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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

JOHN S. BAUCH and JARED O. BAUCH,

Plaintiffs-Appellees,

vs.

MARIAN GRUCHOW,

Defendant-Appellant.

Filed May 28, 1987

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7-108
86-345

Appeal from the Iowa District Court for Tama County (CE1549), Lynne E. Brady, Judge.

Defendant seller appeals judgment for plaintiff buyers in an action for specific performance of an option to purchase real estate after the time for its exercise as stated in the agreement. **AFFIRMED.**

L.J. Cohrt of Swisher & Cohrt, Waterloo, for defendant-appellant.

Paul C. Peglow and Craig L. Johnson of Johnson, Carter, Latham & Peglow, Marshalltown, for plaintiffs-appellees.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ.

SCHLEGEL, J.

Defendant seller appeals judgment for plaintiff buyers in an action for specific performance of an option to purchase real estate after the time for its exercise as stated in the agreement. We affirm.

In 1966, the defendant, Marian Gruchow, and her husband purchased real estate in Traer on which they operated a service station. The purchase price was approximately $7,000. In 1969, defendant's husband died and the station was subsequently leased until June 1972. After sitting vacant for three months, the property was leased for a nine-month period until June 1973. After another three-month vacancy, the property was leased until December 1973 when a fire broke out on the premises. The property then remained vacant and unrepaired. In April 1974, Mrs. Gruchow went to see her lawyer, John Bauch. She inquired if Mr. Bauch would be interested in purchasing the property. Since Mr. Bauch and his brother, Jared, were then looking for a site for a new office building, an offer was made to Mrs. Gruchow for a lease with an option to buy at the end of the lease term. The proposal was for a 10-year lease at $100 per month with an option to purchase the land at the end of the lease for $3,400. This would yield Mrs. Gruchow $15,400 if the option was exercised plus another $100 credit toward the option. Mrs. Gruchow expressed a desire to receive $15,000 for the property. Mr. Bauch told her that he would not be willing to pay that much money in a lump sum. Mr. Bauch testified that Mrs. Gruchow was particularly interested in payment on a monthly basis and Mrs. Gruchow confirmed in her testimony that she thought monthly payments would be beneficial to her due to family demands. Mr. Bauch proposed a triple net lease in which defendant would not be responsible for maintenance, insurance, or real estate taxes. Mrs. Gruchow was informed that if the Bauches decided to build on the property the option would be exercised.

Mrs. Gruchow contemplated the offer for two days and then requested Mr. Bauch draw up the lease and option. These were signed on April 19, 1974. The defendant testified at trial that she though the documents fairly expressed her understanding of the agreement between the Bauches and herself and that the terms were fair and reasonable.

During the course of the lease, the Bauches put up an office building on the land at a total cost of $95,000. The Bauches fully intended to exercise their option to purchase the land. Mrs. Gruchow fully expected them to exercise this option. The Bauches forgot to do so. The May 1, 1984, date on which the option was to be exercised came and went. On May 17, 1984, the Bauches received a letter from Mrs. Gruchow's attorney advising them that they had failed to exercise the option. The Bauches immediately called this attorney and informed him they intended to exercise the option. They sent him a cashier's check for $5,000—the $1,600 balance to be used by Mrs. Gruchow for any fees or inconvenience due to their failure to exercise their option for the 17 days.

Mrs. Gruchow refused the $5,000 and claimed that the land and the building were forfeited to her. The Bauches commenced an action in equity seeking specific performance of the option agreement. The defendant counterclaimed asking that she receive quiet title to the real estate and that the Bauches be required to pay off the remaining mortgage on the building. The trial court ordered the defendant to specifically perform the option agreement and dismissed the defendant's counterclaim.

Our scope of review of this equitable proceeding is de novo. Iowa R. App. P. 4. When considering the credibility of the witnesses, we give weight to the fact findings of the trial court, but we are not bound by them. Iowa R. App. P. 14(f)(7).

On appeal, defendant claims that the trial court erred in permitting equity to intervene to prevent a forfeiture when the plaintiffs had failed to exercise their option. Furthermore, defendant claims that plaintiff did not come into equity with "clean hands" and therefore could not obtain an equitable remedy.

It is true that the time named for the exercise of an option is to be regarded as the essence of the option. Figge v. Clark, 174 N.W.2d 432, 435-35 (Iowa 1970). If the option is not exercised within the time limited then all rights of the optionee stand forfeited without notice. Steele v. Northrup, 259 Iowa 443, 448, 143 N.W.2d 302, 305 (1967). Defendants ask us to apply these rules to the facts of this particular case where: the holder of the option has in good faith made substantial improvements on the land and fully intended to exercise the option; the owner actually knew that substantial improvements had been made and that the optionholders intended to exercise the option; no loss, financial or otherwise, had accrued to the owner; the owner had received the benefit of the agreement entered into; and where the optionholders overlooked the required date for exercise of the option.

