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 REPLY 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 Reply Brief contains 1,143 words, excluding the parts of the Reply Brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This Reply 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 Reply Brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2013 in Times New Roman 14 font.

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I. RESPONSE TO PLAINTIFF'S STATEMENT OF FACTS

A. The Plaintiff claims (on page 8) in its brief that the Agreement in question in this case bore the signature of "Natalya Rodionova." The Defendant has always contested this and did so in the manner provided by the Iowa Rules of Civil Procedure 1.405(4) including attaching an Affidavit of Dr. Rodionova stating that the Agreement contained a signature that was not hers (Answer of Defendant and attached Affidavit, App. pp. 9-13). The Plaintiff has made no attempt to prove that the signature was genuine, even in the face of this affidavit.

B. With regard to the claim that the equipment was installed and working, the affidavit used by the Plaintiff to establish this is signed by Steve Louvar, but it is not based upon his firsthand knowledge but upon the hearsay statement by an employee of the Plaintiff identified as Katy Mulherin. (See Affidavit of Steve Louvar ¶ 5, App. p. 26). Iowa Rule of Civil Procedure 1.981(5) states that affidavits "…shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence…." The hearsay recitation of knowledge by a third party would not be admissible in the trial of this matter (without either a waiver or exception to the hearsay rule). In addition, Exhibit 2 to the Plaintiff's Motion for Summary Judgment (App. p. 24) does not have any line to indicate that the equipment is either working or

installed. This document is represented to be the phone records of the conversation with an employee of the Defendant and it does not contain the information that the Plaintiff claims it does.

C. The Defendant cannot deny payments were made to the Plaintiff because they were. However, the nature of those payments is the issue in this case. This is a professional corporation in this case - not a business corporation. If a close examination is paid to Exhibit 3 to the Plaintiff's Motion for Summary Judgment (App. p. 25), the email never states that the equipment was used by the corporate defendant nor does it state that anything other than that the equipment was dropped off at the offices of the Defendant.

D. The Defendant made attempts to reject the equipment, not only with the Plaintiff, but also with New York Digital and their representative. (*See* Exhibit 3 attached to Plaintiff's Motion for Summary Judgment, App. p. 25).

II. RESPONSE TO RATIFICATION

A. The Plaintiff states that the Defendant corporation can be held liable even if Dr. Rodionova's signature was forged. The logic behind this is contained in the Iowa Supreme Court's change in position on the topic which was decided in the case of *Life Investors Ins. Co. of Am. v. Estate of Corrado*, 838 N.W. 2d 640, 647 (Iowa 2013). The Court's rationale was that someone

should not be able to accept the benefits of a contract but deny the obligations thereunder. *Life Investors* at p. 647. The missing piece in this case is the benefits aspect. The Plaintiff asserts benefits without providing any proof thereof. The statements and emails of Dr. Rodionova do not provide any benefits in this equation.

B. The Plaintiff really relies entirely on the fact that payments were made by the Defendant. This is not enough in this case of a forged signature - it is unlike the typical case where there is no such allegation and payments have been made. The claim is made that Natalya Rodionova Medical Care, P.C.'s (hereinafter "NRMC") should have immediately, upon receipt of the invoice from GreatAmerica, refused payment and returned the equipment. The fact that NRMC had dealt with and was still dealing with a third-party malefactor certainly had some effect on the speed with which NRMC and its professional head, Dr. Rodionova, reacted. The victim, whether that victim is viewed as the corporate defendant NRMC or Dr. Rodionova personally, did not instantly know what was going on to squelch the fraud. What is clear from her email to Tim McEowen, of the Plaintiff, is that she expected Tony Barro to do something about it and she indicates in that email that she sent the last two invoices to him which he swore he would pay. (*See* Plaintiff's Exhibit 3 attached to its Motion for Summary Judgment, App. p.25).

C. With regard to the argument about ratification by NRMC, a similar defect exists in the Plaintiff's argument. For instance, in the cases cited by the Plaintiff for the proposition that NRMC ratified the agreement even given its sullied beginning, there was no ratification by the "office manager" because Dr. Rodionova was the only corporate officer here, and there were no continued business dealings with the vendor (whether the vendor is considered to be New York Digital or GreatAmerica). See *Wells Fargo Fin. Leasing, Inc. v. Piggie Park Enters, Inc.*, No. 3:09-1752-JFA, 2010 WL 50045 at 3 (D.S.C. Feb. 5, 2010). The lack of proof of a benefit to NRMC, at least by proof in this motion for summary judgment, was previously mentioned by NRMC.

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 September 12, 2018, App. p. 30).

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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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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