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IN THE SUPREME COURT OF IOWA
Supreme Court No. 19-0491

GREATAMERICA FINANCIAL SERVICES CORPORATION,

Plaintiff-Appellee,

vs.

NATALYA RODIONOVA MEDICAL CARE, P.C.,

Defendant-Appellant.

APPELLEE'S APPLICATION FOR FURTHER REVIEW

FROM THE IOWA COURT OF APPEALS' APRIL 1, 2020 DECISION; ON APPEAL FROM THE DISTRICT COURT FOR LINN COUNTY THE HONORABLE LARS ANDERSON

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QUESTION PRESENTED FOR REVIEW

1. Is the Court of Appeals' decision (2-1) holding a business did not ratify an equipment financing agreement with a forged signature by paying on seven monthly invoices to the finance company as a matter of law in conflict with *Life Investors Ins. Co. of Am. v. Estate of Corrado*, 838 N.W.2d 640 (Iowa 2013)?

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STATEMENT SUPPORTING FURTHER REVIEW

This is a commercial debt collection action. Appellant Natalya Rodionova Medical Care, P.C. ("NRMC") of New York ordered photocopiers and telephone equipment for use in its business from its equipment vendor, New York Digital Products, Inc. ("NYDP"). Rather than purchase the equipment outright, NRMC provided its credit information to finance the acquisition over time. A financing agreement ("Agreement") was prepared with Appellee GreatAmerica Financial Services Corporation ("GreatAmerica") of Iowa. App. 8.

After making payments to GreatAmerica on the first seven monthly invoices, which referenced the Agreement, NRMC attempted to cancel the Agreement because it was unhappy with NYDP's services. In the district court, NRMC argued the Agreement was not enforceable because the signature on the Agreement was forged.

In *Life Investors Ins. Co. of Am. v. Estate of Corrado*, 838 N.W.2d 640 (Iowa 2013), the Iowa Supreme Court held that a party may ratify a contract that contains a forged signature even if the person who signed is unknown and lacked authority to sign it. In this case, the district court relied on *Life Investors* in granting summary judgment to GreatAmerica, ruling that NRMC's acts of accepting and using the equipment and making

payments on seven monthly invoices constituted ratification of the Agreement as a matter of law. App. 118-23.

A two-judge majority of a Court of Appeals panel ("Majority") reversed the district court. Add. 1-14 (Bower, J). The Majority held that under *Life Investors*, a person's actions do not constitute ratification if "[the actions are] made without knowledge of material facts about the act of the agent or other actor." Add. 13 n. 9 (citing Restatement (Third) Agency § 4.06 cmt. b). Although it is unclear from the Majority's decision what "material facts" are genuinely in dispute, the Majority concluded: "[T]here is a question of fact whether NRMC had knowledge that would have led a reasonable person to investigate further." Add. 11 (citing Restatement (Third) Agency § 4.06 cmt. d).

To the extent the unknown "material facts" surround the identity of the individual who signed the Agreement and whether that person was authorized to sign, the Iowa Supreme Court has already decided that this is no longer a valid contractual defense as a matter of law. *Life Investors*, 838 N.W.2d at 647. To hold the identity of the signor is material to whether NRMC later ratified the Agreement turns *Life Investors* on its head. The Majority's decision is thus in conflict with the Supreme Court's decision in *Life Investors*, requiring further review under Rule 6.1103(1)(b)(1).

To the extent the "material fact" is whether NRMC had knowledge of the specific written terms of the Agreement, including the hell or high water clause, this is not a required element of GreatAmerica's proof for ratification. When attempting to establish ratification, GreatAmerica need only show NRMC had knowledge that would have led a reasonable business to investigate further the terms of the underlying agreement. *See Life Investors*, 838 N.W.2d at 647 (adopting the Restatement (Third) Agency § 4.06 cmt. d).

The record here establishes that NRMC had a basic level of knowledge that a contract existed between the parties. As Judge Greer points out in her dissent ("Dissent"), GreatAmerica directly invoiced NRMC for each payment due under the "Agreement," making reference to the Agreement, and NRMC made payments on seven monthly invoices without protest. Add. 19 (Greer, J., dissenting). "Under any commercial scenario, a company would not pay a billing without investigating what the term 'agreement' meant in the billing." *Id.* The Dissent correctly concludes the record below reveals NRMC had ample knowledge of the existence of the Agreement as a matter of law. The Majority's decision is in conflict with

the Supreme Court's decision in *Life Investors*, requiring further review under Rule 6.1103(1)(b)(1). [1]

BRIEF

Facts

GreatAmerica is an Iowa corporation with its principal place of business in Cedar Rapids, Iowa. App. 26 ¶ 2. GreatAmerica provides financing to businesses that desire to acquire equipment and/or software for commercial use. App. 26 ¶ 3. NRMC is a professional corporation incorporated in New York. App. 16 ¶ 3.

NRMC sought to acquire office equipment (two Kyocera copiers and a Grandstream telephone system) from NRMC's equipment vendor, NYDP. According to Dr. Rodionova: "I dealt with New York Digital Products, Inc. with regard to certain equipment that New York Digital Products, Inc. was supposed to provide." App. 85 ¶ 4. Dr. Rodionova did not write a check to purchase the equipment outright; rather she left it to NYDP to locate a

[1] The Majority's erroneous application of *Life Investors* is not confined to this case, as a similarly split decision was recently issued in *GreatAmerica Financial Services Corp v. Personal Touch Medical Management, et al*., No. 18-1932, 2020 WL 822043 (Iowa Ct. App. February 19, 2020) (Bower, J. holding party that forged signature on finance agreement and then made 9 payments did not ratify agreement; Greer, J. dissenting that the agreement had been ratified under *Life Investors*).

finance company to arrange financing for this equipment. App. 86 ¶ 11. Dr. Rodionova gave permission to NYDP to "check my credit history so [NYDP's owner] would decide [whether] to sign contract with me or not." App. 65. She agrees that NYDP made contact with GreatAmerica in Iowa to provide financing. *Id*. GreatAmerica checked NRMC's credit and approved extending financing to the company.

Although it is a reasonable inference that the financing of equipment by a bank or finance company is accomplished through a written agreement, Dr. Rodionova states "the" agreement prepared in this case was not signed by her, even though NYDP delivered the equipment she ordered. According to Dr. Rodionova:

> The agreement never was signed. New York Digital sent equipment to the Defendant even though I never signed contract with New York Digital and left it in the office.

App. 64.[2]

In October 2017, this Agreement made its way to GreatAmerica, a finance company located in Iowa. When GreatAmerica received the

[2] As Judge Greer points out in the Dissent, NRMC pleaded in an affirmative defense that NYDP fraudulently induced it "to enter into a contract." Add. 15, 17.

Agreement, labeled No. 1296204, the Agreement bore a mark above the signature line for "Natalya Rodionova," owner of NRMC. App. 8.

The Agreement contains a "hell or high water" clause:

> NET AGREEMENT. THIS AGREEMENT IS NON-CANCELABLE FOR THE ENTIRE AGREEMENT TERM. YOU UNDERSTAND WE ARE PAYING FOR THE EQUIPMENT BASED ON YOUR UNCONDITIONAL ACCEPTANCE OF IT AND YOUR PROMISE TO PAY US UNDER THE TERMS OF THIS AGREEMENT, WITHOUT SET-OFFS FOR ANY REASON EVEN IF THE EQUIPMENT DOES NOT WORK OR IS DAMAGED, EVEN IF IS NOT YOUR FAULT.

Id. Under the terms of the Agreement, NRMC was required to make 63 monthly payments of $999, plus tax. *Id.*

Although Dr. Rodionova claims she personally did not sign the Agreement up front, she followed through with the transaction. NRMC admits: "New York Digital sent equipment to the Defendant [NRMC]. . . ." App. 64. On October 23, 2017, following a telephone verification that the equipment had been delivered, GreatAmerica provided the financing for the Agreement. App. 24, 27 ¶ 6. NRMC acknowledges it used the equipment. *See* App. 24, 25.

On October 30, 2017, GreatAmerica sent its first invoice (Invoice Number 21562773) to NRMC pursuant to the Agreement:

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GreatAmerica FINANCIAL SERVICES
HARD WORK • INTEGRITY • EXCELLENCE

GreatAmerica Financial Svcs.
PO Box 660831
Dallas, TX 75266-0831

Remittance Section

Invoice Number:	21562773
Agreement Number:	003-1296204-000
Invoice Print Date:	10/30/2017
Due Date:	**11/23/2017**
Total Due:	**$1,157.17**

Return Service Requested

☐ Check here for change of address (see reverse for details)

Use enclosed envelope and make check payable to:

ATTN: ACCOUNTS PAYABLE
NATALYA RODIONOVA MEDICAL CARE P.C.
2109 MATTHEWS AVE
BRONX NY 10462-2614

GreatAmerica Financial Svcs.
PO Box 660831
Dallas, TX 75266-0831

0000031296204000000000002156277300000000001157175

Keep lower portion for your records - Please return upper portion with your payment

GreatAmerica FINANCIAL SERVICES
HARD WORK • INTEGRITY • EXCELLENCE

GreatAmerica Financial Svcs.
PO Box 660831
Dallas, TX 75266-0831

Invoice Number:	21562773
Due Date:	**11/23/2017**
Total Due:	**$1,157.17**

Important Messages

We appreciate your business!
We are glad you chose GreatAmerica Financial Services Corporation. Please remove the remittance portion of this invoice and include it with your payment.

Invoice Detail

Agreement 003-1296204-000: 2-Kyocera TASKalfa 4002i Copiers & Grandstream Phone Sys		Amount	Tax	Total
	1 Standard Payment	999.00	88.67	1,087.67
	2 One-Time Documentation Fee	69.50	0.00	69.50
				$1,157.17

For questions about these charges, please call 866-803-2665 or visit www.AccountServicing.com . (Para Español, pida la extensión 2344.)

Total Due **$1,157.17**

Dishonored Checks, Drafts Or Orders Shall Be Subject To A Surcharge Of $30

EXHIBIT 4

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Updated Contact Information
Please complete all information below to ensure our system is fully updated.

Effective Date: _____
Completed By: _____
Contact Name: _____
Contact Phone: _____
Contact Email: _____
Contact Fax: _____

If you need additional assistance updating your address, please contact us to speak to a Customer Service Advisor.

Agreement #: *003-1296204-000*

New Billing Address:

_____
_____
_____

New Equipment Location:

- ☐ Same as new Billing Address
- ☐ Same as previous Equipment Location
- ☐ New Location (specify below)

_____
_____
_____

ADDITIONAL INFORMATION

- Please allow 7-10 days for your payment to be received by our office.
- Include the Remittance Section slip and payment referencing your agreement number and account name; failure to do so may result in a processing delay.
- If you have a right under your agreement to purchase the equipment at or after the end of the term of the agreement, and you properly exercise such right, you are hereby notified that the seller of the equipment ("Seller") has assigned to Account Services Exchange LLC, a qualified intermediary, as part of an Internal Revenue Code Section 1031 like-kind exchange program, Seller's rights (but not its obligations) under the agreement to sell office and/or communication equipment to you.

