789 N.W.2d 436, 2010 WL 3324960 (Iowa App.)
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(The Court's decision is referenced in a "Decisions Without Published Opinions" table in the North Western Reporter.)

Court of Appeals of Iowa.
FRONTIER LEASING CORPORATION, Plaintiff–Appellant,
v.
ADVANCED MAILING SYSTEMS, INC. d/b/a Esthetica Medspa Medical Group, Melinda Ann Lirones and Samuel S. Lirones, Individually, Defendants–Appellees.
Melinda Ann Lirones and Samuel S. Lirones, Third–Party Plaintiffs,
v.
Lilian Pinho, Third–Party Defendant/Appellant.

No. 08–1329.
Aug. 25, 2010.

West KeySummary**Guaranty 195 18**

195 Guaranty
195I Requisites and Validity
195k18 k. Validity of assent in general. Most Cited Cases

Bookkeeper's failure to read a guaranty contract did not require a finding that a contract was formed when she was told she only needed to sign to perform her bookkeeping function of monthly payments to a lessor. Solicitor had told bookkeeper that she would merely perform bookkeeping duties for his business, but the documents made her the guarantor for a $100,000 lease to solicitor's company instead. There was no indication that bookkeeper was explained the true nature of the documents before she signed, and no indication that bookkeeper understood that she would have any involvement with the company, but that her bookkeeping responsibilities would be for a spa.

Appeal from the Iowa District Court for Polk County, Robert J. Blink, Judge.
An assignee of an **equipment lease** appeals a district court ruling finding no enforceable contract between the lessor and the purported guarantor of the lease. AFFIRMED.
Edward N. McConnell and Aaron Ginkens of Ginkens & McConnell, P.L .C., Clive, for appellant Frontier Leasing.

Steven P. DeVolder of DeVolder Law Firm, Norwalk, and Steven Porto, West Des Moines for appellee Melinda Lirones.

Considered by VAITHESWARAN, P.J., and DOYLE and TABOR, JJ.

VAITHESWARAN, P.J.
***1** An assignee of an **equipment lease** appeals a district court ruling finding no enforceable contract between the lessor and the purported guarantor of the lease.

I. Background Facts and Proceedings
Lilian Pinho formed a business entity called Advanced Mailing Systems, Inc. with the goal of having the entity purchase a spa **franchise**. Pinho solicited an investment of $100,000 from Samuel and Melinda Lirones, a retired mechanic and a bookkeeper, respectively. The couple declined to invest, but Melinda agreed to perform part-time bookkeeping services for the spa.

Advanced Mailing reached an agreement to rent spa equipment from an equipment leasing entity known as Total Lease Concepts (TLC). Melinda Lirones signed the agreement on behalf of Advanced Mailing after Pinho told her that the agreement was simply a document authorizing her to perform her bookkeeping function of making monthly payments to the lessor. Unbeknownst to Melinda, the title "president" was later typed in next to her name. At the be-

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hest of Pinho, Melinda also executed a guaranty agreement that "[f]or valuable consideration" obligated her to indemnify TLC for Advanced Mailing Systems' outstanding debts. [FN1] Melinda received no consideration for her execution of the guaranty agreement, valuable or otherwise.

> FN1. Melinda's husband was also listed as a signatory on the guaranty agreement, but it was later determined that his signature was forged.

TLC assigned the lease and guaranty agreements to Frontier Leasing Corporation. Advanced Mailing subsequently defaulted on its payments to Frontier.

Frontier sued Advanced Mailing as well as Samuel and Melinda Lirones as guarantors. The Lironeses brought in Pinho as a third-party defendant. Samuel was dismissed prior to trial. Neither Pinho nor Advanced Mailing appeared at trial. Following trial, the district court concluded that Frontier failed to prove there was an enforceable guaranty contract with Melinda.[FN2]

> FN2. The court also entered judgment in favor of the Lironeses and against Pinho in the amount of $82,354.55. Pinho's appeal was dismissed for lack of prosecution.

II. Contract

Frontier frames the key issue as being "whether the contracts, which were later assigned to [it], were formed as to Advanced Mailing, Melinda Lirones and the original lessor TLC." Frontier also raises the following issue: "[W]hether [it] was protected by the waiver of defenses clause in the **equipment lease** contract such that the rationale the trial court applied to invalidate the lease ... [was] cut off as a matter of law."

