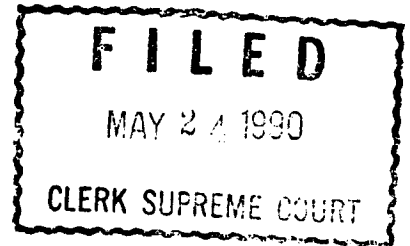


IN THE COURT OF APPEALS OF IOWA

No. 0-75 / 88-1905



POWESHIEK-JASPER FARM SERVICE, CO., and MAHASKA FARM
SERVICE, CO.,

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Appellants,

vs.

GRUBB OIL CO., INC.,

Appellee.

Appeal from the Iowa District Court for Poweshiek
County, James D. Jenkins, Judge.

Plaintiffs appeal from a district court decision
rejecting their petition for reformation of their contract
to purchase Grubb Oil and granting Grubb's counterclaim for
specific performance of the contract and awarding Grubb
actual and punitive damages. **AFFIRMED AS MODIFIED.**

Robert N. Helmick of Bradshaw, Fowler, Proctor &
Fairgrave, Des Moines, for appellants.

Garold F. Heslinga of Heslinga, Heslinga, Dixon &
Grotewold, Oskaloosa, for appellee.

Considered by Donielson, P.J., and Hayden and Habhab,
JJ.

DONIELSON, P.J.

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Plaintiffs are Farm Service cooperatives engaged in the retail sale of goods and services to farmers, including the sale of petroleum products. Grubb Oil is an Iowa corporation which operated petroleum sale facilities in the counties in which plaintiffs operated.

In 1987, negotiations ensued for the purchase of Grubb Oil by plaintiffs. Growmark, a company owned by various farm service cooperatives including plaintiffs, negotiated purchase agreements on behalf of the plaintiffs.

On May 13, 1987, the parties reviewed, modified, and signed the purchase agreements. Language in both agreements provided the following warranty:

Seller further represents and warrants that for the year ended September 30, 1986, Seller had retail petroleum sales of approximately 1,276,047 gallons, wholesale petroleum tankwagon sales to service stations of approximately 300,000 gallons, sales volume of motor oil of \$83,400 and sales volume of tires, batteries and accessories of \$174,000 for a total sales volume of \$1,745,106. Buyer, in reliance on the Seller's representations and warranties as to sales volumes, has entered into this Agreement.

In conjunction with signing the purchase agreements, Grubb Oil executed leases which transferred all of its assets to plaintiffs on May 13, 1987. Plaintiffs immediately took control of Grubb Oil's operations.

Closing was scheduled for June 15, 1987. At the closing, plaintiffs questioned the figures warranted in the purchase agreement. Grubb Oil agreed to turn over its books once the plaintiffs made the agreed-upon payment.

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Plaintiffs refused to pay and later stopped payment on the earnest money checks issued at the time the purchase agreements had been executed.

On July 6, 1987, plaintiffs filed an action seeking reformation of the contract. Plaintiffs sought a decrease in the purchase price based on Grubb Oil's alleged misrepresentation regarding its 1986 sales. Grubb Oil counterclaimed, seeking specific performance of the contract. Following a trial to the court, the district court granted Grubb Oil specific performance on the contract. Grubb Oil was also awarded actual and punitive damages on its counterclaims.

Plaintiffs have filed this appeal. Our review of this action tried in equity is de novo. Iowa R. App. P. 4. As modified by this opinion, we affirm the decision of the district court.

I.

Plaintiffs contend the trial court erred in not finding they were entitled to a reformation of the purchase agreements. Reformation of written instruments may be granted only upon clear, satisfactory, and convincing evidence of fraud, deceit, duress, or mutual mistake. Iowa R. App. P. 14(f)(11); Kufer v. Carson, 230 N.W.2d 500, 504 (Iowa 1975). Reformation does not mean changing the terms of an agreement, but refers to a change in the instrument to reflect the real agreement of the parties. Kufer, 230 N.W.2d at 503. The right to reformation lies within the

discretion of the equity court and depends upon whether the remedy is essential to the ends of justice. Id. at 504.

The trial court concluded no basis existed for reformation of the agreements. It found Grubb Oil's testimony and evidence was more credible than plaintiffs' version of the facts. In equity cases, especially when considering the credibility of witnesses, we give weight to the fact findings of the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7).

From our review of the record, we agree plaintiffs failed to sustain their burden for proving the need to reform the purchase agreements. At issue is terminology. Plaintiffs argue Grubb Oil misrepresented its gasoline sales, and they distinguish "wholesale," "retail," and "tankwagon" sales. Dickie and Patsy Grubb testified that plaintiffs' agent, Robert Hopping, did not elicit information from them to distinguish their sales in this way. Documentary evidence supports their statements. At the time the purchase agreements were signed, Grubb Oil specifically deleted language from the agreements to clarify it was warranting it had "retail petroleum sales" of 1,276,047 gallons in 1986 and not "retail petroleum tankwagon sales" of 1,276,047 gallons. There is no evidence of fraud or deceit by Grubb Oil. In fact, as the trial court found, the warranted figures were accurate almost to the exact gallon. Any mistake in this case was not mutual, but was occasioned by plaintiffs' own

investigation and evaluation of Grubb Oil. Reformation of the purchase agreements was not warranted in this matter.

II.

