


IN THE SUPREME COURT OF THE STATE OF NEVADA

KLAUS ENGLERT ING. A/K/A K.E.I.,
Appellant,
vs.
EQUIPMENT MANAGEMENT
TECHNOLOGY, A CORPORATION
F/K/A VIKIP, INC.,
Respondent.

No. 51500

FILED

JUL 06 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in a contract action. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

In the district court, the parties disputed whether the price appellant charged respondent for equipment was consistent with three written "commission agreements," under which the parties agreed that respondent would pay appellant a commission on the equipment sales. With regard to equipment price, respondent argued below that the parties had agreed orally that appellant would invoice respondent in an amount equal to appellant's actual cost for the equipment and that appellant's profit on the sale would be a commission equal to one half of the difference between the cost available to appellant, a German company, from a European manufacturer and the cost that respondent would have to pay if the equipment were purchased in the United States. According to respondent, appellant breached the oral pricing agreement by charging it more than the manufacturer's price.

Following a bench trial, the district court found that the commission agreements were “vague and ambiguous as to the pricing of equipment” and that they were firm only as to the amount of the commission. Thus, in addition to the commission agreements and supporting documents, the district court considered parol evidence in the form of testimony from appellant and respondent’s representative and determined that the parties had entered into an earlier oral agreement regarding equipment price, under which appellant was supposed to charge respondent the manufacturer’s price for the equipment. The court found credible respondent’s representative’s testimony that he would never have agreed to pay a profit on the “front end (markup) plus a profit on the back end (commission).” The court awarded respondent \$137,542.85 in damages for breach of contract.¹ It later denied appellant’s motion to amend or for relief from the judgment. This appeal followed.

Whether a contract exists presents a factual question, to which we defer to the district court’s findings so long as they are not clearly wrong and supported by substantial evidence. May v. Anderson, 121 Nev. 668, 672-73, 119 P.3d 1254, 1257 (2005). Substantial evidence is evidence that “a reasonable mind might accept as adequate to support a conclusion.” Whitemaine v. Aniskovich, 124 Nev. 302, ___, 183 P.3d 137, 141 (2008). Contract interpretation matters generally present questions of law, subject to de novo review. May, 121 Nev. at 672, 119 P.3d at 1257.

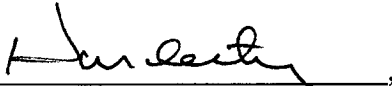
¹Appellant also was awarded \$37,774.01 in damages on its breach of contract claim, and the district court found in favor of appellant on respondent’s fraud claim. No cross-appeal was taken from the judgment.

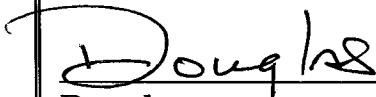
After reviewing the record and considering the parties' arguments, we conclude that substantial evidence supports the district court's finding that the parties had a separate equipment pricing agreement. Although appellant asserts that the district court improperly considered extrinsic evidence in finding a separate oral equipment pricing agreement, the written commission agreements spoke only to the agreed-upon commissions on equipment sales, not to equipment price.² See M.C. Multi-Family Dev. v. Crestdale Assocs., 124 Nev. 901, ___, 193 P.3d 536, 545 (2008) (explaining that extrinsic oral evidence is admissible to show "[t]he existence of a separate oral agreement as to any matter on which a written contract is silent, and which is not inconsistent with its terms" (quoting Kaldi v. Farmers Ins. Exch., 117 Nev. 273, 283, 21 P.3d 16, 22 (2001))). Thus, since the parties' agreement regarding equipment pricing

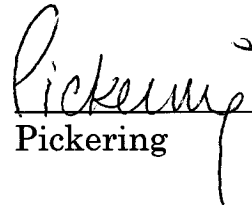
²Appellant contends that the commission agreements were clear and unambiguous as to equipment price, but the commission agreements merely listed the equipment prices according to the invoices and purchase orders for the equipment specified. Therefore, the parol evidence rule, which generally precludes consideration of evidence if it contradicts or varies the terms of an unambiguous written agreement, does not foreclose consideration of the parties' earlier oral agreement regarding equipment pricing because the commission agreements memorialize only the parties' negotiation of a commission on the equipment sales and the equipment prices, while listed, are not part of that agreement. The commission agreements do not contain a merger clause, and although they were binding as to the commission amounts, the district court properly considered the parties' prior negotiations and agreement regarding equipment price because equipment price terms were not integrated in the commission agreements. See Kaldi, 117 Nev. at 281, 21 P.3d at 21; see also Restatement (Second) of Contracts § 216(1) and comment b (1981) (providing that evidence of a consistent additional term is admissible to supplement an agreement that is not completely integrated).

was not integrated into the commission agreements, the district court properly considered parol evidence to determine that the parties had agreed on a method for pricing equipment and that appellant breached that agreement. See id; Fox v. First Western Sav. & Loan, 86 Nev. 469, 472, 470 P.2d 424, 426 (1970) (recognizing that credibility determinations are within the district court's fact-finding purview). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Jennifer Togliatti, District Judge
Dana Jonathon Nitz, Settlement Judge
Clark Tatom, LLC
Holland & Hart LLP/Las Vegas
Eighth District Court Clerk