IN THE COURT OF APPEALS OF IOWA

No. 8-723 / 98-0304
Filed February 24, 1999

MAURICE MITCHELL, SR.,
MAURICE MITCHELL, JR., and
LISA MITCHELL,
Appellants,

vs.

NORWEST BANK IOWA, N.A.,
Appellee.

Appeal from the Iowa District Court for Polk County, George W. Bergeson, Judge.

Plaintiffs appeal a directed verdict for defendant on their breach of contract claim. **AFFIRMED.**

Peter C. Riley of the Tom Riley Law Firm, P.C., Cedar Rapids, for appellants.

David L. Charles and David K. Basler of Belin Lamson McCormick Zumbach Flynn, P.C., Des Moines, for appellee.

Heard by Sackett, C.J., and Streit and Vogel, JJ.

STREIT, J.

Land buyers claim they had a right to bid a higher price for the sale of land. Plaintiffs, Maurice Mitchell, Sr., Maurice "Maury" Mitchell, Jr., and Lisa Mitchell, appeal the trial court's grant of directed verdict on their breach of contract claim and appeal several of the court's evidentiary rulings. Because the Mitchells have not proved each element of the breach of contract claim by substantial evidence on the record, we affirm the trial court's grant of directed verdict to the defendants.

I. Procedural Background & Facts.

The Maurice Mitchell family sought to purchase farmland owned by the Charles Laverty Trust and offered for sale by Norwest Bank, as trustee. On March 25, 1996, the Mitchells met with a Norwest representative to purchase two parcels of land. Maurice Mitchell, Sr., offered the full list price in cash on one parcel and tendered a down payment. Maurice "Maury" Mitchell, Jr., offered the full list price on the other parcel and tendered a down payment. The Mitchells allege Norwest promised to give them the opportunity to submit a higher bid if another party overbid their offers.

Maury's purchase of his parcel of property was conditioned on him obtaining financing. When he had, he contacted Norwest, but was informed both parcels of land were sold to another party, and his and his father's down payments would be returned.

The Mitchells brought suit against Norwest alleging breach of contract and fraudulent misrepresentation based on Norwest's assurance the Mitchells would have the opportunity to counter-bid higher offers. The case progressed to trial. After the Mitchells had presented their evidence, Norwest moved for directed verdict on the breach of contract claim. The court granted the motion. The jury returned a verdict in favor of Norwest on the Mitchells' fraudulent misrepresentation claim. The Mitchells appeal the district court's grant of directed verdict to Norwest and several of the court's evidentiary rulings.

II. Standard of Review.

Our review from a grant of motion for directed verdict is for correction of errors at law. Iowa R. App. P. 4. We view the evidence in accordance with the same principles that guide the district court in its review. *Olson v. Nieman's, Ltd.*, 579 N.W.2d 299, 313 (Iowa 1998). The standard is whether there is sufficient evidence to submit a party's claim to the jury. *Id.* In making this determination, we view the evidence in the light most favorable to the party against whom the motion was made. *Id.* If substantial evidence supports each of the elements of the plaintiff's claim, the district court should deny the motion. *Id.* Conversely, if there is no such substantial evidence, a directed verdict or judgment notwithstanding the verdict in the defendant's favor is appropriate. *Id.* "Evidence is substantial if reasonable minds could accept it as adequate to reach the same findings." *Id.* (quoting *Tim O'Neill Chevrolet, Inc. v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996)).

We view evidentiary rulings of the trial court for abuse of discretion. *Williams v. Hedican*, 561 N.W.2d 817, 822 (Iowa 1997).

III. Breach of Contract Claim.

The Mitchells claim the trial court erred in granting defendant a directed verdict on the breach of contract claim. To avoid directed verdict, the Mitchells had to present substantial evidence of each of the following elements: (1) the existence of the contract; (2) consideration; (3) the terms and conditions of the contract; (4) that the buyers have performed all of the terms and conditions of the contract required of them to now require the seller to perform; (5) that the contract was breached in some particular way; and (6) that the buyer has suffered damages. *Berryhill v. Hatt*, 428 N.W.2d 647, 652 (Iowa 1988); *Cf.* Iowa Civil Jury Instruction no. 2400.1 (1986).

The Mitchells did not meet their burden. They did not show the existence of a contract. Although their offer was in writing to Norwest, it had never been accepted by a Norwest representative. The offer sheets contained a specific signature line for a Norwest representative to sign if the offers were accepted. This line was not signed. The offer sheet stated a separate written contract needed to be executed to consummate a sale agreement. No separate written contract was ever prepared. The only Norwest representative who dealt with the plaintiffs informed them he did not have the authority to accept their offer without approval of the trust committee. No approval from the trust committee was ever achieved. The Mitchells have not shown their offer was accepted. To prove the existence of a contract, a party must show both an offer and acceptance. *Magnusson Agency v. PENCO*, 560 N.W.2d 20, 26 (Iowa 1997).

The Mitchells have also failed to present any evidence of consideration for the alleged option contract (the option to bid higher amounts). Consideration constitutes a benefit to the promisor or detriment to the promisee. *Id.* at 26. The Mitchells argue offering the full purchase price for the land, rather than a lesser amount, and tendering down payments, was consideration for the option contract. However, Maury testified he would have offered the full purchase price even if there was no option contract. This did not constitute consideration. Because the Mitchells did not meet their burden of proving the essential elements of a breach of contract claim with substantial evidence, their claim fails. Even if the Mitchells had met their burden, the evidence would be barred by the statute of frauds. *See* Iowa Code § 622.32(3)(1997)(option contract must comply with the statute of frauds to be enforceable). The trial court did not err in granting a directed verdict in favor of the defendants.

We have reviewed the Mitchells' claims the trial court abused its discretion in excluding the expert testimony of Brian Linnemeyer and the court's initial exclusion of the Mitchells' testimony regarding the value of the Laverty Trust properties and find them without merit.

In regard to the Mitchells' testimony on value, the trial court reconsidered its initial exclusion of the testimony and allowed them to testify to the value of the properties after the close of Norwest's case. Any error in the court's initial decision was cured by the court's subsequent admission of the testimony. *See Kengorco, Inc. v. Jorgenson*, 176 N.W.2d 186, 189 (Iowa 1970).

When evaluating the exclusion of expert testimony, "great deference is given to the decision of the trial court." *Bell v. Community Ambulance Service Agency for Northern Des Moines County*, 579 N.W.2d 330, 338 (Iowa 1998). A reviewing court will not interfere without a showing that the trial court has manifestly abused its discretion to the prejudice of the complaining party. *Id.*

There has been no abuse of discretion in the trial court's exclusion of the proffered expert testimony. Mr. Linnemeyer did not have an opinion on the fair market values of the parcels of property in this case. His testimony would have consisted of a range of properties in the neighborhood the properties were located. It was not an abuse of the trial court's discretion to determine such information would not aid the trier of fact in deciding the issue of damages in this case.

The trial court is affirmed on all issues.

AFFIRMED.