

FILED

MAY 31 1988

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

JOHN A. McGEE and ERMA McGEE,)

Plaintiffs-Appellees,)

vs.)

DONALD DAMSTRA,)

Defendant-Appellant.)

Filed May 31, 1988

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8-134
87-667

Appeal from the Iowa District Court for Monroe County (No. CE-20648-0486), Richard J. Vogel, Judge.

Defendant appeals from the district court's ruling that the sellers are entitled to the remedy of specific performance. **REVERSED AND REMANDED.**

Timothy A. Scherle and Thomas J. Whorley of Wolff, Worley, DeHoogh & Thompson, Sheldon, for defendant-appellant.

Marvin V. Colton of Colton Law Office, Albia, for plaintiffs-appellees.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ.

DONIELSON, J.

The defendant, a buyer of real estate who defaulted on a purchase contract, appeals from the district court's ruling that the sellers are entitled to the remedy of specific performance. We reverse and remand.

In 1981 the McGees sold sixty-five acres of farmland to Damstra on contract. The contract provided:

10. FORFEITURE AND FORECLOSURE. If Buyers fail to perform this agreement in any respect, time being made the essence of this agreement, then Sellers may forfeit this contract as provided by Chapter 656 of the Iowa Code and all payments made and improvements made on said premises shall be forfeited. Sellers may not declare the full balance owing due and payable and proceed by suit at law or in equity to foreclose this contract.

The word "not" in the second sentence was not in the original form, but was inserted to prohibit foreclosure. The last portion of the paragraph and sentence has been dashed out. That portion of the form read "in which event Buyers agree to pay costs and attorney fees and any other expense incurred by Sellers. It is agreed that the periods of redemption after sale on foreclosure may be reduced under the conditions set forth in Sections 628.26 and 628.27, Code of Iowa." The contract was written on a standard Iowa Bar Association form and provided for a purchase price of \$130,000 with a down payment of \$38,000 and annual payments of \$2,500 plus nine percent interest until January 1, 1991, when the entire balance becomes due. After making the down payment and several annual installments, Damstra defaulted on the contract after the January 1, 1985 payment. The McGees filed a petition in equity seeking specific performance on the contract. The trial court found in their favor.

On appeal, Damstra contends that altered Paragraph 10 of the contract makes forfeiture the sole remedy available for default and that such was the understanding of the parties. To support that position, he offers parol evidence from a witness who testified he explained the forfeiture provisions to all parties.

In contradiction to that testimony, the McGees claim that the witness never explained the alterations in Paragraph 10 to them and that they never intended to limit their remedies to forfeiture. They contend that the altered contract merely eliminates foreclosure as a possible remedy and does not prohibit the McGees from seeking specific performance.

Our scope of review is de novo. Iowa R. App. P. 4. In the construction of written contracts, the cardinal principle is that the intent of the parties must control; and except in cases of ambiguity, this is determined by what the contract itself says. Iowa R. App. P. 14(f)(14). The real estate contract involved could have been more artfully drawn; however, we find that forfeiture was meant to be the sole remedy available to the McGees.

Due to the conflicting opinions of the parties regarding the intent of the "forfeiture and foreclosure" paragraph, parol evidence was properly allowed. Damstra's witness testified he informed the McGees of the changed provision in the contract and that the only remedy available to them upon default by Damstra was the remedy of forfeiture. He also testified that the alteration was an important selling point in the transaction between the parties.

We find the contract language and parol evidence combined show that the McGees were not entitled to the remedy of specific performance and were limited in their remedy to forfeiture. Accordingly, we reverse the district court and remand for proceedings consistent with this opinion.

Determination of this case moots other matters before the courts and makes the contempt proceeding and judgment a nullity.

REVERSED AND REMANDED.