FILED
MAY 25 1982
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

BENJAMIN CURTIS BUEHLER and MARILYN BUEHLER, Husband and Wife,

Plaintiffs-Appellees,

LEONARD VON EHWEGEN and VIOLA VON EHWEGEN,

Defendants-Appellants.

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2-147
2-66724

Appeal from Sac District Court - James C. Smith, Judge.

Defendants appeal from a trial court order granting plaintiffs specific performance of a contract which gave plaintiffs an option to buy eighty acres of farmland from defendants. - AFFIRMED WITH MODIFICATIONS.

Collin J. McCullough, of McCullough Law Firm, Sac City, for defendants-appellants.

Charles A. Schulte, of Schulte & Graven, Sac City, for plaintiffs-appellees.

Submitted to Oxberger, C.J., and Donielson and Carter, JJ.

PER CURIAM

Defendants appeal from a trial court order granting plaintiffs specific performance of a contract which gave plaintiffs an option to buy eighty acres of farmland from defendants. We affirm with modifications.

On July 28, 1975, plaintiffs purchased a 160 acre farm from defendants, and leased another eighty acres from them. The lease contained a provision which gave them an option to buy the eighty acres which they were leasing for $80,000 during the term of the lease. Plaintiffs had to give written notice before March 1, 1979, to exercise the option, and the option was "subject to [the] contract of this date" for the purchase of the 160 acre tract.

In the fall of 1978 plaintiffs began investigating ways to finance purchasing the eighty acres, and on February 27, 1979, they tried to give defendants written notice that they were exercising the option. The defendants refused to sign the option, so the plaintiffs had the defendants served with a "notice of exercise of option" on February 28, 1979. The plaintiffs did not tender any money with the notice.

When subsequent negotiations between the parties did not yield any agreement, the defendants declared the option void because no cash had been tendered with the option exercise. Plaintiffs filed suit, and requested specific performance.

After trial to the court, the court granted plaintiffs specific performance. The court decided that because the contract did not limit the method of exercising the option, plaintiffs' exercise was effective. The court directed that payment for the eighty acres should be similar to the payment schedule for the 160 acre tract, and set up a schedule for the parties to follow.

The defendants appealed, arguing that the contract required full payment before March 1, 1979, and that since plaintiffs tendered no money with their

option, the option was not properly exercised. The defendants also argue that the court made a new contract for the parties by setting up the repayment terms of the contract.

I. The options clause in the contract provided as follows: "In addition to the lease herein the tenants shall have the option to purchase the premises for $80,000 during the lease period by giving notice in writing to landlords before March lst of following crop year. This lease & option are subject to contract of this date for N.E. 1/4 Sec. 7-87-36."

The parties do not agree on what plaintiffs had to do to effectively exercise the option. Defendants argue that written notice and tender of the full contract amount was required, while plaintiffs contend, and the trial court agreed, that notice in writing was all that was required before March 1, 1979.

The disagreement can be resolved only by discerning and interpreting the meaning of the disputed contract terms which are set out above. "The only fixed rule regarding the manner of the exercise of an option under a contract granting it, is to discover from the language of the instrument, construed in the light of competent parol testimony, the intent of the parties with reference thereto." Lyon v. Willie, 288 N.W.2d 884, 888 (Iowa 1980), quoting Breen v. Mayne, 141 Iowa 399, 403, 118 N.W. 441, 443 (1909).

Plaintiffs testified that the initial intention of the parties in 1975 was to devise a method for plaintiffs to purchase the remaining eighty acres in the future when they could afford to do so. They included an option clause in the contract which specified that written notice was required. Plaintiffs complied with that requirement.

Despite defendants' testimony that they intended plaintiffs had to pay the full amount before March 1, 1979, they tried to negotiate after that date for different terms, including a higher interest rate. The defendants did not have the

abstract on the property continued until after March 1, 1979, so they would not have been able to effect a sale before that date in any event.

Given that plaintiffs complied with the one requirement which was clearly stated in the options clause, and that they were getting financing for the eighty acres, we agree with the trial court's interpretation of this matter. The trial court discerned the intentions of the parties and interpreted the disputed contract clause correctly. Specific performance is justified, and we affirm the trial court's ruling on this point. However, we direct that plaintiffs pay defendants ten percent interest on the principal beginning from March 1, 1979.

II. Defendants also argue that the trial court made a new contract for the parties when it set out and directed the terms of payment for the property. While we disagree with the trial court's directions for payment, we do not believe it made a new contract for the parties.

The trial court was influenced by the language in the contract which specified that the lease and option were subject to the contract for the 160 acre farm sale. The trial court evidently believed that that phrase meant that when and if plaintiffs exercised the option, they would get the same terms from defendants on the eighty acres that they got on the 160 acre sale. We think the phrase,"the lease and option are subject to" more correctly means that unless the contract for the 160 acre tract is adequately performed, the lease and option both fail. The lease and option are therefore subject to the performance of the original contract.

Under our interpretation, no installment contract terms can be specified by the court. Full cash payment is required by plaintiffs unless they arrange other terms with the defendants. Such payment shall include payment of the interest for which we have previously indicated the plaintiffs are responsible. We interpret the agreement to provide a reasonable period of time in which payment may be

tendered. In view of the uncertainties which have been brought about as a result of this litigation, we conclude that plaintiffs shall have ninety days from the issuance of the procedendo within which to tender payment in full.

III. The parties arranged to have the plaintiffs continue farming the land while this dispute was being settled. Plaintiffs ask that all crops grown on the land since March 1, 1979, be declared their property. Since we are granting specific performance on the contract to plaintiffs, all crops grown since March 1, 1979, are their property.

AFFIRMED WITH MODIFICATIONS.