

IN THE COURT OF APPEALS OF IOWA

FILED

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CLERK SUPREME COURT

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AMENDED AND RESTATED PROFIT)
SHARING TRUST OF SKOGMAN)
CONSTRUCTION COMPANY OF IOWA,)

Plaintiff-Appellee,)

vs.)

EDWARD PECHOUS,)

Defendant-Appellant.)

4-342
84-294

Appeal from the Iowa District Court for Johnson County—August F. Honsell,
Judge.

Defendant buyer appeals from a judgment for plaintiff seller ordering
specific performance of a real estate contract. REVERSED WITHOUT
PREJUDICE TO THE PLAINTIFF TO PURSUE ITS REMEDY AT LAW.

Jay H. Honohan of Honohan, Epley, Kron & Haymond, Iowa City, for
defendant-appellant.

Iris E. Muchmore of Simmons, Perrine, Albright & Ellwood, Cedar Rapids,
for plaintiff-appellee.

Considered by Donielson, P.J., and Schlegel and Sackett, JJ.

Edward Pechous, defendant buyer, appeals from a judgment for plaintiff seller, Amended and Restated Profit Sharing Trust of Skogman Construction Company of Iowa, ordering specific performance of a long-term real estate contract.

Pechous, as buyer, and Skogman, as seller, entered into a purchase agreement on April 3, 1982 for the sale of 188 acres near North Liberty, Iowa, for a sum of \$330,000. Ten thousand dollars was paid to ERA Skogman Realty, the listing realtor, to be delivered to seller Skogman at time of closing. Possession was to be given on March 1, 1983, at which time an additional \$90,000 was to be paid to seller. The balance of \$230,000 was to be paid in annual installments of \$25,080.72, including interest at 10% per annum. Payments of \$25,080.72 were to commence on March 1, 1984, with the contract balance to be due and payable on March 1, 1993.

The purchase agreement provides, "In case either party fails to perform his part of the agreement, the other party may at his option forfeit the contract by 30 days notice, or may proceed by action at law or equity to enforce the same as provided by law, and the party in default shall pay all costs including attorney fees, and a receiver may be appointed."

The property had been listed with ERA Skogman Realty; however, Pechous' offer was submitted by Suzanne Fountain Realty. Fountain was aware that the property was for sale and contacted ERA who agreed to pay Fountain one-half of the sales commission in the event she obtained a buyer.

Pechous testified that he planned to make the \$90,000 payment with funds he received from a real estate contract with a third party where he was seller. No contingency for the \$90,000 payment was included in the contract, although Fountain was aware of Pechous' intentions. Skogman contends the contingency was never communicated to them and that Fountain was not their agent. The third party did not perform and Pechous was unable to make the \$90,000 payment and so notified Skogman in February of 1983.

Seller Skogman sued for specific performance and the trial court decreed that Pechous specifically perform the agreement and pay to Skogman the balance of the purchase price with interest as provided in the agreement.¹ The trial court also ordered Pechous to pay Skogman's attorney fees of \$5,193.63.

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Buyer Pechous claims the seller Skogman must plead and prove an inadequate remedy at law before being awarded equitable relief. Seller Skogman claims he is not required to prove his remedy at law is inadequate but if he is he has met his burden of proof. "The fundamental rule of equity jurisprudence that the jurisdiction of a court of equity depends upon the absence of a plain, adequate and complete remedy at law is an essential and determining factor in establishing the jurisdiction of equity to decree specific performance of contracts. A decree for specific performance of a contract, whether a written or oral one, will not be granted unless it appears that the plaintiff has no adequate remedy at law. The remedy is generally available only where, under the circumstances of the case, an action at law for compensatory damages for breach of contract by failing to carry it out is inadequate under the circumstances of the case to do complete justice between the parties." 71 Am. Jur. 2d Specific Performance §8 (1973). "[I]n the case of contract for the sale of real estate, it is presumed by the courts that the remedy at law is inadequate, . . ., since no two parcels of real estate are the same." Id. at §9. This is a contract for the sale of land and specific performance can lie without a showing of the exhaustion of other legal remedies.

¹ The trial court later sustained a motion to enlarge findings holding that Pechous owed \$97,863.35 as of January 13, 1984, and that the clerk should issue execution for payment and interest as they become due in the agreement.

II.

Buyer next contends that specific performance should be denied here because it results in a substantial hardship to him and his performance is not possible. Seller contends that buyer did not timely raise a hardship defense and that buyer has not established the defense of impossibility of performance.