App. 111–12. The first invoice, like the next six invoices that followed, states at the top it is from "GreatAmerica Financial Services" and is for "Agreement Number: 003-1296204-000." App. 95–112. The invoices contain an "Important Message" that "We are glad you chose GreatAmerica Financial Services Corporation." *See* App. 111. The "Invoice Detail" section states: "Agreement 003-1296204-000: 2-Kyocera TASKalfa 4002i Copiers & Grandstream Phone Sys." *Id*. A blue box at the bottom of the invoice provides a toll-free number for GreatAmerica and a web address, in case NRMC has any questions. *Id*.

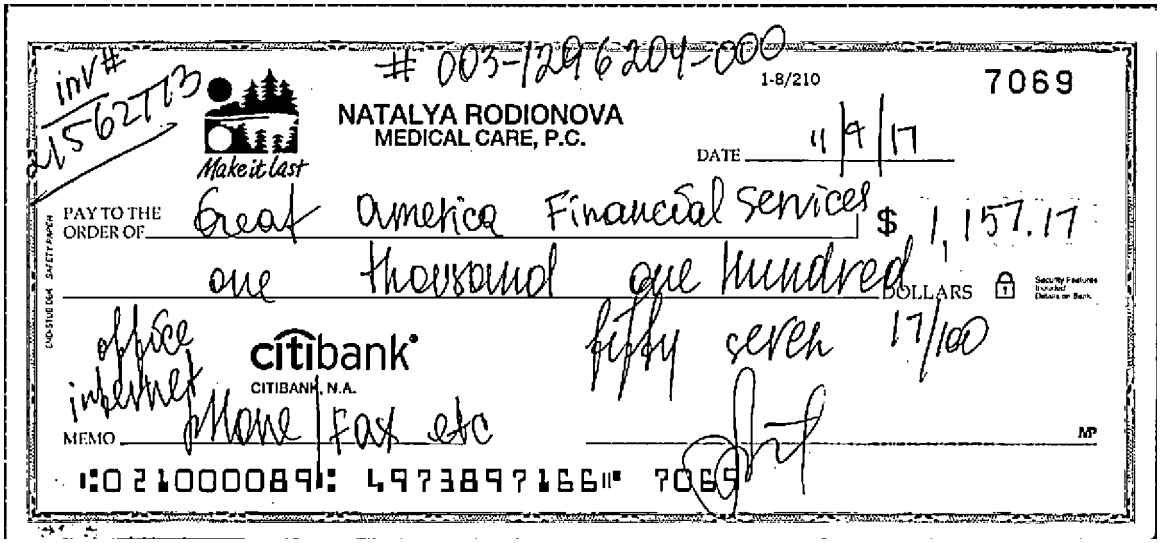
The back side of the invoice provides a section to permit NRMC to update its contact information. It provides: "If you need additional assistance updating your address, please contact us to speak to a Customer

Service Advisor. Agreement #: 003-1296204-000." The invoice also provides a final section of "ADDITIONAL INFORMATION:"

> - Include the Remittance Section slip and payment referencing *your agreement number* and account name; failure to do so may result in a processing delay.
> - If you have a right under *your agreement* to purchase the equipment at or after *the end of the term of the agreement*, and you properly exercise such right, you are hereby notified that the seller of the equipment ("Seller") has assigned . . . Seller's rights (But not its obligations) under *the agreement* to sell office and/communication equipment to you.

App. 112 (emphasis added).

NRMC paid the first invoice via check sent to GreatAmerica dated "11/9/17." (App. 113):


inv# 21562773
003-1296204-000
1-8/210
7069
NATALYA RODIONOVA
MEDICAL CARE, P.C.
Make it last
DATE 11/9/17
PAY TO THE ORDER OF Great America Financial Services $ 1,157.17
one thousand one hundred fifty seven 17/100 DOLLARS
citibank
CITIBANK, N.A.
office internet phone/fax etc
MEMO
⑆021000089⑆ 4973897166⑈ 7069

NRMC wrote on the check for the first payment: "inv #21562773" (referencing the invoice number); "#003-1296204-000" (referencing the Agreement number); and "office internet phone/fax etc" (referencing the

exact equipment being used). *Id*. The next four monthly invoices were paid by NRMC through two separate telephone calls with GreatAmerica employees in which NRMC authorized debits to NRMC's bank account. App. 114–15; App. 116–17 ¶ 5. NRMC admits "it did make payments to GreatAmerica." App. 33 ¶ 9; *see also* App. 113.

On May 17, 2018, Dr. Rodionova sent GreatAmerica an email seeking to cancel the Agreement. App. 25. In the email, Dr. Rodionova admits she had been using the equipment, but stated her internet services were interrupted due to a dispute with NYDP. *Id.* According to Dr. Rodionova, NRMC "moved back with Verizon and Cablevision." *Id.* Dr. Rodionova offered to buy the printers and fax machines she had been using from GreatAmerica, rather than continue to lease them. *Id.* Dr. Rodionova asserted a belief that NYDP's actions constituted "fraud." *Id.* Further, Dr. Rodionova requested of GreatAmerica:

> The last 2 invoices send to [NYDP's owner]. He was swearing, he will pay them.

Id.

Nevertheless, four days later on May 21, Dr. Rodionova herself spoke to a GreatAmerica employee and authorized the payment of the two overdue invoices with late fees pursuant to the Agreement. App. 114, 117. NRMC defaulted on the Agreement by making no further payments after May 21,

2018. App. 27 ¶ 8. In all, NRMC paid seven monthly invoices under the Agreement before defaulting. App. 27 ¶ 8; 114-15.

Proceedings in the District Court and Court of Appeals.

On February 28, 2019, the district court granted GreatAmerica's motion for summary judgment. The district court initially noted that the Agreement contains a hell-or-high-water clause and addressed whether NRMC "accepted" the equipment under the IUCC. App. 120. The district court held that NRMC accepted delivery of the goods and failed to reject them. App. 120.

The district court also held NRMC ratified the Agreement as a matter of law:

> As with the conduct that constitutes acceptance of the goods, in the same ways, Dr. Rodionova ratified the contract with GreatAmerica, regardless of who signed the initial agreement. By accepting the equipment and keeping it, using it to some degree, and making seven monthly payments, Dr. Rodionova received a benefit from the agreement for which she also was obliged to continue making payments. *Life Investors*, 838 N.W.2d at 647 ("A person should not be able to accept the benefits of a contract even if the signer's acts are unauthorized, but deny his or her obligations under the contract because the signer's acts are unauthorized.")

Add. 26.

A two-judge majority of a panel of the Court of Appeals reversed the district court. Add. 1–14 (Bower, J. for Majority). With regard to ratification, the Majority held: "[T]here is a question of fact whether NRMC had knowledge that would have led a reasonable person to investigate further." Add. 11.[3]

Judge Greer issued a dissenting opinion. Add. 15–21. The Dissent points out a party assumes the "risk of lack of knowledge" if the principal had enough knowledge of facts that would have led a reasonable person to investigate further. Restatement (Third) of Agency § 4.06 cmt. d. Judge Greer then correctly concludes that the undisputed evidence in the record establishes ample knowledge of the existence of an agreement that would have led a reasonable person to investigate further. Add. 18–19. Thus, the district court properly granted summary judgment on ratification.

[3]The Majority also held there were material fact disputes on whether NRMC "accepted the benefits" of the Agreement and timely rejected the equipment. These holdings contradict long-standing Iowa law on the Iowa Uniform Commercial Code as discussed *infra* Section II.

Argument

I. The Court of Appeals Majority Issued a Decision in Conflict with the Supreme Court's Decision in Life Investors.

The Majority believed the use of summary judgment was inappropriate in deciding ratification under *Life Investors*, citing a case decided long before the Restatement (Third) of Agency was drafted and adopted in Iowa. *See* Add. 13 (citing *Argus v. Ware & Leland*, 136 N.W. 774, 775-76 (Iowa 1912)).

Other courts that have adopted and applied § 4.06 similar to *Life Investors*, however, have affirmed grants of summary judgment. In *Grabois v. BMO Harris Bank*, No. 1 CA-CV 13-0164, 2015 WL 4040612 (Ariz. Ct. App. June 30, 2015), a bank issued a new loan to a company. Similar to Dr. Rodionova in the present case, the president of the company (Grabois) was involved with the efforts to refinance, made six draws on the new loan, and received monthly bank statements that referenced the new loan number. *Id*. at **5-6. Grabois later claimed the new loan was not enforceable because his signature on the new loan had been forged.

The Arizona Court of Appeals rejected Grabois' argument that ratification may never be decided on summary judgment. *Id*. at *5. The court noted that a principal may ratify a forged contract without knowledge of all material facts and assumes the risk of lack of knowledge if the

principal ratifies knowing the principal is without knowledge of such facts. *Id*. (quoting Restatement (Third) of Agency § 4.06 cmts. b and d). In affirming summary judgment, the court found the record below of the undisputed facts showing knowledge of the existence of the new loan to be "robust." *Id*. at *6; *see also Inn Foods, Inc. v. Equitable Co-Operative Bank*, 45 F.3d 594, 597-98 (1st Cir. 1995) (affirming summary judgment where defendant had sufficient knowledge to ratify either by actions taken or by acquiescence).

In Iowa, the use of summary judgment in cases involving a contract with a "hell or high water" clause is well developed. Iowa courts have long understood the importance of these clauses for finance companies, such as GreatAmerica, to proving funding for businesses across the country. *See GreatAmerica Leasing Corp. v. Star Photo Lab, Inc*., 672 N.W.2d 502, 505–06 (Iowa Ct. App. 2003) (enforcing hell or high water clause contained in equipment lease); *GreatAmerica Fin. Servs. Corp. v. Lloyd S. Meisels, P.A.*, 888 N.W.2d 680, 2016 WL 5480718 at 83 (Iowa Ct. App. Sept. 28, 2016). Indeed, Iowa courts routinely grant summary judgment in cases like this. *Star Photo Lab*, 672 N.W.2d at 505 (quoting *In re O.P.M. Leasing Serv., Inc.*, 21 B.R. 993, 1006-07 (Bankr. S.D.N.Y. 1982).

As Judge Greer pointed out in her Dissent in this case, resisting GreatAmerica's motion for summary judgment was the "put up or shut up" moment for NRMC, and NRMC fell short of presenting evidence showing a legitimate dispute of the material facts. Add. 16 (citations omitted). Indeed, nowhere in the district court or appellate record does NRMC argue it lacked knowledge that an agreement existed between it and GreatAmerica. Neither the Majority nor NRMC mention what "knowledge" NRMC required before its performance of the Agreement constituted ratification. Because the undisputed facts in the record establish NRMC chose to accept equipment to be financed and performed under an Agreement with a known finance company, NRMC ratified the Agreement as a matter of law.

