IN THE COURT OF APPEALS OF IOWA

No. 5-717 / 95-0162

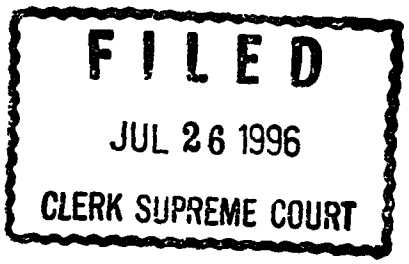
JACK KINNAMON and VIRGINIA KINNAMON,

Plaintiffs-Appellees,

vs.

ROGER PETTIT and JAN PETTIT,

Defendants-Appellants.



Appeal from the Iowa District Court for Davis County, Robert Bates, Judge.

Roger and Jan Pettit appeal the district court's ruling in this breach of contract action. **AFFIRMED AS MODIFIED.**

J. W. McGrath and William C. Glass of McGrath & McGrath, P.C., Keosauqua, for appellant Roger Pettit.

James Q. Blomgren and Randall C. Stravers of Pothoven, Blomgren & Stravers, Oskaloosa, for appellant Jan Pettit.

J. Terrence Denefe of Kiple, Kiple, Denefe, Beaver & Gardener, Ottumwa, for appellees.

Considered by Sackett, C.J., and Habhab and Huitink, JJ.

SACKETT, C.J.

Defendants-appellants Roger Pettit and Jan Pettit appeal from a judgment for $10,794.39 entered against them for allegedly breaching a ten-year lease. They contend the trial court erred in finding there was a lease, and if there was a lease, the trial court erred in finding plaintiffs-appellees Jack Kinnamon and Virginia Kinnamon failed to mitigate damages. We affirm on these issues.

Defendant-appellant Jan Pettit further contends the trial court erred in failing to grant her claim for indemnity against Roger Pettit. We agree and modify the judgment accordingly.

In 1980, plaintiffs incorporated the insurance company they owned and operated. At that time, plaintiffs and the corporation entered into a ten-year lease for the property where the agency was located. The lease provided the corporation would pay $850 per month in rent to plaintiffs. The rent was reduced in 1983 to $650 per month after a special meeting of the corporation's board of directors.

In 1985, plaintiffs sold the corporation to defendants. Among other things, the purchase agreement provided in paragraph ten:

> *Pursuant to a separate lease agreement*, the building housing the insurance agency, including the office upstairs and the basement area, will be leased to the Buyers for a period of ten years at $650 per month rent. In addition, the rental agreement shall contain the provision concerning responsibility for repairs, placing the responsibility for any repairs or maintenance costing less than $50 with the Buyers, and any repairs or maintenance exceeding $50 with the Sellers. Buyers further agree that a term life insurance policy will be maintained on Roger

> Pettit's life in an amount equal to or greater than the balance due and owing on the contract to the Sellers.

(Emphasis added.) The parties never executed a separate lease.

In March 1993, the corporation informed plaintiffs of its decision to terminate the lease as of May 1993. Plaintiffs filed a petition claiming defendants breached the 1985 ten-year lease agreement. Defendants filed separate answers. Roger Pettit raised the affirmative defense that the rental agreement was a tenancy at will and he gave plaintiffs proper notice. He further contended if he did breach the lease, plaintiffs failed to mitigate damages.

Jan Pettit claimed the affirmative defense of indemnity owed to her by Roger. Defendants were divorced in 1988 and entered into an agreement that Roger would hold Jan harmless for any failure to timely pay the debt owed to plaintiffs. Jan also cross-claimed against Roger for indemnity.

The matter was tried to the court, which found paragraph ten of the purchase agreement was sufficiently definite to create a new lease and any failure of plaintiffs to mitigate damages was excused. The court entered judgment in favor of plaintiffs and against defendant Roger Pettit for $10,794.39 plus interest and costs. Plaintiffs filed an Iowa Rule of Civil Procedure 179(b) motion requesting judgment be entered against defendant Jan Pettit. The motion was granted.

This appeal follows. Defendants first contend their motion to dismiss should have been granted. They contend there was no lease breached. They advance that

when they purchased the corporation, they purchased the 1980 lease which had expired by the time they vacated the building. They further contend there was no 1985 lease. Plaintiffs contend the provisions in the purchase agreement were sufficient to create a new lease. Defendants claim they were not and the trial court erred in not applying the statute of frauds.

The standard of review is for errors at law. *Keppy v. Lilienthal*, 524 N.W.2d 436, 438 (Iowa App. 1994)(citing *Grinnell Mut. Reins. Co. v. Voeltz*, 431 N.W.2d 783, 785 (Iowa 1988)). The trial court's findings bind this court if supported by substantial evidence. Iowa R. App. P. 14(f)(1).