Specific performance of a contract is not a remedy which is available as a matter of right, but rather, its availability rests in the sound discretion of the trial court. It will not be granted where to do so will result in hardship or injustice. Youngblut v. Wilson, 294 N.W.2d 813, 817 (Iowa 1980). "Actions for specific performance rest on their own peculiar facts and circumstances, and rarely does one find one case identical with another, or so fashioned in fact and law that it can be said that the one is "on all fours" with another. 71 Am. Jr. 2d Specific Performance §4 (1973). "One of the fundamental rules with regard to specific performance is that that remedy will not be decreed unless it affirmatively appears that the contract which the plaintiff seeks to enforce is a fair and equitable one. The contract must be reasonable and just in its provisions, and it must appear to have been entered into fairly and understandingly . . . [i]t must, in addition to being a valid contract, be fair and just in all of its terms, and free from suspicion as to its bona fides. The circumstances attending it must be such as commend it favorably to the court; otherwise, equity will refuse its aid. Specific performance will be refused where the contract is inequitable, oppressive, or unconscionable. But the equitable considerations which will justify a court in refusing to compel specific performance of a valid contract must have some reference to or some connection with the contract itself or the duties of the parties in relation to it." Id. at §5.

The criterion is not whether a court would be justified in the rescission of the contract or in refusing other forms of relief, but whether it would be inequitable

to enforce the contract. If to unfairness are added other elements showing that it is not equitable, specific performance will unquestionably be denied. The mere absence of any intention to take an unfair advantage will not be sufficient to procure the equitable enforcement of a contract which violates any of the recognized rules governing the granting of equitable relief. 71 Am. Jr. 2d Specific Performance §5 (1973).

Whether a contract is so unjust as to make it unenforceable by specific performance is ordinarily a question to be determined by the trial court in the light of all the facts and circumstances of each particular case. The issue is whether or not the record reflects that the trial court's order provided an equitable result treating both parties fairly so as not to result in a hardship or injustice to either. Equity seeks fairness. The plaintiff seeking specific performance has the burden of establishing that the result they seek will be fair and equitable.

The trust presented testimony that they were ready to perform and they felt farm values dropped in the one year period between the execution of the agreement and the possession date. There was no evidence of damage to the trust, nor any evidence of the drop in farm values. The trust made no effort to re-sell, establish market value nor do anything on being advised of Pechous' problem in February of 1983. They had a buyer and they expected him to perform. We must therefore determine if the enforcement of Skogman's position here is fair and equitable. The record made in the trial court is not adequate to convince us that enforcement of this contract is fair and equitable.

Neither party sought to introduce evidence of land values. While we are bound by the record before us, one would have to live in a vacuum to be unaware of the current plight of the Iowa farmer and the decrease in values of farm real estate. This is not an isolated event but one that is reoccurring with more

frequency. The courts have a burden to view these unfortunate situations caused by our farm economy with caution and care in an attempt to deal fairly with both buyers and sellers and to attempt to balance the equities.

In 1860, the Iowa Supreme Court said "The court will not decree a specific performance where there has been a change in the circumstances of the case or a large depreciation in the value of the property. Mullin v. Bloomer, 11 Iowa 3360, 363 (1860). Their position was tempered in Marlin v. Tall, 196 Iowa 388, 391, 192 N.W. 806, 807 (1923), where the Iowa court said that decrease in value of the dollar and corresponding decrease in land values did not defeat specific performance nor did misunderstanding of the defendant, absence fraud, wrong on part of plaintiff or mutual mistake. In Marlin the court discussed the reality that contracting parties assume the speculation and realities of real estate values and negotiate accordingly.

Skogman presents no evidence of land values. It is not equity when a decree of specific performance places one party in a position where he can take advantage of the other party. We have grave concern that specific performance of this contract will put the seller in such a position. That is not the purpose of an equitable action. Pechous has testified that if he obtains the \$90,000 he will be unable to make the annual payments and the contract will be forfeited. If this were to happen, Skogman would receive 33-1/3% of the contract price prior to forfeiture. The record does not indicate that this is a fair result. "Specific performance being wholly discretionary, various grounds have been used for its denial. Among them are: 1. Hardship; 2. Where granting of specific performance would prove harsh, oppressive or unconscionable." Bauman v. Nutter, 328 N.W.2d 354, 356 (Iowa Ct. App. 1982).

"However strong, clear and emphatic the language of the contract, however plain the right at law, if a specific performance would, for any reason, cause a result harsh, inequitable, or contrary to good conscience, the court should refuse

such a decree, and leave the parties to their remedy at law. Nelson v. Robinson, 189 Iowa 1076, 1084 (1920) quoting Mansfield v. Sherman, 81 ME 365 (17 Atl. 300).

"Courts of equity often refuse specific performance of valid contracts, while leaving to the complainant his right to his legal remedy for damages for breach." Burge v. Gough, 153 Iowa 183, 186, 133 N.W. 340, 341 (1911).

The record before us does not convince us that the remedy ordered by the trial court is fair and equitable. We therefore reverse the order for specific performance without prejudice and leave plaintiff the right to pursue its remedy at law.

Skogman requests attorney fees on appeal. Denied.

REVERSED WITHOUT PREJUDICE TO THE PLAINTIFF TO PURSUE ITS
REMEDY AT LAW.