FILED
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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

ARNOLD P. GREIF and BETTY L. GREIF,	)	
Appellees,	)	Filed December 28, 1977
vs.	)	
WOODS INC. and THOMAS LEO WOODS II	)	328 2-59021
Appellants.	)	

Appeal from Linn District Court - Ansel J. Chapman, Judge.

Defendant appeals trial court's order of specific performance of a real estate option purchase agreement. - Affirmed.

John K. von Lackum, E. H. Wadsworth & H. Marc Joseph, of Cedar Rapids, for Appellees.

Francis J. Pruss, of Cedar Rapids, for Appellants.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Defendant Thomas Leo Woods II appeals the trial court's order of specific performance of a real estate option purchase agreement between Woods and the plaintiffs Arnold P. Grief and Betty L. Grief. We affirm.

Woods' first attack is upon the Griefs' tender. The record indicates he received the exercise-of-option letter October 25, 1974, within the period designated for the exercise. The letter was drawn by Dunn Real Estate and signed by the Griefs along with their personal check made out to Woods and Dunn. He made no objection to the form of the tender. Indeed, his only response was a letter of November 27, 1974, which accompanied the return of the $2000 check:

> This is to advise you that Mr. Woods declines your offer to purchase your real estate. The purported option to purchase real estate dated November 21, 1972 is void per indefiniteness and further, there was no consideration for this purported option to purchase real estate.

The Griefs argue that § 538.8, The Code, required Woods to make any objection to the inclusion of Dunn Real Estate as a payee at the time the check was received. Watson v. Chapman, 244 Iowa 56, 62, 55 N.W.2d 555, 558 (1952) ruled that the cases decided under § 538.8 precluded objection to the form of tender if not made at the time tender is proffered. Therefore, Woods may not now attack the form of the Griefs' tender. A related issue breifed and argued by the parties involves the trial court's finding Dunn Realty acted in the exercise of the option as an agent for Woods. Our decision adverse to Woods on the issue of waiver, however, renders any consideration of error in the resolution of the agency question unnecessary.

The gist of Woods' second complaint is that the court cannot substitute its bargain for that of the parties. At most, he claims the option merely indicated an agreement to contract. We find no merit in this contention. When the parties exchanged written negotiations regarding the 220 acre farm where the Griefs now reside, there was included a provision for the option to buy the additional 40 acre tract. The lease of the 40 acre tract which was executed contingent upon the closing of the 220 acre farm sale included such an option. At the closing Woods offered a separate option agreement which was ultimately executed by the parties. It is this version of the option which Woods claims may not support an order of

specific performance.

Each of the documents referring to the option included essentially the same provisions regarding a total purchase price, amount of annual installments, downpayment and interest rate. The first two option provisions included a 10-year payoff clause. On this record, we rule the parties themselves hammered out their bargain; the trial court merely ordered Woods to do that which was within the contemplation of the parties from the time they began to deal with one another regarding the 220 acre farm and the 40 acre tract.

Finally, Woods attempts to avoid the sale of the 40 acre tract by claiming the final option agreement he had drawn upon his instructions is void because on its face it is impossible to perform. Here the focus is upon the language which requires the annual $500 installment be applied first toward the interest indebtedness and the failure to include a payoff date. The previous two option clauses had provided for an annual principal payment of $500 plus 7% interest upon the unpaid balance with payoff to occur over a 10-year period. The trial court held under Janssen v. North Iowa Conference Pensions Inc. of the Methodist Church, 166 N.W.2d 901 (Iowa 1969) it could consider the various instruments dealing with the option and could conclude the parties intended annual principal payments of $500 and a payoff period of ten years. We agree. **Janssen** involved the attempted exercise of an option agreement to purchase farm land by parties occupying it as lessees. It disposes, adversely to Woods, any claim that specific performance is unavailable to the Griefs on the record made in the trial court.

Affirmed.