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IN THE COURT OF APPEALS OF IOWA SUPREME COURT

CHARLES P. SMITH,	)	
Plaintiff-Appellant,	)	Filed June 24, 1980
vs.	)	
COUNTRY MANOR, INC.	)	0-151
Defendant-Appellee.	)	2-63479

Appeal from Black Hawk District Court - Carroll E. Engelkes, Judge.

Appellant appeals judgment denying specific performance. - AFFIRMED.

C. Kevin McCrindle, of McCrindle, Bergstrom & Sindlinger, Cedar Falls, for plaintiff-appellant.

Charles F. Hinton, Waterloo, for defendant-appellee.

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

Plaintiff, Charles P. Smith, appeals from a judgment for defendant, Country Manor, Inc., in an action for specific performance of a contract for the sale of real estate. We affirm.

Plaintiff-buyer filed this suit in equity on June 2, 1978, seeking defendant-seller's performance on a real estate contract. The court below heard the case in two segments, the first being on hearing defendant's motion for summary judgment on the basis that plaintiff's failure to secure financing by the date specified in the written agreement rendered the contract void. Upon hearing plaintiff's evidence, the court overruled the motion on December 19, 1978. The defendant's case as well as plaintiff's rebuttal evidence was presented on February 22, 1979. The court filed its findings, conclusions and decision on April 9, 1979, holding that the contract was no longer enforceable by the plaintiff. Smith appeals that decision and our review of this matter is de novo. Iowa R. App. P. 4.

The trial court found that Smith had breached express terms of the agreement in not tendering the balance payment on or before a date specified in the agreement. Smith claims his offer to close made four days after the specified date constituted adequate performance. He claims that the parties did not intend time to be of the essence despite the printed clause to that effect in the contract. Smith argues that this clause was negated by other portions of the contract and by circumstances of the parties to the sale. He contends the settlement date provided an insufficient time to complete closing arrangements. Smith argues the sale was between the owner of a real estate company and one of his salesmen, therefore a situation where procedures were less formal.

Iowa law has long honored express provisions in a contract providing that time is of the essence, Matthews v. Gilliu, 1 Iowa 242 (1855); First Trust Joint Stock Land Bank of Chicago v. Hanlon, 223 Iowa 440, 273 N.W. 114 (1937). These clauses will be enforced as to performances for which a definite time is specified. Haynes v. Dairyland Mutual Insurance Company, 199 N.W.2d 83 (Iowa 1972). In this case, May 15, 1978, was designated to be the date by or on which the balance of \$23,900 was to be paid by Smith.

Our review of the evidence reveals that plaintiff offered no evidence to substantiate insufficiency of the time period provided in the agreement. The trial court found the circumstance of an employer-employee sale did not preclude the application of obligations and rights under a written agreement. We find by Smith's testimony that he was aware of defendant's customary desire to close a sale as soon as possible. We conclude that time was of the essence with respect to the specified date of the balance payment.

Smith claims this provision was waived by the seller's failure to provide an abstract of title prior to the payment date. He further raises the sellers should be estopped from asserting that time was of the essence because of the failure to provide the abstract. Country Manor, Inc. argues that these issues were not before the trial court and, therefore, not properly before this court for consideration.

On appeal, issues may not be redrawn. McHugh v. Johnson, 268 N.W.2d 225 (Iowa 1978). Justification for non-performance of contract conditions must appear in the pleadings or be presented and argued during trial proceedings. Henschel v. Hawkeye Security Ins. Co., 178 N.W.2d 409 (Iowa 1970). Our review of the record reveals brief mention of the abstract in the testimony of Smith and Granger, agent for Country Manor, Inc. The trial brief submitted by Smith pointed to the failure of Country Manor, Inc. to furnish an abstract prior to May 5, 1978, as being evidence to negate the parties' intent that time was of the essence.

We find seller's conduct as constituting waiver or grounds for estoppel was not sufficiently raised below, and we cannot consider these issues.

AFFIRMED.