We believe that the principles underpinning our courts' equity jurisdiction do not support the harsh application of the rules which would permit forfeiture in this case. First, equity abhors forfeitures. Figge, 174 N.W.2d at 434. Second, equity will not permit a result which imposes an oppressive burden on one party and results in a windfall to the other. Farmer Savings Bank, Joice v. Gerhart, 372 N.W.2d 238, 245 (Iowa 1985). Third, equity jurisdiction allows a court the necessary flexibility to determine the equities between the parties. Skubal v. Meeker, 279 N.W.2d 23, 27 (Iowa 1979).

In this case, Mrs. Gruchow testified that: she thought the agreement between the parties was fair and reasonable; she knew the land had been substantially improved; she had no doubt that the Bauches wanted to and would exercise

their option to purchase; she had no complaints about the Bauches' conduct; and she suffered no financial detriment or injury as a result of the failure to exercise the option until 17 days past due. She even testified that it did not appear fair to her that someone would be able to get a windfall after the other party had invested a great deal of money in the property. Her testimony at trial repeatedly emphasized the contention that "the law's the law," and the option date was missed. Therefore, she argued, the property should be hers.

We believe equity is served, in these circumstances, by intervening to prevent the oppressive burden on plaintiffs of the loss of their investment and the resultant windfall to defendant. The plaintiffs at all times acted in good faith. No harm was caused to defendant. The oversight caused no damage other than a delay in payment. Plaintiffs even offered to pay $1,600 as a self-imposed penalty for that delay. Other jurisdictions have found that equity may intervene to prevent a forfeiture arising out of a tenant's forgetting to timely exercise an option to purchase. See, e.g., Blumenthal v. 162 East 80th Tenants, Inc., 451 N.Y.S.2d 771 (App. Div.2d 1982). See also, Annot. 27 A.L.R. 4th 266 at 290-94 (1984) (circumstances excusing lessee's failure to give timely notice of exercise of option to renew or extend lease). Our courts of equity have a tradition of interposing to grant relief to a far greater extent in cases involving real property than in cases involving personal property, especially if the vendor has not suffered any material injury. See Young v. Daniels, 2 Iowa 126, 129 (1855). We see no need to depart from that tradition in this case.

Defendant also claims that plaintiffs did not come to equity with "clean hands." The general rule in that equitable relief is barred to those guilty of improper conduct in the matter for which they seek relief. Carlson v. Ringgold County Mutual Telephone Co., 252 Iowa 748, 762, 108 N.W.2d 478, 486 (1961); 30 C.J.S. Equity, § 93 at 1006 (1965). The "clean hands" defense refers to willful

misconduct rather than merely negligent misconduct. 30 C.J.S. Equity § 95 at 1021-22 (1965). The defense is not favored and is reluctantly applied. Butler v. Butler, 253 Iowa 1084, 1125, 114 N.W.2d 595, 619 (1962). "Unclean" conduct preventing bringing of a claim must appear to have injured, damaged, or prejudiced the defendant, or he may not invoke the doctrine. Midwest Management Corp. v. Stephens, 353 N.W.2d 76, 81 (Iowa 1984). The doctrine is ordinarily invoked to protect the integrity of the court where granting of affirmative relief would run contrary to public policy or lend the court's aid to fraudulent, illegal, or unconscionable conduct. Matter of Herm's Estate, 284 N.W.2d 191, 196 (Iowa 1979).

There is no evidence in the record of this case that the Bauches' failure to timely exercise the option to purchase was willful. In fact, the failure to exercise the option had potentially disastrous financial implications for the Bauches. There is no evidence of any fraudulent, illegal, or unconscionable conduct on the part of the Bauches. Mrs. Gruchow was not injured, damaged, or prejudiced in any way, contrary to the assertion on appeal that Jack Bauch did not pay fair consideration for the lease and option agreement. The argument is made that Jack Bauch took advantage of his ongoing legal relationship with Mrs. Gruchow so as to pay her less than the property was worth. We do agree that in situations such as this a client should be advised to have another lawyer inspect the agreement so that an independent evaluation could ensure no unfair business advantage was gained from the attorney-client relationship. See Iowa Code of Professional Responsibility DR5-104(A). However, the evidence presented suggests absolutely no impropriety in the agreement between the parties. The evidence as to present value and adjustment for inflation presented by defendant to substantiate the unfairness of the consideration was speculative at best. The evidence presented by plaintiffs as to the fair market value and

the present value of the property at the time of sale was substantially more persuasive The present value of the lease and option agreement in 1974 was between $11,615 45 and $10,441 03 Evidence was presented that the fair market value was approximately $10,000 Therefore, even if present value was a factor that entered into consideration in contracts in 1974, Mrs. Gruchow appears to have received more than the fair market value of her land. We find the evidence fully supports the fact findings of the trial court on these issues and we agree with the court's conclusion that, "If there is ever a case in which the principles of equity and justice ought to be applied, this is that case."

AFFIRMED