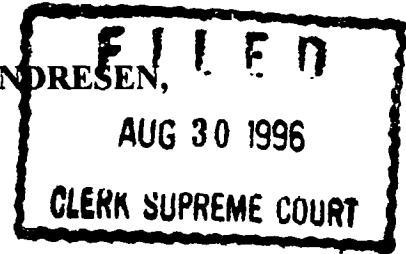


IN THE COURT OF APPEALS OF IOWA

No. 6-156 / 95-443

IN THE MATTER OF THE ESTATE OF HAROLD J. ANDRESEN,
Deceased,

DARLUS SELKEN,
Plaintiff-Appellant,



vs.

DENNIS ANDRESEN, As Executor of the Estate of Harold J. Andresen,
and Individually,

Defendant-Appellee.

Appeal from the Iowa District Court for Benton County, Van D. Zimmer,
Judge.

The plaintiff appeals a district court ruling that the defendant was not contractually bound to purchase an entire tract of farmland pursuant to an option to buy contained in the decedent's will. **AFFIRMED.**

Boyd J. Milroy, Morris L. Eckhart, and David C. Thompson of Milroy & Eckhart, Vinton, for appellant.

Mark McCormick of Belin, Harris, Lamson, and McCormick, P.C., Des Moines, for appellee.

Heard by Habhab, P.J., Cady and Huitink, JJ. Sackett, C.J., takes no part.

CADY, J.

Darlus Selken appeals a district court decree finding Dennis Andresen was not contractually bound to purchase certain portions of farm real estate pursuant to an option contained in the last will and testament of Harold Andresen. On our de novo review, we affirm.

Harold Andresen died in April 1993. He left a will naming Darlus Selken and Dennis Andresen as the two residuary beneficiaries. Another provision in the will granted Dennis an option to buy all or any part of the farm real estate. The real estate consisted of two parcels: unit 30 with 190 acres and unit 19 with 70 acres. The option required the sales price of the property to be determined by three appraisers, one appointed by each beneficiary and one independent. The option was to remain open for one year following Harold's death. Dennis was appointed executor.

In April 1993, Dennis gave notice to exercise his option "to purchase the farm real estate." Three appraisers were selected as provided in the will. Their appraisals valued unit 30 at \$340,635 and unit 19 at \$84,365. Dennis then decided to purchase only unit 30 since it had the most tillable and fertile land. In March 1994, Dennis signed a notice to exercise his option for section 30, and applied to the court for authority to sell section 19.

Darlus resisted Dennis' application by filing a motion for declaratory judgment, alleging he was contractually bound to purchase the entire parcel of land by his April 1993 notice.

Following a hearing, the district court found Dennis did not exercise his option to purchase unit 19 by giving the April 1993 notice. In the alternative, the court reformed the April 1993 notice to reflect Dennis' true intentions to only purchase unit 30. The court further found Dennis rescinded his April 1993 notice to purchase the entire farm real estate by giving his March 1994 notice stating his intention to purchase only unit 30, and specifically rejected Darlus' self-dealing and third party beneficiary contentions. The court also found Darlus failed to plead equitable estoppel or specific performance, yet determined the claims to be without merit.

Darlus appeals. She argues the notice to exercise the option is clear and unambiguous, and Dennis clearly intended to purchase the entire farm real estate. She further argues Dennis engaged in self-dealing in his capacity as executor, and is estopped from rescinding or modifying his exercise of the option to purchase. She finally contends her claims for specific performance and equitable estoppel were properly presented to the district court.

I. Standard of Review

We review this equity action de novo. Iowa R. App. P. 4. We give weight to, but are not bound by, the district court's fact findings. Iowa R. App. P. 14(f)(7); *In re Marriage of Swan*, 526 N.W.2d 320, 323 (Iowa 1995).

II. Notice to Exercise Option to Purchase Farm Real Estate

A promise to keep an offer open for a period of time constitutes an irrevocable offer or an option. Restatement (Second) of Contracts § 87(2) (1981). An offer

invites and creates a power of acceptance in an offeree. *Id.* at §§ 29, 24. Acceptance of an offer is the manifestation of assent to the terms of an offer in the manner required by the offer. *Id.* at § 60. *See also Figge v. Clark*, 174 N.W.2d 432, 435-36 (Iowa 1970) (in the absence of a prescribed method of acceptance in the option contract, no particular form of notice is required and anything amounting to an unqualified manifestation of an optionee's determination to accept is sufficient).

