

FILED

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157

IN THE COURT OF APPEALS OF IOWA
CLERK SUPREME COURT

DONALD L. NEWQUIST and
RITA K. NEWQUIST,

Appellants,

vs.

DONALD GEORGE CHRISTENSON
and EYLOE JEANNE CHRISTENSON,

Appellees.

Filed February 22, 1979

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2-62056

Appeal from Polk District Court - Harry Perkins, Judge.

Plaintiffs appeal from adverse judgment in law action tried to court wherein their claim for rescission and damages on purchase of apartment building was denied and defendants were awarded judgment on counterclaim for unpaid purchase price. Affirmed.

Joseph B. Joyce of Des Moines for appellants.

James V. Sarcone, Jr. of Des Moines for appellees.

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

PER CURIAM

Plaintiffs appeal from adverse judgment in law action tried to the court. Plaintiffs' claim, in the alternative, is for money damages or rescission as a result of alleged misrepresentation in the sale of an apartment building. Defendants counterclaimed for moneys due on the contract of sale.

The trial court found that the evidence was insufficient to establish that defendants misrepresented any material facts which induced plaintiffs to purchase the property and therefore denied both the damage claim and the prayer for rescission. In addition, the trial court found that \$2,640 was owed to defendants by plaintiffs on the contract and awarded the defendants judgment on the counterclaim for that sum.

Because the action below was tried as a law action, our review is for correction of errors. The trial court's findings of fact have the effect of a special verdict. Rule 4, R. App. P.; *Staley v. Fazel Bros. Co.*, 247 Iowa 644, 75 N.W.2d 253, 255 (1956). Within the scope of review, the plaintiffs ask us to find that the trial court's findings and judgment are not sustained by the evidence and are contrary to law. We disagree and affirm the trial court.

Plaintiffs' claim is predicated upon their contention that defendants misrepresented that the building contained six apartment units suitable for occupancy under local ordinance requirements when in fact defendants had been advised by the city building department prior to the transaction that two of these units (which were basement apartments) did not meet minimum height requirements. The trial court found that the plaintiffs failed to prove the existence of any misrepresentation as to this circumstance or to show the defendants had knowledge thereof.

In reviewing the evidence, we conclude that a misrepresentation was not established as a matter of law and therefore the trial court's negative finding as to the existence thereof is binding upon us. *Ertl Co. v. Lange Plastics Co.*, 158 N.W.2d 93, 98 (Iowa 1968). With respect to plaintiff's secondary contention that defendants failed to disclose a material fact, the evidence supports the finding that even if defendants had been made aware of the deficiency prior to the sale to plaintiffs, they could reasonably have believed that these matters were not so serious as to preclude rental of the units. The record shows that to the extent that these deficiencies may have been called to defendants' attention by city building inspectors, the city continued to permit occupancy of the basement units by tenants up to the time of the sale to plaintiffs and thereafter.

Plaintiffs were able to rent the two units after buying the property, with the knowledge of the city building official. Prior to the sale to plaintiffs, city building department records show that defendants were making progress toward correcting the deficiencies, if any, which had been called to their attention.

After the sale to plaintiffs the two units in question were inspected by the city and no violations were noted. At the trial, the building official explains this by stating that at the time in question, their policy was to waive ceiling height deficiencies if the apartments were dry and clean. There is evidence that the apartment building in question deteriorated considerably after the sale to plaintiffs. Several months after this action was commenced, city building officials still considered that it was possible to bring these two units into compliance. This is quite contrary to plaintiffs' claims that the two units were at all times in such a condition that compliance was not feasible.

Considering the record as a whole, we find that the evidence does not establish that as a matter of law defendants failed to disclose a material fact in negotiating the sale or that plaintiffs were generally misled by any failure to disclose. Plaintiffs were shown to have been generally familiar with city building department requirements.

The case of *Loghry v. Capel*, 257 Iowa 285, 132 N.W.2d 417 (1965), relied upon by plaintiffs, does not require a contrary result. There the trier of fact found in favor of the plaintiffs. Here the trier of fact found against the plaintiffs. In either case, reasonable minds could have differed as to the correct result under the evidence. Under such circumstances, we should not disturb the conclusion of the trier of fact.

Plaintiffs make no argument attacking the legal sufficiency of the finding and judgment against them on defendants' counterclaim, and therefore any issue with respect thereto is deemed waived. *Ertl Co. v. Lange Plastics Co.*, supra at 99.

We have considered all issues presented and find no basis for reversal.

AFFIRMED.