IN THE COURT OF APPEALS OF IOWA

No. 6-538 / 95-1940

000075

CAMELLOTT CORPORATION,

Plaintiff-Appellant,

vs.

MICHAEL HSU, STEPHEN HSU, and ALICE CHANG,

Defendants-Appellees.

FILED
JUN 26 '97
CLERK OF SUPREME COURT

Appeal from the Iowa District Court for Story County, Carl E. Peterson, Judge.

Plaintiff appeals a district court ruling dismissing his petition for declaratory judgment. **AFFIRMED.**

Ben T. Doran of Quinn, Doran & Anderson, Boone, for appellant.

Mack D. Maffett, Ames, for appellees.

Considered by Habhab, C.J., Sackett, and Cady, JJ.

CADY, J.

The issue presented in this appeal is whether a default judgment against a vendee in a forcible entry and detainer action bars a subsequent action by the vendee to declare a contract forfeiture invalid. The district court concluded the vendee's declaratory action was barred by the prior forcible entry and detainer action. We affirm on our de novo review.

C. T. and Betty Hsu sold real estate in Ames, Iowa, in 1983 to Augustus and Betty Lartius pursuant to an installment contract. The contract required monthly payments until 2013. In 1993, the Lartius's conveyed their interest in the real estate to Camellott Corporation.

Camellott soon became delinquent in the installment payments and was served with notice of forfeiture through their registered agent. The delinquency was subsequently cured. Camellott, however, again fell delinquent and the Hsus served another notice of forfeiture on April 16, 1994. The default was not cured and an affidavit in support of forfeiture was filed on May 17, 1994.

The Hsus subsequently filed a forcible entry and detainer action against Camellott to remove them from the premises which was the subject of the forfeiture. Judgment by default was entered against Camellott on August 1, 1994. The judgment was affirmed by the district court on appeal.

Camellott filed a petition for declaratory judgment against Hsus on October 31, 1994. It asked the contract forfeiture be declared invalid, alleging defective notice of

forfeiture and acceptance of contract payments by the Hsus after the affidavit in support of forfeiture had been filed and after the default judgment had been entered. Camellott made three payments on the contract after the forfeiture notice and two payments three days after the default judgment was entered.

The district court held the adjudication of forcible entry and detainer action precluded Camellott from litigating its claims in a declaratory judgment action. It dismissed the petition.

Camellott appeals. It claims the default judgment in the forcible entry and detainer action did not preclude litigation of its claims because they were never raised or decided by the court in the forcible entry and detainer action. Additionally, Camellott claims the payments it made to the Hsus after the default judgment was entered constitute new facts that were not available at the time of the forcible entry and detainer action.

I. Claim Preclusion.

An action by a vendee to set aside the forfeiture of the vendee's interest in a real estate contract is barred by the doctrine of claim preclusion following the entry of a judgment for the vendor in an action for forcible entry and detainer involving the same real estate. *Lowery Investments v. Stephens Industries*, 395 N.W.2d 850, 853 (Iowa 1986). This is because the validity of a vendor's forfeiture of the vendee's interest in a real estate contract is necessarily resolved adversely to the vendee in the forcible entry action. *Id.* The vendor's right of possession in a forcible entry action

is dependent upon the validity of the forfeiture under Iowa Code chapter 656. *Id.* Thus, the traditional notions of res judicata or claim preclusion bar any challenge to a contract forfeiture once judgment has been entered in the forcible entry litigation. *Id. See also Palmer v. Tandem Mgmt. Services*, 505 N.W.2d 813, 816-17 (Iowa 1993).

Camellott argues this principle should not apply to this case because the forcible entry judgment was entered by default. It asserts the claims they now raise were not actually considered in the forcible entry action.

Our appellate courts recognize claim preclusion is founded on the concept that a party should not be permitted to split a claim piecemeal, but must place the entire claim or defense in issue in the first action which proceeds to final judgment. *Lowery Investments*, 395 N.W.2d at 852. Thus, as a doctrine of conclusiveness of judgment, claim preclusion is applied with equal force to default judgments. *See Lynch v. Lynch*, 250 Iowa 407, 412-13, 94 N.W.2d 105, 108-9 (1959); 50 C.J.S. *Judgment* §§ 732, 797 (1997). Camellott could have raised the claims they now raise in this action if they had defended the forcible entry action. Thus, claim preclusion applies to bar their present action.

Finally, we consider whether Camellott has raised new facts not available at the time of the forcible entry action to avoid the impact of the claim preclusion doctrine. These facts concern two contract payments made by Camellott a few days after the forcible entry judgment was entered.

It is generally recognized that claim preclusion does not apply where facts occur after the prior judgment which establish a new claim or defense. 50 C.J.S. *Judgment* § 751, at 301 (1997). However, a party cannot avoid the claim preclusion doctrine by simply alleging additional grounds or theories not presented in the first action. *Westway Trading Corp. v. River Terminal Corp.*, 314 N.W.2d 398, 401 (Iowa 1982). Moreover, any change in the underlying facts must be substantial. *Jaffree v. Wallace*, 837 F.2d 1461, 1469 (11th Cir. 1988).

