IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

FRANKLIN A. REYNOLDS and IONA DEE REYNOLDS,

Plaintiffs-Appellees,

vs.

GEORGE RICHARD LANCASTER, JR.,

Defendant-Appellant.

Filed June 24, 1987

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7-81
86-897

Appeal from the Iowa District Court for Cerro Gordo County (No. 48620) - Stephen P. Carroll, Judge.

Defendant appeals from judgment for plaintiff in quiet title action. **REVERSED AND REMANDED.**

Alfred A. Beardmore, Charles City, for defendant-appellant.

R. Michael Sweesy, Mason City, for plaintiffs-appellees.

Considered en banc.

SACKETT, J.

The issue we must address is whether an installment sale real estate contract should be forfeited for delinquent monthly payments where the buyer exercised the right to prepay principal and the principal received by the seller, to date of forfeiture, exceeded the principal the buyer was required to pay by said date.

In 1977, Plaintiffs Franklin A. and Iona Dee Reynolds contracted to sell real estate in Clear Lake to Defendant George Richard Lancaster, Jr.[1] The sale price was $175,000. Lancaster paid $75,000 down. The balance of $100,000 was amortized on a monthly basis with interest at 8-1/2 percent. The contract called for monthly payments of $867.82 to commence on February 1, 1978. The balance was due and payable on January 3, 1983. Payments were made as due through September, 1980. Additionally, in January, 1979, Lancaster made and Reynolds accepted a $10,000 prepayment. Starting in September, 1980, after the $10,000 prepayment was made, Lancaster did not make monthly payments in a timely manner. Eight notices of forfeiture were served between September, 1980, and December 1982. The deficiencies claimed in these eight notices were paid within 30 days of the notices. The monthly payments due December 1, 1981 and January 1, 1982 were not made.

On January 6, 1982, Lancaster was served with a notice of forfeiture claiming the December, 1981 and January, 1982 payments were delinquent and he owed taxes and penalties for a total sum of $1,831.95. Lancaster did not tender the amount claimed of the alleged deficiency until February 11, 1982, more than 30 days after he was served with notice of forfeiture. The tender was refused by Reynolds. Without sellers' knowledge Lancaster paid real estate taxes which would be delinquent in April 1982, and October, 1982 before they became delinquent. Reynolds refused Lancaster's subsequent tenders. Thereafter

[1] Richard Lancaster's former wife was an original buyer but has quit claim her interest to Richard. She is not a party to this action.

Reynolds filed a petition to quiet title. The case was tried to the court. Lancaster claimed because of the $10,000 prepayment he was not in default since Reynolds had received more money on the date of the alleged forfeiture than they contracted to receive by that date. Reynolds did not dispute the fact they had received the $10,000. Reynolds did not deny they received more money than they contracted to receive by the date of the claimed forfeiture. Reynolds claim because of the manner in which the money was paid Lancaster did not comply with the language of the contract and therefore was in default.

The trial court rejected Lancaster's claim he was prepaid on the contract, found the tender was not timely made and ordered the contract forfeited. Lancaster appeals contending the contract should not have been forfeited because of the prepayment. This is an action in equity and we find the facts anew. Lett v. Grummer, 300 N.W.2d 147, 148 (Iowa 1981); Treese Leasing, Inc. v. Union Trust and Savings Bank, 253 N.W.2d 921, 915 (Iowa 1977).

The contract contained the following provision:

> 1. Total Purchase Price: The buyer agrees to pay for said property the total of $175,000.00, . . . due and payable . . .as follows: (a) Down Payment of $37,500.00,[2] . . . (2) Balance of Purchase Price, $100,000.00, as follows, $867.82 including interest[3] . . . on the 1st day of February, 1978, and $867.82 including interest . . . on the 1st day of each and every month thereafter.
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> 21. In addition to the principal payments required in paragraph 1 of this Contract, Buyers shall have the right to make additional principal payments of up to $40,000 in the calendar year 1979 and additional principal payments of up to $40,000.00 in calendar year 1980, and shall have the right to prepay the balance of this Contract in full at any time commencing January 3, 1981.

