FILED
APR 23 1986
CLERK SUPREME COURT

56

IN THE COURT OF APPEALS OF IOWA

KRISTERIN DEVELOPMENT CO., An Iowa Corporation,	)
Plaintiff/Appellant,	)
vs.	)
GRANSON INVESTMENT, A Partnership; KENNETH L. GRANDQUIST, an Individual and Partner; DALE V. NELSON, an Individual and Partner; JOHN GRANDQUIST, an Individual and Partner; LOREN MEGGISON, an Individual, and MEGGISON REAL ESTATE INCORPORATED,	)
Defendants/Appellees.	)

Filed April 23, 1986

5-642
85-293

Appeal from the Iowa District Court for Polk County (No. CL 50 29124) - Rodney J. Ryan, Judge.

Plaintiff appeals and defendant cross-appeals from order setting aside judgment for plaintiff. **REVERSED AND REMANDED.**

John R. Hearn, Des Moines, for plaintiff/appellant.

J. Ronald Pogge, of Hopkins & Huebner, P.C., Des Moines, for defendants/-cross-appellants Granson, Grandquist, and Nelson.

Ronald L. Sutphin, of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, Des Moines, for defendants/appellees Meggison.

Heard by Schlegel, P.J., and Hayden, and Sackett, JJ.

SACKETT, J.

Plaintiff Kristerin Development Co., brought suit on a contract to buy real estate from Defendant Granson Investment, a partnership with three partners, defendants Kenneth Grandquist, Dale V. Nelson, and John Grandquist. Defendant Loren Meggison is a real estate agent and does business as Meggison Real Estate, Inc. He was the realtor handling the transaction.

Plaintiff claimed: (1) Granson Investment and its individual partners breached a contract to sell certain real estate to plaintiff, (2) Granson and its individual partners fraudulently misrepresented the transaction, (3) defendants Loren Meggison and Meggison Real Estate Inc. misrepresented the transaction, and (4) Granson had vicarious liability for Meggison's acts. Plaintiff asked for actual and exemplary damages.

The matter proceeded to trial. At the close of plaintiff's evidence on a motion for directed verdict, the trial court: (1) dismissed the cause against the partners of Granson individually, determining the transaction was by the partnership and never intended to involve the partners individually, (2) dismissed the claim against Loren Meggison and Meggison Real Estate Inc., determining Meggison was only acting in a representative capacity as Granson's agent, and (3) dismissed the contract claim finding there was no contract as a matter of law. The trial court ultimately submitted the matter to the jury on a fraud claim against Granson Investment. The jury returned a $100,000 verdict against Granson Investment. The trial court then reconvened the same jury to consider the issue of punitive damages. A verdict against Granson Investment for $20,000 in exemplary damages was returned.

Granson Investment filed a motion for judgment notwithstanding the verdict and for new trial. The trial court in a short ruling offering no supporting rationale

for its decision sustained Granson's motion for judgment notwithstanding the verdict and overruled Granson's motion for new trial.

The parties appealed and cross-appealed.

I.

We look at whether the trial court was correct in determining there was no contract as a matter of law. The trial court determined because Kenneth Grandquist had failed to sign the offer and because Kenneth Grandquist alleged there were certain unresolved issues, there was no contract as a matter of law. A written offer to buy real estate was made by the plaintiff to John P. Grandquist, Kenneth L. Grandquist and Dale V. Nelson, as partners of Granson Investment, a partnership. The undated offer was then signed by John P. Grandquist and Dale V. Nelson. There was a signature line for Defendant Kenneth L. Grandquist. Kenneth L. Grandquist never signed the offer.

The first issue is whether there was sufficient evidence in the record from which the jury could have determined the parties entered into a contract; and second, whether the absence of Ken Grandquist's signature was fatal to the contract. There was sufficient evidence in the record from which a trier of fact could have determined the two signatures bound the partnership.

Iowa Code section 544.9(1) (1985) provides:

> Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which the partner is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom the partner is dealing has knowledge of the fact that the partner has no such authority.

Iowa Code sections 544.10(1) and (2) (1985) provide:

> 1. Where title to real property is in the partnership name, any partner may convey title to the property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partner's act binds the partnership under the provisions of section 544.9, subsection 1, or unless the property has been conveyed by the grantee or a person claiming through the grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded the partner's authority.
>
> 2. Where title to real property is in the name of the partnership, a conveyance executed by a partner in the partner's own name, passes the equitable interest of the partnership, provided the act is within the authority of the partner under the provisions of section 544.9, subsection 1.

