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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

HENRY M. KRAAYENBRINK and BETTY M. KRAAYENBRINK, Plaintiffs-Appellees, vs. **JOSEPH EMERSON and NANCY EMERSON,** Defendants-Appellants.	Filed January 29, 1985 4-484 84-645

Appeal from the Iowa District Court for Cerro Gordo County, Jack W. Frye, Judge.

Defendants appeal from a court decision that decreed reformation of a contract to which they were a party and that rendered a money judgment against them. AFFIRMED.

Robert E. Dreher of Dreher, Wilson, Adams & Jensen, Des Moines, for defendants-appellants.

Ted Enabnit of Enabnit & Keen, P.C., Mason City, for plaintiffs-appellees.

Considered by Oxberger, C.J., Snell, and Schlegel, JJ.

OXBERGER, C.J.

The trial court decision in question in this appeal allowed reformation of a contract to sell property. The court reformed the contract to express the agreement of the parties, as plaintiffs contended it should read, and defendants have appealed. We affirm.

The plaintiffs, Henry and Betty Kraayenbrink, sought buyers for property they owned in Clear Lake. Henry Kraayenbrink is a photographer with an eighth-grade education and little experience in real estate sales. The Kraayenbrinks contacted Evertte Oliphant, a realtor with OK Realty of Clear Lake, to seek a buyer. The defendants, Joseph and Nancy Emerson, also owned property in Clear Lake and told Oliphant they were interested in buying a larger property in the area. Mr. Emerson is a businessman with three years college education and had involvement in several past real estate transactions. After viewing the Kraayenbrink property, the Emersons made an offer in July 1979 through Oliphant to the Kraayenbrinks. The Kraayenbrinks decided to accept the offer, and on August 6, 1979, traveled to Clear Lake from Sioux Center to meet with Oliphant and an attorney, Thorkel Sondrol, who Oliphant had recommended, in order to finalize the contract. Oliphant testified that the offer was to include the following terms: a three-year contract to sell the property for $85,000; a $2000 down payment was to be paid in cash; the Emersons were to assume the $46,685 mortgage owed to Mutual Federal; and the remaining equity was to be paid at the end of three years, or when the Emersons sold their Clear Lake property, whichever came first. During the time prior to payment of the equity, they were to pay nine and one-half percent interest on the unpaid equity, plus an additional one percent "override interest." When the four met at Sondrol's office, Oliphant and the Kraayenbrinks reviewed the contract and found the terms confusing. Notes were made on the original contract, and all four testified Sondrol then drafted a new version using his word processor. Oliphant, Sondrol, and Mr. and Mrs. Kraayenbrink testified that at this point the first version was mixed up with

the final version, and the original unclear agreement was attached to a standard bar association sale contract and signed. All four also testified that prior to the signing, Sondrol explained the terms as those set out above.

Later that month, the Emersons requested a meeting with the Kraayenbrinks, saying there were certain portions of the contract that were not clear. Mr. and Mrs. Emerson met with Mr. Kraayenbrink and Oliphant at Emerson's Des Moines office on August 27, 1979. At the meeting, Kraayenbrink says he discovered the version sent to the Emersons did not contain the terms he reportedly agreed to and challenged it. After a hostile confrontation, Emerson reportedly said he could interpret the terms favorably to himself, that he was going to "look out for Joe Emerson" and proceeded to sign the contract. Kraayenbrink said he thought Emerson was aware of what the contract should be and thought Emerson would honor it. Oliphant testified he also informed Emerson that the terms were as described by Kraayenbrink.

Emerson said in court that the contract signed was the one agreed to and the terms of the agreement were that no equity payments were to be made unless Emerson sold his Clear Lake property or three years passed. If the property was not sold in three years, the remaining $35,000 in equity owed to the Kraayenbrinks would be paid off over fifteen years. No interest would be owed on the unpaid equity during the first three years if Emerson did not sell his house in Clear Lake. Emerson also said it provided for a "double credit" so that payments made to Mutual Federal would reduce the equity owed to the Kraayenbrinks.

