# IN THE COURT OF APPEALS OF IOWA

No. 7-289 / 96-0869

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**R.H. REWOLDT,**

Plaintiff-Appellant/Cross-Appellee,

**vs.**

**UNIVERSITY MOTORS CO., DAN W. McCONNELL and JANET L. McCONNELL,**

Defendants-Appellees/Cross-Appellees.

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**UNIVERSITY MOTORS CO., An Iowa Corporation,**

Third-Party Plaintiff-Appellee/Cross-Appellee,

**vs.**

**LEGEND MOTORS, an Iowa Corporation, a/k/a LEGEND GMC TOYOTA, and JAMES T. SKARLIS and SANDRA R. SKARLIS,**

Third-Party Defendants-Appellees/Cross-Appellants.

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Appeal from the Iowa District Court for Black Hawk County, Thomas N. Bower, Judge.

Plaintiff lessor appeals from the district court's ruling determining defendant lessees were only obligated for lessor's payment of real estate taxes due and delinquent prior to the expiration of the lease. **AFFIRMED AS MODIFIED.**

James L. Wagner of Gartelos, Wagner & Ament, Waterloo, for appellant.

John R. Walker, Jr. and Eric W. Johnson of Beecher, Rathert, Roberts, Field, Walker & Morris, P.C., Waterloo, for third party defendant-appellees.

Frederick G. White, Waterloo, for defendant-appellees.

Considered by Sackett, P.J., Huitink, J., and Hayden, S.J.*

*Senior judge from the Iowa Court of Appeals serving on this court by order of the Iowa Supreme Court.

**SACKETT, P.J.** 000413

We are asked to determine if the trial court correctly found liability for real estate taxes under a lease. The real estate was owned by plaintiff-appellant R. H. Rewoldt. He leased the property to defendant-appellee University Motors Co. on December 22, 1978. The lease was personally guaranteed by defendants-appellees Dan McConnell and Janet McConnell. The lease was to run until December 31, 1990 and made provision for defendants to pay certain real estate taxes.

Third-party defendants Legend Motors, James Skarlis, and Sandra Skarlis purchased a car franchise owned by defendants and assumed defendants' 1978 lease with plaintiff and took possession under the lease.

On December 26, 1990, plaintiff paid the Black Hawk County Treasurer $19,603 for real estate taxes and interest due on the leased premises. Plaintiff sought reimbursement for the taxes from defendants and subsequently sued them. On January 21, 1992, this suit was dismissed under Iowa Rule of Civil Procedure 215.

On February 4, 1994, plaintiff filed a second petition against defendants. It is from this suit appeal is taken. In the February 1994 petition, plaintiff sought, among other things, judgment against defendants for real estate taxes he paid in the amount of $19,603 with interest on said amount from December 26, 1990.

Defendants then filed a third-party petition against Legend Motors and James and Sandra Skarlis asserting they were liable for the taxes because they assumed any liability under the lease defendants had with plaintiff.

The district court found plaintiff was entitled to collect taxes due and delinquent during the lease term which expired on December 31, 1990. The court further found that any property tax obligation was assumed by third-party defendants by their assumption of defendants' obligations to plaintiff under the 1978 lease. The district court decided plaintiff was entitled to $16,483.50 for real estate taxes paid plus interest from February 4, 1994, the date of the filing of the second action.

Plaintiff appeals and third-party defendants cross-appeal.

Plaintiff challenges the district court's ruling finding the 1978 lease only obligated defendants' to pay real estate taxes due and delinquent prior to the expiration of the lease. Plaintiff claims the district court should have determined under the 1978 lease plaintiff could recover real estate taxes that were due but not delinquent during the lease term. Plaintiff further contends he should have interest from December 26, 1990, the date he paid the real estate taxes, not just from the date he filed the second petition.

The trial court found plaintiff was entitled under the 1978 lease only to collect taxes through December 31, 1990, the end of the lease term. The trial court computed that to be $16,483.50.

In Iowa, real estate taxes are levied on a fiscal year basis. Real estate taxes for one fiscal year are payable in the next fiscal year. Taxes which become delinquent during the fiscal year are for the previous fiscal year. Iowa Code § 445.36(1). The taxes are considered delinquent if one-half is not paid by October 1 succeeding the

levy and the second one-half by April 1 following. Iowa Code § 445.36(2); *see Presidential Realty Corp. v. Bridgewood Realty Investors*, 498 N.W.2d 694, 697 (Iowa 1993).

