IN THE COURT OF APPEALS OF IOWA

No. 6-525 / 95-1616

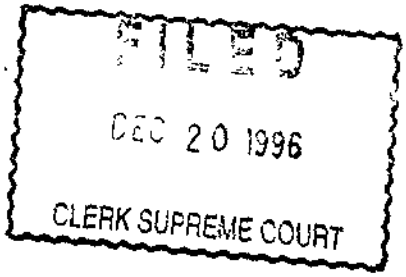
FRANCES BALLARD,

Appellee,

vs.

LARRY A. CROSSLEY,

Appellant.



Appeal from the Iowa District Court for Winnebago County, John S. Mackey, Judge.

Larry Crossley appeals a district court order granting summary judgment in favor of the plaintiff, Frances Ballard. **AFFIRMED.**

Larry A. Crossley, Carlos, Minnesota, pro se.

Daniel E. Bappe, Nevada, for appellee.

Heard by Sackett, C.J., Cady, and Huitink, JJ.

CADY, J.

Larry Crossley appeals a district court order granting summary judgment to Frances Ballard in the sum of $114,432.24. Larry claims the district court acquired no personal jurisdiction to enter judgment, and a genuine issue of material fact existed which precluded summary adjudication. We affirm the district court on our review.

The facts of the lawsuit date back to 1973 when James and Frances Ballard sold a 240 acre farm in Winnebago County to Donald and Patricia Crossley pursuant to a real estate contract. The contract required annual installment payments, as later amended, until 1989, at which time the balance became due. James Ballard later died.

In 1985, the Crossleys assigned their interest in the 240 acre farm to Forest City Bank and Trust Company as security for several loans made to them by the bank.

In 1986, Frances Ballard assigned her interest in the real estate contract to the Crossleys' son, Larry. She reserved, however, "all rights and remedies" under the original real estate contract in the event of a default. The Crossleys were in default at the time, and Larry was required to make all payments to Frances that were due and payable by his parents under the real estate contract. The assignment between Frances and Larry was amended in 1988 to specify that Larry was considered a "buyer" of the farm and Frances was the "seller." Larry was a resident of Winnebago County at the time. He took possession of the farm and made the required payments until 1991.

The bank later filed a petition to foreclose under the 1985 assignment with the Crossleys after the Crossleys defaulted on their loans. The district court eventually entered a decree for foreclosure. The unpaid balance and interest due to the seller under the real estate contract was $114,432.24. The bank tendered this amount to the clerk of court and obtained title to the real estate.

Frances filed a petition against Larry in 1994 seeking to recover the funds tendered to the clerk of court by the bank. Larry, who had changed his residency to Minnesota, moved to dismiss the petition for lack of personal jurisdiction. The district court overruled the motion.

Frances then sought summary judgment. The district court determined Frances was entitled to the funds tendered by the bank as a matter of law, and entered judgment for Frances.

Larry appeals. He claims the long-arm statute was not available to acquire jurisdiction over him because the assignment he entered into with Frances had been terminated by the foreclosure action brought by the bank. He additionally claims summary judgment was improperly entered by the district court because a reasonable interpretation of the assignment gives him the right to the funds tendered by the bank.

I. Jurisdiction

Larry first argues the foreclosure by the bank divested the district court of its ability to acquire personal jurisdiction over him under Iowa's long-arm statute. He argues there was no longer a contract between Frances and himself "to be performed

in whole or in part by either party in Iowa" after the bank's foreclosure. *See* Iowa Code § 617.3 (1995).

The long-arm statute is based on the due process concept of "minimum contacts." *Svendsen v. Quester Corp.*, 304 N.W.2d 428, 430 (Iowa 1981). The due process clause limits the power of state courts to render judgment against a nonresident by permitting personal jurisdiction only when the nonresident has "minimum contacts with the forum state such that the maintenance of the [law]suit does not offend traditional notions of fair play and substantial justice." *Id.* Generally, contracts to be performed in the forum state satisfy this due process standard. *See Douglas Mach. & Eng'g Co. v. Hyflow Blanking Press Corp.*, 229 N.W.2d 784, 788 (Iowa 1975). Yet, the focus of the due process analysis is not whether the contract is capable of performance at the time the lawsuit, but whether the contract rendered the contact by the nonresident with the forum state sufficient to satisfy the minimum contacts standard. *See Omnilingua, Inc. v. Great Gulf Resorts of World, Inc.*, 500 N.W.2d 721 (Iowa App. 1993). We reject Larry's jurisdictional claim. Larry clearly had a substantial connection with Iowa so that the maintenance of this lawsuit in Iowa did not offend the due process clause.