We will begin with the second issue first, the effect of the waiver of defenses clause contained in the lease agreement. That clause states, "Lessee agrees not to raise any claim or defense which lessee may have against lessor arising out of the lease or otherwise as a defense, counterclaim, or offset to any action by assignee or secured party hereunder." In a recent opinion, the Iowa Supreme Court held that defenses to contract formation could be raised despite such a waiver of defenses clause. *C & J Vantage Leasing Co. v. Outlook Farm Golf Club*, —— N.W.2d ——, —— (Iowa 2010). At least one of the defenses Melinda raised, the absence of mutual assent, is a defense to contract formation. *See North v. State*, 400 N.W.2d 566, 569 (Iowa 1987). Therefore, it could be raised despite the waiver of defenses clause.

***2** We will proceed to address the merits of that defense. Our review is for correction of errors at law. *Blackford v. Prairie Meadows Racetrack & Casino, Inc.*, 778 N.W.2d 184, 187 (Iowa 2010). The district court's fact findings are binding on us if supported by substantial evidence. *Id.*

"For a contract to be valid, the parties must express mutual assent to the terms of the contract." *Schaer v. Webster County*, 644 N.W.2d 327, 338 (Iowa 2002). A misrepresentation as to the character of an essential term of the proposed contract may preclude mutual assent. *See* Restatement (Second) of Contracts § 163, at 443 (1981). In particular,

> If a misrepresentation as to the character or essential terms of a proposed contract induces conduct that appears to be a manifestation of assent by one who neither knows nor has reasonable opportunity to know of the character or essential terms of the proposed contract, his conduct is not effective as a manifestation of assent.

Id.[FN3] *Cf.* Iowa Code § 554.3305(1)(a)(iii) (2005) (providing that a defense available to avoid an obligation under a negotiable instrument includes "fraud

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that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms").

FN3. Our courts do not appear to have adopted this Restatement provision. However, they have discussed fraud in the inception of a contract. *See Lamasters v. Springer*, 251 Iowa 69, 75, 99 N.W.2d 300, 304 (1959) ("If plaintiff was induced by fraud and deceit to enter into the contract, he cannot be bound by its terms."); *Beardsley v. Clark*, 229 Iowa 601, 607, 294 N.W. 887, 890 (1940) ("It is a fundamental proposition that fraud in the procurement of any written instrument vitiates it in the hands of one seeking to benefit thereby.' " (quoting *Rathbun v. Baumel*, 196 Iowa 1233, 1238, 191 N.W. 297, 299 (1922)); *Blake v. Osmundson*, 178 Iowa 121, 143, 159 N.W. 766, 773 (1916) (stating that "fraud vitiates all contracts"); *Lavalleur v. Hahn*, 152 Iowa 649, 660, 132 N.W. 877, 881 (1911) (noting that if fraud in the inception of a contract is proven, the contract was never valid); *Harding v. Willie*, 458 N.W.2d 612, 614 (Iowa Ct.App.1990) (finding that as a result of mutual mistake or fraud there was no meeting of the minds and no contract). The Iowa Supreme Court has also discussed the related doctrine of fraud in the inducement and stated it is a defense to contract formation. *C & J Vantage Leasing*, ——N.W.2d at ——. *Cf. Duffens v. Valenti*, 161 Cal.App.4th 434, 74 Cal.Rptr.3d 311, 321–22 (Cal.Ct.App.2008) ("California law distinguishes between fraud in the "execution" or "inception" of a contract and fraud in the "inducement" of a contract. In brief, in the former case "the fraud goes to the inception or execution of the agreement, so that the promisor is deceived as to the nature of his act, and actually does not know what he is signing, or does not intend to enter into a contract at all, mutual assent is lacking, and [the contract] is void. In such a case it may be disregarded without the necessity of rescission.' " Fraud in the inducement, by contrast, occurs when "the promisor knows what he is signing but his consent is induced by fraud, mutual assent is present and a contract is formed, which, by reason of the fraud, is voidable. In order to escape from its obligations the aggrieved party must rescind ....' " ' " (citations omitted) (emphasis omitted)); *see also Harkrider v. Posey*, 24 P.3d 821, 826–27 (Okla.2000) ("Where a contract is entered into on the basis of a misrepresentation which deceives one of the parties as to the true nature of the proposed agreement, the purported contract is rendered *void.*"). We find it unnecessary to characterize the nature of the fraud, if any, that occurred here because, however it is characterized, the record contains substantial evidence to support a finding that Pinho's misrepresentations prevented Melinda from assenting to the terms of the guaranty agreement.

