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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 6-124 / 94-1937

MERLE L. HIBBS, MICHELLE L. HARRISON, DAVID J. HARRISON, MELANIE J. HIBBS, and **MELISSA A. BASCHE,**
Appellees,

vs.

NODDLE DEVELOPMENT COMPANY,
Appellant.

Appeal from the Iowa District Court for Marshall County, Carl D. Baker, Judge.

Defendant appeals a judgment for breach of a real estate contract. **AFFIRMED.**

Paul C. Peglow of Johnson, Sadenga, Latham, Peglow & O'Mare, Marshalltown, for appellant.

Michael J. Moon of Mowry, Irvine, Giannetto & Moon, Marshalltown, for appellees.

Considered by Cady, P.J., and Streit and Vogel, JJ.

Development company appeals district court ruling in breach of contract action on the grounds that a valid and enforceable real estate contract did not exist and the court failed to consider evidence outside the written contract that indicated the company was acting as an agent for another company.

Merle L. Hibbs and Noddle Development Company entered into a real estate contract that provided for a $10,000 non-refundable down payment upon the execution of the agreement. The real estate involved in this transaction was located in Marshall County and was allegedly being purchased by Noddle for Dayton-Hudson Corporation to build a Target store on the property. A "Purchaser's Contingency" clause gave Noddle the right to cancel the Agreement by written notice to Hibbs on or before the 120th day after the date Hibbs mailed an executed copy of the Agreement to Noddle. The clause further provided even if the agreement was canceled, the down payment would not be returned. Noddle was also responsible for abstract fees incurred by Hibbs and in the event of a court proceeding, the party in default pays attorney fees. The contract contained an integration clause.

In February, 1993, both parties signed the contract for sale of the real estate. Noddle explained it would tender the $10,000 down payment to Hibbs, but never actually made the payment. Noddle canceled the contract within the 120 days provided under the contract and Hibbs brought suit for damages. The district court awarded Hibbs damages for the $10,000 earnest money, $590 for abstract fees and attorney fees.

Noddle contends. (1) there was not a valid and enforceable contract because payment of the $10,000 was never tendered; and (2) the district court erred in finding the contract was an integrated agreement.

Our scope of review is for the correction of errors of law. Iowa R App. P. 4. Noddle asserts a valid and enforceable contract did not exist because it never tendered the $10,000 down payment called for at the time of execution. The parties refered to the contract as an "option contract." We determine the agreement was an executory contract of purchase and sale and not an option.

An option contract is a promise which meets the requirements for the formation of a contract and limits the promisor's power to revoke an offer. Restatement (Second) of Contracts § 25 (1981). An option contract has two components. (1) the underlying contract which is not binding until accepted; and (2) the covenant to hold open to the optionee the opportunity to accept. *Plantation Key Developers, Inc. V. Colonial Mortgage Co.*, 589 F.2d 164, 168 (5th Cir. 1979). The option agreement component states the terms upon which the seller is willing to sell his land, if the optionee elects to accept within the agreed time. *Hott v. Pearcy/Christon, Inc.*, 663 S.W 2d 851 (Tex. App 5 Dist. 1983).

The purchaser's contingency clause of the contract entered into between Hibbs and Noddle contained the following relevant language:

> PURCHASER'S CONTINGENCY. Purchaser's obligation to close under this Agreement shall be wholly contingent upon Purchaser

> determining by the contingency date that Purchaser desires to proceed to closing and to consummate this transaction Purchaser may, for any reason sufficient to itself, determine that it will not proceed to closing; and in such event, **Purchaser shall provide written notice to Sellers on or before the contingency date that Purchaser will not perform**. If Purchaser determines it will not perform, then this Agreement shall be canceled but none of the earnest money (Item 3(A) shall be returned to Purchaser.

Real Estate Agreement, para. 5 (emphasis added).

Under the facts here, we conclude that an option contract did not exist. The provision to cancel the agreement before the contingency date did not constitute an option.

The executive vice president of Noddle entered into a binding agreement with Hibbs when the agreement was signed. In a letter to plaintiff's attorney, the vice president of Noddle thanked the attorney for his "assistance in getting this agreement finally nailed down." The cancellation provision in the contingency clause merely provided an escape out of the agreement. If within 120 days Noddle decided it no longer wished to purchase the real estate from Hibbs, it was relieved from the obligation to purchase the land and would lose the $10,000 down payment. An option contract holds open to the optionee the opportunity to accept the offer. *Plantation Key Developers, Inc.*, 589 F.2d at 168. Here, Noddle already accepted the offer but had 120 days to cancel. If Noddle did not take any action within the 120 day contingency it would have been required to pay the remaining purchase price for the land.

Noddle asserts no contract was made because there was a failure of consideration. We presume a written, signed agreement is supported by consideration.

Iowa Code § 537A.2; *Kristerin Development Co. v. Granson Inv.*, 394 N W.2d 325, 331 (Iowa 1986). Consideration may take many forms. *Kristerin*, 394 N.W.2d at 331; *Recker v. Gustafson*, 279 N.W 2d 744, 749 (Iowa 1979) In this case the offer and acceptance contained mutual promises as consideration to support an agreement. *Kristerin*, 394 N.W.2d at 331. The $10,000 earnest money was part of Noddle's $900,000 consideration for the purchase.

A valid and enforceable contract existed. Hibbs performed his requirements under the purchase agreement. He obtained an abstract of title to the property and withheld the real estate from the market until Noddle informed him that it would be canceling the contract. The $10,000 down payment was non refundable and was owed to Hibbs under the contract as well as abstract fees and attorney fees. We affirm the district court.

Noddle further contends the district court erred in finding the written agreement was fully integrated. A contract with an integration clause typically represents the complete agreement of the parties and any extrinsic evidence which varies, adds, or subtracts from its terms is barred by the parol evidence rule. *Levien Leasing Co. v. Dickey Co.*, 380 N.W.2d 748 (Iowa App. 1985). The contract at issue contains an integration clause.

A parol evidence rule objection should be sustained "where the handcrafted contract contains an integration clause, where the parties were sophisticated business

persons represented by counsel and of equal bargaining strength, and where terms of the alleged oral agreement reasonably would be expected to be included in the exchange agreement." *Id.* Hibbs has been engaged in the real estate brokerage business for over 40 years. Noddle Development Company develops and owns approximately 70 retail shopping centers in 15 states. Both parties were sophisticated business persons Hibbs was represented by counsel and Noddle by the executive vice president.

Noddle contends it was acting as an agent for Dayton Hudson and performance of the contract was conditioned upon Dayton Hudson forwarding the $10,000 down payment. Although the evidence implies there was an agreement between Dayton Hudson and Noodle, this condition was not stated within the four corners of the written agreement. The trial court did not err in excluding evidence to vary the terms of the agreement.

AFFIRMED.