

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD FRAZIER,

Plaintiff-Appellant,

v

ECONOMY TRANSPORT, INC,

Defendant-Appellee.

UNPUBLISHED
February 11, 1997

No. 191312
Wayne Circuit Court
LC No. 94-428742

Before: Doctoroff, P.J., and Hood and P.J. Sullivan,* JJ.

PER CURIAM.

Plaintiff appeals as of right the orders granting him \$1650 in damages and summary disposition in favor of defendant on the remaining claims in this breach of contract action. We affirm.

Plaintiff, as lessor, and defendant, through defendant's agent, Brian Price, as lessee, entered into a True Lease Agreement on November 19, 1993, whereby plaintiff leased his tractor and trailer to defendant to pick up certain goods in Detroit and deliver them to Laredo, Texas. Once plaintiff arrived in Laredo, his trailer would be unhitched from his truck and taken by Gateway Transportation (Gateway) into Mexico. Plaintiff went to Laredo and delivered his trailer on November 29, 1993. According to plaintiff's complaint, the trailer was not returned for ninety-two days. When the trailer was finally returned, it was damaged, equipment was missing, and it required extensive repair and replacement in the amount of \$2,650. The repairs took twenty-four days. Plaintiff brought suit against defendant, seeking recovery for the damages to his trailer, for the period of time in which his trailer was in detention, and for the extended time for the repair of his trailer. Defendant initially moved for partial summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that the written lease agreement between the parties clearly provided that plaintiff was responsible for any damages that the trailer sustained. The trial court ruled that the written lease agreement placed liability on plaintiff and that the evidence purporting to change the written lease agreement was barred by the parol evidence rule.

* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant brought a second motion for summary disposition on the remaining issue of liability for the period of time that the trailer was in Mexico. Defendant produced an affidavit from a Gateway employee that indicated that plaintiff's trailer was in Mexico for only eleven days. Plaintiff failed to produce any evidence contradicting the affidavit. The trial court, therefore, granted summary disposition in favor of defendant and ruled that, because the lease agreement provided that defendant would pay \$150 per day of detention, plaintiff was entitled to \$1650 (\$150 per day multiplied by eleven days).

Plaintiff first argues that the trial court improperly granted defendant partial summary disposition by ruling that the written lease agreement between plaintiff and defendant was not subject to oral modification, thereby precluding plaintiff from recovery for damages to his trailer. We disagree. Summary disposition is permitted when, except as to the amount of damages, there is no genuine issue regarding any material fact and the nonmoving party is entitled to judgment as a matter of law. *Radtko v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993).

In this case, the written lease agreement between plaintiff and defendant was clear and unambiguous in providing that plaintiff was responsible for any damages to the trailer. Plaintiff's assertion that defendant orally promised him that defendant would be responsible for damages before the signing of the contract is not admissible. Where a contract is clear and unambiguous, parol evidence cannot be admitted to vary it. *In re Skotzke Estate*, 216 Mich App 247, 251; 548 NW2d 695 (1996). The parol evidence rule also bars admission of prior or contemporaneous agreements that contradict the written contract. *Central Transport v Fruehauf*, 139 Mich App 536, 544; 362 NW2d 823 (1984).

Prerequisite to the application of the parol evidence rule is a finding that the parties intended the writing to be a complete expression of their agreement. *Skotzke, supra* at 251-252. Having reviewed the record, we find that the trial court properly found that the parties made a contract and expressed it in a complete, accurate, and integrated writing. Plaintiff's argument that, because neither he nor defendant read the contract terms, the contract is not a complete expression of the parties' agreement, is without merit. One who signs a contract cannot seek to avoid it on the basis that he did not read it or that he supposed that it was different in its terms. *Nieves v Bell Industries*, 204 Mich App 459, 463; 517 NW2d 235 (1994). Because there is no question of fact regarding defendant's liability, the trial court properly granted partial summary disposition for defendant.

Plaintiff next argues that the trial court erred in finding no issue of fact regarding the date that the trailer was returned. The trial court found that plaintiff's trailer was returned on or before December 10, 1993, thereby limiting plaintiff's recovery for detention charges. At the motion for summary disposition, defendant produced an affidavit of an employee of a holding company that stated that plaintiff's trailer was detained for only eleven days. Plaintiff responded by merely arguing that he did not have proper notice of the employee's deposition and that the employee did not have personal knowledge of the date that the trailer was returned. Because plaintiff failed to provide any affidavits or other documentary

evidence to show the existence of a genuine issue for trial, summary disposition was proper.¹ *IBEW, Local 58 v McNulty*, 214 Mich App 437, 442; 543 NW2d 25 (1995); *Metro Life Ins v Reist*, 167 Mich App 112, 118-119; 421 NW2d 592 (1988). The trial court did not err.

Finally, defendant argues that plaintiff's motion for rehearing was defective under MCR 2.119(F). Defendant's failure to cross appeal precludes our review of this issue. MCR 7.207; *Barnell v Taubman Co*, 203 Mich App 110, 123; 512 NW2d 13 (1995).

Affirmed.

/s/ Martin M. Doctoroff

/s/ Harold Hood

/s/ Paul J. Sullivan

¹ We note that plaintiff produced an affidavit in which he stated that his trailer was detained for a longer period of time. This affidavit, however, was not presented until plaintiff's motion for rehearing and reconsideration. In ruling on a motion for summary disposition, a court considers evidence then available to it. *Quinto v Cross & Peters*, 451 Mich 358, 367 n 5; 547 NW2d 314 (1996). Accordingly, we will not consider the affidavit in ruling on the propriety of the trial court's grant of defendant's motion for summary disposition.