Plaintiffs argue they were excused from performing the purchase agreements because of Grubb Oil's failure at the closing to grant plaintiffs an easement and to disclose its sales volume records. The trial court found plaintiff Poweshiek-Jasper Farm Service had demanded an easement pursuant to section seven of its purchase agreement, but did not even know the legal description for the easement it was demanding. Grubb Oil's refusal to grant an easement at the time of the closing was no justification for plaintiffs' failure to perform.¹

We do find plaintiffs were legally excused from completing the closing on June 15, 1987, because of Grubb Oil's refusal to provide them with data or records regarding its past sales volume. The purchase agreements specified that the seller was to make available to the plaintiffs

all of its records relative to all merchandise, and the purchase of inventory, supplies or any other contracts relative to the operation of said business which Buyer may reasonably request.

Grubb Oil also warranted that it had disclosed to the

1. In their brief, plaintiffs ask for an order compelling Grubb Oil to grant them a permanent easement. A review of the trial transcript reveals a stipulation was entered into regarding the easement. The trial court's order for specific performance of the agreements negates the need for any further order regarding the easement.

buyers all material facts known to it which could have an impact on the buyers' decision to enter into the agreements.

The purchase agreements contained provisions allowing the buyers to cancel or rescind the agreements if Grubb Oil failed to comply with any of their terms, conditions, or covenants. The trial court found plaintiffs had contacted Grubb Oil seeking verification of the warranted figures and did not receive the verification they sought. Such a request was reasonable in nature, and Grubb Oil was obligated under the agreements to produce such records.

As plaintiffs had a legal excuse for failing to close the agreements on June 15, 1987, we strike that part of the trial court's decree which grants Grubb Oil interest on the unpaid contractual sums.

Plaintiffs did not challenge the court's ability to grant specific performance; in fact, they conceded rescission of the contract was not a viable alternative, and they sought reformation of the agreements. Under these circumstances, we offer no opinion as to a court's authority to grant specific performance when a party was in fact legally excused from performing the agreement. We leave intact the trial court's order for specific performance modified by our decision eliminating the obligation to pay interest on the contractual payments.

III.

Plaintiffs argue the trial court was without authority

to grant Grubb Oil punitive damages in this matter. The trial court specifically found that by retaining Grubb Oil's assets after the closing date, plaintiffs had wrongfully converted the property. Finding plaintiffs' actions to be willful, wanton, oppressive, and malicious, the trial court ordered each plaintiff to pay Grubb Oil \$30,000 in punitive damages.

Conversion is the act of wrongful control or dominion over another's personal property in denial of or inconsistent with that person's possessory right to the property. Kendall/Hunt Publishing Co. v. Rowe, 424 N.W.2d 235, 247 (Iowa 1988). The essential elements of conversion are:

1) ownership by the plaintiff or other possessory right in the plaintiff greater than that of the defendant; 2) exercise of dominion or control over chattels by defendant inconsistent with, and in derogation of, plaintiff's possessory rights thereto; and 3) damage to plaintiff.

In re Estate of Bearbower, 426 N.W.2d 392, 394 (Iowa 1988). Generally, exemplary damages may be awarded for conversion if it is characterized by malice or willful disregard of a plaintiff's rights. Sandhorst v. Mauk's Transfer, Inc., 252 N.W.2d 393, 394 (Iowa 1977).

The purchase agreements in this case specifically incorporated by reference the lease agreements executed by the parties. A review of the agreements and leases makes clear that plaintiffs were to be allowed to lease Grubb Oil's assets for the period between the signing of the

purchase agreements (May 13, 1987) and the day of the closing (June 15, 1987). The lease language contemplates termination of the leasehold upon closing of the sale or upon cancellation of the purchase agreements. Despite the fact that plaintiffs effectively canceled the purchase agreements by refusing to complete the closing, they did not return Grubb Oil's property within five days as specified in each lease. No provision in the lease or purchase agreements appears to contemplate a situation in which plaintiffs refuse to complete the closing on June 15th, yet continue to operate Grubb Oil's business operations indefinitely and at no cost to plaintiffs.

From our review of this case, we conclude the trial court was correct in finding plaintiffs had converted Grubb Oil's property after June 15, 1987. This was not a situation in which there is no conversion because the plaintiffs were rightfully in possession of the property by virtue of a lease. See, Williams v. Redinger, 179 Iowa 615, 161 N.W. 701 (1917).

We also agree with the trial court that plaintiffs' conduct in this case was willful and oppressive. Plaintiffs, by retaining Grubb Oil's assets and refusing to pay for them after the closing fell through, put Grubb Oil in a precarious financial position. Plaintiffs' own agent, in an interoffice memo, recognized the "pretty tough spot" in which Grubb Oil had been placed, and he concluded "[w]e will probably end up renegotiating this one." The thrust

of this statement suggests the "lease limbo" created by plaintiffs' conduct would make Grubb Oil susceptible to renegotiating the deal and accepting less for the sale of its assets. Plaintiffs' interference with Grubb Oil's property was serious, see Kendall/Hunt, 424 N.W.2d at 247, and we affirm the punitive damages awarded by the trial court.

IV.

Once Grubb Oil's income-producing assets were in the control of plaintiffs, Grubb Oil was without the means to pay off notes used to acquire the assets. One of Grubb Oil's creditors, Moore Oil Company, obtained a judgment against it. The trial court ordered plaintiffs to pay Grubb Oil the interest incurred by Grubb on the Moore Oil Company judgment.

Plaintiffs claim the court erred in ordering it to pay the interest on the judgment. Grubb Oil does not challenge this claim and concedes it should be eliminated from the judgment. We do so without addressing the propriety of either party's position.

In sum, we affirm the trial court's order of specific performance and its award of punitive damages for conversion. We modify the decree and judgment to eliminate plaintiffs' obligation to pay interest on the contract sums now due Grubb Oil and the interest award based on the Moore Oil Company judgment obtained against Grubb Oil.

AFFIRMED AS MODIFIED.