

FILED**MAY 31 1983**

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

JOHN URMIE and RUTH URMIE,)
 Plaintiffs-Appellees,)
 vs.)
MURRY FITZER,)
 Defendant-Appellant.)

Filed May 31, 1983

3-86
 2-68622

Appeal from Cedar District Court, Max R. Werling, Judge.

Defendant appeals from judgments for plaintiffs both on their claim for rent allegedly owed them for farmland and on defendant's counterclaim for rent he allegedly overpaid while a tenant. **AFFIRMED.**

Thomas P. Schlapkohl of Hyland, Laden & Pearson, P.C., Des Moines, for defendant-appellant.

John J. Carlin of John J. Carlin, P.C. Davenport, for plaintiffs-appellees.

Considered by Oxberger, C.J., and Donielson, Snell, and Schlegel, JJ.
 Hayden, J., takes no part.

OXBERGER, C.J.

Defendant appeals from judgments for plaintiffs both on their claim for rent allegedly owed them for farmland and on defendant's counterclaim for rent he allegedly overpaid while a tenant. On appeal, defendant asserts that (1) there was no accord and satisfaction settling the disputes between the parties; (2) because there was no substantial evidence that the farm lease called for a rent of a flat, fixed number of bushels or corn per year, rather than a rent based on the number of acres times a bushels-per-acre rental fee, the court erred in holding that the rent was a fixed total number of bushels; and (3) the parties were mutually mistaken as to the number of acres in the farm, so the rental agreement should be revised to require payment of an amount calculated from the correct number of acres. We affirm.

The parties in this case entered into an agreement for a lease of plaintiffs' farm land to the defendant. This lease was renewed annually for a number of years. Whenever the terms of the lease were altered, the new terms were inserted into the written lease agreement by crossing out the old ones and writing in the new.

By the time the lease was to be renewed for the 1980 crop year, the defendant, Fitzer, became suspicious of the number of tillable acres in the plot, and during 1980, he asked for a recalculation by the AFCS. This recalculation showed that the tract contained 173.3 acres, and not the 192 acres upon which earlier payments to the plaintiffs, the Urmies, had been based. Although the parties engaged in some discussions relative to an adjustment in the terms for the 1980 rental as well as for the 1981 season, no new document was drawn reflecting any such changes, and no changes were made in the old lease. On October 31, 1980, John Urmie sent Fitzer a letter offering to release him from his rental agreement (to which Fitzer was bound because he had held over past the statutory cutoff date), but that if Fitzer chose to farm the land, he would be held to the term of the old lease. Urmie did not receive a response from Fitzer.

In January, 1981, Fitzer asked the Urmies to release their landlord's lien on the 1980 crop so that he would qualify for a \$25,000 interest-free loan. Before the lease was signed, Fitzer paid \$15,000 on a portion of the rent, in cash, and promised to pay the remainder of the 1980 rent in February at the rate contained in the old lease. Fitzer claims that he had some reservations about his obligation to pay, but these were not clearly communicated to the Urmies.

The trial court found that Fitzer had agreed to pay \$3.07 per bushel for 10,560 bushels of corn in return for obtaining the Fitzers' lien waiver and that he agreed to pay the remainder of the rent in February, 1981. Fitzer not only failed to make the February payment, but also farmed the ground during the 1981 crop year.

The court found that the discussions concerning the rental for 1980 and 1981 were preliminary, and that the subsequent written contract and all of the terms in the contract represented the agreement between the parties. The court found that the terms of the lease were not ambiguous, that the defendant agreed to pay rent of a specified number of bushels each year, and that in spite of his knowledge of the difference between his original understanding of the number of tillable acres and information he received later, he agreed to pay the 1980 rent in January of 1981, in return for the Urmies' release of their landlord's lien and interest-free government loan. The court found that this was a valid agreement based upon separate consideration, and constituted an accord and satisfaction of the dispute between the parties. We agree with the trial court.