A testator's intent governs the determination of the construction and effect of a purchase option. *See* 80 Am. Jur. 2d *Wills* § 1481 (1975). We look to the intention of the testator to determine the manner in which an optionee exercises an option under a will. *In re Estate of Claussen*, 482 N.W.2d 381, 384 (Iowa 1992).

Darlus contends the manifestation of Dennis' intention to purchase both section 30 and 19 of the farm real estate was clear and unambiguous. She argues, therefore, the district court erred in relying upon extrinsic evidence, such as Dennis and his attorneys' testimony concerning the drafting of the April 1993 notice, to determine he did not intend to be contractually bound to purchase unit 19.

We recognize the parol evidence rule prevents extrinsic evidence from varying, adding to, or subtracting from a written agreement. *Johnson v. Dodgen*, 451 N.W.2d 168, 176 (Iowa 1990). However, the language used in the option differs from the language used in the April 1993 notice. The option allows Dennis the opportunity to

purchase “all or part” of the farm real estate. Dennis’ April 1993 notice merely stated he was providing the required notice to purchase “the” farm real estate.¹

We find the language used in the notice to be ambiguous. Therefore, we find no error in the district court’s observance of extrinsic evidence to ascertain the true intention behind Dennis’ April 1993 notice of acceptance of the offer.

Testimony at the directed verdict hearing indicated Dennis did not intend to be bound to purchase the farm real estate before the appraisals. We find it would be inequitable to contractually bind an offeree to purchase real estate prior to a determination of its purchase price.²

We find no error in the district court’s determination Dennis was not contractually bound to purchase all of the farm real estate. He provided a subsequent notice to purchase only unit 30 and tendered payment for this portion of the farm real estate.

III. Equitable Estoppel and Specific Performance

¹ The word “the” as used in the April 1993 notice is susceptible to two different interpretations. “The” could mean all of the farm real estate, as Darlus contends, or could mean “all or part” of the farm land, as the language in the will indicates.

² We also note the similarity of the option used in Andresen’s will and an option used in *In re Estate of Michels*, 223 Neb. 286, 389 N.W.2d 285 (1986). In *Michels*, a will granted an option to purchase farm real estate “within one year of the date of [the testator’s] death for the sum of Fifty-Thousand Dollars (\$50,000)” The court found payment of the purchase price was essential for the exercise of the option, and a letter expressing an intention to exercise the option was not binding absent a tendering of the purchase price. The only difference between Andresen’s option and the option in *Michels* is a method to determine the purchase price. Here, Dennis fully exercised his option when he tendered payment for section 30.

Darus finally contends the district court improperly found she failed to raise a claim for equitable estoppel and specific performance. She argues she is entitled to relief in the form of monetary damages or specific performance.³

Equitable estoppel if not directly alleged, must be embraced by the factual allegations set forth in the petition. *In re Marriage of Winegard*, 278 N.W.2d 505, 510 (Iowa 1979). A plaintiff must set forth, in his or her petition, a simple accurate, and unambiguous statement of the essential facts showing a cause of action for specific performance and stating his or her right to relief. 71 Am. Jur. 2d *Specific Performance* § 197 (1973). A right to specific performance cannot be presumed. *Id.*

Darus' petition merely stated she "further prays for such further and other relief as may be appropriate to declare, construe and protect the rights and interests of the Plaintiff." She generally stated in her petition she relied upon the Dennis' April 1993 notice and he should be required to complete the purchase of all the farm real estate.

We need not specifically decide if Darus sufficiently pled specific performance and equitable estoppel. The granting of relief for such claims rests within the equitable discretion of the district court. *Berryhill v. Hatt*, 428 N.W.2d

³ We observe Darus' presented minimal evidence to support her claim for monetary damages. She merely provided general testimony as to a diminished value of the land when it is sold in units and not as a whole. No specific amount of damages was provided to the district court. We find no error in the district court denying her claim for monetary damages resulting from the alleged breach of contract.

647, 657 (Iowa 1988). Specific performance will not be granted if hardship or injustice will result.

We find the district court did not abuse its discretion in denying Darlus' claims for equitable estoppel and specific performance. An unusual injustice would result if Dennis was forced to purchase section 19 prior to his awareness of its purchase price, when the evidence clearly indicates he never intended to purchase this portion of the farm real estate. *See Baumam v. Nutter*, 328 N.W.2d 354, 356-58 (Iowa App. 1982) (specific performance denied as inequitable when evidence of mistake by a party bound by a contract).

We have carefully considered all of the issues raised in the briefs. We find no error in the district court denial of Darlus' petition for declaratory judgment.

AFFIRMED.