IN THE COURT OF APPEALS OF IOWA

VINCENT KOPACEK,	)	
Appellee,	)	Filed January 25, 1979
vs.	)	
EUGENE LEONARD AND IRENE M. LEONARD,	)	770 / 2-61643
Appellants.	)	

Appeal from Humboldt District Court - Newt Draheim, Judge.

Defendants appeal judgment ordering specific performance of a contract to sell corporate shares to plaintiff. - Affirmed.

H. A. Stoebe, Humboldt, for Appellants.

James L. Kramer, of Johnson, Burnquist, Erb, Latham & Gibb, P. C., Fort Dodge, for Appellee.

Heard by Oxberger, C. J., and Snell, Carter and Johnson, JJ. Donielson, J., takes no part.

PER CURIAM

Defendants Eugene and Irene Leonard appeal judgment ordering specific performance of a contract to sell all their capital stock in a wholly owned corporation to plaintiff Vincent Kopecek. The Leonards contend the award of specific performance was improper for a variety of reasons. Initially we note that since actions for specific performance are in equity, our review thereof is de novo. Janssen v. North Iowa Conference Pensions, Inc. of Methodist Church, 166 N.W.2d 901, 903 (Iowa 1969). We affirm.

Unconscionability

Sellers (Leonards) first argue that the contract at issue herein is not specifically enforceable because it is harsh, inequitable and oppressive. They contend the contract provided them with insufficient security. The record shows, however, that sellers repeatedly refused to specify the type of security they desired. Buyer suggested to them that his father, a man of considerable wealth, would guarantee the contract. On the closing date, buyer even offered to pay the purchase price in full, rather than in installments. Sellers refused both offers. Accordingly, we reject their complaint about any alleged lack of security. Sellers also claim the contract places them at buyer's mercy in the settlement of outstanding claims. In actuality, the contract provides for sellers' warranty that there are no undisclosed or contingent liabilities. The 30 day settlement procedure will only take effect in the event that sellers fail to fully disclose their liabilities. We have examined the contract as a whole and find nothing therein so grossly unfair or one-sided as to deprive buyer of an equitable remedy. See generally Larson v. Smith, 174 Iowa 619, 156 N.W. 813 (Iowa 1916).

Lack of Mutuality

Sellers next contend the contract lacks mutuality of obligation. The question for determination is whether the promises made by the buyer were illusory because he could avoid performance at will. The test of mutuality of obligation is to be applied at the time of enforcement rather than the time the promises were made. See First Wisconsin National Bank of Milwaukee v. Oby, 52 Wis. 2d 1, 188 N.W.2d 454, 458 (1971). The instant contract was made subject to buyer obtaining adequate financing and certain franchise agreements. Buyer also had the right to rescind the contract if an audit revealed book value of less than $250,000. On the date of performance, buyer tendered his down payment thereby eliminating the condition of adequate financing. From the record it appears that sellers were responsible for buyer's inability to secure all of the required franchises. It further appears this condition was inserted for buyer's protection and he has waived fulfillment of same. As far as the power of rescission is concerned, buyer clearly had no right to rescind the contract on his own whim but only upon occurrence of the specified condition. "A contract is not made invalid for lack of 'mutuality' by the fact that one of the parties and not the other is given the option of terminating the contract on some condition, such for example as the failure of the other party to render satisfactory performance." 1A A. Corbin, Contracts § 265 (1963).

Dependence on Acts of Third Parties

Sellers assert the contract cannot be enforced because of a condition obliging sellers to obtain the transfer of certain franchises. Since such transfers are within the control of third party franchisors, sellers argue that performance is impossible. Again, as noted above, the provision for transfering the franchises was included for buyer's protection and he has waived this condition.

Ambiguity

Sellers contend the contract is hopelessly ambiguous in several respects - the forfeiture clause, the prepayment option, a mistake in naming the corporation, and the deduction of $15,000 for automobiles and cash. We have examined each of these provisions and find them sufficiently definite to be enforceable. The fact that the terms embodied in the contract differ from sellers' memory of the negotiations does not render the contract ambiguous.

Ineffective Execution

In this division of their argument, sellers maintain that no contract ever existed between the parties since sellers never authorized delivery of the document. Sellers do not deny signing the contract. They allege that buyer's attorney acquired possession of the signed contract from sellers' place of business without their knowledge or consent. Sellers overlook the fact that a manual transfer of the instrument is unnecessary to constitute good delivery. Hayne v. Cook, 252 Iowa 1012, 1022, 109 N.W.2d 188, 193 (1961). We find there is ample evidence of sellers' intent that the instrument take effect as a valid obligation. They signed the contract and made no protest when buyer's attorney took physical possession of same. After signing the instrument, sellers allowed buyer to work at their store to familiarize himself with its operation. Furthermore, they pursued their obligation to secure certain franchise transfers. The actions of the sellers speak louder than their belated verbal protests.

Fraud

Finally, sellers seek to avoid specific performance on the ground that they were fraudulently induced to enter into the contract by the alleged misrepresentations of buyer's attorney. The record, however, does not substantiate this claim. It is true that sellers were not represented by legal counsel during the negotiations, but the attorney who was present made it clear that his client was the buyer. Mr. Leonard is an able, experienced businessman. The parties examined the proposed contract in careful detail, "paragraph by paragraph." There was no fiduciary relationship between sellers and the attorney for the buyer. We find no evidence of fraudulent inducement.

Parenthetically, it should be pointed out that we have examined, de novo, all issues raised by appellants regardless of whether trial court specifically ruled on them. Finding no merit in these assertions, we affirm the trial court's order.

AFFIRMED.