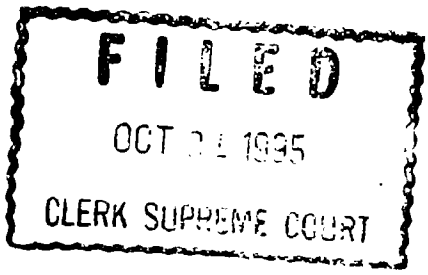
IN THE COURT OF APPEALS OF IOWA



No. 5-359 / 94-1952

WILLIAM L. BECKER, JR., and **PEARL A. BECKER,**

Appellees,

vs.

ROGER VERNON BECKER and **DARLENE L. BECKER,**

Appellants.

Appeal from the Iowa District Court for Dubuque County, Lawrence H. Fautsch, Judge.

The defendants appeal the district court judgment directing them to convey certain real estate to the plaintiffs under a partnership dissolution agreement and entering a judgment against Roger Becker for amounts owing under the agreement for the division of the partnership's accounts receivable. **AFFIRMED.**

Charles H. Jacobs, Dubuque, for appellants.

Michael J. Coyle and Norman J. Wangberg of Fuerste, Carew, Coyle, Juergens & Sudmeier, P.C., Dubuque, for appellees.

Considered by Donielson, C.J., and Cady and Huitink, JJ.

DONIELSON, C.J.

The defendants, Roger and Darlene Becker, appeal a district court order requiring them to convey real estate and entering a judgment for $5,986.66 against defendant Roger Becker. The parties agree review of this action should be de novo. In equity cases we give weight to, but are not bound by, the trial court's fact findings. Iowa R. App. 14(f)(7). We affirm the district court's order in its entirety.

Two brothers, plaintiff William Becker and defendant Roger Becker, had a partnership agreement for the operation of a stone quarry in Dubuque. The brothers owned the real property as tenants in common. The property included an active lower quarry and an upper quarry no longer used in the business. William apparently used a strip of land in the lower quarry as a garden site.

The brothers decided to terminate the partnership pursuant to a partnership termination agreement requiring an exchange of the two quarries and the payment of accounts receivable. The contract provided in part:

> 2. Roger shall take the real estate known as the lower quarry except for a strip of land which cannot be used for quarry purposes that would measure 120 ft. x 400 ft. (approx.) and which would be adjacent to the northern boundary of the lower quarry and contiguous to real property owned by William. William will fence said area with an 8-foot high fence in the event it is used to build a residence within ten (10) years. . . .
>
> 4. William shall receive the real estate known as the upper quarry which lies south of Kaufmann Avenue. . . .

> 12. Should any survey or plat be necessary for the 120 ft. by 400 ft. parcel of property referred to above, that shall be the sole expense of William. . . .
>
> 14. The accounts receivable shall be paid out to Roger and William upon receipt of funds from each customer either for the whole account or any part of it. . . .
>
> 15. It is the intent of Roger and William that upon execution of this Agreement all abstracts of title shall be immediately sent for continuance to be followed by examination by any attorney that either wishes and then promptly by exchange of all transfer documents.

As required by the dissolution agreement William, Roger, and their spouses executed a release in conjunction with the execution of the partnership dissolution agreement. The release specified Roger and William each received consideration for the dissolution of the partnership and the consideration would directly benefit their spouses.

William claims the dissolution agreement required Roger to convey the 120 by 400 foot garden strip of property to William and his wife. The conveyances of the interests in the upper and lower quarry were executed by the two brothers and their spouses, resulting in Roger and Darlene Becker acquiring a joint tenancy ownership interest in the entire lower quarry tract. However, Roger and his wife did not convey their interests in the lower quarry garden site to William and his wife, although the strip had been platted and approved by them, and a quit claim deed for such a conveyance was prepared by their counsel and sent to plaintiffs' counsel.

The dissolution agreement also provided for an allocation of the accounts receivable. William claimed he was owed additional amounts under this provision. Specifically, he claimed he was owed an amount on a project that was listed as an unpaid account receivable at the time of the partnership dissolution. No specific amount was listed because the project's measurement for cost was not available. William claimed his allocation from this account was $4,000. In addition, William sought $1,986.66 as an allocation of other accounts receivable which the defendant had agreed to pay. Roger had issued a check for the latter amount, but it was not accepted by William because it included the notation "Acc. Rec. PAYMENT IN FULL."

William and his wife brought this action against Roger and Darlene seeking an order directing them to execute and deliver a deed for the conveyance of the garden property and for payment to William of the amounts he claimed he was owed as part of his allocation of the accounts receivable. The case proceeded to a trial during which William presented evidence supporting his claims. Roger did not testify nor did he present any evidence at the conclusion of the plaintiffs' case. The district court entered an order directing the property in question be conveyed to William and his spouse and ordering Roger to pay William the sum of $5,986.66 plus interest for his share of accounts receivable under the dissolution agreement.

I. REAL ESTATE.

The defendants claim they were not contractually obligated to transfer the garden site to the plaintiffs, and Darlene's dower interests and the statute of frauds prevent a court from ordering such a transfer. At the outset we note the defendants have not made a persuasive statue of frauds argument and this issue is without merit. Further, we note that while Darlene was not a party to the dissolution agreement, she did execute a concomitant release in which she admitted she directly benefited from the consideration exchanged pursuant to the dissolution of the partnership. The trial court's order did not violate any alleged dower interests of Darlene or obligate her to a contract to which she was not already a beneficiary.

The cardinal rule of contract construction is that the parties' intent controls. *Lange v. Lange*, 520 N.W.2d 113, 119 (Iowa 1994). Except where ambiguity exists, intent is determined by what the contract itself says. *Id.* In interpreting a contract we give effect to the language of the entire contract in accordance with its commonly accepted and ordinary meaning. *Id.* When a contract is not ambiguous, we are obliged to enforce it as written. *Id. at 117.*

Specific performance is available when the contract involves property which is unique or possesses special value. *Severson v. Elberon Elevator, Inc.*, 250 N.W.2d 417, 423 (Iowa 1977). Real estate is assumed to possess this quality. *Id.* Specific performance may be decreed when contractual terms are so express the court

can reasonably determine the duty of each party and the conditions under which performance is due. *See Lange*, 520 N.W.2d at 117.

The trial court found it was clear from the language of the partnership dissolution agreement that William was to receive the garden strip portion of the lower quarry. We agree. As consideration for the partnership dissolution, Roger was to receive the entire ownership interest in the lower quarry "except for a strip of land which cannot be used for quarry purposes that would measure 120 ft. x 400 ft. (approx.) and which would be adjacent to the northern boundary of the lower quarry and contiguous to real property owned by William." There is nothing ambiguous about the land transfers which were to occur under this agreement, and the trial court was correct in ordering specific performance.

II. ALLOCATION OF ACCOUNTS RECEIVABLE.

A review of the record establishes William's entitlement to one-half of the accounts receivable. The $1,986.66 check tendered by Roger reflects an undisputed amount due William and judgment was properly required on this amount. It was disputed as to whether William was entitled to an additional $4,000 for a retaining wall project completed at the Schoen residence.

The evidence reveals William performed some work in conjunction with this project. Roger presented no substantive evidence to refute why this project would

not have been an account receivable to which William was entitled. The trial court was correct in awarding William $4,000 for his share of this account receivable. We affirm the trial court's entry of a judgment for $5,986.66 plus interest against Roger.

AFFIRMED.