IN THE COURT OF APPEALS OF IOWA

No. 7-689 / 97-0253

JAMES OPPERMAN,

Plaintiff-Appellant,

DELRAY, INC.,

Plaintiff,

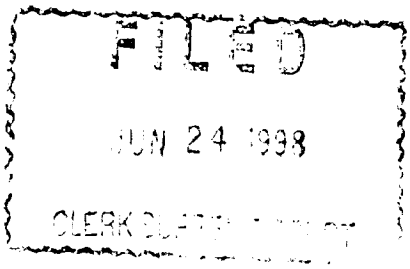
vs.

JOHN OPPERMAN,

Defendant-Appellee,

DELSTAR, INC., and M. & I. DEHY, INC.,

Defendants.



Appeal from the Iowa District Court for Carroll County, Ronald H. Schechtman, Judge.

James Opperman appeals from the district court's refusal to compel John Opperman to release a lien held against their mother's home. **AFFIRMED.**

John F. Lorentzen of Nyemaster, Goode, McLaughlin, Voigts, West, Hansell & O'Brien, P.C., Des Moines, for appellant.

A. Eric Neu of Neu, Minnich, Comito & Hall, P.C., Carroll, for appellee.

Considered by Cady, C.J., and Vogel and Mahan, JJ.

MAHAN, J.

Jim Opperman appeals the trial court's denial of specific performance. Jim alleges the trial court erred when it refused to order John Opperman to release a real estate mortgage on property owned by Betty Opperman, the parties' mother. We affirm.

This matter arose after a dispute between Jim and John concerning their respective interests in three family corporations. Each made and exchanged lists showing their shares in the assets. Jim concluded an agreement had been reached. John asked him to take the lists to Claus Bunz, an attorney, to reduce the agreement to writing. Jim consulted Bunz three or four times but John did not attend these meetings.

Bunz drew up a proposed agreement known as "the Bunz agreement." John was to receive a corporation known as M & I Dehy, Inc., as well as another called Delstar. Jim was to receive the corporation called Delray. Also under the Bunz agreement, John was to release a second mortgage held by M & I Dehy on Betty's home. Ivan and Betty Opperman waived any claim to the assets of any of the corporations. The agreement contained a signature line for Betty. John refused to sign the Bunz agreement without any counterproposal or specificity of the problem.

The parties agreed to attend a mediation presided over by former Iowa Supreme Court Justice Louis W. Schultz. Schultz prepared modifications to the Bunz agreement in his own handwriting. However, the parties agreed the terms of the Bunz

agreement would govern the settlement of their dispute where the mediation had not specifically altered them. John and Jim signed the modifications as written by Schultz and agreed they would draft an agreement pursuant to the modifications and pursuant to examination for tax purposes. Schultz believed Jim and John had reached a final agreement of their dispute, and believed the mediation had been successfully completed.

Jim drafted a proposed agreement containing the provision requiring John to release the mortgage. However, John refused to sign the agreement. Jim then redrafted the proposed agreement. This agreement became known as the Final Settlement Agreement ("the Final Agreement"). The Final Agreement did not contain the language requiring John to release the mortgage on Betty's home but it did specifically require Jim and John to ensure good and marketable title to certain items specifically listed. This form was never signed.

Ultimately, Jim sued John for specific performance. The court agreed with Jim and on August 1, 1996, *ordered specific performance of the Final Agreement.* The district court retained jurisdiction to assure the parties perform pursuant to the terms of the Final Agreement, which did not contain the provision for the release of Betty's mortgage.

John refused subsequent requests to release the mortgage on Betty's home. On November 1, 1996, Jim filed a motion to enforce the judgment, claiming John was

required to release the mortgage under the terms of the Final Agreement. The court denied the request.

Jim then filed a rule 179(b) motion on January 6, 1997. Among other things, Jim asked the court to amend its findings and conclusions and to modify the supplemental order. Jim claimed Betty is an intended third-party beneficiary of the Final Agreement and as such was a party to the agreement for purposes of the release language. Jim then requested the district court order John to release the mortgage. The district court denied this portion of the motion.

I. STANDARD OF REVIEW. Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. STANDING. John argues Jim does not have standing to bring this suit against him. A party in whose name a contract is made for another's benefit may sue in his own name without joining the party for whose benefit the action is prosecuted. Iowa R. Civ. P. 2; *see also City of Ames v. Schill Builders*, 274 N.W.2d 708, 712 (Iowa 1979) (city is entitled to bring suit under rule 2 on the basis it entered into a contract for the benefit of others). Even if Betty is not a party to this contract, she is clearly a third-party beneficiary. *See Uhl v. City of Sioux City*, 490 N.W.2d 69, 72-73

(Iowa App. 1992). This contract is made in Jim's name and part of the contract is specifically for Betty's benefit. Thus, we find Jim has standing to bring this suit.

III. THIRD-PARTY BENEFICIARY. Jim contends Betty is a third-party beneficiary making her an actual party to the contract and entitling her to a release of all claims as set forth in paragraphs seven, ten, eleven, and twelve of the agreement. Jim argues the references to "the parties" includes Betty, due to her status. In order to enforce a contract, a third-party beneficiary must show the contract was made for his or her express benefit. *Id.* at 73. However, even though an intended third-party beneficiary may sue to enforce the contract, it does not make that person an actual "party" to the contract itself. *See Bailey v. Iowa Beef Processors, Inc.*, 213 N.W.2d 642, 645-46 (Iowa 1973) (it is the rule in Iowa and in most American jurisdictions that a third person may, in his own right and name, enforce the promise made for his benefit even though he is a stranger both to the contract and to the consideration).

We find Betty's status as a third-party beneficiary does not make her an actual "party" to the contract. Thus, Betty is not entitled to the release of the mortgage under this argument.

IV. AMBIGUITY OF THE FINAL SETTLEMENT AGREEMENT. Jim contends the Final Agreement's use of the term "parties" is ambiguous. Jim argues, because the usage is ambiguous, the court should look to extrinsic evidence to interpret its meaning. Jim argues "parties" should be interpreted to include Betty. He

further argues if "parties" includes Betty, then paragraphs seven, ten, eleven, and twelve require John to release the mortgage on Betty's home.

If the term "parties" is ambiguous, we may look to extrinsic evidence to determine the parties' intent. *See Anderson v. Aspelmeier, Fisch, Power, Warner & Engberg*, 461 N.W.2d 598, 600 (Iowa 1990). If the usage is not ambiguous, intent is determined by what the contract itself says. *Id.* We find "parties" is not ambiguous and does not include Betty. Paragraph six states:

> 6. The assets listed on Exhibit D are assets owned by Elizabeth Opperman, the mother of James and John Opperman. ***The parties*** hereto shall execute and deliver such instruments of conveyance, assignment and transfer in order to effectively vest in Elizabeth Opperman good and marketable title and possession of the assets set forth in Exhibit D.

(Emphasis added.)

Paragraph six is inconsistent with Jim's argument. We find this paragraph shows "parties" meant Jim and John and did not include Betty. Also, there is no signature line for Betty. Thus, paragraphs seven, ten, eleven, and twelve cannot apply to Betty.

For these reasons we affirm the result of the district court and deny Jim's request to order John to release the mortgage on Betty's home.

AFFIRMED.