The requirements to create a landlord-tenant relationship generally include the identification of parties, a definite description of the property, a statement of the term, and the amount of rent to be paid. *McCarter v. Uban*, 166 N.W.2d 910, 914 (Iowa 1969). The same rules apply to creating a lease. *Id.* (citing Jacobs, *Cases and Materials on Landlord and Tenant* (2d ed.)). Subject to the statute of frauds, this agreement may be done in writing or orally. *Uban*, 166 N.W.2d at 914. The parties must manifest a mutual, unequivocal assent to the terms of the contract to have a binding agreement. *Id.* at 913. In particular, to have a valid lease, there must be mutual agreement which includes a definite agreement regarding the extent and boundary of the leased property, an agreed term, an agreed price of rental, and the time and manner of payment. *Id.* at 914 (citing *Cochrane v. Justice Min. Co.*, 16 Colo. 415, 26 P. 780 (____); *Boston Clothing Co. v. Solberg*, 28 Wash. 262, 68 P.

715 (____); and *Jones on Landlord and Tenant*, § 137a, at 170). When considering whether a contract/lease had been formed, the *Uban* court considered the parties' business experience.

According to Iowa Code section 622.32 (1993), "no evidence of the following enumerated contracts is competent, unless it be in writing and signed by the party charged or by the party's authorized agent" and includes contracts that cannot be performed within one year.

Plaintiffs contend the trial court correctly enforced the 1985 lease. The trial court found the parties had a definite agreement as to the extent and boundary of the property and understood the limits of space when paragraph ten stated the lease included "the office upstairs and the basement area." The trial court found paragraph ten discussed the rent ($650) and set an agreed term of ten years. Also, the rent was paid on the first of each month. These facts are supported by substantial evidence and are binding on us. Iowa R. App. P. 14(f)(1).

Substantial evidence supports a finding of fact if the finding may be reasonably inferred from the evidence. *Keppy*, 524 N.W.2d at 438; *Briggs Transp. Co. v. Starr Sales Co.*, 262 N.W.2d 805, 808 (Iowa 1978).

Paragraph ten contains enough information to constitute a lease when considered in light of the parties' behavior. Under *Uban*, the basic requirements to create a landlord-tenant relationship (or a lease) generally include the identification of parties, a definite description of the property, a statement of the term, and the

amount of rent to be paid. *Id.* at 914. Here, the purchase agreement identified the parties and paragraph ten briefly described the property when describing the leased area as including the office upstairs and the basement area. Also, paragraph ten stated the term of the lease as ten years and set the rent at $650 per month.

Additionally, the parties' actions support an intent to be bound. There was evidence Roger was unaware of the 1980 lease until well after they entered the 1985 stock purchase agreement and yet occupied the premises and continually paid rent on the first of the month. This was evidence of an intention to be bound even though a separate lease agreement was not executed. Furthermore, the parties operated according to the repair clause of paragraph ten which requires defendants to pay for repairs costing less than $50 while plaintiffs covered repairs over $50.

The parties operated from 1985 until 1993 by basically following the provisions of paragraph ten. Whether a separate agreement was actually created does not destroy the parties' intent of having a ten-year lease from 1985 to 1995. We affirm the trial court on this issue.

Defendants next contend plaintiffs failed to mitigage damages. The trial court found plaintiffs hesitated before moving to mitigate damages but excused it under the circumstances and found thereafter they promptly moved to find a new tenant. We review for errors at law. *Chariton Feed and Grain, Inc. v. Harder*, 369 N.W.2d 777, 782 (Iowa 1985). The duty of a landlord to mitigate damages when there is an abandoned rental and he or she knows about it is well established. *Vawter v.*

McKissick, 159 N.W.2d 538, 542 (Iowa 1968); *Harmeson v. Dr. MacDonald's, Inc.*, 403 N.W.2d 48, 52 (Iowa App. 1987).

Defendants contend they gave notice of their intent to leave in March 1993 and plaintiffs made no effort to rent until September 1993. Plaintiffs contend a settlement conference was held in May 1993 and Roger agreed to mitigate damages. Plaintiffs further contend they were not aware until an answer was filed to their petition in August 1993 that was not to happen. The trial court found that Roger agreed to pay rent in the interim. There was evidence to support this finding. There also is evidence after that time plaintiffs took steps to rent the building. While defendants contend plaintiffs did not do enough, the trial court found they did.

Jan also contends a judgment should have been entered in her favor against defendant Roger for indemnity on the judgment entered against her and in favor of plaintiffs. Roger admitted in answering her cross-claim he owed her such a duty and accepted the tender of her defense. We modify to enter judgment against Roger and in favor of Jane to indemnify her on this judgment.

AFFIRMED AS MODIFIED.