

IN THE COURT OF APPEALS OF IOWA

No. 9-299 / 88-1838

FILED

AUG 23 1989

CLERK SUPREME COURT

B. ANN SCHULTZ,

Plaintiff-Appellant,

556

vs.

CARMELLA WILLIAMS, FRANK POWERS, and MARY KAY HOFT,

Defendants-Appellees.

Appeal from the Iowa District Court for Webster County,
Allan L. Goode, Judge.

Plaintiff appeals from a district court order granting
defendant Williams' application for order of forfeiture of
plaintiff's interest in real estate. **REVERSED.**

David J. Lawler, Omaha, Nebraska, for
plaintiff-appellant.

William H. Habhab, Ft. Dodge, for defendants-appellees.

Considered by Donielson, P.J., and Schlegel and
Sackett, JJ. Habhab, J., takes no part.

SACKETT, J.

The issue before us is did the trial court properly order forfeiture of a real estate contract. We find the trial court should not have ordered forfeiture. We reverse the trial court.

Plaintiff-appellant B. Ann Schultz purchased real estate in Webster County from defendant-appellee Carmella Williams. The sale was a contract sale and the parties executed an installment sale contract. With reference to forfeiture and foreclosure, the contract provided:

If Buyers fail to perform this agreement in any respect, time being the essence of this agreement, then Sellers may forfeit this contract as provided by Chapter 656 of the Iowa Code and all payments made and improvements made on said premises shall be forfeited; or Sellers may declare the full balance owing due and payable and proceed by suit at law or in equity to foreclose this contract, in which event Buyers agree to pay costs and attorney fees and any other expense incurred by Sellers. It is agreed that the periods of redemption after sale on foreclosure may be reduced under the conditions set forth in Sections 628.26 and 628.27, Code of Iowa.

Plaintiff did not make the required payments. Defendant caused plaintiff to be served with a notice of forfeiture. Plaintiff filed a suit seeking to enjoin the forfeiture. Before the matter came to trial the parties entered into a stipulation of settlement. The stipulation provided plaintiff was to pay defendant \$5,877.62 in two installments and additionally was to pay real estate taxes. The stipulation contained the following provision:

3. That the parties hereto agree that the forfeiture matter pending at this time be set aside

and the contract between Carmella Williams and B. Ann Schultz continue as previously stipulated. However, if payments . . . are not made on or before April 30, 1988, the parties hereby agree that said contract shall be deemed forfeited.

On May 20, 1988, defendant filed an application for order of forfeiture contending payments were not made in accordance with the stipulation and asking the court to enter an order declaring the contract forfeited. Plaintiff resisted contending there was an error made in calculating amounts due and the contract should not be forfeited. She also contended defendant could not accept partial payment under the stipulation and still be entitled to forfeiture.

The trial court ordered the forfeiture finding the issue was not one of the parties' rights in a forfeiture proceeding but the issue was the enforcement of a breached contractual agreement. Plaintiff has appealed.

Iowa Code section 656.1 provides:

A contract which provides for the sale of real estate located in this state, and for the forfeiture of the vendee's rights in such contract in case the vendee fails, in specified ways, to comply with said contract, shall, nevertheless, not be forfeited or canceled except as provided in this chapter (emphasis added).

These statutory provisions limit an otherwise valid contractual right. Jensen v. Schreck, 275 N.W.2d 374, 386 (Iowa 1979). See also Hampton Farmers Co-op Co. v. Fehd, 257 Iowa 555, 560, 133 N.W.2d 872, 875 (1965). The chapter is construed strictly against forfeiture and liberally toward opposing it. Jensen, 275 N.W.2d at 386. One

seeking a forfeiture of a land contract must fully and strictly follow the required procedure. Id. Kilpatrick v. Smith, 236 Iowa 584, 593, 19 N.W.2d 699, 703 (1945).

We find the trial court should not have entered the order of forfeiture. We are dealing with an issue of a contract for sale of land. The legislature has prescribed remedies for forfeiture. The stipulation was a contract for sale of land. Forfeiture of plaintiff's rights demanded statutory compliance.

REVERSED.