L. Scope of Review

Since this is an action at law, our review is on assigned error only. Iowa R. App. P. 4. Trial court's findings of fact have the effect of a special verdict and are equivalent to a jury verdict; if supported by substantial evidence they are binding upon us and the judgment will not be disturbed on appeal. Iowa R. App. P. 14(f)(1). "A finding of fact is supported by substantial evidence if the finding may

reasonably be inferred from the evidence." Briggs Transportation Co. v. Starr Sales Co., 262 N.W.2d 805, 808 (Iowa 1978). The record is reviewed in the light most favorable to the judgment. Ambiguities are construed to uphold rather than defeat the judgment. Pillsbury Co. v. Ward, 250 N.W.2d 35, 38 (Iowa 1977). The substantial evidence rule limiting review of a law action tried to the court, however, does not preclude inquiry into whether, conceding the truth of the findings of facts, the conclusions of law drawn therefrom are correct. Keith v. Community School District of Wilton in the Counties of Cedar and Muscatine, 262 N.W.2d 249, 255 (Iowa 1978).

Inasmuch as this case was heard in law and not in equity, we do not review the record do novo, but confine our inquiry to purported errors of law.

II. Accord and Satisfaction

Fitzer argues that the trial court erred in finding that there was an accord and satisfaction when the parties completed their negotiations in January, 1981. This conclusion is based upon several facts: (1) Fitzer's payment of \$15,000 of the \$37,419.20 he would owe if the Urmies' position were upheld fell short of Urmies' "satisfaction." (2) Fitzer's offer, in January, to pay the remainder was no more than an offer to do that which he was already obliged to do, and was therefore not the substituted performance contemplated by the definition of accord and satisfaction. (3) There is allegedly no evidence that the parties intended to enter into a contract in which Fitzer would be obliged to pay rent for 1980 based upon the value of 10,560 bushels of corn, the amount that would have been derived from 192 acres at 55 bushels per acre.

The essential elements of an effective accord and satisfaction are proper subject matter, competent parties, meeting of the minds of the parties, and consideration. And its most common pattern is a mutual agreement between the parties in which one pays or performs and the other accepts payment for performance in satisfaction of a claim or demand which is a bona fide dispute. [citation.]

Brock and Blevins Co. v. United States, 343 F.2d 951, 955 (Ct. Cl. 1965).

To constitute an accord and satisfaction, where there is a bona fide dispute, it is necessary the money should be offered in satisfaction of the claim, and the offer accompanied with such acts and declarations as amount to the condition that, if the money is accepted, it is accepted in satisfaction, and such that the party to whom it is offered is bound to understand therefrom that, if he takes it, he does so subject to such condition. A party to whom an offer is thus made has no alternative but to refuse it or accept it upon such conditions and if he takes it his claim is canceled. In other words, if the offer is accepted by the offeree his claim is canceled and no protest, declaration or denial on his part, so long as the condition is insisted on, can vary the result. [citations.]

Gibson v. Deuth, 220 N.W.2d 893, 895-96 (Iowa 1974), emphasis added.

In Gibson, the court went on to note that an accord and satisfaction "may be effected by paying money, doing an act, or giving a promise, provided the thing paid, done, or given, is not something to which the creditor was already entitled." Id. at 896, citing 1 C.J.S. Accord and Satisfaction § 17.

Fitzer misconstrues the court's analysis of the case. The "satisfaction" is the consideration given by one party to the other for the new contract. As Fitzer understood the obligations between the parties, Urmie owed him money as a result of the alleged mistake over the previous years in the total acreage he was farming. The trial court therefore did not consider the \$15,000 partial payment tendered by Fitzer in January, 1981, to be the consideration which established the accord and satisfaction. The consideration was the Urmies' release of their landlords' lien on Fitzer's corn and the \$25,000 interest-free loan Fitzer was thus able to receive from the government. In return, Fitzer's claim against the Urmies' for the alleged mistake in amount due from previous years was understood to be nullified.