A. The Identity of the Person Who Signed Dr. Rodionova's Name to the Agreement is not a Material Fact in Dispute.

Even assuming that the person who signed the Agreement for NRMC was unauthorized to do so by NRMC and is an unknown third party, NRMC legally ratified the forged Agreement by making payments under *Life Investors**Error! Bookmark not defined.***, 838 N.W.2d at 647. In *Life Investors*, Life Investors and one of its insurance marketers attempted to resolve a commission dispute through a written settlement agreement, purportedly signed by the marketer. *Id*. at 643. The parties subsequently operated under the agreement, but when the terms of the agreement required

the marketer to pay larger sums, the marketer claimed he did not sign the agreement and had not authorized anyone else to sign for him. *Id*. The marketer argued his actions in performing under the agreement could not have ratified the agreement because the signer was unknown, not authorized by the marketer, and the marketer was unaware of the terms of the agreement. *Id*. at 644.

The Court examined existing Iowa law and stated: "[O]ur legislature has taken the position a principal may ratify an unauthorized signature, including a forgery, when dealing with negotiable instruments." *Id.* (citing Iowa Code § 554.3403(1)). The Court adopted Restatement (Third) of Agency § 4.03 to apply to all contracts in Iowa:

> We conclude Iowa law should abandon the 'purported to act' rule contained in the Restatement (Second) of Agency and our prior case law in favor of the rule contained in the Restatement (Third) of Agency, that an undisclosed principal may ratify an actor's unauthorized act. . . . A person should not be able to accept the benefits of a contract even if the signer's acts are unauthorized, but deny his or her obligations under the contract even if the signer's acts are unauthorized.

Life Investors, 838 N.W.2d at 647; *see also Affiliated Corp. Servs. v. Englewood Cmty. Health Org., Inc*., No. 98C7420, 1999 WL 652027, at *4 (N.D. Ill August 20, 1999) (holding lessee ratified lease, even though it was unknown who signed the lease, where lessee passed a corporate resolution

authorizing the entry of equipment lease and three (3) payments were made on the lease).

Because it does not matter who actually signed Dr. Rodionova's name to the Agreement, this fact is not material to the issue of ratification. Indeed, as pointed out by the Dissent, a party may ratify an agreement that has no signature at all. Add. 17 (citing *Henderson v. Henderson*, 114 N.W. 178, 179 (Iowa 1907)). The Majority's position that there is a fact issue preventing summary judgment as to whether NRMC had sufficient knowledge to investigate the identity of the alleged forger is untenable under *Life Investors*.[4]

B. Whether NRMC Had Actual Knowledge that the Agreement Contained a Hell or High Water Clause is Not a Material Fact in Dispute.

The Majority holds that NRMC's actions in making the payments may not have ratified the Agreement because it was unaware of the precise terms of the Agreement, including the hell or high water clause. The Majority held there is a fact issue as to whether NRMC had enough knowledge of its

[4] NRMC suspects that someone at the equipment vendor company forged Dr. Rodionova's signature. As the Dissent aptly states: "Without question, NRMC and its vendor, New York Digital Products, Inc. (New York Digital), are at crosshairs based on New York Digital's alleged fraud. But the question here is whether NRMC contracted with GreatAmerica." Add. 15.

agreement with GreatAmerica to investigate whether this agreement included a typical hell or high water clause. The Dissent correctly concludes this is not a genuine dispute of material fact that prevents the grant of summary judgment.[5]

From the outset, it should be noted that this is not a case in which a rogue employee of a business forges a signature on a contract and no manager of the business has any idea about the contract or the nature of the transaction. In this case, Dr. Rodionova, the owner of NRMC, orchestrated the transaction; she wanted two Kyocera copies and a Grandstream telephone system for her business. App. 85 ("I dealt with [NYDP] with regard to certain equipment [NYDP] was supposed to provide."). Dr. Rodionova selected NYDP as her company's vendor and decided to finance the equipment rather than purchase it outright. She knew she needed to have her credit checked in order to enter into a financing agreement for the equipment. App. 65. It is undisputed that on October 23, 2017, NYDP

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[5] Any defendant can readily allege it was unaware of specific contractual provisions—and such arguments routinely fail as a matter of law if the defendant failed to take the opportunity to read the contract. *See McKee v. Isle of Capri Casinos, Inc.*, 864 N.W.2d 518, 527 (Iowa 2015) ("[F]ailure to read a contract before signing it will not invalidate the contract. Absent fraud or mistake, ignorance of a written contract's contents will not negate its effect."). This does not change if the contract contains an alleged defect and the defendant chooses to remain ignorant of the contents of the contract.

delivered office equipment to NRMC. Although Dr. Rodionova claims "the contract was never signed," she agrees in the same breath that NYDP delivered the equipment she ordered after applying for financing. App. 64. Clearly, the equipment was also installed, as Dr. Rodionova admits she used the phones until they later ceased to operate. App. 44.

On October 30, 2017, GreatAmerica sent its first invoice to NRMC. As explained above, *supra* at Section I.B, the first and subsequent invoices contain repeated references to the Agreement by number (003-1296204-000) and extensive detail about the financing transaction, including listing the exact equipment delivered to NRMC. On November 9, 2017, NRMC paid the first invoice via check sent to GreatAmerica. App. 113. NRMC wrote on its check "inv #21562773;" "#003-1296204-000;" (referencing the Agreement) and "office internet phone/fax etc." *Id.* The next four monthly invoices that GreatAmerica mailed to NRMC were paid by NRMC via telephone calls with GreatAmerica employees during which NRMC authorized debits to NRMC's bank account. App. 114–15.

On May 17, 2018, Dr. Rodionova sent an email to GreatAmerica describing NYDP's conduct as "fraud" and asked GreatAmerica to send the two most recent overdue invoices to NYDP. App. 44. Significantly, on May 21, 2018, Dr. Rodionova herself spoke to a GreatAmerica employee

and authorized payment of the two invoices, including late fees. App. 114; App. 116 ¶ 5. This shows Dr. Rodionova's understanding that NRMC was party to an agreement with GreatAmerica, a finance company, which requires the timely payment of monthly invoices to avoid default. In all, NRMC paid seven monthly invoices, from October 2017 to May 2018, under the Agreement. Even after NRMC defaulted, Dr. Rodionova offered to buy some of the equipment subject to the Agreement. App. 44.

In short, on October 30, 2017, when NRMC received GreatAmerica's first invoice referencing a specific GreatAmerica agreement, by number, NRMC had a choice: refuse payment under the Agreement and call GreatAmerica toll free to ask about specific terms of the Agreement; or accept the benefits of this Agreement without further investigation and perform under it.[6] NRMC chose to perform under the Agreement, and in doing so, accepted the risk of lacking knowledge as to the terms of the Agreement. *See* Restatement (Third) of Agency § 4.06 cmt d. As the Dissent correctly held: "Under any commercial scenario, a company would not pay a billing without investigating what the term 'agreement' meant in

[6] The benefit that NRMC accepted in this case is the opportunity to finance the acquisition of the Equipment through payments over time. It is undisputed that NRMC did not pay for the equipment outright, but was permitted to use it and pay for it over time.

the billing." Add. 19. This is consistent with how Iowa and other courts deal with references to agreements in bank statements and other documents. *See Davis Mobile Homes, L.L.C. v. U.S. Bank National Association*, 824 N.W.2d 562, 2012 WL 5356132, at **4-6 (Iowa Ct. App. Oct. 31, 2012) (charging company with knowledge of change in bank account agreement because statement made reference to change in terms, even though company's owner had never seen the agreement, did not actually review the agreement's terms and conditions, nor expressly agree to them); *Grabois*, 2015 WL 4040612, at **5-6 (affirming summary judgment and holding party ratified new loan alleged to have a forged signature as a matter of law under Restatement (Third) of Agency § 4.06 because party had sufficient knowledge of the new loan through receipt of monthly statements from bank that referenced the new loan number and showed new loan amount); *White v. Moriarty*, 15 Cal. Rptr. 2d 200, 202 (Cal. App. Ct. 4th 1993) (holding defendant ratified bank note containing his unauthorized signature and despite defendant's lack of knowledge of loan transaction because defendant later signed power of attorney for signer that referenced the purchase and financing of the equipment).

Because NRMC possessed adequate knowledge that it had entered an agreement with GreatAmerica to finance the Equipment it concedes was

delivered to it, NRMC was on notice as a matter of law that if it wanted to know the precise terms of the agreement, it should investigate further.[7] Having failed to do so, NRMC assumed the risk of lack of knowledge of the terms of the Agreement, and its actions constitute ratification. *See Life Investors*, 838 N.W.2d at 647; Restatement (Third) of Agency § 4.06 cmt. d. By accepting the financing, using the Equipment, and making payments pursuant to seven detailed invoices, NRMC ratified the Agreement. *Id.* The Court of Appeals Majority's decision reversing the district court is contrary to *Life Investors* and must be reversed.

II. The Court of Appeals Majority Also Committed Error in Holding There Are Fact Issues Preventing Summary Judgment on Acceptance Under the Iowa Uniform Commercial Code.

Once the ratification issue is corrected on further review, the district court's decision granting summary judgment on the hell or high water clause should be fully reinstated. The consequence of NRMC ratifying this Agreement, which contains a hell or high water clause, is the Agreement becomes noncancelable if NRMC accepts the equipment under the IUCC.

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[7] The Majority points out that NRMC complained during discovery that GreatAmerica had not sent a copy of the Agreement to NRMC before the lawsuit. Add. 12. This fact is not in dispute and is not material. At no time did Dr. Rodionova request a copy of the Agreement, even when she informed GreatAmerica on May 17, 2018 that NYDP committed fraud and asked GreatAmerica to send the two recent invoices to NYDP for payment.

Here, the Majority held there were factual disputes over whether NRMC "accepted the benefits" of the Agreement and whether NRMC rejected the Equipment in a timely manner. Add 13. As pointed out by the Dissent, these findings are contrary to long-standing cases from Iowa appellate courts and the Iowa Uniform Commercial Code. Add. 19-21.

It is unclear from the Majority's Decision whether "accept the benefits" refers to NRMC's enjoyment of use of the equipment. What is clear under Iowa law is if NRMC "accepted the equipment" within the meaning of the IUCC, the Agreement becomes noncancelable pursuant to the hell or high water clause and NRMC's actual use of the equipment does not matter. *See Star Photo Lab, Inc.*, 672 N.W.2d at 505. As explained by the Dissent: "It matters not whether or how much they could use [the equipment]." Add. 19.

"An acceptance occurs under the Uniform Commercial Code after the lessee has had a reasonable opportunity to inspect the goods and (a) signifies or acts in a way signifying the goods are conforming, and (b) the lessee fails to make an effective rejection of the goods." *Star Photo Lab, Inc.*, 672 N.W.2d at 505 (quoting Iowa Code § 554.13515). The first element can be established by a lessee's actions in certifying delivery of equipment, such as by signing a delivery form or confirming delivery through a telephone call,

or by making payments to a finance company. *See Meisels*, 2016 WL 5480718, at *4; *Star Photo Lab, Inc.*, 672 N.W.2d 505; *GreatAmerica Leasing Corp. v. Davis-Lynch*, No. 10-CV-13-LRR, 2011 WL 167248, at *5 (N.D. Iowa 2011).

Here, the record shows two independent ways NRMC signified the equipment was acceptable. First, on October 23, 2018, NRMC employee Melissa Santiago and a GreatAmerica employee had a telephone conversation in which Santiago acknowledged the equipment had been delivered and was working. App. 24 (documenting the verification). Second, NRMC made payments on seven monthly invoices without any attempt to cancel the Agreement.

