



IN THE COURT OF APPEALS OF IOWA

GARY PHILO,

)

Plaintiff-Appellant,

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Filed August 9, 1979

vs.

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HARRY R. THOMAS and RAMONA A.
THOMAS,

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Defendants-Appellees.

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Appeal from Buchanan District Court - Thomas H. Nelson, Judge.

Plaintiff appeals from dismissal of action for specific performance of agreement
for sale of land. AFFIRMED.

Denny R. Wilson, of Craig & Wilson, of Independence, for plaintiff-appellant.

Daryl Roberts, of Roberts & VanderHart, of Independence, for defendants-
appellees.

Submitted to Oxberger, C.J., Donielson, Snell, Carter and Johnson, JJ.

DONIELSON, J.

Plaintiff appeals from trial court judgment dismissing his action to compel specific performance of an agreement for the sale of land. Plaintiff asserts that laches and estoppel by acquiescence bars defendants from refusing to convey land upon his notice to exercise an option to purchase. Plaintiff also contends the evidence does not support the trial court's finding that his actions constituted a transfer in fraud of creditors. We affirm.

Our review of this equitable proceeding is *de novo*. Iowa R. App. P. 4. We are bound to review the facts and law and determine anew from credible evidence contentions of the parties. Miller v. American Wonderlands, Inc., 275 N.W.2d 399, 402 (Iowa 1979). We give weight to the trial court's findings of fact, especially when credibility of witnesses is involved, but are not bound by them. Severson v. Elbersson Elevator, Inc., 250 N.W.2d 417, 420 (Iowa 1977); Iowa R. App. P. 14(f)(7).

I. On December 12, 1972, plaintiff Gary Philo and defendants Harry H. Thomas and Ramona A. Thomas, entered into a lease agreement and an option to purchase agreement, both contained in an instrument designated "Memorandum of Agreement," concerning land in Buchanan County. The third paragraph of the Memorandum of Agreement stated plaintiff could exercise the option to purchase only if he owned and occupied real property adjacent to the option property at the time he exercised the option.

On November 22, 1977, plaintiff served defendants his notice to exercise the option to purchase. Defendant refused to convey the land, claiming that plaintiff was not entitled to exercise the option because he did not own the property adjacent to the option property. Title of the adjacent property had been taken in the name of Kathie A. Philo, plaintiff's present wife, as sole owner on December 4, 1972. Plaintiff refused to take title in his own name as he was involved in a dispute with his ex-wife concerning child support and wished to protect the land from a judgment lien. Defendants learned in June 1976 that title to the adjacent property was in the name of plaintiff's present wife. In December 1976, plaintiff paid to defendants the final annual lease payment of \$25.00.

Plaintiff brought this action to compel defendants to specifically perform the contract and convey the option property or in the alternative to receive monetary damages. The action was dismissed on both counts. Plaintiff is appealing only the dismissal of the first count regarding specific performance of the contract.

II. Plaintiff contends that laches should be applied in this case as it would be inequitable not to compel the defendants to transfer title of the option property to the plaintiff. The Supreme Court of Iowa stated in Davidson v. Van Lengen, 266 N.W.2d 436 (Iowa 1978), regarding the doctrine of laches:

The application of laches requires focusing on the defendant's [plaintiff's] position and determining whether the delay harmed him or resulted in material prejudice. . . . The doctrine is a purely equitable one and applies where there has been an unreasonable delay in asserting a remedy and is clearly demanded in the interests of justice. Davenport Hosp. Ass'n. v. Hospital Service, 261 Iowa 247, 261, 154 N.W.2d 153, 152. . . . Each case is governed chiefly by its own circumstances. Shives v. Niewoehner, Iowa, 191 N.W.2d 633, 637.

Davidson, 266 N.W.2d at 439.

The party asserting the affirmative defense of laches has the burden of establishing all essential elements by clear, convincing, and satisfactory evidence. Anita Valley, Inc. v. Bingley, 279 N.W.2d 37, 41 (Iowa 1979); Moser v. Thorp Sales Corp., 256 N.W.2d 900, 908 (Iowa 1977). Prejudice is an element of laches. Anita Valley, Inc., 279 N.W.2d at 41; Davidson, 266 N.W.2d at 439.