The new contract, entered into as a result of the accord and satisfaction, differed from that from which the parties originally negotiated in that in the negotiations, Fitzer's obligation would have been defined in terms of bushels per

acre, while in the final contract, his obligation was defined as a lump sum of 10,560 bushels times the going price of corn per bushel.

The intent of the parties is determined, not only by what they say during their negotiations, but more important by the words of the written agreement into which they enter—particularly where those words are clear and unambiguous, as they are here—and by the actions of the parties, which are equally clear. As the supreme court said in Brown v. Hughes, 251 Iowa 44, 449, 99 N.W.2d 305, 308 (1960), "[W]e must judge the intent of the parties by what they did and said, rather than by some secret, undisclosed intention they may have had in mind, or which occurred to them later."

Fitzer not only accepted the benefits of the Urmies' release of their landlord's lien; he also failed to respond to their offer to permit him to withdraw from the lease for the 1981 crop year after he had held over, and then farmed the land. He is presumed to know that as a holdover tenant-farmer, he is bound to the same terms as were embodied in the prior year's lease. The trial court found that Fitzer acknowledged that the rent owed for 1980 was 10,560 bushels as expressed in the lease, and that this acknowledgement was made some two months after receipt of the offer to cancel the 1981 lease. Thus, the court concluded that Fitzer became a tenant holding over on the terms of the prior lease and that the 1981 rent was consequently 10,560 bushels.

In Brown, the supreme court said that after accepting the benefits of the bargain he had made with the defendant, the plaintiff "cannot now be heard to say that he had an undisclosed intention to reserve the right to maintain his own cause of action. . . . [I]f he in fact intended to settle with the defendant for a comparatively small amount so that he could then sue for a much larger sum, fair dealing required that he should have made it known." 251 Iowa at 450, 99 N.W.2d at 308.

We conclude that there was no error in the trial court's conclusion that there was an accord and satisfaction. For adequate consideration, Fitzer agreed to what amounted to a new lease for 1980 under which he would pay the Urmies \$3.07 per bushel for 10,560 bushels of corn and drop any claim he might have had against the Urmies on the basis of the alleged mistake in the number of acres he was farming on this land. We therefore affirm the trial court's judgment in the amount of \$17,419.20 plus interest on the 1980 crop.

III. The 1981 Lease

Our conclusion on the issue of accord and satisfaction does not lay the case to rest. We are still left with a dispute over the terms of the lease for 1981.

As we have indicated in Division II of this opinion, the trial court concluded that the 1981 lease, automatically renewed as a result of the application of Iowa Code section 562.6, was upon the same terms and conditions as the original lease.

Fitzer had an opportunity to relinquish the 1981 lease after he was told by Urmis that he would be held to payment of 10,560 bushels, as required by the 1980 lease. Fitzer was by this time fully aware of the difference between the old estimates of tillable acreage on the farm and the new ones. He nevertheless chose to proceed, and farmed the land in 1981.

An estoppel "consists of a preclusion which in law prevents a party from alleging or denying a fact in consequence of his own previous act, averment, or denial." Scheetz v. IMT Ins. Co. (Mut.), 324 N.W.2d 302, 305 (Iowa 1982), citing Gilbert v. Globe & Rutgers Fire Ins. Co. of New York, 91 Or. 59, 67, 178 P. 358, 358 (1919).

Fitzer knew that the 1980 contract provided that he would be required to pay Urmie for 10,560 bushels of corn at \$3.07 per bushel in exchange for the right to farm Urmie's land. He knew that Urmie was intent on holding him to this bargain.

Because he failed to respond to Urmie's letter offering to release him from his obligations under the lease unless he paid the amount just mentioned, Fitzer is estopped from claiming mistake. His rent for the 1981 crop season is therefore identical with that which the trial court found that he was obliged to pay for the 1980 crop season.

Finding no error, we affirm.

AFFIRMED.