The Majority's position that there is a material fact issue on whether Santiago was "authorized" to speak on the telephone misses the mark. NRMC does not deny that the conversation took place exactly as recorded on the document. Dr. Rodionova herself admits, however, that the equipment was actually delivered and used by NRMC. App. 44. Most importantly, the Majority did not consider the undisputed fact that NRMC made payments on seven monthly invoices, which is a separate means by which a lessee may signify equipment is conforming. Courts have held that making as little as one payment is sufficient to find acceptance of goods

under a lease agreement. *See Flair Fashions, Inc. v. SW CR Eisenhower Drive, Inc.*, 427 S.E.2d 56, 57 (Ga. Ct. App. 1993); *EVCO Distrib., Inc. v. Commercial Credit Equip. Corp.*, 627 P.2d 374, 380-81 (Kan. Ct. App. 1981). By making payments on seven monthly invoices before attempting to terminate the Agreement, NRMC accepted the equipment within the meaning of Section 554.13515. *See Meisels*, 2016 WL 5480718, at *4 (finding lessee signified acceptance of equipment by making 15 payments); *Davis-Lynch*, 2011 WL 167248, at *5 (holding that ten payments without an attempt to reject equipment constitutes acceptance).

Similarly, the Majority erred in holding that a material fact issue exists as to whether NRMC effectively rejected the equipment. *See* Add. 13. It was not until May 17, 2018, seven months after the equipment was delivered and used by NRMC employees, that NRMC sent an email to GreatAmerica purporting to terminate the Agreement. App. 44. Assuming this email can be construed as an attempted rejection or revocation of acceptance, such rejection or revocation is untimely. *See Davis-Lynch*, 2011 WL 167248, at *5 (concluding purported rejection ten months later was untimely); *see also In re Rafter Seven Ranches, L.P. v. C.H. Brown, Co.*, 546 F.3d 1194, 1201-02 (10th Cir. 2008) (determining lessee failed to effectively reject equipment where lessee did not inform finance lessor until six weeks

after delivery); *Pioneer Peat, Inc. v. Quality Grassing Servs., Inc.*, 653 N.W.2d 469, 472 (Minn. Ct. App. 2002) (finding one month lapse between acceptance and rejection was not reasonable).

Having accepted the equipment within the meaning of Iowa law, NRMC must now perform under the Agreement "despite any dissatisfaction with the performance of the [equipment]." *Star Photo*, 672 N.W.2d at 506. Under Iowa law, NRMC's payment obligations continue "come hell or high water." *Id.* NRMC breached the Agreement by failing to make the payments, and thus, the district court correctly granted summary judgment to GreatAmerica. The Court of Appeals Majority's decision should be reversed on further review to the Supreme Court.

CONCLUSION

For these reasons, Appellee GreatAmerica Financial Services Corporation respectfully requests the Supreme Court accept further review of the Court of Appeals' decision and issue a decision reversing the Court of Appeals.

Respectfully submitted,

/s/Randall D. Armentrout

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CERTIFICATE OF COMPLIANCE WITH TYPEFACE

REQUIREMENTS AND TYPE-VOLUME LIMITATION

This Application complies with the typeface and type-volume requirements of Iowa R. App. P. 6.1103(4) because*:*

[X] this Application has been prepared in a proportionally spaced typeface using Times New Roman in 14 point and contains 5,593 words, excluding parts of the application exempted by Iowa R. App. P. 6.1103(4)(a), or

[ ] this Application has been prepared in a monospaced typeface using [state name of typeface] in [state font size] and contains [state number of] lines of text, excluding the parts of the [application or resistance] exempted by Iowa R. App. P. 6.1103(4)(a).

April 21, 2020 /s/ Randall D. Armentrout
Date

PROOF OF SERVICE AND CERTIFICATE OF FILING

I hereby certify that on April 21, 2020, I electronically filed the foregoing with the Clerk of the Supreme Court of Iowa using the Iowa Electronic Document Management System, which will send notification of such filing to the counsel of record.

/s/ Randall D. Armentrout

ELECTRONICALLY FILED APR 01, 2020 CLERK OF SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 19-0491
Filed April 1, 2020

GREATAMERICA FINANCIAL SERVICES CORPORATION,
Plaintiff-Appellee,

vs.

NATALYA RODIONOVA MEDICAL CARE, P.C.,
Defendant-Appellant.

Appeal from the Iowa District Court for Linn County, Lars G. Anderson, Judge.

The defendant appeals an adverse summary judgment ruling in this breach-of-contract action. **REVERSED AND REMANDED.**

Larry J. Thorson of Ackley, Kopecky & Kingery, L.L.P., Cedar Rapids, for appellant.

Randall D. Armentrout and Leslie C. Behaunek of Nyemaster Goode, P.C., Des Moines, for appellee.

Considered by Bower, C.J., and Greer and Ahlers, JJ.

BOWER, Chief Judge.

GreatAmerica Financial Services Corporation (GreatAmerica) seeks to enforce a "hell or high water" clause against an entity, Natalya Rodionova Medical Care, P.C. (NRMC), which has submitted evidence the signature on the financing contract is a forgery and that it did not accept or ratify the Agreement. Because GreatAmerica has not proved ratification of the Agreement as a matter of law, we reverse and remand for further proceedings.

I. Background Facts and Proceedings.

GreatAmerica is an Iowa corporation with its principal place of business in Cedar Rapids, Iowa. GreatAmerica provides financing for business equipment and/or software for commercial use.

NRMC is a professional corporation with its practice located in New York City, New York. The sole shareholder of the corporation is Dr. Natalya Rodionova, a licensed physician.

The "Agreement" GreatAmerica asserts has been breached is reproduced in its entirety below:[1]

[1] The quality of the copy of the Agreement is very poor. As best as we can make out, the Agreement purports to require sixty-three monthly payments of $999.00 for "Kyocera copier 4002i–2pcs–sp#W376Z03025/WL376Z02961 Grandstream phone system–1" provided by New York Digital Products Inc. (New York Digital).

AGREEMENT

GreatAmerica FINANCIAL SERVICES

GREATAMERICA FINANCIAL SERVICES CORPORATION
625 FIRST STREET SE, CEDAR RAPIDS IA 52401
PO BOX 609, CEDAR RAPIDS IA 52406-0609

AGREEMENT NO.: 1296204

CUSTOMER ("YOU" OR "YOUR")

FULL LEGAL NAME: Natalya Rodionova Medical Care P.C.

ADDRESS: 2109 Matthews Ave Bronx, NY 10462-2514

VENDOR (VENDOR IS NOT OWNER'S AGENT NOR IS VENDOR AUTHORIZED TO WAIVE OR ALTER ANY TERM OR CONDITION OF THIS AGREEMENT)

New York Digital Products Inc. Mineola, NY

EQUIPMENT AND PAYMENT TERMS

TYPE, MAKE, MODEL NUMBER, SERIAL NUMBER, AND INCLUDED ACCESSORIES: ☐ SEE ATTACHED SCHEDULE

Kyocera copier 4002i-2pcs - sn#W376Z03025/W376Z02961

Grandstream phone system - 1

EQUIPMENT LOCATION: As Stated Above

TERM IN MONTHS: 63 MONTHLY PAYMENT AMOUNT*: $999.00 (*PLUS TAX) PURCHASE OPTION: Fair Market Value

ADDITIONAL TERMS AND CONDITIONS

AGREEMENT. You want us to pay your Vendor for the equipment referenced herein ("Equipment") and you agree to pay us the amounts payable under the terms of this agreement ("Agreement") each period by the due date. This Agreement will begin on the date the Equipment is delivered to you or any later date we designate. We may charge you a reasonable fee to cover documentation and investigation costs. If any amount payable to us is not paid when due, you will pay a late charge equal to: 1) the greater of ten (10) cents for each dollar overdue or twenty-six dollars ($26.00); or 2) the highest lawful charge, if less.

NET AGREEMENT. THIS AGREEMENT IS NON CANCELABLE FOR THE ENTIRE AGREEMENT TERM. YOU UNDERSTAND WE ARE PAYING FOR THE EQUIPMENT BASED ON YOUR UNCONDITIONAL ACCEPTANCE OF IT AND YOUR PROMISE TO PAY US UNDER THE TERMS OF THIS AGREEMENT, WITHOUT SET-OFFS FOR ANY REASON, EVEN IF THE EQUIPMENT DOES NOT WORK OR IS DAMAGED, EVEN IF IT IS NOT YOUR FAULT.

EQUIPMENT USE. You will keep the Equipment in good working order, use it for business purposes only, and not modify or move it from its initial location without our consent. You must resolve any dispute you may have concerning the Equipment with the manufacturer or Vendor. Payments under this Agreement may include amounts you owe your Vendor under a separate arrangement (for maintenance, service, supplies, etc.), which amounts may be invoiced by us on your Vendor's behalf for your convenience.

SOFTWARE/DATA. Except as provided in this paragraph, references to "Equipment" include any software referenced above or installed on the Equipment. We do not own the software and cannot transfer any interest in it to you. We are not responsible for the software or the obligations of you or the licensor under any license agreement. You are solely responsible for protecting and removing any confidential data/images stored on the Equipment prior to its return for any reason.

NO WARRANTY. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. YOU HAVE ACCEPTED THE EQUIPMENT "AS-IS". YOU CHOSE THE EQUIPMENT, THE VENDOR AND ANY/ALL SERVICE PROVIDER(S) BASED ON YOUR JUDGMENT. YOU MAY CONTACT YOUR VENDOR FOR A STATEMENT OF THE WARRANTIES, IF ANY, THAT THE MANUFACTURER OR VENDOR IS PROVIDING. WE ASSIGN TO YOU ANY WARRANTIES GIVEN TO US.

ASSIGNMENT. You may not sell, assign or sublease the Equipment or this Agreement without our written consent. We may sell or assign this Agreement or our rights in the Equipment, in whole or in part, to a third party without notice to you. You agree that if we do so, the assignee will have our rights but will not be subject to any claim, defense, or set-off assertable against us or anyone else.

LAW/FORUM. This Agreement and any claim related to this Agreement will be governed by Iowa law. Any dispute will be adjudicated in a state or federal court located in Linn County, Iowa. You consent to personal jurisdiction and venue in such courts and waive transfer of venue. Each party waives any right to a jury trial.

LOSS OR DAMAGE. You are responsible for any damage to or loss of the Equipment. No such loss or damage will relieve you from your payment obligations hereunder. We are not responsible for, and you will indemnify us against, any claims, losses or damages, including attorney fees, in any way relating to the Equipment. In no event will we be liable for any consequential or indirect damages.

