IN THE COURT OF APPEALS OF IOWA

No. 9-352 / 88-1691

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C. CARLETON FREDERICI, JR., and **KAREN A. ZDYCHNEC,** a/k/a **KAREN A. NEILL,**

Plaintiffs-Appellants,

vs.

TOY NATIONAL BANK OF SIOUX CITY,

Defendant-Appellee.

Appeal from the Iowa District Court for Woodbury County (94179C), Richard J. Vipond, Judge.

Plaintiffs appeal a district court decree dismissing their petition seeking a forfeiture of a lease. **AFFIRMED.**

Jonathan C. Wilson and Deborah Tharnish Craig, of Davis, Hockenberg, Wine, Brown, Koehn & Shors, Des Moines, for plaintiffs-appellants.

Robert R. Eidsmoe, of Eidsmoe, Heidman, Redmond, Fredregill, Patterson & Schatz, Sioux City, for defendant-appellee.

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

PER CURIAM

Plaintiffs appeal a district court decree dismissing their petition seeking forfeiture of a lease. They allege that defendant, the lessee, failed to notify them of new construction done on the property in 1980. Since the lease requires notification, plaintiffs contend the district court erred in failing to forfeit the lease.

Our scope of review is de novo. Iowa R. App. P. 4. We affirm the district court.

The lease at issue is a ninety-nine-year lease, entered into in 1938, with rent of $125 per month. The property is a lot in the downtown business district of Sioux City. According to the terms of the lease, the original lessee agreed to construct a building on the lot at his own expense. He put up a one-story commercial building that was used as a hardware store until 1960.

In 1960 the original lessee subleased the lot to defendant. Defendant built a walk-in and drive-in bank building after the original lessors were given notice of the plans and approved them. In 1980 defendant removed the bank building and constructed a smaller facility to be used only for drive-in banking. Defendant did not give notice to plaintiffs, who were the successors in interest to the original lessors. Defendant's officers were unaware of the lease provisions requiring them to provide plans, specifications, and cost estimates to the plaintiffs.

Plaintiffs first learned of the 1980 construction in 1983. They notified the defendant that it had breached the lease and the lease would thus be terminated.

Plaintiffs' main contention is that they are entitled to forfeiture because the defendant did not give notice and provide plans as required by the lease. The district court found that the purposes of the notice requirement had been met by the time plaintiffs discovered the new construction, and we agree.

The lease requires any building constructed by the lessee to have a value of $15,000 or greater, and to be fireproof and "erected in a good workmanlike manner," in compliance with all laws and ordinances. Construction must be completed within sixty days. The lease also requires the lessees to promptly pay for any construction work done on the premises, so lessors will not have their property subjected to mechanic's liens. Plaintiffs admit that all of these provisions were met by defendant, except the one regarding value. Plaintiffs contend the value of the building built in 1980 is less than $15,000.

The facilities cost over $127,000 when constructed in 1980. After reviewing the record, we agree with the trial court's determination that the value of the building is at least $15,000.

The purpose of the various notification provisions is to allow the lessors to make sure any new construction will comply with the lease provisions listed above. While the plaintiffs were not afforded that opportunity here, the end result did comply with all lease requirements. The purpose of the notification provisions was achieved by 1983, when the plaintiffs discovered the new construction.

Plaintiffs also contend the lease requires defendant to obtain their consent for any new construction. We find no provision in the lease to support this argument. Plaintiffs argue that if consent is not required, the notice provisions would be meaningless. We believe those provisions merely help the lessor to protect itself if the lessees were planning to build in violation of the lease. As we stated above, the construction here is in total compliance with the lease. Thus, even if consent were required, plaintiffs would have had no reasonable grounds on which they could have withheld their consent. "An agreement will not be given an interpretation which places one party at the mercy of another unless the contract clearly requires that result." Midwest Management Corp. v. Stephens, 291 N.W.2d 896, 913 (Iowa 1980).

It is a well-established rule that equity abhors a forfeiture. Jamison v. Knosby, 423 N.W.2d 2, 4 (Iowa 1988); Roshek Realty Co. v. Roshek Bros. Co., 249 Iowa 349, 358, 87 N.W.2d 8, 13 (1957). Substantial compliance with the terms of a lease will avoid a forfeiture. Beck v. Trovato, 260 Iowa 693, 696-97, 150 N.W.2d 657, 659 (1967); Bentler v.

Poulson, 258 Iowa 1008, 1010, 141 N.W.2d 551, 552 (1966). We find there was substantial compliance with the terms of the lease and plaintiffs were not damaged by the failure of notice. Therefore, plaintiffs are not entitled to forfeiture of the lease with defendant. See Maytag Co. v. Alward, 253 Iowa 455, 465-66, 112 N.W.2d 654, 660 (1962); Folkers v. Southwest Leasing, 431 N.W.2d 177, 181 (Iowa App. 1988). The decision of the district court is affirmed.

AFFIRMED.