Reynolds argue the $10,000 payment was an additional payment and did not prevent the December, 1981 and January, 1982 payments from being delinquent. Lancaster argues when he made the $10,000 payment he considered

[2] A payment of $37,500 was made at the time the contract was signed. This payment brought the total down payment to $70,000.

[3] "or more at the option of buyers" is crossed out on the printed form.

he was paying ahead. Sellers argue the cases Lett v. Grummer, 300 N.W.2d 147 (Iowa 1981) and Anderson v. Haskell, 45 Iowa 45 (Iowa 1876), which provide a seller does not have to accept prepayments, are dispositive. While we agree with the sellers' position that a buyer cannot be forced to accept prepayments. We determine that is not the issue before us since payment has already been accepted.

Reynolds seek forfeiture under Iowa Code chapter 656. We are dealing with statutory forfeiture and we must enforce the statute. Lett, 300 N.W.2d at 149. While we carry out Iowa Code chapter 656 according to its terms, we read it strictly as to the vendor, Id.; Kilpatrick v. Smith, 236 Iowa 584, 593, 19 N.W.2d 699, 703 (1945); and liberally toward the buyer. Kilpatrick, 236 Iowa at 593, 19 N.W.2d at 703.

Forfeitures are not favored at either law or equity. Id. Equity abhors forfeiture. Beek v. Travato, 150 N.W.2d 655, 660 (Iowa 1967). When forfeitures are forced, those claiming them should show the equities are clearly on their side. Kilpatrick, 236 Iowa at 593, 19 N.W.2d at 703. Equity courts will not hesitate to indulge in inferences which will avoid unfair or inequitable results. LaFontaine v. Developers & Builders, Inc., 156 N.W.2d 651, 657 (Iowa 1968). At law, courts will so construe contracts to avoid forfeiture if possible. Lane v. Cresent Beach Lodge & Resort, Inc., 199 N.W.2d 78, 81 (Iowa 1972). Doubtful language in a written instrument will be construed against the party who selected it. Rector v. Alcorn, 241 N.W.2d 196, 202 (Iowa 1976); Pappas v. Bever, 219 N.W.2d 720, 722 (Iowa 1974).

In the instant case the question is whether equities dictate this contract be forfeited. In Lane, the court said:

> It is well settled that forfeitures by implication or by construction, not compelled by express requirements, are regarded with disfavor, and that contracts involving a forfeiture cannot be extended beyond the strict and literal meaning of the words used. Since forfeitures

> are not favored . . ., provisions for forfeitures are to receive, where the intent is doubtful, a strict construction against those for whose benefit they are introduced. Courts are reluctant to declare and enforce a forfeiture if by reasonable construction it can be avoided. Forfeitures are enforced only where there is the clearest evidence that that was what was meant by the stipulation of the parties. . . .

Lane, 199 N.W.2d at 81 (citing 17 Am.Jur.2d Contracts §500 at 975-76 (2d ed. 1964).

The buyer made and the sellers accepted the $10,000 payment. The $10,000 payment resulted in Reynolds receiving more principal than they contracted to receive. Furthermore, when the $10,000 was prepaid, the interest was reduced ($850 in the first year) so the monthly payments reduced principal at a greater rate than contracted. According to Reynolds' appraisal, at time of trial, the property was valued at between $158,000 and $163,000. Lancaster owed Reynolds approximately $78,683.21 on the contract.

