IN THE COURT OF APPEALS OF IOWA

No. 0-514 / 90-0214

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CLERK SUPREME COURT

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LEONARD MACAL and **DORIS MACAL**,

Appellants,

vs.

MAYNARD STINSON and **ELLEN STINSON**,

Appellants,

and

MARK DAGLEY,

Defendant.

Appeal from the Iowa District Court for Winneshiek County, John Bauercamper, Judge.

The Macals appeal from a district court order awarding them $24,380 plus interest for the Stinsons' breach of a real estate contract. **AFFIRMED IN PART; REVERSED IN PART.**

Christopher F. O'Donohoe and Richard D. Stochl of O'Donohoe, O'Connor & O'Donohoe, New Hampton, for appellants.

James Burns and Linny C. Emrich of Miller, Pearson, Gloe, Burns, Beatty & Cowie, P.C., Decorah, and Michael W. Fay of Fay Law Office, Cedar Rapids, for appellees.

Heard by Oxberger, C.J., and Donielson and Sackett, JJ.

DONIELSON, J.

On August 28, 1984, Leonard and Doris Macal held a farm real estate auction for the purpose of selling their farm. It was the Macals' intention to get enough money from the farm sale to pay off their debts and move to Cresco, where they would acquire a home and retire from farming. As a result of the auction, the Macals' farm was sold in three separate parcels. Maynard and Ellen Stinson were the high bidders on one of the parcels. The Stinsons and the Macals executed a written purchase agreement for the parcel. The purchase agreement acknowledged receipt of a 10 percent down payment ($7,420) and stated the balance of the purchase price ($66,780) was due in "cash on possession." The agreement also stated possession would be given on or before March 1, 1985.

After the auction, and in light of the purchase contracts received from all of the buyers at the sale, the Macals contracted to build a new home in Cresco. The Macals secured interim financing to build the home, planning to pay the loans off when all their real estate transactions were closed.

On or about March 1, 1985, the purchasers of two of the three parcels performed their agreements, however, the Stinsons failed to perform. Later in March the Stinsons informed the Macals that they knew of someone who would purchase their parcel for around $600 less an acre than the Stinsons had agreed to pay (offer of $42,400). The Macals rejected the offer.

In April 1985, the Stinsons transferred all land owned by them to a family trust. After learning of the Stinsons' transferral of their property to a family trust, the Macals were concerned that no crop would be planted on the parcel of farm land for the 1985 crop year, and no income would be earned from the property. In May, after being assured the Stinsons were going to take no action to take possession of the land or close on the purchase agreement, the Macals leased the parcel. They leased the parcel again in 1986. The rental income collected by the Macals for the two years amounted to $8,320. Eventually, the Macals sold the parcel, at a much reduced price.

In December 1988, the Macals filed this lawsuit alleging the Stinsons breached a real estate contract, demanding actual and consequential damages and damages for intentional infliction of emotional distress. The Macals also sought to set aside the transfer of Stinsons' property to the family trust as a fraudulent conveyance.

The district court set aside the property transfer as a fraudulent conveyance. The court awarded the Macals damages for the Stinsons' breach of contract but refused to award the Macals damages for either the interest incurred on their construction loans or for emotional distress.

The Macals appeal. The Macals contend the district court erred in: (1) failing to award the Macals damages for out-of-pocket interest expenses incurred as a result of the Stinsons' breach, and (2) failing to award the Macals damages for emotional distress.

Because this is an action at law, our review is on assigned error only. Iowa R. App. P. 4.

The damages awarded to the Macals, consisting of the balance due on the contract less the market value of the property at time of breach (as measured by the rejected 1985 offer), amounted to $24,380 plus statutory interest. The Macals contend they are entitled to recover an additional $27,350. Because the Macals were unable to close the sale to the Stinsons, they were unable to pay all of their home construction loans off in full and continued to incur interest payments on their home loans. These payments would not have been incurred had the sale closed. The interest payments amounted to $5,845 in 1985, $8,531 in 1986, $4682 in 1987, $4,563 in 1988, and $3,729 in 1989. The Macals are seeking to recover this interest as consequential damages of the Stinsons' breach of contract.

