

FILED

JUN 24 1980

264

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ESAHK PILDIS, d/b/a)
PILDIS INVESTMENT COMPANY,)

Plaintiff-Appellee,)

Filed June 24, 1980

vs.)

MORRIS MEZVINSKY AND)
ABE GRUNDMAN,)

0-172
2-64023

Defendants-Appellants.)

Appeal from Polk District Court - James P. Denato, Judge.

Defendants appeal from a judgment entered upon jury verdict for plaintiff's claim for real estate commission. - AFFIRMED.

Harold N. Schneebeck, Jr., of Swift, Brown, Winick & Graves, Des Moines, for defendants-appellants.

R. Jeffrey Lewis, of Gamble, Riepe, Burt, Webster & Fletcher, Des Moines, for plaintiff-appellee.

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

PER CURIAM

Defendants-lessors appeal from a judgment entered upon a jury verdict for plaintiff-broker on his claim for a real estate sales commission. We affirm.

Defendants leased and sold their grocery business in the fall of 1977. Plaintiff filed a petition seeking damages for a breach of an oral brokerage agreement. The jury found a contractual relationship between plaintiff and defendants and awarded plaintiff \$10,800 which represented a five percent commission for his efforts in procuring a long-term building lease. Defendants' motions for directed verdict and new trial were denied. Defendants appeal the judgment and our review of their claims is on errors assigned. Iowa R. App. P. 4.

Defendants first contend that there was insufficient evidence for submission to the jury the question of a contractual relationship and for a finding on that issue. They allege that any agreement that existed lacked sufficient definiteness and certainty of terms. To be sufficient, evidence must be substantial enough that a reasonable mind would accept it as adequate to reach a conclusion. General Tel. Co. of Midwest v. Iowa State Commerce Commission, 275 N.W.2d 364 (Iowa 1979). Testimony of both plaintiff and defendants supports that the parties had knowledge and consent of the broker's actions on defendants' behalf and that plaintiff would be entitled to a commission upon an effective lease. We find sufficient evidence in the record to submit the brokerage relationship question to the jury and to sustain its findings.

Defendants contend that there was insufficient evidence of plaintiff's efforts in procurement of a lessor to submit the question of cause to the jury or sustain its findings. They allege that the evidence did not show that plaintiff was the efficient procuring cause of the transaction.

To present a question of procuring cause, more must be in evidence than the broker's authorization to sell a property, broker's contact with prospective purchaser, and prospective purchaser's subsequent purchase of property. Donahoe v. Denman, 223 Iowa 1273, 275 N.W. 154 (1937). We believe the rule for sale of real estate is equally applicable to lease transactions. Direct testimony and depositions in this case were offered to evidence the involvement, contact and actions of the plaintiff and other persons concerned with the transaction.

Although conflicting, the evidence was sufficient for a jury to determine the effect of plaintiff's efforts and the effect of intervening influences on the lessor. See Johnson v. Donbravsky, 181 Iowa 77, 163 N.W. 589 (1917); Armstrong v. Smith, 227 Iowa 450, 228 N.W. 621 (1939).

However, the court instructed the jury to determine plaintiff's actions as a "substantial factor in procuring" a lessee/buyer, not as the efficient procuring cause as requested by defendants. Defendants raise this instruction as error and argue that the wrong standard was proposed to the jury. The plaintiff contends that the offered instruction did not mislead the jury as there is no significant difference in the standards.

The definitions for procuring cause and proximate cause are interchangeable though the terms apply to different areas of the law. Black's Law Dictionary, 1374, 1391 (4th ed. 1968). A particular result may have more than one proximate cause and liability is affixed to any cause which was a substantial factor in bringing about the result. See Restatement (Second) on Torts § 431 (19). We find the offered instruction is analagous to this concept and it adequately guided the jury in deciding this question. Greninger v. City of Des Moines, 264 N.W.2d 615 (Iowa 1978).

AFFIRMED.