A-108 (1) (2008). "A contract is unconscionable if it is 'such as no man in his senses and not under delusion would make on the one hand, and as no honest

[2] Counsel for Hearyman conceded at oral argument on appeal that the agreement is not ambiguous and argued that admission of parole evidence was proper based on Hearyman's assertion of fraud.

and fair man would accept on the other.'" *Estate of Hoffbeck*, 415 N.W.2d 447, 449 (Minn. App. 1987) (citing *Hume v. United States*, 132 U.S. 406, 411, 10 S. Ct. 134, 136 (1889)), *review denied* (Minn. Jan. 28, 1988). We disagree with the trial court's unexplained determination that this agreement was unconscionable.

Hearyman does not dispute that he intended his signature to allow Northside to obtain medical equipment. Hearyman asserts only that he never intended to be personally liable for the financing of such equipment. But there is nothing objectively unconscionable about Hearyman personally agreeing to purchase equipment for a clinic of which he was medical director or personally guaranteeing an obligation of his close personal friend. That Hearyman did not have a financial interest in Northside and did not intend to be responsible under the agreement with Lyon does not make the terms of the agreement unconscionable.

Reversed.