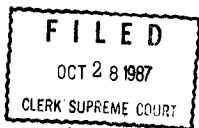


IN THE COURT OF APPEALS OF IOWA



LYLE FORRISTALL and
ELLEN FORRISTALL,

Plaintiffs-Appellants,

vs

JON-DO, INC., an Iowa Corporation,

Defendant-Appellee.

Filed October 28, 1987

7-424
87-138

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Appeal from the Iowa District Court for Pottawattamie County (56761),
J C Irvin, Judge.

Plaintiffs appeal from dismissal of their petition in equity seeking fore-
closure or forfeiture of land held by defendant. **REVERSED AND REMANDED.**

Richard D. Crotty and Donald T. Steege of Steege Law Offices, Council
Bluffs, for plaintiffs-appellants.

N Michael D'Angelo of Hogzett & D'Angelo, Oakland, for
defendant-appellee.

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

PER CURIAM

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In our de novo review on appeal of this equity matter, we find as follows:

1 Defendant offered to buy a 69-acre tract of land from plaintiffs for the sum of \$144,900. This offer was accepted by plaintiffs.

2 After plaintiffs accepted defendant's offer to buy the entire 69-acre tract for \$144,900, plaintiffs insisted upon using a portion of the total tract for a tax-free exchange scheme with a third party. Defendant promised plaintiffs the tax-free exchange transaction would not change or effect anything about their agreement.

3 The parties' initial agreement is expressed in exhibit 7 entitled "Agreement on Earnest Money" which was signed by them on July 11, 1979.

We set forth the pertinent portion as follows:

It is mutually agreed by the undersigned that JON-DO, Inc. shall deposit \$10,000.00 to Mid-Continent Properties, Inc. Trust Account as earnest money for a purchase or exchange on the following Property:

FrSE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 17-74-39, and FrNE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 20-74-39, West of the 5th P.M., and located in Pottawattamie County, Iowa.

A formal agreement will be drawn no later than September 1, 1979, which will state the closing date to be March 15, 1980. It is understood by all parties that the total consideration is \$144,900.00, with \$33,000.00 down payment, annual principal payments of \$15,000.00 and interest on unpaid balances at eight (8) per cent. A balloon payment is due March 15, 1985.

There has been a verbal agreement reached as to possession, taxes, etc.

The specific purpose of this agreement is to allow time for the Buyer to establish documents for a tax-free exchange.

The \$10,000.00 earnest money shall be part of the purchase price, and can only be returned to Buyer in case of defect in title to the above description.

4. Upon defendant's insistence plaintiffs executed a warranty deed to the third party for 11.5 acres from the 69-acre tract. Defendant then exchanged land by warranty deed with the third party for the 11.5 acres.

5. Defendant and plaintiffs executed a formal real estate contract for approximately 58½ acres, which was the land contemplated in the original agreement except for the 11.5 acres. The sum of \$121,900 is shown as the amount of consideration for this contract.

6. At the same time the parties signed the real estate contract in 5 above, defendant executed a mortgage for the 11.5 acres to plaintiffs. This mortgage recites the consideration to be one dollar (\$1.00) and other valuable consideration. The mortgage also contains the following additional provision:

The Mortgagor hereby mortgage to the Mortgagees as additional security the real estate hereinabove described, this being a mortgage given to secure a payment of the purchase money for the premises described in Exhibit "A" conveyed to the mortgagor by the real estate contract by mortgagees, executed and intended to be recorded simultaneously herewith, until such sums have been fully paid and perform and observe all the covenants and agreements on the part of the mortgagor therein contained, then this mortgage shall be void.

This mortgage was signed "JON-DO, Inc." by John E. Buckingham and Dorothy E Buckingham.

7. John E. Buckingham is president of JON-DO, Inc. and is an experienced real estate broker of some twenty years. Plaintiffs had no one representing them but relied upon Buckingham for advice.

8. Defendant defaulted upon the real estate contract. Plaintiffs forfeited the contract against defendant. Plaintiffs went to the treasurer's office to pay the back taxes on the land and then discovered the 11.5 acres was not taxed in their name.

9. Thereafter plaintiffs filed a quiet title action against defendant for the 11.5 acres be quieted in them. Plaintiffs later amended the petition and

prayed in the alternative for foreclosure of the 11.5 acres. Defendant did not answer or reply to the amended petition.

The trial court dismissed plaintiff's petition. The trial court determined plaintiffs had offered no evidence to establish the value of the real estate at the time of the forfeiture of the real estate contract. Also, the trial court determined defendant had paid \$70,000 of the \$121,900 purchase price and inferred plaintiffs' remedy of forfeiture was more than adequate. The trial court recognized the entire transaction as contemplated in July of 1979 was for a single real estate purchase of all the real estate for \$144,900. The trial court concluded the form of the transaction was otherwise and the mortgage was given as additional security in favor of the plaintiffs under the real estate contract. The trial court held equity will not permit the plaintiffs to further enrich themselves by foreclosing the mortgage in question.

We too determine the original intent of the parties was for a single piece of real estate for the sale price of \$144,900. However, we determine it was for defendant's benefit and upon defendant's insistence the transaction was otherwise. Additionally, we determine defendant should not, in equity, profit at plaintiff's expense from the final form of the transaction which was defendant's scheme and plan. See Barks v. White, 365 N.W.2d 640, 645 (Iowa App. 1985).

We do not address plaintiffs' other two assignments of error.

We reverse the trial court and reinstate plaintiffs' petition. Plaintiffs are entitled to pursue their action of foreclosure of the mortgage to the 11.5 acres in question against the defendant.

REVERSED AND REMANDED.