The Iowa courts have determined a buyer's substantial equity is not reason itself to deny forfeiture.[4] Miller v. American Wonderlands, Inc., 275 N.W.2d 399, 405 (Iowa 1979). In Miller the court ordered forfeiture for what it described

[4] This position has been criticized. See Nelson & Whitman, The Installment Sale Contract - A National Viewpoint, 1977 B.Y.U.L. Rev. 541, 543; Lee, Remedies for Breach of the Installment Sale Contract, 19 U. Miami L. Rev. 550, 552-53 (1965); Howe, Forfeiture in Land Contracts, Current Trends in State Legislation 1953-1954, at 428 (1955), Corben, The Right of a Defaulting Vendee to the Restitution of Installments Paid, 40 Yale L.J. 1013, 1028 (1931). See also Comment, Remedying the Inequities of Forfeiture in Land Installment Contracts 64 Iowa L. Rev. 158, 168-69 (1978): "The forfeiture provision of a typical land contract provides for the loss of all payments made by the vendee prior to breach of the contract. Because the aggregate of all past payments made by the vendee may be substantially greater than the actual damages suffered by the vendor, however, it may often result that forfeiture does not represent a reasonable estimate of actual damages for breach of contract. Although actual damages are difficult to determine, it is only coincidental that these damages would have any relationship to the past payments made on the contract. The forfeiture provision does not require an attempt to be made to equate the amount of damages incurred by the vendor to the amount paid by the vendee at various stages of the contract. Thus, the damages awarded the vendor by the forfeiture remedy are not the "reasonable forecast of just compensation for the harm that is caused by the breach" required of a valid liquidated damages clause. The typical forfeiture provision should, therefore, be found to be unenforceable penalty."

as a trifling amount when compared with the value of the real estate. Id. The court determined the default was flagrant, the amount of default was deliberate and the opportunity had been given to make payment. Id.

However, at the same time the buyer's equity is a factor to consider in balancing the equities. Jensen v. Schreck, 275 N.W.2d 374, 387 (Iowa 1979). In Jensen the buyer had made a $1,000 down payment and $1,914.79 in improvements on real estate with a total purchase price of $56,000. Id. In addressing appellants' claim forfeiture was unconscionable, the court determined the amount forfeited was not unreasonable under the circumstances and was not so out of proportion to losses anticipated to constitute a penalty. Id.

A forfeiture here results in sellers having the property returned to them after receiving payments in excess of 50 percent of the purchase price.[5] Lancaster would lose an equity of between $70,000 and $85,000, an amount close to or in excess of 50 percent of the value of the property. Balancing the equities in the instant case, we determine it was reasonable for Lancaster to assume when he prepaid $10,000 he would have some protection on future payments. There is no claim of delinquency in payments before the prepayment was made. The alleged delinquencies all occurred after the prepayment. While it could be argued Lancaster's payment of delinquencies was evidence of his understanding monthly payments were due in addition to prepayment, Lancaster's explanation that he paid for his protection is a feasible argument. Unlike the situation in Miller, the evidence here does not indicate Lancaster deliberately disregarded his obligations under the contract. Rather, the evidence shows an attempt by a buyer to protect himself if times changed and an attempt to pay off the contract under strained circumstances. We also note the fact the alleged defi-

[5] It has been suggested legislative changes be made to disallow forfeitures after buyers have paid 50 percent of the sale price or allowing buyers to demand a mortgage after 50 percent of the purchase price is paid. See 64 Iowa L. Rev. at 180-82.

ciencies were tendered in 34 days. See Keokuk State Bank v. Eckley, 354 N.W.2d 785, 793 (Iowa App. 1984). Furthermore, Lancaster paid real estate taxes after the alleged delinquency. We reverse the ordered forfeiture.

When the decree quieting title was entered, possession was given to Reynolds. Lancaster contends he is entitled to the rentals for said period. We agree.

We remand to the district court to take further evidence to determine the amounts due and owing to the parties. The contract was due in full on January 3, 1983. Lancaster contends he can make such payments. The trial court shall take such further evidence as is necessary to determine the amount of principal and interest currently due and owing. Interest shall be computed at the rate of 8-1/2 percent per annum. The trial court shall also determine the fair rental value less insurance, taxes, reasonable upkeep and maintenance paid by Reynolds during the period of their possession. The fair rental less the specified deductions shall be credited against the amounts Lancaster owes Reynolds on the contract.