Furthermore, there was substantial evidence in the record the partners, including Kenneth Grandquist, represented to plaintiff that two partners could bind the partnership on this offer.

Iowa Code section 544.11 (1985) provides:

> An admission or representation made by any partner concerning partnership affairs within the scope of the partner's authority as conferred by this chapter is evidence against the partnership.

There was also substantial evidence the offer was a binding agreement and represented a meeting of minds.

We find the trial court erred in determining there was no contract as a matter of law because Kenneth Grandquist failed to sign the offer and alleged there were unresolved issues.

Defendant Granson argues the trial court's ruling was correct because there was no evidence plaintiff suffered any damages.

Damages for breach of contract are those injuries which may reasonably be considered as arising naturally from the breach of contract itself or such as may reasonably be supposed to have been in the contemplation of the parties as a probable result of the breach. R.E.T. Corp. v. Frank Paxton Co., 329 N.W.2d

416, 420 (Iowa 1983); Meyer v. Nottger, 241 N.W.2d 911, 920 (Iowa 1976); 22 Am. Jur.2d Damages § 83 at 118-19 (1965).

The offer in question was for $600,000. There was evidence the value of the property was $750,000. Defendants argue such testimony was not credible. That argument, however, goes to the weight of the evidence, which is for the jury to determine. There was substantial evidence in the record from which a jury could have reasonably determined plaintiff suffered damages as a result of the breach.

We find the trial court erred in determining there was no contract as a matter of law. We reverse and remand for a new trial on the contract action.

Plaintiff contends its verdict in the fraud action should be reinstated. To establish fraud, plaintiff must have proven each element by a preponderance of clear, satisfactory, and convincing evidence. Beeck v. Aquaslide 'N' Dive Corp., 350 N.W.2d 149, 155 (Iowa 1984). The elements of fraud are: (1) a material misrepresentation, (2) made knowingly (scienter), (3) with intent to induce the plaintiff to act or refrain from acting, (4) upon which the plaintiff justifiably relies, (5) with damages. Id.

Plaintiff's fraud allegations were premised on the fact Granson represented two signatures could bind the partnership when two signatures could not bind the partnership. We have already determined, however, that under Iowa law two signatures may bind a partnership. There was sufficient evidence in the instant case that two signatures could bind Granson. We determine the record does not contain clear, satisfactory and convincing evidence of material misrepresentation amounting to fraud. Therefore, the trial court was correct in granting a judgment notwithstanding the verdict on the fraud and punitive damage counts.

II.

Plaintiff also claims trial court erred in dismissing the cause against the partners. Iowa Rule of Civil Procedure 4 provides:

> Actions may be brought by or against partnerships as such; or against any and all partners with or without joining the firm. Judgment against a partnership may be enforced against partnership property and that of any partner served or appearing in the suit. A new action will lie on the original cause against any partner nor so served or appearing. The court may order absent partners brought in. [emphasis supplied].

The trial court erred in dismissing the named partners as parties in the contract action. We reinstate them as named defendants.

III.

Kristerin contends the trial court erred in dismissing Kristerin's claims against Loren Meggison and Meggison Real Estate, Inc. In considering the propriety of a motion for directed verdict, we view the evidence in a light most favorable to the party against whom the motion was made. Iowa R. App. P. 14(f)(2). Even when facts are undisputed, if reasonable minds might draw different inferences from them, a jury question is engendered. Iowa R. App. P. 14(f)(17).

Loren Meggison was the agent for Granson. There is evidence in the record that Loren Meggison stated there was a contract, that two of the three partners could bind, and that the deal would close as agreed. Granson denied it ever gave Meggison the authority to make those representations. Kristerin claimed it relied on Meggison's representations, and as Granson's agent, Meggison is liable under agency principles. In dismissing the claim against Meggison, the trial court stated:

> Intertwined in all of that is the question that is raised by defendant Meggison that if, in fact, the plaintiff sought the same direct information from the principal, Kenneth

> Grandquist, how can it be said that [Kristerin] relied upon Meggison? There is virtually no difference in the statements that have been alleged here. If the jury finds that Kenneth Grandquist made the statement, then it should follow that he would be responsible for the consequences of that statement, were it to be found, and that the agent did nothing more than what it's found that the principal did.

Meggison merely repeated Granson's statements to Kristerin. There is no evidence Meggison made any additional misrepresentations.

We find it was not reversible error for the trial court to have dismissed the claim against Loren Meggison and Meggison Real Estate Incorporated.

We reverse and remand for new trial on the contract claim.

REVERSED AND REMANDED.