



IN THE COURT OF APPEALS OF IOWA

SECURITY SAVINGS BANK,)
Appellant,)
v.)
LAMSON AMERICAN HOMES, INC.,)
et al.,)
Appellee.)

Filed February 28, 1978

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2-60004

Appeal from Marshall District Court - Milton D. Seiser, Judge.

In buyer's action for return of purchase price, the owner of the goods, Security Savings Bank, and its sales agent, Lamson American Homes, Inc., dispute ultimate liability. Affirmed.

Max H. Buck, of Grimes, Peterson, Buck & Schoell, of Marshalltown, for appellant Security Savings Bank.

Garold F. Heslinga, of Heslinga & Heslinga, of Oskaloosa, for appellee Lamson American Homes, Inc.

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

PER CURIAM

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This appeal is the last phase in a series of transactions begun in 1972 with the sale of a mobile home by defendant, Lamson American Homes, Inc., to Earl E. Uhde. Upon that purchase, MoAmCo Corporation arranged financing between Uhde and plaintiff Security Savings Bank. When Uhde defaulted, the home was repossessed and placed on Lamson's lot for resale. At this juncture the plaintiff bank acquired title to the home. After the mobile home was placed on the Lamson lot, Nick DeRonde became interested in its purchase. DeRonde reached a purchase agreement with Lamson, which included transportation of the home to DeRonde's lot, and installation thereon. DeRonde fulfilled his part of the bargain by paying Lamson \$4800 in cash. Lamson eventually placed the home on DeRonde's lot, but delivery was never completed because utilities were never hooked up, DeRonde was never given keys which fit the home's locks, and skirting and stairs were never attached. The problem of completing delivery was alleviated when the mobile home was blown away in a wind storm.

After the trailer's destruction, the bank commenced this action. DeRonde filed a cross-petition against Lamson, and counterclaimed against the bank. Trial court entered summary judgment against Lamson and in favor of the bank for, inter alia, the \$4800 which Lamson had collected from DeRonde for the mobile home. The bank then dismissed as to all of the other parties. Lamson subsequently paid the judgment thus rendered.

At this point the specific controversy which has culminated in this appeal arose. After the bank had dismissed its actions, these disputes remained: (1) DeRonde's claim against Lamson, asserted by cross-petition; (2) his claim against the bank, raised by counterclaim; (3) Lamson's claim that the bank would be liable to it for any amount which Lamson was found to owe DeRonde, stated by cross-petition.

The case was then tried to the court, with DeRonde designated as plaintiff and the bank and Lamson as defendants. Trial court determined that DeRonde was entitled to the return of his \$4800 and rendered judgment against Lamson for that amount. The court then decided that it had erred in awarding the summary judgment to the bank against Lamson insofar as the mobile home price was concerned. It therefore held that the bank was liable to Lamson for \$4800 plus interest.

The only issue on this appeal is whether the bank is liable to Lamson as adjudged. The ultimate result reached by trial court is correct. When the trailer was destroyed, the bank, through Lamson, was unable to complete its bargain. DeRonde was therefore entitled to get his money back. Section 554.271(1), The Code. Lamson was not the seller; the bank was. This is evident due to the fact that the bank held the title to the trailer, not Lamson. The seller must be able to pass title to the goods sold. *Eldridge v. Kuehl*, 27 Iowa 160, 173 (1869); cf. § 554.2401, The Code. Lamson was merely a conduit; it had nothing to sell, except services. Any liability arising for failure to perform those services is not in issue here.¹ It was probably error for the court to find Lamson liable at all. However, that portion of the decision is not contested here. The end result of trial court's decision is correct: the bank has been required to disgorge the \$4800 it collected from DeRonde.

AFFIRMED.

¹ The claim by the bank against Lamson on which summary judgment was granted was for conversion. It appears likely that the summary judgment was correct when rendered, because Lamson had failed to pass the funds on to the mobile home's owner, the bank. Lamson should not have been involved in the present suit, since this dispute was actually between the bank and DeRonde. This action was simply for return of the purchase price. DeRonde was entitled to recover the mobile home's price from the party who held it, the bank.

The bank has now lost both the mobile home, and the price of the mobile home. That loss appears to have occurred due to Lamson's failure, in its capacity of acting for the bank, to complete delivery of the trailer, and thus shift the risk of loss. The bank, however, has never pleaded or attempted to prove any such theory of recovery against Lamson.