Reynolds shall deliver to Lancaster an abstract showing merchantable title in Reynolds up until December 11, 1977. Reynolds shall tender a warranty deed warranting title until December 11, 1977, and warranting title as to their own acts to date. Within 10 days thereafter Lancaster shall pay all sums due and owing with interest accrued to rate at 8-1/2 percent. Upon payment of said sum the deed shall be delivered to Lancaster.

REVERSED AND REMANDED.

All judges concur except Snell, J., and Oxberger, C.J., who dissent.

SNELL, J. (dissenting)

I recognize there are many things in this world that are honored more in the breach than in the observance. I believe, however, that as courts of law we generally err when we apply this principle to legislative mandate. As I believe the statutory law has been correctly applied by the trial court, I dissent.

On October 7, 1977, Lancaster contracted to purchase the Reynolds' home. The contract's express terms made time of the essence of the agreement. The contract also provided for forfeiture pursuant to Iowa Code section 656 if Lancaster failed to make timely payment of any installment, tax, or assessment. Among the contractual obligations assumed by Lancaster was the duty to make monthly payments of $867.32 during the period from February 1, 1978, through January 3, 1983, on which date the balance of the accrued interest and principal became due and payable in full.

Lancaster began making his monthly installment payments on February 1, 1978. On January 3, 1979, he made a payment to the Reynolds in the amount of $10,000.00. He continued to make his monthly installment payments until that which came due on September 1, 1980. He was served with a notice of forfeiture on September 24, 1980. Lancaster made the payment within the thirty days provided for by statute. See Iowa Code § 656.2(3) (1979). Lancaster did not make his next sixteen monthly contract payments on the dates provided for by the contract. During the period from September 1, 1980, to January 7, 1982, the Reynolds caused to be served nine notices of forfeiture in connection both with the unmade contract payments and with various taxes, interest on delinquent payments, and service cost payments allegedly past due. Lancaster made all payments following service of notice. The final notice of forfeiture was served on January 7, 1982. Thirty days passed without Lancaster making

his payment. The Reynolds filed their affidavits in support of forfeiture of the real estate contract on March 26, 1982.

Lancaster contends the $10,000.00 payment made on January 3, 1979, was an advance payment of the monthly installments. Consequently, Lancaster reasons, on January 7, 1982, the date of the alleged default, he had actually paid more on the contract than was due. As a result, he claims he was not in default. The Reynolds contend, and the district court reasoned, that the $10,000.00 payment was simply a partial prepayment of the principal, as provided for by the contract, and did not relieve Lancaster of his contractual responsibility to make the monthly payments.

Paragraph twenty-one of the contract between the parties provides as follows:

> 21. In addition to the principal payments required in paragraph 1 of this Contract, Buyers shall have the right to make additional principal payments of up to $40,000.00 in the calendar year 1979 and additional principal payments of up to $40,000.00 in calendar year 1980, and shall have the right to prepay the balance of this Contract in full at any time commencing January 3, 1981.

Paragraph one of the contract detailed the required installment payments. Consequently, paragraph twenty-one clearly states that any additional principal payments made in 1979 would be "[i]n addition to the principal payments required" by that portion of the contract which detailed the installment payments. I am not persuaded by Lancaster's claim that paragraph twenty-one is ambiguous. Moreover, the record demonstrates that Lancaster did not reach, nor did he seek, a parol agreement with the Reynolds so that the $10,000.00 would be accepted as an advance payment of installments due under the contract. Absent such agreement, the Reynolds cannot be compelled to take the money before it is due. Lett v. Grummer, 300 N.W.2d 147, 150 (Iowa 1981). The majority misses the mark when it states that this issue, settled by Lett, "is not the issue

before us since payment has already been accepted." While it is true a payment has been made and accepted, the determinative issue of the nature of that payment remains: was the payment simply a prepayment of principal, allowable under the contract, or was the payment an attempted prepayment of installment obligations, nowhere provided for on this record. I believe the principle established in Lett is applicable to this issue and would hold that, absent an agreement to that effect, the Reynolds cannot be obligated to accept Lancaster's installment payments until they become due. I find nothing in the contract or record which would convince me to rewrite the contract so as to provide for the type of payment schedule Lancaster desires, but did not contract for.

