000127

IN THE COURT OF APPEALS OF IOWA

No. 8-082 / 97-441

LIBERTY BANK & TRUST OF MASON CITY,
Plaintiff-Appellee,

vs.

OLYMPUS ALUMINUM PRODUCTS, INC.,
Defendant-Appellant,
and

ALPANA ALUMINUM PRODUCTS, INC.,
Defendant.

FILED
APR 24 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Cerro Gordo County, Jon Stuart Scoles, Judge.

Olympus Aluminum Products appeals the decision of the district court which ruled for Liberty Bank in an action for forcible entry and detainer. **AFFIRMED.**

David M. Nelson of Nelsen Law Office, Mason City, for appellant.

Thomas H. Burke of Whitfield & Eddy, P.L.C., Des Moines, for appellee.

Considered by Cady, C.J., and Huitink, and Streit, JJ.

1001178

CADY, C. J.

This is an appeal by a lessee claiming the district court should not have found for the lessor in its action for forcible entry and detainer (FED). The lessee claims the parties were actually in the relationship of vendor and vendee. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Liberty Bank & Trust obtained certain property in Mason City from Alpana Aluminum Products, Inc., through the alternative nonjudicial voluntary foreclosure procedures found in Iowa Code section 654.18. On March 8, 1996, Olympus Aluminum Products, Inc., entered into an agreement to purchase the property. The parties also entered into a separate lease agreement for six months, in order to allow Olympus to use the property while it obtained financing for the purchase agreement. The sale was never closed.

Olympus failed to pay rent for June, July, or August. On August 6, 1996, Liberty gave Olympus notice of default and notice of right to cure. Olympus failed to cure the problem. The lease expired on September 30, 1996. Under the terms of the lease, Olympus then became a month-to-month tenant. Olympus paid rent for September and October. On October 31, 1996, Liberty gave Olympus notice of the termination of the lease as of December 1, 1996. Olympus failed to vacate the premises, and Liberty sent it a notice to quit.

On December 13, 1996, Liberty filed an FED action against Olympus. The district court issued an order for writ of removal. Olympus now appeals.

Because an action for FED is triable in equity, our review is de novo. *Powell v. Grewing*, 562 N.W.2d 761, 762 (Iowa 1997). The only question in an FED action is whether the defendant is wrongfully detaining possession of the real property at the time of the trial. *Bernet v. Rogers*, 519 N.W.2d 808, 811 (Iowa 1994).

Olympus contends it maintained possession under the contract for sale of the property, and not under a lease agreement. It asserts Liberty was required to proceed under the purchase agreement, and should have instituted foreclosure or forfeiture proceedings in order to regain the property.

The general rule is that the contract for the conveyance of real estate at a future time on condition that the purchaser perform certain acts or make certain payments does not create an equitable title in the purchaser until the purchaser performs the acts and makes the payments agreed upon. *Long v. Jensen*, 522 N.W.2d 621, 623 (Iowa 1994) (citing 91 C.J.S. *Vendor & Purchaser* §106, at 1013-14 (1955)).

Here, the sale was never completed. The contract never gave rise to any rights or obligation. Instead, Olympus possessed the property pursuant to the lease agreement. This agreement placed Liberty and Olympus in the relationship of landlord and tenant. Because the terms of the lease expired, Liberty could terminate the lease. When Olympus refused to vacate the premises, Liberty properly brought an FED action.

We affirm the order for writ of removal issued by the district court. Costs of this appeal are assessed to Olympus.

AFFIRMED.