IN THE COURT OF APPEALS OF IOWA

No. 2-545 / 92-349

FILED
JUN 29 1993
CLERK SUPREME COURT

000151

GUS J. KANTARIS,
Plaintiff-Appellant,

vs.

ALBERT J. MOSKOWITZ,
Defendant-Appellee.

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

Plaintiff landlord appeals a district court order dismissing his forcible entry and detainer action. **AFFIRMED.**

David M. Nelsen and Charles H. Biebesheimer of Nelson Law Office, Mason City, for appellant.

Joseph R. Lapointe and Timothy L. Lapointe of Lapointe & Lapointe, Mason City, for appellee.

Considered by Oxberger, C.J., and Donielson and Sackett, JJ.

OXBERGER, C.J.

On January 10, 1990, Gus J. Kantaris and Albert J. Moskowitz entered into a lease for some business property in Mason City. Kantaris is the landlord and Moskowitz is the tenant. Moskowitz operates the Four Pesos Restaurant on the premises.

One of the lease provisions requires Moskowitz to carry $1,000,000 in liability insurance. Moskowitz obtained this insurance through Grinnell Mutual Reinsurance Company. However, after a fight in the restaurant, Grinnell notified Moskowitz his coverage would be terminated on December 19, 1991.

On December 20, 1991, Kantaris notified Moskowitz he was in default under the lease. Moskowitz was given ten days to cure the default.

Moskowitz contacted Jerry Olson and Clarence Slife, both independent insurance agents. Neither agent was able to find substitute coverage for the business.

On December 24, 1991, Moskowitz met with Lawrence Snyder, another independent agent. On that date Snyder issued Moskowitz a certificate of insurance, which purported to bind coverage with Badger State Mutual Insurance Company. Snyder later testified that he actually bound coverage on December 24, 1991, with United Fire and Casualty Insurance Company, but erroneously put the name of Badger State on the certificate of insurance.

Kantaris gave Moskowitz notice to quit on December 31, 1991. The notice stated that Moskowitz had allowed the insurance coverage to lapse and had not obtained new insurance coverage which complied with the terms of the lease.

On January 2, 1992, Snyder issued a new insurance binder and a certificate of insurance for Moskowitz with United Fire. The policy had a $500,000 liability insurance policy limit.

Kantaris filed a forcible entry and detainer action on January 7, 1992, claiming that Moskowitz had defaulted under the terms of the lease.

United Fire decided to terminate its insurance coverage effective January 21, 1992. Moskowitz then obtained insurance through Capital Indemnity Corporation on January 17, 1992. This policy provided coverage from January 21, 1992, through January 21, 1993, and has a $1,000,000 liability insurance policy limit. Moskowitz also has a second policy through the Scottsdale Company which has a $1,000,000 liability insurance policy limit.

The district court issued its decision on February 18, 1992. The court found Moskowitz was in default under the terms of the lease because he did not have any insurance from December 19 to December 24, 1991. Also, from December 24, 1991, until January 21, 1992, he had only $500,000 in liability coverage instead of $1,000,000 as required by the lease. The court concluded, however, that Moskowitz had

substantially complied with the terms of the lease. The court therefore dismissed Kantaris's action. Kantaris has appealed.

This case was filed in equity and we review the record de novo. See Iowa R. App. P. 4.

Kantaris first claims Moskowitz did not actually have insurance coverage effective December 24, 1991. The district court found Snyder had authority to bind Badger State and United Fire by issuing a certificate of insurance. We agree that Snyder's representations and the certificates of insurance were binding, so that Moskowitz was covered by insurance as of December 24, 1991.

We also agree with the district court's conclusion that Moskowitz substantially complied with the terms of the lease. Substantial compliance with the terms of a lease will avoid a forfeiture. Beck v. Trovato, 260 Iowa 693, 697, 150 N.W.2d 657, 659 (1967); Bentler v. Poulson, 258 Iowa 1008, 1010, 141 N.W.2d 551, 553 (1966).

Moskowitz diligently tried to obtain substitute insurance after Grinnell notified him it was terminating his policy. He contacted two different independent insurance agents, but neither one could find a company willing to insure him. We conclude the five day period that Moskowitz did not have insurance coverage is not a substantial default under the lease. We note Moskowitz now is in full compliance with the terms of the lease.

We affirm the district court. Costs of this appeal are assessed to Gus Kantaris.

AFFIRMED.