INSURANCE. You agree to maintain comprehensive liability insurance acceptable to us. You also agree to: 1) keep the Equipment fully insured against loss or its replacement cost, with us named as loss payee; and 2) provide proof of insurance satisfactory to us no later than 30 days following the commencement of this Agreement, and thereafter upon our written request. If you fail to maintain property loss insurance satisfactory to us and/or you fail to timely provide proof of such insurance, we have the option, but not the obligation, to secure property loss insurance on the Equipment from a carrier of our choosing in such forms and amounts as we deem reasonable to protect our interests. If we secure insurance on the Equipment, we will not name you as an insured party, your interests may not be fully protected, and you will reimburse us the premium which may be higher than the premium you would pay if you obtained insurance, and which may result in a profit to us through an investment in reinsurance. If you are current in all of your obligations under the Agreement at the time of loss, any insurance proceeds received will be applied, at our option, to repair or replace the Equipment, or to pay us the remaining payments due or to become due under this Agreement, plus our booked residual, both discounted at 5% per annum.

TAXES. We own the Equipment. You will pay when due, either directly or by reimbursing us, all taxes and fees relating to the Equipment and this Agreement. Sales or use tax due upfront will be payable over the term with a finance charge.

END OF TERM. At the end of the term of this Agreement (or any renewal term) (the "End Date"), this Agreement will renew month to month unless: a) you provide us written notice, at least 60 days prior to the End Date, of your intent to return the Equipment, and b) you timely return the Equipment to the location designated by us, at your expense. If a Purchase Option is indicated above and you are not in default on the End Date, you may purchase the Equipment from us "AS IS" for the Purchase Option price. If the returned Equipment is not immediately available for use by another without need of repair, you will reimburse us for all repair costs. You cannot pay off this Agreement or return the Equipment prior to the End Date without our consent. If we consent, we may charge you, in addition to other amounts owed, an early termination fee equal to 5% of the amount we paid for the Equipment.

DEFAULT AND REMEDIES. If you do not pay any sum within 10 days after its due date, or if you breach any other term of this Agreement or any other agreement with us, you will be in default, and we may require that you return the Equipment to us at your expense and pay us: 1) all past due amounts, and 2) all remaining payments for the unexpired term, plus our booked residual, both discounted at 5% per annum. We may also use all other legal remedies available to us, including disabling or repossessing the Equipment. You agree to pay all our costs and expenses, including reasonable attorney fees, incurred in enforcing this Agreement. You also agree to pay interest on all past due amounts from the due date, at 1.5% per month.

UCC. You agree that this Agreement is (and/or shall be treated as) a "Finance Lease" as that term is defined in Article 2A of the Uniform Commercial Code ("UCC"). You agree to forgo the rights and remedies provided under sections 507-522 of Article 2A of the UCC.

MISCELLANEOUS. This Agreement is the entire agreement between you and us and supersedes any prior representations or agreements, including any purchase orders. Amounts payable under this Agreement may include a profit to us. The original of this Agreement shall be that copy which bears your facsimile or original signature, and which bears our original signature. Any change must be in writing signed by each party.

OWNER ("WE", "US", "OUR")

THIS AGREEMENT IS NON-CANCELABLE FOR THE FULL AGREEMENT TERM.

OWNER: GreatAmerica Financial Services Corporation

SIGNATURE: DATE:

PRINT NAME & TITLE:

CUSTOMER'S AUTHORIZED SIGNATURE

THIS AGREEMENT IS BINDING WHEN WE FUND VENDOR FOR THE EQUIPMENT.

CUSTOMER: (As Stated Above)

SIGNATURE: X DATE: 10/23/17

PRINT NAME & TITLE:

UNCONDITIONAL GUARANTY

The undersigned unconditionally guarantees that the Customer will timely perform all obligations under the above Agreement. The undersigned also waives any notification if the Customer is in default and consents to any extensions or modifications granted to the Customer. In the event of default, the undersigned will immediately pay all sums due under the terms of the Agreement without requiring us to proceed against Customer or any other party or exercise any rights in the Equipment. The undersigned, as the guaranty, agrees to the designated forums and consents to personal jurisdiction, venue, and choice of law as stated in the Agreement, agrees to pay all costs and expenses, including attorney fees, incurred by us related to this guaranty and the Agreement, waives a jury trial and transfer of venue, and authorizes obtaining credit reports.

SIGNATURE: X INDIVIDUAL: DATE:

GreatAmerica sent monthly invoices to NRMC beginning October 30, 2017. According to GreatAmerica records, NRMC made four payments to GreatAmerica. The first payment was by check in the amount of $1157.17 from the bank account

of NRMC dated "11/4/17" with the notation "office internet phone/fax etc" on the memo line. Additional payments as noted in a GreatAmerica "payment history report" were made on January 23 ($2355.24), March 29 ($2233.64), and May 21, 2018 ($2607.44).[2]

On May 17, 2018, Dr. Rodionova sent an email to Tim McEowen[3] concerning an April 23, 2018 invoice:

> Tim! Tony Barro and New York Digital betrayed me and broke the[ir] responsibility to me
> My services got interrupted, in both offices, because he (they) did not pay their bills
> I moved back with Verizon and Cable vision.
> You can pick up your phones.
> I cannot use them.
> If you want, and give me a fair price on used printers/ faxes, I will purchase them from your company.
> Let me know, how you want to approach it.
> Sorry,
> Ny Digital turned out to be criminals and a fraud.
> Let'[s] take everything into consideration, so I could pay you for equipment, if you are looking to sell it I am willing to buy.
> I am not looking to lease. That is out of the equation.
> Thank you. Respectfully,
> Dr Rodionova.
> Ps.
> The last 2 invoices send to Tony Barro.
> He was swearing, he will pay them.
> I have it in writing and witnesses. For all the damage he caused to my company.

On July 26, 2018, GreatAmerica sued NRMC, alleging "NRMC breached the Agreement by failing to make the required payments." GreatAmerica also

[2] The May 21 payment was authorized by Dr. Rodionova by telephone.
[3] According to an interrogatory answer, McEowen is an employee of GreatAmerica who "had communications with Defendant regarding late payments and buyout quote."

asserted a claim of unjust enrichment because "NRMC is in possession of the equipment financed by GreatAmerica."

NRMC denied the allegations of the complaint and affirmatively asserted (1) GreatAmerica "has unclean hands in that [it] knew or should have known that New York Digital . . . had a history of not performing its obligations with regard to sales of equipment to its customers, yet [GreatAmerica] continued to finance said sales"; (2) no authorized person of NRMC signed the Agreement; and (3) the representative of New York Digital "fraudulently induced [NRMC] to enter into a contract that was financed by GreatAmerica." The answer was accompanied by an affidavit by Dr. Rodionova, which provides in part:

> I did not sign the document which is attached to the Petition by GreatAmerica . . . and I have not signed any document with GreatAmerica Leasing.
>
> To the extent that the document purports to have my signature, it is a forgery. The representative from New York Digital Products created accounts in my name that were not authorized by me.

On January 18, 2019, GreatAmerica sought summary judgment, arguing it did not matter if "no authorized person of the defendant signed" the Agreement because under Iowa law, "NRMC ratified the Agreement by accepting the equipment and making seven monthly payments. Having ratified the Agreement, the plain language in the Agreement that it is "non-cancelable" must be enforced as a standard "hell or high water clause."

As support for its contention that NRMC accepted and used the equipment, GreatAmerica filed the affidavit of Steve Louvar:

> I am employed as a litigation specialist for [GreatAmerica.] The information set forth in this Affidavit is based on my personal knowledge and my review of GreatAmerica's business records.

. . . .

On October 23, 2017, GreatAmerica employee, Katy Mulherin, performed a telephone verification with NRMC Employee Melissa Santiago. Exhibit 2 is a true and accurate copy of the Equipment Inspection/Verification. Santiago confirmed that the equipment had been installed and was working.

Exhibit 2 is copied here:

EQUIPMENT INSPECTION/VERIFICATION

CUSTOMER NAME: Natalya Rodionova medical care PC
APPLICATION NO: 1296204
PHONE NUMBER: 718-794-1000 google

DATE/TIME: 10/23 11:46
CONTACT/TITLE: melissa Santiago Medical Asst.

IS THE EQUIPMENT INSTALLED AND WORKING? ☑ YES ☐ NO
DATE OF INSTALL: today

TERM: 63
PAYMENT: 999.00
SEC. DEP./ADV.:
(NEW) OR USED EQ.

EQUIPMENT LOCATION: Same as last
BILLING ADDRESS (IF DIFFERENT FROM EQ. LOC.): Same as last
AP CONTACT: AP
PHONE NUMBER:
FAX NUMBER: 718-794-5264
EMAIL: N Rodionova@outlook.com
COMMENTS: Natalya Rodionova Director

In response, NRMC asserted the "handwritten part of Plaintiff's Exhibit 2 does not confirm the year that the person supposedly called" and "[t]here is no indication that equipment is working." In a February 5, 2019 affidavit, Dr. Rodionova averred:

(4) I dealt with New York Digital Products, Inc. with regard to certain equipment that New York Digital Products, Inc. was supposed to provide. I did not sign any agreement with GreatAmerica Financial Services Corporation or GreatAmerica Leasing. No one in my office was authorized to sign any agreement with GreatAmerica Financial Services Corporation or GreatAmerica Leasing.

(5) There is what looks like an initial on an agreement with GreatAmerica that has been provided to me since this lawsuit has been filed. That is not my signature.

(6) No agreement was ever signed with me or New York Digital Products, Inc. and as a matter of fact I parted ways with New York Digital Products, Inc. because of their actions with regard to the proposal they gave me concerning certain phone and copier equipment and their actions thereon.

. . . .

(8) The equipment dropped off at my offices by New York Digital Products, Inc. was used equipment and was not something I would purchase or finance from anybody.

(9) Melissa Santiago is not authorized to act on behalf of the corporation, is not authorized to accept delivery of equipment or make any determination as to whether or not payment is due and owing to anyone from the Defendant corporation, and is not authorized to determine if any equipment meets my corporation's needs or standards.

(10) When I contacted a representative from GreatAmerica Financial Services Corporation he was not helpful and he was only defending the actions of New York Digital Products, Inc.

(11) New York Digital Products, Inc. made the contact with GreatAmerica Leasing Corporation and I had nothing to do with deciding who New York Products, Inc. was going to deal with.

(12) With regard to the alleged agreement, I was not presented a copy of it when I contacted the GreatAmerica Leasing representative.

(13) . . . The equipment that was sent to my office was something that I could not use because it was specific for New York Digital Products, Inc. I never got any use out of the equipment.[4]

---

[4] NRMC answered interrogatory No. 14 as follows:

The agreement never was signed. New York Digital sent equipment to the Defendant even though I never signed contract with New York Digital and left it in the office. I found out that my identity was stolen in 2018 or end of 2017. Even I could not use the equipment (it was specific for New York Digital) and I have chosen Cablevision for one office and Verizon for another. I paid a lower price.

NRMC acknowledged it made seven payments but asserted it did so because New York Digital was not making promised payments. NRMC also asserted it was attempting to come to a resolution with GreatAmerica in light of fraudulent conduct by New York Digital.