The district court made the following findings on the question of mutual assent:

> On May 20, 2005, Ms. Lirones went with her daughter Denise to the offices of Martha M. Lonsdale–Emby, a California notary public. Ms. Pinho told Ms. Lirones she needed to sign documents at that office to allow her to perform the part-time bookkeeping services for the spa. Ms. Lirones and her daughter were at the office for five minutes. She did not read the documents before she signed. She thought they were bank authorization documents. In fact they were the TLC **equipment lease** agreement and the guaranty for the assignment to Frontier. Ms. Lirones asserts that after she signed the document, her signatory line was altered to indicate that she signed as president of Advanced Mailing. Likewise,

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> after signing the guaranty, the signatory area was altered to include a signatory line for Sam her husband. After the documents were signed, Denise took them with her. Ms. Lirones contends she was unaware she had signed a financing lease and guaranty document until she and her husband received letters from Frontier in 2005 demanding payment of their "guaranty." There is no reason to disbelieve her, particularly since she testified personally at the hearing and was credible in the Court's opinion.

These findings are supported by substantial evidence.

This does not end our inquiry, because if Melinda had a reasonable opportunity to learn the key terms of the contract by reading it, then Pinho's misrepresentations would not have prevented the formation of the contract. *See Rosenthal v. Great W. Fin. Sec. Corp.*, 14 Cal.4th 394, 58 Cal.Rptr.2d 875, 926 P.2d 1061, 1078 (Cal.1996) ("One party's misrepresentations as to the nature or character of the writing do not negate the other party's apparent manifestation of assent, if the second party had reasonable opportunity to know of the character or essential terms of the proposed contract' " (quoting Restatement (Second) of Contracts § 163, at 443 (1981))). *Cf.* Iowa Code Annotated § 554.3305, cmt. 1 (2001) (setting forth factors to consider in determining what is a reasonable opportunity to obtain knowledge of fraud in the context of negotiable instruments).[FN4]

> FN4. A comment to section 554.3305 of the Iowa Code provides,
>
> > In determining what is a reasonable opportunity, all relevant factors are to be taken into account, including the intelligence, education, business experience, and ability to read or understand English of the signer. Also relevant is the nature of the representations that were made, whether the signer had good reason to rely on the representations or to have confidence in the person making them, the presence or absence of any third person who might read or explain the instrument to the signer, or any other possibility of obtaining independent information, and the apparent necessity, or lack of it, for acting without delay.
>
> Iowa Code Annotated § 554.3305, cmt. 1.

***3** The record contains substantial evidence to support the district court's implicit finding that Melinda did not have a reasonable opportunity to learn the contract terms. In addition to the findings set forth above, the record reveals that Melinda only worked for Advanced Mailing Systems for a total of forty hours, earning less than $1000. She never talked to anyone associated with the lessor, Total Lease Concepts, and she testified that she never had any intent to undertake a deal to personally guarantee **equipment leases**. Indeed, as noted, Pinho had earlier approached her about investing $100,000 in the spa and Melinda told her "there was no way." Melinda only signed the documents because Pinho told her she needed to in order "to make sure that [the Frontier Leasing] account would get paid every month." Pinho was a friend of her daughter. Melinda's daughter had quit her job as a dental assistant to work with Pinho in setting up the spa. Her daughter came to Melinda's house with the documents but kept the papers with her. She led the way to the notary's office where Melinda was to sign the documents, and Melinda followed in a separate car. When they arrived at the notary, Melinda signed the documents and her daughter took them to the spa. There is no indication that her daughter explained the true nature of the documents to her mother before she signed them. There is also no indication that Melinda understood that she had or would have any involvement with Advanced Mailing Systems, Inc. To the contrary, she testified that Pinho told her

Advanced Mailing did mailings for big companies but her job would be with "Esthetica MedSpa." All the checks she signed as bookkeeper were for the latter company. At no time did she authorize her name to be used on behalf of Advanced Mailing, be it as bookkeeper or as president. Given these facts, and applying an objective standard, we conclude Melinda's failure to read the guaranty contract before signing it does not require a finding that a contract was formed. Accordingly, the district court did not err in concluding that "Ms. Lirones did not assent to the purported lease/guaranty contract."

Frontier makes several additional arguments in support of reversal. We find them unpersuasive or unnecessary to decide.

We affirm the district court's dismissal of Frontier's action against Melinda Lirones.

AFFIRMED.

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