The majority cites Lane v. Cresent Beach Lodge & Resort, Inc., 199 N.W.2d 78, 91 (Iowa 1972), as authority for the propositions (1) that we disfavor forfeitures that are not compelled by express requirements, and (2) that we strictly construe forfeiture provisions where their intent is doubtful. The majority then holds that "it was reasonable for Lancaster to assume when he prepaid $10,000 he would have some protection on future payments." From these principles, the majority concludes that forfeiture is not warranted in the present case.

The majority effectively engrafts a new element onto our statutory forfeiture analysis: the reasonableness of the vendee's assumptions as concerns his or her noncontractual actions. This is, I believe, an unwise step to take. It is certainly without support in precedent, as the majority effectively demonstrates by its failure to cite any favorable authority. The legislative purpose behind Iowa Code section 656 is to limit the rights of the forfeiting vendor. Jensen v. Schreck, 275 N.W.2d 374, 384 (Iowa 1979). A vendor must shoulder the burden of demonstrating that the requisite statutory elements have been met. Keokuk State Bank v. Eckley, 354 N.W.2d 785, 790 (Iowa App. 1984).

I believe that any pertinent "reasonableness" calculus has already been done by the legislature. The results of that calculus are codified as the statutory elements which, when met, entitle a vendor, prima facie, to forfeit a contract. See Iowa Code § 656.2. The majority adds to the legislature's requirements by effectively requiring a vendor to demonstrate the unreasonableness of a vendee's nonstatutory, noncontractual actions. The reasonableness of Lancaster's assumptions, unless manifested in an agreement with the Reynolds, is irrelevant. Those assumptions do not change Lancaster's contractual obligations nor do they alter our governing statutes.

Moreover, I believe this forfeiture clearly compelled by express forfeiture provisions of both the pertinent statutes and contract. The intent of these provisions can in no way be characterized as doubtful.

The cases cited by Lancaster in support of his position are distinguishable both on the basis that they deal with different contractual language, and on the basis that they deal with contractual and not with statutory forfeiture. See, i.e., Bradford v. Thompson, 470 S.W.2d 633 (Texas 1971), cert. denied, 405 U.S. 955, 92 S. Ct. 1174, 31 L. Ed. 2d 232 (1972); Los Angeles Investment Co. v. Wilson, 181 Cal. 616, 185 P. 853 (1919). It is statutory forfeiture with which we concern ourselves in the present case. See Lett, 300 N.W.2d at 149. The majority's recognition that "[w]e are dealing with statutory forfeiture and we must enforce the statute," could not, in light of the majority's result and reasoning, ring hollower. Although equity abhors a forfeiture, Roshek Realty Co. v. Roshek Brothers Co., 249 Iowa 349, 358, 87 N.W.2d 8, 13 (1957), neither is it enamored of the type of stubbornly deliberate defaults which constitute the record in the present case. See Miller v. American Wonderlands, Inc., 275 N.W.2d 399, 403 (Iowa 1979). As our state's supreme court has recently stated in vacating this court's determination that forfeiture was not warranted in an

earlier cases:

> While it is true, as the court of appeals notes, that equity abhors a forfeiture, we agree with the [appellees] that it does not abhor a forfeiture enough to override established legal principles.

May v. Oakley, No. 85-1563, slip op. at 9 (Iowa June 17, 1987).

I agree with the district court's finding that Lancaster was in default on the real estate contract. As this narrow issue is the sole matter presented for our review, I would affirm the judgment of the district court.

Oxberger, C.J., joins this dissent.