**IN THE COURT OF APPEALS OF IOWA**

**ELMER L. BENISH**, Conservator of )
**WESLEY SIROVY**, a/k/a VACLAV SIROVY, )

Plaintiff-Appellant, )

vs. )

**SWISHPORT FARMS, INC.**, )

Defendant-Appellant. )

Filed April 26, 1983

2-517
2-67713

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Appeal from Linn District Court, Larry J. Conmey, Judge.

Plaintiff-conservator appeals from judgment for defendant in an action to set aside a contract entered into by his ward prior to his appointment. AFFIRMED.

David F. McGuire, Cedar Rapids, for plaintiff-appellant.

Robert D. Houghton and Thomas P. Peffer of Shuttleworth & Ingersoll, Cedar Rapids, for defendant-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, and Schlegel, JJ.

OXBERGER, C.J.

Plaintiff-conservator appeals from a judgment for defendant in an action seeking to set aside a contract entered into by his ward prior to his appointment. We affirm the decision of the trial court.

In 1980 plaintiff was appointed conservator for a ward who, at the age of 92, in 1977 entered into a contract with defendant corporation providing for the lease of his 77-acre farm for $4,800 per year for ten years with an option to buy six months after his death at $2,000 per acre at six percent interest to be paid in ten annual installments. The president of defendant corporation was a neighbor who had engaged in business transactions with the ward on previous occasions, one of which involved a 1971 contract for which the payments to the ward were doubled during the period of the lease in the contract at issue. Nine days prior to execution of the contract at issue, the parties to that contract executed, and then canceled by mutual agreement, a contract for sale of the 77-acre farm which differed from the contract at issue only in that the ward retained legal title to the property until his death in the contract at issue. Earlier in 1977 the ward had engaged in various other business dealings. At the time the contract at issue was executed only he and the purchaser were present. The ward's attorney represented the purchaser in drafting the contract. The ward had difficulty seeing and hearing and mental problems ultimately resulted in the appointment of plaintiff conservator. Conflicting medical and other testimony was presented as to whether he was competent at the time the contract was executed. Conflicting evidence was also presented as to whether the contract terms approximated the fair market value of the property. The trial court found no basis for setting aside the contract.

Plaintiff's appeal is based upon the following claims:

1. The ward was not competent at the time he entered into the contract.

2. The option to buy was not supported by consideration.

3. The contract was unconscionable.

4. The ward's attorney violated the Code of Professional Responsibility by acting on behalf of defendant-purchaser in the matter.

5. The contract constitutes an unreasonable restraint on alienation.

6. The contract makes a testamentary disposition of property without complying with statutory requirements.

**I. Competence.**

The law imposes a presumption, which may be rebutted, that the parties to a contract were competent when the contract was executed. Sjulin v. Clifton Furniture Co., 41 N.W.2d 721, 723 (Iowa 1950). The burden is on the party seeking to void the contract to prove by clear and convincing evidence that one of the parties to the contract "did not possess sufficient consciousness or mentality when the contract and deed were executed, to understand the import of [his] acts." (emphasis added). Waitt Bros. Land, Inc. v. Montange, 257 N.W.2d 516, 521 (Iowa 1977), quoting Costello v. Costello, 186 N.W.2d 651 (Iowa 1981). A mere showing of mental infirmity is insufficient ground to void a contract absent a showing of undue influence, fraud, or unconscionability. Waitt, at 521.

Plaintiff has failed to meet his burden here. We accord little weight to the testimony of plaintiff's expert witnesses, since Sirovy's condition in December 1977 and subsequently is of little probative value in determining his competence on May 13, 1977. See Speer v. Speer, 146 Iowa 6, 8 (1909). More damaging to plaintiff's case, however, is his testimony on deposition that Sirovy was competent to sell 44 acres of land to the airport in April 1977, and competent to enter into the land sale contract on March 4, 1977, which contract was subsequently rescinded. Given these claims, his allegation that Sirovy was incompetent on May 13, 1977, is suspect.

**II. Consideration for the Option to Buy**

An option to buy is made irrevocable if consideration is given for the option. Consideration is not insufficient merely because it is a small one—indeed, the sum of one dollar actually paid is sufficient to render the option irrevocable. See A. Corbin, Corbin on Contracts (1952).

Consideration is not limited to the tender of money. "[C]onsideration consists of some benefit or advantage accruing to one party to a contract or some loss or disadvantage incurred by the other." Bankers Trust Co. v. Economy Coal Co., 276 N.W. 16, 20 (Iowa 1937).

In the case at bar it is clear that defendant gave consideration for the option to buy. The May 4 contract, the validity of which is not challenged here, had conveyed the subject property to defendant. In exchange for the option to buy, defendant agreed to surrender its existing rights to the property and enter into a lease arrangement with Sirovy for the duration of his life. This is sufficient consideration to render the option to buy irrevocable.

**III. Unconscionability**

We find no evidence of unconscionability in the contract at issue. The parties had been friends since the 1930's and had engaged in similar business dealings with each other before. There is no evidence of any discrepancy in bargaining position between them, nor is there any evidence of coercion, fraud or misrepresentation.

Furthermore, the evidence does not suggest that the contract terms were unreasonably favorable to defendant. The rent, which averaged out to $80 per acre was reasonable in light of the fact that nearby farmland had been rented out that same year by disinterested third parties for $68 per acre and $70 per acre.

While we are persuaded by plaintiff's arguments that the sale price of $2000 per acre was somewhat below the market value of the property, we must point out that, in the absence of coercion or fraud, inadequacy of consideration is an insufficient ground to invalidate a contract. St. Peter v. Pioneer Theatre Corp., 227 Iowa 1391, 1400 (1940). A party is entitled to the benefit of his bargain. The sale price agreed to in the contract is not so unreasonable that it raises a presumption of coercion or fraud, and there is no evidence in the record to support a finding that Sirvoy was coerced or defrauded in any way by defendant.

**IV. Violation of the Code of Professional Responsibility**

Plaintiff argues that the contract should be voided on the ground that the attorney who drafted it did so in violation of DR 5-105 of the Code of Professional Responsibility. While we are of the opinion that the conduct of the attorney was not in violation of the Code, we need not determine that issue here. The position urged by plaintiff, that a contract which has been executed by two competent partis is void if its scrivener has violated the Code of Professional Responsibility by drafting the document, is a novel one, and totally unsupported by authority. We decline the invitation to provide any expansion of accepted contract doctrine.

**V. Unreasonable Restraint on Alienation**

"An agreement granting the tenant an option to purchase the leased premises is not on its face invalid as an unreasonable restraint on alienation." 61 Am. Jur. 2d Perpetuities and Restraints on Alienation § 120, pg. 129 (1972). It may be held invalid, however, if it violates the rule against perpetuities, which provides that a future interest must vest within 21 years of a life in being at the time the interest was created. Defendant's option to buy was to be exercised six months after Sirovy's death. It therefore did not violate the rule against perpetuities.

Plaintiff relies on the decision in Trecker v. Langel, 298 N.W.2d 289 (Iowa 1980). Trecker is not applicable, however, since it deals with preemptive rights rather than options.

**VI. Noncompliance with Statutory Provisions**

Plaintiff argues that the farm lease with option to buy did not comply with the statutory provisions for the testamentary disposition of property. It did not need to, however, for it was a valid contract and not a testamentary disposition of property.

The contract at issue in this case was executed by competent parties for consideration. There is no evidence to suggest it was procured by coercion, deceit or fraud, nor are the terms unconscionable on their face. On these facts the trial court refused to set this contract aside. Accordingly, we affirm that decision.

AFFIRMED.