On February 28, 2019, the district court granted GreatAmerica's motion for summary judgment. The district court noted the Agreement contains a hell-or-high-water clause, which is valid and enforceable under Iowa law. The district court found:

> NRMC confirmed receipt of the equipment and paid the invoices, one of which was paid by Dr. Rodionova herself on the phone. Both the verbal affirmation and the payments . . . function as acceptance of the goods and trigger the enforcement of the "hell or high water clause."
>
> . . . .
>
> The court finds that [NRMC] did accept the delivery of the goods both according to the phone call verification with GreatAmerica and to the extent there is any question of the substance of that phone call, by keeping the goods for seven months and making payments there upon, without any attempt to reject the goods.
>
> . . . .
>
> As with the conduct that constitutes acceptance of the goods, in the same ways, Dr. Rodionova ratified the contract with GreatAmerica, regardless of who signed the initial agreement. By accepting the equipment and keeping it, using it to some degree, and making seven monthly payments, Dr. Rodionova received a benefit from the agreement for which she also was obliged to continue making payments.

The court entered judgment for GreatAmerica for contractual damages of $60,879.51 plus interest, attorney fees of $16,724.00, and costs of $314.99.

NRMC appeals, contending genuine issues of fact remain that preclude a finding that NRMC ratified the Agreement by making payments.

II. Scope and Standard of Review.

We review the grant of summary judgment in favor of GreatAmerica for correction of errors at law. *See C & J Vantage Leasing Co. v. Wolfe*, 795 N.W.2d 65, 73 (Iowa 2011). Summary judgment is proper when the record reveals 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). The nonmoving party is entitled to have the evidence viewed in the light most favorable to its position. *See Luana Sav. Bank v. Pro-Build Holdings, Inc.*, 856 N.W.2d 892, 895 (Iowa 2014). "Where reasonable minds can differ on how an issue should be resolved, a fact question has been generated, and summary judgment should not be granted." *Wolfe*, 795 N.W.2d at 73. "[O]ur review is limited to whether a genuine issue of material fact exists and whether the district court applied the correct law." *Id.*

III. Discussion.

In ruling in GreatAmerica's favor, the district court relied upon the case of *Life Investors Insurance Co. of America v. Estate of Corrado*, 838 N.W.2d 640 (Iowa 2013). In *Life Investors*, our supreme court stated:

> A principal may ratify the unauthorized act of an agent. *See Abodeely v. Cavras,* 221 N.W.2d 494, 502 (Iowa 1974) (stating a factor to determine whether a contract is ratified often is whether a principal accepted benefits from an agent's unauthorized act). Even if the actor who signed the contract was not Corrado's agent at the time of signing, "[a] person may ratify the act of an actor who was not an agent at the time of acting," providing the actor purports to be the person's agent or assumed to be the person's agent. Restatement (Third) of Agency ch. 4, intro. note, at 304 (2006).

838 N.W.2d at 644.

In discussing ratification,[5] the supreme court adopted the rule contained in the Restatement (Third) of Agency that an undisclosed principal may ratify an actor's unauthorized act. *Id.* at 647. "We reach this conclusion for the reasons set forth in comment "c*"* of section 4.03 of the Restatement (Third) of Agency and for the fact that our legislature has adopted this rule for negotiable instruments."[6] *Id.* "A person should not be able to accept the benefits of a contract even if the signer's acts are unauthorized, but deny his or her obligations under the contract because the signer's acts are unauthorized." *Id.*[7]

Under Restatement (Third) of Agency, which was adopted by our supreme court, "[r]atification is the consequence of a choice freely made by the principal. The principal may choose to ratify the action of an agent or other actor without knowing material facts." Restatement (Third) of Agency § 4.06 cmt. d. Furthermore, "[a] factfinder *may* conclude that the principal has made such a

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[5] We observe that the *Life Investors* court was addressing "[o]nly ratification by the principal of an agent's signature" and not "ratification by an individual who had the power to avoid the contract but affirmed the contract." 838 N.W.2d at 645.

[6] Comment "c" provides:

> *Forgeries.* . . . Official Comment 3 acknowledges that a forger is not an agent. However, the person whose name is signed may retroactively adopt the forger's signature as the person's own. The retroactive adoption carries the consequences of ratification. Like ratification, it is a unilateral expression of a person's consent, and like ratification it does not require consideration to be enforceable. It may be in the principal's interest to ratify a forgery to obtain the benefit of a transaction not otherwise available.

[7] *See Life Inv'rs Ins. Co. of Am. v. Corrado*, 804 F.3d 908, 911 (8th Cir. 2015) (where insurer brought a breach-of-contract action against its life-insurance sales representative, alleging that defendant breached the parties' settlement agreement by failing to repay advances on monies he received from plaintiff, the district court granted summary judgment for plaintiff and court of appeals affirmed, holding that defendant was bound by the settlement agreement through ratification—even if defendant did not sign the agreement, he was bound by it because he did not object to it and accepted the benefits he received from it).

choice when the principal is shown to have had knowledge of facts that would have led a reasonable person to investigate further, but the principal ratified without further investigation." *Id.* (emphasis added). Viewing the record in the light most favorable to NRMC,[8] we conclude there is a question of fact whether NRMC had knowledge that would have led a reasonable person to investigate further.

GreatAmerica asserts NRMC received GreatAmerica's invoice "referencing a finance agreement" [at which point] "NRMC had a choice: refuse payment under the Agreement and investigate the Agreement further; or accept the benefits of this Agreement without further investigation and perform under it." GreatAmerica overstates its evidence.

The initial billing to NRMC is set out below:

[8] *See Luana Sav. Bank*, 856 N.W.2d at 895.

GreatAmerica FINANCIAL SERVICES
HARD WORK • INTEGRITY • EXCELLENCE

GreatAmerica Financial Svcs.
PO Box 660831
Dallas, TX 75266-0831

Remittance Section 110

Invoice Number:	21562773
Agreement Number:	003-1296204-000
Invoice Print Date:	10/30/2017
Due Date:	**11/23/2017**
Total Due:	**$1,157.17**

Return Service Requested

☐ Check here for change of address (see reverse for details)

Use enclosed envelope and make check payable to:

ATTN: ACCOUNTS PAYABLE
NATALYA RODIONOVA MEDICAL CARE P.C.
2109 MATTHEWS AVE
BRONX NY 10462-2614

GreatAmerica Financial Svcs.
PO Box 660831
Dallas, TX 75266-0831

0000031296204000000000002156277300000000001157175

Keep lower portion for your records - Please return upper portion with your payment

GreatAmerica FINANCIAL SERVICES
HARD WORK • INTEGRITY • EXCELLENCE

GreatAmerica Financial Svcs.
PO Box 660831
Dallas, TX 75266-0831

Invoice Number:	21562773
Due Date:	**11/23/2017**
Total Due:	**$1,157.17**

Important Messages

We appreciate your business!
We are glad you chose GreatAmerica Financial Services Corporation. Please remove the remittance portion of this invoice and include it with your payment.

Invoice Detail

Agreement 003-1296204-000: 2-Kyocera TASKalfa 4002i Copiers & Grandstream Phone Sys		Amount	Tax	Total
	1 Standard Payment	999.00	88.67	1,087.67
	2 One-Time Documentation Fee	69.50	0.00	69.50
				$1,157.17

The billing references "Agreement Number 013-1296204-000." Nothing is said of a "finance agreement." It does not provide any terms of the referenced agreement.

We also noted Dr. Rodionova's affidavit states: "There is what looks like an initial on an agreement with GreatAmerica that has been provided to me *since this lawsuit has been filed*. That is not my signature." (Emphasis added.) She also states, "[W]ith regard to the alleged agreement, I was not presented a copy of it when I contacted the GreatAmerica Leasing representative."

Perhaps a factfinder could conclude NRMC "had knowledge of facts that would have led a reasonable person to investigate further,"[9] but that is a question for a factfinder. *See Argus v. Ware & Leland*, 136 N.W. 774, 775–76 (Iowa 1912) (noting ratification presented a jury question).

We believe the same is true as to whether NRMC accepted the benefits of a contract. Dr. Rodionova's affidavit states Melissa Santiago "is not authorized to act on behalf of the corporation, is not authorized to accept delivery of equipment or make any determination as to whether or not payment is due and owing to anyone from the Defendant corporation and is not authorized to determine if any equipment meets my corporation's needs or standards." Dr. Rodionova also states, "New York Digital Products, Inc. made the contact with GreatAmerica Leasing Corporation and I had nothing to do with deciding who New York Products, Inc. was going to deal with." Moreover, "the equipment that was sent to my office was something that I could not use because it was specific for New York Digital Products, Inc. I never got any use out of the equipment."

We also observe there appears to be a question of fact as to whether NRMC attempted to reject the equipment. The evidence is not so one-sided that the issue can be determined as a matter of law. *Cf. GreatAmerica Leasing Corp. v. Davis-Lynch, Inc.*, No. 10-CV-13-LRR, 2011 WL 167248, at *9 (N.D. Iowa 2011) ("[T]he undisputed evidence demonstrates that Moreno's supervisor and Defendant's office manager, Adrienne Redd, accepted the copy machines and served as

[9] *See* Restatement § 4.06 cmt. b ("A person who has ratified is not bound by the ratification if it was made without knowledge of material facts about the act of the agent or other actor. . . . The burden of establishing that a ratification was made with knowledge is on the party attempting to establish that ratification occurred.").

Defendant's primary contact with Seamless. Despite Redd's knowledge of the transactions, Redd continued to deal with Seamless on Defendant's behalf, and Defendant continued to use the copy machines Seamless provided to Defendant under the C/CAMP Agreements. Thus, Redd later ratified the agreements and Defendant benefitted from the use of the copy machines.").

Viewing the record in the light most favorable to NRMC, the district court erred in finding GreatAmerica proved ratification as a matter of law. There are genuine issues of material fact concerning ratification that preclude summary judgment. We therefore reverse the entry of judgment in favor of GreatAmerica and remand for further proceedings not inconsistent with this opinion.

REVERSED AND REMANDED.

Ahlers, J., concurs; Greer, J., dissents.

GREER, Judge (dissenting).

I respectfully dissent; I would affirm the district court and grant GreatAmerica Financial Services Corporation (GreatAmerica) summary judgment against Natalya Rodionova Medical Care, P.C. (NRMC). As an affirmative defense to the GreatAmerica breach-of-contract claim, NRMC confirmed "[t]he representative from New York Digital Products, Inc. fraudulently induced the Defendant to *enter into a contract that was financed by GreatAmerica Financial Services Corporation*." (Emphasis added.) Next, Dr. Rodionova[10] verified she did not sign any document with GreatAmerica, but on October 23, 2017, Melissa Santiago,[11] a NRMC employee, confirmed the equipment leased (a telephone system and copiers) was installed and working. On top of that, NRMC made seven months of payments on the contract for the telephone system and copiers, one of which was personally authorized by Dr. Rodionova by telephone. Finally on May 17, 2018, seven months after delivery of the equipment, Dr. Rodionova sent GreatAmerica an email seeking to cancel the agreement. Without question, NRMC and its vendor, New York Digital Products, Inc. (New York Digital), are at crosshairs based on New York Digital's alleged fraud. But the question here is whether NRMC contracted with GreatAmerica.