Plaintiff contends he was materially prejudiced by defendants' action in accepting the \$25.00 lease payment after defendants knew plaintiff's name was not on the title to the adjacent property. The harm of this act, if any, does not rise to the material level required for the invocation of laches as it is limited to the expenditure of \$25.00 less the value of the use of two acres of land for one year. Plaintiff has failed to establish any other material prejudice suffered by him. Laches is not applicable to this case because of the absence of any special detriment and prejudice to the plaintiff and allowing defendant to retain the property is neither inequitable nor unconscionable.

III. Plaintiff also contends the doctrine of estoppel by acquiescence applies and requires specific performance of this contract. The basic thrust of plaintiff's argument is that defendants' acceptance of the check for payment of the lease agreement while knowing that plaintiff did not own the adjacent property acted as a waiver of all the

defendants' rights under the agreement.

Estoppel by acquiescence focuses on an examination of the individual's actions who holds a right in order to determine whether that right has been waived. Davidson, 266 N.W.2d at 439. The party asserting this defense must prove a reasonable belief that the other party waived or abandoned the right in question by clear, convincing, and satisfactory evidence. Anita Valley, Inc., 279 N.W.2d at 41; Davidson, 266 N.W.2d at 438.

We find no evidence of a waiver by defendants of their right to insist on plaintiff fulfilling the condition precedent to the exercise of the option, namely ownership of the property adjacent to the option property. Defendants' acceptance of the last year's lease payment waived only the condition of ownership of the adjacent property for the lease. Such acceptance did not waive the condition of ownership for the option to purchase. The lease and option to purchase were separate agreements. Defendants had the right to insist on the condition of ownership for the option to purchase, while waiving such condition for the lease. Furthermore, plaintiff had no reasonable cause to believe defendants had waived the condition of ownership for the option to purchase. There is no evidence in the record indicating plaintiff knew that defendants had become aware in June 1976 of plaintiff's failure to have title to the adjacent property. If plaintiff did not know that defendants had become aware that title to the adjacent property was not in plaintiff's name, it is not reasonable to conclude plaintiff could infer a waiver or acquiescence by defendants. Even assuming that plaintiff could reasonably infer a waiver of the condition precedent, such an inference reasonably extends only to the lease agreement. A waiver of the condition precedent for the option to purchase would not necessarily follow.

The trial court properly refused to order specific performance as plaintiff failed to fulfill a condition precedent of the contract. A party cannot enforce specific performance of a contract while in default of its terms. Tschirgi v. Merchants National Bank of Cedar Rapids, 253 Iowa 682, 686, 113 N.W.2d 226, 228 (1962). Moreover, there are no equitable reasons to require defendants to convey the land to plaintiffs.

IV. Plaintiff challenges the trial court's conclusion that placing title to the adjacent property in Kathy Philo for the purpose of preventing his ex-wife from levying

execution on the land in satisfaction of her outstanding judgment for delinquent support was a transfer in fraud of creditors. We find it unnecessary to decide whether there was sufficient evidence in the record to support this finding.

Our decision does not require a finding of transfer in fraud of creditors. As resolution of this question is not essential to our decision, we must necessarily withhold any expression. Goode v. American Railway Express Co., 205 Iowa 297, 302, 217 N.W. 876, 876 (1928), modifying judgment on rehearing, 205 Iowa 297, 215 N.W. 621 (1928). Questions rendered unnecessary for disposition of appeal because of a decision against appellant on the merits need not be discussed. Lamson v. Horton-Holden Hotel Co., 193 Iowa 355, 365, 185 N.W. 472, 476 (1921); Muir v. Miller, 72 Iowa 585, 587, 34 N.W. 429, 430 (1887). The propriety of our disposition of this question is supported by the circumstances of this case. Neither party was directing their efforts specifically towards the fraudulent conveyance issue. The question, as a result, was not fully argued, particularly as to plaintiff's solvency at the time of the alleged conveyance, a defense to a fraudulent conveyance claim. Richman v. Ady, 211 Iowa 101, 105, 232 N.W. 813, 815-16 (1930); Chamberlain v. Fay, 205 Iowa 662, 664-65, 216 N.W. 700, 701 (1927). We deem it is unwise and inappropriate to decide an issue not fully presented, especially one that may be litigated in the future. Star Land Co. v. Olson, 168 N.W. 111, 113 (1918).

AFFIRMED.