In this case, the new facts do not establish new legal rights or impact the effect of the claim preclusion doctrine. Camellott sought to have the contract forfeiture declared invalid. It did not seek to have the payments returned. The defenses of compliance with the forfeiture notice, waiver, and estoppel were all available to Camellott at the time of the forcible entry judgment. Evidence that Camellott made payments to the Hsus after the forfeiture notice was given was also available. Any new facts showing some of the payments made following the forfeiture notice were also made after the default judgment was entered would not create a new the underlying defense. The relevant point in time for establishing waiver or estoppel in a forfeiture action based on the acceptance of late payments is after the notice of forfeiture. Evidence of additional payments after the forcible entry has been entered would create no new defense or rights for the vendee to avoid forfeiture of the contract.

We have considered all claims raised by Camellott. We affirm the district court.

AFFIRMED.

Habhab, C.J., concurs; Sackett, J. dissents.

SACKETT, J. (dissenting) 000081

Plaintiffs brought a declaratory judgment action seeking to have the court declare an installment sale real estate contract assigned to buyers to purchase real estate from defendants[1] had not been forfeited for several reasons, including the fact the default had been cured and defendants accepted contract payments from plaintiffs after the forfeiture was completed. The trial court denied plaintiffs the relief they sought and the majority has affirmed.

Defendants served a notice of forfeiture of real estate contract showing default in the amount of $4553.53 on April 16, 1994.[2] On May 17, 1994, defendants filed an affidavit in support of forfeiture with the county recorder. The affidavit was signed by defendants' attorney, Richard Lowther. On that same day, plaintiffs paid Lowther's trust account $6765. On June 3, 1994, plaintiffs paid Lowther's trust account $2220.05. On July 15, 1994, plaintiffs paid Lowther's trust account $2210.05.

Despite having accepted plaintiffs' payments, defendants filed a forcible entry and detainer action against plaintiffs on August 1, 1994. Defendant obtained a default

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[1] The contract entered into on December 1, 1983 was for $198,000 with $28,000 down and monthly payments commencing January 1, 1984 of $1460 including interest at 9.75 percent through November 1, 2013, with the balance due December 1, 2013. The contract had the usual provision requiring buyer to be responsible for taxes and insurance.

[2] Plaintiffs contend the notice was not properly served because it was served on an employee, not a registered agent.

judgment in the forcible entry and detainer action.[3] Three days after the default was entered, on August 4, 1994, plaintiffs made payments of $1562.24 and $2210.05 to Lowther's trust account.[4]

The trial court found plaintiffs had made all of the above payments to Lowther's trust account but resolved the declaratory judgment against plaintiffs finding the order in the forcible entry and detainer action precluded future litigation on the issue of forfeiture. The majority, in affirming, has agreed with the district court.

I do not necessarily agree with the majority that *Lowery Investments Corp. v. Stephens Indus.*, 395 N.W.2d 850, 853 (Iowa 1986), and *Palmer v. Tandem Mgmt. Servs.*, 505 N.W.2d 813, 816-17 (Iowa 1993), dictate the result reached by the trial court. I find it unnecessary to distinguish these cases. The sellers accepted payments *after* they had obtained the default judgment. This fact was not before the court at the time the default judgment was entered.

Additionally, there is no equity in allowing defendants' position to prevail.

In *Sheeder v. Lemke*, ___ N.W.2d ___ (Iowa 1997), the court said:

> Forfeiture is a harsh remedy and is not favored in either law or equity. *Lett v. Grummer*, 300 N.W.2d 147, 149 (Iowa 1981); *Babb's,*

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[3] Plaintiff filed a motion to set aside the default and the motion was denied on September 8, 1994. On November 8, 1994, the district court affirmed.

[4] The briefs report Lowther is now deceased. Defendants acknowledge he was acting as their agent.

> *Inc. v. Babb*, 169 N.W.2d 211, 212 (Iowa 1969); *Kilpatrick v. Smith*, 236 Iowa 584, 593, 19 N.W.2d 699, 703 (1945). One may make a contract that provides for forfeiture following a breach; however, courts of this state will "scan [a contractual forfeiture provision] closely" before giving it effect. *Van Hosen v. Bankers Trust Co.*, 200 N.W.2d 504, 507-08 (Iowa 1972) (forfeiture clause in employee pension plan); *LaFontaine v. Developers & Builders, Inc.*, 261 Iowa 1177, 1189-90, 156 N.W.2d 651, 659-60 (1968) (same in stock purchase agreement). The party claiming forfeiture of a real estate contract has the burden of proving facts that, based on terms of the contract, would entitle the vendor to forfeit the agreement. *Tait v. Reid*, 158 Iowa 466, 472, 139 N.W. 1101, 1103 (1913). Forfeitures will be enforced only "when those claiming them . . . show that the equities are clearly on their side." *Kilpatrick*, 236 Iowa at 593, 19 N.W.2d at 703.

Id. at ___.

The trial court, while finding (1) plaintiffs had paid amounts to defendants' attorney's trust account which I find sufficient to cure the alleged forfeiture, and (2) plaintiffs had paid $3772.29 to the attorney's trust account three days after the default judgment in the forcible entry was entered, ruled plaintiffs are estopped from bringing this action. I find no hint of equity in the trial court's ruling. The forfeiture should not be enforced. I would grant plaintiffs the relief requested.