IN THE COURT OF APPEALS OF IOWA

No. 3-065 / 92-276

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FILED
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CLERK SUPREME COURT

PAUL S. KURTZ,

Appellant,

vs.

HENRY J. TREPP,

Appellee.

Appeal from the Iowa District Court for Black Hawk County, Roger F. Peterson, Judge.

The plaintiff originally brought suit in 1982 seeking damages against the defendant for breach of contract and the wrongful conversion of rental property jointly owned by the parties. **AFFIRMED IN PART AND REVERSED IN PART.**

L. Don Snow of Reed-Merner and Mershon, Snow & Knock, Cedar Falls, for appellant/cross-appellee.

Bruce B. Zager of the Zager Law Office, Waterloo, for appellee/cross-appellant.

Heard by Oxberger, C.J. and Donielson and Sackett, JJ. Donielson, J., takes no part.

OXBERGER, C.J. 000306

This is the third appeal in this case involving an investment property partnership. The issue central to this appeal is the correct measure of damages to be awarded.

In 1971, Paul Kurtz and Henry Trepp formed a partnership to purchase potential investment property. The parties agreed they would jointly own and manage the property. The parties incorporated under the name of T & K Lands, Inc.

Sometime in 1973, a dispute arose between the parties. In 1975, Trepp caused all of the stock to be issued to him and all of the acquired real estate to be titled in his name. He also changed the name of the corporation to Sunny Hills, Ltd.

In 1981, after Kurtz discovered Trepp had conveyed the property, he filed a petition seeking damages. Trepp counterclaimed on the ground that Kurtz had failed to repay a personal loan. The district court granted summary judgment in favor of Trepp. The court of appeals reversed and remanded. See Kurtz v. Trepp, 375 N.W.2d 280 (Iowa App. 1985).

On remand, the district court found in favor of Kurtz on his claim and in favor of Trepp on his counterclaim. The court determined that Kurtz's damages were the fair market value of the stock at the time of the conversion. The stock's value was equal to the value of the real estate. Thus, the court awarded Kurtz one-half the value

of the real estate plus interest at the rate of ten percent per year.

The court also awarded Trepp the amount of the unpaid loan plus ten percent interest. Both parties appealed. The court of appeals determined the district court had incorrectly calculated the damages. The court of appeals held that the proper calculation of damages was the "benefit of the bargain" rather than one-half of the fair market value at the time of the conversion. See Kurtz v. Trepp, No. 89-601 (Iowa App. June 26, 1990). The court of appeals determined that the benefit of the bargain would be the net rental value of the property from the time of the conversion plus interest. The court of appeals stated, after the deduction of expenses, the net rental income from 1975 to 1987 amounted to $24,524.14. The court of appeals also stated the plaintiff was entitled to one-half the present value of the properties.

On remand, the district court determined that the court of appeals based its net income calculations on one of the plaintiff's exhibits. The district court determined that this exhibit showed excess legal fees for the years 1988 through 1990 and the first quarter of 1991. After making the adjustment for the excess attorney fees, the court awarded Kurtz $27,126.39 for his one-half of the net rental income. The court determined that the investment properties were currently worth $81,000. Offsetting only Trepp's claim on the unpaid personal loan, the court

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entered judgment in Kurtz's favor in the amount of $65,772.13 with interest. Both parties appeal.

Because this is an action at law, our review is for correction of errors at law only. Iowa R. App. P. 4. We are bound by the trial court's findings of fact if supported by substantial evidence. Iowa R. App. P. 14(f)(1).

Kurtz first contends the district erred in allowing a deduction for depreciation in determining the net rental value of the property. We previously determined the net rental income from the property was $24,524.14 plus interest, for the years 1975 through 1987. See Kurtz v. Trepp, No. 89-601 (Iowa App. June 26 1990). This is the law of the case and we will not now reopen the issue for those years previously determined. See e.g. Feller v. Scott County Civil Serv. Comm'n, 482 N.W.2d 154, 159 (Iowa 1992). We thus reverse the district court's determination of the net rental value of the property and reinstate our previous judgment of $24,524.24 plus interest for the years 1975 through 1987.

We did not determine the net rental income from the property for the years 1988 through April 1991 in our previous opinion as it was not properly before us. The district court determined Kurtz's share of the net rental income for those years as follows: $1792.50 for 1988, $1545 for 1989, $1590 for 1990 and 578.50 for the first quarter of 1991. In so doing, the district court determined the

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net rental income for the years 1988 through April 1991 in the same manner we had previously determined the net rental income for the years 1975 through 1987. Thus, Kurtz's share of the net rental income for the years 1988 through April 1991 is $5506 plus 10 per cent interest. We find no error in the district court's computation and we affirm.

Trepp cross-appeals, contending the district court committed error in failing to allow him a deduction for attorney fees and legal expenses. Trepp attempts to relitigate issues regarding net rental income already addressed in our previous opinion. Once again, the law of the case governs and we decline further reconsideration of those issues.

Trepp's remaining contentions are not supported by authority. Accordingly, pursuant to Iowa R. App. P. 14(a)(3), we will not consider these issues further.

AFFIRMED IN PART AND REVERSED IN PART.