No payments were made on the equity or interest and this action was brought by the Kraayenbrinks. The court decided a mutual mistake had occurred as a result of the scrivener's error and that the Emersons were guilty of inequitable conduct. The court reformed the contract to reflect the terms delineated by the plaintiffs.

As in all equitable actions, our review of this case is de novo. Iowa R. App. P. 4. We give weight to the trial court findings of fact, particularly where the

credibility of witnesses is involved, but are not bound by the court's findings. Iowa R. App. P. 14(f)(7). The burden is on the plaintiffs in this action to show that equity requires reformation, through clear, satisfactory, and convincing evidence. Akkerman v. Gersema, 260 Iowa 432, 149 N.W.2d 856, 859 (1967). Reformation is allowed when the proof shows mutual mistake, fraud, deceit, or duress. Iowa R. App. P. 14(f)(11).

Defendant claims there was no mutual mistake here, that any mistake which occurred was on the part of the Kraayenbrinks, but not the Emersons. He says the version as signed was the offer made to the Kraayenbrinks. Emerson also claims there was no fraud or inequity and, if a mistake occurred, the plaintiffs caused it, not the defendants. The Kraayenbrinks cannot seek relief, Emerson says, when they did not read the contract before signing it. He says cases support the proposition that a party bears the risk of mistake when the party knows he or she is acting on insufficient knowledge, but does not seek further information. Walnut Street Baptist Church v. Oliphant, 257 Iowa 879, 886, 135 N.W.2d 97, 101 (1965); Restatement (Second) of Contracts § 154 (1981). Defendant claims the plaintiffs have not proven that reformation is proper through clear and convincing evidence.

Many of the arguments raised by defendant have been addressed in a similar case. In Akkerman v. Gersema, plaintiffs sought reformation when the scrivener in preparing a lease contract provided for rent to be reduced for two months of the year, rather than three months of the year, as had been agreed upon. Akkerman v. Gersema, 260 Iowa at 436, 149 N.W.2d at 858. The court stated that a mistake is mutual where it is a result of the error of the scrivener. Id. at 437, 149 N.W.2d at 860. Despite the fact the plaintiffs did not read the agreement prior to signing it, the court allowed reformation, saying, "Defendants had a right to rely upon the terms settled by the previous agreement and the representation that the scrivener drew the lease in accord therein." Id. at 442, 149 N.W.2d at 861.

The evidence bears out plaintiffs' claims that the terms are those set out by them. Both Oliphant and Sondrol stated they were attempting to consummate the deal and did not feel they necessarily represented one party or the other. The defendants presented no reason why Sondrol would invent his testimony of the mixup of contracts resulting from his paper shuffling. Oliphant testified the contract signed was not the offer he presented from the Emersons. Both testified the terms were those claimed by the plaintiffs. On the other hand, we have only the testimony of the Emersons that the terms were those most favorable to them.

The court will also look to the realities of the various claimed versions of what happened. As stated in Akkerman, "In such a situation the circumstances surrounding these transactions and the relative reasonableness or unreasonableness of the respective versions are properly considered, and often they furnish a very satisfactory indication as to where the truth lies." Id. at 440, 149 N.W.2d at 860. It would be unreasonable for a seller of property to forego any equity or interest payment for the length of time claimed by the Emersons and to believe their story that the Kraayenbrinks had, in essence, allowed them use of their $35,000 for three years without interest.

We find the plaintiffs have proved reformation was required through clear, convincing, and satisfactory evidence.

The defendants also quarrel with the method the court used to reach the amount owed to plaintiffs. We can find no error pointed to by the defendants. The court awarded the $37,869 in equity owed to the Kraayenbrinks, along with nine and one-half percent interest totaling $16,248 for the period the equity was not paid, along with another $1870 reflecting the override interest. The total sum of the judgment was properly entered at $55,979.18.

For these reasons, we affirm the trial court decision in all respects.

AFFIRMED.