The district court applied the "hell or high water" clause of the contract and found NRMC was bound because of its unconditional acceptance of the contract terms by usage and payment. The court confirmed the agreement is non-

[10] Dr. Natalya Rodionova is the sole shareholder of the professional corporation NRMC.
[11] Dr. Rodionova argues this employee had no authority to bind NRMC.

cancelable. The court also determined NRMC ratified the contract by its actions and inaction. GreatAmerica contends the district court got it right. But finding there are still genuine issues of material fact to resolve, the majority reverses the district court's summary judgment ruling. Those disputed facts are: (1) whether NRMC had insufficient knowledge so that it had no duty as a reasonable person to investigate further into the transaction, thereby avoiding ratification of an agreement the principal did not sign; (2) whether NRMC accepted the benefits of the contract; (3) whether Melissa Santiago authorized acceptance and approval of the equipment; and (4) whether NRMC rejected the equipment. Even addressing these questions, I disagree that material facts prevent summary judgment as a matter of law.

Under established principles of summary judgment, NRMC's arguments fail. A party resisting summary judgment must set forth specific facts which constitute competent evidence showing a *prima facie* claim. Summary judgment "is the 'put up or shut up' moment in a lawsuit, when a [nonmoving] party must show what evidence it has that would convince a trier of fact to accept its version of the events." *Schacht v. Wis. Dep't of Corr.*, 175 F.3d 497, 504 (7th Cir. 1999), *overruled on other grounds as stated in Higgins v. Mississippi*, 217 F.3d 951, 954 (7th Cir. 2000); *see also Bauer v. Stern Fin. Co.*, 169 N.W.2d 850, 853 (Iowa 1969) ("[A] party 'may not rest upon the mere allegations or denials of his pleading.' He must set forth specific facts showing there is a genuine issue. He cannot merely say there is one; but it must appear 'by affidavits or otherwise' that this is the case." (citation omitted)). NRMC, other than protesting unfairness, omits verified facts refuting summary judgment.

(1) Ratification. First, even looking at the facts in the light most favorable to the nonmoving party and assuming that Dr. Rodionova did not sign the GreatAmerica agreement and that someone forged her initials, it does not change this result. "Signature is not always essential to the binding force of an agreement. If accepted and acted upon by the parties as a binding engagement, mutuality appears without formal signature. This is elementary." *Henderson v. Henderson*, 114 N.W. 178, 179 (Iowa 1907). NRMC made seven months of payments to GreatAmerica for the equipment. When NRMC defaulted, it stopped making all payments but still had the equipment. The default came seven months after delivery of that equipment to NRMC. The district court found NRMC ratified the contract "[b]y accepting the equipment and keeping it, using it to some degree, and making seven monthly payments." Additionally, in the NRMC affirmative defenses, it asserted that "New York Digital Products, Inc. fraudulently induced [it] *to enter into a contract* that was financed by GreatAmerica Financial Services Corporation." (Emphasis added.)

After conceding *some* contract existed, I would find NRMC ratified the contract's terms. Our supreme court has said, "Ratification is the affirmance by a person of a prior act which did not bind him but which was done or professedly done on his account, whereby the act, as to some or all persons, is given effect as if originally authorized by him." *Abodeely v. Cavras*, 221 N.W.2d 494, 502 (Iowa 1974) (quoting Restatement (Second) of Agency § 92, at 210 (Am. Law Inst. 1958)). "There are two types of ratification: (1) ratification by the principal of the signature of an agent, and (2) ratification by an individual who had the power to avoid the contract but affirmed the contract." *Life Inv'rs Ins. Co. of Am. v. Estate*

of Corrado, 838 N.W.2d 640, 645 (Iowa 2013). Whether the party "expressly or implicitly authorized a person to sign on his behalf is not a necessary fact to determine" ratification of a contract since a principal may ratify the act of an agent. *Id.* at 644. "In other words, if ratification exists a contract exists and the action is on the contract." *Id.*; *see also Mayrath Co. v. Helgeson*, 139 N.W.2d 303, 306–309 (Iowa 1966) (holding ratification occurred where corporation knew employee accepted settlement agreement and corporation accepted benefit of contract).

In the second type of ratification—ratification by an individual who had the power to avoid the contract but affirmed the contract—failure to act can be fatal. NRMC asserts it did not ratify the actions of New York Digital because it did not know material facts about the contract terms. So NRMC and the majority assert a fact question exists on whether NRMC had knowledge that would have led it to investigate further. *See* Restatement (Third) of Agency § 4.06 cmt. d (Am. Law Inst. 2006).[12] But under the undisputed facts NRMC had information and ratified without a further investigation. Even though NRMC had not seen the contract terms before suit, it received a billing referencing an agreement number and "your agreement."[13] NRMC confirmed it had no agreement with New York Digital. Yet

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[12] Restatement (Third) of Agency § 4.06 cmt. d provides,

> *d*. *Risk of lack of knowledge.* Ratification is the consequence of a choice freely made by the principal. The principal may choose to ratify the action of an agent or other actor without knowing material facts. A factfinder may conclude that a principal has made such a choice when the principal is shown to have had knowledge of facts that would have led a reasonable person to investigate further, but the principal ratified without further investigation.

[13] Under "ADDITONAL INFORMATION" the billing noted:

> If you have a right under *your agreement* to purchase the equipment at or after the *end of the term of the agreement*, and you properly exercise such right, you are hereby notified that the seller of the

it received billings from GreatAmerica, received equipment at its office, and paid seven months of payments without protest. Under any commercial scenario, a company would not pay a billing without investigating what the term "agreement" meant in the billing. *Life Inv'rs Ins. Co. of Am. v. Corrado*, 804 F.3d 908, 912–13 (8th Cir. 2015) (upholding summary judgment and concluding, when faced with inconsistencies about the commercial relationship, Corrado ratified an agreement, which he claimed he had not signed, but had operated under for years).

(2) Acceptance of Benefits. Second, NRMC accepted the equipment and made payments from when it was delivered in October 2017 until May 2018 when the last payment was authorized over the telephone by Dr. Rodionova. It matters not whether or how much they could use it. Here because the agreement was ratified, under the "hell or high water" clause, once a lessee formally accepts the property there is an unconditional obligation to pay the lease payments required under the agreement. *See, e.g.*, *Hinkel Excavation & Constr., Inc. v. Constr. Equip. Int'l, LTD.*, No. C00-4090-MWB, 2001 WL 34008497, at *5–6 (N.D. Iowa 2001); *Citicorp of N. Am., Inc. v. Lifestyle Comm. Corp.*, 836 F. Supp. 644, 655–56 (S.D. Iowa 1993); *GreatAmerica Leasing Corp. v. Star Photo Lab, Inc.*, 672 N.W.2d 502, 504 (Iowa 2003). It does not matter if property is suitable for its intended purpose, is lost, or is destroyed. *Citicorp*, 836 F. Supp. at 655–66. The court in *Hinkel Excavation* noted:

> equipment ("Seller") has assigned to Account Services Exchange LLC, a qualified intermediary, as part of an Internal Revenue Code Section 1031 like-kind exchange program, Seller's rights (but not its obligations) under *the agreement* to sell office and/or communication equipment to you.

(Emphasis added.)

> The essential practical consideration requiring liability as a matter of law in these situations is that [hell or high water] clauses are essential to the equipment leasing industry. To deny their effect as a matter of law would seriously chill business in this industry because it is by means of these clauses that a prospective financier-assignee of rental payments is guaranteed security for his outright loan to the lessor. Without giving full effect to such clauses, if the equipment were to malfunction, the only security for this assignee would be to repossess equipment with substantially diminished value.

2001 WL 34008497, at *7 (quoting *Colorado Interstate Corp. v. CIT Grp./Equip. Fin., Inc.*, 993 F.2d 743, 748 (10th Cir. 1993)).

(3) Melissa Santiago's Actions. Third, NRMC did not dispute that Melissa Santiago said the equipment was accepted and working but instead argues she was not authorized to accept the equipment or make any determination about its working condition. And following the October 2018 contact between Santiago and the GreatAmerica representative, payments were made and there was no rejection of agreement or equipment. Through these undisputed actions, NRMC accepted the equipment by the October 2018 phone call between GreatAmerica's employee and Santiago, NRMC's employee, wherein she confirmed that the goods were delivered and were operational. *See Star Photo Lab, Inc.*, 672 N.W.2d at 506; *see also GreatAmerica Leasing Corp. v. Davis-Lynch, Inc.*, No. 10-CV-13-LRR, 2011 WL 167248, at *5 (N.D. Iowa Jan. 19, 2011). NRMC provided no affidavit of Santiago refuting the acceptance of the equipment or its working condition.

(4) Rejection of Equipment. Finally under this record, there is no factual dispute impacting the summary judgment ruling. Reviewing the facts in the light most favorable to NRMC, no rejection of the equipment occurred until Dr. Rodionova emailed GreatAmerica suggesting the phones did not work but she would consider buying the copiers and fax. Belated efforts to cancel a lease cannot

constitute an "effective rejection." A refusal to keep making payments after seven months of payments does not constitute an effective rejection of goods under Iowa law. *See In re Rafter Seven Ranches L.P. v. C.H. Brown Co.*, 546 F.3d 1194, 1201–02 (10th Cir. 2008) (holding lessee who made no payments under the leases but did nothing to reject defective sprinklers for six weeks did not reasonably reject the goods); *Davis–Lynch, Inc.,* 2011 WL 167248, at *5 (stating lessee's payments over nine months before refusing to continue to pay "does not constitute an effective rejection of goods under Iowa law"); *Campbell v. AG Finder Iowa Neb.*, No. 03-0323, 2004 WL 893937, at *3 (Iowa Ct. App. Apr. 28, 2004) (noting a rejection is ineffective unless made within a reasonable time).

Based on these undisputed facts, I believe the district court correctly granted summary judgment against NRMP. I would affirm the summary judgment ruling and enter judgment accordingly.

IOWA APPELLATE COURTS

State of Iowa Courts

Case Number	**Case Title**
19-0491	GreatAmerica Financial v. Natalya Rodionova Medical Care

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E-FILED 2019 FEB 28 11:25 AM LINN - CLERK OF DISTRICT COURT

IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY

GREATAMERICA FINANCIAL SERVICES CORPORATION, Plaintiff,	)	Case No. LACV090823
v.	)	ORDER ON MOTION FOR SUMMARY JUDGMENT
NATALYA RODIONOVA MEDICAL CARE, P.C., Defendant.	)	

This matter comes before the Court on the Plaintiff's Motion for Summary Judgment filed on January 18, 2019. The Defendant has filed a Resistance on February 7, 2019. The Plaintiff filed a further reply on February 21, 2019. The Matter is now considered submitted. Having reviewed the record, arguments of counsel, and relevant statutory and case law, the Court now enters the following order.

PROCEDURAL AND FACTUAL HISTORY

This action was brought on July 6, 2018 alleging breach of written contract and unjust enrichment against Defendant, incorporated in California, on the basis of an agreement between the parties for which the Defendant failed to make payments. The Defendant filed an Answer and Affirmative Defenses on September 13, 2018. By way of affirmative defenses, the Defendant states that the Plaintiff has failed to state a claim, that the Plaintiff has unclean hands because it knew or should have known that New York Digital Providers, Inc. had a history of nonperformance, that no authorized representative of Defendant signed the agreement, and that New York Digital Products, Inc. fraudulently induced the Defendant to enter into the contract. Trial is presently set for July 17, 2019.

