FILED
DEC 17 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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GENE PHELAN,	)	
Plaintiff-Appellee,	)	
vs.	)	
HARRY V. FOOTE and BARBARA E. FOOTE,	)	7-229 86-1317
Defendants-Appellants.	)	

Appeal from the Iowa District Court for Woodbury County (No. 89048), Dewie J. Gaul, Judge.

The defendants appeal the judgment finding them liable for the breach of a real estate contract. **AFFIRMED.**

Sam S. Killinger of Kindig, Beebe, Rawlings, Nieland, Probasco & Killinger of Sioux City for defendants-appellants.

Patrick N. Murphy of Dull, Murphy & Dull of Le Mars for plaintiff-appellee.

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

OXBERGER, C.J.

The defendants, the Footes, appeal the judgment finding them liable for the breach of a real estate contract. They present two issues for review: (1) the trial court's finding that the defendants showed no sufficient reason justifying their noncompliance with the agreement is not supported by substantial evidence; and (2) the trial court erred in its conclusion of law that the plaintiff made an absolute and unconditional tender of payment as called for by the agreement. We affirm.

Plaintiff Phelan entered into a real estate contract in 1980 to buy the Footes' farm. Phelan did not make the required down payment and the Footes brought suit. On February 24, 1982, the parties reached a settlement. The terms of the settlement were read into the court record.

The settlement provided that Phelan would have a new agreement prepared and recorded by March 10, 1982. The settlement also provided that Phelan would take possession of the land on March 1, 1983, after remitting his $62,000 principal payment. The only remedy available to the Footes under the settlement would be forfeiture under the relevant statutes. The remaining rights would be the same as the prior contract. Phelan also paid the Footes $50,000 at the settlement with an additional $5,000 to be paid shortly thereafter. All parties on the record agreed to the settlement.

The contract was timely drawn, but the Footes refused to sign because of the exclusive forfeiture remedy. Despite the Footes' refusal to sign, Phelan's attorney, on February 18, 1983, sent a letter to the Footes' attorney notifying him that Phelan was prepared to perform in accordance with the settlement. The Footes refused to close the deal and Phelan filed suit.

Our scope of review is for the correction of errors at law. Iowa R. App. P. 4. Since this matter was tried to the court, the court's findings of fact have the force of a special verdict and are binding on us if supported by substantial

evidence. Iowa R. App. P. 4; Iowa R. App. P. 14(f)(1). Substantial evidence is evidence that a reasonable mind would accept as adequate to reach a conclusion. C.F. Sales, Inc. v. Amfert, Inc., 344 N.W.2d 543, 553 (Iowa 1983). We view the evidence in the light most consistent with the judgment. R.E.T. Corp. v. Frank Paxton Co., 329 N.W.2d 416, 419 (Iowa 1983). Our deference to the trial court's finding of facts does not extend to its determinations of law. Id.

The first issue raised by the defendants is whether the trial court's finding that the Footes did not show sufficient justification for not complying with the settlement agreement is supported by substantial evidence. The trial court found that the Footes' refusal was based on their "perverse insistence that the check for $62,000 be in their hands before they signed the contract."

The Footes argue they did not comply because they did not accept the exclusive forfeiture remedy, and because they distrusted Phelan. In contrast to this, the trial court was shown evidence of the Footes' on-the-record consent to the settlement agreement, Phelan's performance under the agreement, and Phelan's letter showing he was prepared to perform under the agreement. The court also specifically found the Footes received a copy of the letter prior to the anticipated closing.

This evidence is clearly substantial, and is sufficient to support the trial court's decision. The simple fact of the matter is that the Footes failed to comply with the settlement agreement, while Phelan fully performed under the agreement. We hold the trial court's finding the Footes' noncompliance was unjustified is supported by substantial evidence and is affirmed.

The defendants also contend the trial court erred in concluding as a matter of law that Phelan made an absolute and unconditional tender of payment of $62,000 under the terms of the agreement. The court found that the February 18, 1983 letter was a sufficient tender to comply with the settlement agreement.

The Footes now contend that Phelan was unable to perform at the time he offered to pay. They argue he never produced a check. Phelan replies that he was, in fact, able to make the $62,000 payment.

Iowa law provides that "an offer in writing to pay a particular sum of money, or to deliver a written instrument or specific personal property, if not accepted, is equivalent to the actual tender of money . . . ." Iowa Code § 538.6 (1985); Swanson v. Baldwin, 250 Iowa 342, 345, 93 N.W.2d 740, 743 (1959). To be effective a tender must be absolute and unconditional. Lyon v. Willie, 288 N.W.2d 884, 894 (Iowa 1980); Miller v. Merritt, 233 Iowa 230, 237, 8 N.W.2d 726, 730 (1943).

The trial court found the February 18, 1983 letter was clear and unequivocal as to Mr. Phelan's tendering performance. The Footes did not present any evidence indicating they never received the letter. They also did not show that Phelan was unable to make the $62,000 payment. In the absence of such a showing, and under Iowa law, we cannot conclude the trial court's finding was erroneous. We therefore hold the trial court's finding that an absolute and unconditional tender of payment was made was correct.

AFFIRMED.