"Under Iowa law, when a contract has been breached, the innocent party is generally entitled to be placed in a position [the party] would have occupied had there been performance." Lakota Girl Scout Council, Inc. v. Havey Fund-Raising Management, Inc., 519 F.2d 634, 639-40 (8th Cir. 1975).

> Where two parties have made a contract, which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be either such as may be fairly and reasonably be [sic] considered arising naturally--that is, according to the usual course of things--from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it.

Mihills Manufacturing Co. v. Day Brothers, 50 Iowa 250, 252 (1878) (quoting Hadley v. Baxendale, 25 E.L. & E. 398). Foreseeability of the type of damage is the focus of Iowa law. See De Waay v. Muhr, 160 N.W.2d 454, 458-59 (Iowa 1968). "These damages are generally categorized as 'consequential damages.'" Walker Manufacturing Co. v. Henkel Construction Co., 346 F. Supp. 621, 635 (N.D. Iowa 1972).

In Metropolitan Transfer Station, Inc. v. Design Structures, Inc., 328 N.W.2d 532, 536 (Iowa App. 1982), this court held that, in a contract action, the nondefaulting party may recover consequential costs, including interest payments to third persons which are reasonably foreseeable and proximately caused by the defaulting party's breach. This holding has not been disputed or criticized by our supreme court. Nachazel v. Miraco Mfg., 432 N.W.2d 158, 161 (Iowa 1988); Renze Hybrids, Inc. v. Shell Oil Co., 418 N.W.2d 634, 638-639 (Iowa 1988). In Metropolitan Transfer, interest was incurred by the plaintiff for borrowing money to repair a facility due to defendant's faulty construction. The interest was held to be a foreseeable consequence of the breach and therefore an element of consequential damages in the breach of contract suit.

We conclude Metropolitan Transfer governs the case before this court. The interest incurred by the Macals after March 1, 1985, was a consequence of the Stinsons' breach and would not have occurred but for the breach. That the Macals, upon selling their home and farm, would make arrangements for different living quarters and might have to incur debt to do so was reasonably foreseeable by the Stinsons. It was also reasonably foreseeable that the Stinsons' purchase price would be allocated to satisfy the Macals' interest-bearing debts. The trial court erred in refusing to award the Macals damages for the out-of-pocket interest on their home construction loan. We reverse the trial court's denial of damages for the Macals' out-of-pocket interest expenses. Rental income received by the Macals on the parcel, however, must be offset against the interest they incurred when computing additional damages.

The trial court did not err in refusing to award damages for emotional distress. In order to establish a claim for emotional distress, a plaintiff must show: (1) outrageous conduct by the defendant; (2) that the defendant intentionally caused, or recklessly disregarded the probability of causing, emotional distress; (3) that the plaintiff suffered severe or extreme emotional distress; and (4) that the emotional distress was actually and proximately caused by the defendant's outrageous conduct. See Vinson v. Linn-Marr Community School District, 360 N.W.2d 108, 118 (Iowa 1985). The trial court found the Stinsons had intentionally breached the purchase agreement but apparently determined that their behavior could not be considered outrageous; it appears the district court excused the behavior to some extent because Mr. Stinson suffered from mental health problems. We, too, are unable to conclude the Stinsons' breach of contract was conduct "so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Harsha v. State Savings Bank, 346 N.W.2d 791, 801 (Iowa 1984).

For the reasons stated above, we affirm the trial court's judgment with regard to recovery of damages for emotional distress and we reverse the trial court's judgment with regard to recovery of interest. We remand this case to the trial court for entry of judgment in favor of the Macals against the Stinsons for an additional $27,350 (the home loan interest incurred subsequent to the Stinsons' breach of the purchase agreement) less $8,320 (the rental income received).

Costs of this appeal are taxed one-half to appellants and one-half to appellees.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED FOR ENTRY OF JUDGMENT.