We look to what the 1978 lease says to assess liability. The lease provided:

> [Lessee] shall pay all taxes . . . which may be assessed or imposed upon the leased premises by any taxing authority or governmental agency with power to tax, and shall cause the same to be paid when due before they shall become delinquent; . . . that, if Lessee shall fail to pay and discharge any taxes . . ., Lessor may, at Lessor's option, and without prejudice to any right of Lessor, . . . pay such taxes . . . and the amount of any such payment shall be forthwith repaid by Lessee with interest thereon at the rate of 10% per annum, and such amount and interest are hereby declared and agreed to be so much additional rent for the premises hereby leased, . . . .

Though the record and briefs are unnecessarily confusing as to the periods the real estate taxes plaintiff paid covered, we find the lease requires payment by defendants of any taxes levied for the period of the lease. All taxes paid by plaintiff were levied and due, though some were not delinquent, for the period defendants or third-party defendants were in possession under the lease. Plaintiff never consented to third-party defendants' assumption of the lease, so defendants remained liable to plaintiff under the lease. We modify the trial court judgment to award plaintiff judgment against defendants for all real estate taxes and interest paid in December 1990 in the amount of $19,603.

Plaintiff next contends he should have interest from the date of payment. Neither defendants nor third-party defendants argue he should not.

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The lease provides plaintiff is entitled to ten percent interest from the date of payment. The damage was complete on December 26, 1990, when the taxes were paid. *See Brenton Nat'l Bank v. Ross*, 492 N.W.2d 441, 443 (Iowa App. 1992). We modify to award interest to plaintiff from December 26, 1990, the date of payment, at ten percent per annum pursuant to the terms of the lease.

The next question is whether the trial court properly held defendants could look to third-party defendants to pay the judgment against them. Third-party defendants claim the trial court erred in determining defendants could look to them for the payment of plaintiff's judgment. Third-party defendants rest this claim on agreement provisions regarding expense prorations, the seller's warranty, and pre-closing business debts and obligations. They also introduced evidence indicating their intent not to assume liability for costs and expenses attributable to defendants' occupancy prior to the closing date for the sales agreement.

The sales agreement between defendants and third-party defendants provides:

> 3. ASSUMPTION OF LEASE: That the Seller shall assign to Buyer and the Buyer shall assume all of the obligations of the Seller in the [Lease] . . . .
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> . . . .
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> 19. PRO-RATIONS: That as of the date of closing, all ongoing business expense and obligation shall be pro-rated between the parties including, but not limited to, insurance, telephone, utilities, and other ongoing business expenses.
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> . . . .
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> 21. CLOSING: That the closing shall take place on the 3rd day of November, 1989 . . . .

> 22. SELLER'S WARRANTIES: That the Seller warrants and represents that as of the date of closing, Seller has marketable title, free and clear of all liens, charges, and encumbrances, of all assets conveyed herein to the Buyer. Seller further warrants that there is no existing breach of the Rewoldt or Toyota leases as of the date of the closing.
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> 23. ADDITIONAL COVENANTS OF SELLER: . . . It is further understood by and between the parties that the Buyer is not purchasing the ongoing businesses of Seller and is not assuming any liability for any of the Seller's debts or obligations, either to third-parties or their employees or independent contractors. Furthermore, the Seller agrees that it shall assume full responsibility and hold the Buyer harmless for any lease agreement which has been executed by the Seller prior to the date of this agreement through the date of closing. Buyer, however, assumes Seller's obligation under the Rewoldt lease and computer lease with Toyota Motors Distributors, U.S.A., which Buyer agrees to assume as of November 3, 1989. . . .
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> 24. PRE-CLOSING BUSINESS DEBT AND OBLIGATIONS: That the Seller shall be responsible for all debts and obligations arising out of the conduct of the business prior to the date of closing and shall pay any such expenses within twenty days of notice from the Buyer. Any reasonable expenses not so paid by Seller may be deducted from the Buyer's monthly payments.

Third-party defendants contend together these provisions show the intention of the parties, when considered with extrinsic evidence, to be that real estate taxes would be prorated to the date of their possession. We agree.

Third-party defendants took possession November 3, 1989 and stayed in possession through the end of the term. Third-party defendants are responsible for real estate taxes plaintiff paid which were imposed for the period they were in possession. We determine those taxes to be in the amount of $8,318.77. We modify the judgment against the third-party defendants accordingly and enter judgment in

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favor of defendants and against third-party defendants for $8,318.77 plus interest at the rate of ten percent from December 26, 1990.

**AFFIRMED AS MODIFIED.**