II. Summary Judgment

Our review of summary judgment is for correction of errors at law. *Carr v. Bankers Trust Co.*, 546 N.W.2d 901, 903 (Iowa 1996). Summary judgment is

properly entered when the record fails to reveal a genuine issue of material fact and the movant is entitled to judgment as a matter of law. *Id.*

An assignment is a contract between the assignor and assignee. *Broyles v. Iowa Dep't of Soc. Serv.*, 305 N.W.2d 718, 721 (Iowa 1981). The same rules of construction applicable to contracts apply to assignments. *Id.* Summary judgment is particularly suited to resolve issues involving the construction of an assignment or contract and may be properly utilized in cases involving the interpretation of an assignment of contract. Construction involves the determination of the legal effect of a contract and is normally decided by the court as a matter of law. *LeMars Mut. Ins. v. Farm & City Ins.*, 494 N.W.2d 216, 217 (Iowa 1992). Interpretation also involves a legal issue if the resolution of the issue does not depend on extrinsic evidence. *Fashion Fabrics of Iowa, Inc. v. Retail Investors Corp.*, 266 N.W.2d 22, 25 (Iowa 1978). Thus, if a contract is unambiguous about the dispositive issue in the case, or it is ambiguous but extrinsic evidence is dispositive of the interpretation, summary judgment may be granted. *World-Wide Rights Ltd. v. Combe Inc.*, 955 F.2d 242, 245 (4th Cir. 1992). On the other hand, when there is relevant extrinsic evidence to help reveal the parties' actual intent of an ambiguous contract, the meaning of the contract becomes an issue of fact barring summary judgment. *American Express Travel Related Serv. Co. v. Accu-Weather, Inc.*, 849 F. Supp. 233, 238 (S.D.N.Y. 1994).

We believe the dispositive issue in this case is whether the assignment between Frances and Larry transferred the right to receive the unpaid balance of the contract following foreclosure by a third party to Larry or whether that right was retained by Frances. Thus, we must ultimately examine the language of the assignment to determine the intent of the parties. *See Whalen v. Connelly*, 545 N.W.2d 284, 291 (Iowa 1996).

We initially recognize the seller of real estate by real estate contract holds, as personal property, legal title to the realty as security for payment of the balance of the purchase price. *Junkin v. McClain*, 221 Iowa 1084, 1089-90, 265 N.W. 362, 365 (Iowa 1936). It is this security interest which protects the seller's rights from being appropriated by third persons who may acquire an interest in the real estate through the buyer. Thus, if anyone claims an equitable interest to the real estate through the buyer and ultimately enforces that interest by sale, the vendor is entitled to receive the value of the security interest equal to the unpaid purchase price plus accrued interest. *See Twogood v. Stephens*, 19 Iowa 405 (1865); *see also Bulter v. Wilkinson*, 740 P.2d 1244 (Utah 1987).

Generally an assignment by seller of real estate transfers to the assignee the entire interest or right of the seller in the property. *Padzensky v. Kinzenbaw*, 343 N.W.2d 467, 471 (Iowa 1984). However, a seller may limit the assignment and retain rights which do not pass to the assignee. *Id;* 6A C.J.S. *Assignments* § 96 (1975).

In this case, Frances specifically retained "all rights and remedies", including forfeiture and foreclosure, reserved to her upon default in the original real estate contract. Furthermore, the subsequent addendum to the assignment revealed an intention of the parties that Larry be treated as a buyer and Frances have the rights of a seller of a real estate contract.

Larry claims Frances reserved only rights to take affirmative steps in the event the contract was in default, such as instituting an action to forfeit and foreclose the contract. Consequently, Larry asserts the right to receive the unpaid balance of the contract upon a foreclosure not initiated by Frances was assigned to him.

The mere assertion of an ambiguity in a contract does not preclude summary judgment. *Mycak v. Honeywell, Inc.*, 953 F.2d 798, 802 (2d Cir. 1992). The nonmovant must show the contractual language is susceptible of two fairly reasonable meanings. *Id.* We conclude Larry's interpretation is unreasonable, and the language of the assignment is unambiguous.

The written assignment between Frances and Larry specifically reserved to Frances both the "rights and remedies" upon default. This reservation recognizes the continued existence of a security interest in the vendor which may be enforced by forfeiture or foreclosure, or would protect the vendor in the event the real estate is subject to claims through the vendee's interest. In either situation, the vendor maintains a right to the value of the security interest, and is entitled to receive the

unpaid balance of the contract in the event the real estate is sold. Any other interpretation of the "rights and remedies" reservation would be unreasonable.

We conclude the language of the assignment as unambiguous. We construe the assignment to reserve to Frances the right to the disputed proceeds. Summary judgment was properly entered. We have considered all the claims raised by Larry and affirm the decision of the district court.

AFFIRMED.