Plaintiff's Motion for Summary Judgment argues that it was presented with an agreement signed by NRMC owner, Natalya Rodionova, on October 23, 2017, seeking financing on Kyocera copiers and a Grandstream telephone system from New York Digital Products, Inc. ("NYDP"). On October 23, 2017, it confirmed by phone with an NRMC employee that the equipment was installed and working. *Exh.* 2; *Louvar Aff.* ¶ 5. NRMC made 7 out of 63 payments on the agreement. *Louvar Aff.* ¶ 8.

On May 17, 2018, NRMC sent an email to Great America attempting to cancel the agreement. *Def. Initial Disclosure* 3; *Exh.* 3. Dr. Rodionova stated that she had used the phone system, but service was interrupted based on a vendor dispute. *Id.* Contrary to Defendant's argument that an authorized person did not sign the agreement, Plaintiff's argue that the agreement was ratified by acceptance and the first seven monthly payments. *Life Investors Ins. of Am. v. Estate of Corrado*, 838 N.W.2d 640, 647 (Iowa 2013). If the agreement was ratified, Plaintiff argues the "hell or high water" clause makes the obligation to pay unconditional and non-cancelable, making all of the other complaints by the Defendant irrelevant.

The Defendant resisted the Motion for Summary Judgment by stating that there remain issues of material fact. Specifically, the signature and telephone verification. Defendant alleges that she contacted Plaintiff to see if they would be reasonable given alleged fraud on the part of NYDP. Dr. Rodionova states that she dealt with NYDP through an Anthony Bara, who she has since learned has a criminal record. She additionally alleges that NYDP acted without her consent at a number of points, including stealing her identity to set up phone accounts that she did not authorize.

The Plaintiff replied to the Defendant's resistance, reiterating that the agreement was ratified regardless of how it came into existence and it contains an enforceable "hell or high water" clause. NRMC confirmed receipt of the equipment and paid the invoices, one of which was paid by Dr. Rodionova herself on the phone. Both the verbal affirmation and the payments made function as acceptance of the goods and trigger the enforcement of the "hell or high water clause."

SUMMARY JUDGMENT STANDARD

"When there is no genuine issue of fact to be decided, the party with a just cause should be able to obtain a judgment promptly and without the expense and delay of trial." *Daboll v. Hoden,* 222 N.W.2d 727, 731 (Iowa 1974). "The moving party has the burden of showing the nonexistence of a material fact." *Nelson v. Lindaman*, 867 N.W.2d 1, 6 (Iowa 2015)(*citing Hlubek v. Pelecky*, 701 N.W.2d 93, 95 (Iowa 2005)).

"An issue of fact is 'material' only when the dispute involves facts which might affect the outcome of the suit, given the applicable governing law." *Nelson v. Lindaman*, 867 N.W.2d 1, 6 (Iowa 2015)(*citing Wallace v. Des Moines Indep. Cmty. Sch. Dist. Bd. of Dirs.*, 754 N.W.2d 854, 857 (Iowa 2008)).

The Court reviews "the record as we would on a motion for directed verdict." *Bazel v. Mabee*, 576 N.W.2d 385, 387 (Iowa 1998)(*citing Smith v. CRST Int'l, Inc.*, 553 N.W.2d 890, 893 (Iowa 1996)). Namely, "in the light most favorable to the party opposing summary judgment." *Sampson v. American Standard Ins. Co.*, 582 N.W.2d 146, 149 (Iowa 1998)(*citing Smith v. CRST Int'l, Inc.*, 553 N.W.2d 890, 893 (Iowa 1996)). "[E]very legitimate inference that reasonably can be deduced from the evidence should be afforded to the nonmoving party." *Konz v. Ehly*, 451 N.W.2d 504, 505 (Iowa Ct. App. 1989)(*citing Martinko v. H-N-W Associates*, 393 N.W.2d 320, 321 (Iowa 1986)). "Summary judgment is inappropriate if reasonable minds would differ on how the issue should be resolved." *Dickerson v. Mertz*, 547 N.W.2d 208, 212 (Iowa 1996).

"A party resisting a motion for summary judgment cannot rely on the mere assertions in his pleadings but must come forward with evidence to demonstrate that a genuine issue of fact is presented. The record on summary judgment includes the pleadings, depositions, affidavits, and exhibits presented." *Stevens v. Iowa Newspapers*, 728 N.W.2d 823, 827 (Iowa 2007)(*citing Carr v. Bankers Trust Co.*, 546 N.W.2d 901, 903 (Iowa 1996)); *See also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 244 (1986), *adopted in Behr v. Meredith Corp.*, 414 N.W.2d 339, 341 (Iowa 1987).

LEGAL DISCUSSION

"Hell or High Water" Clause

Great America claims that based upon its contract provision the agreement cannot be cancelled, even for the alleged fraud claimed by the Defendant. The provision at issue reads:

> THIS AGREEMENT IS NON-CANCELABLE FOR THE ENTIRE TERM. YOU UNDERSTAND WE ARE PAYING FOR THE EQUIPMENT BASED ON YOUR UNCONDITIONAL ACCEPTANCE OF IT AND YOUR PROMISE TO PAY US UNDER THE TERMS OF THIS AGREEMENT, WITHOUT SETOFFS FOR ANY

> REASON, EVEN IF THE EQUIPMENT DOES NOT WORK OR IS DAMAGED, EVEN IF IT IS NOT YOUR FAULT.

Additionally the contract states:

> UCC. You agree that this Agreement is (and/or shall be treated as) a "Finance Lease" as that term is defined in Article 2A of the Uniform Commercial Code ("UCC"). You agree to forgo the rights and remedies provided under sections 507-522 of Article 2A of the UCC.

The law in Iowa is such that these provisions, known as "hell-or-high-water" provisions, are valid and enforceable upon acceptance of the goods. *GreatAmerica Leasing Corp. v. Star Photo Lab, Inc.*, 672 N.W.2d 502, 505 (Iowa Ct. App. 2003). Such clauses may be articulated specifically in a finance lease or, by operation of the Uniform Commercial Code, extended to all finance leases. Iowa Code § 554.13407, cmt. 1. The general effect is to make an obligation under a finance lease irrevocable *upon acceptance* regardless of what happens after that point. *Star Photo Lab*, 672 N.W.2d at 504 (*citing General Elec. Capital Corp. v. Nat'l Tractor Trailer Sch., Inc.*, 667 N.W.S.2d 614, 619 (N.Y. 1997)). The agreement between these parties is both by definition and by agreement of the parties, a finance lease. Iowa Code § 554.13103(1)(g). The Court finds that the provision itself is valid and binding upon acceptance.

Acceptance

Having established that this contract is a finance lease, the second requirement for the attachment of the hell-or-high-water provision is acceptance of the goods. Iowa Code § 554.13407(1). Acceptance occurs when

> the lessee has had a reasonable opportunity to inspect the goods and (a) the lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or (b) the lessee fails to make an effective rejection of the goods.

Iowa Code § 554.13515(1). Courts have held that rejection after paying on the contract for a number of months was not an effective rejection. *GreatAmerica Leasing Corp. v. Davis-Lynch, Inc.*, 2011 WL 167248, at *5 (N.D. Iowa Jan. 19, 2011).

The Court finds that the Defendant did accept the delivery of the goods both according to the phone call verification with GreatAmerica and to the extent there is any question of the substance of that phone call, by keeping the goods for seven months and making payments there upon, without any attempt to reject the goods.

Affirmative Defenses

However, the Defendant, by Dr. Rodionova, has alleged that it did not know of the agreement with GreatAmerica and did not agree to the specific terms of this contract because Dr. Rodionova did not sign the contract, nor did any employee of Defendant. Rather, they assert, this contract came into being at the bequest of an agent of NYDP and without the specific consent of Dr. Rodionova in whose name it is purportedly signed.

A defense to contract formation may be raised despite the hell-or-high-water clause. *C & J Vantage Leasing Co. v. Outlook Farm Golf Club, LLC*, 784 N.W.2d 753, 758 (Iowa 2010). An unpublished decision by the Iowa Court of Appeals found that the enforceable hell-or-high-water clause does not defeat affirmative defenses in so much as they related to the validity of the contract formation itself or unconscionability. *Frontier Leasing Corp. v. Krueger*, 791 N.W.2d 429, *6 (Iowa Ct. App. 2010)(unpublished)(*citing GreatAmerica Leasing Corp. v. Star Photo Lab, Inc.*, 672 N.W.2d 502, 505 (Iowa Ct. App. 2003)("'It follows that contractual limitations upon remedies are generally to be enforced unless unconscionable.'")

Once the provision has attached it is "not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs." Iowa Code § 554.13407(2)(b). However, "real defenses" such as fraud in factum, may still be available. Iowa Code § 554.3305(2); *GreatAmerica Financial Services Corp. v. Meisels*, 888 N.W.2d 680, at *5 (Iowa Ct. App. 2016). Even though the Defendant continued to pay on the equipment and to use the equipment to some extent, the affirmative defense of fraudulent inducement or fraud may still overcome the hell-or-high-water provision.

However, GreatAmerica further claims that the agreement has been ratified even if it was originally entered into by fraud. GreatAmerica cites to *Life Investors Ins. Co. of Am. v. Estate of Corrado* for the holding that a person cannot accept the benefits of a contract they did not authorize and then fail to assume the obligations of that contract. 838 N.W.2d 640, 647 (Iowa 2013). The equipment was delivered to NRMC by October 23, 2017 and NRMC made payments from October 2017 to May 2018.

Life Investors found that ratification could occur if the person ratifying was the same person whom the agent initially purported to act for. *Id.* at 646. The Court there explicitly found that a principal could ratify a signature even where the signer was unknown, citing both the Restatement (Third) of Agency and Iowa Code section 554.3403(1), for the proposition that a principal can ratify an unauthorized signature, including a forgery. Ratification can occur by "(a) manifesting assent that the act shall affect the person's legal relations, or (b) conduct that justifies a reasonable assumption that the person so consents." Restatement (Third) of Agency § 4.01(2).

As with the conduct that constitutes acceptance of the goods, in the same ways, Dr. Rodionova ratified the contract with GreatAmerica, regardless of who signed the initial agreement. By accepting the equipment and keeping it, using it to some degree, and making seven monthly payments, Dr. Rodionova received a benefit from the agreement for which she also was obliged to continue making payments. *Life Investors*, 838 N.W.2d at 647 ("A person should not be able to accept the benefits of a contract even if the signer's acts are unauthorized, but deny his or her obligations under the contract because the signer's acts are unauthorized.")

Therefore, the Court finds that even if there were a problem with the formation of the contract, such that a defense might otherwise have been available, by ratifying the contract, Dr. Rodionova accepted responsibility for the obligations that run with the benefits she received.

CONCLUSION

Based on the foregoing discussion, the Court finds that summary judgment is appropriate in favor of the Plaintiff. The Plaintiff is directed to submit a proposed order detailing the amount due, as well as application for attorney's fees.

Costs of the action are assessed against the Defendant.

IT IS SO ORDERED.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
LACV090823	GREATAMERICA FIN SERV CORP VS NATALYA RODIONOVA

So Ordered

Lars Anderson, District Court Judge,
Sixth Judicial District of Iowa

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